

FLORENTINA BILAG-RIVERA, PETITIONER, VS. CRISANTO FLORA, RESPONDENT.

A.M. No. P-94-1008. July 06, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

In an affidavit-complaint[1] filed with the Office of the Court Administrator, complainant Florentina Bilag-Rivera charged respondent Crisanto Flora, deputy sheriff, RTC of Baguio City, with grave misconduct and dishonesty, when he released a motor vehicle subject of a writ of attachment to a representative of the plaintiff in a civil case, without authority from the court which issued the writ, thereby enabling said plaintiff to sell the motor vehicle to a third person, to the damage and prejudice of complainant who claims ownership over said motor vehicle.

On 5 August 1990, Elsie V. Tacay bought an Isuzu Jitney on installment basis from Panda Automotive Corporation (PANDA), Dagupan City, represented by Charlie Q. Carlos, for the amount of P256,000.00. On 17 March 1992, when the installment payments reached P145,000.00, Tacay demanded for the execution of a Deed of Absolute Sale which she obtained from PANDA on the same date. On 23 March 1992, Tacay registered the vehicle in her name with the Land Transportation Office (LTO) in Lingayen. On 10 May 1992, Tacay tendered a check for P100,000.00 to cover part of the P120,000.00 balance still due PANDA. Upon presentment by PANDA with the drawee bank, the check for P100,000.00 was dishonored as the same was allegedly forged. When confronted by PANDA about the check's dishonor, Tacay promised to pay the balance of P120,000.00 on or before 23 June 1992.

On 8 July 1992, however, Tacay sold the Isuzu jitney to complainant Florentina Bilag-Rivera for the amount of P250,000.00, covered by an Absolute Deed of Sale.[2] Hence, possession of the vehicle and its LTO registration papers were turned over to complainant.

It appears that Tacay failed to fulfill her promise to pay the P120,000 balance on the vehicle due PANDA Corporation, prompting the latter to verify the whereabouts of the said vehicle. PANDA later learned of the deed of sale between Tacay and complainant and obtained information that the alleged deed of sale was not registered or even annotated on the Certificate of Registration of the motor vehicle.

In September 1992, with Tacay still in default on her outstanding obligation to Panda Corporation, the latter, thru its manager Charlie Carlos, filed a complaint for specific performance, replevin, and damages with the RTC of Dagupan City, Branch 40 [docketed as Civil Case No. D-10205] with prayer for the issuance of a writ of preliminary attachment against Elsie Tacay, with complainant (Rivera) impleaded as co-defendant.

On 18 September 1992, the RTC of Dagupan issued a writ of preliminary attachment against Tacay and complainant. Since the subject motor vehicle was believed to be in the City of Baguio, the writ was addressed to the RTC, City Sheriff, Baguio City.

Complainant alleges that being a buyer in good faith, she should not have been impleaded in the complaint of

Panda Corporation. Instead of proceeding against the principal defendant Elsie V. Tacay, the respondent Deputy Sheriff proceeded to attach the subject motor vehicle in complainant's possession. At that time, respondent Sheriff was accompanied by Charlie Carlos, PANDA's Manager. Respondent issued to the complainant a handwritten receipt on the same day (18 September 1992) which indicated that he took possession of the vehicle pursuant to the writ of attachment.[3]

Complainant requested the City Sheriff of the RTC, Baguio City to hold the vehicle for a few days as she would prepare the amount of P20,000.00 as counterbond to discharge the attachment. Since there was no bonded warehouse in the City of Baguio, the office of the City Sheriff requested complainant to pay P1,000.00 to justify their holding on to said vehicle until she could post the counterbond. Complainant paid the amount of P1,000.00 and was duly receipted for said payment.[4]

On 23 December 1992, however, the RTC of Dagupan City issued an order in Civil Case No. D--10285 for the issuance of an alias writ of attachment as prayed for by Panda Motors. The writ was again addressed to the office of the City Sheriff, RTC of Baguio City with an order to attach the same motor vehicle in possession of complainant. Respondent received the alias writ on 23 February 1993.

The alias writ was not served immediately by respondent because the whereabouts of the said vehicle could not be ascertained. It was only on 15 March 1993 when Charlie Carlos, the manager of Panda Motors, came personally to the office of respondent and informed him that the vehicle to be attached was in the possession of Carlos Camiwet, a cousin of complainant.

Forthwith, respondent together with Charlie Carlos, proceeded to the residence of Carlos Camiwet and served the alias writ of attachment on the latter with an attachment bond of P120,000.00. Complainant avers that this time, respondent sheriff did not issue any receipt to cover for his re-possession of the said vehicle. Worse, complainant maintains that at the time of the levy, various tools worth P50,000.00, which were not integral to the motor vehicle, were also taken by respondent sheriff.

The following day, complainant accompanied by her lawyer, went to the office of respondent to inquire about the motor vehicle and to request for a receipt. According to complainant, respondent told her not to worry and that the issuance of a receipt was no longer necessary because the vehicle and its tools were being kept in a safe place. Complainant then informed respondent that she would be posting a counterbond as soon as she had the money.

Complainant further alleges that on several occasions, she came to the office of respondent to inspect the vehicle but respondent did not allow her to see the vehicle nor was she informed of its whereabouts. Respondent, however, gave complainant repeated assurances that the vehicle was being kept in a safe place.

On 17 May 1993, complainant attended the hearing in Civil Case No. D-10285 to argue her Motion to Dismiss and Motion to Quash the Writ of Preliminary Attachment. To her surprise, she was informed by the lawyer of Panda Corporation that a certain Elsie Tacay had voluntarily surrendered the vehicle together with its documents to Panda Corporation and that Panda's manager, Charlie Carlos, had already sold the vehicle to a person named Leonardo Sarmiento for P175,000.00.

Complainant manifested before the court that the subject motor vehicle was in custodia legis and that the above-mentioned transactions were anomalous and contrary to law. Thereafter, the court directed complainant's lawyer to investigate the matter and to report his findings to the court.

Complainant's lawyer then sent a letter of inquiry to the Clerk of Court of Baguio City, asking why respondent did not issue a receipt when he executed the alias writ of attachment; why there was no sheriff's return on the writ of attachment filed in court; why the vehicle was no longer seen again after 15 March 1993; and whether it was true

that Elsie Tacay took the vehicle together with the tools from respondent and returned it to Panda Corporation.[5] Complainant also sent a letter of inquiry to the LTO office in Lingayen to check on the current registration of the said vehicle.[6]

Meanwhile, the Clerk of Court and the Ex-Officio Sheriff of RTC, Baguio issued a memo to respondent requiring him to explain the proceedings he conducted in enforcing the alias writ of attachment in Civil Case No. D-10285.

In his compliance dated 18 June 1993, respondent stated that he:

"x x x served and took the subject vehicle into "custodia legis", and a receipt was duly issued. The receipt was not however received nor signed by the defendants as they refused to do so, thereafter, said motor vehicle was surrendered to the Plaintiff in the above-captioned case for safekeeping and custody for the reason that this office has no bonded warehouse to keep the said motor vehicle. An acknowledgment receipt was duly signed by the manager of said Plaintiff (Panda Motors) in the person of Mr. Charlie Marcos."[7] (Emphases supplied)

In addition, respondent denied the existence of the tools when he levied the alias writ of attachment on the said vehicle.

In respondent's return of the alias writ of attachment dated 7 June 1993, he similarly stated that:

"xxx xxx x x x

On March 15, 1993, the said (alias) writ of attachment was enforced together with the manager of Panda Corporation, Mr. Charlie Carlos from Mrs. Florentina Rivera, but refused to acknowledge the receipt of the said motor vehicle for the reason that she will just file(d) the necessary counterbond.

And on the said date said motor vehicle was taken by the plaintiff thru Mr. Charlie Carlos for safekeeping and custody for the reason that this officer has no bonded warehouse to place the said motor vehicle."[8]

On 10 June 1993, complainant's lawyer received a reply from the LTO in Lingayen with certified photocopies of the vehicle's registration indicating that on 1 April 1993, Elsie V. Tacay re-sold the subject vehicle for P175,000.00 to Charlie Carlos[9] and that on 10 April 1993, Charlie Carlos sold the same unit for P175,000.00 to Leonardo Sarmiento of Bautista, Pangasinan[10] and that the same had been registered in Sarmiento's name for LTO registration year 1993-1994.

Complainant now argues that the foregoing facts and circumstances clearly demonstrate that respondent sheriff adopted an irregular procedure and entered into an anomalous transaction in not issuing a receipt to complainant when he served the alias writ of attachment and on the very same day turned over possession of the vehicle to the attaching creditor which simply issued an acknowledgment receipt for the vehicle, instead of securing the permission of the trial court, knowing fully well that the vehicle was in custodia legis. Compared to the service of the first writ of attachment when respondent requested the amount of P1,000.00 from complainant as storage fees for the vehicle, respondent in serving the alias writ of attachment in effect made Charlie Carlos his agent when he turned over the said vehicle to the latter for alleged "safekeeping and custody."

In his comment[11] filed with this Court, respondent contends that the Office of the City Sheriff of Baguio has no bonded warehouse to store the vehicle for the disposition of the (trial) court, hence, the vehicle was turned over to the attaching-creditor's representative, Charlie Carlos, who immediately asked respondent that the motor vehicle be kept in his custody for which Carlos signed a receipt[12] acknowledging that the vehicle was under custody of the Court but shall be temporarily deposited in the company's (Panda's) premises (in Dagupan City).

Respondent explains that after the due enforcement of the alias writ of attachment, he awaited for further disposition of the same by the trial court, and for all intents and purposes, his (ministerial) function had been fully

served. Thus, he no longer had any knowledge, consent nor participation with respect to the subsequent deed of sale between Elsie Tacay and Charlie Carlos[13] and between Charlie Carlos and Leonardo Sarmiento[14]. Neither did he receive nor enjoy any benefit in any form out of these transactions.

In a resolution dated 27 July 1994, this Court, as recommended by the Office of the Court Administrator, referred this case to Executive Judge Clarence J. Villanueva of the Regional Trial Court of Baguio City, Branch 7 for investigation, report and recommendation within sixty (60) days from receipt of the records.

In a six (6) page report dated 15 November 1994, Judge Villanueva made the following findings and recommendations:

"x x x there is clear evidence on record that respondent sheriff Crisanto Flora was remiss of [sic] his duties as an officer of the court in releasing the subject motor vehicle to Charlie Carlos, a representative of the plaintiff in the case where the writ of attachment emanated, without seeking an order or permission from the court concerned. It was incumbent of Sheriff Flora to take into his custody the motor vehicle subject of attachment and protect it. A sheriff who takes possession of the property under a writ of attachment is duty bound to protect the property from damage or loss and to exercise ordinary and reasonable care for the preservation of the property (Adm. Matter p. 128, 81 SCRA 599). The fact that respondent Flora failed to immediately make a return of his proceedings on the second writ of attachment is something to consider. He enforced the second writ of attachment on March 15, 1993 but he waited until June 18, 1993 to do so at the direction of the Clerk of Court Atty. Delilah Gonzales-Munoz as contained in the memorandum issued to respondent (see Exh."B" page 45 record; see also Exhs. "C" and "C-1"). While it is true that there are no bonded warehouse(s) where sheriffs could deposit attached properties for safe keeping, herein respondent is not exempt from exercising reasonable diligence in performing his duties as an officer of the court. The least that he could have done is to ask permission for the concerned court to allow him to turn over the subject vehicle to Charlie Carlos. This he failed to do."[15]

The Court agrees with the findings of Judge Villanueva and concludes that while the evidence may be insufficient to prove that respondent conspired with Charlie Carlos and Elsie Tacay in eventually alienating the vehicle to a third person, his particular zeal and precipitate decision to give possession of the vehicle to a party litigant (plaintiff) and treat the same as "in custodia legis" effectively destroys the presumption of regularity in the performance of his official duties.

As deputy sheriff, respondent could not be unaware of Rule 57, section 6 of the rules of Court which provides that:

Immediately after executing the order the officer must make a return thereon to the clerk or judge of the court from which the order issued, with a full statement of his proceeding under the order and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve a copy of any such counter-bond on the applicant or his lawyer.

Section (7)(c) of the same Rule also mandates that:

Properties shall be attached by the officer executing the order in the following manner:

"xxx xxx x x x

(c) Personal property capable of manual delivery, by taking and safely keeping it in his capacity, after issuing the corresponding receipt therefor.

Chapter VIII(e)(4) of the Manual for Clerks of Court similarly states that:

All sheriffs and deputy sheriffs shall submit a report to the judge concerned on the action taken on all writs and

processes assigned to them within (10) days from receipt of said process or writ. Said report shall form part of the records.

Respondent could not evade the positive duty of serving the attaching creditor's affidavit, bond, and the order of attachment on complainant's representative (Camiwet) by now alleging that it was the fault of complainant and her representative in refusing to sign the receipt that he allegedly issued on 15 March 1993.

The records of the investigation reveal otherwise—that complainant could not have signed the acknowledgment receipt because she was not present when the vehicle was attached. In the same vein, her cousin Camiwet refused to sign the receipt because, as he testified, the same was misleading as he was being forced to sign a receipt which indicated that complainant and Elsie Tacay surrendered the vehicle to respondent by virtue of the said alias writ of attachment.

The Court is more inclined to believe the testimony of Camiwet during the investigation to the effect that he only surrendered the vehicle to respondent because he was repeatedly assured by respondent that everything was all right and that Charlie Carlos was really after Elsie Tacay, that as soon as Mr. Carlos returned to Dagupan, he (Camiwet) or complainant could retrieve the vehicle in his (respondent's) possession.[16]

Respondent himself virtually admitted his nonfeasance when he testified that it had been their practice to give possession of properties subject of writs of attachment to party litigants because they have no bonded warehouse in their jurisdiction. However, he could not explain why, in this particular case, in the first writ of attachment, he even demanded P1,000.00 from complainant for alleged storage fees while complainant bought time to find the amount for her counterbond, and yet, in the execution of the alias writ, he usurped the court's function and released the vehicle to the custody of Mr. Carlos. Equally reprehensible is his attempt to cover up his misdeed by concealing it from complainant when the latter confronted him thereafter in his office.[17]

Thus, the return he executed more than two (2) months after the enforcement of the alias writ was more of an afterthought rather than the fulfillment of a positive duty, because by then he had been ordered by the clerk of court to explain his proceedings under the alias writ of attachment.

Time and again, the Court has reiterated the rule that the conduct of every employee of the judiciary must be at all times characterized with propriety and decorum and above all else, it must be above and beyond suspicion.[18] In the case at bench, respondent cannot successfully defend his negligent omission to secure a court order before disposing of the property by simply alleging that a party litigant had agreed to be his agent. In the same vein, a sheriff or deputy sheriff cannot act as special deputy sheriff of any party litigant.

The Court takes notice that on 18 July 1994, the RTC of Dagupan City rendered a decision in Civil Case No. D-102805 awarding damages[19] in favor of complainant Rivera. Said decision became final and executory as Panda and Elsie Tacay did not interpose any appeal therefrom. This circumstance adds more credence to complainant's claim that she would not have been defrauded in the first place had respondent sheriff performed his duty in accordance with the rules instead of unduly accommodating the request of a party litigant.

In his report, Judge Villanueva recommends that respondent be suspended for six (6) months without pay. The Court considers said penalty to be too harsh in the absence of direct evidence showing that respondent has pecuniarily received any financial gain from the anomalous transactions.

But for his failure to exercise reasonable diligence in the performance of his duties as an officer of the court, the Court hereby imposes a fine of P5,000 on respondent Flora with STERN WARNING that any repetition of the same act in the future will be dealt with more severely. Let a copy of this decision be entered in respondent's personal record.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

- [1] Rollo, pp. 1-7.
- [2] Annex "A", Rollo p. 11.
- [3] Annex "C", Rollo p. 14.
- [4] Annex "D", Rollo p. 15.
- [5] Annex G, Rollo, p. 18.
- [6] Annex H, Rollo, p. 22.
- [7] See Annex I, Rollo, p. 34.
- [8] See Annex J, Rollo p. 25.
- [9] Annex M, Rollo p. 29.
- [10] Annex N, Rollo p. 30.
- [11] Rollo, pp. 33-41.
- [12] Annex A and B of Respondent's Comment, Rollo p. 42.
- [13] Annex F, Rollo, p. 50.
- [14] Annex F-2, Rollo, p. 51.
- [15] Rollo, pp. 223-228.
- [16] See Rollo, pp. 167-172.
- [17] See Rollo pp. 204-205.
- [18] Valenton vs. Melgar A.M. No. P-92-698, March 3, 1993 219 SCRA 372.
- [19] Rollo pp. 68-72.

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