

BERNARDITA B. CHUA IN BEHALF OF ACCORD LOANS, INC., PETITIONER, VS. BENJAMIN A. GONZALES, RESPONDENT.

A.M. No. P-94-1063. December 17, 1996

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PER CURIAM:

On May 24, 1991, a writ of execution[1] was issued by the Municipal Trial Court of Angeles City, Branch III in Civil Case No. 90-166 entitled, "Accord Loans, Inc. v. Spouses Martin F. Nuñez & Elizabeth M. Nuñez, Godofredo Sanchez and Eduardo R. Tulfo," for collection of a sum of money, addressed to the City Sheriff of Olongapo City commanding the latter as follows:

"THEREFORE, you are commanded to seize the goods and chattels of the said spouses Martin F. Nuñez and Elizabeth M. Nuñez, except such are by law exempt, and make sale thereof according to the law in such cases made and provided to the amount of the said judgment, together with your fees for the execution, and pay the amount so collected by you thereon to the Accord Loans, Inc., the plaintiff in said action to accept the amount of your fees thereon.

In case sufficient personal property of the said spouses Martin F. Nuñez & Elizabeth M. Nuñez, cannot be found to satisfy the amount of such judgment, costs, interests and your fees thereon, you are ordered to levy upon the real estate of the said defendants and sell the same in the manner provided for by law, for the satisfaction of the balance of such judgment, costs, interests and your fees thereon; and the same returned to me within sixty (60) days upon receipt with your action.

WITNESS THE HON. PEDRO T. LAGMAN, Presiding Judge of this Court this 24th day of May 1991 at Angeles City.

s/ Marlon P. Roque
t/ MARLON P. ROQUE
Clerk of Court III"[2]

Pursuant to the above writ, respondent Benjamin A. Gonzales, as Deputy Sheriff of Olongapo City, on July 25, 1991 levied on one (1) unit 20" colored television set worth P5,000.00 owned by the Spouses Martin F. Nuñez & Elizabeth M. Nuñez, the defendants in said case. Complainant alleged that her company found out about the execution of the writ only sometime in May 1994 through its client Spouses Nuñez. When asked about the execution, Sheriff Gonzales failed to produce the television set or to give the amount of P5,000.00 despite sufficient demands from him. Apparently, respondent Gonzales failed to accomplish the sheriff's return of service and to submit the same before the court issuing the writ.

On July 20, 1994, Bernardita Chua, as Branch Manager of Accord Loans, Inc., brought the instant complaint for grave misconduct against the respondent sheriff alleging the foregoing facts.

In his defense, respondent, while admitting that he had taken possession of the television set on July 25, 1991, maintains that he totally forgot about the May 24, 1991 writ of execution when his apartment dwelling was destroyed due to the eruption of Mt. Pinatubo on July 15, 1991. During this period, he was unable to report to his

office "due to the continuous volcanic activities that has (sic) affected his person." He had not been reminded of the levy respecting the subject writ of execution until he received the administrative complaint on September 28, 1994.[3] Upon receipt of said complaint, however, he immediately repaired to the house of a certain Mr. Rodenio Diwa, Jr., with whom he allegedly entrusted the appliance for safekeeping. The latter voluntarily surrendered the item to him in good condition. Thus, he is now ready to deliver the TV set in obedience to the orders of this Court.[4]

We find the defense of respondent Deputy Sheriff unworthy of credence.

It appears that this is the third administrative complaint filed against Deputy Sheriff Benjamin A. Gonzales. His personal record (201 file) shows that:

(1) By a resolution dated April 15, 1991, in A.M. No. P-87-64, entitled "Jaime Co vs. Benjamin Gonzales, Deputy Sheriff, Branch 49, Guagua, Pampanga," respondent was (a) reprimanded for bringing and keeping the attached personal properties at his residence and at the house of his parent-in-law without prior consultation with his Officer-In-Charge and/or his Presiding Judge; and (b) reprimanded and imposed a fine equivalent to his three (3) months salary for not returning the attached personal property upon termination of his employment when his temporary appointment as Deputy Sheriff of Branch 49 was no longer renewed by his Presiding Judge and for returning the attached properties only after the Court has issued several orders for its return and for his arrest.

(2) In A.M. No. P-91-469 (Victorino Fajota vs. Benjamin Gonzales, Deputy Sheriff, RTC, Branch 75, Olongapo City), Executive Judge Alicia Santos in her report and recommendation dated April 22, 1993, found respondent remiss in his duty by not making the proper return of the writ and for exercising his discretion by not levying the real property of the losing defendant in the forcible entry case.

The Third Division of the Honorable Court in its Resolution, dated August 16, 1993, reprimanded and warned respondent that a similar act will be dealt with more severely in the future.

Coming to the merits of the complaint, it is significant to note that Mt. Pinatubo erupted on June 15, 1991. The levy on execution over the television set was made on July 25, 1991, which is more than one (1) month after the eruption. Strangely enough, while the volcanic eruption did not prevent him from executing the writ, it caused him to forget his more urgent duty to file his return of service and/or to sell the property to satisfy the judgment debt as mandated by Section 11, Rule 39 of the Revised Rules of Court, viz:

"Return of writ of execution. - The writ of execution may be made returnable, to the clerk or judge of the court issuing it, at any time not less than ten (10) nor more than sixty (60) days after its receipt by the officer who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property has been sold, or of the officer's return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed."

Respondent insists that he forgot all about the writ of execution until he was served the administrative complaint. The circumstances of this case as well as the irregular actuations of the respondent reveal that this is not a case of simple forgetfulness. In the affidavit[5] of Mr. Edwin Carreon, Collection Assistant of Accord Loans, Inc., it was stated that their company learned of the levy made by the respondent from the Spouses Nuñez sometime in May 1994, but Deputy Sheriff Gonzales failed to inform their office regarding the matter and likewise "failed to produce the goods he seized from Spouses Nuñez and/or to give the value thereof." This administrative complaint was sworn to by Mrs. Bernardita Chua on July 20, 1994. Respondent avers, however, that he remembered the writ of execution only when he received a copy of the administrative complaint on September 28, 1994. The assertion

of the complainant deserves weight when she stated in her affidavit-complaint[6] that previous demands were made upon the respondent for the delivery of the TV set or its value considering that this is the standard operating procedure in their kind of business. Hence, while respondent had more than one (1) month to produce the television set under the rules, he did not undertake the delivery, thus evincing a deliberate attempt on his part to retain the appliance for his own benefit.

WHEREFORE, considering that this is his third offense in the performance of his duties as a Deputy Sheriff, respondent Benjamin A. Gonzales is DISMISSED from the service, with forfeiture of all leave credits and retirement benefits. He is disqualified from reemployment in the national and local governments, as well as in any government instrumentality or agency, including government-owned or controlled corporations.

This decision is immediately executory and respondent Deputy Sheriff is further ordered to cease and desist from discharging the functions of his office upon receipt of this Decision. Let a copy of this decision be entered in the personal records of the respondent.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Rollo, pp. 6-7.

[2] Ibid.

[3] Rollo, p. 12.

[4] Rollo, pp. 18-19.

[5] Rollo, p. 9.

[6] Rollo, p. 5.

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