

MARY ANN ESTOQUE, Complainant, vs. REYNALDO O. GIRADO, Sheriff IV, Regional Trial Court, Branch 33, Davao City, Respondent.

A.M. No. P-06-2250 (Formerly OCA IPI No. 06-2413-P). March 24, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This administrative case stemmed from the verified Letter-Complaint[1] of Mary Ann Estoque against Reynaldo O. Girado, Sheriff IV of Regional Trial Court, Branch 33, Davao City, for dereliction of duty in connection with the latter's alleged unreasonable failure and refusal to implement the writ of execution in Civil Case No. 23-242-94 entitled "Marcela A. Estoque et al. v. Apo View Hotel, et al."

In the letter-complaint received by the Office of the Court Administrator (OCA) on April 3, 2006, complainant Estoque averred:

I am one of the plaintiffs in Civil Case No. 23,248-94, entitled "MARCELA A. ESTOQUE, MARY ANN ESTOQUE, and NEIL MARK ESTOQUE, Plaintiffs, - versus - APO VIEW HOTEL, duly represented by MARIANO PAMINTUAN, JR., E.B. VILLAROSA & PARTNER CO., LTD., duly represented by ENGR. FELICIANO A. SUBANG and FREYSSINET DAVAO, INC., duly represented by ENGR. REYNALDO T. FUENTES, Defendants" for injunction with prayer for temporary restraining order, damages and attorney's fees, pending before the Regional Trial Court, 11th Judicial Region, Branch 33, Davao City (hereafter "RTC 33")[.] The case was filed on October 27, 1994.

On November 9, 1994, RTC 33 rendered its Decision based on the Amicable Settlement entered into by the parties on November 8, 1994. For failure of the defendants to completely comply with the terms and conditions of the Amicable Settlement, a writ of execution, upon proper motion, was issued on April 7, 1999.

Despite the writ of execution issued on April 7, 1999, the defendants still failed to completely comply with the terms and conditions of the Amicable Settlement.

On March 10, 2000, my lawyer filed a motion for issuance of alias writ of execution. RTC 33 granted the said motion in its order dated April 14, 2000, and an alias writ of execution was issued on July 7, 2000.

My complaint is about the unreasonable failure and refusal of the sheriff assigned at RTC 33 in the person of SHERIFF REYNALDO O. GIRADO to implement, despite the length of time and follow-ups, the alias writ of execution issued pursuant to the court order dated April 14, 2000. For the said sheriff's failure to implement the alias writ of execution and his failure to make a return of the writ, I was forced to bring to the attention of RTC 33 the matter by filing appropriate motions and manifestations.

The following are the records of events[:]

- On February 1, 2001, my lawyer filed an "EX-PARTE MOTION TO DIRECT THE SHERIFF TO MAKE A RETURN OF THE WRIT OF EXECUTION" xxx;

- On February 1, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to submit his Sheriff's Return of the Writ of Execution issued pursuant to the order dated April 14, 2000 xxx. Sheriff Reynaldo

Girado failed to submit the Sheriff's Return despite the court order;

- On April 25, 2001, my lawyer filed an EX-PARTE MOTION TO DIRECT THE SHERIFF OF THIS BRANCH (referring to RTC 33) TO SHOW WHY HE SHOULD NOT BE CITED FOR CONTEMPT OF COURT FOR HIS CONTINUED FAILURE TO MAKE A SHERIFF'S RETURN OF THE WRIT OF EXECUTION" x x x[;]

- On April 27, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to show cause why he should not be cited for contempt for failure to submit his sheriff's return on the steps he had taken with respect to the writ of execution, within ten (10) days from receipt of the order xxx. Despite the said order, Sheriff Reynaldo Girado failed to submit his comment or explanation why he should not be cited for contempt for failure to submit his sheriff's return[;]

- On October 24, 2001, for failure of Sheriff Reynaldo Girado to comply with the order of RTC 33 dated April 27, 2001 xxx, my lawyer filed a MOTION TO CITE SHERIFF REYNALDO O. GIRADO FOR CONTEMPT OF COURT AND TO ASSIGN A SUBSTITUTE SHERIFF FOR THIS PARTICULAR CASE xxx [;]

- On October 26, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to file his comment to the appropriate motion [above-stated] within fifteen (15) days from October 26, 2001 xxx;

- On January 11, 2002, RTC 33 issued another order directing the Branch Clerk of Court and [Ex-Officio] Provincial Sheriff to assign and designate from among the several sheriffs under him a sheriff to implement the Alias Writ of Execution issued in this case xxx [;]

- [On] January 14, 2002, RTC 33 issued a separate order directing Reynaldo O. Girado to show cause why he should not be cited for CONTEMPT OF COURT for his:

"1. Failure to implement and execute the Alias Writ of Execution issued on July 7, 2000; if implemented and executed, for his failure to submit his [Sheriff's] Return on Execution within the period provided by law;

2.Failure to comply with the Order of this Court dated 1 February 2001;

3. Failure to comply with the Order of this Court dated 27 April 2001;

4. Failure to comply with the Order of this Court dated 26 October 2001;"

x x x

(Order dated January [14], 2002)

x x x

- On June 8, 2004, my lawyer filed a MANIFESTATION WITH MOTION bringing to the attention of RTC 33 that Sheriff Reynaldo Girado has failed to comply with its previous orders and that the Clerk of Court and [Ex-Officio] Provincial Sheriff has not also implemented the directive of RTC 33 contained in the order dated January 11, 2002 xxx ;

- On June 14, 2004, acting on the Manifestation with Motion xxx, RTC 33 directed me to initiate contempt proceedings against Sheriff Reynaldo O. Girado xxx. I did not anymore initiate contempt proceedings because I expected the same result – Reynaldo O. Girado will not again comply[;]

- On June 15, 2004, RTC 33 issued an order again directing Sheriff Reynaldo Girado to submit his explanation why he should not be held in contempt of court for failure to comply with the [Order] of this Court (RTC 33), within ten (10) days from receipt of the order xxx [;]

- On June 24, 2002, my lawyer wrote the Clerk of Court and [Ex-Officio] Provincial Sheriff, Regional Trial

Court, Davao City, requesting for the implementation of the Order dated January 11, 2002 for the assignment of a substitute sheriff xxx [;] [and]

- On September 24, 2004, my lawyer wrote a REQUEST FOR IMPLEMENTATION OF THE ORDER DATED JANUARY 11, 2002 ISSUED BY BRANCH 33 OF THE REGIONAL TRIAL COURT, 11TH JUDICIAL REGION, DAVAO CITY, addressed to the Clerk of Court and [Ex-Officio] Provincial Sheriff, Regional Trial Court, 11th Judicial Region, Davao City xxx. Up to the present, I have not yet received any information from the Clerk of Court and [Ex-Officio] Provincial Sheriff regarding my said request.

Despite the several orders of RTC 33, Sheriff Reynaldo Girado has unjustifiably failed and refused and up to the present still fails and refuses to comply with those orders, leaving me with no other recourse or option but to send this present LETTER-COMPLAINT to your Honorable Office for proper action against Sheriff Reynaldo O. Girado.

It is feared that if no immediate implementation of the writ of execution in this case, the life of the occupants of the house, the complainant herein and the members of her family, the other plaintiffs in the aforementioned case, will be in danger and at risk considering that the kitchen of the occupants is now about to collapse and the posts are now almost suspended[.][2]

In his Comment[3] to the complaint, respondent pleaded:

a)

At the outset, I would like to make it clear that I have no slightest intention not to implement the alias writ of execution issued by the Court of [sic] on July 7, 2000 much less, disobey and totally disregard the lawful orders of the court;

b)

The records would bare that pursuant to the Writ of Execution dated 7 April 1999, I exerted efforts to implement the same on July 30, 1999 where I conducted an inspection on the residential building of plaintiffs together with plaintiff Mary Ann Estoque and the representatives of defendant Freyssinet Davao, Inc.;

c)

During said inspection, we found out that the repair made by defendant E.B. Villarosa & Partner Co. Ltd. on the residential building of plaintiffs was a failure and no certificate of completion was handed by the defendants to the plaintiffs and neither did the defendants execute a performance bond in favor of the plaintiffs as agreed upon by them;

d)

As indicated in my sheriff's progress report dated 18 August 1999[,] copy furnished plaintiff's counsel, defendant E.B. Villarosa & Partner Co. Ltd. was not notified of the inspection because of the closure of its office at 102 Juan Luna Street, Davao City[,] following [the] cessation of [its] operation;

e)

I tried to locate the whereabouts of the officers of E.B. Villarosa & Partner Co. Ltd., in order to fully implement the decision of the court but all my efforts proved futile;

f)

On July 7, 2000, the court issued an alias writ of execution;

g)

I was again confronted with the dilemma on how to implement it considering that defendant E.B. Villarosa & Partner Co. Ltd. is nowhere to be found;

h)

In one instance where I chanced upon in court plaintiff's previous counsel, Atty. Clemencia Cataluña, I told her about it and she casually commented that "it's really a problem because how could you implement it when the one which will do the repair and make good the undertaking could not be located";

i)

Locked on this predicament, I chose not to make any return nor submit any progress report to the court because plaintiff's already knew about it when I furnished them with my sheriff's progress report dated August 18, 1999;

j)

In my humble understanding, I could not fully implement the subject alias writ of execution without defendant E.B. Villarosa & Partner Co. Ltd. having been duly informed about it in view of the fact that it has already ceased operation and closed down its offices and the whereabouts of its officers [were] totally unknown to me;

k)

To reiterate, I have no slightest intention to disregard the various motions filed by the plaintiff for me to file my return and/or progress report [or] flagrantly disobey the lawful orders of the court;

l)

I sincerely apologize to the plaintiffs for not according them the respect and courtesy they deserve, and to the Honorable Court, for not religiously following its orders and directives to the letter; and

m)

I am very sorry for what I have done and I strongly resolve not to commit again the same mistakes in the future.[4]

After consideration of the parties' respective submissions, the OCA, on June 27, 2006, recommended that respondent be held guilty for neglect of duty and be fined P1,000, with warning that a repetition of the same or similar act in the future shall be dealt with more severely.[5]

Respondent manifested his willingness to submit this matter for decision on the basis of the pleadings filed, conformably with this Court's September 25, 2006 Resolution.

The Court agrees with the evaluation of the OCA but not as to its recommended penalty.

Time and again, it has been held that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the court order strictly to the letter and has no discretion whether to execute the judgment or not. Once the writ is placed in his hands, it is his duty, unless restrained by the court, to proceed with reasonable celerity and promptness to properly execute it according to its mandate, ensuring at all times that the enforcement of a judgment is not unduly delayed.[6]

Thus, a sheriff should know by heart his order to make a return of the writ of execution to the clerk/judge issuing it or if the judgment cannot be satisfied in full within 30 days after his receipt of the writ, to report to the court and state the reason/s therefor. In the latter case, he is further tasked to make a report to the court every 30 days on the

proceedings followed until the judgment is satisfied in full or its effectivity expires.[7] The submission of the return and periodic reports by the sheriffs is not a duty that must be taken lightly. It serves to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions.[8]

In this case, respondent admittedly failed to implement the alias writ of execution issued on July 7, 2000, to submit a sheriff's return on execution, and to make a monthly report as to the proceedings taken to satisfy in full what had been amicably settled by the parties. He would excuse himself by arguing that complainant Estoque already knew that defendant E.B. Villarosa & Partner Co. Ltd. already ceased its operation when she was furnished a copy of the sheriff's progress report on August 18, 1999 and that, in his "humble understanding," he could not fully implement the alias writ due to such fact and since the whereabouts of its officers were totally unknown to him.

The Court is not persuaded. Good faith or lack of it in proceeding to execute the writ is inconsequential, for a sheriff is chargeable with the knowledge that being an officer of the court it behooves him to make compliance in due time.[9] Hence, granting for argument's sake that respondent indeed entertained an honest belief that enforcing the writ would only be a futile attempt, the rules still do not give him the prerogative not to implement the alias writ.

Moreover, respondent simply brushed aside and trivialized the orders issued by the trial court. From what appears on record, even the court was seemingly helpless to enjoin immediate compliance by respondent for he repeatedly refused, without any justification, to comply with its five directives, to wit: on February 1, 2001 (to submit his sheriff's return of the alias writ of execution); on April 27, 2001 (to show cause why he should not be cited for contempt of court for continued failure to submit his sheriff's return); on October 26, 2001 (to file his comment to the motion to cite him for contempt of court and to assign a substitute sheriff); on January 14, 2002 (to show cause why he should not be cited for contempt of court for failure to implement the alias writ of execution and to comply with the three previous court orders); and on June 15, 2004 (to submit his explanation why he should not be held in contempt of court for failure to comply with the January 14, 2002 Order). Nothing was practically heard from respondent until this case was filed. His constant indifference on the matter belies his representation that he had not the slightest intention to disobey the court orders.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[10] respondent is guilty of simple neglect of duty which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[11] As it appears that respondent has not been previously administratively faulted and so as not to hamper the performance of the duties of his office,[12] instead of suspending him, he should be fined in an amount equivalent to his salary for one month.

WHEREFORE, respondent Sheriff Reynaldo O. Girado is found GUILTY of simple neglect of duty and is FINED in an amount equivalent to his salary for one month, with a STERN WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.

Let a copy of this Decision be attached to the personnel records of respondent Girado in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Leonardo-De Castro, JJ., concur.

[1] Rollo, pp. 1-6.

[2] Id. at 1-3.

[3] Id. at 45-47.

[4] Id.

[5] Id. at 49-52.

[6] Vargas v. Primo, A.M. No. P-07-2336, January 24, 2008, pp. 4-5; Cebu International Finance Corporation v. Cabigon, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622; and Patawaran v. Nepomuceno, A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 277.

[7] Bunagan v. Ferraren, A.M. No. P-06-2173, January 28, 2008, p. 8; Cebu International Finance Corporation v. Cabigon, id.; and Patawaran v. Nepomuceno, id. This is in compliance with Section 14, Rule 39 of the Revised Rules on Civil Procedure, which mandates:

SEC. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

[8] Patawaran v. Nepomuceno, supra note 6.

[9] Bunagan v. Ferraren, id.

[10] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999 (see Aranda, Jr. v. Alvarez, A.M. No. P-04-1889, November 23, 2007).

[11] Vargas v. Primo, supra note 6; Sy v. Binasing, A.M. No. P-06-2213, November 23, 2007, p. 4; De Leon-Dela Cruz v. Recacho, A.M. No. P-06-2122, July 17, 2007, 527 SCRA 622, 631; Jacinto v. Castro, A.M. No. P-04-1907, July 3, 2007, 526 SCRA 272, 278; Tiu v. Dela Cruz, A.M. No. P-06-2288, June 15, 2007, 524 SCRA 630, 640; Malsi v. Malana, Jr., A.M. No. P-07-2290, May 25, 2007, 523 SCRA 167, 174; and Patawaran v. Nepomuceno, supra note 6.

[12] Sy v. Binasing, id.; Jacinto v. Castro, id.; and Tiu v. Dela Cruz, id.

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