

## **ATTY. OCTAVIO DEL CALLAR, COMPLAINANT, VS. JUDGE IGNACIO L. SALVADOR AND DEPUTY SHERIFF ANGEL L. DORONI, RESPONDENTS.**

*A.M. No. RTJ-97-1369 [Previously OCA IPI 96-223-RTJ]. February 17, 1997*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

The parties agreed that we consider this case submitted for decision on the basis of the pleadings filed by them.

In its Memorandum, the Office of the Court Administrator(OCA), to which we referred this case for evaluation, report, and recommendation, summarized the antecedents in this case as follows:

In his earlier complaint, Atty. Del Callar charged respondent Judge Ignacio L. Salvador with serious misconduct and inefficiency (evident bad faith, bias, gross and deliberate ignorance of the law) and respondent Sheriff Angel L. Daroni, with gross misconduct, gross neglect of duty, dishonesty, inefficiency and incompetence in the performance of official duties, refusal to perform official duty and for conduct grossly prejudicial to the best interests of the service relative to Civil Case No. Q-92-13380 entitled “Eduardo Matillano vs. Vicar International Construction, Inc. and Carmelita v. Chaneco.”

In compliance with the marginal notes of now retired Court Administrator Ermani Cruz Paño, the complaint was referred to respondents for their comment and/or appropriate action. Considering then that the subject of the complaint is substantially the same as the matter pending review before the Court of Appeals (CA G.R. Sp. No. 37932) and the outcome therein may materially affect the complaint, Atty. Del Callar was furnished copy of the comments and was advised to await the outcome of his petition filed at the Court of Appeals before resorting to administrative remedy.

### **CHARGES AGAINST RESPONDENT DEPUTY SHERIFF ANGEL L. DORONI**

The administrative complaint against respondent Deputy Sheriff hinges on his alleged adamant refusal to comply with his ministerial and mandatory duties under Section 17, Rule 39, Revised Rules of Court, RE: proceedings where levied property is claimed by a third person.

Complainant alleges that his client, Mr. Reynaldo A. Lim, has been deprived of his right to use, enjoy and dispose his 1.9 million Toyota Land Cruiser which respondent seized under a writ of execution issued pursuant to a special order granting execution pending appeal on April 28, 1995. On the next working day, May 2, 1995, his client served upon respondent an affidavit of third party claim, copy furnished the plaintiff judgment creditor. Attached to the said affidavit are the registration certificates of the vehicle since 1992 up to the “current year” 1995 in the name of his client and the “present” insurance policy covering the land cruiser. Despite this, respondent refused to comply with his duties under the aforementioned rule and instead under his counter-affidavit filed in answer to a complaint filed with the Executive Judge of RTC, Quezon City, he explained that it was his “firm and honest conviction” that he should not release the vehicle to the third party claimant despite the absence of a bond from the attaching judgment creditor because of his own findings of facts and of his own observance of certain provisions of the Family Code and some Supreme Court decisions.

While herein complainant made mention of annexes attached in his letters, none however was attached therein when the same was submitted to this Office.

### **COMMENT OF RESPONDENT DEPUTY SHERIFF ANGEL L. DORONI**

Respondent Deputy Sheriff in his comment avers that he was only complying with his duty when he enforced the “Order and Writ of Execution, Levy on Execution/Execution, all dated April 28, 1995,” in connection with Civil Case No. Q-92-13380, entitled “Eduardo Matillano vs. Vicar Construction, Incorporated and Carmelita Chaneco.”

Respondent claims that complainant and his client Reynaldo A. Lim made a perjurious statement that he was not furnished any receipt or copy of the Notice of Sheriff’s Sale and Notice of Levy on Execution/Attachment. According to respondent, the truth of the matter is that Lim refused to received [sic] the same and affix his signature on the receiving copy. Respondent alleges that although Lim may not have been a named defendant in the aforesaid case, his property is not exempt from or beyond the reach of the processes of the Honorable Court considering that he is the spouse of defendant Carmelita V. Chaneco, which he deliberately withheld. Respondent avers that in other instances like Civil Case No. Q-95-22855 filed with RTC, Quezon City, Lim represented himself as the spouse of defendant Carmelita V. Chaneco. Respondent adds that in a Motion to Withdraw as Counsel dated May 20, 1995 filed before RTC, Branch 77, Quezon City, defendant Carmelita no longer uses the previous name of “Carmelita V. Chaneco” but her spouse’s name. It is respondent’s contention that in view of these judicial admissions of Carmelita V. Lim, it is indubitable that the subject [vehicle] is a conjugal property of the Lim Spouses and that all arguments of Reynaldo A. Lim about his being a third party claimant are untenable, precisely because he is not a third party claimant. Respondent further contends that the subject vehicle is similarly owned by defendant Carmelita, notwithstanding that its title is in Reynaldo’s name.

Respondent alleges that upon receipt of the third-party claim, he immediately notified plaintiff Eduardo Matillano thereof and required him to file an indemnity bond, however, said plaintiff filed his Opposition to the third-party claim. Upon being furnished a copy of Lim’s letter of demand seeking the immediate return of the subject vehicle, respondent allegedly answered through a letter stating that he cannot release the said motor vehicle in question considering that there is a pending incident to be resolved by the court on the third-party claim unless he is ordered by the court to release the same upon ruling on the third-party claim. Finally, respondent states that it is his firm and honest conviction that the subject [vehicle] cannot just be released to Lim in the absence of a court order to that effect, otherwise, he would be:

1. contravening the Writ of Execution dated April 28, 1995;
2. violating the Order dated June 28, 1995 denying Carmelita Lim’s Motion to Set Aside Execution Pending Appeal;
3. violating the Order dated June 28, 1995 denying Reynaldo Lim’s Third-Party Claim; and
4. grossly violating his duties as a sheriff.

As a reaction to the comment submitted by respondent Doroni, complainant filed a Manifestation and Motion dated August 30, 1995 wherein the latter clarified that when the summons in the said civil case was received by defendant Carmelita V. Chaneco (nee Carmelita Villazor) in October 1992, she was then a widow and married Reynaldo A. Lim on September 1, 1994. Respondent Sheriff was allegedly informed of these facts because as a party respondent in the special proceedings before the Court of Appeals, he was duly furnished with a copy of the petition where the said information appears.

### **CHARGES AGAINST RESPONDENT JUDGE IGNACIO L. SALVADOR**

The complaint against respondent Judge stems from his inaction on a motion to set aside the execution pending appeal which is based on two basic grounds namely: (a) the court had lost its jurisdiction over the case because the order granting execution pending appeal was issued two months after an earlier order giving due course to a perfected appeal; and (b) the special order granting execution pending appeal contains no good reason for the immediate implementation of the decision as required by Section 2 of Rule 39 of the Rules of Court... Complainant manifests that by reason of the inaction of the respondent Judge, his client, Mr. Reynaldo A. Lim, has been deprived of his right to use, enjoy, possess and dispose his P1.9 million Toyota Land Cruiser which the Sheriff seized under a writ of execution which was issued pursuant to his (respondent) special order granting execution pending appeal.

Complainant recounts that under an order dated February 27, 1995, the court found the defendants' appeal perfected on time and thus ordered the entire records of these aforesaid civil case to be forwarded to the Court of Appeals; that the records were not forwarded to the appellate court within the period laid down by law; that before the perfection of the appeal, plaintiff judgment creditor filed a motion for execution pending appeal; that on February 27, 1995 when the court records were ordered transmitted to the appellate court, the motion for execution pending appeal was also denied; that one month after the order to transmit the court records to the Court of Appeals, the court entertained a motion for reconsideration which was filed on March 27, 1995; and that on April 21, 1995 respondent issued his Special Order granting execution pending appeal without citing any good reason therefore and without even requiring the plaintiff judgment creditor to post a bond which he wanted to file.

Complainant alleges that in the Order dated June 20, 1995, respondent denied the motion to set aside execution pending appeal thus, a petition for certiorari, prohibition and mandamus, and/or preliminary injunction was filed with the Court of Appeals, docketed as CA.-G.R. SP. No. 37923.

### **COMMENT OF RESPONDENT JUDGE IGNACIO L. SALVADOR**

In his comment, respondent Judge Ignacio L. Salvador presents the following arguments:

- \* highly compelling reasons have long been existing to warrant the grant of execution pending appeal
- \* the mere perfection of appeal does not deprive the trial court of its jurisdiction to issue execution pending appeal
- \* the trial court has inherent powers to avail of means necessary to carry its jurisdiction into effect
- \* the third-party claim by Reynaldo A. Lim has no factual and legal basis
- \* there was no bad faith in the actuations of respondent
- \* the instant complaint has become moot and academic

In the discussion of his arguments, respondent Judge avers that defendants in the aforementioned civil case (the clients of herein complainant) have admitted in their answer that the dump truck owned and registered in their name bumped other trucks which in turn smashed the dump truck of plaintiff; that it is only fair and just that defendants be ordered to immediately indemnify plaintiff for the damage he suffered as the case then has been pending for three years so that the purchasing power of the peso has undeniably declined; that plaintiff had manifested that he is willing, able and ready to put up a bond and had in fact posted a bond; and that defendants' appeal is merely pro forma and manifestly taken the delay.

Respondent claims that his court still retained its jurisdiction to issue the writ of execution notwithstanding his two Orders dated February 27, 1995 denying the Motion for Execution Pending Appeal and ordering the elevation of the case records to the Court of Appeals. According to respondent, plaintiff received a copy of the decision on December 17, 1994 while defendant received theirs on December 16, 1994, the motion for execution pending appeal dated December 19, 1994 was filed on December 22, 1994, thus, his court had

jurisdiction to issue the order of execution pending appeal. The auction sale made last April 7, 1995, respondent adds was merely a continuation of the said motion. Respondent cites the ruling in the case of Universal Far East Corporation vs. Court of Appeals, 131 SCRA 642, to support his actions to wit:

We hold that the trial court had jurisdiction to issue the order of execution pending appeal because the motion for execution was filed before Ching had perfected his appeal and it was resolved before the trial court had acted on Ching's appeal and elevated the record to the Appellate Court (see Section 23, Interim Rules). The execution pending appeal has to be a part of the records to be elevated to the Appellate Court. (Underscoring supplied).

To support his argument that the trial court has inherent powers to avail of the means necessary to carry its jurisdiction into effect, respondent cites Section 6, Rule 135 of the Rules of Court which provides:

SECTION 6. Means to carry jurisdiction into affect. -- When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means [necessary to carry it into effect may be employed] by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

and the case of Eudela vs. Court of Appeals, 211 SCRA 546, which held:

The mere filing of a notice of appeal does not divest the trial court of its jurisdiction over the case. The court may still take cognizance of the other party's motion for execution pending appeal, as in the instant case, provided such motion is filed within 15 days from notice of the decision of the said party.

Respondent's averments in discussing his arguments that the third-party claim of Reynaldo A. Lim has no factual and legal basis is a mere reiteration of the comment submitted by respondent Deputy Sheriff Doroni.

Respondent maintains that his actuations is not tainted with bad faith thus he could not be held personally liable for damages thereafter resulting in the performance of official duty. Further, respondent states that since the acts sought to be restrained have been consummated, this complaint have become moot and academic.

A Petition for Certiorari, Prohibition and Mandamus with Prayer for Preliminary Injunction was filed before the Court of Appeals which assailed the Order dated April 21, 1995 of respondent Judge that granted [plaintiff's] motion for reconsideration of the Order dated February 27, 1995 denying the motion for execution pending appeal. The Court of Appeals in its Decision rendered on March 25, 1996 ruled that [the order granting] the motion for reconsideration, on account of which a writ of execution pending appeal was issued, was thus issued without or in excess of respondent Judge's jurisdiction, thereby, ordering that the Order of April 21, 1995 and the proceedings arising therefrom [be] nullified and set aside.

The OCA agreed with the Court of Appeals that respondent Judge Salvador had already lost jurisdiction over the case when he reconsidered the 27 February 1995 Order denying the motion for execution pending appeal. It then recommended that he be fined in the amount of P5,000.00. As to respondent Deputy Sheriff Doroni, the OCA suggested that the charge against him be dismissed because he was merely complying with the orders issued to him, and he was not bound to release the levied property to the third-party claimant in the absence of a court order to that effect.

It is significant to note that in denying the plaintiff's motion for execution pending appeal, the respondent Judge relied on *Montelibano v. Bacolod-Murcia Co.*[1] Thus:

The Honorable Supreme Court, in the case of *Montelibano vs. Bacolod-Murcia Milling Co., Inc.*, 136 SCRA 294, has stated, thus:

"A trial court can no longer grant a motion for execution pending appeal after the appeal has been perfected."

Had the respondent Judge read that case further, he would have found out that the reason why the trial court lost jurisdiction to issue an order of execution was that the motion was filed after the appeal had been perfected. This Court declared therein:

We hold that the Appellate Court acted correctly in holding that the motion for execution pending appeal was filed late. It should have been filed before the perfection of the appeal or within the fifteen-day period.

It should be underscored that the motion was denied because the trial court had no more jurisdiction to grant execution pending appeal since the appeal of Bacolod-Murcia Milling was already perfected when the Montelibanos filed their motion.

In this case, the motion for execution was filed before the perfection of the appeal. The application of the ruling in Montelibano was, therefore, erroneous.

At any rate, on plaintiff's motion for reconsideration, the respondent judge ordered the issuance of a writ of execution pending appeal; thus:

Submitted before this Court for resolution are the "Motion Reconsideration" as well as the "Opposition" thereto filed by the respective counsel.

After a careful evaluation of the "Motion for Reconsideration" and the "Opposition" thereto, the Court finds substantial arguments alleged in plaintiff's "Motion For Reconsideration" to warrant this Court to set aside its "Order" dated February 27, 1995 denying plaintiff's "Motion For Execution Pending Appeal."

WHEREFORE, the "Motion for Reconsideration" is hereby granted and the "Order" denying plaintiff's "Motion For Execution Pending Appeal" is ordered set aside.

ACCORDINGLY, let a "Writ of Execution Pending Appeal" be issued.

The respondent Judge now argues that since the plaintiff received a copy of the decision on the merits of the case on 17 December 1994 and filed the motion for execution pending appeal on 22 December 1994, his court still had jurisdiction to issue an order for immediate execution. To support his position, he cites *Universal Far East Corp. v. Court of Appeals*[2] and *Eudela v. Court of Appeals*[3] where this Court held that a trial court has jurisdiction to issue an order granting execution pending appeal, provided that the motion for execution is filed before the perfection of the appeal.

True, the respondent Judge could still take cognizance of the motion for execution, since the same was seasonably filed. His jurisdiction to act on the motion continued until the matter was resolved.[4] The fact that he had already denied such motion did not divest him of that jurisdiction. He could still entertain, as he did, a timely motion for the reconsideration of his earlier order to enable him to correct mistakes, if there are any, without the intervention of a higher court.

The respondent Judge cannot, therefore, be faulted from taking cognizance of the motion for the reconsideration which was filed by the plaintiff twenty days after the receipt of the order denying immediate execution. Neither irregularity be ascribed to him in not requiring the movant to put up bond because bond is not an indispensable requisite for the granting of a writ of execution pending appeal.[5]

The respondent Judge's fault lies in his failure to state in his Special Order "good reasons" to justify the issuance of the writ of execution. This is in clear violation of Section 2, Rule 39 of the Rules of Court, which requires that there be a good reason for issuing a writ of execution pending appeal and that the good reason be stated in a special order.

As a judge, who is called upon to administer the law and apply it to the facts, he should be studious of the

principles of law and diligent in endeavoring to ascertain the facts.[6] He should exhibit more than just a cursory acquaintance with the statutes and procedural rules.[7]

Nevertheless, judges may not be held administratively responsible for every error or mistake in the performance of their duties; otherwise, that would make their position unbearable. To merit disciplinary sanction, the error or mistake must be gross or patent, malicious, deliberate, or in bad faith. In the absence of proof to the contrary, defective or erroneous decision or order is presumed to have been issued in good faith.[8]

Since, in the instant case, the complainant failed to show that the actuation of the respondent Judge was attended by “bad faith, bias, or gross and deliberate ignorance of law,” the respondent Judge should merely be ADMONISHED for having failed to exercise due care in the performance of his adjudicatory functions.

As to respondent Deputy Sheriff Doroni, we agree with the OCA that he should not be made administratively liable for his acts.

WHEREFORE, respondent Judge Ignacio L. Salvador is hereby ADMONISHED for having failed to exercise that degree of care required of him in the performance of his judicial functions and prerogatives.

For lack of merit, the case against respondent Deputy Sheriff Angel L. Doroni is DISMISSED.  
SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

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**[1]136 SCRA 294 [1985].**

**[2] 131 SCRA 642 [1984].**

**[3] 211 SCRA 546 [1992].**

[4] Edding v. COMELEC, 246 SCRA 502, 509 [1995] citing Cebu Contractors Consortium v. Court of Appeals, 216 SCRA 597, 601 [1992].

[5] II VICENTE J. FRANCISCO, The Revised Rules of Court in the Philippines 614 [1966].

[6] Canon 4, Canons of Judicial Ethics. See also Rule 3.02, Code of Judicial Conduct.

[7] RUBEN AGPALO, Legal Ethics 454 [4th ed., 1989] (hereinafter AGPALO), citing Daplas v. Arquiza, 99 SCRA 141 [1980], and Ramirez v. Macandog, 144 SCRA 462 [1986].

[8] See AGPALO 470-471.

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