

FIRST DIVISION

[A.M. No. P-18-3875 (formerly OCA IPI No. 16-4577-P), October 03, 2018]

CARLOS GAUDENCIO M. MAÑALAC, COMPLAINANT, VS. HERNAN E. BIDAN, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 53, BACOLOD CITY, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The present administrative case arose from the notarized Complaint-Affidavit^[1] filed with the Office of the Court Administrator (OCA) by Carlos Gaudencio M. Mañalac (Mañalac), for and on behalf of Philippine One Investment (SPY-AMC), Inc. (hereinafter PI One), against Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court (RTC), Bacolod City, Negros Occidental (respondent sheriff).

Complainant accused respondent sheriff with gross misconduct, grave abuse of authority, and conduct prejudicial to the best interest of the service relative to his actuations in SP Case No. M-6682, entitled "*In the matter of Petition for Rehabilitation with Prayer for Staying All Claims, Actions and Proceedings Against Philippine Investment One (SPV-AMC), Inc. v. Metropolitan Bank and Trust Company,*" and in Commercial Court Case No. 05-057, entitled "*In the Matter of the Petition for Corporate Rehabilitation; Medical Associates Diagnostics Center, Inc., petitioner.*"

Complainant alleged that PI One was a special purpose vehicle created under Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Law of 2002; that it was undergoing corporate rehabilitation before Branch 149 of the RTC Makati in SP Case No. M-6682; that in said case, RTC-Branch 149 had issued a Stay Order dated September 23, 2008, which covered, among others, Transfer Certificate of Title No. 166-2015000786 registered in its name (subject lot); that it acquired the subject lot pursuant to a foreclosure proceeding because of the failure of Medical Associates Diagnostics Center, Inc. (MADCI) to pay off its mortgage on the subject lot; that it came into lawful possession of the subject lot by virtue of a Writ of Possession issued by Branch 61 of the RTC of Kabankalan City as shown in that court's Order of October 20, 2015; that in the afternoon of May 13, 2016, its office (PI One), received a call from its security guards stationed in the subject lot to the effect that the former owner of the property Dr. Enigardo Legislador, Jr. in the company of respondent sheriff, as well as certain civilians, and security guards, "stormed" the subject lot in an apparent illegal take-over of the same; that its in-house counsel remonstrated with respondent sheriff that it had not received any court order, notice, writ or any other process in respect to the subject lot, which at the time was under *custodia legis* of the RTC-Makati, hence the take-over was illegal and should not be implemented; that as an officer of the court, respondent sheriff knew, or ought to have known, that he must first serve upon the adverse party, the

court order, notice, writ or any other process before he (respondent sheriff) could proceed with its implementation; that respondent sheriff knew, or ought to have known, too, that a motion for the issuance of a writ of execution always contains a notice to the adverse party; that respondent sheriffs blatant disregard of established law and procedure deprived complainant of its rights to due process, and unlawfully dispossessed it of the subject lot; that respondent sheriffs overzealous implementation of the court's processes, which was vitiated by lack of proper notice to the adverse party, constituted grave abuse of authority and conduct prejudicial to the best interest of the service.

In his Comment,^[2] respondent sheriff countered that his impugned actions came within the ambit of his official duties as a court sheriff; that eight days before the alleged illegal take-over, or on May 5, 2016, Branch 53 of RTC-Bacolod issued an Order^[3] which categorically declared that the foreclosure over the subject lot and that all proceedings thereon were null and void; that he proceeded with the implementation of the questioned Writ of Execution in good faith; that it is settled that it was his ministerial duty to execute a valid writ; and that complainant had not presented any substantial evidence to show that he acted beyond or outside his legal authority; hence it is presumed that he performed his official duties in due course. Respondent sheriff thus prayed that the Complaint-Affidavit be dismissed.

The OCA Report and Recommendation

In its Memorandum dated November 15, 2016,^[4] the OCA recommended that respondent sheriff be found guilty of abuse of authority and conduct prejudicial to the service, and that he be penalized with a fine of P10,000.00, plus a strong warning that a repetition of the same or similar offense shall be dealt with more severely by the Court.

The OCA cited verbatim the dispositive portion of the Order dated May 5, 2016, which was quoted in the writ of execution, to wit:

Furthermore, the court hereby declares the FORECLOSURE of the property of petitioner [MADCI], including the hospital, and subsequent proceedings taken thereafter as NULL and VOID. **PI One is ORDERED TO RESTORE IMMEDIATELY** petitioner to the possession of the [subject lot] and the hospital and its facilities. Pending compliance with the ORDERS above-stated, petitioner is hereby RESTORED to its ACTIVE STATUS in the above-entitled case.^[5] (Emphasis in the original)

The OCA held that the order to restore possession of the subject lot to MADCI was directed at PI One, and not at respondent sheriff; that respondent sheriff should have served a copy of the writ of execution on PI One, even as he ought to have accorded reasonable tie and opportunity unto PI One to comply therewith; that it was only after PI One had in fact unjustifiably refused to surrender possession of the subject lot to MADCI, that respondent sheriff was well in his right or authority to oust PI One therefrom, conditioned upon the fact that prior and proper notice had been made upon PI One's counsel; that respondent sheriff should not have immediately taken possession of the subject lot and should not have placed MADCI in possession thereof on the very day of the issuance of the writ of execution, without prior notice to PI One's counsel; that respondent sheriffs interpretation of the Order and the writ of execution was clearly erroneous, if for no other reason

than that respondent sheriff utterly failed to give notice to the other party that such a writ had in fact been issued, and to demand that PI One surrender possession of the subject lot within three days from the issuance of the writ, pursuant to Section 10(c), Rule 39, in relation to Section 2, Rule 13 of the Rules of Court; that respondent sheriff should have known that notice to the client and not to the counsel of record is not notice at all within the meaning of the law; that the requirement of notice is based on the rudimentary tenets of justice and fair play; that while respondent sheriffs duty in the execution of a writ was purely ministerial, he ought to have known that it was his bounden duty to scrupulously observe and comply with the Rules of Court in implementing the court's orders, writs, and processes; and that considering that respondent sheriffs violation was not tainted with malice or bad faith, a fine of P10,000.00 is appropriate under the circumstances.

Ruling

It is hornbook law that "[a] sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39."^[6] Thus it is provided -

SECTION 10. *Execution of judgments for specific act.* -

x x x x

(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.

In *Calaunan v. Madolaria*,^[7] this Court ruled that "[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension"^[8] pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),^[9] which applies to the instant case,^[10] simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense.

At the risk of belaboring a point, while it is settled that respondent sheriffs duty to implement the writ was ministerial,^[11] it is equally settled that it was respondent sheriffs mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.