

SECOND DIVISION

[A.M. No. P-16-3511 (Formerly OCA IPI No. 14-4346-P), September 06, 2017]

ROLANDO SOLIVA, COMPLAINANT, VS. REYNALDO TALEON, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 10, DIPOLOG CITY, ZAMBOANGA DEL NORTE, RESPONDENT.

DECISION

CAGUIOA, J:

For resolution is the letter-complaint^[1] dated September 16, 2014 filed by Rolando Soliva against respondent Reynaldo Taleon, Sheriff IV, Regional Trial Court, Branch 10, Dipolog City, Zamboanga del Norte, for dishonesty, grave misconduct, and grave abuse of authority.^[2]

Soliva was one of the defendants in Civil Case No. P-663, entitled "*Ageas, et al. vs. Soliva*," for forcible entry and damages, before the Municipal Circuit Trial Court (MCTC), Pinan-La Libertad, Zamboanga del Norte.^[3] The MCTC ruled in favor of the plaintiffs.^[4]

Aggrieved, Soliva filed a petition for annulment of judgment and damages with prayer for preliminary injunction, docketed as Civil Case No. 6888, before Branch 6, Regional Trial Court, Dipolog City, Zamboanga del Norte.^[5] Soliva's urgent motion for issuance of temporary restraining order and/or writ of preliminary injunction was set for a hearing.^[6]

Soliva alleged that, while the said urgent motion was pending, Sheriff Taleon issued notices of garnishment to several banks in Dipolog City.^[7] Soliva argued that Sheriff Taleon should have first made a demand on the judgment obligors before resorting to garnishment and/or levy.^[8]

Soliva also submitted a supplemental complaint^[9] dated October 20, 2014, alleging that Sheriff Taleon filed an *ex-parte* request/manifestation to put Soliva's properties under levy on execution.^[10] Moreover, Sheriff Taleon had not submitted a report or return relative to Civil Case No. P-663.^[11] Furthermore, he caused the publication of a Notice of Sale on Levy on Execution.^[12] Soliva also alleged that the MCTC Order dated October 1, 2014 in Civil Case No. P-663 directed Sheriff Taleon to follow the procedure under Sections 9^[13] and 10,^[14] Rule 39 of the Rules of Court by first making a demand on the defendants to vacate the subject land and to pay the damages awarded to the plaintiffs.^[15] However, instead of complying with the court's directive, Sheriff Taleon proceeded with the levy.

On the other hand, Sheriff Taleon submitted his Comment^[16] dated November 27, 2014 to Soliva's letter-complaint, alleging that Soliva did not want to pay the damages awarded to the plaintiffs.^[17] Moreover, Sheriff Taleon alleged that he had given the occupants of the subject land sufficient time to vacate the premises.^[18] In his Reply^[19] dated December 29, 2014, Soliva denied Sheriff Taleon's allegations in his Comment.^[20]

Meanwhile, Sheriff Taleon submitted his Comment^[21] dated February 20, 2015 to Soliva's supplemental complaint, reiterating his allegations in his previous Comment and emphasizing that no temporary restraining order or injunctive writ was issued to bar the execution of the MCTC Decision in Civil Case No. P-663.^[22] Moreover, Sheriff Taleon claimed that he demanded payment from Soliva, but the latter failed to tender his payment, hence, he proceeded with the garnishment.^[23] Since the money from the garnishment was insufficient for the payment of the award of damages, and Soliva still refused to pay, he resorted to levy on execution.^[24] In his Reply^[25] dated April 8, 2015 to the said Comment, Soliva reiterated the allegations in his complaint and supplemental complaint.^[26]

In a Report^[27] dated March 16, 2016, the Office of the Court Administrator (OCA) recommended that the administrative complaint against Sheriff Taleon be re-docketed as a regular administrative matter, and that he be found guilty of simple misconduct and suspended for three (3) months without pay, effective upon receipt of the Court's resolution.^[28] The OCA ratiocinated as follows:

This Office has observed certain irregularities in respondent Sheriffs implementation of the writ of execution. His garnishment of complainant's account without any demand for payment so as to expedite execution contravenes the established rules as laid down in Rule 39, Rules of Court. Although it is conceded that the primary duty of a sheriff is to execute writs placed in his hands with reasonable celerity and promptness, speed should never compromise the rudiments of justice and fair play. In *Mendoza vs. Daroni*^[29] the Court held that a sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action.

Respondent Sheriffs assertion that demand for payment from complainant (the judgment obligor) may be dispensed with since it is very apparent that he has no intention of paying is untenable. It is not for respondent Sheriff to decide whether or not an important step in the execution of judgment is expendable. It bears stressing that every step in the Rules forms part of procedural due process that is guaranteed by no less than the Constitution. Hence, a demand should not be just a mere lip service but must be performed to afford the judgment obligor due process.

Respondent Sheriffs misconduct is revealed in the Order issued by Presiding Judge Vittorio Dante D. Dalman, Branch 1, MCTC, Pifian, Zamboanga del Norte, on 1 October 2014, viz:

The officer executing the judgment must follow the procedure outlined under paragraph [(c)], Sec. 10 of Rule 39 of the Rules of Court by making a demand to 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 maybe reasonably necessary to retake possession, and place the judgment obligee in possession of such property. x x x

As admitted by the executing sheriff in his *ex-parte* request and/or manifestation that the first process he made was to garnish the bank accounts of the defendants, this is not the correct procedure since the Rule mandates under both Section 9 and Section 10 of Rule 39 that the officer shall enforce execution of the judgment by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees (Sec. 9 Rule 39, 1997 Rule[s] on Civil Procedure).

Hence, the officer cannot proceed to garnish the debts or credits belonging to the judgment obligor without first making a demand from him for the payment of damages awarded to the judgment obligee.

On the matter of levy, it can be availed of only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee.

In this case, as claimed by the defendants and even admitted by the executing sheriff that the first process he made was to garnish bank accounts, no such demand for payment was made from the defendants for the satisfaction of the judgment.

Hence, the executing sheriff is hereby directed to follow the procedure outlined under Sec. 10, Rule 39 of the Rules of Court for the execution of the judgment for specific acts and Sec. 9 of the same Rule for the satisfaction of the damages awarded in the judgment by first making a demand to the defendants to vacate from the land subject matter of this case and to pay the damages awarded to the plaintiffs.

Unless the demand to vacate and pay the damages was made and upon showing or proof that the defendants refused to comply and pay the damages it is not yet proper to proceed to the garnishment and to levy real or personal properties belonging to the defendants.

IN VIEW thereof, the executing sheriff is hereby directed in executing the judgment to comply with the procedure as provided in par. [(c)], Sec. 10, Rule 39 of the Rules of Court with respect to the specific acts required of the defendants and paragraph (a), Sec. 9, Rule 39 of the Rules of Court for the satisfaction of the damages awarded to the plaintiffs.

In the event that the defendants failed or refused to comply and pay the damages, then the executing sheriff can proceed to levy the properties belonging to the defendants or to proceed with the garnishment as authorized under par. b and c, Sec. 9, of Rule 39 of the Rules of Court.

In the meantime and unless the demand to the defendants has been done, the levy of the properties belonging to the defendants and the garnishment must be held in abeyance.

This was further shown in the 14 January 2015 Order of Presiding Judge Dalman, *viz*:

x x x x

The record of this case revealed that this court in an order dated October 1, 2014 directed the sheriff to follow the procedure contained under Sections 9 and 10 of Rule 39 particularly on the requirement of prior demand to pay personally on the defendants and to desist in the meantime from proceeding with the levy unless the demand to the defendants was effected and the latter refused and/or failed to pay.

In the instant case, the executing sheriff appeared to have proceeded with the levy without showing that the defendants failed and/or refused to pay the judgment obligation upon demand.

What is more lamentable is that the executing sheriff caused the publication of the Notice of Sale on Levy on Execution dated September 12, 2014 announcing the schedule of the execution sale on October 10, 2014.

The levy of the properties and the subsequent execution sale were undertaken in violation of the order of this court dated October 1, 2014 enjoining the sheriff from proceeding with the levy unless the defendant refused to pay the judgment obligation upon demand.

In the present case, there is no showing that the defendant Rolando Soliva refused and/or failed to pay the amount indicated in the judgment when a demand was made on him.