

**ELPIDIO SY, PETITIONER, VS. JUDGE EMELITA
HABACON--GARAYBLAS, IN HER CAPACITY AS PRESIDING JUDGE
OF METROPOLITAN TRIAL COURT OF MANILA, BRANCH 7,
RESPONDENT.**

Adm. Matter No. MTJ-93-860. December 21, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

In a sworn complaint dated July 1, 1993, Elpidio Sy charged Judge Emelita Habacon-Garayblas of the Metropolitan Trial Court, Branch 7, Manila with gross ignorance of the law, partiality and knowingly rendering an unjust judgment or order, in relation to Civil Case No. 131430-CV, an ejectment case entitled "Systems Realty Development Corporation vs. Maria P. Garcia." Complainant is the duly authorized representative of Systems Realty Development Corporation.

On June 16, 1992, respondent rendered a decision in favor of the plaintiff in said case (Annex "A") and on August 20, 1992, she issued a writ of execution (Annex "C"). A Notice to Vacate was served on defendant on August 21, 1992, giving her three days within which to leave the subject premises (Annex "D").

According to complainant, when Sheriff Samuel Caballes was about to enforce the writ of execution, respondent whimsically and illegally stopped the implementation thereof by issuing an Order dated August 24, 1992, directing the sheriff "to hold in abeyance the implementation of the Writ of Execution issued by the Court dated August 20, 1992" (Annex "E"). The basis of the order was an unverified Manifestation filed by one Dr. Peter B. Flores, who claimed to be the occupant of the subject premises (Annex "F").

Complainant alleged that respondent maliciously and unlawfully refused to lift the questioned Order despite several motions and pleadings to lift the same (Annexes "G", "G-1", "G-2" and "G-3"). Complainant even filed a petition for mandamus on October 13, 1992, with the Regional Trial Court, Branch 39, Manila to compel respondent to implement the writ of execution.

In her comment dated August 19, 1992, respondent explained that her actions were justifiably taken to enable her to judiciously resolve the issues of whether Dr. Flores was claiming rights under the defendant in Civil Case No. 131430-CV and whether the writ of execution may be enforced against him. Thus, respondent issued an order dated September 12, 1992, setting the Manifestation for hearing on October 12, 1992 and directing the sheriff to hold in abeyance the implementation of the writ of execution. On October 13, 1992, the day following the hearing, complainant filed the petition for mandamus.

Respondent averred that the Regional Trial Court, acting on the petition for mandamus, issued an order directing her to elevate the records of the case to said court. She also noted that the complainant filed a motion for withdrawal of the petition for mandamus on July 19, 1993, which motion had not yet been acted upon. Neither have the records of the case been returned to respondent's sala.

We find respondent's explanation satisfactory.

As admitted by complainant, possession of the subject premises was claimed by Dr. Peter B. Flores, a third party or stranger to the ejectment case. Thus, respondent's act of suspending the implementation of the writ of execution was justified under the doctrine laid down in *Sta. Ana v. Suñga*, 54 SCRA 36, 44 [1973]:

"There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case, that such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. In any of these events, the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant. But in the absence of any such hearing or any proceeding of similar character, every person in the actual possession of the land has a right to be respected therein (Art. 446, Civil Code) and his ejectment would constitute a deprivation of a property right without due process of law" (citing 2 Moran Rules of Court, 1970 ed., p. 36).

The fact that the manifestation filed by Dr. Flores was unverified does not militate against respondent taking cognizance thereof. The requirement regarding verification of a pleading is formal, not jurisdictional. The court may order the correction of the pleading if the verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the end of justice may thereby be served (*Villarica v. Court of Appeals*, G.R. No. 96085, March 16, 1992, First Division, Minute Resolution).

Complainant also cannot fault respondent for not resolving the several motions to lift the questioned Order dated August 24, 1992. Respondent could not take action on the motions because complainant filed a petition for mandamus with the Regional Trial Court on October 13, 1992 to compel respondent to lift the questioned order. As a consequence of said filing the records of the case were taken out of respondent's hands.

Complainant failed to show that respondent acted with bad faith, illegal motive and evident partiality in issuing the order suspending the implementation of the writ of execution and in not acting on the motions filed by him.

WHEREFORE, the complaint against respondent is DISMISSED for lack of merit. Respondent is DIRECTED to take action and resolve WITH DISPATCH the cases subject of this complaint.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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