

THE PHILIPPINE TRIAL LAWYERS ASSOCIATION, INC., PETITIONER, VS. ARSENIO D. TABADDA, DEPUTY SHERIFF OF QUEZON CITY, RESPONDENT.

Administrative Matter No. P-2208. February 24, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Philippine Trial Lawyers Association, Inc. charged respondent Arsenio D. Tabadda, Deputy Sheriff of Quezon City, in a verified Complaint filed on 25 June 1979, for inefficiency and incompetence in the performance of his official duties and for gross misconduct in office, allegedly committed as follows:

Respondent Deputy Sheriff was assigned to serve summons against the defendant in Civil Case No. IV-33681 entitled "Sigma-Mariwasa, Inc. vs. Ocampo's Quezon City Appliance Marketing Center." Atty. Procopio S. Beltran, Jr., President of complainant Association, was counsel for the plaintiff in that case. On 10 October 1978, respondent submitted a Return which reads:

"THIS IS TO CERTIFY that on this date copy of the Summons together with the Complaint issued in the above case WAS NOT SERVED upon the OCAMPO's QUEZON CITY APPLIANCES MARKETING INC., at 757 Aurora Blvd., Quezon City in view of the fact that as per information from Mrs. Cleofe Lacsamana, secretary, nobody is authorized to receive such kind of process as per memorandum of Mrs. Ocampo who is at present in the United States."

On 26 December 1978, an Alias Summons was secured by Atty. Beltran against the same defendant corporation, which was again assigned to respondent Deputy Sheriff for service. In his Return which he dated 17 January 25, January, 8 February, and 20 February 1979, respondent stated as follows:

"THIS IS TO CERTIFY that the Summons and Complaint issued in the above-entitled case, could not be served upon the defendant-OCAMPO'S QC APPLIANCE MARKETING, INC., at No. 757 Aurora Boulevard, Quezon City. For several times, the undersigned tried to serve the process upon the defendant but the person he has been talking with refused to identify himself or herself and, moreover, the person who is duly authorized to receive the process in behalf of the defendant corporation could not be contacted at said place."

Complainant avers that the Returns made by respondent Deputy Sheriff manifestly showed his inefficiency and incompetence in the performance of his official duties and functions, and caused the plaintiff in the aforementioned civil case to suffer irreparable damage and injury.

Answering the Complaint, respondent vehemently denied the charges against him and invoked the defense that his failure to serve the summons, despite diligence on his part, was for the simple reason that he could not possibly get the information as to the identities of the right persons upon whom the summons must be served considering

that the defendant is a domestic corporation. Furthermore, respondent alleged that the personnel of defendant corporation were hostile and non-cooperative to him. Additionally, respondent explained that his suggestion to the representative of plaintiff's counsel that he be furnished the names of the persons upon whom the summons could be legally served, or that somebody accompany respondent to the defendant's office, who could be apprised of the real facts and circumstances leading to the non-service of the summons, had been actually ignored.

On 11 August 1980, we referred this administrative complaint to Judge Ernani Cruz Paño, Executive Judge of the Court of First Instance of Rizal in Quezon City, for investigation, report and recommendation. His written Report, dated 12 November 1980, concludes that respondent failed to perform his duty with the degree of responsibility, integrity, loyalty and efficiency expected of him as a Deputy Sheriff. This conclusion is strongly supported by the following factual findings specifically stated in his Report, to wit:

"1. When he went to the premises on October 5, 1979 (sic), respondent succeeded in talking with and getting the identity of Cleofe Lacsamana. He, however, relied on this person's statement that the president and general manager, Mrs. Ocampo, issued a memorandum that no one is authorized to receive court process. He should not have been satisfied with such an excuse. He should have determined who are the authorized persons as enumerated in Sec. 13, Rule 14 of the Rules of Court. Ocampo's Q.C. Appliance Marketing, Inc. does not appear to be an extensive establishment; the first floor of the premises is where the appliances are displayed; and the office is on the second floor. It would not have been a difficult matter to determine who is the person in charge in the absence of Mrs. Ocampo. As a matter of fact, on October 5, 1980 (sic), he came to know Lacsamana, and on the second occasion he saw and talked with the company's cashier. There are only three or four persons in this Floor (TSN p. 17, Oct. 6, 1980). It is not credible that respondent would not know who the manager is; it is likewise contrary to human experience that the owner would leave for the United States without a person in charge of the business;

"2. Even if respondent may be excused for the original return, yet as to the alias summons he went to the premises four times. He saw a person who was acting as cashier as to whom the summons could have been tendered. He should not anticipate that later on this person will deny that he is the cashier. He should have tendered the process on this person and submit the corresponding certification.

"3. The return Exhibit 'F' appears to be a devious way of closing all avenues for service through the alleged non-identification of the persons in the office of the corporation and the failure to get in touch with the person authorized to receive the process. It is not credible that respondent would not be able to ascertain the identity of the persons he had been talking with, whereas, on October 5, 1978, he was able to identify Lacsamana. If no one identified himself to respondent, how did respondent know that the person authorized to receive the process could not be contacted? This is all the more incredible when it is considered that respondent had been working as a deputy sheriff since 1960. The second return Exhibit 'F' appears then to have been respondent's response to the complaint of Atty. Beltran who was not even furnished a copy of said return.

"It is also noted that respondent did not appear in the corporation's office as an ordinary pedestrian; he was there as a representative of the Court and citizens are generally cooperative with court officials. The investigator seriously doubts that the people he met at the appliance store would be as uncooperative as he describes them. Only the naive would believe the statements in the return Exhibit 'F' "[1]

Taking into account that this is a first offense, and considering that Civil Case No. IV-33681 was eventually

settled amicably, Judge Paño recommended that a fine equivalent to two (2) months salary be imposed on respondent Deputy Sheriff with the warning that a repetition of the same or similar act would be dealt with more severely.

Court Administrator, Justice Lorenzo Relova, in his Memorandum dated 19 November 1980, expressed his concurrence thereto.

We agree.

Respondent's posture that he cannot be faulted for having been remiss in his duty to serve the summons because substituted service on a corporation is generally not allowed, is not well taken. Section 13, Rule 14 of the Rules of Court specifically provides:

"SEC. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors."

Thus, respondent could have availed of this mode of service of the summons upon any of the authorized agents of the defendant corporation allowed by law to receive court processes in its behalf, the cashier, in this case. As pointed out by Justice Relova:

"Assuming it as true that Mrs. Lacsamana of defendant corporation told respondent that in the absence of Mrs. Ocampo no one is authorized to receive any kind of process, the circumstance wherein respondent stood when he had to serve the alias summons, would warrant the conclusion that respondent should have served the summons upon the cashier whom he had talked with." [2]

WHEREFORE, for inefficiency and lack of responsibility and zeal in the performance of his duties, respondent Deputy Sheriff, Arsenio D. Tabadda, is hereby sentenced to pay a fine equivalent to two (2) months salary, with a warning that a repetition of the same or analogous act in the future would be dealt with more severely.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez and Guerrero, JJ., concur.

[1] Report and Recommendation, pp. 4-5.

[2] Memorandum dated 19 November 1980, p. 4.

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