

CONRADO E. COBARRUBIAS, COMPLAINANT, VS. ARNIEL S. APOSTOL, SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 51, CALOOCAN CITY, RESPONDENT.

A.M. NO. P-02-1612. January 31, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Facts

Complainant Conrado E. Cobarrubias ("complainant") is the plaintiff in a suit for a sum of money with prayer for a writ of preliminary attachment entitled "Conrado E. Cobarrubias vs. Renato Caling" [1] and raffled to the Metropolitan Trial Court of Caloocan City, Branch 51 ("trial court"). [2]

Pursuant to a writ of preliminary attachment issued by the trial court on 5 September 1994, the sheriff levied on a parcel of land ("property") located in Bacoor, Cavite and owned by defendant Renato Caling ("defendant"). On 26 January 1996, the trial court rendered a decision in favor of complainant, ordering the defendant to pay actual damages and attorney's fees. [3] The court issued a writ of execution on 4 September 2000, for implementation by respondent Arniel S. Apostol, Branch Sheriff ("respondent Sheriff").

On 24 October 2000, respondent Sheriff issued a Notice of Sheriff's Sale [4] setting the auction sale of the property on 14 December 2000. The notice was published in the 26 October and 2 November 2000 issues of Pilipino Star Ngayon.

One day before the scheduled date of auction sale, Jacqueline de Lucia ("de Lucia") filed a Third-Party Claim over the property. Accordingly, respondent Sheriff required complainant to furnish an indemnity bond pursuant to Section 16, Rule 39 of the Rules of Court. On 18 December 2000, complainant filed the required indemnity bond of P120,000. Respondent Sheriff thus issued a second Notice of Sheriff's Sale [5] scheduling the auction sale on 15 March 2001. This notice was published in the 3 and 10 February 2001 issues of Pilipino Star Ngayon.

To the "surprise and disappointment" of complainant, respondent Sheriff did not conduct the auction sale on the re-scheduled date. The facts show that on 14 March 2001, de Lucia filed an Omnibus Motion to Quash Writ of Execution (with Motion to Suspend Auction Sale). Apprised of this, complainant wrote a letter to the branch clerk of court on 20 March 2001, requesting for the issuance of a certification on whether the trial court issued any order in connection with the Omnibus Motion. [6] Clerk of Court Sofia Malazarte certified on 30 March 2001 that the trial court did not issue any order except to set the motion for hearing on 6 April 2001. [7] The trial court later issued an Order [8] dated 17 May 2001 denying the Omnibus Motion.

In his complaint filed before the Office of the Court Administrator ("OCA") on 10 May 2001, complainant bewailed the failure of respondent Sheriff to conduct the auction sale on 15 March 2001, despite the posting of an indemnity bond and the absence of an order from the trial court stopping the auction sale. He also accused respondent Sheriff of receiving sheriff's fees beyond those allowed by law:

In having the Writ of Execution implemented, complainant had already spent the following amounts:

a)

For the publication (2 times) of the
Notices of Sheriff's Sale - - - - - P10,320.00

b)

Premium on the P120,000.00 indemnity
bond - - - - - P 4,918.50

c) Sheriff's fees
- P 16,655.00

Total P 31,893.50[9]

Complainant lamented that although he won in the original suit, he could not collect what was due him because of the acts of respondent Sheriff. Complainant charged respondent Sheriff of grave misconduct, willful and unjustified refusal to perform an official duty, and other acts highly unbecoming a sheriff of the court. [10]

On 30 May 2001, the OCA required respondent Sheriff to file his Comment.

In his Comment dated 26 July 2001, respondent Sheriff claimed that he "waited for the resolution of the [Omnibus] Motion to make sure that the implementation of the Writ of Execution is in accordance with law." [11] He argued that after the trial court had resolved to deny the Motion in its Order dated 17 May 2001, complainant "did not contact the undersigned for the implementation of the said writ," citing the "policy of this Court that the litigants should be the one to follow up their case and not vice versa." [12] Respondent Sheriff also denied that he received sheriff's fees of P16,655, claiming instead that —

The total amount that the herein plaintiff incurred for the Sheriff's expenses for the implementation of the writ was P2,500.00. The amount of P2,000.00 was given on September 29, 2000 while the amount of P500.00 was given sometime in February 2001. x x x

The itemized breakdown of all the expenses incurred by the herein respondent are as follows:

Transportation expenses (gasoline for 2 trips) - P 800.00
Foods (includes lunch, snacks, mineral
water, etc. for 2 days) - P1,200.00
For the rent of owner type jeep - P 500.00 [13]

Complainant filed his Reply to Respondent's Comment on 29 August 2001, reiterating that the auction sale should have proceeded as scheduled because he had posted an indemnity bond and there had been no court order preventing the sale. On the subject of sheriff's fees, complainant gave the following account:

Complainant did not give P2,000.00 to the respondent on September 29, 2000. Respondent with two (2) companions and the complainant went to the Office of the Register of Deeds of Trece Martirez City on the said date to levy the land. They went there in complainant's car with the complainant driving. He also paid for the gasoline, lunch and snack for the four (4) of them.

However, the Register of Deeds of Trece Martirez City would not annotate the levy because it was not signed by the Executive Judge of the Caloocan City Metropolitan Trial Court. Since the levy could not be annotated on the title x x x, the date of the auction sale could not be determined and the posting of the notice of sale could not likewise be made.

Complainant gave the P500.00 to the respondent on January 8, 2001, not in February 2001 as claimed by him. After the indemnity bond was approved by the Court, respondent went to the residence of the complainant and told the latter that republication of the notice of sale was no longer necessary and that he would post the notices of sale. Complainant gave another P500.00 to the respondent. [14]

Report and Recommendation of the OCA

In its Report dated 25 March 2002 ("Report"), the OCA found that respondent Sheriff erred when he did not proceed with the auction sale of the property, observing that, "[r]espondent arbitrarily and oppressively disregarded his role as a ministerial officer in implementing the writ of attachment issued by the court." [15] The OCA recommended that respondent Sheriff be held liable for serious misconduct and fined P5,000. [16]

On 3 June 2002, the Court resolved to re-docket the complaint as a regular administrative matter. The Court issued another resolution dated 3 February 2003 requiring the parties to manifest within ten (10) days from notice whether they were willing to submit the case for resolution based on the pleadings filed. Neither party filed a manifestation.

The Court's Ruling

The Court agrees with the finding of the OCA that respondent Sheriff is liable for failing to hold the auction sale as scheduled. Respondent Sheriff ignored specific provisions of the Rules of Court outlining the procedure for execution where the property under levy is the subject of a third-party claim. Section 16, Rule 39 of the Rules of Court states:

Sec. 16. Proceedings where property claimed by third person. – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on x x x.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action x x x. (Emphasis supplied)

Complainant's indemnity bond was meant to answer for damages which de Lucia might suffer if respondent Sheriff had proceeded with the sale. It would have served as respondent Sheriff's shield against any personal liability. On the other hand, de Lucia could have posted a counter-bond to stay the execution of the decision, a remedy she obviously chose not to pursue. At any rate, de Lucia was not helpless. Section 16 of Rule 39 provides that she had the right to file an independent action against complainant or whoever might purchase the property at the sale or afterwards. [17]

Clearly, respondent Sheriff acted beyond the bounds of his authority, as there was no legal impediment to the auction sale. His justification that he waited for the court's resolution of the Omnibus Motion to ensure that the implementation of the writ "is in accordance with law" does not impress the Court. It is not the duty of a sheriff to decide on the truth or sufficiency of the processes committed to him for service. [18] We remind respondent that:

The duty of a sheriff to execute a valid writ is ministerial and not discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. A discretionary act, on the other hand, is a faculty conferred upon a court or official by which he may decide the question either way and still be right. [19]

On the issue of sheriff's fees, there exists no evidence that respondent Sheriff received P16,655 from complainant. The record contains only the latter's bare assertion that he "will prove at the hearing of this case that he had already spent P16,655 in sheriff's fees." [20] The Court cannot give credence to such an unsupported claim. It is well-settled that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. [21]

On the other hand, respondent Sheriff himself stated in his Comment that he had incurred a total of P2,500 "for the Sheriff's expenses." Interestingly, he does not specify how the money came to his custody, but only that it was "given" on certain dates. Another statement invites attention: "The herein respondent together with two of his companions went to Bacoor, Cavite for the posting of the Notice of Sheriff's Sale in three (3) conspicuous places and the service of notice to the defendant." Respondent Sheriff also failed to explain the presence of these unidentified persons who accompanied him in his performance of an official duty.

Rule 141 of the Rules of Court authorizes a sheriff's legal fee of P500 for executing a writ of attachment. [22] Additional sums may be required from the party requesting the writ. However, the sheriff must always follow the procedure in Section 9 of Rule 141. This means that the sheriff executing the writ must submit for the court's approval an estimate of the expenses to be incurred and for the interested party to deposit the amount with the Clerk of Court and the ex-officio sheriff. These expenses shall then be disbursed to the executing sheriff subject to his liquidation within the same period for rendering a return on the writ. [23]

Considering the seriousness of the accusations against him, respondent Sheriff would naturally have sought to prove his innocence by demonstrating that the money was disbursed according to the Rules. However, respondent Sheriff did not exhibit even the slightest degree of awareness of the procedure, much less an intention to comply with it. He did not present any list of estimated expenses duly approved by the court, nor did he endeavor to show that such sums as he claims to have received were liquidated accordingly.

Based on the evidence, the Court believes that respondent Sheriff received the P2,500 directly from the complainant. Whether complainant gave the money voluntarily is of no moment. Neither should the Court consider if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes. [24]

The Court cannot countenance respondent Sheriff's professed adherence to the practice of waiting for litigants "to follow up their case." Such a remark displays shameless disregard for the State policy of promoting high standards of efficiency, integrity, and professionalism. In the administration of justice, it is the sheriff's duty to implement promptly the orders of the court.

Considering the evidence presented, we find the recommendation of the OCA to impose a fine of P5,000 too light since the OCA itself considered respondent Sheriff to have committed a grave misconduct. In *Alvarez, Jr. v. Martin*, [25] the Court found respondent sheriff therein guilty of refusal to perform official duty for similarly violating Section 9 of Rule 141 and failing to implement promptly a writ of execution. Here, respondent Sheriff committed the same grave offense of refusal to perform official duty, penalized under the Uniform Rules on Administrative Cases in the Civil Service [26] with suspension for six months to one year for the first offense. Since this is the first administrative offense of respondent Sheriff, the penalty of six months suspension will suffice.

WHEREFORE, we find respondent Arniel S. Apostol, Sheriff III of the Metropolitan Trial Court of Caloocan City, Branch 51, GUILTY of refusal to perform official duty. We SUSPEND him for Six Months without pay, with a STERN WARNING that a repetition of the same or similar infraction shall merit a more severe penalty.

Let a copy of this decision be attached to the personnel records of Arniel S. Apostol.

SO ORDERED.

Quisumbing, Carpio-Morales, and Tinga, JJ., concur.

[1] Docketed as Civil Case No. 21677.

[2] The case was originally raffled to Branch 121, with Judge Adoracion G. Angeles presiding. On 7 December 1994, Judge Angeles issued an order remanding the case to Branch 51 on jurisdictional grounds. The order to remand was questioned by Jacqueline de Lucia before this Court in a petition for certiorari (G.R. No. 118199). We resolved to dismiss the petition on 11 January 1995 for failure of the petitioner "to show that grave abuse of discretion was committed by the respondent court."

[3] Rollo, pp. 7-11. The dispositive portion reads:

Viewed from the foregoing, judgment is hereby rendered in favor of the plaintiff and as against the defendant, ordering the latter, as follows:

- to pay the plaintiff actual damages of FIFTY-FIVE THOUSAND AND FIVE HUNDRED (P55,500.00) plus legal rate of interest per annum computed from the date of filing of suit until full payment;
- to pay the plaintiff the sum equivalent to 25% of the total amount due and recoverable as and for attorney's fees; and
- to pay the cost of suit.

SO ORDERED.

[4] Rollo, pp. 12-13.

[5] Id. at 20-21.

[6] Id. at 33.

[7] Id. at 23.

[8] Id. at 32.

[9] Id. at 5. (Emphasis supplied).

[10] Id. at 1.

[11] Id. at 25.

[12] Id.

[13] Id. at 26.

[14] Id. at 37-38.

[15] Id. at 42.

[16] Id. at 43.

[17] *Yupangco Cotton Mills, Inc. v. Court of Appeals*, 424 Phil. 469 (2002).

[18] *The 2002 Revised Manual for Clerks of Court*, Vol. 1, p. 438, citing 47 Am. Jur. 822.

[19] Sismaet v. Sabas, A.M. No. P-03-1680, 27 May 2004, 429 SCRA 241, citing PBC v. Torio, 348 Phil. 74 (1998).

[20] Rollo, p. 38.

[21] Judge De Guzman v. Judge Dy, 453 Phil. 214 (2003).

[22] Sec.10(c), Rule 141 of the Rules of Court. Effective 16 August 2004 per amendment introduced in Court Resolution dated 20 July 2004, A.M. No. 04-2-04-SC.

[23] Bernabe v. Eguia, A.M. No. P-03-1742, 18 September 2003, 411 SCRA 259, citing Tiongco v. Molina, 416 Phil. 676 (2001).

[24] Bernabe v. Eguia, supra.

[25] A.M. No. P-03-1724, 18 September 2003, 411 SCRA 248.

[26] Section 52, Rule IV. Resolution No. 991936 of the Civil Service Commission, effective 26 September 1999.

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