

ATTY. HECTOR P. TEODOSIO, COMPLAINANT, VS. ROLANDO R. SOMOSA, EDGAR CORDERO, AND RODOLFO HARO, SHERIFFS, MUNICIPAL TRIAL COURT IN CITIES (MTCC), ILOILO CITY, AND GANI LACATAN AN...

A.M. No. P-09-2610 (Formerly A.M. OCA IPI No. 09-3072-P). August 13, 2009

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PER CURIAM:

Before this Court is a letter-complaint[1] dated July 3, 2007 filed by complainant Atty. Hector P. Teodosio against respondent Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., Deputy Sheriffs of the Regional Trial Court (RTC) of Iloilo City, and respondents Sheriffs Rolando Somosa, Edgardo Cordero and Rodolfo Haro, Deputy Sheriffs of the Municipal Trial Court in Cities (MTCC) of Iloilo City, with the Office of the Court Administrator (OCA) relative to the irregular manner of implementing the writ of execution issued by the MTCC, Branch 2, Bacolod City, Negros Occidental in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*.

The antecedent facts are as follows:

On August 27, 2004, the MTCC, Branch 2, Bacolod City, Negros Occidental, rendered a Decision[2] on the civil aspect of Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*, for violation of Batas Pambansa Bilang 22 filed by therein private complainant Lita Gamboa against therein accused Mary Ann Ng, President and Chief Executive Officer (CEO) of Nueva Swine Valley, Inc. (Nueva Swine). Said decision was based on an amicable settlement entered into between accused Ng and Keylargo Commodities Trading (Keylargo), represented by therein private complainant Lita Gamboa, wherein the former agreed to pay on installment basis her civil liability in the form of post dated checks she will issue, for and in behalf of Nueva Swine.

When therein accused Ng failed to comply with the terms and conditions of the judgment, therein private complainant, through her counsel, moved for the execution of the decision. On August 4, 2006, the MTCC issued a Writ of Execution,[3] which reads in part:

NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment on the civil aspect of the cases; to levy the goods and chattels of the accused, except those which are exempt from execution and to make the sale thereof in accordance with the procedure outlined by Rule 39, Revised Rules of Court, and in such cases made and provided together with all your lawful fees for the service of this Writ.

In case sufficient personal property of the accused cannot be found whereof to satisfy the amount of the said judgment, you are hereby directed to levy the real property of said accused and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment. You shall only sell so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees, and make a report to this Court every thirty (30) days on the proceedings taken until the judgment is satisfied in full, or its effectivity expires.

On January 22, 2007, Judge Ma. Lorna Demonteverde, Presiding Judge of the MTCC, Branch 2 of Bacolod City, issued an Order[4] directing the City Sheriff and/or the Provincial Sheriff of Iloilo to serve a copy of the writ on therein accused Ng.

On May 30, 2007, Nicolasito Solas, Ex-Officio Sheriff and Clerk of Court of the MTCC, Iloilo City directed herein respondents, Sheriffs Johnny Tugado, Rolando Somosa, Edgardo Cordero, and Rodolfo Haro, to implement the writ.[5] Co-respondents, Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., both Deputy Sheriffs of the Province of Iloilo, were also approached by Juanito Gamboa, President of Keylargo, to implement said writ.

On May 31, 2007, respondents proceeded to Nueva Swine's hog farm at Barangay Talokgangan, Banate, Iloilo to implement the writ. Upon reaching the place, they introduced themselves and explained to the officer-in-charge (OIC) their purpose, as accused Ng was not around. They then served upon the OIC a copy of the writ, together with the decision, and demanded the money judgment. When the OIC failed to produce the money, respondents levied and took away 675 pigs and, thereafter, delivered them to Keylargo for safekeeping. A Notice of Levy on Execution[6] was issued on the same day to accused Ng.

On June 1, 2007, complainant sought a 72-hour Temporary Restraining Order (TRO) with the RTC, Branch 66 of Barotac Viejo, Iloilo, which the latter granted,[7] enjoining respondents, their agents and other persons acting for and on their behalf, from removing, transferring, disposing of and selling the swine in the hog farm of Nueva Swine in Brgy. Talokgangan, Banate, and in Nueva Invention, Barotac Viejo, Iloilo, and from selling or disposing the swine already taken, which would be preserved and maintained in its present location under supervision of the sheriff of the court. Despite the TRO, respondent sheriffs issued a Sheriff's Notice of Sale on Execution,[8] setting the auction sale of the pigs levied on June 5, 2007, 10:00 a.m., at the Victorias Milling Corporation Farm Site in Victorias City, Negros Occidental.

On June 3, 2007, complainant Atty. Hector Teodosio, counsel for Nueva Swine, wrote Judge Roger Patricio, Executive Judge of the RTC of Iloilo City and Sheriff Gerry Sumaculub, Clerk of Court and Ex-Officio Provincial Sheriff of Iloilo City, asking for information on the sheriffs who implemented the writ of execution. On June 7, 2007, he likewise wrote Judge Amalik Espinosa, Executive Judge of the MTC of Iloilo City and Sheriff Nicolasito Solas, City Clerk of Court and Ex-Officio City Sheriff of the MTC of Iloilo City, to obtain the same information.

On June 4, 2007, Judge Rogelio Amador of the RTC, Branch 66 of Iloilo City issued an Order extending the 72-hour TRO to a full 20 days, or until June 21, 2007, and setting the case for a preliminary injunction on June 15, 2007. Said Order was served and received by the Provincial and City Sheriffs of Iloilo.[9]

On June 5, 2007, respondents personally turned over all levied hogs to the MTCC, Branch 2 of Bacolod City.[10]

On June 7, 2007, Branch Sheriff Emilio Portal of the MTC, Branch 2, Bacolod City, conducted the public auction sale of the levied hogs.[11]

In a letter complaint dated July 3, 2007 and filed on July 9, 2007 with the OCA, complainant alleged that although he had previously sought information from Atty. Sumaculub of the RTC of Iloilo, and Mr. Solas of the MTC of Iloilo, on the purported irregular implementation of the writ of execution in *People of the Philippines v. Mary Ann Ng*, both had not replied. Complainant then sought help from the OCA requesting it to direct Atty. Sumaculub and Mr. Solas to furnish him the said information.

On July 19, 2007, the OCA separately indorsed the complaint dated July 3, 2007 and filed before it on July 9, 2007, to Executive Judges Patricio and Espinosa for immediate action and investigation.

In compliance with said directive of the OCA, Executive Judge Patricio set the initial hearing on August 7, 2007.

On August 14, 2007, Executive Judge Patricio issued an Order directing the respondents to submit their respective counter-affidavits within ten (10) days from receipt thereof.

In his Affidavit[12] dated August 14, 2007, complainant alleged that he went to the facilities of Nueva Swine on June 1, 2007 to stop the implementation of the writ of execution against the properties of his client, Nueva Swine. Upon reaching the farm, he saw about seven armed men in Philippine National Police (PNP) uniform posted outside the gate while swine were being loaded into cargo trucks provided by Keylargo. Complainant approached respondents Sheriffs Tugado, Cordero and Somosa and asked for the necessary documents that gave them authority to implement the execution. After going over the documents, he informed the respondents that the swine being levied upon belonged to Nueva Swine and not to accused Ng. Respondents, however, told him that they would only stop the implementation of the writ if a TRO would be issued. Thus, on that same day, complainant filed a petition for prohibition with prayer for TRO and preliminary injunction, which the RTC granted. Thereafter, armed with the TRO, complainant returned to Nueva Swine and presented the TRO to respondents Sheriffs Divinagracia and Lacatan. When complainant left the premises, however, he was told by Nueva Swine's manager, Dr. Matis Donglal, Jr., that respondents insisted on transporting the swine. Complainant then returned to Nueva Swine to stop the attempt at removing or transporting the swine out of the premises.

Complainant further averred that on June 2, 2007, he received a text message from an employee of Nueva Swine that respondents Tugado, Somosa, Lacatan and Divinagracia were trying to enter the gate of the farm to serve a notice of levy, a notice of sale and inventory documents. He advised the employee not to receive said documents or to sign any receipt. Respondents, however, left the documents at the gate of Nueva Swine.

Complainant added that the swine levied upon were sold at a public auction on June 7, 2007 without any notice to Nueva Swine or accused Ng, and in violation of the TRO. He argued that respondents illegally levied the swine owned by his client and not by accused Ng, and that they violated existing laws and administrative circulars of the Court when it implemented the writ in the absence of the judgment obligor, accused Ng.

To support the complainant's testimony, Dr. Donglal, Production Manager and Farm Veterinarian of Nueva Swine, submitted his Affidavit[13] dated August 13, 2007. He stated that sometime on May 31, 2007, at about 8:00 a.m., 30 men, ten of whom were in PNP uniform, entered the premises of Nueva Swine. Two of them introduced themselves as Sheriffs Lacatan and Divinagracia and showed him a writ of execution and a decision rendered against accused Ng. Despite having informed respondents that Nueva Swine did not belong to accused Ng, they ordered their companions to get the swine from the pigpens and load them into the cargo trucks. They also ordered their companions to slaughter one pig of imported variety, which was then cooked into lechon (roasted pig) on the premises. As respondents were accompanied by armed men, Dr. Donglal was not able to do anything. He further claimed that the taking of the swine lasted until the afternoon of June 1, 2007, when complainant and Sheriff Jonel Tupas of the RTC, Branch 66 of Barotac Viejo, came with a copy of the TRO. However, after complainant left the premises, respondents insisted on transporting the swine, prompting Dr. Donglal to call up complainant for assistance. Dr. Donglal estimated that about 383 swine, one cow, and a slaughtered pig were taken from the farm.

On the other hand, respondents Lacatan, Divinagracia, Somosa and Haro alleged in their Joint Counter-Affidavit[14] dated August 29, 2007 that prior to the implementation of the writ, respondent Sheriff Tugado, head of the group, together with Keylargo's representative, went to Bacolod City to verify certain matters before implementing the writ on May 31, 2007. On June 1, 2007, complainant arrived at Nueva Swine and ordered the closure and padlocking of the main gates of the corporation. Respondent Sheriff Tugado forced open

the padlock and implemented the writ pursuant to the MTCC Order dated May 30, 2007. They levied the swine after Dr. Donglal failed to pay the monetary obligation of accused Ng. The corporation was furnished a copy of the consolidated report on the inventory of the pigs taken from the piggery. Unfortunately, the officers refused to receive it, so they reported the matter to the police station for record purposes. Respondents averred that they discontinued implementation of the writ on June 1, 2007 at around 5:30 p.m., upon being informed that a TRO had been issued by the RTC, Barotac Viejo. Although they were not yet served a copy of the TRO, they nevertheless stopped levying on the property of Nueva Swine.

In their Joint Counter-Affidavit^[15] dated August 29, 2007, respondents Lacatan and Divinagracia argued that they were informed by Keylargo's President, Juanito Gamboa, that accused Ng, as President of Nueva Swine, issued the subject checks on behalf of the corporation to pay for the feeds delivered by Keylargo to Nueva Swine, pursuant to their business relationship which began in 1998. They implemented the writ of execution on May 31, 2007, together with some members of the PNP and a group of individuals provided by Juanito Gamboa, upon the directive of the Clerk of Court of MTCC, Iloilo City. They also coordinated with the deputy sheriff of RTC, Branch 66, Barotac Viejo, Iloilo and the Barotac Viejo PNP and police officers of the Presidential Management Group, Sara, Iloilo. In implementing the writ, they said that they had explained their purpose to Dr. Donglal and asked for the whereabouts of accused Ng, but he told them that she was in Manila. Dr. Donglal called up accused Ng, but the latter refused to talk to them. Hence, they implemented the writ after the corporation failed to pay the judgment obligation by levying the swine and loading them into the cargo trucks provided by Keylargo. They were also given pieces of roasted pork. They later learned that a pig had been slaughtered by the head of the group and provided by Juanito Gamboa, upon the suggestion of Dr. Donglal, because their provision for food was missing. They averred that the employees of the corporation were aware of the slaughtering of the pig and had not objected thereto. The implementation of the writ lasted until 6:00 p.m. of June 1, 2007 when complainant arrived and served upon them a copy of the TRO. An argument ensued between them and complainant but to avoid trouble, they decided to unload the swine which were already taken before the TRO was served upon them.

On August 14, 2007, Executive Judge Espinosa submitted his report, viz:

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In summation, it was the late City Court Deputy Sheriff Johnny Tugado, assigned at Branch 3, MTCC-Iloilo, who actively facilitated the preparatory matters, with the active participation of a lawyer/practitioner Atty. Gelacio Lira by way of following up with Branch 2, MTCC- Bacolod City, as far as, the implementation of the Writ of Execution, issued by said Court, as well as the Order, dated January 22, 2007.

It was sheriff Tugado who got hold of the original copies of said Court document, but he did not present it to Mr. Nicolasito Solas, the MTCC-Iloilo City Clerk of Court/Ex-Officio City Sheriff, instead showed to the latter, only a photocopy thereof. Yet, Mr. Solas issued an office order, directing the four City Deputy Sheriffs to comply and execute the order of Judge Demonte Verde. He also wrote a letter request to RTC Clerk of Court Atty. Jerry Sumaculub for him to provide RTC Sheriffs to assist his City Sheriffs to implement the said Order, who granted said letter request by issuing a memorandum to RTC Sheriffs Camilo Divinagracia, Jr. and Gani Lacatan.

These sheriffs therefore comprised the team that were responsible for the implementation of the Order, and Writ of Execution issued by Branch 2, MTCC-Bacolod City. The overall team leader was the late Deputy Sheriff Tugado, who actively made the preparation, in coordination with the complainant, for its implementation, which entailed financial and monetary considerations for police assistance, labor force, transportation (land and water) from the hog farm to the ports, both in Iloilo City and Bacolod City.

Since the letter of Atty. Hector Teodosio requested for these information, the undersigned so limits its report to

these matters as narrated, since an exhaustive investigation is being formally conducted by RTC Executive Judge Roger B. Patricio.

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In his Report dated May 30, 2008, Executive Judge Patricio submitted the following findings:

The undersigned Investigator finds merit in the charges of the complainant.

1. The respondents-sheriffs violated the procedure laid down by Sec. 9, Rule 39 of the 1997 Rules of Civil Procedure governing the implementation in the execution of judgments for money. Under Sec. 9(a), supra, it is clear that the officer executing the Writ of Execution shall demand from the judgment obligor the immediate payment of the full amount stated in the Writ of Execution and all the legal fees. The payment shall be in cash, certified bank check payable to the judgment obligee, or in any form acceptable to the latter.

The Rule further provides that levy upon the properties of the judgment obligor may be had by the executing sheriff if the judgment obligor cannot pay all or part of the full amount stated in the Writ of Execution and all the lawful fees in cash, certified bank check or other acceptable mode of payment (Sec. 9(b), supra). If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode acceptable to the judgment obligee, he is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.

The respondents-sheriffs cannot and should not have been the ones to determine if the judgment obligor (in this case Mary Ann Ng) cannot immediately pay because it is the judgment obligor who is in the best position to know if he can immediately pay by way of cash, certified bank check or any other mode of payment acceptable to the judgment obligee.

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From the evidence on record, it appears that the respondents have violated the laws and the Rules of Court by implementing a valid Writ of Execution issued by a competent court in a "Gestapo"-like manner and have caused considerable damages to the Nueva Swine Valley, Inc. in the form of hundreds of hogs which were taken by the respondents without due process of law.

In view of the foregoing, the undersigned Investigator finds respondent-Sheriffs Gani Lacatan, Camilo Divinagracia, Jr., Rolando Somosa, Edgardo Cordero and Rodolfo Haro guilty of the charges for GRAVE MISCONDUCT filed against them by complainant Atty. Hector Teodosio, and considering the severity of the acts committed and the extent of the damages they have caused to the Nueva Swine Valley, Inc., client of the complainant, it is hereby respectfully recommended that the respondents be suspended for a period of six (6) months without pay, and that they should be warned that a repetition of similar offense, a more severe penalty shall be imposed upon them.

For having been killed before the investigation of this case was completed, the case against sheriff Johnny Tugado is recommended to be dismissed.[16]

In a Memorandum dated February 4, 2009, the OCA made the following observation:

We agree with the findings of the Investigating Judge.

Section 9 of Rule 39 of the 1997 Rules of Civil Procedure provides that in the execution of a judgment for money, the officer enforcing such judgment shall demand from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. If the judgment obligor cannot pay all or

part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

In the implementation of the writ of execution, respondents failed to strictly comply with the above rule. They failed to show that they demanded from accused Ng the payment of the judgment obligation. Records show that the writ was served on an officer of Nueva Swine who is not a party to the case and not on accused Ng. In their Return of Service dated June 28, 2007, respondents stated that when they arrived in the hog farm of Nueva Swine, accused Ng was not present. Mr. Donglal, an officer of the corporation, allegedly contacted accused Ng but it was not shown whether respondents talked to the former and demanded from her the payment of her obligation. In his affidavit, Mr. Donglal, denied talking with accused Ng nor did respondents ask him to talk to her. Thereafter, respondents demanded from Mr. Donglal the payment of the judgment obligation. When the latter failed to pay the obligation, respondents levied the corporation's properties. Again, this is in violation of the rules as the hogs levied upon by respondents are not the personal properties of accused Ng.

Respondents' argument that the checks, subject of the criminal case, were issued by accused Ng as president of Nueva Swine and for the benefit of the corporation is irrelevant.

The Writ of Execution dated August 4, 2007 issued by MTCC, Branch 2, Bacolod City, specifically directed the sheriff or his deputies to cause the execution of the judgment on the civil aspect of the cases; to levy the goods and chattels of the accused, except those which are exempt from execution and to make the sale thereof in accordance with the procedure outlined by Rule 39, Revised Rules of Court. If the personal property of the accused is insufficient to satisfy the amount of the said judgment by levying the real property of said accused and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment. The writ made no mention of implementing the writ on the properties of Nueva Swine, rather, it provided to levy the goods and chattels of the accused Ng. Further, the Order dated January 22, 2007 issued by Judge Demonte Verde unequivocally directed the City Sheriff and/or the Provincial Sheriff of Iloilo to serve the writ of execution on the civil aspect of the criminal cases to accused Mary Ann Ng and not to Nueva Swine.

It is a basic principle of law that money judgments are enforceable only against property unquestionably belonging to the judgment debtor.

In the case at bench, the officer of Nueva Swine during the implementation of the writ of execution informed respondents that the personal properties being levied upon does not belong to accused Ng, the judgment obligor, but to Nueva Swine, a juridical person separate and distinct from the judgment obligor. Such information should have warned respondents of the possibility of levying properties not belonging to accused Ng. Respondents have no authority to determine which property to levy based on documents presented to them and to conclude that the checks issued by accused Ng was for and in behalf of Nueva Swine. Their only directive is to implement the writ on the properties of accused Ng. They have no capacity to vary the judgment and deviate therefrom based on their own interpretation thereof.

Well settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. It is not their duty to decide on the truth or sufficiency of the processes committed to him for service as their duty to execute a valid writ is not ministerial and not discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff - he must see to it that its mandate is

obeyed.

Thus, echoing the decision of the Honorable Court in *Tropical Homes vs. Fortune* "it is basic that the only portion of the decision that becomes the subject of execution is that ordained in the dispositive portion. Whatever may be found in the body of the decision can only be considered as part of the reason or conclusions of the court and while they may serve as a guide or enlighten to determine the ratio decidendi what is controlling is what appears in the dispositive part of the decision.

Being one specifically entrusted with the proper execution of judgments, a sheriff should know that the writs of execution were not enforceable against persons who are clearly not claiming rights under the judgment debtors nor acting in the latter's discretion and control. It must be emphasized that in serving the court's writs and processes, and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. They should set the example by faithfully observing the Rules of Court, and not brazenly disregard the Rules.

We take note of the Order of the RTC, Branch 66, Barotac Viejo, Iloilo in Special Civil Action Case No. 2007-607 which held that:

As shown by the evidence on record, the writ of execution was on the civil aspect of the criminal cases which were filed against accused Mary Ann Ng before the MTCC, Branch 2 in Bacolod City.

It was alleged by the private respondent Lita Gamboa that the transaction which gave rise to the filing of the several cases for Violation of BP 22 against accused Mary Ann Ng was for the benefit of the petitioner-corporation in payment for feeds. The checks which were issued by the accused as signatory had the name of the corporation printed on them.

During the hearing, however, it was not clearly shown that when accused issued the checks to complainant Keylargo Commodities, it was authorized by the petitioner corporation through a board resolution. When the compromise agreement was signed by Mary Ann Ng as regard the civil aspects of the criminal cases, there was no evidence presented wherein the petitioner corporation authorized Mary Ann Ng to sign the same. These were not introduced in evidence.

If such facts had been established, this Court could readily disregard the legal fiction of corporate entity or piercing the veil of corporate entity so that judgment may be enforced against the property of the petitioner corporation.

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As regards the allegation that respondents slaughtered one pig and cooked it into "lechon" over the objection of the officer-in-charge of Nueva Swine, records show that respondents, in their Inventory of the hogs levied upon, admitted that they slaughtered one swine but argues that it was Mr. Donglal who proposed that the pig be slaughtered as the provision for food for those executing the writ were missing. This was, however, belied by Mr. Donglal.

Sheriffs play an important role in the administration of justice and as agents of the law high standards are expected of them. They and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish likewise the faith of the people in the judiciary.

Clearly, respondents violated the laws and Rules of Court in implementing the writ of execution that has caused considerable damage to Nueva Swine. They have been remiss in the discharge of their duties as officers of the court in the implementation of the subject writ of execution. Such acts constitute conduct grossly prejudicial to the best interest of the service which is punishable by suspension from the service for six (6) months and one day to one year for the first offense and dismissal for the second offense.

Respondent Johnny Tugado was killed before the investigation of the case was completed, hence, the complaint against him be dismissed.

IN VIEW OF THE FOREGOING, it is respectfully recommended to the Honorable Court that:

(a) [T]his matter be FORMALLY DOCKETED as an administrative complaint against respondents Rolando R. Somosa, Edgar Cordero and Rodolfo Haro, Sheriffs of the MTCC, Iloilo City, and Gani Lacatan and Camilo Divinagracia, Sheriffs of the RTC, Iloilo City.

(b) Respondents be held liable for acts grossly prejudicial to the best interest of the service and be SUSPENDED for a period of SIX (6) MONTHS without salary and other benefits and WARNED that a repetition of the same or similar offense in the future shall be dealt with severely.

(c) The complaint against respondent Johnny Tugado be DISMISSED in view of his death.

In its Resolution dated February 24, 2009, the Court formally docketed the complaint as an administrative matter and dismissed the complaint against respondent Sheriff Tugado in view of his death and, accordingly, considered the complaint against him as closed and terminated per Resolution of June 2, 2009.

Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by either of them.[17] As such, sheriffs and deputy sheriffs must discharge their duties with due care and utmost diligence, because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.[18]

The procedure for the implementation of a writ of execution of judgment is provided for under Section 9, Rule 39 of the Rules of Court, which states:

SEC. 9. Execution of judgments for money, how enforced. -

(a) Immediate payment on demand. - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ. (Emphasis Supplied.)

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In the present case, it was clearly shown that respondents failed to follow the above-cited procedure. Instead of demanding payment from accused Ng, the judgment obligor and therein defendant, as to the civil aspect in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, respondents served the writ of execution on Dr. Donglal, an officer of Nueva Swine. Respondents claimed that they tried to contact accused Ng through Dr. Donglal although the latter did not mention such incident in his affidavit. However, respondents failed to establish that they exerted all means to look for accused Ng, who should have been given the option as to which of her personal properties could be levied. They merely proceeded to demand payment from Dr. Donglal who was not even a party to the said criminal case. Worse, they levied the property of Nueva Swine.

In the execution of a money judgment, the sheriff must first make a demand on the obligor for payment of the full amount stated in the writ of execution.[19] Property belonging to third persons cannot be levied upon.[20]

Accused Ng was the judgment obligor as stated in said writ, and not Nueva Swine, although she was the President and CEO of the said company. She has a personality which is separate and distinct from that of the corporation[21] and, likewise, her properties cannot be considered as properties of the corporation. Even assuming that accused Ng owned a majority of the stocks of Nueva Swine, respondents could have, at most, proceeded against her shares of stock, but not levy the hogs of Nueva Swine. Although the legal fiction that a corporation has a personality separate and distinct from that of stockholders and members may be disregarded, this exception should not be applied if it is used as a means to perpetrate fraud or an illegal act; or as a vehicle to evade an existing obligation, to circumvent statutes, or to confuse legitimate issues.[22] Therefore, when respondents levied the properties of the corporation, a third party to the case and not named in the writ, they exceeded their authority to strictly comply with the writ of execution.

Moreover, respondents committed grave abuse of authority when they forcibly took the swine despite the explanation of Dr. Donglal that the properties being levied did not belong to accused Ng. They continued to load the hogs into their cargo trucks even after having been informed of the TRO. Respondents' taking was aggravated by the fact that they slaughtered one of the hogs, a fact that they expressly admitted and even stated in the Sheriffs' Return of Service[23] dated June 28, 2007. The slaughtered pig was then cooked into lechon (roasted pig), and respondents feasted on it while still in the premises of Nueva Swine. While respondents maintain that it was Dr. Donglal who proposed that the pig be slaughtered as food for them, such excuse is unacceptable because sheriffs cannot appropriate levied property for themselves, even though the same be purportedly upon the instance of Dr. Donglal. Sheriffs are enjoined to keep levied properties securely in their custody,[24] and file a return of the writ of execution.[25]

Such conduct of respondents evidently falls short of the standard established by the pertinent provisions of the Code of Conduct for Court Personnel,[26] specifically Section 2, which states that court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible; and Section 6, which states that court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

Respondents became administratively liable for grave abuse of authority when they forcibly levied and took away properties belonging to a third person and, thereafter, appropriated the levied property for themselves. Respondents' grave abuse of authority amounted to gross misconduct, which under the Uniform Rules on Administrative Cases in the Civil Service,[27] Rule IV, Section 52 A (3) thereof, is a grave offense punishable by dismissal even for the first offense.

The recommendations of both the Investigating Judge and the OCA that respondents be suspended from the service for six (6) months without pay are not commensurate to the gross misconduct committed. Although respondents are first-time offenders, the Court takes into consideration the seriousness of their offense. They did not only implement a writ of execution in excess of their authority, but appropriated a part of the levied property for themselves. Their act of appropriation is a grave offense that may even subject them to criminal prosecution.

Previously, in *Office of the Court Administrator v. Fuentes and Paralisan*,[28] where therein respondent sheriff hastily implemented a writ of execution when he failed to confer with the officials concerned as to which properties were to be levied, he was found guilty of conduct prejudicial to the best interest of the service and dismissed from the service, with forfeiture of all retirement benefits and accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government.

In *Flores v. Caniya*,[29] where therein sheriff failed to issue receipts for money entrusted to him in his official capacity, thereby amounting to misappropriation, he was found guilty of dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service, and dismissed from the service, with

forfeiture of all retirement benefits and accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government.

Likewise, in *Meneses v. Zaragoza*,^[30] where therein respondent sheriff demanded money from therein complainant on the pretext that it would be used for demolition expenses, he was found guilty of grave misconduct and simple neglect of duty and, accordingly, dismissed from the service, with forfeiture of retirement benefits, except earned leaves, and with prejudice to reemployment in any branch or instrumentality of the government.

In view of the gravity of respondents' offense, and bolstered by established jurisprudence, the Court finds respondents guilty of grave abuse of authority amounting to grave misconduct, and is constrained to impose a penalty of dismissal from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations. The penalty of dismissal even for the slightest breach of duty by, and the slightest irregularity in the conduct of, said officers and employees, is warranted.^[31]

WHEREFORE, herein respondents, Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., Deputy Sheriffs of the Regional Trial Court of Iloilo City, and Sheriffs Rolando Somosa, Edgardo Cordero and Rodolfo Haro, Deputy Sheriffs of the Municipal Trial Court in Cities of Iloilo City, are found GUILTY of grave abuse of authority amounting to GRAVE MISCONDUCT, and are DISMISSED from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

This Decision shall take effect immediately.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.

Quisumbing, and Ynares-Santiago, JJ., on official leave.

[1] Rollo, pp. 3-4.

[2] Id. at 58-59.

[3] Id. at 61.

[4] Id. at 60.

[5] Id. at 65.

[6] Id. at 66.

[7] Id. at 88.

[8] Id. at 71.

[9] Affidavit dated August 14, 2007, id. at 120-124.

[10] Sheriffs Return of Service dated June 28, 2007, id. at 183-184.

[11] Report dated May 30, 2008, id. at 1-14.

[12] Id. at 104-108.

[13] Id. at 140-142.

[14] Id. at 180-181.

[15] Id. at 187-192.

[16] Citations omitted.

[17] *Sismaet v. Sabas*, A.M. No. P-03-1680, May 27, 2004, 429 SCRA 241.

[18] *Abalde v. Roque*, A.M. No. P-02-1643, April 1, 2003, 400 SCRA 210, 215, citing *Ignacio v. Payumo*, 344 SCRA 169, 172 (2000).

[19] *Philippine Airlines, Inc. v. Balubar, Jr.*, A.M. No. P-04-1767, August 12, 2004, 436 SCRA 168.

[20] *QBE Insurance (Phils.) Inc. v. Rabello, Jr.*, A.M. No. P-04-1884, December 9, 2004, 445 SCRA 554.

[21] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353.

[22] *Aratea and Canonigo v. Suico and Court of Appeals*, G.R. No. 170284, March 16, 2007, 518 SCRA 501.

[23] *Rollo*, pp. 67-69.

[24] *Caja v. Nanquil*, A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174.

[25] Rules of Court, Rule 39, Sec. 14.

[26] Promulgated by the Supreme Court En Banc through A.M. No. 03-06-13-SC dated June 1, 2004.

[27] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, series of 1999.

[28] A.M. No. RTJ-94-1270, August 23, 1995, 247 SCRA 506.

[29] A.M. No. P-95-1133, April 26, 1996, 256 SCRA 518.

[30] A.M. No. P-04-1768, February 11, 2004, 422 SCRA 434.

[31] *Orfila v. Arellano*, A.M. No. P-06-2110, and *Spouses Arellano v. Maniñgas, et al.*, A.M. No. P-03-1692, April 26, 2006, 488 SCRA 279.

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