

MANUEL P. CALAUNAN, COMPLAINANT, VS. REYNALDO B. MADOLARTA, SHERIFE IV, REGIONAL TRIAL COURT, BRANCH 217, QUEZON CITY, RESPONDENT.

A.M. No. P-10-2810. February 08, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Buenavista Properties Inc. (Buenavista) entered into a contract with La Savoie Development Corporation (La Savoie) on January 15, 1997 for the development of its (Buenavista's) property in San Rafael, Bulacan into a housing subdivision and for the sale of the constructed houses thereon.

Manuel P. Calaunan (complainant) contracted to purchase a house and lot (the property) at the Buenavista Park Subdivision owned by Buenavista. Upon complainant's payment of the reservation and downpayment, he took possession of the property.

After complainant had fully paid the purchase price of the property, the Deed of Absolute Sale had not been delivered to him, as well as the title to the property. He thus filed a complaint before the Housing and Land Use Regulatory Board (HLURB) on March 18, 2005 against La Savoie and Buenavista.

The HLURB rendered judgment[1] in favor of complainant which was affirmed by the HLURB Board of Commissioners,[2] and eventually by the Office of the President,[3] the latter by Decision of May 29, 2008.

On account of a Decision of June 12, 2003[4] rendered by Branch 217 of the Quezon City Regional Trial Court (RTC) in favor of Buenavista which filed a complaint against La Savoie for termination of contract, the trial court issued a Writ of Execution on November 21, 2007. To enforce the Writ, a contingent composed of armed men in fatigue uniforms, barangay officials, a few civilians, a representative from Buenavista and Reynaldo B. Madaloria (respondent), Sheriff IV of Branch 217 of the RTC, repaired to the subdivision on December 5, 2007 at about 2:00 PM to evict the homeowners.

Complainant, who was not at home at that time, arrived at about 7:30 in the evening and was escorted to the subdivision clubhouse where respondent, by complainant's claim, did not identify himself as sheriff and rudely and arrogantly told him that he could not enter his house as it had been padlocked.

Still by complainant's claim, on his query, respondent, this time identifying himself as a sheriff, informed complainant that he was enforcing the writ of execution of the decision rendered by Branch 217 of the RTC in favor of Buenavista. Complainant thereupon advised respondent that he (complainant) was not a party to the case nor was he served a notice to vacate, hence, the writ of execution could not be enforced against him.

His protestations notwithstanding, complainant was not allowed to enter his house and was instead instructed to return on December 8, 2007 to retrieve his personal belongings.

In March 2008, complainant discovered that his house was already demolished, hence, spawned the present

administrative case.

In compliance with the 1st Indorsement of June 20, 2008^[5] of the Office of the Court Administrator (OCA), respondent submitted his Counter-Affidavit on August 8, 2008,^[6] alleging that a notice to vacate was served upon the caretaker of the subdivision and its occupants after La Savoie ignored the writ of execution and failed to surrender the property. Respondent stressed that he did not cause the demolition of complainant's house. Second Vice-Executive Judge BERNELITO Fernandez (Judge Fernandez) of Branch 97, RTC of Quezon City who conducted the investigation of the complaint came up with the following findings in his Report and Recommendation dated August 12, 2009:

With the foregoing, it is clear that no Notice to Vacate was received by the complainant. The respondent should have more circumspect in insuring that all the parties and/or residents in the subject subdivision were properly notified of the implementation of the Writ of Execution as this will necessarily affect the lives and properties of the occupants therein. It appears that reasonable opportunity should have been given the complainant to seek remedial means to be able to peaceably vacate the premises and this includes properly serving the Notice to Vacate.

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Clearly, nothing appears on record that respondent was responsible or even caused the alleged demolition of the house of the complainant. A close review of the records of Buenavista Properties Inc., plaintiff vs. La Savoie Development Corporation, defendant, (Civil Case No. Q-98-33682) before the Regional Trial Court, Quezon City, Dr. 217, reveals nothing regarding the existence of any writ of demolition or demolition order. It can be safe to state that the respondent had no hand in the alleged demolition of the house of the complainant, if indeed there was any demolition at all.^[7] (underscoring supplied)

Judge Fernandez's findings were echoed by the Quezon City Executive Judge, by Report of August 28, 2009,⁸ absolving respondent from liability for the demolition of the property, but holding respondent administratively liable for his failure to serve the Notice to Vacate before evicting complainant.

The OCA, on the directive of the Court, has submitted its Report and Recommendation of April 30, 2010, the salients of which read:

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It is clear from the foregoing provision that enforcement of a Writ of Execution that entails eviction from a contested property requires that the sheriff must first serve notice of such writ and demand of the person against whom the judgment was rendered, as well as of all other persons claiming rights under him, to vacate the subject property within three (3) days from such notice. It is only when such persons resist after service of notice and demand to vacate that the sheriff can forcibly enforce the writ by bodily removing them from the premises.

Likewise evident is the requirement that, when the situation warrants, the sheriff must give notice to two (2) sets of people before eviction can be effected. First, demand to vacate must be made on "on the person against whom the judgment for the delivery or restitution of real property is rendered"; and second, demand must likewise be made P-B. "all persons claiming rights" under the person against whom the judgment is rendered.

It is apparent that complainant Calaunan belongs to the class of persons referred to in the pertinent Rule as a person claiming rights under LA SAVOIE, the judgment obligor. On the other hand, he can also be deemed as a person asserting his own rights of ownership by virtue of the judgments rendered by the proper administrative agencies uniformly declaring him the owner of the subject property. He had already paid in full for the subject property that he had been occupying for eleven (11) years, long before the Joint Venture

Agreement between LA SAVOIE and BUENA VISTA was rescinded by the trial court. The only problem was that LA SAVOIE failed to issue a final deed of sale in favor of complainant Calaunan, which became the subject of a complaint the latter filed before the HLURB. Under the given circumstances, as a person who is claiming a right to the subject property, complainant Calaunan is entitled to the protection afforded by the Rules by requiring prior notice of the Writ of Execution and/or Notice to Vacate.

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Respondent Sheriff Madolaria's unequivocal admission in his Affidavit is further bolstered by his Sheriffs Partial Return dated 20 December 2007, which states that the Notice to Vacate was served upon LA SAVOIE at San Rafael, Bulacan, through Emily Mendoza, the wife of the caretaker of the subdivision. It is also reflected therein that a copy of the Notice to Vacate was posted at the main entrance of the subdivision while other copies were distributed by the security guards posted by BUENA VISTA to the residents. It is patent, therefore, that respondent Sheriff Madolaria did not personally serve copies of the Notice to Vacate and Writ of Execution upon complainant Calaunan.

While it appears that the Notice to Vacate was received by security guards Carlos Baleno and Emily Mendoza, as evidenced by their signatures, there is no indication whatsoever that the individual residents of the subdivision indeed received copies of the Notice to Vacate. And as found by the Investigating Judge, there is no evidence to support respondent Sheriff Madolaria's assertion that the individual residents made arrangements with BUENA VISTA's representatives regarding the implementation of the Notice to Vacate.

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Anent the allegation that respondent Sheriff Madolaria caused or was responsible for the demolition of complainant Calaunan's house, there is nothing on record that would establish to a reliable degree that respondent Sheriff Madolaria was indeed the person to blame therefore. The basic rule is that mere allegation is not evidence, and is not equivalent to proof. And in administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the

complaint. By substantial evidence is meant such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. No such substantial evidence exists in this case. Accordingly, Sheriff Madolaria cannot be held responsible for the demolition of complainant Calaunan's house, (emphasis and underscoring supplied)

The OCA thus recommends the dismissal of respondent from the service, after taking into account the previous occasions where he was administratively charged and accordingly penalized.[9] The OCA explains:

In imposing the proper penalty, the Court takes cognizance of the fact that this is not the first time that respondent Sheriff Madolaria has been charged administratively. In fact, as recently as 16 April 2008, he was meted a penalty of SUSPENSION for one (1) year in A-M. No. P-06-2142 for a string of infractions. In that case, respondent Sheriff Madolaria was found guilty of inefficiency and incompetence in the performance of official duties and conduct prejudicial to the best interest of the service, which are grave offenses, each of which carry the penalty of suspension from six (6) months and one (1) day to one (1) year even for the first offense. He was likewise found guilty of loafing or frequent unauthorized absences from duty during regular working hours, also a grave offense, which is punishable by suspension from office for six (6) months and one (1) day to one (1) year for the first offense. Finally, he was found guilty of insubordination, a less grave offense, which carries the penalty of suspension from one (1) month and one (1) day to six (6) months for the first offenses and dismissal for the second.

It bears mentioning that the Court issued a stern warning to respondent Sheriff Madolaria that the commission of the same or similar acts in the future will be dealt with more severely.[10] As concluded earlier, he is guilty of simple neglect of duty for failing to follow the procedure laid down in Section 10(c), Rule 39 of the 1997

Rules of Civil Procedure, which is a less grave offense. Considering that he was previously found guilty of insubordination, also a less grave offense which is similar and in the same classification as simple neglect of duty, this present conviction shall be treated as a second offense which is punishable by dismissal, (emphasis, underscoring and capitalization supplied)

The OCA's recommendation is well taken.

Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by the sheriffs' actions, they may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[11]

In the case at bar, respondent failed to comply with the procedure laid down in Section 10(c) of Rule 39 of the Rules of Court in the implementation of a writ of execution[12] which requires that the sheriff must first give notice of such writ and a demand to the judgment obligor to vacate the property within three days. Only after such period can the sheriff enforce the writ by the removal of defendant and his personal belongings.[13]

A sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39.[14] Respondent's contention that he complied with the requirement by serving copies of the notice to vacate on November 27, 2007 upon the wife of the caretaker and the security guard of the subdivision[15] for distribution to the homeowners of the subdivision, as shown in his Partial Return of December 20, 2007,[16] does not lie.

The requirement of a notice to vacate is based on the rudiments of justice and fair play. The aforementioned provision requires that a notice be served on the "person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him. " It bears noting that complainant was not a party to the case in the decision which was executed.

Respecting 'complainant's allegation that respondent is responsible for the demolition of his house, there is indeed no proof thereof.

Failure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty,[18] which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension.[19]

The OCA recommended that respondent be dismissed from the service as he had been previously found administratively guilty[20] of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of the service, insubordination and loafing or frequent unauthorized absences[21] for which he was suspended for one year without pay.

Indeed, the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and shove away the undesirable ones. Absent a showing of malice and bad faith on respondent's part, however, but taking into account his above-stated previous infractions, the Court finds that respondent's suspension without pay for one year is in order.

WHEREFORE, respondent Sheriff Reynaldo B. J. Vladolaria of Branch 217 of the Regional Trial Court of Quezon City is **SUSPENDED** for One Year without pay, and with a **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Carpio,[*] J., no part.

[*] No Part.

[1] Rollo, pp. 38-44.

[2] Id. at 46-49.

[3] Id. at 50-54.

[4] Id. at 34.

[5] Id. at 91.

[6] Id. at 64-66.

[7] Id. at 219-211.

[8] Id. at 229-235.

[9] Id. at 296-323.

[10] *Grutas v. Madolaria*, A.M. No. P-06-2142, 551 SCRA379 (2008).

[11] *Yaeso v. Enolpe, et al.*, A.M. No. P-08-2584 November 15, 2010 citing *Metro Manila Transit Corp. v. Santiago*, 489 Phil. 1, 10(2005); *V.C. Ponce Co., Inc. v. Eduarte*, 397 Phil. 498, 514(2000).

[12]"Sec. 10(C)Delivery or restitution of real property. - The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money."

[13] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52 citing *Tan v. Dael*, 390 Phil. 841,845.

[14] *Ibid.*

[15] Records, p. 71.

[16] Id. at 74-75.

[17] Sec. 10(c), Rule 39, RULES OF COURT.

[18] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52.

[19] Section 52(b)(l), Revised Uniform Rules on Administrative Cases in the Civil Service.

[20] *Grutas v. Madolaria*, 551 SCRA 379, A.M. No. P-06-2142, April 16, 2008.

[21] WHEREFORE, Reynaldo B. Madolaria, Deputy Sheriff, Regional Trial Court, Branch 217, Quezon City, is found GUILTY of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of service, insubordination, and loafing or frequent unauthorized absences from duty during regular working hours and is SUSPENDED for one (1) year without pay, with a STERN WARNING that the commission of the same or similar acts shall be dealt with more severely.

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