

**ANDRES M. AQUINO, COMPLAINANT, VS. MELECIO N. AFICIAL,
DEPUTY SHERIFF, COURT OF FIRST INSTANCE, DAGUPAN CITY,
RESPONDENT.**

A.M. No. P-1065. January 31, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In his sworn letter-complaint dated August 21, 1975 Andres M. Aquino charged the respondent Melecio N. Aficial, Deputy Sheriff of tile Court of First Instance at Dagupan City, with "misconduct, inefficiency, incompetence in the performance of official duties and conduct prejudicial to the best interest of the service" in the implementation of a writ issued by the City Court of Dagupan, Branch II, pursuant to a judgment in favor of the herein complainant in an ejectment case, Civil Case No. 1411-75 entitled "Andres M. Aquino vs. Pancho M. Patungan".

The charges are based on the respondent's alleged failure to levy on the goods and chattels of the judgment debtor Pancho M. Patungan when said writ of execution was served on May 12, 1975.

The pertinent allegations of the letter-complaint are:

"That the defendant is a lessee of a portion of the store space No. 376 located at Avenida Torres Bugallon, Dagupan City, he being a shoemaker and dealer of made to order and high quality shoes; that he owns a grinding machine worth P1,000.00 more or less; Electric fan, worth P200.00; Refrigerator worth P1,500.00 more or less; gas range worth P200.00 more or less and 100 pairs of high quality and made to order shoes worth more or less P1,500.00;

That these personal properties were all in the store of the defendant when the Writ of Execution was actually served on the 12th of May, 1975. That before the Writ of Execution was served, Deputy Sheriff Melecio N. Aficial advised me to hire a jeep to haul the personal properties of the defendant to which I readily complied by hiring a Ford Fiera for P11.00;

That out of respect, courtesy and gratitude to the good advice of Deputy Sheriff Melecio N. Aficial and his promise to seize the personal properties of the defendant, I treated said Deputy Sheriff Melecio N. Aficial together with his companions namely, Mr. Juanito C. Salcedo and Pat. Pablo de Asis at the Dagupan City Panciteria by serving them food and cigarettes at around 9:00 A.M., on May 12, 1975. A friend of mine, Mr. Federico M. Maramba joined us in this happy-happy affair;

Nevertheless I am very sorry to file this letter-complaint because Deputy Sheriff Melecio N. Aficial surprisingly failed to make good his promise and legal obligation to seize the above-enumerated personal properties of the defendant which were in his store after Atty. Victor Llamas whom the defendant re-requested to intercede for him have a talk with the said sheriff;

That instead Deputy Sheriff acceded to the promise of the defendant to settle the total obligation with the Sheriff's Office on or before May 19, 1975;"[1]

Attached to the letter-complaint is a copy of respondent's return dated August 11, 1975 wherein it is stated that the writ of execution had been "duly served but not satisfied", with this explanation:

"Upon investigation of his personal or real properties said judgment-debtor has no properties not exempt from execution. However, said judgment-debtor is willing to settle the judgment obligation some other days."[2]

On September 2, 1975, this Court's Executive Officer, Atty. Arturo B. Buena, referred the letter-complaint through the Executive Judge of the Court of First Instance, Dagupan City, to respondent for his comment within ten (10) days from receipt thereof.

In his answer dated September 17, 1975, the respondent explained that he failed to levy on the goods and chattels of the judgment debtor because:

"That on said date, May 12, 1975, together with Pat. Pablo de Asis of the Dagupan City Police Department, we proceeded to the portion of the store space at No. 376, Torres Bugallon Avenue, Dagupan City, where the judgment-debtor Pancho Patungan is and served the said writ but refused to sign or acknowledge the same and witnessed by Pat. Pablo de Asis and Mr. Juanito C. Salcedo, as evidenced by their signatures at the back of the original writ. After explaining to him the contents of the Execution, he went out and brought his copy to his counsel and after a few minutes he came back with Atty. Victor T. Llamas, Jr. (Affidavit of Atty. Victor T. Llamas, Jr. is hereto attached.) His counsel interceded and promised the under-signed to settle the total obligation on or before May 19, 1975 which I have agreed and with the consent of the plaintiff-complainant. But I instructed said defendant to move out or vacate the premises. Before this, the plaintiff-complainant told and requested me that even though we could not collect the obligation stated therein provided, you instruct him to vacate the premises at the earliest possible time because he always makes disturbance inside the store having a drinking spree with his friends almost daily of which said defendant has complied with on the next day.

After that period, May 19, 1975, said defendant has not fulfilled or settled the total obligation but, instead he requested again to settle it between June 16 to 20, 1975, as he alleged to me that he has an application for a loan with the PCI Bank to be released soon. After that number of days when he has not complied again, I went to his residence at Malued Dist., Dagupan City, but informed me that his loan was not yet approved.

With respect to the allegations of the plaintiff-complainant that the defendant-lessee owns a grinding machine, electric fan, refrigerator, gas range and 100 pairs of shoes, the truth of the fact is that, there were only five pairs of shoes inside the shelf (display), which were ordered by and owned by his customers and there are no other shoes as alleged by the complainant; the electric fan and refrigerator are not yet owned by the defendant as

they have a prior lien with the Radiowealth Finance Company; the tools and implements and cooking utensils inside the premises cannot be levied upon as they are exempt from execution. A certification of the Radiowealth Finance Co., and affidavits of Pat. Pablo de Asis and Mr. Juanito C. Salcedo are hereto enclosed herewith."[3]

The certification of the Radiowealth Finance Company attached to the answer attested that the refrigerator of the judgment debtor Pancho M. Patungan was "pulled out" by the said company on May 31, 1975.[4] The affidavits of Victor T. Llamas, Jr., Pablo de Asis and Juanito Salcedo[5] corroborated respondent's report on the service of the writ of execution.

Upon being furnished with a copy of respondent's answer, the complainant wrote a letter dated November 4, 1975[6] to Executive Officer Arturo B. Buena reiterating his plea that the complaint be formally investigated.

There is no need to conduct a formal investigation of the charges. The facts of record sufficiently provide a basis for determination of respondent's administrative liability. There is no question that the respondent failed to levy on the refrigerator, gas range, electric fan and the pairs of shoes found at the store of the judgment debtor, Pancho M. Patungan when the writ of execution was served on him on May 12, 1975.

Section 15, Rule 39 of the Rules of Court explicitly makes it the duty of the sheriff to levy on all the pro-property or on a sufficient amount of such property of the judgment debtor not exempt from execution, as will satisfy the amount of the judgment and costs included in the writ of execution. While the respondent was justified in not levying on the cooking utensils and the tools and implements used by the judgment debtor in shoemaking, his trade, for these are exempt from execution, it was incumbent upon said respondent to levy on the other properties found within the premises occupied by the judgment debtor.

Respondent's claim that these other properties were subject to a prior lien in favor of the Radiowealth Finance Corporation is no excuse for respondent to shirk from his duty to implement the writ of execution. The judgment debtor had a tangible and definable interest in these properties which was of value and not exempt from execution. It was respondent's duty to make the levy. The said Radiowealth Finance Corporation could properly protect its interest by filing a third party claim with the respondent in accordance with Section 17 of Rule 39.

Respondent's contention that he acceded to the judgment debtor's promise to pay at a later date because of an alleged understanding with complainant is not tenable. His authority under the writ of execution does not embrace the power to compromise with the judgment debtor. Any extrajudicial agreement should be between complainant and the judgment debtor.

Respondent's unwarranted failure to levy on execution the properties of the judgment debtor not exempt from execution constitutes negligence in the performance of official duties. His negligence not only had caused damage to complainant, but more importantly had impaired public faith and confidence in the administration of justice by our courts. As held by this Court in *Recto vs. Racelis*:

"... The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel - hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice."[7]

Negligence in the performance of official duties is one of the grounds for disciplinary action against public officials and employees under Presidential Decree No. 6. It falls under the classification of a less grave offense in accordance with Civil Service Commission Memorandum Circular No. 8, series of 1970.[8] Considering the

circumstances of the case and in line with Our decisions in Recto vs. Racelis[9] and Estioko, Sr. vs. Cantos,[10] the appropriate imposable penalty for respondent's negligence is suspension from office for six (6) months without pay.

WHEREFORE, the respondent, Melecio N. Aficial, is declared guilty of gross negligence in the performance of his duties as Deputy Sheriff of the Court of First Instance of Dagupan City, and he is hereby suspended from office for a period of six (6) months without pay to commence immediately after the final entry of judgment in this case, with the warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Guerrero, JJ., concur.

[1] Rollo, pp. 1-2.

[2] Rollo, p. 5.

[3] Rollo, p. 9.

[4] Rollo, p. 11.

[5] Rollo, pp. 10, 12 & 13.

[6] Rollo, p. 16.

[7] Adm. Matter No. P-182, April 30, 1976, 70 SCRA 438, 443.

[8] Bayani vs. Buenaventura, Adm. Matter No. P-116, September 30, 1976, 73 SCRA 98, 105.

[9] Supra.

[10] Adm. Matter No. P-865, September 30, 1977.

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