# RENATO G. CUNANAN, COMPLAINANT, VS. DEPUTY SHERIFF ARTURO C. FLORES, RESPONDENT.

*A.M. No. P-99-1351. November 24, 1999*

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**PER CURIAM:**

Francisco Ong, attachment debtor in Civil Case No. 91-1108, entitled "Manuel C. Ho et. al. vs. Francisco Ong, et. al", thru his counsel, Atty. Renato G. Cunanan, complains against Arturo C. Flores, Deputy Sheriff of Branch 150 of the Regional Trial Court (RTC) of Makati City, for nonfeasance for failure to discharge his obligation under Rule 57, Sec. 7 (c) of the Rules of Court.

Records disclose that on May 3, 1991, pursuant to a writ of attachment issued by the RTC of Makati City in said civil case, respondent Deputy Sheriff Arturo C. Flores, accompanied by two other sheriffs, attached two motor vehicles and other personal properties of Francisco Ong, particularly described in the covering Sheriff's Return, as:

a) two (2) units VESPA air compressor MT 21 F and MT-10P L;

b) one (1) unit 555 metal cutter;

c) one (1) unit cut-off wheel SP 305 A (type 3P);

d) one (1) unit pipe threader Rolex Cupid No. SN-150;

e) one (1) unit Daiden Welding Machine;

f) one (1) unit Omega Power Washer HP Sprayer (orange);

g) one (1) unit Ford Laser 1981, white, plate No. NHC 235; and

h) one (1) unit Mitsubishi Lancer 1978, red, plate no. NEZ 429.

The aforementioned properties were stored at the courtyard and motorpool of the RTC of Makati City. A year later or on March 23, 1992, to be precise, respondent deputy sheriff received a notice from the administrator of the courthouse, informing him that the attached vehicles and pieces of equipment would have to be removed from the court premises to pave the way for the demolition of the motorpool building.

Respondent turned over the seized articles to the plaintiff (attaching creditor) on condition that the seized articles would be returned should he (respondent) be ordered to give the same to Ong.

On November 12, 1993, the court a quo dissolved the writ of attachment and ordered the return of the attached properties of Ong. But it was only on November 26, 1993, that plaintiff surrendered the Ford Laser car and Ong refused to accept it unless all his seized properties were returned to him.

Despite pleas from respondent, plaintiff refused to turn over the other seized articles, and he changed his address without notice, later on. Almost a year after, or on August 25, 1994, the plaintiff turned over the red Lancer car to

respondent. The other seized articles were returned on September 22, 1994.

When the articles and motor vehicles were finally given to Ong, the latter refused to accept them, as he noticed extensive damage to the red Lancer car, and the substitution of a majority of pieces of equipment with inferior brands. Indignant, Ong instituted the administrative case at bar against the respondent.

For his defense, respondent theorized that Ong knew of the delivery of the attached properties to the plaintiff but he (Ong) did not offer any objection. The physical appearance of subject properties changed as they were moved from the court premises and exposed to the elements for a long time.

The case was referred to Executive Judge Salvador S. Abad Santos for investigation, report and recommendation. After conducting the investigation, Executive Judge Abad Santos found respondent guilty, as charged, and recommended his dismissal from the service. Pertinent portions of the Report of Executive Judge Abad Santos, dated February 20, 1996, state:

> "My own assessment of the evidence presented reveals the respondent sheriff's failed to discharge his obligation under Rule 57, Sec. 7 (c) of the Rules of Court.
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> (1) The record shows that respondent released the levied properties to the plaintiff upon being informed that such could no longer be accommodated in the motorpool and the Courthouse quadrangle. Such act of his was, however, without the previous knowledge and consent of the court. No explanation was offered for the obvious omission. Considering that as the officer of said court with the obligation under law to take attached properties and keep them safe in his custody, the respondent's precipitate action and reckless bestowal of trust upon the plaintiff is unjustified.
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> (2) Respondent's explanation regarding the damage to and the substitution of the properties to the effect that the items changed in physical appearance due to the length of time that they were exposed to the elements, is untenable. The damage suffered by the properties and the substitutions made could not have been caused by mere exposure to the elements, however long the exposure may have been. For instance, the "Notice of Levy on Execution/Attachment" signed by the respondent himself specifies one (1) unit welding machine DAIDEN type (Annex G) but the welding machine respondent attempted to return merely had "Daiden" written on it with a marking pen. The pipe threader that respondent attempted to return was manually operated while the one taken from defendant was electrically operated.
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> (3) Moreover, at the investigation conducted, the complainant and his counsel as well as the respondent appeared. Said respondent admitted that he received from the plaintiff the Ford Laser car of the defendant on 26 November 1993. This notwithstanding, and despite having been ordered previously by Honorable Judge Aliposa to return the vehicle to its owner, respondent was able to return only the Lancer Mitsubishi automobile. And despite committing himself during the aforesaid hearing to return the vehicle before the next hearing date, respondent failed to do so and even absented himself from the proceedings without explanation, leading to the submission of the case for resolution on the basis of what had thus far been established.
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> Premises considered, it is hereby recommended that respondent be found guilty of non-feasance. It is further recommended that he be dismissed from service with forfeiture of all benefits he may be entitled to and with prejudice to future reinstatement in the government service and employment in government owned or controlled corporations." (Rollo, p. 73)

On September 11, 1998, the Office of the Court Administrator submitted its Memorandum, quoting with approval the above findings. Upholding the recommended penalty of dismissal from the service, with forfeiture of all benefits and with prejudice to re-employment in the government service, the Office of the Court Administrator cited the case of Onasa, Jr. vs. Villaran, 246 SCRA 131 [1995], where a sheriff, who unduly delayed the turning over to the owner of the garnished amount, was found to have misapplied or misappropriated the same for his own


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personal use, and was meted the supreme penalty of dismissal. In this case, the Office of the Court Administrator found the actuations of respondent equally constitutive of grave misconduct and/or grave dishonesty and conduct grossly prejudicial to the best interest of the service and gross neglect of duty. (Memorandum, p. 7)

The findings and recommendation of the Investigating Judge and the Office of the Court Administrator are in accord with law and the evidence. Respondent's unusual zeal and precipitate decision in giving possession of the seized properties in question to the plaintiff effectively destroyed the presumption of regularity in the performance of his official duties. (Bilag-River vs. Flora, 245 SCRA 611 [1995])

Under the Rules of Court (now Rule 57 Sec.7 [b]), personal property seized under a writ of attachment, capable of manual delivery, must be taken and safely kept by the Deputy Sheriff in his capacity, after issuing the corresponding receipt therefor. Thus, the respondent's act of leaving the seized articles in the possession and control of the plaintiff (the prevailing party in the case below) did not comply with the Rules. Neither did it comply with the plainly worded Order of the Regional Trial Court. The condition imposed on the plaintiff that he would produce the same articles whenever required by the court was no compliance either, because it did not show that subject property was in respondent's presence and possession. Respondent's performance fell short of his bounden duty to take and safely keep the attached property" in his capacity." (Walker vs. McMicking, 14 Phil 668, [1909] cited in Herrera, Oscar M., Remedial Law, Vol. 3 [1999 ed.] p. 29)

Respondent's stance that the Regional Trial Court of Makati City did not have any storage facility to house subject properties is no justification. (Sebastian vs. Valino, 224 SCRA 259 [1993]). As aptly ruled by the Investigating Judge, the respondent could have sought prior authority from the trial court which issued the writ.

As expected, when the trial court ordered the immediate return of all the properties seized pursuant to the writ of seizure, dated May 3, 1991, plaintiff refused to part with them. It was only almost a year after, when plaintiff relinquished the seized properties to the respondent. But then, Ong refused to accept the same, after finding them in a deplorable state, viz: some of the items were damaged, others, as observed by the Investigating Judge himself, were substituted with inferior brands.

Respondent could have avoided getting into his present predicament had he not turned over prematurely the possession of the seized items to the plaintiff. (Sebastian vs. Valino, supra)

> "The Court cannot overstress the need for proper and circumspect behavior on everyone connected with an office charged with the dispensation of justice, from the presiding judge, to the sheriff and the lowliest clerk. Said conduct is circumscribed with the heavy burden of responsibility and must, at all times, be characterized with propriety and decorum. Every employee of the judiciary should be an example of integrity, honesty and uprightness. He must always be above and beyond suspicion. Sheriffs, in particular, must show a high degree of professionalism in the performance of their duties given the delicate task they're reposed with." (Borja, Sr. vs. Angeles, 244 SCRA 706, 709 [ 1995])

WHEREFORE, Deputy Sheriff Arturo C. Flores is found GUILTY of Grave Misconduct, Gross Neglect of Duty, Grave Dishonesty and conduct grossly prejudicial to the best interest of the service, and is hereby DISMISSED from the service, with forfeiture of all benefits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.


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