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SECOND DIVISION

[Adm. Case No. 2734. July 30, 1986]

ROSA SANTIAGO ARCADIO, et al., *complainants, vs.* **ATTY. CESAR ZOOK YLAGAN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTION; EJECTMENT; WRIT OF EXECUTION; EXTENT OF AUTHORITY OF OFFICER TO ENTER A MAN'S HOUSE.**— The case of *Keith vs. Johnson* summed up the rules on the extent of the authority of an officer to enter a man's house, in this wise: "The common law, jealous of intrusion upon domestic peace and security, did not permit an officer to break open an outer door of the defendant's dwelling house, for the purpose of executing a *ca. sa.* upon a person, or of levying a *fi. fa.* on the goods of the defendant, unless the king was plaintiff. Every man's house was deemed his castle, and an ordinary judicial writ did not authorize the opening of the outer door, lest the king's enemies might enter; but the officer, once legally in the house, had a right to open an inner door: x x x But the executions in civil cases for specific property might have authorized the breaking of the house, if the officer could not otherwise execute the command of the writ. Executions for the specific thing which had been adjudged to be the property of the plaintiff, were of that character, such, for example, as a writ of seisin, or an *habere facias possessionem*; because, 1] If resisted, the officer could not execute the writ, unless he employed force to overcome resistance; 2] The thing had been judicially ascertained to be the property of the plaintiff and not of the defendant; 3] The defendant would be guilty of a contempt of the court, and a prostitution of his sanctuary, by concealing within his closed walls, that which he knew not to be his, and which the law had commanded him to surrender to the true owner. Hence when a writ of seisin was resisted, the officer had a right to employ whatever force the exigency made necessary to enable him to enter the house, and to turn the defendant out and put the plaintiff in."

2. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR.**— The name of the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the

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actual possession of the land recovered is called a *habere facias possessionem*. The records show that the writ of execution issued by Judge Gorospe, Jr. of the Metropolitan Trial Court on May 10, 1984 partakes of the nature of a *habere facias possessionem*. It commanded the sheriff to cause the defendant Arcadio to vacate the premises of the plaintiffs bearing No. 26 situated at the corner of Judge Juan Luna and Pitimini Streets, Barangay Paltok, San Francisco del Monte, Quezon City, as well as all persons claiming rights under her and restore possession thereof to the plaintiff. Since it is not disputed that no one was in the apartment at the time execution was carried into effect and the doors, windows and outer gate were padlocked, there was no need for the sheriffs and the respondent to secure a "break-open" order inasmuch as the character of the writ in their hands authorized them to break open the apartment, if they could not otherwise execute its command.

3. **ID.; ID.; ID.; "BREAK-OPEN" ORDER NECESSARY WHEN EXECUTION INCLUDES DEMOLITION.**— There is merit in the position taken by the respondent, manifested in a memorandum of authorities submitted to supplement his comment, that there is only one instance in the Rules of Court which requires a special "break-open" order — that referred to in Section 14, Rule 39, which reads: "Sec. 14. Removal of improvements on property subject of execution. — When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court." The situation contemplated under the foregoing section is very much different from the case at bar since no building or structure constructed by the tenant was demolished or required to be demolished. The charge therefore cannot prosper, in the absence of any rule which imposes upon the officer the duty to obtain a break open order.

4. **ID.; ID.; FORCIBLE ENTRY AND DETAINER CASES; TECHNICALITIES OF PROCEDURE CAUSING UNNECESSARY DELAY SHOULD BE AVOIDED.**— Cases of forcible entry and detainer are summary in nature, for they involve perturbation of social order which must be restored as promptly as possible, and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided.

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Hence, when an officer duly qualified to act under a writ of execution in an ejectment case should be obstructed by a lock or a latch, he is not expected to lie in wait around the premises until such time as the tenants arrive. He has the right to employ force necessary to enable him to enter the house and enforce the judgment. If the rule were otherwise, and as experience has shown, the prevailing party will be at the mercy of his adversary who will stop at nothing to thwart execution.

5. **ID.; EVIDENCE; DISBARMENT; CLEAR PREPONDERANT EVIDENCE NECESSARY TO JUSTIFY IMPOSITION OF ADMINISTRATIVE PENALTY; ABSENT IN CASE AT BAR.**— In disbarment proceedings, the burden of proof rests upon the complainant and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequences of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty. After a careful consideration of the allegations of the complaint, supported by annexes, and the comment thereto, likewise with annexes, We are convinced that the complainants failed to meet the above standard to warrant the disbarment of respondent.

6. **ID.; COURTS; PRIVATE PERSONS AND DISGRUNTLED OPPONENTS SHOULD NOT BE USED TO VENT THEIR RANCOR ON MEMBERS OF THE BAR.**— While courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, they will, on the other hand, protect them from the unjust accusations of dissatisfied litigants. Private persons and particularly disgruntled opponents, may not, therefore be permitted to use the courts as vehicle through which to vent their rancor on members of the Bar.

RESOLUTION

FERNAN, *J.*:

Rosa Santiago Arcadio, Jose C. Santiago, Iris C. Santiago and Guillerma C. Santiago filed a sworn letter-complaint on February 15, 1985 praying that Atty. Cesar Z. Ylagan be disbarred on the

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ground that he, together with the sheriffs of Quezon City and two barangay officials, "used violence to break open our domicile WITHOUT authority from the court."

Complainant Rosa Arcadio is the lessee of an apartment bearing No. 26 situated at the corner of Judge Juan Luna and Pitimini Streets, Barangay Paltok, San Francisco del Monte, Quezon City. The apartment is owned by Ernesto Ylagan, brother of respondent. Sometime in 1983, respondent, as counsel for his brother, instituted an ejectment suit against Arcadio before the Metropolitan Trial Court of Quezon City, based on three grounds: sublease by the lessee of the premises to another without the consent of the lessor; need of the lessor/owner to repossess the unit for his own use or for the use of any immediate member of his family; and, ownership by the lessee of another residential unit in Alabang, Muntinlupa, Metro Manila.

For failure to answer, Arcadio was declared in default. Soon thereafter, a decision was rendered in favor of Ernesto Ylagan. However, this decision was set aside upon motion of Arcadio. On January 23, 1984, Arcadio was ordered to vacate the apartment and to restore possession thereof to the owner, as well as to pay P1,000.00 a month as damages in the form of reasonable compensation for the use and occupancy of the premises, starting June, 1983 until it is vacated and the sum of P1,000.00 by way of attorney's fees, in addition to the costs. The trial court found that all three grounds were duly established, any of which was sufficient to justify Arcadio's ejectment.

Arcadio appealed to the Regional Trial Court but respondent moved for execution pending appeal, which was granted. The writ of execution was issued on May 10, 1984. Thereupon, Arcadio filed a petition for *certiorari* with the Regional Trial Court, which issued a temporary restraining order on May 16, 1984. On June 5, 1984, the petition was dismissed and accordingly, the restraining order was lifted, thereby paving the way for execution.

Thus, pursuant to the writ of execution, Sheriffs Johnny Reyes and Florencio Pangilinan, accompanied by Barangay Secretary Teresita Magnaye, Kabataang Barangay Chairman Marcelino Daligdig and the respondent, proceeded to the subject premises in

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the morning of June 7, 1984. It was the manner in which the writ was carried out which led to the filing of the instant administrative case.

Complainants alleged that Arcadio left the apartment in the morning of June 7, 1984 to ask the help of her sister in putting up a supersedeas bond to stay execution of the judgment; that to ensure herself that nothing untoward happens in her absence, Arcadio left her two young nieces [herein complainants Iris C. Santiago and Guillerma C. Santiago] in the next door apartment occupied by her brother, then closed and padlocked the doors, windows and the outer gate: that about 11:00 that morning, respondent, together with the sheriffs and barangay officials, arrived and when they found the gate padlocked, they shook and banged it until the small padlock was "smashed"; that the group, under the leadership of respondent, used tools to open the apartment door and once inside, they forced open the doors of the rooms and ransacked the place; and that before leaving the premises, respondent locked the doors and gate with new padlocks, to the prejudice of the complainants who were humiliated in the neighborhood because it took them a long time to unlock the doors. It is the contention of complainants that the enforcement of the writ was irregular and illegal because the acts of violence perpetrated by respondent and his group were without authority from the court.

In his comment, respondent averred that the complainants, in order to mislead the Court, conveniently omitted in their entire narration, affidavits and documents, the fact that on the date, time and place mentioned, he, the sheriffs of Quezon City and the barangay officials were implementing a writ of execution issued by the Metropolitan Trial Court of Quezon City in Civil Case No. 43572, entitled "Ernesto Z. Ylagan *versus* Rosa Arcadio." Respondent alleged that when they arrived at the apartment, it was abandoned and padlocked from the outside, which are indications that their arrival was anticipated and that complainants intended to frustrate the writ; that the service of the writ was carried out in a most civil and orderly fashion notwithstanding the belligerent attitude of persons purporting to be Arcadio's relatives, friends and counsel, who were present during their entire stay in the premises; and that these people even summoned a police patrol,

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but the policemen, after checking the identification of the sheriffs and verifying the writ, found everything in order and left. Respondent argued that if complainants had a real case against him, they would have filed the complaint immediately after June 7, 1984 and not wait for eight months before filing the same. In addition, respondent claimed that the motive of complainants in proceeding to disbar him was to harass him and to set a leverage against an impending execution. He explained that on January 21, 1985, shortly before the present complaint was filed, the Regional Trial Court, which had in the meantime affirmed the decision of the trial court, had directed the issuance of a writ of execution for failure of Arcadio to periodically deposit, during the pendency of the appeal, the amount adjudged as the reasonable value for the use and occupation of the premises. The complainants, who were again threatened by eviction, wanted to retaliate against him.

The complaint must be dismissed for lack of legal basis.

The case of *Keith vs. Johnson*[1] summed up the rules on the extent of the authority of an officer to enter a man's house, in this wise:

"The common law, jealous of intrusion upon domestic peace and security, did not permit an officer to break open an outer door of the defendant's dwelling house, for the purpose of executing a *ca. sa.* upon a person, or of levying a *fi. fa.* on the goods of the defendant, unless the king was plaintiff. Every man's house was deemed his castle, and an ordinary judicial writ did not authorize the opening of the outer door, lest the king's enemies might enter; but the officer, once legally in the house, had a right to open an inner door: x x x But the executions in civil cases for specific property might have authorized the breaking of the house, if the officer could not otherwise execute the command of the writ. Executions for the specific thing which had been adjudged to be the property of the plaintiff, were of that character, such, for example, as a writ of seisin, or an *habere facias possessionem*; because, 1] If resisted, the officer could not execute the writ, unless he employed force to overcome resistance; 2] The thing had been judicially ascertained to be the property of the plaintiff and not of the defendant; 3] The defendant would be guilty of a contempt of the court, and a prostitution of his

[1] 1 Dana 604, 25 Am. Dec. 167.

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sanctuary, by concealing within his closed walls, that which he knew not to be his, and which the law had commanded him to surrender to the true owner. Hence when a writ of seisin was resisted, the officer had a right to employ whatever force the exigency made necessary to enable him to enter the house, and to turn the defendant out and put the plaintiff in."

The name of the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the actual possession of the land recovered is called a *habere facias possessionem*.[2] The records show that the writ of execution issued by Judge Gorospe, Jr. of the Metropolitan Trial Court on May 10, 1984 partakes of the nature of a *habere facias possessionem*. It commanded the sheriff to cause the defendant Arcadio to vacate the premises of the plaintiffs bearing No. 26 situated at the corner of Judge Juan Luna and Pitimini Streets, Barangay Paltok, San Francisco del Monte, Quezon City, as well as all persons claiming rights under her and restore possession thereof to the plaintiff. Since it is not disputed that no one was in the apartment at the time execution was carried into effect and the doors, windows and outer gate were padlocked, there was no need for the sheriffs and the respondent to secure a "break-open" order inasmuch as the character of the writ in their hands authorized them to break open the apartment, if they could not otherwise execute its command.

Moreover, there is merit in the position taken by the respondent, manifested in a memorandum of authorities submitted to supplement his comment, that there is only one instance in the Rules of Court which requires a special "break-open" order - that referred to in Section 14, Rule 39, which reads:

"Sec. 14. Removal of improvements on property subject of execution.— When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

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[2] Black's Law Dictionary, p. 639, 5th Edition.

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The situation contemplated under the foregoing section is very much different from the case at bar since no building or structure constructed by the tenant was demolished or required to be demolished. The charge therefore cannot prosper, in the absence of any rule which imposes upon the officer the duty to obtain a break open order.

Cases of forcible entry and detainer are summary in nature, for they involve perturbation of social order which must be restored as promptly as possible, and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided.[3] Hence, when an officer duly qualified to act under a writ of execution in an ejectment case should be obstructed by a lock or a latch, he is not expected to lie in wait around the premises until such time as the tenants arrive. He has the right to employ force necessary to enable him to enter the house and enforce the judgment. If the rule were otherwise, and as experience has shown, the prevailing party will be at the mercy of his adversary who will stop at nothing to thwart execution.

In disbarment proceedings, the burden of proof rests upon the complainant and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequences of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[4]

After a careful consideration of the allegations of the complaint, supported by annexes, and the comment thereto, likewise with annexes, We are convinced that the complainants failed to meet the above standard to warrant the disbarment of respondent.

The incident complained of occurred on June 7, 1984. The day after, June 8, 1984, complainants filed a supersedeas bond. On

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[3] *Co Tiamco vs. Diaz*, 75 Phil. 672.

[4] *Sarmiento vs. Agra*, 135 SCRA 3, citing *Noriega vs. Sison*, 15 SCRA 293; *Santos vs. Dichoso*, 84 SCRA 622.

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January 10, 1985, respondent moved for execution on the ground that Arcadio defaulted in the payment of the mandatory deposit to stay execution pending appeal. On January 21, 1985, the Regional Trial Court favorably acted on the motion for execution. At this point, complainants were threatened anew with eviction. Twenty-five days later or eight months after June 7, 1984, complainants initiated the present administrative case. These circumstances cast a grave and serious doubt as to the motive of complainants. We agree with the respondent that if there was an irregularity in the enforcement of the writ, complainants would have immediately proceeded against him. It is in accord with human nature to assert a right most strongly when it is first invaded.[5] The unexplained delay gives rise to the inference that the complaint is a mere afterthought. Undoubtedly, the complaint is the product of resentment and bitterness of the complainants who wanted to strike back at the respondent for the defeat they suffered in his hands.

Also, the circumstance that no arrest was made by the policemen summoned by Jose Santiago, one of the complainants, bolsters the claim of respondent that, after a verification of the writ and a check on the identification of the sheriffs, the policemen found everything in order. Furthermore, it is intriguing why Arcadio, whose brother resided in the next door apartment, had to padlock the windows, doors and outer gate before leaving the premises that morning of June 7, 1984. There is reason to conclude that her actuations betrayed her intention to frustrate the writ.

While courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, they will, on the other hand, protect them from the unjust accusations of dissatisfied litigants. Private persons and particularly disgruntled opponents, may not, therefore be permitted to use the courts as vehicle through which to vent their rancor on members of the Bar.[6]

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[5] *Arboleda vs. Gatchalian*, 58 SCRA 64.

[6] *Santos vs. Dichoso*, 84 SCRA 622.

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In view of the foregoing, We find no reason or necessity to refer this complaint to the Solicitor General for investigation, report and recommendation.

WHEREFORE, this administrative case is hereby dismissed for lack of merit.

SO ORDERED.

Feria (Chairman), Alampay, Gutierrez, Jr., and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 55935. July 30, 1986]

MARCOPPER MINING CORPORATION, *petitioner, vs.* **MIGUEL GARCIA and HON. ROSALIO A. DE LEON, in his capacity as Presiding Judge of the Court of First Instance of Marinduque,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; RULE THAT NO EVIDENCE MAY BE ALLOWED WHEN SAID MOTION IS BASED ON INSUFFICIENCY OF CAUSE OF ACTION, NOT ABSOLUTE; CASE AT BAR.**— The rule on a motion to dismiss cited by the petitioner, that no evidence may be allowed and the issue should be determined by the allegations of the complaint while correct as a general rule is not without exceptions. In the present case, before the trial court issued the questioned order dismissing petitioner's complaint, it had the opportunity to examine the merits of the complaint, the answer with counterclaim, the petitioner's answer to the counterclaim and its answer to the request for admission. It was but logical for said court to consider all of these pleadings in determining whether or not there was a sufficient cause of action in the petitioner's complaint. The order of dismissal was in the