

EN BANC

[A.M. NO. P-05-1990, July 26, 2007]

**BENJAMIN T. HOFER, COMPLAINANT, VS. TYRONE V. TAN,
SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL
COURT, MALAYBALAY CITY, BUKIDNON, RESPONDENT.**

D E C I S I O N

PER CURIAM:

Paulito R. Hofer (Paulito) was the plaintiff in a civil case^[1] for ownership, payment of rentals, and recovery of possession filed against the spouses Rufino and Dionesia Pansacala (spouses Pansacala). On 26 September 2003, the Municipal Circuit Trial Court of Maramag, Bukidnon (trial court) rendered judgment declaring Paulito as the owner of the property subject of the civil case, and ordering the spouses Pansacala to vacate and return the possession of the property. In the writ of execution^[2] dated 16 April 2004 (writ), the trial court ordered the sheriff or his deputies to execute the judgment and to make a return of the proceedings. Tyrone V. Tan, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Malaybalay City, Bukidnon (respondent), submitted a sheriff's partial report dated 23 July 2004 stating that:

I am submitting herewith my Partial Report in the execution of the Judgment in the above-entitled case.

That the undersigned repaired to the place where the subject matter of this case is situated for the purpose of enforcing the Writ of Execution issued in this case.

That arriving thereat, it was found out that the principal defendants were no longer occupying the subject land as they were now residing at Libongan, Lanao del Norte, but there were three privies of defendants, Sylvia Ludibese, Nantie Tresana and Panchito Eduave who were served with copies of the Writ of Execution last July 22, 2004 and were ordered to immediately vacate the said premises, but considering that we are experiencing bad weather condition and that these privies have small children, I gave them three (3) days from service of the Writ for them to personally vacate the said premises and to remove all their improvements from the subject land.

In case said defendants['] privies failed to comply with said order, the extension of three (3) days, it is recommended to plaintiff's counsel that a motion be filed for a Writ of Demolition of all improvements introduced on the subject matter of this case and that plaintiff should require the presence of the surveyor who conducted the relocation survey to pinpoint

the meets and bounds of the conflicted land to avoid overlapping of boundaries.^[3]

On 16 August 2004, Benjamin T. Hofer (complainant), representing Paulito, filed with the Regional Trial Court, Branch 9, Malaybalay City, an affidavit-complaint (complaint) alleging:

That, respondent Tyrone V. Tan is an Assistant Provincial Sheriff of the Province of Bukidnon and may be served with summons/notice at the Office of the Clerk of Court, RTC, Malaybalay City;

That, Complainant is the plaintiff in Civil Case No. 1407-M entitled Hofer vs. Dionesia Pansacala, MTC of Maramag Bukidnon;

That, the MTC court has decided the case to eject the defendant, among other things;

That, on July 23, 2004 respondent executed the decision for which he asked and Complainant gave him P15,000.00. (see Annex 1, receipt)[;]

That, there are three privies contained in the partial return of Respondent which he gave 3 days to vacate; [and]

That, respondent did not come back to finish his work in spite of repeated demands.

WHEREFORE, it is most respectfully prayed of the Honorable Executive RTC Judge Rolando S. Venadas, Sr.[.] to compel respondent to do his duty and finish his job.^[4]

In his answer and comment^[5] dated 24 August 2004 (answer), respondent alleged that he went to the spouses Pansacala's residence on 21 June 2004 to serve copies of the writ. There, he learned from the spouses Pansacala's daughter-in-law, Everly Pansacala (Everly), that the spouses Pansacala had already transferred their residence. He tendered a copy of the writ to Everly and advised her to give the same to the spouses Pansacala. On 22 July 2004, respondent returned to the property to serve the spouses Pansacala's privies copies of the writ. He found out that there were only three privies — not eight as complainant reported — occupying the property. He served the privies copies of the writ and informed them of the contents of the same in the Cebu-Visayan dialect. He also ordered them to vacate the property. However, because of the bad weather, the presence of small children, and the lack of a place to go, he allowed the privies three days within which to vacate the property.^[6]

Respondent alleged that he submitted a partial report dated 23 July 2004 to Paulito and the latter's counsel. On 24 July 2004, he returned to the subject property to verify whether the spouses Pansacala's privies had already vacated the same. He found out that they were still there. On the advice of one Atty. Nemesio G. Beltran, respondent submitted an amended partial report dated 3 August 2004 specifically stating the number of shanties to be demolished and the names of the spouses Pansacala's privies. He submitted copies of this report to the trial court's clerk of court, to Paulito, and to the latter's counsel.^[7]

In an Indorsement dated 31 August 2004, Judge Rolando S. Venadas, Sr., Executive Judge, Regional Trial Court, Branch 9, Malaybalay City, referred the matter to the Office of the Court Administrator (OCA).

In its Report^[8] dated 28 February 2005, the OCA found that "[r]espondent erred when he personally received the amount of P15,000.00 from the complainant to implement the writ of execution." The OCA recommended that the case be re-docketed as a regular administrative matter and that respondent be held liable for misconduct and fined P20,000.

In a Resolution dated 13 April 2005, the Court ordered the re-docketing of the case as a regular administrative matter.

The Court issued a Resolution dated 14 June 2006 requiring the parties to manifest if they were willing to submit the case for decision based on the pleadings and records already filed and submitted. Complainant and respondent did not file any manifestation. The Court considers the parties to have waived their compliance with the Resolution dated 14 June 2006.

On the charge of inefficiency and incompetence in the performance of official duties, the Court finds respondent not liable. "In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."^[9]

In this case, complainant failed to substantiate the allegation that respondent is guilty of simple neglect of duty or inefficiency and incompetence in the performance of official duties. Aside from the bare allegation in his complaint that "respondent did not come back to finish his work in spite of repeated demands," complainant did not present any evidence to support the charge. Complainant did not state when respondent received a copy of the writ and when respondent was required to submit his

return in accordance with Section 14, Rule 39 of the Rules of Court.^[10] Nor did complainant state when he made the demands on respondent and the period of time respondent refused to perform his duties. Even the OCA, in its Report, did not mention anything about respondent's alleged simple neglect of duty or inefficiency and incompetence in the performance of official duties.

Moreover, in his answer, respondent alleged that he performed his duties: (1) he went to the property several times; (2) he served copies of the writ to the spouses Pansacala's daughter-in-law and privies; (3) he ordered the spouses Pansacala's privies to vacate the property; (4) he checked whether the privies had already vacated the property; (5) he submitted a partial report to Paulito and his counsel; and (6) he submitted an amended partial report to the trial court's clerk of court, to Paulito, and to the latter's counsel.^[11] He also sent a letter to the provincial director of the Philippine National Police, requesting for assistance in the enforcement of the writ.^[12] Without substantial evidence to prove that respondent was remiss in the performance of his duties, this Court cannot hold him administratively liable.

The Court, however, finds respondent liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service. Given the nature of the offense and the fact that respondent is not a first time offender, the Court finds the OCA's recommended penalty too light.

According to complainant, respondent asked, and received, P15,000 from him.^[13] To support this allegation, complainant presented a receipt^[14] bearing respondent's signature. In his answer, respondent did not deny the fact that he demanded and received P15,000 from complainant. In fact, his answer contained an itemized list of the alleged expenses incurred in the partial enforcement of the writ, totalling P14,900. The expenses were as follows:

June 21, 2004 — Service of Writ of Execution to defendants Sps. Mr. and Mrs. Dionesia Pansacala at Kiharong, Maramag, Bukidnon.

- Hiring of motor vehicle	- P1,000.00
- Honorarium of one police	- 500.00
- Meals	- 200.00
	<hr/>
	P1,700.00

June 22, 2004 — Service of Writ of Execution to defendants' privies and ejectment.

- Hiring of motor vehicle	- P2,000.00
- Honorarium for 16 PNP members of Don Carlos, & [sic] Maramag, Buk. PNP Station at P500.00 each	- 8,000.00
	P10,000.00

The request of the undersigned for PNP assistance was only for eight (8) PNP members/escorts, but due to the reports of plaintiff's farm laborers to the police authorities that the defendants will violently resist and were fully armed, the PNP Maramag Station, supported the Don Carlos Prov'l. Mobile Group peacekeeping force.

July 24, 2004 – Verification as to whether or not defendants' privies have vacated the subject land.

- Hiring of motor vehicle	- P1,000.00
- Honorarium for two (2) PNP escorts	- 1,000.00
- Meals	- 200.00

	P2,200.00
- Sheriff's fees	1,000.00
- TOTAL	----- ^[15] [sic]
EXPENSES	[P15,000.00]

Based on these facts, the OCA found respondent guilty of misconduct. Respondent completely ignored the procedure provided in the Rules of Court when he demanded and received P15,000 from complainant. The OCA stated:

Respondent erred when he personally received the amount of P15,000.00 from the complainant to implement the writ of execution.

x x x x

[T]he respondent sheriff did not give an estimated expenses [sic] in serving the writ of execution to the interested party. Instead, he demanded and received from the complainant P15,000.00 as expenses in implementing the writ of execution. Respondent sheriff totally disregarded the court's authority to approve the expenses that may be incurred in implementing the writ and the authority of the Clerk of Court to disburse to him the amount that may be spent to effect the process, subject to his liquidation within the same period for rendering a return on the process.

RECOMMENDATION: Respectfully submitted for the consideration of this Honorable Court is the recommendation that the instant IPI be re-docketed as a regular administrative matter and respondent be penalized to pay a fine in the amount of twenty thousand pesos (P20,000.00) for misconduct with a stern warning that repetition of the same or similar offense shall be dealt with more severely.^[16]

Indeed, respondent violated the procedure laid down in Section 10, Rule 141 of the Rules of Court when he demanded and received money directly from complainant. Section 10 provides in plain and clear terms the procedure to be followed with regard to expenses in the execution of writs. Section 10 states that:

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, **the interested party shall pay said expenses 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. The liquidation shall be approved by the court. 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**