

WEAREVER TEXTILE MILLS, INC., COMPLAINANT, VS. DEPUTY SHERIFF SERGIO E. BAGAYBAGAYAN, COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

Adm. Matter No. P-2436. November 25, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In a sworn complaint filed on September 25, 1980, Wearever Textile Mills, INC. charged Sergio E. Bagayba-gayan, Deputy Sheirff in the Court of First Instance of Manila, with irregular enforcement of a writ of preli-minary attachment issued in Civil Case No. 132865 of the Court of First Instance of Manila, entitled "Filin-vest Credit Corp. vs. Wearever Textile Mills, Inc." [1]

The complaint alleged that the Deputy Sheriff, ac-companied by armed companions, forcibly opened the gate of the factory compound of the complainant by breaking and destroying the barrel bolts thereof; and that said respondent Deputy Sheriff and his armed companions brought out and carted away motor vehicles and office equipments which were inside the compound notwithstanding the pre-vius understanding made between the complainant's offi-cials and the respondent deputy sheriff that those arti-cles will be left in the compound to be guarded by the sheriff's men.

In his comment filed on October 24, 1980, the res-pondent deputy sheriff specifically denied the allega-tions in the complaint and averred that he implemented the writ of preliminary attachment in accordance with the Rules of Court; that the complainant's officers be-came angry when the respondent refused to suspend the enforcement of the writ while they were still contacting Malacañang officials and a general in Camp Crame; and that there was no untoward incident whatsoever in the enforcement of the writ of attachment. [2]

The administrative matter was referred to Honorable Jose C. Colayco, Executive Judge of the Court of First Instance of Manila, for investigation, report and recom-mendation in a second indorsement dated November 14, 1980. [3]

The facts, as found by investigating judge, are:

"The salient fact that can be gleaned from the conflicting evidence is that the respondent brought out the motor vehicles at 6:45 in the afternoon with the assistance of men armed with long firearms after opening the gate by force because of the refusal of the security guard to open the gate; while the respondent claims that he was compelled to open the gate by force because the complainant padlocked the gate to prevent him from carrying the motor vehicles away at 3:50 in the same afternoon. There is need to examine the evidence. Bismala signed his report under oath and a copy of it was fur-nished to the Taguig police within twenty-four (24) hours after the levy. He had very little time to invent. His report gave the license-plate numbers of the motor vehicles in which the PC constables arrived. The respondent, on the other hand, waited for more than seven (7) days before filing his return. (Sec. 6, Rule 57 re-quires that the return be filed immediately after the execution of the writ of attachment). His version does not bear scrutiny. He alleges in his 'Comment' on the complaint filed by

the complainant with the Supreme Court that Mamerto Billano accused him falsely of employing force and intimidation 'to cover up for his wrongdoings and to get even with me because I did not succumb to his pressures and did not agree to his offer to bribe me. Said Colonel Mamerto Billano told respondent that Billano is a P.C. Colonel and he knows the First Couple. Billano told me that I should not enforce the writ against complain-ant because certain highly placed officials in the government are behind Wearever. Billano even offered to bribe me with the amount of P5,000.00, but I refused and I chastised him, for which he got very embarrassed. I told Billano that I am just performing my duty as a sheriff upon court order and if he wishes to cancel the writ or postpone enforcement, then he should go to the Court.' (pp. 7-8, record of Adm. Matter). He was less explicit, however, on the witness stand when he answered the question of his lawyer. He testified that Billano 'was trying to give me some consideration in order that I will not implement' the writ (t.s.n., p. 24, March 18, 1981). And he became very vague about it under cross-examination.

'q: And you also mentioned that Mr. Billano offered to give you a certain consideration. What is that consideration?

'a: Well, I don't know. He said, can we not talk this over? Can we not defer the implementation? I said, well, sir, I have no discretion regarding the implementation of this writ of attachment. This order emanated from the court and I am just only bound to implement it.' (t.s.n., pp. 94-95, id).

"The respondent alleges in his return, which he confirmed on the witness stand, that a security guard of the complaint succeeded in spiriting away two Crown Toyota cars by tricking him with a false phone call. It is hard to believe this because the two Metrocom troopers assigned to assist him were guarding the gate. Billano testified under cross-examination that after taking his lunch, the respondent left and told him that he was going to take down the license-plate numbers of the motor vehicles (t.s.n., pp. 102-103, Jan. 22, 1981). The respondent testified that he had already listed the motor vehicles when he was allegedly tricked ('well, before pulling out the units, I had already a prepared list of all the properties I was going to pull out' [t.s.n. , p. 37, March 18, 1981]). If he was telling the truth, his failure to mention in his return and in his testimony the plate numbers of the vehicles allegedly taken away brands his testimony as pure concoction. He also testified that the security guards of the complainant threatened him and his companion with bodily harm, and that one of them was arrested by the Metrocom troopers for concealing a bladed weapon. This is also not credible, because he testified during his direct examination that there was no untoward or violent incident, not even any heated argument, before he ordered the opening of the gate (t.s.n., pp. 54-55, March 18, 1981). The Metrocom troopers also contradicted him because they testified that they did not notice any commotion or fight during the entire period that they were inside the compound. (t.s.n., pp. 13-14, June 8, 1981; 9-10, June 23, 1981).

"In the light of the foregoing evaluation, it is believed that the respondent agreed for a time not to move the motor vehicles until the following morning upon the request of Billano, but Filinvest prevailed upon him to transfer them and furnished the armed PC troopers to assist him, in anticipation of the resistance by the security guards of the complainant; and that the respondent ordered the forcible opening of the gate when the security guards refused to open it."[4]

The findings of the investigating judge are supported by the evidence.

From the facts found by the investigating judge, it is clear that the respondent deputy sheriff abused his authority when he employed armed men to assist him and forced the gate open without a court order. The actuation of the deputy sheriff was aggravated by the fact that the armed men, although presumably members of the Philippine Constabulary, were not in uniform and were obviously employed to intimidate the security guards.

The recommendation of the investigating judge that the respondent deputy sheriff be ordered to pay a fine equivalent to his salary for one (1) month is reasonable.

WHEREFORE, the respondent, Deputy Sheriff Sergio E. Bagaybagayan, is hereby found guilty of irregular

en-forcement of the writ of preliminary attachment issued in Civil Case No. 132865 of the Court of First Instance of Manila and is hereby ordered to pay a fine equivalent to his salary for one (1) month, with the warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Rollo, pp. 1-4.

[2] Rollo, pp. 6-12.

[3] Rollo, p. 14.

[4] Report, pp. 6-9; Rollo, p. 75.

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