

**CRISPINO M. DE CASTRO, COMPLAINANT, VS. ALBERTO H. SANTOS,
IN HIS CAPACITY AS SPECIAL SHERIFF DESIGNATE, BRANCH 156,
RTC PASIG, METRO MANILA, RESPONDENT. R E S O L U T I O N**

A.M. No. P-90-474. June 19, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

A letter-complaint was filed against the respondent who was designated as Special Sheriff in Civil Case No. 59396 entitled “Vicente Ampa, represented by his Attorney-in-fact Alwin Pornel v. Vicente Cristi, Jr., et al.” The charges against the respondent include: (1) grave misconduct; (2) gross negligence in the performance of duties; and (3) disobedience to the written as well as verbal orders of the Court.

The complainant is the counsel for the defendant in Civil Case No. 59396, an action for delivery of personal property wherein a writ of replevin was initially issued by the trial court against the Caterpillar bulldozer of the complainant’s client. The said writ was executed by the respondent acting as Special Sheriff.

Upon motion by the complainant to quash the writ of replevin and the filing of a counter-bond as required under Sec. 5, Rule 60 of the Rules of Court, the trial court, on May 30, 1990, ordered the return of the Caterpillar bulldozer to Vicente Cristi, Jr. The trial court’s order was never implemented owing to the fact that the subject property which was deposited by the respondent at the Pasig Capitol Motorpool Compound was released by the Officer-in-Charge of the said motorpool compound in favor of the plaintiff, not the defendant, in Civil Case No. 59396, contrary to court orders.

For failure of the respondent as the court officer entrusted with the custody of the subject property to keep the same safely, as required, the present administrative case was brought before the Office of the Court Administrator which submitted the same for our consideration.

Respondent Special Sheriff denies all the charges against him averring that he placed the subject bulldozer in the Pasig Capitol Motorpool Compound in the honest belief that no other place is as safe to keep such valuable equipment; that he exercised all safeguards to protect the subject property and cautioned the Officer-in-Charge of the Motorpool Compound to release the bulldozer under his care only when ordered by the court, and that the loss of the subject property could not be attributed to him but to the said Officer-in-Charge who released the same without his knowledge and consent.

In our Resolution dated November 26, 1990, we referred this matter to the Executive Judge of the Regional Trial Court of Pasig, Metro Manila whose investigation disclosed the following factual findings:

“It appears that when Special Sheriff Alberto Santos and plaintiff Alwin Pornel asked Nunilo Diaz the officer-in-charge of the DPWH Motorpool in Pasig, Metro Manila - to allow them to make use of the said motorpool as a temporary shelter for the bulldozer they will get from Marikina thru a writ of replevin, Nunilo Diaz refused their request, for the latter believed that the motorpool owned by the Government was not suitable

for any private vehicle or property to be garaged there. He later on agreed, however, after Special Sheriff Alberto Santos explained to him that the bulldozer is owned by plaintiff Alwin Pornel, and the latter pleaded to Nunilo Diaz and told him that the bulldozer would be placed in the motorpool for five (5) days only, because they will secure a court order to allow them to take the bulldozer to the province. (TSN, testimony of Nunilo Diaz, February 22, 1991, pp. 4-6, 22-23)

“Pursuant to the said writ of replevin dated May 11, 1990, Special Sheriff Alberto Santos and plaintiff Alwin Pornel got the bulldozer from defendant Vicente Cristi, Jr. and placed it inside the DPWH Motorpool between 6:00 and 7:00 in the evening of the same date; but Nunilo Diaz would not officially receive the bulldozer from defendant Vicente Cristi, Jr. and refused to sign any receipt therefor. Although Special Sheriff Alberto Santos pleaded to him to sign a receipt for the said bulldozer, Nunilo Diaz hedged, saying there was no need for said receipt. Despite such refusal of Nunilo Diaz to issue any receipt for the bulldozer, however, Special Sheriff Alberto Santos left the said equipment in the motorpool. These facts were duly admitted by the said special sheriff in his testimony (TSN, February 26, 1991, pp. 4, and 13).

“After more than five (5) days elapsed and the bulldozer was not taken out of the motorpool, Nunilo Diaz went to see Special Sheriff Alberto Santos in his office and asked him to locate plaintiff Alwin Pornel so that he may take the bulldozer, for he (Diaz) would use the space occupied by the bulldozer because sixty-one (61) pieces of pipes would be placed in the motorpool to be used in a DPWH project; but Special Sheriff Alberto Santos told him that he also could not find Alwin Pornel and said that he will tell Pornel about it should he meet him (TSN, Testimony of Nunilo Diaz, February 22, 1991, pp. 6-7, and 36). This was partly confirmed by Special Sheriff Alberto Santos who testified that Nunilo Diaz came to his office looking for Alwin Pornel and was asking as to when the bulldozer would be taken out of the motorpool compound (TSN, February 26, 1991, p. 6)

“It appears further that from the time that the bulldozer was placed in the Motorpool compound on May 11, 1990 and up to the time that the said equipment was taken by plaintiff Alwin Pornel in the evening of June 2, 1990, Special Sheriff Alberto Santos never visited the bulldozer. This was testified to by Nunilo Diaz, the officer-in-charge of the motorpool (TSN, February 22, 1991, p. 8) This was also confirmed by Special Sheriff Alberto Santos who admitted that he never visited the bulldozer in the motorpool, for he could very well see it from the window of his office. He admitted further that the last time he saw the bulldozer inside the motorpool was in the afternoon of June 1, 1990 (a Friday) before the close of office hours; that he did not look out of the window to check if the bulldozer was in the motorpool on June 4, 5 and 6, 1990; and that he came to know for the first time that the bulldozer was released on June 2, 1990 by Nunilo Diaz to plaintiff Alwin Pornel in the morning of June 7, 1990 - when the defendant Vicente Cristi, Jr. came to his office to ask for the release of said bulldozer to him pursuant to the Order of the Court dated May 30, 1990. (TSN, February 26, 1991, pp. 6, 8-9 & 15)

“The evidence also shows that Special Sheriff Alberto Santos did not furnish Nunilo Diaz with copies of the Court Order dated May 10, 1990 and the Writ of Replevin dated May 11, 1990 - both of which ordered the said sheriff to take the possession of the bulldozer from defendant Vicente Cristi, Jr. and to keep it in his custody. This was admitted by the above named sheriff in his testimony, although he claims that he showed the said order and writ together with the summons to Nunilo Diaz (TSN, February 26, 1991, p. 8). Nunilo Diaz maintains, on the other hand, that Special Sheriff Alberto Santos told him that he is an employee of the Court; and that the said sheriff and Alwin Pornel told him that they have an Order from the Court to take the bulldozer from Marikina, but they did not show the order to him and he did not see it (TSN, February 22, 1991, pp. 7 and 21).

“Special Sheriff Alberto Santos asserts that he told Nunilo Diaz not to release the bulldozer to anyone - in compliance with the order of the Court dated May 16, 1990 directing him to withhold delivery of the bulldozer until pending “Urgent Motion To Quash Writ of Replevin” has been resolved (TSN, February 26, 1991, p. 4). Such assertion, however, is denied by Nunilo Diaz who testified that during the whole time that the bulldozer

was in the motorpool he does not remember any time when Special Sheriff Alberto Santos visited it, and that he (Diaz) did not receive any Order of the Court about the said bulldozer (TSN, February 22, 1991, pp. 7-8)

“Finally, Special Sheriff Alberto Santos maintains in his testimony that Nunilo Diaz should not have released the bulldozer to plaintiff Alwin Pornel, because before the said bulldozer was placed in the Motorpool, he (Santos) told Nunilo Diaz that the bulldozer is the subject matter of a replevin case wherein the true ownership thereof would be determined; that nobody could take the bulldozer unless he personally delivers to Nunilo Diaz an Order from the Court; that in compliance with the Order of the Court dated May 16, 1990, he also told Nunilo Diaz not to release the bulldozer to anyone; and that he never told Nunilo Diaz that plaintiff Alwin Pornel is the owner of the bulldozer or that he could release the said bulldozer to him. (TSN, February 26, 1991, pp. 3,4, 9-10). These declarations of Special Sheriff Alberto Santos, however, are denied by Nunilo Diaz who, in his testimony, said that Special Sheriff Alberto Santos introduced Alwin Pornel to him as the owner of the bulldozer (TSN, February 22, 1991, pp. 6,14 and 26); that he was not made to understand (by Special Sheriff Alberto Santos and plaintiff Alwin Pornel) that they were depositing the bulldozer in his premises by order of the court or that it could not be removed therefrom without a court order (Ibid. p. 37); and that Special Sheriff Alberto Santos did not warn him that if the bulldozer would be lost, he (Nunilo Diaz) will be responsible therefor (Ibid, pp. 34 & 36)” (Report, pp. 5-7)

From the foregoing findings, the Executive Judge who conducted the investigation reached the following conclusions:

“x x x it is the conclusion of the undersigned investigator that Special Sheriff Alberto Santos failed to comply with the duty and responsibility required of him under Sec. 4 of Rule 60 of the Rules of Court, earlier quoted above. He placed the bulldozer subject matter of the writ of replevin at the DPWH Motorpool without requiring its officer-in--charge, Nunilo Diaz, to officially receive the said bulldozer or to sign a receipt therefor. He failed to make Nunilo Diaz fully understand that the ownership of the bulldozer is yet to be determined by the Court and that said bulldozer cannot be removed from the motorpool without any order from the said Court. The said respondent failed to take the necessary steps in order that Nunilo Diaz, as officer--in-charge of the DPWH Motorpool, would be liable for the loss or damage of the bulldozer should he release it without the said Court Order. He failed to give Nunilo Diaz a copy of the Court Order dated May 16, 1990 directing him (sheriff) to withhold delivery of the bulldozer to anyone, pending resolution of defendant’s “Urgent Motion To Quash Writ of Replevin”, and he also failed to show to Nunilo Diaz the Order of the Court dated May 30, 1990 which ordered him to return the bulldozer to defendant Vicente Cristi, Jr. Neither did he inform Nunilo Diaz that although plaintiff Alwin Pornel had filed a motion for reconsideration of said Order dated May 30, 1990, the motion would still be heard on June 4, 1990. All these acts of Special Sheriff Alberto Santos constitute gross negligence in the performance of his duties in the execution of the writ of replevin issued in Civil Case No. 59396, which resulted in the loss or unlawful release of the bulldozer subject matter of the writ by the officer-in--charge of the DPWH Motorpool - to whom he left the said bulldozer without any receipt or written agreement as to the liability or responsibility of said official involving the custody thereof.

“The undersigned investigator finds, however, that the respondent special sheriff’s negligent acts did not arise from any willful or unlawfull misbehavior, or disobedience to the Orders of the Court. Rather, the said acts appear to be the result of his lack of understanding of his duty and responsibility under the law and the circumstances he found himself in while acting as such special sheriff. It is significant to note that respondent Alberto Santos is a Process Server of the Court. He was merely designated as Special Sheriff to execute the Writ of Replevin issued Civil Case No. 59396. He appears to have little knowledge, nay experience, in the work of a sheriff. From the time he seized the bulldozer from defendant Vicente Cristi, Jr., he seemed not to understand that it was his duty under the law to retain it in his custody, and that he must keep it in a secure place and shall be responsible for it. Such duty and responsibility appears to be farthest from his mind, as he seems to be of his frame of mind that he should not be responsible or liable for the loss or damage to the bulldozer. xxx” (Report, pp. 9-11)

After a thorough examination of the records of this case, we see no cogent reason to disregard the factual findings of the Investigating Judge. We are also in accord with the Investigating Judge's conclusion that the respondent had committed gross negligence in the performance of his duties but we cannot mitigate the offense due to the respondent's inexperience as suggested by the Investigating Judge, hence, we find unacceptable and inappropriate the recommended penalty of reprimand and forfeiture of a reasonable amount of respondent's salary.

The sheriff is a court personnel primarily responsible for the speedy and efficient service of all court processes and writs originating from his court and the branches thereof, and those that may be delegated in him from other courts (see SC Administrative Circular No. 12, dated October 1, 1985). As an officer of the court whose duties form an integral part of the administration of justice, he may be properly punished; short of dismissal or suspension from office through the exercise of our power of administrative supervision over all courts for any act violative of the Rules of Court and opposed to a fair and just administration of justice (Section 6, Article VIII, Constitution; *Marisol C. Hipolito v. Elmer R. Mergas*, A.M. No. P-90-412, promulgated on March 11, 1991, citing *Amolador v. Felicidadario*, 82 SCRA 268 [1978]).

The fact that the respondent is a process server merely designated as a Special Sheriff does not give us a valid ground to treat the respondent's gross negligence with leniency. Otherwise, inexperience in one's line of work will be a convenient and lame excuse for those who happen to be similarly situated with the respondent. Moreover, as we have stated in the case of *Leonardo Tan v. Juan Herras* (Adm. Matter No. P-90-404, March 11, 1991):

"Time and again, the Court has stressed that the conduct and behavior of everyone connected with the dispensation of justice from the presiding judge to the lowest clerk should be circumscribed with the heavy burden of responsibility. x x x The conduct of judges and court personnel at all times must not only be characterized by propriety and decorum but must also be above suspicion (*Llanes v. Borja*, Adm. Matter No. P-86-32, December 10, 1990; *Jereos, Jr. v. Reblando Sr.* 71 SCRA 126, 131-132 [1976])

Contrary to the Investigating Judge's submission that the respondent's lack of understanding of his duty and responsibility in the execution of a writ of replevin, he being a Special Sheriff designate, should be appreciated in his favor, we rule that a public officer is expected to all the more act with utmost care and diligence whenever he is assigned to work in a special or acting capacity so much so that in the discharge of his duties in such special acting capacity, he must do so with prudence, caution and attention which careful men usually exercise in the management of their affairs considering that every public officer is bound to use reasonable skill and diligence in the performance of his officially designated duties. (See *Bron v. Delis*, 89 SCRA 433 [1979])

In the case at bar, all that was required of the respondent as Special Sheriff in Civil Case No. 59396 was to secure the subject property for delivery to the party entitled thereto. However, there is a clear showing that when the subject bulldozer was brought to the Pasig Capitol Motorpool Compound for security purposes, the respondent caused the motorpool's Officer-in-Charge, Nunilo Diaz, to get the impression that Pornel is the owner thereof and that the said bulldozer would only stay in the motorpool premises while awaiting the court's order for its release in Pornel's favor within a period not longer than five (5) days. The records, moreover, reveal that the respondent never bothered to check whether the subject bulldozer had remained where he had kept it secured and even passed the buck of responsibility, so to speak, on Diaz when the subject bulldozer which was under his custody was nowhere to be found. These acts, to our mind constitute a flagrant and palpable breach of duty which amounts to gross negligence. (see *Juan v. Arias*, 72 SCRA 404, [1963]).

PREMISES CONSIDERED, the COURT RESOLVED to SUSPEND the respondent from office for a period of FIVE (5) months without pay effective immediately for gross negligence. His supervisors are also ordered to limit his assignments to the work of Process Server and to never assign him as Special Sheriff in the future. As

correctly evaluated by the Investigating Judge, the charges for Grave Misconduct and Disobedience to the Orders of the Court should be DISMISSED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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