

THIRD DIVISION [A.M. No. P-00-1432. October 19, 2000] JOSE C. SARMIENTO, complainant, vs. ROMULO C. VICTORIA, SHERIFF IV, RTC, BRANCH 157, PASIG CITY, respondent. D E C I S I O ...

A.M. No. P-00-1432 (Formerly OCA IPI No. 98-390-P). October 19, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Respondent sheriff Romulo C. Victoria is charged with Grave Abuse of Authority and Gross Misconduct.

Complainant Jose C. Sarmiento (Sarmiento) was a defendant in Civil Case No. 66473, entitled "Jose C. Singson (Singson), et al. vs. Jose C. Sarmiento, et al." for Sum of Money before the Regional Trial Court, Branch 157, Pasig City.

On October 2, 1997, Judge Vivencio S. Baclig of Branch 157 granted Singson's prayer for a writ of preliminary attachment. On October 9, 1997, respondent sheriff levied on Sarmiento's personal properties and on October 15, 1997, respondent sheriff attached Sarmiento's real properties.

Complainant Sarmiento averred that in implementing the said writ, respondent sheriff violated Sec. 7 (b) of Rule 57 of the 1997 Rules of Civil Procedure when he deposited the attached properties in the warehouse of Singson. Respondent sheriff also influenced his daughter, Beverly T. Sarmiento, to sign a paper making it appear that she agreed to such deposit.

Sarmiento complained that the attached properties were exempt from execution. There was also an "over-levy" because the estimated value of the attached real and personal properties was P9,944,470.00 while the attachment bond was only P4.5 million.

In his Answer, respondent sheriff admitted that the attached properties were deposited in complainant's warehouse but this was done in the exercise of his best judgment because it had taken him the whole day to attach Sarmiento's properties. He did not have time to look for a private bonded warehouse. Knowing that the court had no space to store the attached properties, he asked Sarmiento's daughter, Beverly, if he could deposit the seized properties in the warehouse of Singson.

He denied there was an "over-levy" because the value assigned to each property was the acquisition cost which did not consider depreciation costs and did not reflect the present value of the properties. The only time when the true value of the levied properties could be ascertained would be at the public auction. So also, the claim of "over-levy" has become moot and academic since Judge Baclig had allowed the return of tools and implements valued P493,000.00 and household furniture and utensils worth P100,000.00. The eight real properties valued P3,579,470.00 were levied with the Register of Deeds and is only on paper.

Respondent sheriff compulsorily retired from the service on February 17, 1999.

On June 19, 2000, the parties were required to manifest if they were willing to submit the case on the basis of the

pleadings/records already filed. Respondent sheriff's manifestation was received on August 23, 2000. No manifestation has been received from the complainant up to this time.

The Office of the Court Administrator exculpated respondent sheriff from the charge of exceeding his authority in attaching the properties involved. The OCA opined:

It is not the duty of the sheriff to determine, much less to ascertain, that the property subject of attachment is exempt or not. It behooves upon the judgment obligor to prove that said items are exempted. In *Herrera vs. McMiking*, (14 Phil 64) the Court had an occasion to enunciate that '[I]t is questionable whether it is the duty of Sheriff, when he has an execution to serve, to present the objection that the property of the judgment debtor is exempt from execution. The exemption provided for by law is a right accorded to debtors and a right which must be insisted upon or it may be lost.'

Complainant further theorizes that respondent committed an 'over-levy' of properties because the value of the properties attached is more than the value of the attachment bond posted by the plaintiffs. This contention should likewise fall into the ground.

A sheriff, in implementing a writ of attachment, is not dutybound to make a valuation of the attached properties. It is only upon the execution sale thereof that their values are ascertained with definitiveness. Section 16, Rule 57 of the 1997 Rules of Civil Procedure is explicit on this point, to wit:

'Section 16. Balance due collected upon an Execution; Excess Delivered to Judgment Obligor. - If after realizing upon all the property attached, including the proceeds of any debts or credits collected, and applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.' (underscoring ours)

It can be gleaned from the foregoing provision that the law does not require that the value of the property attached be exactly the same as the judgment debt it secures; it can be less or more than the latter. This is the contingency addressed by the aforequoted provision. Nevertheless, the valuation of the attached property is not made by the sheriff at the time of the enforcement of the writ. The sheriff's role in the execution of the writ is purely ministerial. He has no discretion whether to execute the writ or not (*Smith Bell and Co. vs. Saur*, 96 SCRA 667). Any objection to the attachment must be addressed to the judgment of the trial court through the proper proceeding. It is within the jurisdiction of the courts to correct error of their ministerial officers and to control their own processes (*Luna vs. IAC*, 137 SCRA 7).[1]

However, OCA found respondent sheriff liable for depositing the attached properties in the warehouse of Singson. In recommending the imposition of a fine of P1,000.00, the OCA found that:

Respondent admitted that he deposited the subject properties at plaintiff's warehouse because of lack of sufficient time to secure the services of a private bonded warehouse. In so doing, respondent ignored the mandatory provision of Section 7, Rule 57 of the 1997 Rule of Civil Procedure, to wit:

'Section 7. Attachment of Real and Personal Property - Real and personal property shall be attached by the sheriff executing the writ in the following manner:

XXX

XXX

XXX

'(b) Personal property capable of manual delivery, by taking and safely keeping it in his custody, after issuing the correspondent receipt therefor.'

Clearly, the law commands the sheriff to take possession and control of the attached properties. It does not give him any discretion on whether to keep it in his custody or to surrender it to the creditors. The consent given by complainant's daughter is of no moment, because it did not establish that the properties were in respondent sheriff's substantial presence and possession. Respondent fell short of his obligation to take and safely keep the attached properties 'in his custody'. (NBI vs. Tuliao, 270 SCRA 356). In the early case of Walker vs. McMiking, the Court had occasion to lay down the sheriff's duty in enforcing the writ of attachment, to wit:

'xxx A verbal declaration of seizure or service of a writ of attachment is not sufficient. There must be an actual taking of possession and placing of the attached property under the control of the officer or someone representing him. (Hollister vs. Goodale, 8 Conn. 332, 21 Am. Dec. 674; Jones vs. Howard, 99 Ga. 451, 59 Am St. Rep. 231)

'We believe that xxx to constitute a valid levy of an attachment, the officer levying it must take actual possession of the property attached as far as xxx practicable (under the circumstances). He must put himself in (a) position to, and must assert and, in fact, enforce a dominion over the property adverse to and exclusive of the attachment debtor, and such property must be in his substantial presence and possession. (Corniff vs. Cook, 95 Ga. 61, Am. St. Rep. 55, 61). Of course, this does not mean that the attaching officer may not, under an arrangement satisfactory to himself, put anyone in possession of the property for the purpose of guarding it, but he cannot in this way relieve himself from liability to the parties interested in said attachment.'

Respondent's claim that he did not have enough time to deposit the subject properties to a private warehouse is no justification. If he could deposit them to plaintiff's warehouse, there is no reason why he could not do so in another warehouse. His pretense of having acted in utmost good faith for the preservation of the attached properties is hardly credible because there was no reason for his having acted as such. In sum, he failed to satisfactorily explain why he failed to take such movable in his control. (NBI vs. Tuliao, supra, p. 358)[2]

Indeed, respondent sheriff was remiss in his duties when he deposited the attached properties in the warehouse of Singson, a party in the civil case below. This Court has repeatedly held,

xxx the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff and to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Respondent sheriff is a court employee. He is thus required to conduct himself with propriety and decorum. His actions must be beyond suspicion. xxx[3]

WHEREFORE, respondent sheriff ROMULO C. VICTORIA is hereby FINED THREE THOUSAND (P3,000.00) PESOS, chargeable against his retirement benefits.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Report of the Office of the Court Administrator, pp. 2-3, Rollo.

[2] Ibid., pp. 3-4.

[3] Gacho vs. Fuentes, Jr., 291 SCRA 474, 480 citing Flores v. Caniya, 256 SCRA 518.

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