

EN BANC

[A.M. No. P-04-1898 (Formerly OCA IPI No. 04-1887-P), July 28, 2008]

ATTY. STANLEY G. ZAMORA, COMPLAINANT, VS. RAMON P. VILLANUEVA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 96, QUEZON CITY, RESPONDENT.

DECISION

PER CURIAM:

For resolution is a letter-complaint^[1] dated December 2, 2003, filed by Atty. Stanley G. Zamora, charging respondent Ramon P. Villanueva, Deputy Sheriff, Regional Trial Court (RTC), Branch 96, Quezon City, with Gross Misconduct.

The antecedents are as follows:

Atty. Zamora, herein complainant, is the counsel for plaintiff in Civil Case No. Q-01-43767, entitled "*Sps. Mario and Carmelita Cruel v. Sps. Ernesto Pe Lim and Lulu Yu Pe Lim.*" Complainant narrates that on June 28, 2002, the RTC granted plaintiff's motion for the issuance of a writ of execution. Consequently, he informed respondent sheriff that the defendant has real property in Nasugbu, Batangas and requested him to prepare the required Notice of Levy on the property. Respondent in turn demanded from complainant P10,000, allegedly to defray the expenses for the execution proceedings. Complainant agreed and initially gave him P5,000^[2] as advance payment; the balance was to be paid upon the transfer of the property in the name of his client.^[3]

Respondent and one of complainant's paralegal staff members proceeded to Nasugbu, Batangas for the purpose of annotating the notice of levy on the property's title.^[4] After the notice had been annotated on the title, respondent refused to proceed with the execution sale unless and until he was paid the balance of P5,000.^[5]

On September 8, 2003, complainant acceded to respondent's demand and gave him P5,000^[6] after respondent assured him that he would proceed with the execution sale.^[7] However, before the date of the execution sale, respondent demanded an additional five percent of the bid price before proceeding with the sale. Complainant, however, refused to heed his demand.^[8] Hence, respondent refused to proceed with the sale on the scheduled date; and further refused to accept the bid of complainant's client.^[9]

In a letter^[10] dated October 29, 2003, complainant reminded the respondent of the irregularity of his acts. He further warned respondent that his continued refusal to

proceed with the sale would render him administratively and criminally liable.^[11]

This letter notwithstanding, respondent failed to perform his duty. Hence, this administrative complaint.

In his Comment^[12] dated April 7, 2004, respondent admitted having received the P10,000 but contended that the amount was used in serving the writ of execution. He asserted that he, along with another court personnel, Maveric Marasigan, and two police officers, tried to attach the personal properties of defendant Ernesto Pe Lim. However, Deputy Sheriff Joseph Visnar of the RTC, Branch 216, Quezon City was already implementing another writ of execution against the same defendant. In his attempt to attach defendant's properties, respondent incurred transportation, representation and other expenses.^[13] Thereafter, he and Marasigan went to Nasugbu, Batangas to register the notice of levy, where he incurred further expenses.^[14] Lastly, he adds that he tried to serve the notice on the defendant twice and had to post it twice in three conspicuous public places and once in Nasugbu, Batangas.^[15]

As regards the questioned auction sale, respondent contended that he was ready to proceed with the public auction, with complainant's client as the only bidder. He then requested complainant to pay the corresponding Office Commission to the Clerk of Court pursuant to the Rules of Court. However, complainant refused to pay, claiming that the title should first be consolidated.^[16] Respondent prayed that the administrative complaint be dismissed for lack of basis.

The parties thereafter filed their respective letters^[17] to refute each other's accusations and defenses.

In its Report^[18] dated September 9, 2004, the Office of the Court Administrator recommended that respondent be adjudged guilty of grave misconduct and be meted the penalty of suspension for three (3) months without pay.^[19]

From the parties' pleadings and letters, the issues for resolution are simplified as follows: (1) whether or not respondent observed Sec. 9, Rule 141 of the Rules of Court relative to the expenses of the execution sale; and (2) whether or not respondent prematurely adjourned the execution sale contrary to Sec. 22, Rule 39, Rules of Court.

It is undisputed that respondent demanded and received P10,000 from complainant. He, however, reasoned that the amount was to defray the expenses he incurred in implementing the writ of execution and annotating the notice of levy on defendant's property in Nasugbu, Batangas. Nevertheless, his justifications for demanding and receiving the amount from complainant are futile attempts to exculpate himself from liability under the law.

Sec. 9, Rule 141 of the Rules of Court requires the sheriff to secure the court's prior approval of the estimated expenses and fees needed to implement the writ. Specifically, the Rules provide:

SEC. 9. Sheriffs and other persons serving processes. -- 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, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor.^[20] The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.^[21]

In the present case, there was no evidence showing that respondent submitted to the court, for its approval, the estimated expenses for the execution of the writ before he demanded P10,000 from complainant. Neither was it shown that he rendered an accounting and liquidated the said amount to the court. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

As regards respondent's refusal to proceed with the execution sale, allegedly due to the parties' refusal to pay the sales commission, nowhere in the Rules can it be inferred that payment of any such commission is a pre-requisite to an execution sale. Respondent's refusal to conduct the execution sale was baseless and illegal.

As to the validity of the adjournment of the execution sale, Sec. 22, Rule 39 of the Rules of Court^[22] clearly shows that a sheriff has no blanket authority to adjourn the sale. It is only upon written consent of the judgment obligor and obligee, or