

## EN BANC

**[ A.M. No. P-09-2668, February 24, 2015 ]**

**ASTORGA AND REPOL LAW OFFICES, REPRESENTED BY ATTY.  
ARNOLD B. LUGARES, COMPLAINANT, VS. ALEXANDER D.  
VILLANUEVA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 60,  
MAKATI CITY, RESPONDENT.**

### RESOLUTION

#### PER CURIAM:

This administrative Complaint<sup>[1]</sup> was filed by Astorga and Repol Law Offices against Alexander D. Villanueva, Sheriff IV of Branch 60 of the Regional Trial Court, Makati City. Complainant Astorga and Repol Law Offices is a professional law practice partnership, represented by Atty. Arnold B. Lugares.<sup>[2]</sup>

Astorga and Repol Law Offices charged Alexander D. Villanueva (Sheriff Villanueva) with "willful neglect of duty [and] serious misconduct [in office] due to graft and corruption [or] extortion with a prayer that a penalty of dismissal . . . [or] other appropriate sanctions be meted against him."<sup>[3]</sup>

Astorga and Repol Law Offices represented FGU Insurance Corporation in a Complaint for damages filed against NEC Cargo Services, Inc.<sup>[4]</sup> The Complaint was filed before the Regional Trial Court of Makati City and raffled to Branch 66 presided by Judge Ricardo R. Rosario.<sup>[5]</sup> On August 23, 2004, Judge Ricardo R. Rosario issued a Decision in favor of FGU Insurance Corporation.<sup>[6]</sup> The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant NEC Cargo Services, Inc., ordering the latter to pay the plaintiff [FGU Insurance Corporation] the following:

1. the amount of P1,942,285.19 with legal interest thereon from June 21, 2001 until the whole amount is fully paid;
2. attorney's fees amounting to P70,000.00; and
3. costs of suit.<sup>[7]</sup>

NEC Cargo Services, Inc. and Albert Tamayo, a third-party defendant-appellant, appealed the Decision before the Court of Appeals. The Court of Appeals denied the Appeal in its Resolutions dated July 20, 2005 and December 20, 2005. These Resolutions became final and executory.<sup>[8]</sup>

The Writ of Execution dated July 10, 2006 was issued by Atty. Marjorie M. de Castro, Branch Clerk of Court of Branch 66 of the Regional Trial Court of Makati City. On

September 19, 2008, Presiding Judge Joselito C. Villarosa (Judge Villarosa) issued the Order granting Astorga and Repol Law Offices' Motion to Appoint Special Sheriff. Sheriff Villanueva was assigned to execute the Decision.<sup>[9]</sup>

On October 29, 2008, Sheriff Villanueva and Atty. Arnold B. Lugares (Atty. Lugares) started coordinating with each other for the execution of the Decision.<sup>[10]</sup> They agreed to meet on November 24, 2008 allegedly "to discuss the service of the Notice[s] of Garnishment."<sup>[11]</sup>

On November 24, 2008 at 8:54 a.m.,<sup>[12]</sup> Sheriff Villanueva allegedly sent a text message to Atty. Lugares. The message said, "*Nagcoffee break lang sir, antay nio lng muna ako dyan sir, gd. day.*"<sup>[13]</sup>

At around 10:00 a.m., Atty. Lugares met with Sheriff Villanueva on the 10th floor of the Makati City Hall.<sup>[14]</sup>

During the meeting, Sheriff Villanueva allegedly demanded P8,000.00 to execute the Decision.<sup>[15]</sup> He allegedly stated: "[S]ayang lang ang pagod ko dito, kung wala naman tayong makokolekta"<sup>[16]</sup> and "E wala pang 50% ang magagarnish natin diyan eh."<sup>[17]</sup> Atty. Lugares informed Sheriff Villanueva that this was part of his job, and he should not demand money from him. Sheriff Villanueva allegedly lowered the price to P5,000.00. They agreed to meet on Wednesday, November 26, 2008 at 8:00 a.m., to serve the Notices of Garnishment.<sup>[18]</sup>

On November 25, 2008, Sheriff Villanueva sent a text message at 4:27 p.m. to Atty. Lugares. The text message was the following: "*Cge po sir magCALL na kau ngayon.*"<sup>[19]</sup> Atty. Lugares called Sheriff Villanueva on his cellular phone to confirm their appointment.<sup>[20]</sup> In the morning of November 26, 2008, Atty. Lugares sent a text message to Sheriff Villanueva to remind him of their appointment.<sup>[21]</sup> At 7:23 a.m., he replied, "*Dala mo ba mga colors?*"<sup>[22]</sup> Atty. Lugares asked Sheriff Villanueva what he meant by "*colors.*"<sup>[23]</sup> At 7:29 a.m., he replied, "*Hauz pa po, nagcoffee breakfast lng, un legal fees kako kung dala mo?*"<sup>[24]</sup> Atty. Lugares told Sheriff Villanueva to proceed with the meeting.<sup>[25]</sup> At 7:44 a.m., he replied, "*Bka puede bukas nlng sir, nag insist ang mga tga ChinaTrust mamya.*"<sup>[26]</sup>

Atty. Lugares insisted that they proceed with the garnishment since it was Sheriff Villanueva who set the appointment.<sup>[27]</sup> At 8:45 a.m., Sheriff Villanueva replied: "*Patawagin mo nga c atty. astorga dto sa mobil phone ko para magconfirm tau sa legal fees.*"<sup>[28]</sup>

At 8:51 a.m., Sheriff Villanueva allegedly sent this text message to Atty. Lugares: "*Padala mo nlng khit lunch time un legal fees, khit kmi na bhala magpaserve nina shf. Flora.*"<sup>[29]</sup> Atty. Lugares then assumed that since Sheriff Villanueva was not given the amount of P5,000.00 he demanded, the issuance of the Notices of Garnishment did not take place.<sup>[30]</sup>

In his Comment,<sup>[31]</sup> Sheriff Villanueva countered that the Complaint "stemmed from

a Writ of Execution dated July 10, 2006 . . . originally assigned to Sheriff Leodel N. Roxas[.]”<sup>[32]</sup> This Writ of Execution was served on NEC Cargo Services, Inc., and personal properties or office equipment found inside NEC Cargo Services, Inc.’s office were levied.<sup>[33]</sup> However, prior to the scheduled auction sale on July 19, 2006, Mr. Narciso E. Calaton filed an Affidavit of Third-Party Claim.<sup>[34]</sup> FGU Insurance Corporation “failed to post [the] indemnity bond in favor of the third-party claimant.”<sup>[35]</sup> Thus, the Writ of Execution was returned unsatisfied.<sup>[36]</sup>

On October 21, 2008, Sheriff Villanueva was ordered to implement the Writ of Execution.<sup>[37]</sup> The Sheriff’s Return<sup>[38]</sup> dated November 5, 2008 was returned unsatisfied because there were no other properties that could be subject to execution that could be levied upon, besides the shares of stocks registered with the Securities and Exchange Commission with Stocks Cert. Reg. No. A199703734.<sup>[39]</sup>

According to Sheriff Villanueva, Atty. Lugares allegedly approached him and asked whether it was possible to garnish the individual stock certificates of NEC Cargo Services, Inc.<sup>[40]</sup> Sheriff Villanueva alleged that he consulted with his fellow Deputy Sheriffs about how to proceed. This led to Sheriff Villanueva meeting with the Clerk of Court and Ex-Officio Sheriff Atty. Engracio M. Escasiñas, Jr. (Atty. Escasiñas) and Judge Villarosa, then Presiding Judge of Branch 66 of the Regional Trial Court of Makati City.<sup>[41]</sup>

Sheriff Villanueva claimed that he was advised not to garnish the individual stocks since Rule 39, Section 9 of the Revised Rules of Court provided that the sheriff or officer may only levy on debts and credits, such as bank deposits, financial interests, royalties, and commissions, but not on stock certificates. He allegedly advised Atty. Lugares that he might be held administratively liable for gross ignorance of the law.<sup>[42]</sup>

Sheriff Villanueva denied any attempt to extort money from Atty. Lugares. He alleged that if he had met with Atty. Lugares, it would only be out of courtesy due to the latter’s persistence to garnish the stocks.<sup>[43]</sup>

Sheriff Villanueva stated that Atty. Lugares offered him money as a “token of gratitude”<sup>[44]</sup> if the garnishment of the stocks would take place.<sup>[45]</sup> He denied all imputations of bribery alleged by Atty. Lugares and stated that Atty. Lugares was filing these charges against him to harass him.<sup>[46]</sup>

Further, Sheriff Villanueva maintained that he would not risk being sanctioned or disciplined for a mere P8,000.00, after having served government for 18 years, 14 of which he served as a Deputy Sheriff. He alleged that Atty. Lugares had shown him a copy of the Complaint-Affidavit before it was even filed before the Office of the Court Administrator as a threat to ensure that the garnishment would proceed.<sup>[47]</sup>

In his Reply-Affidavit,<sup>[48]</sup> Atty. Lugares raised that Sheriff Villanueva concocted a legal issue on the propriety of the execution to distract the Office of the Court Administrator from the real issue.<sup>[49]</sup>

According to Atty. Lugares, he wanted Sheriff Villanueva to send Notices of

Garnishment to NEC Cargo Services, Inc.'s incorporators. The unpaid subscriptions on NEC Corporation's stocks were debts and credits that could be subjected to garnishment.<sup>[50]</sup>

Atty. Lugares alleged that Sheriff Villanueva prepared these Notices of Garnishment. These notices were not served because Atty. Lugares refused to pay the P5,000.00 Sheriff Villanueva demanded.<sup>[51]</sup>

According to Atty. Lugares, there were no "illegal wishes"<sup>[52]</sup> on his part. If he made these alleged "illegal wishes," Sheriff Villanueva should not have prepared the Notices of Garnishment, scheduled their service on November 26, 2008, or inquired about the address of the garnishee, American Wire, Inc.<sup>[53]</sup> He denied approaching Sheriff Villanueva before the filing of the Complaint since the Order dated December 12, 2008 appointing a Special Sheriff had already been filed. This was prior to Sheriff Villanueva's receipt of the Complaint on December 15, 2008.<sup>[54]</sup>

The Office of the Court Administrator recommended this case for re-docketing as a regular administrative matter.<sup>[55]</sup> Further, the Court Administrator recommended the referral of the Complaint to Executive Judge Maria Cristina J. Cornejo (Executive Judge Cornejo) of the Regional Trial Court of Makati City for investigation and submission of her Report and Recommendation.<sup>[56]</sup> The First Division of this court approved the recommendations of the Office of the Court Administrator in the Resolution<sup>[57]</sup> dated July 29, 2009.<sup>[58]</sup>

Executive Judge Cornejo began the investigation.<sup>[59]</sup> When she was appointed to the Sandiganbayan, Judge Tranquil Salvador, Jr. (Judge Salvador) took over the investigation.<sup>[60]</sup>

In his Investigation Report and Recommendation,<sup>[61]</sup> Judge Salvador recommended the dismissal of the Complaint. This was due to Atty. Lugares' alleged desistance to testify on the contents of his Complaint. According to Judge Salvador, Atty. Lugares failed to prove his allegations with substantial evidence.<sup>[62]</sup>

In its Memorandum<sup>[63]</sup> dated March 29, 2011, the Office of the Court Administrator recommended the dismissal of the Complaint for lack of evidence. It found that Atty. Lugares' failure to prosecute the case invited suspicion that the Complaint was not filed with sincerity of purpose, or that a settlement was reached to cover up his misconduct. The Office of the Court Administrator recommended that Atty. Lugares should show cause why he should not be held in contempt of court for filing an unfounded Complaint against Sheriff Villanueva.<sup>[64]</sup>

In the Resolution<sup>[65]</sup> dated June 22, 2011, this court adopted the recommendations of the Office of the Court Administrator by dismissing the case and requiring Atty. Lugares to show cause.<sup>[66]</sup>

Atty. Lugares filed a Compliance with Motion for Reconsideration<sup>[67]</sup> where he manifested that he was willing to prosecute the case. He alleged that "he was not furnished . . . a copy of the Investigation Report of Judge Salvador."<sup>[68]</sup> He claimed

that no amicable settlement was reached with Sheriff Villanueva and that he had no improper motive in filing this case.<sup>[69]</sup> He attached as annexes<sup>[70]</sup> the photographs of the text messages that Sheriff Villanueva sent him.

In the Resolution<sup>[71]</sup> dated March 5, 2012, this court recalled the Resolution dated June 22, 2011 dismissing the administrative Complaint for lack of evidence and ordered the case to be reopened. This court further ordered Executive Judge Benjamin T. Pozon (Executive Judge Pozon) of the Regional Trial Court of Makati City to conduct an investigation on the administrative Complaint.<sup>[72]</sup>

The parties, particularly Atty. Lugares, were directed to attend the hearings<sup>[73]</sup> and submit their respective memoranda.<sup>[74]</sup> In the hearings, Atty. Lugares failed to present the text messages that he sent to Sheriff Villanueva from his phone.<sup>[75]</sup> These outgoing text messages were automatically deleted since his phone could only store a hundred messages at a time.<sup>[76]</sup>

The parties submitted their respective memoranda to Executive Judge Pozon. In his Memorandum,<sup>[77]</sup> Atty. Lugares reiterated his allegations regarding Sheriff Villanueva's willful neglect of duty and graft and corruption.<sup>[78]</sup> He stated that since Sheriff Villanueva himself prepared the Notices of Garnishment, there was nothing illegal or improper about his request.<sup>[79]</sup> According to Atty. Lugares, Sheriff Villanueva "thwarted the Decision by refusing to execute it. He was able to set at naught all the hardships and labor of the plaintiff, Presiding Judge, Justices, lawyers and other court officers and employees in litigating the case."<sup>[80]</sup>

In his Memorandum,<sup>[81]</sup> Sheriff Villanueva asserted that Atty. Lugares had no personality to complain since there "was no written specific authorization for [him] to file this administrative complaint[.]"<sup>[82]</sup> Further, Sheriff Villanueva maintained that the "legal fees" that were being demanded from Atty. Lugares were payments required by the Office of the Clerk of Court, Cashier's Section.<sup>[83]</sup> The "legal fees" pertained to the amount of ₱100.00 per Notice of Garnishment with the subsequent charge of 3.5% interest of the total amount to be paid to the Office of the Clerk of Court.<sup>[84]</sup> Sheriff Villanueva alleged that Atty. Lugares "never paid the required legal fees with the Office of the Clerk of Court[.]"<sup>[85]</sup>

In his Report and Recommendation,<sup>[86]</sup> Executive Judge Pozon concluded that Sheriff Villanueva did not commit gross neglect of duty.<sup>[87]</sup> He stated that Atty. Lugares was not able to provide evidence to substantiate his claim that Sheriff Villanueva did not perform his duty.<sup>[88]</sup> On the other hand, Sheriff Villanueva was able to provide the affidavit of Atty. Escasiñas, Jr., confirming that when Sheriff Villanueva met with Atty. Lugares, it was to ensure the execution of the Decision.<sup>[89]</sup>

Executive Judge Pozon relied on the testimony and affidavit of Sheriff Villanueva, particularly that of the meeting with Judge Villarosa who discouraged him from executing the Writ of Execution.<sup>[90]</sup>

Executive Judge Pozon stated that "colors" in Sheriff Villanueva's text message "*Dala*