

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
BENJAMIN VERGARA, JONA SARVIDA, MILAGROS MAJOREMOS,
MAJORIE JALALON, MAY JOY MENDOZA (@ MAY JOY SANDI), AND
JOY SABALLA (@ JOS...**

G.R. No. 154037. April 30, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Petitioners are the tenants of Berlito P. Taripe on a property located in Dr. A. Santos Ave., Parañaque City. On December 24, 2001, they were arrested by Ormoc City policemen by authority of a Warrant of Arrest dated November 19, 2001 issued by Judge Fortunito L. Madrona in Sp. Proc. No. 3695-0 for Issuance of Letters of Administration, Distribution and Partition pending before the Regional Trial Court of Ormoc City (Branch 12).[1]

The warrant of arrest stemmed from a motion filed by respondent Eleuteria P. Bolaño, as Special Administratrix of the estate of the late Anselma P. Allers, praying that petitioners be held guilty of indirect contempt for not complying with the probate court's order dated October 9, 1999 directing them to pay their monthly rentals to respondent Bolaño.[2]

It appears that pending the settlement of the estate of the deceased Allers, respondent Bolaño included the property leased by Taripe to petitioners in the inventory of the estate. The probate court issued the assailed Order dated October 5, 1999, portions of which read as follows:

- SUBMITTED FOR RESOLUTION is an omnibus motion filed by the Petitioner-Administratrix, informing among others, the submission of the Inventory of the Estate of the decedent, referred as Motion-Annex 'A' thereof. The Inventory shows that the properties left by the deceased consists of Real and Personal Properties, as well as Credits and Collectibles, itemized under letter heading A, B, and C of the Inventory, respectively.

- The Real Properties are occupied by some lessees, namely: Cargo Bridge Philippines Corporation, represented by its President Mr. Bernhard Ashauer, Jr.; Mrs. Lea Amorcillo, Mrs. Milagros Majoremos, Mr. Danilo Aguylo, Mrs. Marjorie Jalalon, Mrs. Jona Sarvida, Mrs. Analyn Malunes, Mrs. Edna Rubi, Mrs. Josephine Saballa, Mr. Benjamin Vergara, Mr. Jerry Peligro, Mrs. Mary Joy Sandi, and Mr. Jaime Cabarse, all inside the Allers' Property Compound at 8110 Dr. A. Santos Ave., San Dionisio, Parañaque City.

...

- It is further shown that all known intervenors, lessees and heirs were served of the motion and notified of the hearing, with no opposition except intervenor Berlito P. Taripe, based on his claim against the estate, which may be treated in due time for claims against the estate. However, the motion under consideration refers to the return to the court of the true Inventory of the Estate of the deceased within three (3) months as directed under Section 1, Rule 83 which sets a specific period of time to submit, otherwise it is violated. The opposition is not tenable.

- Finding the motion meritorious, the same is hereby GRANTED. As prayed for, the Inventory of the Estate

attached therewith as Motion-Annex 'A' (sic) and considered as a compliance of the required return of the true Inventory of the estate of the decedent.

- Further, the lessees above-cited and listed in the Inventory are directed to pay their respective monthly rental regularly starting the month of August, 1999, including arrears if any, to the duly appointed Special Administratrix Mrs. Eleuteria P. Bolaño, until further notice.

...

Let copies of this Order together with the Inventory served to all above-cited.

SO ORDERED.[3] (Emphasis Ours)

Copies of the order were sent on October 12, 1999 to petitioners via registered mail.[4]

Five months later, on motion of respondent Bolaño, as Special Administratrix, the probate court issued a writ of execution on March 3, 2000 to enforce the aforesaid order dated October 5, 1999. The Sheriff submitted a return dated August 10, 2000 stating that on June 5, 2000, he met with petitioners but failed to collect the rentals due on the property as Taripe had already collected from them three months advance rentals.[5]

On August 4, 2000, respondent Bolaño filed a motion to require petitioners to explain why they should not be cited in indirect contempt for disobeying the October 5, 1999 order of the probate court.[6] Petitioners were served copies of the motion by registered mail.[7] The probate court granted the motion in its Resolution dated September 7, 2000, portions of which read as follows:

The Motion to Exclude Certain Parcels of Land as part of the Estate of the decedent is also denied for lack of merit. The properties sought to be excluded by intervenor Bertito P. Taripe are titled/registered in the name of the decedent and therefore they should be included in the inventory of the intestate estate of Anselma Allers. If intervenor has claims against the estate, he should file a separate action against the Administratrix in accordance with Rule 87 of the Revised Rules of court. As it is, intervenor cannot claim ownership over properties registered in the name of the decedent by mere motion.

The Return of the Deputy Sheriff of the Writ of Execution is noted.

Petitioner's motion to let the lessees explain why they should not be cited for contempt for disobeying the Court's order is granted. All lessees listed on the Writ of Execution are hereby ordered to explain within twenty (20) days from receipt of this order why they should not be cited for indirect contempt of the Court for disobeying the Court's Order dated October 5, 1999, and the Writ of Execution dated May 29, 2000.

SO ORDERED. (Emphasis Ours)

Petitioners were furnished copies of the said Order on September 27, 2000 by registered mail.[8]

Six months later, in a letter dated March 18, 2001, some of the petitioners, together with the other tenants of the property, informed the probate court that they are "freezing" their monthly rentals as they are in a quandary as to whom to pay the rentals.[9]

Respondent Bolaño then filed on March 20, 2001, a motion to cite petitioners in contempt, which was set for hearing on May 11, 2001.[10] In its Order dated May 11, 2001, the probate court found petitioners guilty of indirect contempt and ordered them to pay a fine of P30,000.00 each and to undergo imprisonment until they comply with the probate court's order for them to pay rentals.[11]

Petitioners again wrote the probate court on June 11, 2001 asking that the indirect contempt "slapped" against them be withdrawn. They stated that their failure to attend the May 11, 2001 hearing was due to financial

constraints, most of them working on construction sites, receiving minimum wages, and repeated that the reason why they are freezing the monthly rentals is that they are uncertain as to whom to remit it.[12]

Upon motion of respondent Bolaño, the probate court, per its Order dated November 16, 2001, issued a warrant of arrest on November 19, 2001. On December 24, 2001, petitioners were arrested.

On December 26, 2001, petitioners filed with the Court of Appeals a petition for the issuance of a writ of habeas corpus.[13] On January 3, 2002, the appellate court ordered the temporary release of petitioners.[14] After due proceedings, the appellate court rendered its decision on March 26, 2002 denying the petition for lack of merit. The dispositive portion of the decision reads:

WHEREFORE, the instant petition for issuance of a writ of habeas corpus is hereby DENIED for lack of merit. This Court's resolution ordering the temporary release of the lessees is hereby RECALLED. The lessees are ordered REMANDED to the custody of the Jail Warden of Ormoc City until they have complied with the orders of the probate court.

No pronouncement as to costs.

SO ORDERED.[15]

Their motion for reconsideration having been denied, petitioners filed herein petition for review on certiorari under Rule 45 of the Rules of Court, based on the following grounds:

- THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE ORDER DATED OCTOBER 5, 1999 (ANNEX "E") PARTICULARLY THE PORTION THEREOF WHICH SUMMARILY DIRECTED THE LESSEES TO TURNOVER THEIR MONTHLY RENTALS OF THE APARTMENTS OF BERLITO P. TARIPE TO ELEUTERIA P. BOLAÑO AS SPECIAL ADMINISTRATRIX, IS UNLAWFUL;
- THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE MOTION FOR INDIRECT CONTEMPT OF COURT FILED BY RESPONDENT ELEUTERIA P. BOLAÑO AGAINST THE LESSEES IS NOT THE PROPER REMEDY AND THAT THE ORDER OF THE COURT A QUO GRANTING SAID MOTION AND DECLARING THAT THE LESSEES ARE GUILTY OF INDIRECT CONTEMPT IS A REVERSIBLE ERROR.
- THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE ORDER OF THE COURT A QUO TO ISSUE WARRANT OF ARREST AND THE SAID WARRANT SO ISSUED AS WELL AS THE ACTUAL ARREST OF SAID LESSEES IN COMPLIANCE THEREWITH, ARE UNLAWFUL;
- THE APPELLATE COURT ERRED IN NOT HOLDING THE TEMPORARY RELEASE OF THE LESSEES PERMANENT.[16]

The crux of petitioners' arguments is that they were not notified of the motion filed by respondent Special Administratrix Bolaño, submitting an inventory of the estate of the late Anselma P. Allers, which includes the property occupied by them. Such being the case, petitioners contend that the order dated October 5, 1999 granting the motion and directing them to pay the rentals to Bolaño is unlawful hence, their refusal to comply with it is not contumacious.[17] They also assail the appointment of respondent Bolaño as Special Administratrix for having been made without the required bond,[18] and that she has no authority to file the motion for indirect contempt, as her powers are limited.[19]

When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service.[20] The burden of proving notice rests upon the party asserting its existence.[21] In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13. In the present case, as proof that

petitioners were served with copies of the omnibus motion submitting an inventory of the estate of deceased Allers, respondent Bolaño presented photocopies of the motion with a certification by counsel that service was made by registered mail, together with the registry receipts.[22] While the affidavit and the registry receipts proved that petitioners were served with copies of the motion, it does not follow, however, that petitioners in fact received the motion. Respondent Bolaño failed to present the registry return cards showing that petitioners actually received the motion.[23] Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters.[24] Respondent also failed to present a certification of the postmaster that notice was duly issued and delivered to petitioners such that service by registered mail may be deemed completed.[25]

Nonetheless, even in the absence of proof of actual receipt by the petitioners, the subject orders issued by the probate court are valid and enforceable. Petitioners cannot deny the fact that they had actual knowledge of the said orders. They have admitted in their letter dated March 18, 2001 addressed to the probate court that they received the court's order dated October 5, 1999 "barely 2 months before,"[26] or sometime in January 2001. Instead of complying with the said order, they "froze" payment of their rentals for the reason that they are caught in the middle of the dispute and are not sure to whom to give the rentals. When respondent Bolaño filed the motion to cite them in indirect contempt, setting the hearing on May 11, 2001, again, records show that they had actual knowledge of the same. In their second letter, dated June 11, 2001, addressed to the probate court, they acknowledged that they knew of the hearing set on May 11, 2001, and the reason for their failure to attend was due to financial constraints.[27] They likewise admitted in said letter that they knew of the court's order dated May 11, 2001 finding them guilty of indirect contempt.[28] Petitioners therefore cannot cry denial of due process as they were actually notified of the proceedings before the probate court. Thus, under the circumstances, it is not imperative to require proof of a formal notice. It would be an idle ceremony where an adverse party, as in this case, had actual knowledge of the proceedings.[29]

When petitioners refused to remit the rentals to respondent Bolaño per Order dated October 5, 1999, a written charge of indirect contempt was duly filed before the trial court and hearing on the motion set on May 11, 2001. As previously stated, petitioners did not attend said hearing despite knowledge thereof; instead, they wrote the court on June 11, 2001 asking that the contempt findings against them be withdrawn. Clearly, they were given the opportunity to be heard, and as aptly stated by the court, they were given more than sufficient time to comply with the Order dated October 5, 1999.[30]

Despite the foregoing, we find that the trial court's finding of contempt and the order directing the imprisonment of petitioner to be unwarranted. The salutary rule is that the power to punish to contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. Court must exercise their contempt powers judiciously and sparingly, with utmost self-restraint.[31]

In *Halili vs. Court of Industrial Relations*,[32] the Court quoted the pronouncements of some American courts, to wit:

Except where the fundamental power of the court to imprison for contempt has been restricted by statute, and subject to constitutional prohibitions where a contemnor fails or refuses to obey an order of the court for the payment of money he may be imprisoned to compel obedience to such order. [*Fla.-Revell v. Dishong*, 175 So. 905, 129 Fla. 9; *Va. Branch v. Branch*, 132 S.E. 303; 144 Va.244]. (17 C.J.S. 287).

...

... It has been said that imprisonment for contempt as a means of coercion for civil purpose cannot be resorted to until all other means fail [*Mich.-Atchison, etc. R. co. v. Jennison*, 27 N.W. 6, 60 Mich. 232], but the court's power to order the contemnor's detension continues so long as the contumacy persists [*Ark.-Lane v.*

Alexander, 271 S.W. 710, 168 Ark. 700] (17 C.J.S. 289).[33]

which we hereby adopt as proper guidelines in the determination of whether the Court of Appeals erred in affirming the order of the trial court finding petitioners guilty of indirect contempt of court and directing their imprisonment for their contumacious refusal to pay the rentals to the administratrix.

In Philippine jurisdiction, Section 20, Article 3 of the 1987 Philippine Constitution expressly provides that no person shall be imprisoned for debt. Debt, as used in the Constitution, refers to civil debt or one not arising from a criminal offense.[34] It means any liability to pay arising out of a contract, express or implied.[35] In the present case, petitioners, as recognized lessees of the estate of the deceased, were ordered by the probate court to pay the rentals to the administratrix. Petitioners did not comply with the order for the principal reason that they were not certain as to the rightful person to whom to pay the rentals because it was a certain Berlito P. Taripe who had originally leased the subject property to them. Clearly, the payment of rentals is covered by the constitutional guarantee against imprisonment.

Moreover, petitioners cannot be validly punished for contempt under Section 8, Rule 71 of the Rules of Court to wit:

SEC. 8. Imprisonment until order obeyed. – When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it. (7a)

because herein subject order is not a special judgment enforceable, under Section 11, Rule 39, which provides:

SEC. 11. Execution of special judgment. – When a judgment requires the performance of any act other than those mention in the two preceding sections, a certified copy of judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

Section 9 of Rule 39 refers to the execution of judgments for money, thus:

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. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode or 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.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(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.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (8a, 15a)

while Section 10 of the same Rule refers to execution of judgments for specific acts such as conveyance, delivery of deeds or other specific acts vesting title; sale of real or personal property, delivery or restitution of real property, removal of improvements on property subject of execution and delivery of personal property.

The order directing the payment of rentals falls within the purview of Section 9 as quoted above. Until and unless all the means provided for under Section 9, Rule 39 have been resorted to and failed, imprisonment for contempt as a means of coercion for civil purposes cannot be resorted to by the courts.[36] In *Sura vs. Martin, Sr.*, [37] we held that:

Where an order for the arrest and imprisonment of defendant for contempt of court (for failure to satisfy a judgment for support on ground of insolvency) would, in effect, violate the Constitution.

Thus, petitioners could not be held guilty of contempt of court for their continued refusal to comply with the probate court's order to pay rentals to the administratrix nor could they be held guilty of contempt for disobeying

the writ of execution issued by the probate court, which directs therein the Sheriff, thus:

Should lessees fail to pay the aforementioned amounts on rentals, then of the goods and chattels of said lessees you may cause to be made the sum sufficient to cover the aforestated amounts, but if no sufficient personal properties are found thereof to satisfy this execution, then of the real properties you make the sums of money in the manner required by law and make return of your proceeding under this writ within the reglementary period.[38]

It was the sheriff's duty to enforce the writ.[39]

Under Section 9(b), Rule 39, of the Rules of Court, in cases when the execution calls for payment of money and the obligor cannot pay all or part of the obligation in cash, certified bank check or other mode or 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. The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon. When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees. Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

The writ of execution issued by the trial court in this case commanded its sheriff to collect from petitioners the rentals due from the property, and should they fail to pay, from petitioners' personal/real properties sufficient to cover the amounts sought to be collected.[40] It was not addressed to petitioners. It pertained to the sheriff to whom the law entrusts the execution of judgments,[41] and it was due to the latter's failure that the writ was not duly enforced.

In fine, the Court of Appeals committed a reversible error in affirming the Decision dated November 16, 2001 of the trial court.

WHEREFORE, finding the petition for review on certiorari to be with merit, the decision dated March 26, 2002 rendered by the Court of Appeals is REVERSED and SET ASIDE. Its Resolution dated January 3, 2002 ordering the temporary release of petitioners is made permanent. The Warrant of Arrest dated November 19, 2001 issued by the Regional Trial Court of Ormoc City (Branch 12) in Sp. Proc. No. 3695-0 is DEEMED RECALLED.

No costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Callejo, Sr., JJ., concur.

[1] CA Rollo, p. 56.

[2] Id., pp. 66, 99.

[3] Id., pp. 86-87.

[4] Id., back of p. 67.

- [5] Id., p. 79.
- [6] Id., p. 82.
- [7] Id., back of p. 85.
- [8] Id., back of p. 93.
- [9] Id., pp. 94-95.
- [10] Id., p. 96-98.
- [11] Id., pp. 99, 100.
- [12] Id., p. 101.
- [13] Docketed as CA-G.R. SP No. 68297.
- [14] CA Rollo, pp. 15-16.
- [15] Id., p. 134.
- [16] Rollo, p. 8.
- [17] Id., pp. 9-11.
- [18] Id., p. 9
- [19] Id., p. 11-12.
- [20] Ting vs. Court of Appeals, 344 SCRA 551, 561 [2000], citing 58 Am Jur 2d, Notice, § 45.
- [21] Ibid.
- [22] CA Rollo, Exhibit “4”, pp. 59-61.
- [23] Rules of Civil Procedure, as amended, Rule 13, Section 13.
- [24] Ting vs. Court of Appeals, supra, pp. 561-562, citing Central Trust Co. vs. City of Des Moines, 218 NW 580.
- [25] Rules of Civil Procedure, as amended, Rule 13, Section 10.
- [26] CA Rollo, Exhibit “13”, p. 94.
- [27] Id., Exhibit “17”, p. 101.
- [28] Ibid.
- [29] Melendres, Jr. vs. COMELEC, 319 SCRA 262, 280 [1999].
- [30] CA Rollo, Exhibit “20”, p. 113.
- [31] Heirs of the Late Justice Jose B.L. Reyes vs. Court of Appeals, G.R. Nos. 135180-81; 135425-26, August 16, 2000.
- [32] G.R. No. L-24864, November 19, 1985; 140 SCRA 73 (1985).
- [33] Id., p. 89.
- [34] Ganaway vs. Quillen, 42 Phil 805, 809 (1922), citing Tan Cong vs. Steward, No. 4703, June 14, 1907.

[35] Ibid.

[36] Halili case, *supra*, p. 89.

[37] G.R. No. L-25091, November 29, 1968; 26 SCRA 286.

[38] Exhibit “T”.

[39] *Lipata vs. Tutaan*, 209 Phil 719 (1983).

[40] *Rollo*, p. 78.

[41] *Lipata vs. Tutaan*, *supra*, citing *U.S. vs. Ramayrat*, 22 Phil. 183. Same holding in *Quizon vs. Philippine National Bank*, 85 Phil. 459; *Mendoza vs. Alano and Salceda*, 112 Phil. 445; *Gatchalian vs. Arlegui and Tan Tee vs. Arlegui*, L-32515 and L-41360, February 17, 1977; 75 SCRA 234 and *Fuentes vs. Leviste*, L-47363, October 28, 1982, 117 SCRA 958.

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