

EN BANC

[A.M. No. P-09-2628 [A.M. No. OCA IPI No. 07-2686-P], April 24, 2009]

**WILSON C. ONG, COMPLAINANT, VS. ARIEL R. PASCASIO,
SHERIFF IV, MTCC, BR. 5, OLONGAPO CITY, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

In a Complaint-Affidavit dated February 22, 2007,^[1] Wilson C. Ong (complainant), the plaintiff in Civil Case No. 6120, *Wilson C. Ong v. Trinidad Cabrerros, assisted by her husband, Mr. Reynaldo Cabrerros*, for collection of sum of money (the civil case), which was lodged before the Municipal Trial Court in Cities, Branch 5, Olongapo City, charged Ariel R. Pascasio, Sheriff IV (respondent),^[2] with Grave Abuse of Authority, Dishonesty, and Malfeasance in the Performance of Public Functions as Branch Sheriff.

After the Decision dated November 20, 2003^[3] rendered by the trial court in the civil case in favor of herein complainant became final and executory, a Writ of Execution dated February 5, 2004^[4] was issued, which was implemented when, among other things, the judgment debtor's property was attached and sold at public auction.^[5]

The period to redeem the property having lapsed and a Final Bill of Sale dated August 9, 2005^[6] having been issued in complainant's favor, a Writ of Possession dated February 9, 2006^[7] was issued.

On June 26, 2006, respondent sent the judgment debtors-Spouses Cabrerros a Notice to Vacate.^[8] And he requested and received from complainant the initial amount of P1,500 and another P6,000 as "partial deposit" in the implementation of the writ, with the assurance that he (respondent) would deliver the Certificate of Possession on November 14, 2006. Respondent failed to do so,^[9] however.

Complainant later discovered on December 4, 2006 that on July 3, 2006, respondent received P210,000 from the judgment debtors via an Acknowledgement Receipt^[10] "[r]epresenting [d]eposit in [c]onnection with the WRIT OF EXECUTION . . . in [c]ompliance with the Judgment [s]tated in the WRIT."

Complainant claims that respondent had earlier assured him that the spouses-judgment debtors would voluntarily vacate the premises and they needed only two weeks to move to another residence; and after the lapse of two weeks, he approached respondent who merely told him that the spouses were still residing in the premises.

Complainant concludes that as a result of respondent's dishonesty, the implementation of the writ of possession had been unduly delayed, as the judgment debtors in fact filed a Motion to Quash Writ of Execution and Possession.^[11]

Respondent, claiming that the decision of the trial court had been implemented except for the enforcement of the Notice to Vacate, admitted having received the P210,000 deposit from the judgment debtors. He claims, however, that complainant refused to receive the said amount, fearing that he (complainant) would not be able to recover the remaining balance of the judgment debt; and when he (respondent) attempted to return the amount to the judgment debtors, they also refused to accept it.

Respondent goes on to claim that he made several attempts to remove the spouses from the property, but "due to lack of manpower resources" he failed to do so.^[12]

Respondent claims anyway that complainant was not prejudiced especially since "there has never been an urgency on Mr. Ong's part to be in physical possession of the property"; and as the trial court, by Order dated February 28, 2007, designated another sheriff to execute the final stage of its decision per request of complainant, there is nothing more that would hinder the implementation of the decision.^[13]

By Memorandum of November 4, 2008^[14], the OCA found respondent to have violated Section 9, Rule 141 and Section 14, Rule 39 of the Rules of Court in this wise:

x x x x

The respondent's act of demanding money and **receiving from the complainant** the amounts of P1,500.00 and P6,000.00, allegedly **as partial deposit for the implementation of the writ of possession** is a clear **violation of Section 9^[15], Rule 141 of the Rules of Court.**

This section requires a sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount as approved by the court to the Clerk of Court who will in turn disburse the same to the sheriff, subject to liquidation. This procedure was not observed by the respondent. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which makes him liable for grave misconduct and gross dishonesty.

x x x x

The writ of possession was assigned for implementation to the respondent sheriff on 9 February 2006. The notice to vacate was served upon the defendant on 26 June 2006. As of the time of the filing of this complaint [in the first quarter of 2007], the writ was still pending implementation.

The respondent's **failure to fully implement the writ of possession is inexcusable and constitutes dereliction of duty.** His claim that he

was prevented from fully implementing the writ due to lack of manpower resources is untenable. He is guilty of dereliction of duty as a sheriff for **failing to execute the writ within 30 days from receipt thereof.**

Pursuant to Section 14^[16], Rule 39 of the Rules of Civil Procedure, the respondent is required to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and if the judgment could not be satisfied in full, to make a report to the court within thirty (30) days after his receipt of the writ and to state why full satisfaction could not be made. The sheriff shall continue to make a report every thirty (30) days on the proceedings being taken thereon until the judgment is fully satisfied. The requirement aims to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides the court with insights as to how efficient court processes are after judgment has been promulgated. The over-all purpose of the requirement is to ensure the speedy execution of decisions.

Anent the allegation that the **respondent received the amount of Two Hundred Ten Thousand Pesos (P210,000.00) without informing the complainant, respondent Sheriff Pascasio also ignored the procedures set forth in the Rules of Court.** Good faith on the part of the sheriff, or lack of it, in proceeding to properly discharge his responsibility has no bearing on the matter, for the sheriff is chargeable with the knowledge that being the officer of the court tasked therefor, he is mandated to make due compliance. In the implementation of a writ of execution, only the payment of sheriff's fees may be received by the sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To permit them to do so would be inimical to the best interests of the service because even assuming *arguendo* that such payments were given and received in good faith, this circumstance in itself would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even the "reasonableness" of the amounts charged, collected and received by the sheriff would not be a defense where the procedure laid down in Section 9,^[17] Rule 141 of the Rules of Court has been clearly ignored. In short, **sheriffs cannot, as in this case, receive payments from parties they are under obligation to assist.**

The money accepted by the respondent amounting to Two Hundred Ten Thousand Pesos (P210,000.00) was **not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. The respondent sheriff should not be accepting money from a party, much less requesting for it[.]**

^[18] (Citations omitted) (Italics in the original; emphasis and underscoring supplied)

The Court finds the evaluation by the OCA well-taken. As detailed above, respondent committed Dishonesty, Dereliction of Duty, and violation of the Rules which calls for his dismissal from the service.^[19]