691 Phil. 650

# SECOND DIVISION

# [ A.M. No. P-12-3062 (Formerly A.M. OCA IPI No. 11-3651-P), July 25, 2012 ]

## NORMANDY R. BAUTISTA, COMPLAINANT, VS. MARKING G. CRUZ, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 53, ROSALES, PANGASINAN, RESPONDENT.

## R E S O L U T I O N

**SERENO, J.:**

Before the Court is an administrative complaint filed by Normandy R. Bautista (Bautista) against respondent Marking G. Cruz (Cruz), Sheriff IV, Regional Trial Court (RTC), Branch 53, Rosales, Pangasinan. The core issue at bench is whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution issued by the Municipal Trial Court (MTC) of Rosales, Pangasinan.[1]

### FACTS

The case stemmed from the Complaint for Ejectment with Prayer for Writ of Demolition and Damages filed by plaintiffs Bautista, Rosamund Posadas (Posadas), and Madonna Ramos (Ramos) against defendants Teresita Vallejos (Vallejos) and Luisa Basconcillo (Basconcillo) (collectively, defendants). Plaintiffs therein alleged that they were the co owners of the parcel of land situated in Rosales, Pangasinan, occupied by defendants. On 21 March 2007, the MTC rendered a Decision, the dispositive portion of which reads:[2]

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs ordering the defendants to surrender the possession of the subject property to the plaintiffs and to refrain from building additional structures which would impede the passage of light and view to the former's residence. Costs against defendants.

The RTC in its 19 September 2007 Decision sustained that of the MTC Decision.[3] The Court of Appeals (CA) then affirmed the RTC with modification in the former's 20 November 2008 Decision,[4] the *fallo* of which reads:

> WHEREFORE, the petition is ***DISMISSED***. The Decision dated September 19, 2007 and the Order dated December 19, 2007 of the RTC of Rosales, Pangasinan, Branch 53, in Civil Case No. 1178 are ***AFFIRMED*** with the MODIFICATION that the area of the subject property ordered to be surrendered by respondents should be ***3.42 square meters.***

In its 29 July 2009 and 7 December 2009 Resolutions, this Court upheld the CA

Decision.[5] The Court's Resolutions became final and executory upon the recording thereof in the Book of Entries of Judgments on 3 February 2010. Consequently, the MTC issued a Writ of Execution on 15 April 2010,[6] commanding the sheriff to implement and execute its Decision as modified by the 20 November 2008 Decision of the CA.

Complainant Bautista posits that on 27 April 2010, he contacted respondent Sheriff Cruz to confirm whether the latter had already received the Writ of Execution issued by the MTC. When the sheriff acknowledged receipt of the writ, Bautista then requested the former to implement it right away, as complainant was set to leave for Canada the following month. Further, complainant suggested that the Writ of Execution be satisfied by instead erecting a wall (temporary or permanent) encompassing the property, since the MTC had not issued a writ of demolition. Respondent purportedly agreed to the proposal and noted that the plan would not be contrary to the Decision of the court. He then supposedly assured complainant that the former would put everything in order and implement the writ on 07 May 2010.

On the day the writ was supposed to be implemented, respondent allegedly told complainant that a surveyor was needed to measure the subject area inside the garage. Complainant thus engaged the services of an engineer. Afterwards, respondent ostensibly informed complainant that the writ could not be implemented after all, as the metal door of the garage was locked and the defendants' car was parked inside. Complainant allegedly insisted that the sheriff just employ the services of a locksmith or use a bolt cutter to open the lock and hire a tow truck to take out the car. Complainant argued that a sheriff had the right to use all necessary and legal means, including reasonable force, to be able to implement a writ, but respondent nevertheless continued to refuse to implement the said writ.

Furthermore, complainant discovered that respondent served the Notice to Vacate only on the defendants, and not their counsel. This act allegedly had the effect of preventing the sheriff from executing the writ. Thus, complainant alleges that respondent may have been bribed by the defendants.

Complainant then alleges that respondent refused to recover the costs of suit the former incurred from the appeals to the CA and the Supreme Court (SC). Despite warnings that complainant would file an administrative charge against respondent, the latter was adamant in recovering only the costs of suit as indicated in the MTC Decision.

Respondent refutes all the accusations against him. He claims that he has already fully implemented the writ, as evidenced by complainant's acknowledgment of the Certificate of Possession and by the Officer's Report dated 19 May 2011. He then asserts that any interruption and delay in the implementation of the writ was attributable to complainant. He recounts that complainant at first insisted that there was no need to hire a surveyor, as the subject lot was very small. Allegedly, it was only after respondent maintained that the services of a surveyor were vital to accurately identify the 3.42-square-meter portion that complainant employed one. Furthermore, complainant ostensibly told respondent to just demolish the garage, as the latter was authorized to do so. Respondent then averred that, without a court order authorizing a demolition, he could not place complainant in possession of the

subject property. Complainant purportedly refused to listen and then just left respondent, with the threat of filing a case against the latter.

Respondent subsequently learned that complainant had already left for Canada. Thus, the sheriff instead contacted the other plaintiffs – Posadas and Ramos. However, they ostensibly told him that complainant, being their representative, was the one authorized to discuss the matter. Consequently, respondent was "constrained to shelve" the full implementation of the writ, as he needed the services of a surveyor and a representative whom the sheriff could place in possession of the property. Respondent argues that he has already explained in his Initial Report that he "could not just coerce or force the defendants x x x to vacate the garage and remove their car x x x considering that part of the lot where the garage was erected still belongs to the defendants."[7] He then explains that "only 3.42 square meters of the subject parcel [of] lot was ordered by the Court that should be vacated by the defendants and it runs through the garage as per [his] initial measurement."[8] Thus, he reasons that "the destruction of the padlock as per [the] suggestion [of complainant] and the corresponding removal of the car will not be [a] proper remedy,"[9] since there was no special demolition order issued by the court in relation thereto. They needed a surveyor in order "to know the accurate extent of the boundaries of the subject lot that should be surrendered to [the] possession [of the plaintiffs] by the defendants so that [they] could not [encroach] in their lot."[10]

Respondent then alludes to an MTC Order, which enjoins the parties to an ejectment case to coordinate with the sheriff as regards the latter's recommendation on the matter. It allegedly took a while before complainant communicated with respondent. On 18 May 2011, respondent, accompanied by complainant, implemented the Writ of Execution and returned to the subject lot. They then discussed the execution of the writ with defendant Vallejos, who eventually consented to the demolition of the garage on the subject portion. After the demolition, respondent turned over possession of the property to complainant.

Respondent further asserts that he did not violate any rule when he issued the Notice to Vacate. He explains that he sent the notice to defendants in order for them to peaceably vacate the premises and to avoid a forced eviction therefrom. He maintains that the service thereof on the defendants was not invalid, and that the "notice to counsel rule" is inapplicable. Moreover, this issue has already been rendered moot and academic by the full implementation of the writ.

With respect to the issue of the costs of suit, respondent insists that he did not receive from complainant the receipts for the filing fees paid to the CA and this Court. He also maintains that there was no award of costs of suit mentioned either in the CA or in the SC decision. He also points out that the Clerk of Court only gave him the form for the MTC legal fees for him to implement. Thus, he stresses that the payment by Vallejos of the legal fees paid by the plaintiffs was sufficient.

Respondent in turn accuses complainant of filing the administrative complaint in bad faith. The sheriff points out that he filed the complaint on 18 May 2011, the same day the Writ of Execution was fully implemented.

**ISSUE**

Whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution.

**DISCUSSION**

With respect to the charge that respondent received monetary consideration from the defendants in the ejectment case, this Court agrees with the conclusion of the Office of the Court Administrator (OCA) as follows:

> [T]he same is evidently a mere supposition unsupported by any convincing evidence. The fact that respondent sheriff declared in his Report that he had met the defendants more than once could not be considered even as a speck of evidence to prove that he had been bribed by the defendants. In the absence of any proof to corroborate the allegation, the same would never stand the test of reason, and is bound to fail.[11]

Since complainant failed to establish that respondent received any bribe from the defendants in order to prevent the implementation of the Writ of Execution, we find that there is no basis to hold respondent liable.

Neither do we find respondent liable for his initial refusal to proceed with the implementation of the writ, absent a special order of demolition. Rule 39 of the Rules of Court is clear on the matter:

> SEC. 10. *Execution of judgments for specific act.*
>
> x x x x x x x x x
>
> (d) *Removal of improvements on property subject of execution.* — **When the property subject of the execution contains improvements constructed** or planted by the judgment obligor or his agent, the **officer shall not destroy, demolish or remove said improvements except upon special order of the court**, issued upon motion of the judgment obligee after due hearing and **after the former has failed to remove the same within a reasonable time** fixed by the court. (14a) (Emphasis supplied)

It is undisputed that a garage was installed on the subject lot covered by the MTC Decision, as modified by the CA. Since complainant did not present evidence to show that he had obtained a special order of demolition from the court, the sheriff was then under the obligation not to destroy, demolish, or remove the said improvement. The latter thus acted consistently with the letter of the Rules of Court when he refused to demolish the garage and to just wait for the issuance of a special order of demolition before proceeding with the full implementation of the Writ of Execution.[12]