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SECOND DIVISION

[A.M. No. P-00-1373. September 4, 2001]

ELIZABETH A. TIONGCO, *complainant, vs.* **SHERIFFS ROGELIO S. MOLINA and ARNEL G. MAGAT,** *respondents.*

SYNOPSIS

A writ of execution was issued by the Clerk of Court in the ejectment case filed by complainant against the Spouses Dado. The writ was addressed to respondent Molina who assigned its implementation, with the approval of the Court, to respondent Magat. Magat, who implemented the writ, asked and personally received ₱2,500 from complainant allegedly for the implementation of the writ. The money was not deposited with the Clerk of Court but to one Lito Bati. Magat was thereafter charged with dereliction of duty, together with respondent Molina.

Respondent Molina, who had no part in the implementation of the writ, cannot be held administratively liable for dishonesty and dereliction of duty.

Sheriffs executing writs or processes are required to secure the approval of the court in estimating expenses the interested party has to incur in the implementation of the writ and to deposit the same with the Clerk of Court and the *Ex-Oficio* Sheriff who shall then disburse the same to the executing sheriff. Failure to comply with this rule, as Magat did, constitutes dereliction of duty. Sheriff Magat was fined the amount of ₱5,000.00.

SYLLABUS

1. **ADMINISTRATIVE LAW; JUDICIARY; SHERIFF; IMPLEMENTATION OF WRITS; EXPENSES MUST BE APPROVED BY THE COURT AND DEPOSITED WITH THE CLERK OF COURT AND *EX-OFICIO* SHERIFF; CASE AT BAR.** — Being an officer of the court, Magat must be aware that there are well-defined steps provided in the Rules of Court, particularly Rule 141, Sec. 9, final paragraph, regarding the payment of expenses that might be incurred with respect to

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properties to be levied. To restate what should be of common knowledge to court personnel: The rule requires the sheriff executing the writs or processes to estimate the expenses to be incurred and upon the approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court and the *Ex-oficio* Sheriff. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit. x x x Sheriff Magat ignored the procedures set forth in the Rules of Court. The money was not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. He should have waited for the money to be officially disbursed to him if indeed due or required for expenses. He should not go on accepting money from a party, much less requesting for it. Note that he also failed to properly liquidate the alleged expenses he incurred. Furthermore, he said he entrusted the expense money to one Lito Bati and left the disbursement thereof subject to the latter's disposal. Obviously, this practice departed far from the accepted procedure provided in the Rules of Court.

2. **ID.; ID.; ID.; BOUND TO DISCHARGE HIS DUTIES WITH PRUDENCE, CAUTION AND ATTENTION; NEGLECT AND FAILURE TO COMPLY FAITHFULLY WITH PROVISIONS OF RULE 141 CONSTITUTES DERELICTION OF DUTY AND NEGLIGENCE.** — As a responsible officer of the Court, Sheriff Magat is bound to discharge his duties with prudence, caution, and attention which careful men usually exercise in the management of their affairs. Upon him depends the execution of a final judgment of the Court; as a sheriff, he must be circumspect and proper in his behavior. His neglect and failure to comply faithfully with the provisions of Rule 141 created a negative impression and placed the sheriff's office as well as the court itself in a bad light. Complainant Tiongco clearly has reason to charge him for dereliction of duty and negligence, although not for dishonesty.

D E C I S I O N

QUISUMBING, *J.*:

Before the Office of the Court Administrator, Elizabeth A. Tiongco of La Loma, Quezon City, charged Sheriff IV Rogelio

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S. Molina and Sheriff IV Arnel Magat, both employed in the Office of the Clerk of Court, Regional Trial Court, Biñan, Laguna, with dereliction and dishonesty in the performance of duty.

In her sworn letter-complaint[1] dated October 8, 1997, Tiongco stated that she is the owner of a residential unit leased by spouses Ernesto Dado and Salvacion Dado in Block 5, Lot 1, Golden City Subdivision, Canlalay, Biñan. For their failure to pay monthly rentals, Tiongco filed a suit for ejectment against the Dados before the Municipal Trial Court of Biñan. After Tiongco won the suit, the Dados filed an appeal before the Regional Trial Court of Laguna but failed to post their *supersedeas* bond. Consequently, Tiongco filed a Motion for Execution Pending Appeal which was granted by Judge Rodrigo V. Cosico of the RTC of Laguna, Branch 24, in an Order dated July 23, 1997.[2] A writ of execution dated July 25, 1997, was accordingly issued by the Clerk of Court, addressed to Sheriff Rogelio S. Molina or his authorized representative.[3] Sheriff Molina then assigned the implementation of said writ to his representative, Sheriff Arnel Magat.[4]

Complainant Tiongco claims that Magat asked for ₱3,000.00 from her but she only gave him ₱2,500.00. The money, according to her, was supposed to be given to the police and for transportation in levying and confiscating the personal property of the spouses Dado. She then went to the rented premises with Magat, but he asked her to leave, telling her that he would take charge of everything.[5]

The following day, Tiongco said, she learned that Magat did not confiscate any item or property from the Dados. She was likewise informed that Magat received a postdated check in

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[1] *Rollo*, pp. 1-3.

[2] *Rollo*, Annex "B" of the Complaint.

[3] *Rollo*, Annex "C" of the Complaint.

[4] *Rollo*, p. 2.

[5] *Ibid.*

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his name from the Dados.[6] These developments prompted Tiongco to file an *ex-parte* motion praying that the court order Molina and Magat to explain what happened to the check and why the writ of execution remained unimplemented.[7] This motion was never acted upon.

Thereafter, complainant Tiongco learned that the Dados had already left the rented residential unit. When she inquired from Magat and Molina, they informed her that they had just come to know of it and that they were not able to get anything from the Dados.[8]

In his Comment on the complaint, Molina denies committing any malfeasance or misfeasance. He claims that he had no participation in the implementation of the writ of execution as he already assigned this task to Sheriff Magat. He said the practice of assigning the implementation of a writ to a co-sheriff was authorized by Judge Cosico.[9]

For his part, Magat comments that the complaint against him lacks factual basis. He avers that he received the writ of execution from Sheriff Molina on July 25, 1997. He then proceeded to the leased premises with Lito Bati, a utility worker of the court; Patrolman Miguel Teñido, and six *barangay tanods* (watchmen). He claims that on the same date, he levied personal properties of the spouses Dado, namely: one (1) big cabinet, one (1) small dresser, one (1) garden set, one (1) TV set, one (1) *sala* set and one (1) refrigerator (Winner).

Magat also claims that he only asked for ₱2,500.00, not ₱3,000.00 as claimed by the complainant. The money given to him by complainant was used for the implementation of the writ. He states that the ₱2,500.00 was given by him in turn to Lito Bati for safekeeping. Eventually it was disbursed to

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[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] 2nd Indorsement, March 24, 1998, pp. 1-2.

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pay SPO4 Miguel Teñido and the owner of the jeep engaged to haul the properties levied as well as for the purchase of their food,[10] according to Magat.

Magat adds that the leased premises was eventually turned over to complainant on October 7, 1998 as shown by a "Delivery of Possession" signed by Sheriff Molina. Magat executed a return form stating that the writ of execution was partially satisfied.[11]

Magat claims that complainant took actual possession of the levied properties despite his objections, considering that she was unsatisfied with the levy he made. In the meantime, Magat requested the spouses Dado to issue a check to cover the monetary portion of the decision. Said check was issued payable to the order of "Salvacion Dado" and remained unencashed as of the date of Magat's answer to the complaint.[12]

In its report dated February 4, 2000, the Office of the Court Administrator opined that the records of the case show that Sheriff Molina had no participation in the implementation of the writ. He cannot, therefore, be held administratively liable for dishonesty and dereliction of duty.

The OCA found that Sheriff Magat is the one liable for failing to comply with the last paragraph of Section 9, Rule 141 of the Rules of Court,[13] concerning Sheriff's expenses. It recommended

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[10] 2nd Indorsement, March 25, 1998, pp. 1-2.

[11] *Id.* at 2.

[12] *Ibid.*

[13] Sec. 9, last par., In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-oficio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to

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that he be fined ₱5,000.00 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[14]

We agree with the OCA's findings and recommendation. Clearly, Sheriff Molina had no participation in the implementation of the said writ. He had assigned the task to Sheriff Magat and such assignment had the approval of Judge Cosico.

It was Sheriff Magat who implemented the writ of execution issued by the court. He levied personal properties of the spouses as shown by the Sheriff's Return dated January 14, 1998. Further, he also convinced the defendant spouses to issue a personal check to cover the monetary portion of the decision. Nothing appears on record, however, to show that he deliberately delayed the implementation of the writ for his personal gain and to the disadvantage and injury of complainant. What is clearly shown is that Sheriff Magat overstepped his authority when he asked and personally received ₱2,500.00 from her. The fact that this money was allegedly used for the implementation of the writ is of no moment. Being an officer of the court, Magat must be aware that there are well-defined steps provided in the Rules of Court, particularly Rule 141, Sec. 9, final paragraph, regarding the payment of expenses that might be incurred with respect to properties to be levied. To restate what should be of common knowledge to court personnel:

> The rule requires the sheriff executing the writs or processes to estimate the expenses to be incurred and upon the approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court and the *Ex-oficio* Sheriff. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the

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liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

[14] Report of OCA, p. 5.

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process or writ. Any unspent amount shall be refunded to the party who made the deposit. x x x[15]

Sheriff Magat ignored the procedures set forth in the Rules of Court. The money was not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. He should have waited for the money

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[15] *Bercasio vs. Benito*, 275 SCRA 405, 411 (1997); See Sec. 9, Rule 141, Rules of Court:

SEC. 9. *Sheriffs and other persons serving processes.*-

(a) For serving summons and copy of complaint, for each defendant, fifty (₱50.00) pesos;

(b) For serving subpoenas in civil action or proceeding, for each witness to be served, twenty (₱20.00) pesos;

(c) For executing a writ of attachment against the property of defendant, fifty (₱50.00) pesos;

(d) For serving a temporary restraining order, or writ of injunction, preliminary or final, of any court, fifty (₱50.00) pesos;

(e) For executing a writ of replevin, fifty (₱50.00) pesos;

(f) For filing bonds or other instruments of indemnity or security in provisional remedies, for each bond, twenty (₱20.00) pesos;

(g) For executing a writ or process to place a party in possession of real estate, one hundred (₱100.00) pesos;

(h) For advertising a sale, besides cost of publication, fifty (₱50.00) pesos;

(i) For taking inventory of goods levied upon when the inventory is ordered by the court, one hundred (₱100.00) pesos per day of actual inventory work;

(j) For levying on execution on personal or real property, fifty (₱50.00) pesos;

(k) For issuing a notice of garnishment, for each notice, twenty (₱20.00) pesos;

(l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (₱4,000.00) pesos, four (4%) per centum.

2. On all sums in excess of four thousand (₱4,000.00) pesos, two (2%) per centum.

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to be officially disbursed to him if indeed due or required for expenses. He should not go on accepting money from a party, much less requesting for it.[16] Note that he also failed to properly liquidate the alleged expenses he incurred. Furthermore, he said he entrusted the expense money to one Lito Bati and left the disbursement thereof subject to the latter's disposal. Obviously, this practice departed far from the accepted procedure provided in the Rules of Court.

As a responsible officer of the Court, Sheriff Magat is bound to discharge his duties with prudence, caution, and attention which careful men usually exercise in the management of their affairs. Upon him depends the execution of a final judgment of the Court; as a sheriff, he must be circumspect and proper in his behavior.[17] His neglect and failure to comply faithfully with the provisions of Rule 141 created a negative impression and placed the sheriff's office as well as the court itself in a bad light. Complainant Tiongco clearly has reason to charge him for dereliction of duty and negligence, although not for dishonesty.

WHEREFORE, as recommended by the OCA, we find respondent Sheriff IV Arnel G. Magat, *GUILTY* of dereliction

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In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-oficio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

[16] See *Caseñares vs. Almeida, Jr.*, 324 SCRA 388, 395 (2000).

[17] *Evangelista vs. Penserga*, 242 SCRA 702, 709 (1995), citing *Eduarte vs. Ramos*, A.M. No. P-94-1069, 238 SCRA 36, 41 (1994).

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of duty and negligence for failure to comply with the final paragraph of Section 9, Rule 141, of the Rules of Court and hereby impose on him a fine of FIVE THOUSAND PESOS (₱5,000.00) with a stern warning that a repetition of the same or similar act shall be dealt with more severely. The complaint against respondent Sheriff IV Rogelio S. Molina is *DISMISSED* for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

THIRD DIVISION

[A.M. P-No. 01-1501. September 4, 2001]

JOSEPHINE D. SARMIENTO, *complainant, vs.* **ALBERT S. SALAMAT, Sheriff IV,** *respondent.*

SYNOPSIS

Respondent Sheriff was charged by Josephine Sarmiento with failure to execute the writ of demolition issued against her in Civil Case No. 297-95. Respondent denied the charge against him claiming that the failure to implement the writ was due to the inaction of the plaintiff in the implementation of the writ. Evidence disclosed that respondent offered to the plaintiff the services of the demolition crew of the Office of the Provincial Sheriff, but the latter refused. The plaintiff insisted that he would provide the logistics needed and the expenses to be incurred, but, even after the filing of this complaint plaintiff has not coordinated with respondent to effect the demolition. The Office of the Court Administrator (OCA) found the complaint baseless since the non-implementation of the writ is not attributable to respondent who is not obliged to proceed with the