

**EQUITABLE PCI BANK, INC., REPRESENTED BY PAULINO L. YUSI,
COMPLAINANT, VS. ANTONIO A. BELLONES AND GENEROSO B.
REGALADO, BOTH SHERIFFS IV, BRANCHES 9 AND 16,
RESPECTIVELY, REGIO...**

A.M. NO. P-05-1973. March 18, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For garnishing accounts maintained by Equitable PCI Bank, Inc. (EPCIB) at Citibank, N.A.,[1] and Hongkong and Shanghai Bank Corporation (HSBC),[2] allegedly in violation of Section 9(b) of Rule 39 of the Rules of Court, a complaint for grave abuse of authority was filed by Atty. Paulino L. Yusi against Sheriffs Antonio A. Bellones and Generoso B. Regalado.

The factual antecedents are as follows:

Complainant EPCIB is the defendant in Civil Case No. CEB-26983 before the Regional Trial Court (RTC), Branch 16, Cebu City, entitled, “Ng Sheung Ngor, doing business under the name and style ‘Ken Marketing,’ Ken Appliance Division, Inc. and Benjamin Go, Plaintiffs, vs. Equitable PCI Bank, Aimee Yu and Ben Apas, Defendants” for Annulment and/or Reformation of Documents and Contracts.

Respondents Antonio A. Bellones and Generoso B. Regalado are the sheriffs in Branches 9 and 16, respectively, of the RTC of Cebu City.

On 05 February 2004, the RTC, Branch 16, Cebu City, disposed the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

- Ordering defendant Bank to reinstate and return the amount of plaintiff’s (sic) bank deposit placed on hold status;
- Ordering defendant Bank to pay plaintiffs the sum of P12 Million Pesos as moral damages;
- Ordering defendant Bank to pay plaintiffs the sum of P10 Million Pesos as exemplary damages;
- Ordering defendants Aimee Yu and Benjie Apas to pay plaintiffs, jointly and severally, the sum of Two Million Pesos as moral and exemplary damages;
- Ordering defendants, jointly and severally to pay plaintiff’s (sic) attorney’s fees in the sum of P300,000; litigation expenses in the sum of P50,000 and the costs of suit;
- Directing plaintiffs Ng Sheung Ngor and Ken Marketing to pay defendant Bank the unpaid principal obligation for the peso loan as well as the unpaid obligation for the dollar denominated loan;
- Directing plaintiffs Ng Sheung Ngor and Ken Marketing to pay defendant Bank interest as follows:

- 12% per annum for the peso loans;
- 8% per annum for the dollar loans. The basis for the payment of the dollar obligation is the conversion rate of P26.50 per dollar availed of at the time of incurring of the obligation in accordance with Article 1250 of the Civil Code of the Philippines;
- Dismissing defendants (sic) counterclaim except the payment of the aforestated unpaid principal loan obligations and interest.[3]

Consequently, the trial court issued a Writ of Execution[4] dated 24 March 2004 for the enforcement and satisfaction of its decision which was addressed to Sheriff Generoso B. Regalado and Sheriffs Antonio A. Bellones and Arthur Cabigon, as Assisting Sheriffs.

The complaint alleged that on 25 March 2004, respondent Sheriffs Regalado and Bellones served on EPCIB, through its Legal Services Division, a “Sheriff’s Letter of Demand to Pay the Money Judgment” on the strength of the aforementioned writ of execution. Because of its inability to immediately pay by way of Manager’s Check, given the deliberate swiftness with which the decision was executed, EPCIB offered for levy sufficient real estate properties to satisfy its judgment obligations. It thus chose to exercise the option granted to it in paragraph (b) of Section 39 of the Rules of Court to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. It informed respondents of the exercise thereof through letters[5] dated 24 March 2004.

Despite being made aware of the offer of real properties and its rightful exercise of the option, respondents still proceeded on the very same day to levy and garnish[6] EPCIB’s accounts maintained at the Citibank, N.A., Paseo de Roxas Branch, Makati City, and at HSBC, Cebu City. This was done at a time when one of the prevailing parties in the case, Benjamin Go, was actively engaged with Legal Officers of EPCIB in supposedly arriving at acceptable solutions to their claims.

Complainant immediately sent a letter[7] to respondents reiterating its offer of real estate properties and urging the latter to desist, under threat of administrative suit, from levying its other properties. The letter notwithstanding, respondents continued to garnish the accounts of complainant causing extreme prejudice to it whose operations were threatened to be severely hampered and whose reputation as one of the country’s largest banks has been seriously tarnished.

Per 1st Indorsement[8] dated 21 April 2004, Court Administrator Presbitero J. Velasco, Jr., referred to respondents for comment the Complaint of EPCIB.

Respondent Antonio A. Bellones denies the charge against him and, hence, moves for the dismissal thereof.[9]

He narrated that on 25 March 2004, at about 9:30 a.m., he served a copy of the Writ of Execution, together with copies of the Decision, Omnibus Order and a Demand Letter for the payment of the money judgment to the Office of the Legal Services Division of EPCIB at EPCIB Tower I Building, Makati City.

Ms. Gigi Chua, receiving clerk of the office, received the aforesaid documents, but instead of marking them with “Received,” she gave them to Atty. Paulino L. Yusi, Chief of Legal Services Division of EPCIB. The documents were photocopied and returned to Ms. Chua without being marked “Received.”

At past 10:00 a.m., the same day, Bellones requested Ms. Chua to mark the documents “Received” but the latter refused, prompting the former to write “Copy hereof, together with copies of the Writ of Execution, Decision and Omnibus Order, was (sic) received by Ms. Gigi Chua of the Legal Office of Equitable PCI Bank at around 9:30 A.M. of 25 March 2004.”

The Writ of Execution and the Demand Letter required EPCIB to immediately pay the money judgment. When the latter failed to comply, Sheriff Generoso B. Regalado served the Notice of Garnishment to Citibank, N.A., at Paseo de Roxas Ave., Makati City.

Thereafter, an EPCIB unidentified male employee invited Bellones, plaintiff Benjamin Go and his two counsels to the Conference Room, where they were served with coffee. Sometime later, Atty. Paulino L. Yusi allegedly presented a letter to Bellones offering certain real properties – all located in Bacolod City to be levied upon for the satisfaction of the money judgment.

Sheriff Bellones noticed that the letter[10] was addressed to Sheriff Regalado. Hence, for ethical reason, he did not read the same.

Paragraph 9 of the complaint states that a similar letter[11] was presented to Bellones, but the latter denied such allegation calling the same a pure fabrication. Thereupon, being only an assisting sheriff, he left the Conference Room of the EPCIB and looked for Sheriff Regalado who had gone to Citibank, N.A.

Together with Sheriff Regalado, Bellones went back to EPCIB telling the former of the offer of EPCIB. They met plaintiff Go and his two counsels. Go informed them they need not accompany him when he goes back to the office of Atty. Yusi because he alone will negotiate with Atty. Yusi on the manner as to how EPCIB will pay the money judgment.

Sometime on the second week of April 2004, Bellones got a copy of the reply[12] of Citibank, N.A., on the Notice of Garnishment which states that EPCIB has no deposit, share of stock or property with Citibank, N.A.

The Citibank, N.A., reply proves, Bellones says, that the allegation of complainant (par. 10) that it has maintained an account with Citibank, N.A., that can be subject to garnishment is not true.

As regards the Notice of Garnishment sent to HSBC, said bank has yet to make a reply.

Sheriff Regalado denies the charge against him. He said he complied with the procedure outlined under Section 9, Rule 39 of the Rules of Court regarding Execution of Judgments for Money.

First, the amount stated in the Notice of Garnishment is the same amount stated in the writ of execution issued by the court. It is also the same amount stated in the decision in Civil Case No. CEB-26983.

Second, the manner of service of the notice cannot be characterized as abusive since it was done with caution and circumspection. He said he did not insist to garnish funds of EPCIB in its custody or insist in the immediate delivery of cash. He only required the banks concerned to report within five (5) days from receipt of the notice.

Third, he complied with Supreme Court Administrative Circular No. 12 which states the guidelines and procedure in the service and execution of court writs and processes by informing in writing the proper ex-officio sheriffs of the courts which have jurisdiction over the business addresses of the banks served with notices of garnishment. He said he wrote the sheriff of Pasay City for the Philippine National Bank (PNB) Writ, while the letter for the Makati court was prepared and signed by Sheriff Bellones.

Sheriff Regalado claims EPCIB deliberately misled the Court into believing that the written offer[13] came ahead of the service of the writ of garnishment.

According to Regalado, while the written offer addressed to him and to Sheriff Bellones was dated 24 March 2004, it was not prepared on 24 March 2004 but on 25 March 2004 when Bellones went to EPCIB to serve a copy of the demand letter. He also claims that the written offer does not bear his signature.

Assuming arguendo, Regalado says, that he was immediately informed of EPCIB's offer, he cannot be held liable

for grave abuse of authority for serving the writ of garnishment, because it was premature for EPCIB to immediately claim incapacity to pay in cash, because the banks served with notices of garnishment have not yet submitted their reports.

Besides, Regalado points out he could not reconcile EPCIB's offer of real properties with the admission of the head of the Legal Services Division that its bank deposits have been garnished.

Regalado banks on Section 9(b) of Rule 39 of the Rules of Court. He claims that proof of the judgment obligor's inability and incapacity to pay in cash or certified check must first be shown before the option to choose can be exercised. He contends that assuming he erred in his interpretation of the Rules, his error cannot be characterized as a grave abuse of authority that would warrant disciplinary action. He stresses he did not act arbitrarily. He says he served the Writ of Garnishment because he believed it was the proper thing to do.

He likewise explains that he immediately implemented the writ of execution because he is aware of the several decisions of the Supreme Court directing prompt implementation of the writ. Sheriff Regalado says "I may be hurt by these vicious accusations against me but I am never cowed. I am ready to defend my honor and integrity and prove to this Honorable Court that I am worthy to wear my badge as a court sheriff."

On 19 January 2005, Court Administrator Presbitero J. Velasco, Jr., submitted his report. It reads:

EVALUATION: We find respondent Sheriff Regalado liable as charged. The conduct of Sheriff Regalado was a clear violation of Section 9 Rule 39 of the Rules of Court, which directs the manner of execution of judgments for money. Thus:

...

The culpability of respondent Sheriff Regalado is clear in the Notice of Garnishment to Citibank N.A., which was served prematurely before proper demand for the immediate payment of the judgment debts had been made to complainant's authorized representatives. When respondent Sheriff Regalado left purportedly to garnish complainant's account in Citibank N.A., he did not ascertain first whether complainant would be satisfying its judgment debts in cash.

Respondent sheriff Regalado violated the rules anew when he served writ of garnishment to the Hongkong Shanghai Banking Corporation (HSBC) following receipt of the written offer of EPCIB of real properties to be levied in satisfaction of the judgment. Respondent Sheriff Regalado claimed he was not present when complainant served the written offer of real properties but he must have learned of the letter offer of the EPCIB from respondent Sheriff Bellones or from the complaint filed against them, a copy of which was furnished them by complainant. In fact, respondent Sheriff Regalado used and attached a copy of EPCIB's Complaint in the notice of garnishment served to HSBC.

The option to levy or garnish debts and credits arises only if the judgment obligor cannot be located or does not exercise its option to immediately choose which of the properties it owns may be levied upon in satisfaction of the judgment obligation. As discussed in the Handbook for Sheriffs (p. 19, published by the Philippine Judicial Academy, October 2003);

This is a new provision which requires the sheriff to demand of the obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. Secondly, if the judgment obligor cannot fully pay the obligation in cash, he is given the option to choose which property may be levied upon. Hence the sheriff may not arbitrarily levy on property essential to the work or business of the judgment obligor. It is only when he cannot be located that the sheriff may garnish debts due to the judgment obligor and other credits, or levy on real or personal property of the judgment obligor.

Sheriff Regalado also violated Sec. 6, Canon IV of the Code of Conduct of Court Personnel (A.M. No. 03-06-13-SC) which exhorts "court personnel (to) expeditiously enforce rules and implement orders of the court

within the limits of their authority.” Respondent Sheriff Regalado evidently acted with abuse of authority in the execution of the subject writ of execution and his defense of good faith in this instance is unavailing. He violated the rules twice. His attention was called the first instance but instead of withdrawing the notice of garnishment from Citibank N.A., he served another notice of garnishment, this time to HSBC.

As respondent Sheriff Bellones had no participation in the garnishment of complainant’s accounts in Citibank N.A. and HSBC, he may not be held liable as charged of (sic) grave abuse of authority or violation of Rule 39 of the Rules of Court.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are the following recommendations that: (a) the instant administrative case be REDOCKETED as an administrative matter; (b) respondent Sheriff Regalado be FINED P11,000.00 and WARNED that repetition of similar irregularities in the future will be more severely dealt with; and (c) the complaint against respondent Sheriff Bellones be DISMISSED for lack of merit.

We agree and adopt the findings of the Court Administrator.

Section 9, Rule 39 of the Rules of Court provides for the procedure as to how execution of judgments for money is enforced. It reads:

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.

...

(b) Satisfaction by levy. – 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.

...

(c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

From the foregoing provisions, 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 legal fees. The payment shall be in cash, certified bank check payable to the judgment obligee, or in any form acceptable to the latter. 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, it is only then that the sheriff/officer enforcing the

judgment for money can garnish debts due the judgment obligor and other credits, or levy on the personal or real property of the latter.

In the case at bar, Sheriff Regalado failed to comply with the procedure outlined in Section 9, Rule 39 of the Rules of Court.

It is evident from the comment of Sheriff Regalado that when the demand to pay was served on EPCIB by Sheriff Bellones, he was not there because he was serving the Notice of Garnishment on Citibank, N.A. Thus, he served a Notice of Garnishment even before he has knowledge as to how EPCIB will pay the judgment debt. As the lead sheriff tasked to enforce the writ of execution, he should have waited for EPCIB to inform him of the mode of payment it will employ in satisfying the money judgment. Despite having no knowledge thereof, he immediately served a Notice of Garnishment to Citibank, N.A., which is a clear violation of Section 9. There being no choice yet on the part of EPCIB as to how to pay, whether it be in cash, certified bank check or any other form acceptable to the judgment obligee, or through levy of property and sale thereof, or through garnishment of debts and credits, Sheriff Regalado should have waited before making any move. This, he did not do.

By serving notices of garnishment on Citibank, N.A., HSBC and PNB, Sheriff Regalado violated EPCIB's right to choose which property may be levied upon to be sold at auction for the satisfaction of the judgment debt. It is clear from paragraph (a) of Section 9, Rule 39 of the Rules of Court, that the sheriff shall first demand 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 any other mode of payment acceptable to the judgment obligee, the former is given, under paragraph (b) of the same section, the option to immediately choose which of his property, real or personal, can be levied by the sheriff. In the case before us, EPCIB, after being served with the demand to pay, immediately exercised its option to choose which of its properties will be levied for the satisfaction of the money judgment. As admitted by Sheriff Bellones, he was informed by Atty. Yusi that EPCIB was offering certain real properties, all located in Bacolod City, to be levied upon. Thus, it is clear that when EPCIB offered its real properties, it exercised its option because it cannot immediately pay the full amount stated in the writ of execution and all lawful fees in cash, certified bank check or any other mode of payment acceptable to the judgment obligee.

The insistence of Sheriff Regalado in pursuing the garnishment of the bank deposits of EPCIB in HSBC, as shown by his letter to the latter dated 06 April 2004, despite the letter of EPCIB's lawyer dated 24 March 2004 stating that it has exercised the option to choose and reiterated its offer of real properties sufficient to satisfy the judgment debt, is a clear violation of Section 9, Rule 39 of the Rules of Court.

What is clear under paragraph (a) of Section 9, Rule 39 of the Rules of Court, is that the sheriff shall demand from the judgment obligor the immediate payment in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his property can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located,[14] 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. In the case at bar, EPCIB exercised its option because it cannot immediately pay by Manager's Check the amount demanded because of the "deliberate swiftness with which the decision was executed."

It may now be asked: Who will make the determination if the judgment obligor cannot pay immediately?

This should be answered by the judgment obligor himself. The sheriff cannot and should not be the one to determine if the judgment obligor 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. If this determination is given to the sheriff, then the right of the judgment obligor to exercise its option to choose can be negated by the former if the latter insists that the judgment obligor can immediately pay through cash, certified bank check or any other mode of payment acceptable to the judgment obligee.

In the case at bar, EPCIB cannot immediately pay by way of Manager's Check so it exercised its option to choose and offered its real properties. With the exercise of the option, Sheriff Regalado should have ceased serving notices of garnishment and discontinued their implementation. This is not true in the instant case. Sheriff Regalado was adamant in his posture even if real properties have been offered which were sufficient to satisfy the judgment debt.

The actuations of Sheriff Regalado constitute grave abuse of authority. His claim that he did not act in an arbitrary or despotic manner and that he served the writs of garnishment with the belief that it was the proper thing to do cannot exonerate him. Good faith on the part of the respondent sheriff, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefore, it behooves him to make due compliance.[15] Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.[16]

A public office is a public trust. All public officers and employees must, at all times, be accountable to the people. They ought to perform their duties with utmost responsibility, integrity, competence, and loyalty, and with patriotism and justice, lead modest lives, and uphold public interest over personal interest.[17] Every officer and man of the judiciary is expected to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to conduct themselves with propriety and decorum at all times.[18]

Sheriffs play an important role in the administration of justice and they should always hold inviolate and invigorate the tenet that a public office is a public trust.[19] Being in the grassroots of our judicial machinery, sheriffs and deputy sheriffs are in close contact with the litigants; hence, their conduct should all the more maintain the prestige and the integrity of the court.[20] By the very nature of their functions, sheriffs must conduct themselves with propriety and decorum, so as to be above suspicion.[21] Sheriffs cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[22]

Respondent Regalado failed to properly enforce the execution of a money judgment. He did not observe the procedure provided for in Section 9, Rule 39 of the Rules of Court. His failure to strictly comply with the Rules has effectively deprived the judgment obligor of his right to exercise his option to choose which of his properties shall be levied upon. In so doing, he has breached the trust reposed in him by the people and has left a blot not only on himself, but more importantly in the office he holds which may eventually diminish the people's faith and confidence in the judicial system.

We find, however, the recommended penalty of P11,000 fine to be too stiff considering that there was no bank deposit of EPCIB that was actually garnished. In accordance with the penalty imposed by this Court in *Raymundo v. Calaguas*[23] and *Borja v. Salcedo*[24] for grave abuse of authority, a fine of P5,000 is more appropriate.

As to respondent Bellones, the charge against him is dismissed for lack of merit.

WHEREFORE, premises considered, respondent Generoso B. Regalado, Sheriff IV, Regional Trial Court, Cebu City, Branch 16, is hereby found GUILTY of grave abuse of authority and is FINED Five Thousand Pesos (P5,000.00) with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

The complaint against respondent Antonio A. Bellones, Sheriff IV, Regional Trial Court, Cebu City, Branch 9, for grave abuse of authority is hereby DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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- [1] Head Office, Paseo de Roxas, Makati City.
- [2] J. Llorente St., Cebu City.
- [3] Rollo, p. 7.
- [4] Annex B, Complaint-Affidavit.
- [5] Annexes C and D, Complaint-Affidavit.
- [6] Annexes E and F, Complaint-Affidavit.
- [7] Annex G, Complaint-Affidavit.
- [8] Rollo, p. 18.
- [9] Comment filed on 25 May 2004; Rollo, p. 24.
- [10] Annex C, Complaint-Affidavit.
- [11] Annex D, Complaint-Affidavit.
- [12] Annex 2, Comment of Bellones, Rollo, p. 24.
- [13] Annexes C and D, Complaint-Affidavit.
- [14] Civil Procedure Annotated, Vol. 2 by Feria and Noche, p. 43 (2001 Ed).
- [15] Chupungco v. Cabusao, A.M. No. P-03-1758, 10 December 2003, 417 SCRA 365, 369.
- [16] Villanueva-Fabella v. Lee, A.M. No. MTJ-04-1518, 15 January 2004, 419 SCRA 440, 453.
- [17] Office of the Court Administrator v. Fuentes, A.M. No. RTJ-94-1270, 23 August 1995, 247 SCRA 506, 517, citing Section 2, Republic Act No. 6713.
- [18] Sy v. Norberte, A.M. No. 00-1398-P, 01 August 2000, 337 SCRA 1, 7.
- [19] Ventura v. Concepcion, A.M. No. P-00-1431, 27 November 2000, 346 SCRA 14, 18.
- [20] Cabanatan v. Molina, A.M. No. P-01-1520, 21 November 2001, 370 SCRA 16, 24.
- [21] Tan v. Dael, A.M. No. P-00-1392, 13 July 2000, 335 SCRA 513, 520.
- [22] Torres v. Cablesuela, A.M. No. P-00-1391, 28 September 2003, 366 SCRA 171, 175.
- [23] A.M. No. P-01-1496, 28 January 2005.
- [24] A.M. No. RTJ-03-1746, 26 September 2003, 412 SCRA 110.

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