

**EVELYN ACUÑA, COMPLAINANT, VS. RODOLFO A. ALCANTARA,
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 50, VILLASIS,
PANGASINAN, RESPONDENT.**

A.M. No. 01-1463 (Formerly OCA IPI No. 99-572-P). March 20, 2001

Ponente: VITUG, J.

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VITUG, J.:

In a verified letter-complaint, dated 27 October 1998, complainant Evelyn Acuña charged Rodolfo A. Alcantara, Sheriff IV of the Regional Trial Court of Villasis, Pangasinan, Branch 50, with negligence and manifest partiality relative to his conduct in Civil Case No. V-0413 ("Mrs. Gloria R. Ocampo vs. Mrs. Evelyn Acuña") for "recovery of sum of money with prayer for preliminary attachment." The trial court, on 23 December 1997, granted the preliminary attachment prayed for by plaintiff Ocampo. The writ was thereupon issued on the two flatboats of herein complainant Acuña.

Complainant averred that, in implementing the writ, respondent sheriff had failed to take the necessary precautions in protecting the attached property. Respondent entrusted the flatboats to a relative of plaintiff Ocampo under whose care one of the flatboats submerged. Later, the flatboats were turned over by respondent to the Philippine Coast Guard of Sual, Pangasinan, in which custody the flatboats were totally damaged due to several typhoons that visited the area.

Respondent explained, when required to comment, that when he implemented the writ of attachment, the flatboats were not seaworthy. Initially, he sought the assistance of the Philippine Coast Guard of Sual, Pangasinan, in safekeeping the flatboats but the Coast Guard refused to accept such custody without a court order. Meanwhile, respondent was constrained to dock the flatboats at the Sual port, tied them to a bamboo post and entrusted them to a son of plaintiff Ocampo although the keys were kept by the latter. Sometime in May, 1998, after being informed that one of the flatboats had sunk, he asked for a court order to have the Philippine Coast Guard take possession of the flatboats. The court directed accordingly. Respondent implemented the order of the trial court, dated 05 June 1998, by hiring men at his own expense to lift the submerged flatboat and by depositing the two flatboats with the Philippine Coast Guard in Sual, Pangasinan. On 18 September 1998, respondent received a request from the Philippine Coast Guard to transfer the flatboats to a safer place to prevent them from further deteriorating. Before he could act on the request, however, typhoons "Gading," "Illiang" and "Loleng" struck the place and destroyed the flatboats.

Respondent admitted having initially turned over the custody of the boats to the son of the plaintiff but that he did so only because the Philippine Coast Guard had then refused to render assistance to him; otherwise, he contended, he had taken all the necessary measures to protect the attached property.

The case was referred by the Court to the Office of the Court Administrator ("OCA") for evaluation, report and recommendation. Eventually, the OCA came out with its evaluation, report and recommendation; it said:

"The complaint is partly meritorious.

"In *Tantingco vs. Aguilar* (81 SCRA 599, 604) this Court held that:

"`Having taken possession of the property under the writ of attachment, it was respondent's duty to protect the property from damages or loss. The respondent was bound to exercise ordinary and reasonable care for the preservation of the properties.'

"More to the point is the case of *National Bureau of Investigation vs. Tuliao* (270 SCRA 351, 356). In this case, this Court citing the case of *Walker vs. McMicking* (14 Phil. 688, 673) said:

"`xxx A verbal declaration of seizure or service of a writ of attachment is not sufficient. There must be an actual taking of possession and placing of the attached property under the control of the officer or someone representing him. (*Hallester vs. Goodale*, 8 Cann., 332, 21 Am. Dec., 674; *Jones vs. Hoard*, 99 Ga., 451, 59 Am. St. Rep., 231)

`We believe that xxx to constitute a valid levy or attachment, the officer levying it must take actual possession of the property attached as far as xxx practicable (under the circumstances). He must put himself in a position to, and must assert and, in fact, enforce a dominion over the property adverse to and exclusive of the attachment debtor and such property must be in his substantial presence and possession (*Corniff vs. Cock*, 95 Ga., 61, 51 Am. St. Rep. 55, 61) Of course, this does not mean that the attaching officer may not, under an arrangement satisfactory to himself, put anyone in possession of the property for the purpose of guarding it, but he can not in any way relieve himself from liability to the parties interested in said attachment.'

"Applying the above-quoted principle to the instant case, it is apparent that respondent was negligent in taking care of the boats because he turned over possession thereof to the son of the plaintiff. His reason that the Coast Guard did not accept the boats because he had no court order can not exonerate him. In view of the Coast Guard's refusal, what respondent should have done under the circumstances was to assign a disinterested party, at the expense of the plaintiff, to take care of the boats. Even then, this error could have been rectified if respondent immediately asked the court for an order to transfer custody of the boats to the Coast Guard. Respondent did this only when one of the boats had already sunk. We, however, believe that this is the only extent of respondent's liability. Respondent was able to eventually transfer the possession of the boats to the Coast Guard in whose custody the boats were totally destroyed by storms. The loss of the boats cannot thus be blamed entirely on respondent but it can not be denied that his initial action may have contributed to the deterioration of the sea-worthiness of the boats."

The OCA recommended that respondent be FINED in the amount of P5,000.00 for negligence in the performance of his duties.

The Court adopts the recommendation of the Office of the Court Administrator.

The OCA did not err in holding that respondent sheriff was guilty of negligence. The refusal of the Philippine Coast guard to initially take custody of the flatboats should have prompted him to forthwith ask the trial court for an order to have the custody of the flatboats transferred to the Philippine Coast Guard. He delayed in seeking for such a court order. But while respondent failed to thusly implement the writ of preliminary attachment and to safekeep the property in his custody,[1] it would appear that he exerted efforts to protect the flatboats. The eventual deterioration and loss of the boats had, in fact, been caused by calamities beyond his control. Given the circumstances, by and large extant from the records of the case, the Court deems it appropriate to impose on respondent a fine but on the reduced amount of from P5,000.00 recommended by the OCA to P3,000.00.

WHEREFORE, the Court, finding Rodolfo A. Alcantara, Sheriff IV of the Regional Trial Court of Villasis, Pangasinan, Branch 50, guilty of simple negligence, hereby imposes upon him a FINE of THREE THOUSAND (P3,000.00) PESOS but warns that a repetition of the same or like infraction will be dealt with severely.

SO ORDERED.

Melo (Chairman, Third Division), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Sec. 7, Rule 57 of the revised Rules of Court.

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