

MERLINDA L. DAGOOC, COMPLAINANT, VS. ROBERTO A. ERLINA, SHERIFF IV, RTC, BRANCH 40, TANDAG, SURIGAO DEL SUR, RESPONDENT.

A.M. No. P-04-1857. March 16, 2005

Ponente: CORONA, J.

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CORONA, J.:

This is a complaint for misconduct and ignorance of the law filed by Merlinda L. Dagooc of Diatagon, Lianga, Surigao del Sur, against deputy sheriff Roberto A. Erlina of the Regional Trial Court, Branch 40, Tandag, Surigao del Sur.

Complainant alleged that she was the plaintiff in Civil Case No. L-695 before the Regional Trial Court, Branch 28, Diatagon, Lianga, Surigao del Sur. The court rendered judgment by compromise agreement which immediately became final and executory. Complainant moved for the execution of the decision and, on February 28, 2002, a writ of execution was issued which was endorsed to respondent deputy sheriff Erlina for execution. The defendants, however, could not pay the money judgment. Instead of levying on the properties of the defendants to satisfy the judgment, however, sheriff Erlina asked them to execute promissory notes in favor of complainant which he asked the latter to collect from the defendants. Complainant further alleged that respondent sheriff indicated in his return of service that defendants were insolvent. But upon verification with the assessor's office of Tandag, Surigao del Sur, complainant discovered that defendants owned real properties, as evidenced by the real property field appraisal and assessment sheet.

In his comment, respondent sheriff averred that he served a copy of the writ of execution on the defendants but they could not pay the money judgment despite repeated demands. So he went to the residence of the defendants to levy on some of their personal properties but he found them to be exempt from execution pursuant to Section 13, Rule 39 of the Rules of Court. He then went to the office of the provincial assessor to verify if the defendants owned real properties which he could levy on. He alleged that he was given a certification that there was none. So he made a return of service stating that defendants were insolvent. He denied calling up complainant for her to collect defendant's payment by means of promissory notes. But he advised her to secure an alias writ of execution so he could eventually go after defendants' real properties in Tandag, Surigao del Sur.

We referred the complaint to the Office of the Court Administrator (OCA) for review, evaluation and recommendation. The OCA found the complaint meritorious and respondent sheriff guilty of misconduct and gross ignorance of the law. It recommended that respondent be fined P5,000, with a warning that the commission of a similar act in the future shall be dealt with more severely.

We find it strange and highly unusual, to say the least, that respondent sheriff did not know his duties and functions under Section 9, Rule 39 of the Revised Rules of Court which clearly states how the execution of money judgments should be made.

Section 9. Execution of judgments for money, how enforced. – (a) Immediate payment on demand. – The

officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ. (emphasis ours)

The law mandates that in the execution of a money judgment, the judgment debtor shall pay either in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter. Nowhere does the law mention promissory notes as a form of payment. The only exception is when such form of payment is acceptable to the judgment debtor. But it was obviously not acceptable to complainant, otherwise she would not have filed this case against respondent sheriff. In fact, she objected to it because the promissory notes of the defendants did not satisfy the money judgment in her favor.

If the judgment debtor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the money judgment shall be satisfied by levying on the properties of the judgment debtor. Thus,

Section 9(b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x x x x x x[1]

Levy is defined as the act or acts by which an officer of the law and court sets apart or appropriates a part or the whole of the loser's (judgment debtor's) property for the purpose of eventually conducting an execution sale to the end that the writ of execution may be satisfied, and the judgment debt, paid.[2] However, not all of the judgment debtor's properties may be levied upon because the law exempts some of them from execution.[3] But the right of exemption from execution is a personal privilege granted to the judgment debtor and, as such, it must be claimed not by the sheriff but by the judgment debtor himself at the time of the levy or within a reasonable period thereafter.[4]

Respondent sheriff not only failed to levy on the properties of the judgment debtor when they could not pay the money judgment in cash but also claimed the exemption for them. His conduct blatantly manifested his incompetence and ineptitude in discharging his functions. Moreover, respondent sheriff was seriously remiss in his duties when he stated in his return of service that the defendants were insolvent without first diligently verifying such fact. As it turned out, the defendants had real properties he could have levied on to satisfy the money judgment.

But even assuming that the defendants/judgment debtors were insolvent, respondent sheriff should have garnished their salaries (being paid employees) to enforce the judgment in the subject case as provided for in Section 9(c), Rule 39 of the Revised Rules of Court.

(c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice

upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

Either to desperately cover his tracks after it was pointed out to him that the defendants were not insolvent at all or out of sheer ignorance of the law, respondent sheriff advised complainant to file a motion for the issuance of an alias writ of execution allegedly so that he could levy on the properties of the defendants. But there was no need for an alias writ of execution for him to levy on the real properties of the defendants. The life of the writ was for five years and the judgment of the court had not yet been fully satisfied. Section 14, Rule 39 of the Revised Rules of Court states that:

Section 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. x x x (emphasis ours)

Sheriffs, as public officers, are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability. They are bound to use utmost skill and diligence in the performance of their official duties particularly where the rights of individuals may be jeopardized by their neglect.[5] Here, we find respondent sheriff utterly wanting in zeal and dedication. He was highly incompetent, downright inefficient and grossly ignorant of the law when he did not faithfully execute the writ of execution to the prejudice of complainant.

Considering that respondent sheriff's primary duty was the execution of the writ strictly according to its terms, there was apparently more than mere "harmless" ignorance involved here, which makes us wonder about the very lame and docile penalty of P5,000 being recommended by the OCA. Applying Rule 4, Section 52 B(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service, we find respondent guilty of inefficiency and incompetence in the performance of his official duties and suspend him from the service for one (1) year.

WHEREFORE, in view of the foregoing, we find respondent sheriff ROBERTO A. ERLINA of the Regional Trial Court, Branch 40, Tandag, Surigao del Sur, GUILTY of inefficiency and incompetence in the performance of his official duties. He is hereby SUSPENDED from the service for one (1) year and WARNED that the commission of a similar act in the future shall be dealt with more severely.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

[1] Rule 39, Revised Rules of Court.

[2] See *Llenares v. Valdevella, et al.* 46 Phil. 358 cited in *Paras, E. L., Rules of Court Annotated*, 2nd ed., Vol. 1, 1989, p. 711.

[3] Section 13, Rule 39, Revised Rules of Court.

[4] *Manacop v. Court of Appeals*, 342 Phil. 735 (1997).

[5] *Vda. De Velayo v. Ramos*, 424 Phil. 734 (2002).

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