

VENERANDO C. OLANDRIA, COMPLAINANT, VS. EUGENIO E. FUENTES, JR., SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, CEBU CITY, RESPONDENT.

A.M. No. P-18-3848 (Formerly OCA IPI No. 15-4490-P). June 27, 2018

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The present administrative matter arose from the Complaint-Affidavit^[1] filed by Venerando C. Olandria (complainant) against Eugenio E. Fuentes, Jr., Sheriff IV, Office of the Clerk of Court (respondent), Regional Trial Court (RTC) of Cebu City, for grave misconduct, gross dereliction of duty, and gross ignorance of the law relative to his action in the enforcement of a writ of attachment in Civil Case No. CEB-38633, entitled *Pump & Go Power Fuel, Inc. v. Venlei Assets Corp. and Venerando Cimagala Olandria* doing business under the name and style of Unified Petroleum Philippines.

Complainant alleged that he was one of the defendants in a Complaint for a sum of money and the issuance of a writ of attachment filed by Pump & Go Power Fuel, Inc. (plaintiff) before Branch 7, RTC of Cebu City (RTC-Cebu), and thereat docketed as Civil Case No. CEB-38633; that the RTC-Cebu issued a writ of preliminary attachment in said Civil Case No. CEB-38633; that respondent was assigned to enforce said writ; that respondent thereupon attached and took possession of complainant's seven gasoline stations; that plaintiff posted in each attached gas station a private security guard; that plaintiff eventually gained control of the attached gas stations and could enter and/or leave the premises at will; that on several occasions, plaintiff had withdrawn some things from the attached gas stations; that he filed a motion with the RTC-Cebu to appoint another sheriff since his interest could not be protected by respondent, but the motion was denied; that he filed with RTC-Cebu a motion to require respondent to make an inventory of the attached properties; that on April 3, 2014, the RTC ordered respondent to make an inventory of the attached properties and to state where said attached properties were to be stored; that in response thereto, respondent filed a Manifestation dated October 28, 2014 stating that the attached properties had been withdrawn by the plaintiff in his (respondent's) absence, based on information provided by said plaintiff's representative, hence he could no longer make a true and accurate inventory thereof; that, as an officer of the court, respondent should have retained and kept control of the attached properties, subject to the supervision of the court, in order to protect the interest of both parties equally; and that respondent's acts amounted to gross dereliction of duty, for which respondent should be dismissed from the service.

In its 1st Indorsement^[2] dated October 6, 2015, the Office of the Court Administrator (OCA) required respondent to comment on the above-mentioned charges.

In his Comment,^[3] respondent asserted that he did not lose control over the attached properties because the security guards posted at the gasoline stations effectively protected and guarded the properties; that it had been the standard operating practice of sheriffs that, in the attachment of properties like gasoline stations, security guards were posted therein because bonded warehouses where attached properties could be placed, were not available

anymore; that, in this case, it was impractical to dig out the gasoline tanks and transfer them somewhere else; that it was beyond the physical capability of any sheriff like himself to personally guard all attached properties; that he preferred not to make any comment on the claim that plaintiff's employees could enter and leave the premises of the attached properties, in the absence of any allegation that complainant in fact had suffered any injury or damage as a result thereof; that even if he had prior knowledge of the alleged activity of plaintiff, he could not have prevented plaintiff from taking out the attached properties because the RTC's Decision on a Compromise Agreement dated January 28, 2014 authorized plaintiff to do so; that, in fact, the said Decision gave plaintiff a period of 30 days from the signing of the Compromise Agreement within which to do so, otherwise, plaintiff would have had to pay the intervenors a monthly rental of P40,000.00 for the use and occupation of the gasoline stations in question; and, that after he filed his Manifestation on October 28, 2014, wherein he set forth the reason why he could not render a true and accurate inventory, the RTC in fact did not require him to render an inventory anymore. Respondent concluded his comment with a prayer that the Complaint-Affidavit be dismissed.

The OCA Report and Recommendation

In its Memorandum[4] Report of June 7, 2017, the OCA recommended that respondent be found guilty of simple neglect of duty and ordered to pay a P5,000.00 fine, with a stern warning that a repetition of the same or similar offense would warrant the imposition of a more severe penalty.

The OCA found that respondent did not make an inventory of the properties covered by the writ of preliminary attachment; that while plaintiff was authorized to withdraw the equipment from the attached gas stations pursuant to the RTC's Decision of January 28, 2014, it was respondent's duty nonetheless to see to it that the equipment were withdrawn while he was physically present, so that complainant's interests could be protected; that indeed the RTC's Decision based on the compromise agreement clearly made reference to "the nature and amount of the item or items withdrawn and where it or they were stored or moved to";[5] that the said judgment likewise directed that an inventory be made in compliance with the court's Order; that the mere fact that the RTC did not issue a subsequent Order requiring respondent to make an inventory did not excuse respondent at all from making such an inventory; that respondent was thus remiss in his duty to keep custody of the attached properties, which constituted simple neglect of duty, classified as a less grave offense and penalized by suspension for one month and one day to six months, for the first offense, and dismissal from the service for the second; that pursuant to the doctrine that this Court is not only a court of law but also a court of equity, and considering moreover that this is respondent's first administrative infraction, the penalty that should be meted out against respondent ought to be tempered with compassion; hence, all things considered, a fine in the amount of P5,000.00 was justified under circumstances, so that respondent may continue to discharge his duties, and on the other hand, that any adverse effect on the public service might be avoided.

The Court's Ruling

Rule 57 of the Rules of Court governs the provisional remedy of preliminary attachment; Section 6 of which is pertinent to the instant case, viz.:

SEC. 6. Sheriffs return - After enforcing the writ, the sheriff must likewise without delay make a return thereon to the court from which the writ issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

Here, it was beyond cavil that, by Order[6] dated April 3, 2014, the RTC-Cebu directed the plaintiff to confirm or comment on the allegation of the complainant that there had been withdrawal of fuel from the attached gas stations done without the presence of respondent. Likewise, by Order dated October 10, 2014, the RTC-Cebu directed respondent "to make an inventory of the items removed from [complainant's] warehouse and junkyard

and to make an inquiry as to where the items [were] stored within 10 days."[7]

It is significant to note that respondent did admit his failure or inability to "make an inventory of the items removed from the [complainant]'s warehouse and junkyard and to make an inquiry as to where the items [were] stored within 10 days from receipt there of."[8] However, he justified his non-submission of an inventory by claiming that, as early as January 28, 2014, the parties in Civil Case No. CEB-38633 had already entered into a compromise agreement; and that he was informed by the plaintiffs representative that certain items were withdrawn from the attached gas stations pursuant to the compromise agreement. Respondent also argued, that when he was ordered by the RTC-Cebu on April 3, 2014 to oversee the withdrawal of items from the attached gas stations, the same was already fait accompli as the items had already been withdrawn by the plaintiff.[9] In essence, respondent stated that it would not be possible for him do so because "the said items were already withdrawn by the plaintiff x x x." [10] He then manifested before the RTC-Cebu that "he could not make a true and accurate inventory of the items withdrawn by the plaintiff from the warehouse and junkyard of the [complainant]." [11]

Such inability or failure on the part of respondent, though committed evidently through inadvertence, lack of attention, or carelessness, amounts to simple neglect of duty.

"Simple Neglect of Duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference." [12] In *Sabijon v. De Juan*, [13] this Court adopted the OCA's recommendation that therein respondent-sheriff be held guilty of simple neglect of duty, among others, because of his failure to make periodic reports until either full satisfaction of the judgment or the expiration of the writ's effectivity, thus -

In this case, respondent, as a Sheriff, ought to know that pursuant to Section 9, Rule 39 of the Rules of Court, a judgment debtor, in case he has insufficient cash to pay all or part of the judgment debt, is given the option to choose which among his properties or a part thereof may be levied upon. Moreover, respondent should have known that under Section 14 of the same Rule, he is required to make a return on the writ of execution and make periodic reports on the execution proceedings until either the full satisfaction of the judgment or the expiration of the writ's effectivity, as well as to furnish the parties copies of such return and periodic reports.

x x x Worse, respondent himself admitted that he failed to make a return on the writ and to make periodic reports on the execution process, thus, putting into serious doubt that an auction sale involving the subject truck was actually conducted. Irrefragably, the OCA correctly concluded that respondent's foregoing acts constitute Grave Abuse of Authority and Simple Neglect of Duty. [14] (Emphasis and underscoring supplied)

Conformably with the foregoing disquisition, herein respondent should have submitted the inventory of the attached properties as directed by the trial court; in addition, he should have made updates on the attached properties in his custody while these were awaiting judgment and execution. Furthermore, there is no merit in respondent's claim that he could not make a true and accurate account of plaintiff's withdrawals from the attached properties. Respondent should have made another inventory of the attached properties and compared this second inventory with the first inventory that he had submitted with his return as required under the above-quoted Section 6, Rule 57 of the Rules of Court. The items listed in his first inventory which were no longer in his later inventory should thus appear as the items removed by the plaintiff.

Respondent must be reminded of his general functions and duties as sheriff, to wit:

[a]

serves and/or executes all writs and processes of the Courts and other agencies, both local and foreign

[b]

keeps custody of attached properties or goods;

[c]

maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him;

[d]

submits periodic reports to the Clerk of Court;

[e]

does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court.[15]

Clearly, not only was respondent obliged to submit his periodic reports; he was also expected to perform tasks as may be assigned by the judge, such as the directive to submit an inventory to determine the withdrawals made by the plaintiff. Respondent cannot validly argue that the withdrawals made by the plaintiff were proper and in accordance with the compromise agreement entered by the parties; it is for the judge to determine the propriety of the withdrawals. Also, he cannot validly justify his inaction based on the fact that the RTC-Cebu already rendered judgment on Civil Case No. CEB-38633. Respondent himself stated that the RTC-Cebu rendered its judgment on January 28, 2014[16] but the Order directing him to submit an inventory was issued on October 20, 2014.[17] Simply put, respondent had no authority or discretion to decide whether to comply or not, or to declare whether the order had already become moot.

Under Section 50(D)(1), Rule 10 of the 2017 Revised Rules on Administrative Cases in the Civil Service (RRACCS),[18] simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense.

With reference to the appropriate imposable penalty, this Court notes that the OCA had appreciated in herein respondent's favor one extenuating circumstance, i.e. "this is [respondent's] first administrative infraction." [19] Under Section 53(k), Rule 10 of the RRACCS, "first offense" may be considered as a mitigating circumstance. Moreover, Section 54, Rule 10 of the RRACCS provides that "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the penalty imposed. However, this Court joins the OCA's recommendation that a fine may be imposed on respondent, in lieu of suspension, "so that respondent x x x can continue to discharge his tasks and to avert any undue adverse effect on public service if he were to be suspended" [20] as it has been held in certain cases that suspension would not be practical when respondent's work would be left unattended thereby; hence a fine should instead be imposed so that he can perform the duties of his office.[21] What is more, case law teaches that where a respondent is actually discharging frontline functions as sheriff, then, the penalty of fine may be imposed in lieu of suspension from office.[22] Additionally, Section 52(b), Rule 10 of the RRACCS provides that "[t]he disciplining authority may allow payment of fine in place of suspension x x x [w]hen the respondent is actually discharging frontline functions or those directly dealing with the public and the human resource complement of the office is insufficient to perform such function," as in this case.

In sum, this Court takes the view that the proper amount of fine, which can be imposed upon respondent under the peculiar circumstances attendant to this case, is equivalent to his salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, pursuant to Section 56(d), Rule 10 of

the RRACCS.[23]

WHEREFORE, respondent Eugenio E. Fuentes, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court (RTC), Cebu City is hereby found GUILTY of Simple Neglect of Duty for which he is meted out a FINE equivalent to one (1) month and one (1) day of his salary, computed on the basis of his salary at the time the decision becomes final and executory.

SO ORDERED.

Jardeleza, Tijam, and Gesmundo,[**] JJ., concur.

Leonardo-de Castro, J., on official leave.

[*] Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

[1] Rollo, pp. 1-6.

[2] Id. at 11.

[3] Id. at 13-16.

[4] Id. at 21-25.

[5] Id. at 23.

[6] Id. at 7.

[7] See respondent's Manifestation, id. at 8.

[8] Id. at 18.

[9] Id. at 8-9.

[10] Id. at 19.

[11] Id. at 9.

[12] Sabijon v. De Juan, 752 Phil. 110, 118 (2015).

[13] Id.

[14] Id. at 118-120.

[15] The 2002 Revised Manual for Clerks of Court, Vol. I, p. 196.

[16] Rollo, p. 8.

[17] Id.

[18] Civil Service Commission (CSC) Resolution No. 1701077, promulgated on July 3, 2017.

[19] Rollo, p. 24.

[20] Id. at 24.

[21] Mariñas v. Florendo, 598 Phil. 322, 331 (2009).

[22] See Atty. Cabigao v. Nery, 719 Phil. 475, 485 (2013).

[23] See also Daplas v. Department of Finance, G.R. No. 221153, April 17, 2017.

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