

FIRST DIVISION

[A.M. No. P-06-2250 (Formerly OCA IPI No. 06-2413-P), March 24, 2008]

**MARY ANN ESTOQUE, Complainant, vs. REYNALDO O. GIRADO,
Sheriff IV, Regional Trial Court, Branch 33, Davao City,
Respondent.**

DECISION

AZCUNA, J.:

This administrative case stemmed from the verified Letter-Complaint^[1] of Mary Ann Estoque against Reynaldo O. Girado, Sheriff IV of Regional Trial Court, Branch 33, Davao City, for dereliction of duty in connection with the latter's alleged unreasonable failure and refusal to implement the writ of execution in Civil Case No. 23-242-94 entitled "*Marcela A. Estoque et al. v. Apo View Hotel, et al.*"

In the letter-complaint received by the Office of the Court Administrator (OCA) on April 3, 2006, complainant Estoque averred:

I am one of the plaintiffs in Civil Case No. 23,248-94, entitled "MARCELA A. ESTOQUE, MARY ANN ESTOQUE, and NEIL MARK ESTOQUE, Plaintiffs, - versus - APO VIEW HOTEL, duly represented by MARIANO PAMINTUAN, JR., E.B. VILLAROSA & PARTNER CO., LTD., duly represented by ENGR. FELICIANO A. SUBANG and FREYSSINET DAVAO, INC., duly represented by ENGR. REYNALDO T. FUENTES, Defendants" for injunction with prayer for temporary restraining order, damages and attorney's fees, pending before the Regional Trial Court, 11th Judicial Region, Branch 33, Davao City (hereafter "RTC 33")[.] The case was filed on October 27, 1994.

On November 9, 1994, RTC 33 rendered its Decision based on the Amicable Settlement entered into by the parties on November 8, 1994. For failure of the defendants to completely comply with the terms and conditions of the Amicable Settlement, a writ of execution, upon proper motion, was issued on April 7, 1999.

Despite the writ of execution issued on April 7, 1999, the defendants still failed to completely comply with the terms and conditions of the Amicable Settlement.

On March 10, 2000, my lawyer filed a motion for issuance of alias writ of execution. RTC 33 granted the said motion in its order dated April 14, 2000, and an alias writ of execution was issued on July 7, 2000.

My complaint is about the unreasonable failure and refusal of the sheriff assigned at RTC 33 in the person of **SHERIFF REYNALDO O. GIRADO**

to implement, despite the length of time and follow-ups, the alias writ of execution issued pursuant to the court order dated April 14, 2000. For the said sheriff's failure to implement the alias writ of execution and his failure to make a return of the writ, I was forced to bring to the attention of RTC 33 the matter by filing appropriate motions and manifestations.

The following are the records of events[:]

1. On February 1, 2001, my lawyer filed an "EX-PARTE MOTION TO DIRECT THE SHERIFF TO MAKE A RETURN OF THE WRIT OF EXECUTION" xxx;
2. On February 1, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to submit his Sheriff's Return of the Writ of Execution issued pursuant to the order dated April 14, 2000 xxx. Sheriff Reynaldo Girado failed to submit the Sheriff's Return despite the court order;
3. On April 25, 2001, my lawyer filed an EX-PARTE MOTION TO DIRECT THE SHERIFF OF THIS BRANCH (referring to RTC 33) TO SHOW WHY HE SHOULD NOT BE CITED FOR CONTEMPT OF COURT FOR HIS CONTINUED FAILURE TO MAKE A SHERIFF'S RETURN OF THE WRIT OF EXECUTION" x x x[;]
4. On April 27, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to show cause why he should not be cited for contempt for failure to submit his sheriff's return on the steps he had taken with respect to the writ of execution, within ten (10) days from receipt of the order xxx. Despite the said order, Sheriff Reynaldo Girado failed to submit his comment or explanation why he should not be cited for contempt for failure to submit his sheriff's return[;]
5. On October 24, 2001, for failure of Sheriff Reynaldo Girado to comply with the order of RTC 33 dated April 27, 2001 xxx, my lawyer filed a MOTION TO CITE SHERIFF REYNALDO O. GIRADO FOR CONTEMPT OF COURT AND TO ASSIGN A SUBSTITUTE SHERIFF FOR THIS PARTICULAR CASE xxx [;]
6. On October 26, 2001, RTC 33 issued an order directing Sheriff Reynaldo Girado to file his comment to the appropriate motion [above-stated] within fifteen (15) days from October 26, 2001 xxx;
7. On January 11, 2002, RTC 33 issued another order directing the Branch Clerk of Court and [Ex-Officio] Provincial Sheriff to assign and designate from among the several sheriffs under him a sheriff to implement the Alias Writ of Execution issued in this case xxx [;]
8. [On] January 14, 2002, RTC 33 issued a separate order directing Reynaldo O. Girado to show cause why he should not be cited for CONTEMPT OF COURT for his:

"1. Failure to implement and execute the Alias Writ of Execution issued on July 7, 2000; if implemented and executed, for his failure to submit his [Sheriff's] Return on Execution within the period provided by law;

2.Failure to comply with the Order of this Court dated 1 February 2001;

3. Failure to comply with the Order of this Court dated 27 April 2001;

4. Failure to comply with the Order of this Court dated 26 October 2001;"

x x x

(Order dated January ^[14], 2002)

x x x

9. On June 8, 2004, my lawyer filed a MANIFESTATION WITH MOTION bringing to the attention of RTC 33 that Sheriff Reynaldo Girado has failed to comply with its previous orders and that the Clerk of Court and [Ex-Officio] Provincial Sheriff has not also implemented the directive of RTC 33 contained in the order dated January 11, 2002 xxx ;
10. On June 14, 2004, acting on the Manifestation with Motion xxx, RTC 33 directed me to initiate contempt proceedings against Sheriff Reynaldo O. Girado xxx. I did not anymore initiate contempt proceedings because I expected the same result – Reynaldo O. Girado will not again comply[;]
11. On June 15, 2004, RTC 33 issued an order again directing Sheriff Reynaldo Girado to submit his explanation why he should not be held in contempt of court for failure to comply with the [Order] of this Court (RTC 33), within ten (10) days from receipt of the order xxx [;]
12. On June 24, 2002, my lawyer wrote the Clerk of Court and [Ex-Officio] Provincial Sheriff, Regional Trial Court, Davao City, requesting for the implementation of the Order dated January 11, 2002 for the assignment of a substitute sheriff xxx [;] [and]
13. On September 24, 2004, my lawyer wrote a REQUEST FOR IMPLEMENTATION OF THE ORDER DATED JANUARY 11, 2002 ISSUED BY BRANCH 33 OF THE REGIONAL TRIAL COURT, 11TH JUDICIAL REGION, DAVAO CITY, addressed to the Clerk of Court and [Ex-Officio] Provincial Sheriff, Regional Trial Court, 11th Judicial Region, Davao City xxx. Up to the present, I have not yet received any information from the Clerk of Court and [Ex-Officio] Provincial Sheriff regarding my said request.

Despite the several orders of RTC 33, Sheriff Reynaldo Girado has unjustifiably failed and refused and up to the present still fails and refuses to comply with those orders, leaving me with no other recourse or option but to send this present **LETTER-COMPLAINT** to your Honorable Office for proper action against Sheriff Reynaldo O. Girado.

It is feared that if no immediate implementation of the writ of execution in this case, the life of the occupants of the house, the complainant herein and the members of her family, the other plaintiffs in the aforementioned case, will be in danger and at risk considering that the kitchen of the occupants is now about to collapse and the posts are now almost suspended[.][2]

In his Comment[3] to the complaint, respondent pleaded:

- a) At the outset, I would like to make it clear that I have no slightest intention not to implement the alias writ of execution issued by the Court of [sic] on July 7, 2000 much less, disobey and totally disregard the lawful orders of the court;
- b) The records would bare that pursuant to the Writ of Execution dated 7 April 1999, I exerted efforts to implement the same on July 30, 1999 where I conducted an inspection on the residential building of plaintiffs together with plaintiff Mary Ann Estoque and the representatives of defendant Freyssinet Davao, Inc.;
- c) During said inspection, we found out that the repair made by defendant E.B. Villarosa & Partner Co. Ltd. on the residential building of plaintiffs was a failure and no certificate of completion was handed by the defendants to the plaintiffs and neither did the defendants execute a performance bond in favor of the plaintiffs as agreed upon by them;
- d) As indicated in my sheriff's progress report dated 18 August 1999[,], copy furnished plaintiff's counsel, defendant E.B. Villarosa & Partner Co. Ltd. was not notified of the inspection because of the closure of its office at 102 Juan Luna Street, Davao City[,], following [the] cessation of [its] operation;
- e) I tried to locate the whereabouts of the officers of E.B. Villarosa & Partner Co. Ltd., in order to fully implement the decision of the court but all my efforts proved futile;
- f) On July 7, 2000, the court issued an alias writ of execution;