

FIRST DIVISION

[A.M. No. P-12-3029 (Formerly OCA I.P.I. No. 08-2850-P), August 15, 2012]

ASTORGA AND REPOL LAW OFFICES, REPRESENTED BY ATTY. ARNOLD B. LUGARES, COMPLAINANT, VS. LEODEL N. ROXAS, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 66, MAKATI CITY, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an administrative complaint filed by complainant Astorga and Repol Law Offices, represented by Atty. Arnold B. Lugares (Atty. Lugares), against respondent Leodel N. Roaxs, Sheriff IV of the Regional Trial Court (RTC), Branch 66, Makati City, for willful neglect of duty, relative to Civil Case No. 01-1002, entitled *FGU Insurance Corporation v. NEC Cargo Services, Inc. and Albert T. Tamayo, Third Party Defendant*.

Civil Case No. 01-1002 is a case for damages instituted by FGU Insurance Corporation (FGU) against NEC Cargo Services, Inc. (NEC) before the RTC. FGU was represented by complainant.

After several years of litigation, the RTC rendered a Decision in favor of FGU, the dispositive portion of which reads:

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

1. the amount of P1,942,285.91 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.

With regard to the third party complaint of defendant NEC Cargo Services Inc., the third party defendant Alberto Tamayo, doing business under the name and style of Patriot Cargo Movers, is hereby ordered to reimburse defendant/third party plaintiff for all the sums the latter would pay plaintiff.^[1]

The aforementioned Decision became final and executory on September 24, 2004.
^[2]

FGU filed a Motion for Execution which was granted by the RTC and the Writ of

Execution was accordingly issued on July 10, 2006.^[3]

On July 11, 2006, respondent served a copy of the Writ of Execution upon NEC at Block 15, Lot 9, Tulip Street, Camella Homes I, Putatan, Muntinlupa City, which was received by Mr. Narciso E. Catalon (Catalon). On even date, respondent levied upon the personal properties, consisting of office equipment, found inside the NEC office.

An auction sale was set on July 19, 2006 at 10:30 a.m. at the Main Entrance of the Hall of Justice of Makati City. Copies of the Notice of Sale were sent to all concerned parties and posted on the bulletin boards at the City Hall, Hall of Justice, and Post Office of Makati City.

However, Catalon filed on July 17, 2006 an Affidavit of Third Party Claim, asserting ownership over the levied properties.

Respondent personally furnished complainant, through Atty. Lugares, on July 18, 2006 a copy of the Notice of Third Party Claim, together with a copy of Catalon's Affidavit of Third Party Claim.

Since FGU failed to post an indemnity bond in favor of third party claimant Catalon, respondent did not proceed with the scheduled auction sale on July 19, 2006.

The Sheriff's Report dated August 7, 2006, prepared by respondent, declared the levy upon the personal properties in the NEC office lifted, cancelled, and without effect; and stated that the same personal properties were released to Catalon and the original copy of the Writ of Execution and all pertinent papers were temporarily returned to the RTC unsatisfied.

Since then, there appears to have been no further development in the execution of the RTC Decision dated January 16, 2006 in Civil Case No. 01-1002.

Thus, complainant filed the instant Complaint-Affidavit^[4] dated April 29, 2008 against respondent, alleging, among other things, that:

7. Sometime in October of 2007, [complainant] furnished [respondent] with the Articles of Incorporation of the [NEC] from the Securities and Exchange Commission to inform him that the [NEC] has leviable assets/credits in the form of unpaid subscriptions and asked him to make the corresponding levy/garnishment. He however refused to execute the Decision and make the corresponding levy/garnishment without any valid reason as if to protect the [NEC] and its officers/subscribers.
8. Repeated follow-ups were again made by the [complainant] but to no avail, still no action from [respondent] and no periodic reports. With this, [complainant] was constrained to ask the assistance of the Branch Clerk of said Court to remind the sheriff of his duty to execute the Decision in the above-mentioned case. Despite this, there is still no action from [respondent] and no periodic reports. The levy/garnishment requested by the [complainant] had fallen on

deaf ears. Simply stated, no further action was taken.

9. [Respondent] actually thwarted the Decision by refusing to execute it. He was able to set at naught all the hardships and labor of [FGU], Presiding Judge, Justices, lawyers and other court officers and employees in litigating the case. [Respondent] acts as if [FGU] and [complainant] is at his mercy of whether to execute the Decision or not. This should not be the case because as sheriff, he is duty bound to immediately execute the Decision and not refuse to do his job. His actuation in sleeping on [FGU's] repeated requests certainly undermines the people's faith in the judicial process. People will be discouraged from invoking the jurisdiction of the Courts to settle their dispute if in the end, their victory would only remain a paper victory if the sheriff tasked to execute the Decision would renege on its obligation as what [respondent] is doing.
10. At present, the Decision in [FGU's] favor still remains to be executed, while [respondent] does nothing to execute the same. This should not be the case because [FGU] as the prevailing party is entitled to the fruits of the Decision. Something must be done in order to have the Decision executed.
11. It is respectfully submitted that [respondent] should be penalized and removed from service for willfully refusing to comply with his sworn duty to execute the Decision, which is his job, and obey the order/writ of the court.^[5]

In his Comment^[6] dated July 3, 2008, respondent categorically and vehemently denied what he called as "baseless and malicious accusation" imputed against him by complainant. Respondent countered that:

3. The truth of which is that by virtue of the Writ of Execution dated 10 July 2006, on 11 July 2006, [respondent] levied [the] personal properties of defendant Corporation (NEC Cargo Services, Inc.) but was lifted in view of the Affidavit of Third-Party Claim filed.
4. Contrary to the unfounded allegation of non-filing of periodic reports, [respondent], in compliance with the Rules of Court, prepared and submitted the corresponding Sheriff's Report/Return dated 07 August 2006, (Annex "A") setting forth therein the whole proceedings undertaken and filed with the Court. And a copy thereof was furnished to Atty. Arnold Lugares, received on 28 August 2006 (proof of receipt is attached to the case record).
5. That on October 2007, [respondent] was furnished by Atty. Arnold Lugares of an undated handwritten letter appended thereto with mere photocopies of a list of names of alleged incorporators and asking [respondent] to send notices of garnishment regarding [NEC's] leviable assets/credits in the form of unpaid subscriptions. (attached herewith is a photocopy of Atty. Arnold Lugares undated

letter and its attachments). (Annex "B"). Further, contrary to the baseless allegation in paragraph no. 7 of the Complaint-Affidavit, [respondent] was never furnished of the Articles of Incorporation of [NEC] from the Securities and Exchange Commission by Atty. Arnold Lugares.

6. Contrary to the allegation of "repeated follow-ups", [respondent] suggested to Atty. Arnold Lugares to notify the Court relative to his allegation of [NEC's] leviabale assets in the form of unpaid subscription. Respondent Sheriff opines that the unpaid subscription of the incorporators are not leviabale assets and there is a need to determine and show proof that the subscriptions are declared delinquent through the filing of an appropriate Motion addressed to the Court. It is a fundamental legal axiom that a Writ of Execution must conform strictly to the dispositive portion of the decision sought to be executed. (Banquerigo vs. C.A., 498 SCRA 169). As to the directive in the Writ of Execution in light of the dispositive portion being executed, the Respondent Sheriff acted with prudence and caution especially where the alleged unpaid subscriptions are sought by Atty. Arnold Lugares, counsel of the prevailing party, is not specified in the judgment.
7. Lastly, respondent Sheriff is not remiss in the performance of his duties and does not have the slightest intention to neglect his duty as executing sheriff in the implementation of the Writ relative to the said Civil Case No. 01-1002.^[7]

Consequently, respondent prayed that he be absolved from any administrative liability.

On November 9, 2011, the Office of the Court Administrator (OCA) submitted its report^[8] with the following recommendations:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. The administrative complaint against Leodel N. Roxas, Sheriff IV, Regional Trial Court, Branch 66, Makati City be RE-DOCKETED as a regular administrative matter; and
2. Sheriff Roxas be found GUILTY of simple neglect of duty, and
3. Sheriff Roxas be SUSPENDED FOR ONE (1) MONTH and ONE (1) DAY WITHOUT PAY and STERNLY WARNED that the commission of the same or similar acts in the future shall be dealt with more severely.^[9]

In a Resolution^[10] dated January 18, 2012, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to