

## EN BANC

**[ A.M. No. P-09-2657 [formerly OCA IPI No. 04-2075-P], January 25, 2010 ]**

**BENJAMIN E. SANGA COMPLAINANT, VS. FLORENCIO SJ. ALCANTARA AND SALES T. BISNAR, RESPONDENTS.**

### DECISION

#### PER CURIAM:

Before us is an administrative complaint filed by Benjamin E. Sanga against respondents Sales T. Bisnar and Florencio SJ. Alcantara, both Sheriff IV of the Regional Trial Court (RTC) of Morong, Rizal, Branches 78 and 80, respectively, for grave misconduct.

The facts, as culled from the records, are as follows:

Complainant Sanga is one of the legal heirs of plaintiffs, Spouses Josefina and Salvador Sanga Jr., in an ejectment case docketed as Civil Case No. 986 entitled *Spouses Josefina and Salvador Sanga v. Arturo Libertino, et al.* Later on, Sanga substituted for his parents in view of their death. On June 13, 1995, a Decision, in favor of his parents, was rendered by then Presiding Judge Leili Suarez-Acebo of the Municipal Trial Court (MTC) of Tanay, Rizal, which ordered the defendants to vacate the premises of the subject property and to deliver the possession thereof to the plaintiffs.<sup>[1]</sup> Subsequently, on March 17, 2004, a Writ of Demolition was issued, and the same was directed to Alcantara.<sup>[2]</sup>

Sanga narrated that Alcantara estimated that the amount of P45,000.00 was needed to execute the Writ of Demolition. He claimed that the demolition was scheduled on April 9, 2004, but the same did not push through since he failed to raise the amount needed to implement the writ. Thus, on May 3, 2004, Sanga gave Alcantara the amount of P5,000.00. Again, due to his eagerness to fully implement the Writ of Demolition, Sanga obtained even a usurious loan to be able to raise the balance of P40,000.00, which he gave to Alcantara on May 21, 2004. No official receipts were issued for the money received which, in totality, amounted to P45,000.00. Instead, Alcantara issued a handwritten receipt for both P5,000.00 and P40,000.00 he received, respectively.<sup>[3]</sup> However, as of the filing of the instant complaint, Alcantara failed to deliver to Sanga the lawful possession of the subject property.

Disappointed with Alcantara's failure to implement the writ, Sanga sought the assistance of Bisnar. However, Sanga claimed that Bisnar, likewise, demanded from him the amount of P100,000.00 for the implementation of the writ, but eventually settled for P50,000.00 after he informed Sanga that he would not be able to raise such big amount. On September 10, 2004, Sanga gave Bisnar the amount of P20,000.00 as evidenced by a handwritten acknowledgment receipt duly signed by the latter.<sup>[4]</sup> On November 10, 2004, Sanga again gave Bisnar the amount of

P27,500.00 as partial payment for the demolition as evidenced by an acknowledgment receipt duly signed by Bisnar.<sup>[5]</sup> In both instances, no official receipts were issued for the amounts received by Bisnar, allegedly to defray the initial expenses of the demolition. The demolition was scheduled several times; however, as of the filing of the complaint, the writ remained unimplemented.

The Office of the Court Administrator (OCA) directed both Alcantara and Bisnar to file their respective comments on the charges against them.<sup>[6]</sup>

In his Comment<sup>[7]</sup> dated January 28, 2005, Alcantara denied that he was remiss in his duty to implement the writ. He explained that the demolition was scheduled on April 9, 2004, but a few days before said date, Sanga confessed to him that he could not raise the money needed to cover the expenses of the demolition. Alcantara estimated that the amount of P45,000.00 was needed for the demolition to cover the costs of the wages, transportation and meals of the demolition team. He admitted that for the initial expense of mobilization, Sanga gave him the amount of P5,000.00.<sup>[8]</sup> On May 19, 2004, he served a Second Notice to Vacate with copies of the Writ of Demolition to the defendants whose houses were scheduled for demolition. He claimed to have reported the same to Sanga. He also admitted that indeed on May 21, 2004, Sanga gave him P40,000.00.<sup>[9]</sup>

Alcantara further asserted that before the scheduled demolition, Sanga's counsel, Atty. Jaime Co of the Public Attorney's Office (PAO), informed him of a pending motion filed by defendants for the issuance of a *status quo* order. Thus, he was advised by Atty. Co to suspend action and to wait for the final court order. Alcantara added that on July 19, 2004, he served a Final Notice to Vacate to the defendants and set the date of demolition on July 27, 2004. He claimed that he made an advance payment to the demolition workers in the amount of P6,000.00. However, on July 23, 2004, Alcantara contended that the defendants filed a Manifestation and Motion against piece-meal demolition. Consequently, he claimed that Atty. Co asked him again to suspend the implementation of the writ of demolition. On August 18, 2004, Alcantara filed his return as *served and unsatisfied*.

Finally, in September 2004, Alcantara was informed that the subject writ was transferred to Bisnar. He said he did not question the sudden transfer of duties and merely returned the remaining balance of P36,000.00 to Sanga after deducting the expenses for the mobilization of the demolition team which he claimed amounted to a total of P9,000.00.<sup>[10]</sup>

For his part, Bisnar, in his Comment<sup>[11]</sup> dated January 31, 2005, denied all the allegations in the complaint.

Bisnar claimed that Attys. Jaime Co and Christian Bangui of the Public Attorney's Office (PAO) persuaded him to take charge of the writ of demolition in Civil Case No. 1382 because of the alleged inaction and prolonged delay in the implementation of the writ. On September 20, 2004, he said he was advised by the staff of the said PAO lawyers to accept the amount of P20,000.00 as payment for the initial expenses of the demolition, which he received and, thereafter, issued an acknowledgment receipt.<sup>[12]</sup> He then proceeded to the Clerk of Court to secure a copy of the writ, but found out that an *alias* writ of execution was still pending, which was issued only on

November 10, 2004. On November 12, 2004, Bisnar contended that he served a notice to vacate against the defendants in accordance with the court's order.

According to Bisnar, the demolition proceeding was set on November 26, 2004, but was cancelled due to typhoon "Yoyong." He explained that the demolition was reset to December 9, 2004; however, on the 7<sup>th</sup> day of the same month, he got sick of prostate illness and was confined in the hospital for four days. To support his claim, Bisnar presented a medical certificate<sup>[13]</sup> issued by his attending physician, Dr. Ramelito Mariano. He claimed to be on sick leave from December 8, 2004 until the end of the same year. Thus, on December 21, 2004, he was surprised to learn that, together with Alcantara, he was already charged administratively by complainant in the Office of the Court Administrator. He manifested that the complaint was premature, considering that he had not yet made a report to the court as to the status of the writ.

In his Reply<sup>[14]</sup> dated February 23, 2005, Sanga belied Bisnar's claim that there was typhoon "Yoyong" on the scheduled date of demolition. He also pointed out that aside from the P20,000.00, Bisnar failed to mention in his comment that Sanga also gave him the amount of P27,500.00 on November 10, 2004, as evidenced by an acknowledgment receipt.<sup>[15]</sup>

Likewise, Sanga denied Alcantara's allegation that his lawyers caused the delay in the implementation of the writ. He reiterated anew that he was even forced to obtain a usurious loan in order to raise the amount of P40,000.00 that Alcantara was demanding from him for the implementation of the writ. Sanga also claimed that he made frequent follow-ups as to the status of the demolition, yet to no avail.<sup>[16]</sup>

On November 14, 2005,<sup>[17]</sup> in view of the conflicting versions of the parties, the Court referred the matter to Executive Judge Candido O. delos Santos of the RTC of Morong, Rizal, for investigation, report and recommendation.

After investigation, Judge Delos Santos, in his Report dated January 24, 2007, found both Alcantara and Bisnar liable for grave misconduct and conduct unbecoming an officer of the law, and recommended that they be sanctioned for their misdemeanor. Indeed, he found that both respondents demanded and received money from complainant without complying with Section 9, Rule 141 of the Rules of Court, the pertinent portion of which reads:

x x x x

In the position papers both submitted by the respondents, ***Sheriff Florencio Alcantara and Sheriff Sales Bisnar never contradicted receipt of money from the complainant which they acknowledged receipt thereof as narrated by the said complainant in his position paper.*** In fact, they issued temporary receipt therefore, by themselves and in private, which negotiation was never transacted in the Office of the Clerk of Court and Ex-Officio Sheriff, neither in the presence of the said Clerk of Court. ***In short, the demand for money which herein respondents did not deny to be used initially in the***

***implementation of the Writ of Demolition was never coordinated procedurally and lawfully with the head of the office.*** Both Sheriffs, on their own, without the knowledge and blessing of their immediate superior, acted as if they were the ones in control and the public officers to implement the writ without referring the matter to the Ex-Officio Sheriff. Their defense that there was an agreed deviation from the usual procedure and the doing away with the mandates of the Rules of Court regarding the payment of legal fees would justify their action in pursuing the enforcement of the Writ of Demolition.

x x x . (emphasis supplied)

On January 15, 2008, the OCA recommended that Alcantara and Bisnar be dismissed from the service for having been found guilty of grave misconduct.<sup>[18]</sup>

We adopt the recommendation of the OCA.

Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:

SEC. 9. *Sheriffs and other persons serving processes.* â€œ x x x

(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit;

1. On the first four thousand (P4,000.00) pesos, four (4%) per centum.
2. On all sums in excess of four thousand (P4,000.00) pesos, two (2%) per centum.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, *subject to the approval of the court*. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (emphasis supplied)

Thus, following the above-mentioned rules, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred