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SECOND DIVISION

[A.M. No. P-12-3062. July 25, 2012]
(Formerly A.M. OCA IPI No. 11-3651-P)

NORMANDY R. BAUTISTA, *complainant, vs.* **MARKING G. CRUZ, Sheriff IV, Regional Trial Court, Branch 53, Rosales, Pangasinan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; MAY NOT BE CHARGED WITH REFUSAL TO PROCEED WITH THE IMPLEMENTATION OF THE WRIT IN THE ABSENCE OF A SPECIAL ORDER OF DEMOLITION FROM THE COURT.— Neither do we find respondent liable for his initial refusal to proceed with the implementation of the writ, absent a special order of demolition. x x x It is undisputed that a garage was installed on the subject lot covered by the MTC Decision, as modified by the CA. Since complainant did not present evidence to show that he had obtained a special order of demolition from the court, the sheriff was then under the obligation not to destroy, demolish, or remove the said improvement. The latter thus acted consistently with the letter of the Rules of Court when he refused to demolish the garage and to just wait for the issuance of a special order of demolition before proceeding with the full implementation of the Writ of Execution.

2. ID.; ID.; ID.; ID.; SHERIFF MAY NOT BE HELD LIABLE FOR REFUSING TO RECOVER THE COSTS OF SUIT IN THE ABSENCE OF PROOF THAT COMPLAINANT IS ENTITLED TO IT.— As regards the charge against respondent that he refused to recover the costs of suit complainant had incurred in his appeals to the CA and to this Court, the dispositive portions of their respective Decisions show that only the MTC and the RTC specifically ordered the payment of costs of suit by the defendants. The CA was silent as to the costs of suit incurred by the plaintiffs as a result of the appeal. As to the costs sustained by the plaintiffs following

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their appeal to this Court, we take note that they failed to attach the supposed Resolutions dated 29 July 2009 and 7 December 2009. Nevertheless, our records show that we did not grant the payment of costs of suit in favor of complainant. x x x Since it was complainant Bautista who filed the petitions before the CA and the SC, and both petitions were either dismissed or denied, it is important that he prove that courts have adjudged that the defendants shall pay the costs of the appeal. Contrary to the allegations of complainant, the plaintiffs were not the prevailing parties in the CA or the SC judgment. Consequently, absent any proof that the plaintiffs are entitled to the costs of suit before the CA and the SC, we find that the sheriff cannot be held liable for refusing to recover these expenses from the defendants in the ejectment case.

3. ID.; ID.; ID.; ID.; SHERIFF SHOULD SERVE THE NOTICE TO VACATE TO THE DEFENDANT'S COUNSEL ON RECORD.— We agree, however, with the allegation of complainant that the sheriff committed an error when he served the Notice to Vacate only on the defendants, and not their counsel. x x x Section 10(c), Rule 39 must be read in conjunction with Section 2, Rule 13 of the Rules of Court, which requires that service of pleadings or papers must be made on the counsel if a party is already represented by one. It is a settled rule that notice to the client will only be binding and effective if specifically ordered by the Court. Notice to the client and not to the counsel of record is not notice within the meaning of the law. Consequently, contrary to the recommendation of the OCA that service of the Notice to Vacate on the defendants themselves substantially complied with the essence and spirit of Rule 39, Section 10(c), the sheriff should have served the notice on the defendants' counsel of record and not on the defendants directly.

4. ID.; ID.; ID.; ID.; FAILURE TO SERVE NOTICE TO VACATE TO DEFENDANT'S COUNSEL AND TO SUBMIT PERIODIC REPORTS AMOUNT TO INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; PENALTY.— [W]e adopt the conclusion of the OCA insofar as it found respondent liable for inefficiency and incompetence in the performance of his official duties. Under Section 52(A)(16), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, inefficiency and

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incompetence in the performance of official duties is considered a grave offense with the corresponding penalty of six (6) months and one (1) day to one (1) year of suspension. We agree however with the view of the OCA that respondent's acts were not so grave as to merit suspension. We deem it more appropriate to reprimand respondent for his failure to send the Notice to Vacate to the counsel of defendants and to submit periodic reports to the court on the status of the implementation of the Writ of Execution.

R E S O L U T I O N

SERENO, *J.*:

Before the Court is an administrative complaint filed by Normandy R. Bautista (Bautista) against respondent Marking G. Cruz (Cruz), Sheriff IV, Regional Trial Court (RTC), Branch 53, Rosales, Pangasinan. The core issue at bench is whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution issued by the Municipal Trial Court (MTC) of Rosales, Pangasinan.[1]

FACTS

The case stemmed from the Complaint for Ejectment with Prayer for Writ of Demolition and Damages filed by plaintiffs Bautista, Rosamund Posadas (Posadas), and Madonna Ramos (Ramos) against defendants Teresita Vallejos (Vallejos) and Luisa Basconcillo (Basconcillo) (collectively, defendants). Plaintiffs therein alleged that they were the co-owners of the parcel of land situated in Rosales, Pangasinan, occupied by defendants. On 21 March 2007, the MTC rendered a Decision, the dispositive portion of which reads:[2]

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[1] *Rollo*, p. 38; Writ of Execution dated 15 April 2010. The writ was issued by Presiding Judge Charina Imelda A. Casingal-Sazon.

[2] *Rollo*, p. 45; MTC Decision dated 21 March 2007, p. 7. The MTC Decision in Civil Case No. 1178 was penned by Presiding Judge Charina Imelda A. Casingal-Sazon.

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WHEREFORE, judgment is hereby rendered in favor of the plaintiffs ordering the defendants to surrender the possession of the subject property to the plaintiffs and to refrain from building additional structures which would impede the passage of light and view to the former's residence. Costs against defendants.

The RTC in its 19 September 2007 Decision sustained that of the MTC Decision.[3] The Court of Appeals (CA) then affirmed the RTC with modification in the former's 20 November 2008 Decision,[4] the *fallo* of which reads:

WHEREFORE, the petition is ***DISMISSED***. The Decision dated September 19, 2007 and the Order dated December 19, 2007 of the RTC of Rosales, Pangasinan, Branch 53, in Civil Case No. 1178 are ***AFFIRMED*** with the MODIFICATION that the area of the subject property ordered to be surrendered by respondents should be ***3.42 square meters***.

In its 29 July 2009 and 7 December 2009 Resolutions, this Court upheld the CA Decision.[5] The Court's Resolutions became final and executory upon the recording thereof in the Book of Entries of Judgments on 3 February 2010. Consequently, the MTC issued a Writ of Execution on 15 April 2010,[6] commanding the sheriff to implement and execute its Decision as modified by the 20 November 2008 Decision of the CA.

Complainant Bautista posits that on 27 April 2010, he contacted respondent Sheriff Cruz to confirm whether the latter had already received the Writ of Execution issued by the MTC.

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[3] *Rollo*, p. 52; RTC Decision dated 19 September 2007, p. 7. The RTC Decision in Civil Case No. 1390-R was penned by Judge Teodorico Alfonso P. Bauzon.

[4] *Rollo*, p. 62; CA Decision dated 20 November 2008, p. 10. The CA Decision in CA-G.R. SP No. 102185 was penned by Justice Hakim S. Abdulwahid and concurred in by Justices Portia Alino-Hormachuelos and Teresita Dy-Liacco Flores.

[5] *Bautista v. Vallejos-Santos*, G.R. No. 188278, 29 July 2009 (unpublished); *Bautista v. Vallejos-Santos*, G.R. No. 188278, 7 December 2009 (unpublished); and Writ of Execution, *supra* note 1.

[6] Writ of Execution, *supra*.

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When the sheriff acknowledged receipt of the writ, Bautista then requested the former to implement it right away, as complainant was set to leave for Canada the following month. Further, complainant suggested that the Writ of Execution be satisfied by instead erecting a wall (temporary or permanent) encompassing the property, since the MTC had not issued a writ of demolition. Respondent purportedly agreed to the proposal and noted that the plan would not be contrary to the Decision of the court. He then supposedly assured complainant that the former would put everything in order and implement the writ on 07 May 2010.

On the day the writ was supposed to be implemented, respondent allegedly told complainant that a surveyor was needed to measure the subject area inside the garage. Complainant thus engaged the services of an engineer. Afterwards, respondent ostensibly informed complainant that the writ could not be implemented after all, as the metal door of the garage was locked and the defendants' car was parked inside. Complainant allegedly insisted that the sheriff just employ the services of a locksmith or use a bolt cutter to open the lock and hire a tow truck to take out the car. Complainant argued that a sheriff had the right to use all necessary and legal means, including reasonable force, to be able to implement a writ, but respondent nevertheless continued to refuse to implement the said writ.

Furthermore, complainant discovered that respondent served the Notice to Vacate only on the defendants, and not their counsel. This act allegedly had the effect of preventing the sheriff from executing the writ. Thus, complainant alleges that respondent may have been bribed by the defendants.

Complainant then alleges that respondent refused to recover the costs of suit the former incurred from the appeals to the CA and the Supreme Court (SC). Despite warnings that complainant would file an administrative charge against respondent, the latter was adamant in recovering only the costs of suit as indicated in the MTC Decision.

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Respondent refutes all the accusations against him. He claims that he has already fully implemented the writ, as evidenced by complainant's acknowledgment of the Certificate of Possession and by the Officer's Report dated 19 May 2011. He then asserts that any interruption and delay in the implementation of the writ was attributable to complainant. He recounts that complainant at first insisted that there was no need to hire a surveyor, as the subject lot was very small. Allegedly, it was only after respondent maintained that the services of a surveyor were vital to accurately identify the 3.42-square-meter portion that complainant employed one. Furthermore, complainant ostensibly told respondent to just demolish the garage, as the latter was authorized to do so. Respondent then averred that, without a court order authorizing a demolition, he could not place complainant in possession of the subject property. Complainant purportedly refused to listen and then just left respondent, with the threat of filing a case against the latter.

Respondent subsequently learned that complainant had already left for Canada. Thus, the sheriff instead contacted the other plaintiffs – Posadas and Ramos. However, they ostensibly told him that complainant, being their representative, was the one authorized to discuss the matter. Consequently, respondent was "constrained to shelve" the full implementation of the writ, as he needed the services of a surveyor and a representative whom the sheriff could place in possession of the property. Respondent argues that he has already explained in his Initial Report that he "could not just coerce or force the defendants x x x to vacate the garage and remove their car x x x considering that part of the lot where the garage was erected still belongs to the defendants."[7] He then explains that "only 3.42 square meters of the subject parcel [of] lot was ordered by the Court that should be vacated by the defendants and it runs through the garage as per [his] initial measurement."[8] Thus, he reasons that "the destruction of the padlock as per [the] suggestion [of

[7] *Rollo*, p. 94; Respondent's Comment dated 21 June 2011, p. 4.

[8] *Id.*

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complainant] and the corresponding removal of the car will not be [a] proper remedy,"[9] since there was no special demolition order issued by the court in relation thereto. They needed a surveyor in order "to know the accurate extent of the boundaries of the subject lot that should be surrendered to [the] possession [of the plaintiffs] by the defendants so that [they] could not [encroach] in their lot."[10]

Respondent then alludes to an MTC Order, which enjoins the parties to an ejectment case to coordinate with the sheriff as regards the latter's recommendation on the matter. It allegedly took a while before complainant communicated with respondent. On 18 May 2011, respondent, accompanied by complainant, implemented the Writ of Execution and returned to the subject lot. They then discussed the execution of the writ with defendant Vallejos, who eventually consented to the demolition of the garage on the subject portion. After the demolition, respondent turned over possession of the property to complainant.

Respondent further asserts that he did not violate any rule when he issued the Notice to Vacate. He explains that he sent the notice to defendants in order for them to peaceably vacate the premises and to avoid a forced eviction therefrom. He maintains that the service thereof on the defendants was not invalid, and that the "notice to counsel rule" is inapplicable. Moreover, this issue has already been rendered moot and academic by the full implementation of the writ.

With respect to the issue of the costs of suit, respondent insists that he did not receive from complainant the receipts for the filing fees paid to the CA and this Court. He also maintains that there was no award of costs of suit mentioned either in the CA or in the SC decision. He also points out that the Clerk of Court only gave him the form for the MTC legal fees for him to implement. Thus, he stresses that the payment by Vallejos of the legal fees paid by the plaintiffs was sufficient.

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[9] *Id.*

[10] *Id.*

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Respondent in turn accuses complainant of filing the administrative complaint in bad faith. The sheriff points out that he filed the complaint on 18 May 2011, the same day the Writ of Execution was fully implemented.

ISSUE

Whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution.

DISCUSSION

With respect to the charge that respondent received monetary consideration from the defendants in the ejectment case, this Court agrees with the conclusion of the Office of the Court Administrator (OCA) as follows:

> [T]he same is evidently a mere supposition unsupported by any convincing evidence. The fact that respondent sheriff declared in his Report that he had met the defendants more than once could not be considered even as a speck of evidence to prove that he had been bribed by the defendants. In the absence of any proof to corroborate the allegation, the same would never stand the test of reason, and is bound to fail.[11]

Since complainant failed to establish that respondent received any bribe from the defendants in order to prevent the implementation of the Writ of Execution, we find that there is no basis to hold respondent liable.

Neither do we find respondent liable for his initial refusal to proceed with the implementation of the writ, absent a special order of demolition. Rule 39 of the Rules of Court is clear on the matter:

SEC. 10. *Execution of judgments for specific act.*

xxx xxx xxx

(d) *Removal of improvements on property subject of execution.*

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[11] *Rollo*, p. 446; OCA Report dated 16 February 2012, p. 6.

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— **When the property subject of the execution contains improvements constructed** or planted by the judgment obligor or his agent, the **officer shall not destroy, demolish or remove said improvements except upon special order of the court**, issued **upon motion of the judgment obligee after due hearing** and **after the former has failed to remove the same within a reasonable time** fixed by the court. (14a) (Emphasis supplied)

It is undisputed that a garage was installed on the subject lot covered by the MTC Decision, as modified by the CA. Since complainant did not present evidence to show that he had obtained a special order of demolition from the court, the sheriff was then under the obligation not to destroy, demolish, or remove the said improvement. The latter thus acted consistently with the letter of the Rules of Court when he refused to demolish the garage and to just wait for the issuance of a special order of demolition before proceeding with the full implementation of the Writ of Execution.[12]

As regards the charge against respondent that he refused to recover the costs of suit complainant had incurred in his appeals to the CA and to this Court, the dispositive portions of their respective Decisions show that only the MTC and the RTC specifically ordered the payment of costs of suit by the defendants.[13] The CA was silent as to the costs of suit incurred by the plaintiffs as a result of the appeal.[14] As to the costs sustained by the plaintiffs following their appeal to this Court, we take note that they failed to attach the supposed Resolutions dated 29 July 2009 and 7 December 2009. Nevertheless, our records show that we did not grant the payment of costs of suit in favor of complainant.

We quote the following provisions of Rule 142 of the Rules of Court for reference:

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[12] See *Fuentes v. Leviste*, 203 Phil. 313 (1982).

[13] MTC Decision, *supra* note 2; RTC Decision, *supra* note 3.

[14] CA Decision, *supra* note 4.

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SECTION 1. *Costs ordinarily follow results of suit*. — Unless otherwise provided in these rules, **costs shall be allowed to the prevailing party as a matter of course**, **but the court shall have power**, **for special reasons, to adjudge that either party shall pay the costs of an action**, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

SEC. 8. *Costs, how taxed*. — In **inferior courts**, the costs shall be **taxed by the municipal or city judge and included in the judgment**. In **superior courts**, costs shall be **taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party**. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. **The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution**. (Emphases supplied)

Since it was complainant Bautista who filed the petitions before the CA and the SC, and both petitions were either dismissed or denied, it is important that he prove that courts have adjudged that the defendants shall pay the costs of the appeal. Contrary to the allegations of complainant, the plaintiffs were not the prevailing parties in the CA or the SC judgment.[15] Consequently, absent any proof that the plaintiffs are entitled to the costs of suit before the CA and the SC, we find that the sheriff cannot be held liable for refusing to recover these expenses from the defendants in the ejectment case.

We agree, however, with the allegation of complainant that the sheriff committed an error when he served the Notice to Vacate only on the defendants, and not their counsel. The pertinent sections of the Rules of Court are cited as follows:

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[15] Writ of Execution, *supra* note 1. The writ states that the Third Division of this Court denied Bautista's Petition for Review on *Certiorari* through its 29 July 2009 and 7 December 2009 Resolutions.

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Rule 13

SEC. 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the **act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.** Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (2a)

Rule 39

SEC. 10. *Execution of judgments for specific act.*

xxx xxx xxx

(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. (13a) (Emphases supplied)

Section 10(c), Rule 39 must be read in conjunction with Section 2, Rule 13 of the Rules of Court, which requires that service of pleadings or papers must be made on the counsel if a party is already represented by one. It is a settled rule that notice to the client will only be binding and effective if specifically ordered by the Court. Notice to the client and not to the counsel of record is not notice within the meaning of the law.[16] Consequently, contrary to the recommendation of the OCA that service of the Notice to Vacate on the defendants themselves

[16] *Philippine National Bank v. Court of Appeals*, 316 Phil. 371 (1995); and *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 273 Phil. 467 (1991).

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substantially complied with the essence and spirit of Rule 39, Section 10(c), the sheriff should have served the notice on the defendants' counsel of record and not on the defendants directly.

Finally, as regards the allegation that respondent failed to continue implementing the writ and to submit a periodic report on his efforts every 30 days, we quote with approval the findings of the OCA, *viz*:

> [R]espondent sheriff made no positive assertion to disprove the claim. xxx In perusing the [Officer's Reports he attached with his Comment], it would appear that from the months of August 2010 to April 2011, respondent sheriff failed to submit his report concerning his attempt to implement the writ of execution. The supposition that he made no effort to submit his monthly report is backed up by respondent sheriff's own admission that he was "constrained to shelve for a while the full implementation of the writ of execution" due to the absence of complainant. Since [respondent] made no effort, during the intervening period, to implement the writ, it is safe to assume that no monthly report was submitted by him during said period since there was nothing really to be reported at all. Such being the case, it becomes an evident disregard on the part of respondent sheriff of Rule 39, Section 14 of the Rules of Court:
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> > **SEC. 14.** *Return of writ of execution*. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor**. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.[17] (11a) (Emphasis supplied)

[17] *Rollo*, pp. 448-449; OCA Report dated 16 February 2012, pp. 8-9.

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In *Concerned Citizen v. Torio*,[18] we have explained that it is compulsory for the sheriff to execute and make a return on the writ of execution within the period provided under Section 14, Rule 39 of the Rules of Court. Furthermore, the sheriff must submit periodic reports on partially satisfied or unsatisfied writs, so that the court as well as the parties may be apprised of the actions carried out in relation thereto. As stated under the rules, the periodic reporting must be done regularly and consistently every 30 days until the writ is returned fully satisfied.

For the foregoing reasons, we adopt the conclusion of the OCA insofar as it found respondent liable for inefficiency and incompetence in the performance of his official duties. Under Section 52(A)(16), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, inefficiency and incompetence in the performance of official duties is considered a grave offense with the corresponding penalty of six (6) months and one (1) day to one (1) year of suspension. We agree however with the view of the OCA that respondent's acts were not so grave as to merit suspension. We deem it more appropriate to reprimand respondent for his failure to send the Notice to Vacate to the counsel of defendants and to submit periodic reports to the court on the status of the implementation of the Writ of Execution.

WHEREFORE, respondent sheriff Marking G. Cruz is found guilty of inefficiency and incompetence in the performance of official duties and is hereby **REPRIMANDED,** with a stern **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

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[18] 433 Phil. 649 (2002).

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.