

THIRD DIVISION

[A.M. No. RTJ-06-1999 (FORMERLY OCA IPI NO. 03-1903-RTJ), December 08, 2010]

**BANGKO SENTRAL NG PILIPINAS, COMPLAINANT, VS.
EXECUTIVE JUDGE ENRICO A. LANZANAS, REGIONAL TRIAL
COURT, BRANCH 7, MANILA, CLERK OF COURT JENNIFER DELA
CRUZ-BUENDIA AND DEPUTY SHERIFF CARMELO V. CACHERO,
REGIONAL TRIAL COURT, OFFICE OF THE CLERK OF COURT,
MANILA, RESPONDENTS.**

D E C I S I O N

BRION, J.:

Before the Court is the administrative complaint instituted, on November 12, 2003, [1] by the Bangko Sentral ng Pilipinas (*BSP*) against Executive Judge Enrico A. Lanzanas, [2] Regional Trial Court (*RTC*), Branch 7, Manila; Clerk of Court Jennifer dela Cruz-Buendia and Sheriff Carmelo V. Cachero, *RTC*, Office of the Clerk of Court (*OCC*), for "their culpable violation of the duties of their office when they usurped the functions of the Presiding Judge of *RTC*-Manila, Br. 12 - Pairing Judge Hon. Cesar Solis[,] by allowing the withdrawal and release from the custody of the court garnished funds in the total amount of PESOS: NINETY-SEVEN MILLION THREE HUNDRED EIGHTY-EIGHT THOUSAND FOUR HUNDRED SIXTY-EIGHT & 35/100 (P97,388,468.35) to Philippine Bank of Communications (*PBCOM*) and its counsel of record who are not parties to the case." [3]

Specifically, the *BSP* asked that the respondents be made liable, as follows:

1. Cachero

- a. fraudulently causing the release of the P97,388,468.35 from the custody of the *RTC*, Manila, Branch 12, in Civil Case No. 99-95993;
- b. usurpation of authority;
- c. malversation of public funds;
- d. causing undue injury to the government;
- e. disclosing or using confidential information; and
- f. falsification of public records.

2. Dela Cruz-Buendia

- a. usurpation of judicial functions;
- b. malversation of public funds;
- c. violation of her duties as clerk of court;
- d. causing undue injury to the government;
- e. disclosing or using confidential information; and

f. falsification of public records.

3. Judge Lanzas - for gross negligence in the performance of his duties.

The Antecedents

The Office of the Court Administrator (OCA) conducted an investigation of the complaint and submitted a report/recommendation to then Chief Justice Artemio V. Panganiban on March 27, 2006.^[4] The facts, based on the report and the records, are summarized below.

The BSP is the plaintiff in Civil Case No. 99-95993, entitled *Bangko Sentral ng Pilipinas v. Orient Commercial Banking Corporation, et al.* The BSP alleged that, on January 19, 2000, Judge Rosmari D. Carandang (presently Court of Appeals Associate Justice) of the RTC, Branch 12, Manila, issued a Writ of Attachment^[5] against the assets and properties of the defendants, Orient Commercial Banking Corporation, Jose C. Go, Vicente C. Go, Gotesco Properties, Inc. and Go Tong Electrical Supply, Inc. The writ was served, among others, on the various malls owned by the defendants, resulting in the garnishment of the rentals of the tenants. By order of the court, the corresponding check payments of the mall tenants were deposited to the Land Bank of the Philippines (LBP) account of the RTC, Manila, under the management and custody of dela Cruz-Buendia.

Defendant Jose C. Go and his wife Elvy T. Go are also the defendants in Civil Case No. 01-101190, filed by PBCOM, which was pending before the RTC, Branch 42, Manila.

On May 23, 2003, when the BSP's counsel, Fe B. Macalino, inquired into the status of Civil Case No. 99-95993, she was allegedly informed by the personnel of the RTC, Branch 12, Manila, that portions of the subject funds (P85,631,690.38) had been withdrawn and released to PBCOM on the basis of a Notice to Deliver Garnished Amount, dated May 12, 2003, served by Cachero,^[6] based on the writ of execution issued by Judge Guillermo G. Purganan of the RTC, Branch 42, Manila, in Civil Case No. 01-101190, *Philippine Bank of Communications v. Spouses Jose C. Go and Elvy T. Go*.

In compliance with the notice, Lilia C. Santiago, then cashier of the RTC, Manila, prepared a disbursement voucher, dated May 14, 2003,^[7] in the amount of P82,634,281.23. The amount was covered by LBP Check No. 175255, also dated May 14, 2003, and co-signed by Judge Lanzas and dela Cruz-Buendia. The voucher named PBCOM as the claimant, and receipt of the money was acknowledged by Atty. Cesar D. Ramirez, PBCOM's Vice-President for the Legal Division.

The BSP noted that the disbursement voucher contained a certification which states:

CERTIFIED: Adequate available funds/budgetary allotment in the amount of P(illegible) expenditure properly certified; supported by documents marked (x) per checklist on back hereof[.]

The BSP questioned the certification, claiming that as of the date of the disbursement voucher (May 14, 2003), the records of the case had been brought to the Court of Appeals on April 22, 2003, in view of the defendants' appeal in Civil Case No. 01-101190.^[8]

On May 15, 2003, Cachero, issued notice to deliver garnished amount of P11,756,777.97 in favor of PBCOM's lawyer, Atty. Crisostomo M. Delos Reyes, in Civil Case No. 01-101190. The notice, like the first one, was addressed to the Clerk of Court and *Ex-Officio* Sheriff of the RTC, Manila (Dela Cruz-Buendia), with a notation that the "garnishment was effected on the deposit made in Civil Case No. 99-95993."^[9]

On May 16, 2003, LBP Check No. 175239 for P11,344,990.74, signed by Judge Lanzanas, was issued in the name of PBCOM. Atty. delos Reyes acknowledged receipt of the check.^[10]

On the same day, May 16, 2003, dela Cruz-Buendia made another withdrawal from the garnished funds for the amount of P29,491.94, covered by LBP Check No. 175296 dated June 4, 2003, and signed by Judge Lanzanas and dela Cruz-Buendia. The payee was the "Clerk of Court RTC-Manila on General Fund." The BSP claimed that on the official receipt covering the payment of the commission, Atty. delos Reyes was named as the payor, although the receipt referred to LBP Check No. 175296 which was issued by Judge Lanzanas and dela Cruz-Buendia. The BSP also claimed that the receipt was falsified by making it appear that Atty. Delos Reyes was the payee when he did not pay any amount as beneficiary of the award.

The BSP further alleged that on May 14, 2003, Santiago issued another disbursement voucher,^[11] amounting to P214,179.22, representing withdrawal of commission on deposit for the garnished amount of P85,631,690.38, in favor of PBCOM. The withdrawal was made through LBP Check No. 175292 dated June 4, 2003. On June 5, 2003, a certain Rodrigo Tan was named payor in the official receipt which indicated the mode of payment to be LBP Check No. 175292 dated June 4, 2003.^[12]

On June 5, 2003, the office of dela Cruz-Buendia again issued a disbursement voucher, for P1,712,713.00, allegedly representing withdrawal of the Sheriff Percentage of Collections of the Garnished Account of P85,631,690.38,^[13] which was covered by LBP Check No. 175292 dated June 4, 2003. Official receipt no. 18269397 bore the name of Tan as payor.^[14]

Also on June 5, 2003, dela Cruz-Buendia issued another disbursement voucher, for P428,178.45, allegedly representing the withdrawal of the Sheriff Percentage of Collection, and covered by LBP Check No. 175293 dated June 4, 2003,^[15] as indicated in the official receipt which, again, made Tan as the payor.^[16]

The BSP wondered what the connection of Tan was with the unauthorized release of its garnished funds considering that Tan was not a party to the PBCOM case; neither was he a party to the BSP case.

The BSP protested that the withdrawals from the garnished rental payments in Civil Case No. 99-95993 were irregular as a court has no power to lift a writ of preliminary attachment by a co-equal court. It stressed that the RTC, Manila, Branch 42, no longer had jurisdiction over the case involving PBCOM and the Spouses Go because the case records were transmitted to the Court of Appeals on March 7, 2003.^[17]

The Respondents' Comments

Judge Lanzanas

On January 28, 2004, Judge Lanzanas filed his comment^[18] to the complaint. He strongly denied that he had committed any improper or illegal act in connection with the withdrawal of the funds in dispute.

He claimed that the checks he signed were personally brought to his office by dela Cruz-Buendia and Cachero, but he had nothing to do with the preparation of the checks, vouchers and other supporting documents. He allegedly signed the checks as a matter of duty and out of respect for the writ of execution issued by Judge Purganan of the RTC, Manila, Branch 42. He saw nothing in the checks or in the supporting documents which would invite suspicion that something was wrong. He signed the checks in a ministerial capacity as executive judge, especially as he was not told that there was any controversy regarding the amount to be paid to PBCOM.

Additionally, Judge Lanzanas explained that the amount released to PBCOM is still intact, and a Manifestation with Urgent Motion to Return and Restrain^[19] had already been filed by the BSP to recover the amount. He stressed that the manifestation did not include his office as respondent. Lastly, he pointed out that he was also a respondent in a similar complaint, with the same facts and issues, filed by Gotesco Properties, Inc., through Imelda P. delos Santos, docketed as OCA IPI No. 03-1809-RTJ.

Clerk of Court Dela Cruz-Buendia

Dela Cruz-Buendia filed her comment on March 29, 2004.^[20] She explained that on May 12, 2003, the OCC, RTC, Manila, was served with a copy of a Notice to Deliver Garnished Amount for P85,631,690.38, signed by Cachero. Attached to the notice was the order of Judge Purganan of the RTC, Manila, Branch 42, granting PBCOM's Motion for Execution Pending Appeal and the corresponding writ of execution. On May 15, 2003, a second Notice to Deliver Garnished Amount for P11,344,990.74 was served on the OCC.

Finding the two notices and their supporting papers to be in order, dela Cruz-Buendia referred the documents to the OCC cashier for proper disposition. The cashier then prepared the check vouchers, one for P82,634,281.23, net of the legal fees paid by PBCOM, and the other for P11,344,990.74, after having been satisfied that money deposits did exist.

Thereafter, and in accordance with the OCC standard operating procedures, the checks, including the supporting attachments, were brought to the Office of Judge Lanzanas for his approval and signature. After Judge Lanzanas signed the checks,

they were brought back to the OCC for release.

Dela Cruz-Buendia argued that her act of preparing the two (2) checks, as well as other related acts, cannot be the basis of the charges BSP brought against her. She claimed that she acted in good faith in preparing the checks for the approval and signature of Judge Lanzanas, considering, as she alleged, that all the documents that were submitted to the OCC were complete and in order; she was mandated to comply with the writ of execution, a court order which on its face was regular, having been issued by competent authority. In signing the checks in question, she strictly observed the procedure prescribed under the 2002 Revised Manual for Clerks of Court. She argued that for this reason, she could not be made liable for usurpation of judicial functions, nor for violation of her official duties as clerk of court.

Dela Cruz-Buendia further alleged that the release of the questioned funds to PBCOM was done in line with her ministerial duty as clerk of court. Therefore, the release was in good faith, especially after she had been assured that the amount was garnished and identified as belonging to parties against whom the notice of garnishment was enforced.

Dela Cruz-Buendia likewise denied BSP's charge of malversation of public funds as the bank had not shown that she had appropriated or misappropriated, nor had she consented to or permitted any other person to take the garnished funds in question, even by BSP's admission that all the amounts covered by the issued checks were all released to PBCOM. She stressed that she did not conspire with the sheriff and the executive judge in committing the acts complained of as it was clearly shown that she had no participation whatsoever in the disposition of Civil Case No. 99-95993, except to obey lawful orders of the court.

The respondent clerk of court likewise denied the charge of disclosing or using confidential information, claiming that the information regarding the deposit of the garnished funds in the OCC was not confidential as it was furnished to the sheriff, upon his request, by the previous clerk of court. Neither could she be made liable for falsification of public records for certifying documents; it was her ministerial duty to sign these documents considering that they had been checked and initialed by court personnel.

Sheriff Cachero

On March 8, 2004, the respondent sheriff submitted his comment.^[21] Like the clerk of court, he professed good faith for his role in the implementation of the writ of execution issued by Judge Purganan in Civil Case No. 01-101190. He added that it was his ministerial duty to see to the writ's implementation. A writ of execution is enforceable even pending appeal, conditioned on the posting of a surety bond to answer for damages in the event of a reversal by the appellate court. In this instance, there was in fact a surety bond. Additionally, Cachero contended that the compromise agreement entered into by the BSP and the Orient Commercial Banking Corporation, and the claim or lien made by PBCOM on the interests of Jose C. Go and Elvy T. Go on the garnished deposits indicated that the Gotesco group of companies' funds and Jose C. Go's funds referred to one and the same garnished amount, thereby validating PBCOM's claim.