

SECOND DIVISION

[A.M. No. P-16-3424 [Formerly OCA I.P.I. No. 11-3666-P], August 07, 2017]

GLORIA SERDONCILLO, COMPLAINANT, VS. SHERIFF NESTOR M. LANZADERAS, REGIONAL TRIAL COURT, BRANCH 37, GENERAL SANTOS CITY, RESPONDENT.

DECISION

PERALTA, J.:

Before us is an administrative complaint^[1] filed by Gloria Serdoncillo, in her capacity as the representative of Ms. Petra D. Sismaet, against Nestor M. Lanzaderas (*Lanzaderas*), Sheriff of Branch 37, Regional Trial Court, General Santos City, for grave misconduct and incompetence relative to Civil Case No. 6677 entitled "*Petra Vda. de Sismaet, in her personal capacity and the Heirs of the late Angeles Sismaet, et al. v. Regino Getis, et al.*

Complainant alleged that sometime in February 2011, after the implementation of the demolition order against the illegal occupants of the property subject of Civil Case No. 6677, Lanzaderas went to her office and in an arrogant manner, accused her and her staff of stealing steel bars/trusses recovered from the demolition site. She denied that they participated in the recovery of said steel bars/trusses as in fact it was a certain Mr. Serrano's laborers who handled it. Complainant, however, claimed that she was puzzled by Lanzaderas' reactions and interest in the recovery of the steel bars which was actually taken by its owners.

On January 21, 2011, in the subject Civil Case No. 6677, due to the contradicting claims of the parties as to the boundaries of the subject property, the court directed the sheriff of the court to hold any action on the house of intervenors until the correct and exact boundaries are determined.^[2]

However, complainant alleged that Lanzaderas misled the other occupants of the subject property by making it appear that the Order dated January 21, 2011 was in the nature of a temporary restraining order (*TRO*) when it was merely a directive by the court to conduct a joint survey to determine the true and correct extent of the boundaries of the area. In fact, complainant averred that after their compliance of the requirements of the Court, an Order for Further Demolition^[3] dated April 13, 2011 was issued by the court.

Complainant added that even after they have requested the court to order Lanzaderas to desist from further enforcing the demolition, Lanzaderas still visited the subject property on several occasions and informed the occupants that his first enforcement of demolition was the correct one and that the order that follows was erroneous. Complainant lamented that said actions of Lanzaderas would cause havoc and stir unrest from the illegal occupants considering that he is an officer of

the court.

Finally, complainant claimed that Lanzaderas charged them exorbitant fees amounting to Php 172,600.00 when it was plaintiff Sismaet who personally paid for the labor cost and other provisions for the demolition team. As evidence, complainant submitted copies of the vouchers showing Lanzaderas' receipt of said amount.^[4] Complainant further averred that Lanzaderas failed to account said amount. Thus, complainant requested that Lanzaderas be ordered to liquidate all his expenditures, and prayed that appropriate sanctions be meted upon Lanzaderas for his unethical conduct.

On June 21, 2011, the Office of the Court Administrator (OCA) directed Lanzaderas to submit his comment on the charges against him.^[5]

In his Comment^[6] dated August 12, 2011, Lanzaderas categorically denied all the allegations against him. For starters, he questioned the personality of the complainant to file the instant administrative case against him as he alleged that there is no evidence that complainant is the attorney-in-fact of the plaintiffs in the subject case.

Lanzaderas claimed that complainant's motive in filing the case was to compel him to inflate the expenses incurred in the demolition in order to make a profit. He asserted that although he did go to complainant's office, this was only to inquire about the missing items as he felt it was his duty to act on the information sent to him by a certain Ms. Elma Ruiz whose house was among those torn down.^[7]

He further insisted that he did not mislead the occupants into believing that the Order dated January 21, 2011 was a TRO. He averred that he merely informed them that there was an order from the court directing him to desist from demolishing the house of certain intervenors whose properties were situated meters away from the subject area. He admitted that while he might have frequented the area, it was only because he was doing his job since he did not receive any request from the complainant or any order from the court directing him to stop from executing the demolition.^[8]

Lanzaderas likewise denied that he charged exorbitant fees for the demolition conducted. He explained that the plaintiffs in Civil Case No. 6677 agreed to the amount stipulated in the budget which was included in the estimate of expenses submitted to the court. The estimate of expenses amounting to P222,600.00 was also duly approved by the court. However, he added that the estimate of expenses failed to include provisions for financial assistance to the informal settlers who earlier signified their willingness to knock down their houses on their own.^[9]

Lanzaderas further claimed that he requested the plaintiffs to deposit said amount with the Clerk of Court and *Ex-Officio* Sheriff, however, because plaintiffs' counsel wanted the demolition to be effected immediately, they requested that instead of depositing the money to the Clerk of Court, they be allowed to give the amount directly to him on installment basis to avoid the hassle of withdrawing the amount from the Clerk of Court, who may not be available all the time. Out of *delicadeza*, he admitted to have agreed on said arrangement.^[10]

In his Reply/Rejoinder^[11] dated September 21, 2011, complainant reiterated that Lanzaderas: (1) in a loud and arrogant manner, falsely accused them of stealing the steel bars recovered from the demolished properties; (2) misled the other occupants as to the nature of the Order dated January 21, 2011 which resulted in confusion and commotion among the occupants and demolition team; (3) did not inform them that they should deposit the amount with the Clerk of Court, as in fact he was given thirty thousand pesos (Php30,000) per day for the alleged expenses; (4) did not give any financial assistance to the informal settlers, as in fact it was the plaintiffs who did so. Complainant surmised that Lanzaderas, in alleging that he spent some of the money to give assistance to the informal settlers, was just trying to cover-up a portion of the money which he utilized for his personal benefit.

On August 25, 2015, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter and that Lanzaderas be fined in the amount of Two Thousand Pesos (Php2,000.00) for having been found guilty of Simple Neglect of Duty.^[12]

We adopt the findings of the OCA, except as to the recommended penalty.

Section 10, Rule 141 of the Rules of Court, as amended reads:

Sec. 10. Sheriffs, process servers and other persons serving processes. With regard to sheriffs expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards fees, warehousing and similar charges, the interested party shall pay said expenses 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-officio 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. The liquidation shall be approved by the court. 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 sheriffs expenses shall be taxed as costs against the judgment debtor.** (Emphasis supplied)

Moreover, the deposit and payment of expenses incurred in enforcing writs are governed by Section 9, Rule 141 of the Rules of Court:

SEC. 9. Sheriffs and other persons serving processes.

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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