

DY TEBAN TRADING CO., INC., COMPLAINANT, VS. ARCHIBALD C. VERGA, SHERIFF IV, RTC, BRANCH 33 BUTUAN CITY, RESPONDENT.

A.M. No. P-11-2914 [FORMERLY A.M. OCA IPI NO. 09-3159-P]. March 16, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Complaint dated May 20, 2009,[1] Leo C. Dy, on behalf of Dy Teban Trading Co., Inc., charges Archibald C. Verga, Sheriff IV, Regional Trial Court (RTC), Branch 33, Butuan City, with Dishonesty, Graft and Corruption, Gross Inefficiency, Neglect of Duty and Usurpation of Judicial Authority in connection with the Writ of Execution issued by the trial court following the finality of its decision in SEC Case No. 16-2004, "Dy Teban Trading Co., Inc. v. Peter Dy, et al.," for Injunction with Prayer for Temporary Restraining Order or Preliminary Injunction and Damages.

The trial court granted the petition of the therein plaintiff-herein complainant, disposing as follows:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered in favor of petitioner and against respondents as follows:

1. Pursuant to petitioner's prayer for injunctive relief, let a writ of injunction issue against respondents Peter C. Dy, Johnny C. Dy and Ramon C. Dy, their lawyers, representatives, agents or any persons acting for and in behalf directing, commanding and ordering them to immediately cease and desist from physically entering, occupying, possessing or otherwise controlling and remove themselves from the entire premises of the commercial building and the land on which it is erected as then conveyed by Tax Declaration No. 96GR-03-003-1290-C in a manner that is permanent and not to hinder or prevent physically otherwise, the petitioner's officers, directors, agents, lawyers or representatives, or all persons acting for and on its behalf from physically entering, occupying, possessing or otherwise utilizing the same and its entire premises as lawful owner and possessor thereof upon receipt of this decision.

2. Respondents Peter C. Dy, Johnny C. Dy, and Ramon C. Dy are likewise ordered and directed to pay unto petitioner in solidum the following amount:

a. As compensatory damages, the sum of Two Million (P2,000,000.00) Pesos and for loss of stocks and the further sum of:

a.1 One Hundred Sixty Thousand (P160,000.00) Pesos per month from September 2004 up to and until respondents shall have actually vacated the outlet premises in question representing unrealized income for deprivation of possession and use of the outlet in the form of rentals; and

a.2 One Hundred Fifty Thousand (P150,000.00) Pesos as damages under Article 2205 [2] of the Civil Code;

b. One Hundred Fifty Thousand (P150,000.00) Pesos as nominal damages;

c. One Hundred Thousand (P100,000.00) Pesos as exemplary damages;

d. Five Hundred Thousand (P500,000.00) Pesos as attorney's fees; and

e. Five Hundred Thousand (P500,000.00) Pesos as litigation expenses.[2] (*Italics in the original*)

By complainant's claim, respondent, to enforce the Writ of Execution[3] (the writ), demanded from his (complainant's) brother Lorenzo Dy (Lorenzo) the amount of Ten Thousand (P10,000) Pesos on December 12, 2008 and another Ten Thousand (P10,000) Pesos on December 17, 2008, no receipts for which were issued.[4]

Complainant refers to his brother Lorenzo's Affidavit of May 18, 2009[5] in which the affiant claimed to have handed Twenty Thousand (P20,000) Pesos to respondent, and the Affidavit executed by Emma Lim, cashier of the company, in which she attested to processing the amounts that were given to respondent on the dates alleged by Lorenzo.

Complainant laments, however, that respondent never implemented the writ as he was "cavorting or transacting with the judgment debtors." [6] He draws attention to respondent's Return of Service dated January 15, 2009[7] which shows that he did not serve copies of the writ to the judgment obligors because of an alleged decision of the Court of Appeals.

Additionally, complainant faults respondent for causing the lifting of the notices of garnishment earlier served upon the judgment obligors despite the absence of any directive for the purpose from the court. He thus finds respondent liable for usurpation of authority of the judge.

Respondent, in his Comment of July 6, 2009,[8] denies receiving Twenty Thousand (P20,000) Pesos from Lorenzo, explaining that the writ was issued on December 15, 2008 and, therefore, he could not have demanded any amount as early as December 12, 2008. He admits, however, having received Five Thousand (P5,000) Pesos from Lorenzo.

Respondent informs that he prepared on December 16, 2008[9] a "Particulars of Expenses" in the amount of Eleven Thousand (P11,000) Pesos for the implementation of the writ, which was approved by Judge Edgar G. Manilag of the trial court and served upon complainant Dy through Lorenzo. He draws attention to the itemized expenses charged to the Five Thousand (P5,000) Pesos he received from Lorenzo and which he reflected in his liquidation report dated January 28, 2009.

Respondent goes on to cite his partial Sheriff's Report dated December 18, 2008[10] indicating why he failed to implement the writ - the judgment obligors refused to acknowledge receipt of the writ. Furthermore, he claims that there was a decision of the Court of Appeals directing the remand of the case for further proceedings.

Respondent thus claims that he was actuated by good faith when he caused the lifting of the notices of garnishment which was earlier served by another sheriff.

Complainant, by Reply of August 3, 2009,[11] claims that respondent showed to his brother Lorenzo on December 12, 2008 a photocopy of a writ which appeared to have been issued by the trial court on even date.

Respecting respondent's "Particulars of Expenses" which respondent claims was approved by the Clerk of Court and Judge Manilag, complainant brands it a forgery. For the Clerk of Court denied, by letter of July 29, 2009, as did the Branch Clerk of Court, by letter also of July 29, 2009, the authenticity of the document.

By Memorandum dated January 3, 2011, the Office of the Court Administrator came up with the following evaluation of the case:

It would appear, therefore, that the "Particular of Expenses" was merely concocted by respondent Sheriff Verga to justify the amount of P5,000.00 which he demanded from the brother of complainant Dy. The acts of respondent Sheriff Verga reek of Dishonesty.

Granting *arguendo* that the "Particulars of Expenses" is genuine, respondent Sheriff Verga, in asking for the amount of P5,000.00 upfront, failed to observe the proper procedure set forth under Section 10 of Rule 141 (Re: Legal Fees, as amended by A.M. No. 04-2-04-SC; 16 August 2004). In the case of *Cebrian vs. Monteroso*, Sheriff IV, RTC, Branch 34, Cabadbaran, Agusan del Norte (A.M. No. P-08-2461; 23 April 2008), the Court, in suspending the respondent sheriff for six (6) months, noted this failure to observe the aforesaid provision under Rule 141, to wit:

Under no circumstance should a sheriff, more so should any of his relatives, receive and keep money for executing a court process from the party. The sheriff has to seek approval of the amount of expenses from the court; have the interested party deposit the amount to the clerk of court or ex-officio sheriff for the latter to disburse the amount to the sheriff; and liquidate the expenses within the period for rendering a return or process.

There are very valid and serious reasons why the procedure in Sec. 9 is meticulously laid out. When it comes to money changing hands in court transactions, courts have always adhered to very stringent procedure to assure the public that the judiciary could be trusted, Any possibility of the courts being perceived as dishonest and corrupt erodes public confidence and contravenes the policy on public accountability.

Respondent Sheriff Verga also failed to satisfactorily explain why he caused the lifting of the notices of garnishment previously served to the respondents in Sec. Case No. 16-2004 (Sp. Civil Case No, 1235). Sheriff Verga claimed he merely acted in good faith when he lifted the said notices, claiming that he received a copy of the decision from the Court of Appeals supposedly remanding the case to the trial court for further proceedings. Respondent Sheriff Verga should have known better that his duty of implementing the writ of execution is purely ministerial. It does not grant him the authority to decide otherwise in the absence of a clear and direct order from the court.

In the case of *Vargas vs. Primo*, Sheriff IV, RTC Branch 65, Bulan, Sorsogon (A.M. No. P-07-2336; 24 January 2008), the respondent sheriff was suspended for six (6) months for deferring the implementation of the writ because of a pending motion for reconsideration, The Court held that "it is settled that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. As a sheriff, respondent has no discretion whether or not to execute a writ. Indeed, unless restrained by a court order, a sheriff must act with considerable dispatch and ensure that the execution of judgment is not unduly delayed.

In the *Monteroso* case, the respondent sheriff was found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Service and suspended for six (6) months for non-observance of Rule 141 in the collection of sheriff's expenses. In the *Primo* case, respondent sheriff was found guilty of neglect of duty and was likewise suspended for six (6) months for the unauthorized deferment of the implementation of the writ of execution. The same penalty should be imposed on the respondent in the instant case.[12] (Emphasis and italics in the original)

Accordingly, the OCA gave the following recommendation:

- (1) the matter be RE-DOCKETED as a regular administrative complaint against Archibald C. Verga, Sheriff IV, Regional Trial Court, Branch 33, Butuan City; and
- (2) that respondent Sheriff Verga be found GUILTY of Grave Misconduct, Dishonesty and Neglect of Duty and, accordingly, SUSPENDED from office without pay for a period of six (6) months, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.[13] (Emphasis in the original)

The Court finds the evaluation and recommendation of the OCA well-taken.

The sheriff's responsibility in the execution of a writ is mandatory and purely ministerial. Once the writ is placed in his hand, it becomes his duty, to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court..[14] In *Sanga v. Alcantara*,[15] the Court had another occasion to remind sheriffs on the performance of this duty:

Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:

SEC. 9. Sheriffs and other persons serving processes. ? x x x

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit;

1.On the first four thousand (P4,000.00) pesos, four (4%) per centum.

2.On all sums in excess of four thousand (P4,000.00) pesos, two (2%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Thus, following the above-mentioned rules, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor. The rule requires that the sheriff execute writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and Ex-Officio Sheriff. The expenses shall then be disbursed to the executing Sheriff, subject to his liquidation, within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service, because even assuming *arguendo* that the payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary to this point, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps; otherwise, such act would amount to dishonesty or extortion.

In this case, it is undisputed that both *Alcantara* and *Bisnar* miserably failed to comply with the above requirements of Section 9. Both *Alcantara* and *Bisnar* demanded and collected money from the plaintiff allegedly to defray the expenses for the implementation of the writ. The acquiescence or consent of the plaintiffs to such expenses does not absolve the sheriff of his failure to secure the prior approval of the court concerning such expenses. There was no evidence showing that respondents submitted to the court, for its approval, the estimated expenses for the execution of the writ before they demanded monies from complainant. They did not deposit the sums received from complainant with the Clerk of Court who, under Section 9, was then authorized to disburse the same to respondent sheriff to effect the implementation of the writ. Neither was it shown that they rendered an accounting and liquidated the said amount to the court. We also note that both

Alcantara and Bisnar made no mention in the sheriff's return, which they submitted to court, of the amounts of money they had received from complainant. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

Furthermore, we also agree with the findings of the OCA that respondents' issuance of Temporary Receipts, which were handwritten on scraps of papers, also constitutes a violation of Section 113 of Article III, Chapter V of the National Accounting and Auditing Manual, which provides that "no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.

A sheriff is an officer of the court. As such, he forms an integral part of the administration of justice, since he is called upon to serve the orders and writs and execute all processes of the court. As such, he is required to live up to the strict standards of honesty and integrity in public service. His conduct must at all times be characterized by honesty and openness and must constantly be above suspicion. Respondent Sheriff's unilateral and repeated demands for sums of money from a party-litigant, purportedly to defray the expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering to that court an accounting thereof, in effect, constituted dishonesty and extortion. That conduct, therefore, fell far too short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.[16]

WHEREFORE, for grave misconduct, dishonesty and neglect of duty, Archibald C. Verga, Sheriff IV, Regional Trial Court, Branch 33, Butuan City, is **SUSPENDED** from office without pay for Six Months. He is **WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Abad,[*] Villarama, Jr., and Sereno, JJ., concur.

[*] Designated member in view of the leave of absence of Justice Arturo D Brion per Special Order No. 940 dated February 7, 2011.

[1]Rollo, pp. 1-15.

[2]Id. at 19-20.

[3]Id. at 19-21.

[4]Id. at 2.

[5]Id. at 27-30.

[6]Id. at 8.

[7]Id. at 45.

[8]Id. at 83-89.

[9]Id. at 92.

[10] Id. at 47-48.

[11] Id. at 152-164.

[12] Rollo, pp. 210-211.

[13] Rollo, p. 211.

[14] Dacdac v. Ramos, A.M. No. P-052054, 553 SCRA 32, 35-36.

[15] A.M. No. P-09-2657, January 25, 2010, 611 SCRA 1

[16] A.M. No. P-09-2657, January 25, 2010 611 SCRA 1, 8-11.

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