

ALBERTO PATANGAN, COMPLAINANT, VS. REYNALDO CONCHA, RESPONDENT.

A.M. No. R-699-P. August 07, 1987

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PER CURIAM:

In a sworn complaint dated 3 July 1986, Alberto Patangan charged Atty. Reynaldo Concha, Clerk of Court of the Regional Trial Court of Zamboanga del Norte and Deputy Provincial Sheriff, with abuse of authority, non--performance of duty and ignorance of the law.

The complaint arose out of the failure of respondent to execute or enforce the writ of execution issued by the Municipal Trial Court of Dipolog City, Branch 2, in Civil Case No. A-2641 entitled "Alberto Patangan vs. Florinette Magpulong", a case brought for the collection of a sum of money. The writ of execution related to the enforcement of a judgment obtained by the complainant in the amount of P9,312.00.

The respondent filed his Comment dated 26 January 1987. The relevant facts as found by the Office of the Court Administrator are as follows:

"On April 23, 1986 A.M., complainant handed respondent a writ of execution issued by the MTC of Dipolog City in connection with Civil Case No. A-2641 for collection of a sum of money. He urged that the same be served immediately as defendant therein was determined to transfer her residence. Respondent confronted her in one of the RTC salas but failed to serve the writ. Defendant, however, promised to pay in cash at 2:00 P.M. on that same day.

"At 2:00 P.M. defendant failed to make payment as promised. Complainant was required to pay a P200.00 deposit for the service of the writ. Thereafter, respondent in the company of his Deputy, Lope D. Canturias, went to defendant Magpulong's residence at Miputak, of the same city. While there they found personalities belonging to defendant. Again complainant was insisting that the writ be served.

"Visibly irked, respondent countered that complainant should not teach the Sheriff, as he knows what to do. He also stated that, Magpulong had 60 days within which to produce the money. Magpulong pleaded for a little time so she could dispose of her properties at the right price. Respondent warned Magpulong not to remove any of the items without his authority.

"Not satisfied, complainant watched from some distance (as he did not have money to hire security guards) to make sure defendant did not abscond, but at 9:00 P.M. he got hungry and left for home.

"The following day complainant found out defendant had left for Cagayan de Oro City, taking all her personalities with her. He informed respondent, but was advised to deposit P500.00 for expenses so his deputy could serve the writ at Cagayan de Oro City. But complainant failed to put up the deposit as he had no more money.

"By way of comment, respondent pointed out that the case arose out of a Masiao game with defendant as financier and complainant's wife as coordinator, who advanced money to cover winnings of bettors who placed bets with her totalling a claim of P29,000 reduced to P9,312 by virtue of an amicable settlement signed by

them before Barangay Captain Digal of Miputak, Dipolog City. When the 1st installment fell due, defendant failed to pay and spouses Patangan came before the Municipal Trial Court of Dipolog to ask for a writ of execution.

"Respondent avers that this is not the first time that the Office of the Provincial/City Sheriff had been made a collection agent in the game of Masiao. But with the writ of execution issued, respondent had no choice but to try and serve the same. Complainant demanded that respondent act on and serve the writ immediately, and notwithstanding his explanation that he could not, on the spot, pull out one Deputy Sheriff to implement the writ on his say-so, as he had a limited number with two on leave, taking the Bar Review classes in Manila, and another, the victim of a heart attack which left him totally disabled and paralyzed and confined at hospital. The remaining Deputy Sheriffs had their hands full serving other writs of execution and/or summons of earlier dates whose 60 days are almost up. He explained that they have had to schedule the implementation of writs to be able to serve other writs before they expire. But due to complainant's importunings and insistence and having been made to believe by complainant that Magpulong was no longer a resident of Dipolog and was a great swindler, respondent acceded to his request and ordered his Deputy Sheriff, Jose Centino, to cancel his day's schedule to serve the writ. Providentially, however, Sheriff Centino met Magpulong at the entrance of Branch VI session hall attending to another civil case arising from Masiao. Whereupon she was served and informed of the aforesaid writ of execution.

"When first confronted, defendant tried to evade liability by refusing to acknowledge the writ served upon her, on the pretext that she did not know anything about this obligation. Brought to respondent's office she was apprised of the nature of the writ and though she insisted for some time that she did not owe anyone in Dipolog, she finally relented when shown and confronted by the undersigned with the amicable settlement signed by her. She later said she forgot all about it, that it arose from a Masiao game, and that Major Encabo could attest to this.

"At 2:00 P.M. defendant failed to show up. The spouses Patangan could not pay the sheriff's fees but promised to pay the next day, April 24, and respondent favorably acted on their request.

"On the spouses' insistence that the writ be served even late in the afternoon, notwithstanding respondent's reluctance due to nighttime limitations, respondent again acceded to complainant's request. And with additional Deputy Sheriff Lope D. Canturias they proceeded to Magpulong's rented house. Enroute, they passed by Fiscal Orlando Velasco and the lawyer of Mrs. Magpulong and the defendant herself. They invited them for the ride to defendant's house.

"On reaching the house respondent's party found movable properties consisting of a narra dining round table with six seaters also in carvings, two sleeprite beds, a TV cart, a mini tricycle, etc.

"Respondent again tried to persuade Magpulong to affix her signature on the writ, especially since she now had a lawyer present to assist her, but she continued to refuse.

"At this point respondent prepared in his own handwriting the Sheriff's 'Officer's Levy on the described personalities (Annex 2 of Comment). While he was thus making the levy, Magpulong again pleaded that she be given time to produce the amount of P9,312.00 the following day so she could get a fairer price for the items, and again promised to settle the amount at 2:00 P.M. the next day, April 24, 1986.

"After the constructive levy and seizure had been made by respondent, he ordered the padlocking of the main and back doors and windows of Magpulong's house to safeguard the seized chattels but because it was past 6:00 P.M. and was getting dark, he had to accede to her request that as she had just arrived that day from Cagayan de Oro City, and as she had no other place to sleep, she be allowed to stay in the house to pass the night. She even shed copious tears, threatening to commit suicide if her request to sleep in the house were not granted. With the representation of counsel, that a modicum of compassion and human consideration be given to her, respondent relented. Defendant promised to pay in full at the Office of the Provincial Sheriff at Capitol

Building the next day.

"Believing, albeit mistakenly, in her sincerity and candor respondent yielded to her request of shelter for the night, on condition and with a stern warning that no removal whatsoever of the chattels be made without the sheriff's permission or that of the Court.

"Notwithstanding respondent's explanation that the writ had in fact been served and an officer's levy made and that defendant's refusal to sign the same was of no moment, complainant's wife was insisting that the writ of execution be now served on defendant. Respondent had to admonish the couple not to teach the Sheriff as he knows what to do. Because complainant's wife was, to respondent's mind demanding so many things already excessive, unreasonable and unjust, he reprimanded her saying the lifetime of the aforecited writ has (sic) still sixty (60) days [within which] for the Sheriff to implement x x x despite the fact that complainant's wife has not yet paid the legal fees on Sheriff's fees and expenses, and in order just to accommodate her x x x no less than the undersigned (provincial Sheriff) himself together with his two (2) other Deputy Sheriff's proceeded to Mrs. Magpulong's house even after office hours. The undersigned furthermore explained to complainant's wife that due to the urgency of her request and in cases like that, the one asking for the implementation of the writ has to provide the laborers and at least a cargo truck to haul the validly levied chattels to the Office of the Provincial Sheriff, and because it was already 6:00 o'clock in the evening of April 23, 1986, complainants were nevertheless, advised to provide at their expense a security guard in order to safeguard the seized personal properties; but all these suggestions were not feasible for reason that the complainants had no money at that time, neither were they prepared for that, hence they were advised to watch for themselves as having admitted by complainant himself under par. V of his complaint x x x.' (Comment. pp. 15-16).

"Respondent in 'all sincerity and candor' vehemently denies allegations of abuse of authority, non-performance of duty and ignorance of the law".

We note, in the first place, that respondent's attitude in respect of the performance of his official duties leaves much to be desired. We discern a marked reluctance on the part of the respondent promptly to carry out his duty which was to serve the writ of execution upon the judgment debtor, to locate and take possession of the property, personal or real, of the judgment debtor, to levy upon the same and to dispose of such property by public sale in accordance with the Revised Rules of Court and applicable regulations. We observe in the behavior of respondent the deplorable attitude that he was bestowing upon the complainant a big favor by serving the writ of execution, which was his bounden duty to carry out in the first place, for which the complainant should have been properly grateful. The respondent was annoyed and irritated by the complainant's persistent but understandable requests that the writ of execution be served and carried out promptly. The complainant had warned, and apparently convinced, the respondent that the judgment debtor Mrs. Magpulong "was no longer a resident of Dipolog City and that she was a great swindler".[1] This warning apparently produced no effect on the respondent who appeared to be more concerned about payment by the complainant of sheriff's fees and expenses and the complainant's lack of ready cash with which to pay such fees and expenses.

In the second place, contrary to the insistence of the respondent, he did not have sixty days within which to implement the writ of execution. Under Section 11 of Rule 39 of the Revised Rules of Court, the writ of execution is 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 execute it. Thus, it is the return of the writ that may be effected within sixty days after receipt of the writ by the officer who is to carry it out. But such officer must act with all appropriate celerity in serving and implementing the writ; he has no discretion whether to execute it or not.[2] A sheriff who delays the service and execution of the writ does so at his own peril if, by his malfeasance or misfeasance, he fails to implement the writ and causes damage to the judgment creditor. As pointed out in *Moya vs. Bassig*,[3]

"It is undisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch, in executing the writ so as not to unduly delay the administration of justice. Otherwise, the decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party."

The respondent found a substantial quantity of personal property, in all probability sufficient to generate the amount due, belonging to the judgment debtor in the house where she was staying. The respondent failed to take possession of such personal properties. Instead of promptly taking control and possession of such personality, respondent, purporting to be moved by the copious tears of the judgment debtor (whom respondent acknowledged to be a "great swindler"), and professing a sudden surge of humani-tarian feeling, left the judgment debtor in possession of her personal properties free to abscond with her property, as she did abscond. Had respondent moved with a little more dispatch, he should have been able to carry out the levy and taken possession earlier during the day and avoided the furtive withdrawal of the debtor's property under cover of night and the debtor's flight. The respondent had, by his own statement,[4] already agreed to the request of complainant's wife that sheriff's fees and expenses be paid the following day. To leave the judgment debtor in control and possession of her personal property, without any arrangements for the security thereof other than a supposed oral adjuration by the respondent, was, in effect, to lift the levy, the writ having been already served on the judgment debtor and constituted, in the circumstances of this case, gross dereliction of duty.

ACCORDINGLY, we find the respondent GUILTY of dereliction of duty and he is hereby DISMISSED from the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any other branch or agency of the government, including government owned or controlled corporations.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.
Melencio-Herrera, J., on official leave.

[1] Comment by respondent, p. 10.

[2] Villaraza v. Atienza, 108 SCRA 559, 566-567 (1981).

[3] 138 SCRA 49, at 52 (1985); underscoring supplied.

[4] Comment by respondent, p. 11.

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