

BIENVENIDO L. PUNZALAN, COMPLAINANT, VS. RUMEL M. MACALISANG, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 258, PARAÑAQUE CITY, RESPONDENT.

A.M. No. P-06-2268 (FORMERLY A.M. OCA IPI NO. 04-1838-P). November 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.

Before us is a complaint-affidavit[1] dated December 22, 2003 filed by Bienvenido L. Punzalan (complainant) against Sheriff IV Rumel M. Macalisang (respondent), Regional Trial Court (RTC), Branch 258, Parañaque City, for Misfeasance and Malfeasance of Duties.

Complainant alleges that: he is one of the plaintiffs in Civil Case No. 00-0221 entitled "Spouses Bienvenido Punzalan and Lilia Punzalan v. Olive Mamangon" for Specific Performance with Damages; a Writ of Execution was issued by the Branch Clerk of Court on July 25, 2003 for the collection of P36,000.00 as professional fees in favor of his former counsel, Atty. Grandy N. Trieste (Trieste); through a new lawyer, he contested said writ by filing a Motion to Quash on August 28, 2003 and a Supplemental/Amended Motion to Quash on September 30, 2003; both motions were submitted for resolution after the hearing held on October 3, 2003; on October 10, 2003, without waiting for the order of the court, respondent issued a Notice of Garnishment to East West Bank, Parañaque City; on November 12, 2003, the court issued an Order denying both motions; on November 25, 2003, he filed a Motion for Reconsideration; on December 3, 2003, upon receipt of the Notice of Garnishment, the bank froze his account.

In his Comment[2] dated March 10, 2004, respondent alleges that on March 30, 2001, a decision based on compromise agreement was rendered by the RTC; on November 11, 2002, Trieste filed a motion for lawyer's lien; on March 25, 2003, the RTC granted the motion of Atty. Trieste; on May 7, 2003, Atty. Trieste filed a motion for the issuance of writ of execution; on July 12, 2003, the RTC issued an Order granting the issuance of a writ of execution; on August 6, 2003, respondent accompanied by Trieste, served a copy of the writ dated July 25, 2003 upon complainant; on August 28, 2003, complainant filed a motion to quash writ of execution; on October 8, 2003, Trieste sent a letter to respondent to prepare a notice of garnishment due to complainant's continuous refusal to honor his obligation; on November 12, 2003, the court denied the motion to quash writ of execution; on November 25, 2003, complainant filed a motion for reconsideration; on December 1, 2003, respondent served a copy of the notice of garnishment with East West Bank as well as the other banks; on February 11, 2004, complainant filed a motion for reconsideration; on February 20, 2004, the court denied the motion for reconsideration; there being no temporary restraining order issued by the court, he served the notice of garnishment, otherwise, Trieste will file an administrative case against him.

In the Agenda Report dated July 15, 2004,[3] the Office of the Court Administrator (OCA) submitted its evaluation and recommendation, to wit:

EVALUATION: Complainant assails the act of respondent Sheriff in issuing a Notice of Garnishment pursuant

to a Writ of Execution which the former had sought to quash.

Well-settled is the rule that when a writ is placed in the hands of a sheriff, it is his ministerial duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandates. But when in conjunction with the overzealous manner by which a sheriff executes a judgment, the speed of its implementation assumes a sinister significance.

In the instant case, respondent Sheriff appears to have transgressed established rules in enforcing the writ.

Respondent failed to submit a Sheriff's Return after the implementation of the assailed writ – violating Rule 39, Section 14 of the 1997 Revised Rules of Civil Procedure. The said rules provide that it is the sheriff's duty to (a) make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment, and if the judgment cannot be satisfied in full, to (b) make a report to the court within thirty (30) days after his receipt of the writ and state why full satisfaction could not be made.

Instead of submitting a Sheriff's Return and informing the court of the reasons behind his failure to fully serve the writ, respondent Sheriff went ahead and issued a Notice of Garnishment based solely on the claim of the plaintiff in the civil case that the obligation remained unfulfilled. The explanation of the respondent that his actions were subsequently vindicated by the denial of the court of the motions to quash the writ does not negate the fact that he went beyond the scope of his ministerial duty vis-à-vis the implementation of the writ. It is unusual for a sheriff not to know his duties and functions as laid down by law. Moreover, a sheriff who enforces a writ with apparently undue haste, unusual vigor, and unseemly arrogance, betrays his lack of impartiality.

However, assuming *arguendo* that the respondent did act with undue haste, it was not sufficiently established that his actions were ingrained with bad faith. It must be noted that the writ was due to [sic] enforcement as early as 12 July 2003. While complainant insisted that the writ should not have been enforced as it was defective, it was not for the respondent to decide on the matter, his only duty being to enforce the writ.

The allegation of the complainant that the actions of the respondent were meant to favor the plaintiff in the civil case was also not supported by convincing proof. At the very least, respondent Sheriff was a bit overzealous in trying to execute the writ.

The respondent nonetheless should have been more circumspect in enforcing the writ. Sheriffs play an important part in the administration of justice, and as officers of the court, they are duty bound to use reasonable skill and diligence in the performance of their duties. For this reason, respondent Sheriff deserves a tempered administrative sanction.

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, is our recommendation that respondent Sheriff Rumel M. Macalisang be REPRIMANDED for want of prudence in carrying out his task.

In the Resolution dated September 27, 2004, the Court required the parties to manifest if they are willing to submit the case for resolution based on the pleadings filed.

In a letter dated October 25, 2004, respondent manifested his willingness to submit the case for resolution based on the pleadings already submitted.

Since complainant failed to comply with the above-mentioned Resolution, the Court, in the agenda of August 14, 2006, deemed complainant to have submitted the case for resolution based on the pleadings filed.

We approve the findings and recommendation of the OCA.

Settled is the rule that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any

instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.[4] Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.[5] Records show that the writ of execution issued on July 25, 2003 already attained finality when complainant filed the Motion to Quash only on August 28, 2003, or more than a month beyond its reglementary period within which to assail said order.

Complainant's bare allegation that respondent prematurely issued a notice of garnishment on October 10, 2003 to the East West Bank without first waiting for the order of the court deserves scant consideration. Records show that although the notice of garnishment was dated October 10, 2003, the same was received by the East West Bank only on December 1, 2003,[6] after the court denied complainant's Motion to Quash the Writ of Execution on November 12, 2003. It is noted that respondent waited for more than two weeks to enforce the writ, which, to our mind, cannot be considered as having been issued without authority or a transgression of settled rules.

Complainant's allegation that the November 12, 2003 Order, denying the Motion to Quash, is not yet final and executory due to a pending Motion for Reconsideration, has no merit. As culled from the Order[7] of November 12, 2003 the Order of the court dated July 12, 2003 had already attained its finality when the aforesaid motion was filed on August 28, 2003, or beyond the reglementary period.

As this Court has said more than once, the execution of judgment is the fruit and end of the suit and is the life of the law.[8] A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.[9] Worse, the parties who are prejudiced tend to condemn the entire judicial system. Thus, unless restrained by a court order to the contrary, a sheriff should always see to it that the execution of judgment is never unduly delayed. Although respondent failed to comply with the required sheriff's return,[10] respondent may not be faulted for issuing the notice of garnishment as it is his ministerial duty to enforce the writ without undue delay once it is given to him, unless restrained. There being no order restraining respondent from implementing the subject writ, we find his conduct to be proper.

Not being supported by convincing evidence, the alleged undue favor given by respondent to Trieste, has no merit. Alleged errors in the implementation of the writ do not necessarily give rise to liability if circumstances exist showing that the erroneous implementation was done in good faith. Moreover, respondent is just being cautious for any possible administrative complaint that might be lodged against him if he failed to implement the writ.

Nevertheless, as the OCA had aptly found, respondent failed to submit a Sheriff's Return in violation of Section 14, Rule 39, Rules of Court, he should be reprimanded therefor. It constitutes simple neglect of duty. In the absence of bad faith or malice, respondent deserves a mere reprimand.

WHEREFORE, the Court finds RUMEL M. MACALISANG, Sheriff IV, Regional Trial Court, Branch 258, Parañaque City guilty of simple neglect and hereby REPRIMANDS him, with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 1-3.

[2] Id. at 10-11.

[3] Id. at 49-52.

[4] Jason v. Ygaña, 392 Phil. 24, 36 (2000); Philippine Airlines, Inc. v. Balubar, Jr., A.M. No. P-04-1767, August 12, 2004, 436 SCRA 168, 177.

[5] Aquino v. Lavadia, 417 Phil. 770, 776 (2001).

[6] Id. at 42.

[7] Id. at 5.

[8] Ang v. Asis, 424 Phil. 105, 118 (2002); Meneses v. Zaragoza, A.M. No. P-04-1768, February 11, 2004, 422 SCRA 434, 447.

[9] Ayo v. Violago-Isnani, 368 Phil. 19, 27 (1999).

[10] RULES OF COURT, Rule 39, Sec. 14.

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