

**RUTH A. COLLADO, COMPLAINANT, VS. ADONIS L. SEVIDAL,
SHERIFF IV, RTC, BR. 44, DAGUPAN CITY, RESPONDENT.**

A.M. NO. P-05-2073 (FORMERLY OCA I.P.I. NO. 05-2144-P). August 29, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is the administrative complaint[1] of Ruth A. Collado charging Sheriff Adonis L. Sevidal[2] with serious misconduct and violation of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.

The factual antecedents of the complaint are as follows:

In May 1994, the spouses Rufino and Estela Austria mortgaged to the Philippine National Bank (PNB) a parcel of land designated as Lot No. 3544 and covered by Transfer Certificate of Title (TCT) No. 61509 of the Registry of Deeds of Dagupan City. When the spouses Austria failed to comply with the terms and conditions of the mortgage, PNB foreclosed the mortgage extrajudicially. By virtue of the special power of attorney attached in the deed of mortgage in favor of PNB, Sheriff Vinez A. Hortaleza of the Regional Trial Court of Dagupan City sold Lot No. 3544 at a public auction. PNB was the highest bidder at the auction conducted on May 13, 1996, and a certificate of sale was issued to it.

Ownership of the lot was consolidated on PNB upon the expiration of the redemption period on February 4, 1998. TCT No. 61509 was cancelled and TCT No. 69390 was issued in PNB's name.[3]

On July 30, 2003, PNB filed with Regional Trial Court of Dagupan City, Branch 44, an ex parte petition docketed as S.P. No. 2003-0132-D for the issuance of a writ of possession. The trial court, pursuant to the provisions of Act No. 3135,[4] as amended, ordered the issuance of a writ of possession on October 1, 2003. The trial court decreed,

WHEREFORE, let a writ of possession issue in favor of the Philippine National Bank and the mortgagors Rufino Austria and Estela Austria and all persons claiming rights under them and those acting under their direction and control are ordered to vacate the premises identified as Lot 3544 situated in Dagupan City, covered by and embraced by TCT No. 69390 of the Register of Deeds of Dagupan City.[5]

Respondent Sheriff served the writ of possession on the occupants of the lot. All except one failed to vacate. Thus, upon PNB's motion, the trial court ordered the issuance of a writ of demolition. The Clerk of Court then issued the writ commanding respondent "to remove and demolish all structures and any other improvements found [on said lot]."[6]

On November 9, 2004, respondent served the writ of demolition on the remaining occupants of Lot No. 3544.

On November 16, 2004, respondent arrived at the premises with 20 men. To aid in the execution, PNB caused a relocation survey to be conducted to ascertain the boundaries of the property. It was discovered that a portion of the concrete fence of complainant, who owned an adjoining lot, as well as a portion of her brother's house, encroached on Lot No. 3544. Respondent then demolished those structures found on Lot No. 3544, over the objections of complainant who insisted that the lot on which her fence and her brother's house stood were still part

of her own lot, Lot No. 3557.

Complainant now claims that respondent exceeded and violated his authority by maliciously and unlawfully causing the demolition of her concrete fence that was allegedly well within her own lot. She also claims that respondent destroyed and ransacked her brother's house, which was likewise within her lot, and coerced him to leave under threat that otherwise "something bad would happen to him." She stresses that neither she nor her brother were parties in S.P. No. 2003-0132-D and laments the denial to them of due process.

In his comment, filed upon order of the Office of the Court Administrator, respondent maintains that he properly executed the writ of demolition. He avers that he merely implemented the writ of demolition which commanded him "to remove and demolish all structures and any other improvements found [on Lot No. 3544]." Thus, it was his duty to demolish a part of complainant's fence because it encroached on said lot. He further denies ever touching the house of complainant's brother, much less ransacking it, and asserts that he never threatened anybody. He also denies that complainant was denied due process. He points out that complainant's children, who were actual occupants of her property, filed a motion to intervene in S.P. No. 2003-0132-D and then actually intervened in said proceedings.[7]

In a memorandum dated August 2, 2005, then Court Administrator Presbitero J. Velasco, Jr., found respondent liable and recommended to this Court that a fine of P5,000 be imposed on him.[8]

We find no reason to disagree with said findings and recommendation of the Court Administrator.

The decision in S.P. No. 2003-0132-D which respondent was executing, was directed only against "the mortgagors Rufino Austria and Estela Austria and all persons claiming rights under them and those acting under their direction and control." [9] The writ of possession, issued to implement the decision, was likewise only against said persons. Even the writ of demolition reiterated that the court had commanded said persons to vacate the properties. Complainant and her brother, however, were occupying a portion of Lot No. 3544 adversely to the spouses Austria. Complainant claimed that the lot on which her fence and a portion of her brother's house stood were still part of her lot, Lot No. 3557, which adjoined Lot No. 3544. Thus, both complainant and her brother were clearly not claiming rights under the spouses Austria nor acting in their direction and control. Neither were they parties to S.P. No. 2003-0132-D.

Being a sheriff specifically entrusted with the proper execution of judgments, respondent should have known that the writs were not enforceable against complainants. Respondent should know that the writ of demolition was issued to implement the decision in S.P. No. 2003-0132-D. As the officer charged with the execution of judgment, he is enjoined to ensure that only that portion of a decision ordained or decreed in the dispositive part should be subject of execution.[10] Thus, we find no merit in respondent's argument that he properly enforced the directive in the writ of demolition since the writ directed him to demolish all improvements on Lot No. 3544.

That the directive to demolish was couched in such general terms as to imply that it was applicable to all improvements regardless of ownership is of no moment. In the enforcement of judgments and writs, a sheriff must know what is inherently right and wrong and is bound to act with prudence and caution.[11] Respondent is called to exercise due care and reasonable skill in the performance of his duties. The writ of execution having been issued to implement a decision, respondent should have read the directive in light of the dispositive portion of the decision he was executing, not apart from it. Precisely, the writ of demolition contained a restatement of the dispositive portion to guide respondent in the implementation of the writ.

Indeed, the records show that respondent was cavalier in implementing the writ of demolition, albeit without malice, bad faith or corrupt motives. Recall that PNB caused the relocation survey to be conducted only on

November 16, 2004. Before that time, it was not known that a portion of complainant's fence, as well as a portion of her brother's house, encroached on Lot No. 3544. Hence, respondent never sent complainant or her brother a notice of the writ of possession as shown by respondent's own return.[12] Demand on them to vacate the property was made by respondent only after the encroachment was discovered. Yet, respondent immediately caused the demolition of their properties on the strength of a decision and a writ that before that day, they never knew about.

The appropriate course of action for respondent, given complainant's objections and the lack of notice of the writs of possession and demolition to her and her brother, should have been to inform the judge of the situation by way of a partial Sheriff's return and wait for instructions on the proper procedure to be observed. This respondent failed to do.

In *Gadil v. Cordova*, [13] we held that the respondent sheriff therein was liable for simple misconduct for a similar failure. In that case, the respondent sheriff enforced a writ of execution obtained pursuant to Act No. 3135, as amended, (1) despite the assertion of the complainant that the writ was not enforceable against her as she was not in privity with the debtor or mortgagor, and (2) without bringing the objection to the attention of the issuing judge. Respondent herein is similarly liable.

His reliance on a motion to intervene which complainant's children supposedly filed in S.P. No. 2003-0132-D, is unmeritorious and therefore cannot exonerate him. Complainant was not one of the intervenors and neither is there any indication that the movants were related to complainant or acting in her behalf. There is even no indication that complainant participated in S.P. No. 2003-0132-D.

WHEREFORE, respondent Sheriff Adonis L. Sevidal is found **LIABLE** for simple misconduct and is hereby **ORDERED** to pay a FINE of P5,000.00, **WITH A WARNING** that commission of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

Carpio, Carpio Morales and Tinga, JJ., concur. Velasco, Jr., J., no part due to prior action in OCA.

[1] Rollo, pp. 1-3.

[2] Sheriff IV, Regional Trial Court of Dagupan City, Branch 44.

[3] Rollo, p. 11.

[4] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES.

[5] Supra note 3 at 16.

[6] Id. at 22-23.

[7] Id. at 5-8.

[8] Id. at 32-34.

[9] Id. at 16.

[10] *Cunanan v. Cruz*, A.M. No. R-89-P, November 24, 1989, 167 SCRA 674, 677.

[11] *Malbas v. Blanco*, A.M. No. P-99-1350, December 12, 2001, 372 SCRA 118, 126.

[12] Rollo, p. 18.

[13] A.M. No. P-04-1832 (Formerly OCA-IPI No. 03-1572-P), February 23, 2005, 452 SCRA 134.

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