

## THIRD DIVISION

**[ A.M. No. P-06-2246 [Formerly OCA I.P.I. No. 05-2287-P], July 11, 2012 ]**

**LAMBAYONG TEACHERS AND EMPLOYEES COOPERATIVE,  
REPRESENTED IN THIS ACT BY ITS MANAGER, GUDELIO S.  
VALEROSO, COMPLAINANT, VS. CARLOS P. DIAZ, IN HIS  
CAPACITY AS SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20,  
TACURONG CITY, RESPONDENT.**

### DECISION

#### MENDOZA, J.:

On September 14, 2005, Gudelio S. Valeroso (complainant) filed a complaint<sup>[1]</sup> for and in behalf of Lambayong District I Teachers and Employees Cooperative (*the Caoperative*) with the Office of the Court Administrator (OCA) against Carlos P. Diaz (*Sheriff Diaz*), Sheriff IV of the Regional Trial Court, Branch 20, Tacurong City, for dereliction of duty, inefficiency, grave abuse of authority, and dishonesty.

The case stemmed from three (3) civil cases for collection of sum of money, attorney's fees and damages filed by the Cooperative against three (3) of its members, namely, Rona M. Tacot (*Tacot*), Matabay T. Lucito (*Lucito*) and Jocelyn S. Constantinopla (*Constantinopla*), before the Municipal Trial Court in Cities, Tacurong, Sultan Kudarat (MTCC). After the trial, the MTCC rendered its judgment and subsequently issued three separate writs of execution on December 3, 2003, which were given to Sheriff Diaz for implementation.

Complainant alleged that Sheriff Diaz committed irregularities in the implementation of the writs of execution. Sheriff Diaz was said to have delayed the execution of the writs and it was only after they had inquired from the court that he actually executed them by garnishing the salary checks of Lucito and Constantinopla. Complainant further alleged that Sheriff Diaz failed to render an accounting on the garnished amounts and that out of the P16,695.17 worth of cash and checks, only P8,347.93 was remitted to the Cooperative.

In response,<sup>[2]</sup> Sheriff Diaz denied the allegations and stated that when he received the three writs on February 19, 2004, he immediately prepared the Sheriff's Notice and instructed Atty. Marilou S. Timbol (*Atty. Timbol*), the Cooperative's counsel, to pay the amount of P1,500.00 to defray the necessary expenses in the implementation of the writs. He explained that it was only on March 19, 2004, when all the writs were personally served on the judgment debtors because they were not in their offices or in their respective houses every time he attempted to serve them the notices.

Sheriff Diaz further alleged that when the judgment debtors failed to comply with the notice, he served the Notice of Garnishment regarding the salaries of the

judgment debtors and their co-makers on their employer, the Department of Education (*DepEd*); that *DepEd*, however, did not withhold their salaries but only furnished him with machine copies of their paychecks for the month of May 2004; that he went to the complainant and told him about *DepEd*'s refusal to withhold the salaries of the judgment debtors and their co-makers; and that the complainant advised him to collect only from the judgment debtors and exempt the co-makers from liability.

Sheriff Diaz also denied that he appropriated the cash and checks he garnished. Regarding Tacot, he claimed that he turned over to complainant the following: LBP Check in the amount of P14,016.50, DBP Check in the amount of P4,847.06 and cash amounting to P136.96 or a total amount of P19,000.56. Then, he remitted the whole amount to the Cooperative through its treasurer, Melinda Agcambot (*Agcambot*), but the latter handed back to him the P136.96 cash for merienda and tricycle fare. Thus, only P18,863.56 was credited to the account of Tacot. Sheriff Diaz further claimed that by January 26, 2007, he then remitted the total amount of P58,276.45 to the Cooperative and submitted the Sheriff's Final Report and the Notice of Lifting of Levy/Attachment to the MTCC stating therein that the judgment against Tacot had been fully satisfied.

With regard to the case of Lucito, Sheriff Diaz stated that he had turned over to the Cooperative his (Lucito's) March 2005 salary; that on May 3, 2005, he garnished the paycheck of Lucito for the month of April 2005 in the amount of P3,907.06; that he gave the said check to their OIC- Clerk of Court, Pelagio Hilario, Jr. (*Hilario*), who returned the check to Lucito after the latter had paid the legal fees; that he also garnished P1,000.00 cash from Lucito's June 2005 salary but returned the same after Lucito begged for its return; and that he submitted his report to the MTCC stating that the writ was not satisfied and that Lucito had no visible properties that could be levied or garnished.

Lastly, in the case of Constantinopla, Sheriff Diaz related that on May 3, 2005, he garnished the paycheck of Constantinopla in the amount of P3,440.67 and left the check with Hilario; that without his knowledge, Constantinopla followed and begged Hilario for the return of the check; that Hilario returned the check after Constantinopla had paid the legal fees; and that he remitted the total amount of P34,447.83 to the cooperative as of February 2007.

Upon the recommendation<sup>[3]</sup> of the OCA, the Court, in its Resolution,<sup>[4]</sup> dated September 18, 2006, referred the case to the Executive Judge of the Regional Trial Court, Tacurong City, for investigation, report and recommendation.

On March 18, 2011, the Investigating Judge found the charges for dereliction of duty, inefficiency and dishonesty unsubstantiated. He, however, found Diaz liable for grave abuse of discretion and recommended that the appropriate penalty be meted against him for accepting the amount of P1,500.00 for his expenses in the execution of the writs in violation of Section 10, Rule 141 of the Rules of Court.<sup>[5]</sup>

On March 14, 2012, the OCA, in its Memorandum,<sup>[6]</sup> adopted the recommendation of the Investigating Judge, dismissing the charges for dereliction of duty, inefficiency and dishonesty. It, however, found Sheriff Diaz guilty of simple misconduct and recommended that he be fined an amount equivalent to his three (3) months salary.