

VISITACION EGOS, COMPLAINANT, VS. HERMINIA G. GALLARDO, RESPONDENT.

A.M. No. P-1399. June 29, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint against respondent Herminia G. Gallardo, Clerk of Court of the City Court of Cavite, Branch I and Acting City Sheriff of Cavite City, for ignorance, incompetence and abuse of authority.

The facts are undisputed.

"On August 7, 1975 the Hon. Rodolfo Alejo of the City Court of Cavite decided Civil Case No. 1653 for 'ejectment' against defendant (complainant herein). The decision, however, was seasonably appealed by defendant;

"On October 13, 1975 defendant filed the corresponding supersedeas bond to stay execution pending appeal. But finding the said bond insufficient, the court ordered the execution of its decision;

"On November 19, 1975 defendant filed with the Court of First Instance of Cavite a petition for certiorari with preliminary injunction for the annulment of the order of the City Court, which petition was dismissed on December 4, 1975, whereupon defendant filed a petition for certiorari with writ of preliminary injunction with the Court of Appeals;

"On December 15, 1975, a writ of execution was issued pending appeal by the Hon. Rodolfo Alejo, wherein the City Sheriff was directed among others, to 'make a return with the writ within thirty (30) days from receipt thereof';

"On December 16, 1975, the writ was received by a representative of Defendant Domingo Yu;

"On January 15, 1976, a restraining order was issued by the Court of Appeals;

"On July 21, 1976, said restraining order was vacated and entry of judgment was entered in connection therein on August 9, 1976; and

"On August 24, 1976, the Acting City Sheriff in the company of several policemen enforced said writ of execution by ejecting defendant (complainant herein).

"It can be gleaned from the period covered by the aforementioned dates, that the thirty (30) day period within which the writ should be returned had expired on January 16, 1976. Therefore, the writ of execution had already become stale and inefficacious when the same was carried out and enforced by the Acting City Sheriff (respondent) on August 24, 1976." (Page 47, Record.)

Thus, it is clear that when respondent enforced on August 24, 1976 the writ of execution dated December 15, 1975, the 30-day period fixed by the court as the life thereof had already expired. Consequently, respondent was without authority to proceed the way she did. It is of no avail to her that she acted on the strength of a letter of

plaintiff's counsel addressed to her after the Court of Appeals had lifted its restraining order suspending the execution. It was her duty to know that the said restraining order of the Court of Appeals did not automatically suspend the life of the writ of execution. What she should have done was to inform the court of the situation and leave it to the interested party to seek the issuance of an alias writ. There is no question, therefore, that respondent must be made to answer for such shortcoming.

Considering, however, that there is no suggestion at all that respondent has acted in bad faith and for improper considerations, and this is the first administrative case against her, the Court is inclined to be liberal in her case. Moreover, it does not appear that anyone, much less the complainant, ever called her attention to the fact that the writ she was enforcing had already become stale. If she had been so advised and the matter were brought to the attention of the court, no prejudice could have been caused to anyone.

Accordingly, respondent is hereby found guilty of lack of diligence and carefulness in the performance of her official duties and is hereby severely reprimanded, with the admonition that any similar failure on her part to be cognizant of the legal rules governing the performance of her functions will be dealt with more severely.

Fernando, (Chairman), Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

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