

SECOND DIVISION

[A.M. NO. P-07-2327 [FORMERLY OCA-I.P.I. NO. 04-1934-P], July 12, 2007]

NENA GIMENA SOLWAY, COMPLAINANT, VS. ARIEL R. PASCASIO, SHERIFF III, MTCC, BRANCH 5, OLONGAPO CITY, MICHAEL P. UCLARAY, SHERIFF, III, MTCC-OCC-OLONGAPO CITY AND BENJAMIN M. TULIO, SHERIFF III, MTCC-OCC-OLONGAPO CITY, RESPONDENTS.

R E S O L U T I O N

TINGA, J.:

This administrative matter pertains to a complaint^[1] dated 5 April 2004 filed by Nena Gimena Solway (complainant) against Ariel R. Pascasio (Pascasio), Michael P. Uclaray (Uclaray) and Benjamin M. Tulio (Tulio), charging them with Abuse of Authority and Harassment before the Office of the Court Administrator (OCA). Pascasio holds the position of Sheriff III, Municipal Trial Court in Cities (MTCC) Branch 5, Olongapo City, while Uclaray and Tulio are both employed as Sheriff III of MTCC-OCC.

The complaint, couched in Tagalog, recites the antecedents, thus:

Ely Palenzuela (Palenzuela) is the owner of a building in Baloy Beach, Bo. Barretto, Olongapo City. She leased it to complainant, who opened at the premises an establishment called Mynes Inn and Restaurant. Complainant paid a monthly rental of P13,200.00. Prior to the expiration of the lease contract on 1 August 2003, the parties agreed on its renewal for five (5) years with a ten percent (10%) increase in rentals or P15,000.00 monthly, but no formal contract was executed because Palenzuela had left for Hawaii. Upon Palenzuela's return, she increased the monthly rental to P25,000.00 and shortened the period of lease to one year. The parties failed to reach an agreement. Hence, the matter was referred to the Office of the Lupon Tagapamayapa (Lupon) of Barangay Barretto.

Before the Lupon, the parties signed an Amicable Settlement^[2] dated 28 January 2004, wherein it was agreed that the monthly rental is P20,000.00; that complainant will pay P240,000.00 as rental for one year after the finalization of the contract, and; that the contract will be renewed yearly.

On 9 February 2004, Palenzuela went to complainant's restaurant. She produced a copy of a Notice of Execution^[3] signed by Barangay Chairman Carlito A. Baloy, who turned out to be Palenzuela's brother, and forced complainant to sign the same. Complainant refused to do so. The following day, Pascasio and Uclaray, with the same copy of the Notice of Execution in tow, also forced and threatened complainant to sign. Out of fear, complainant relented and signed the Notice of Execution.

In the morning of 20 February 2004, Pascasio and Uclaray, accompanied by Isagani Saludo and Tulio, returned to complainant's restaurant. They introduced themselves as sheriffs and ordered complainant to take all her properties out of the restaurant. The latter refused, insisting that there was no court order authorizing the execution and that an agreement for the renewal of the lease contract had already been reached.^[4] At around 3:00 p.m. on the same day, the barangay chairman ordered respondents to take complainant's stuff out of the restaurant and into the street. Respondents complied. Thereafter, respondents padlocked all the rooms and ordered all customers to get out of the establishment.^[5]

In her complaint, complainant questioned the presence of respondents in the premises, considering that there was no court order to eject her.^[6]

On 25 May 2004, the Court Administrator endorsed the complaint to respondents for their comment.^[7]

In their Joint Comment/explanation,^[8] respondents admitted their presence in complainant's establishment. According to them, they were there to provide assistance in securing compliance with the Amicable Settlement. Professing innocence of any act of harassment or abuse of authority, they further claimed that they were instructed by Clerk of Court and City Sheriff Alexander Rimando to observe the implementation of the arbitration award. They were thus mere witnesses to complainant's refusal to comply with the settlement process which was under the control and supervision of the barangay chairman. Respondents accordingly prayed for the dismissal of the complaint.

On 13 December 2004, the OCA submitted a Report^[9] finding that respondents exceeded their functions when they participated in the execution of the Amicable Settlement. Nevertheless, the OCA observed that there was no showing that respondents profited from their participation in the exercise and on that basis recommended the dismissal of the complaint for lack of merit.^[10]

In the Resolution^[11] dated 7 February 2005, the parties were required to manifest within ten (10) days from notice, if they are willing to submit the case for resolution based on the pleadings filed. On 10 March 2005, complainant made a manifestation to that effect^[12] while respondents submitted a similar manifestation on 9 February 2007.^[13]

Respondents are liable.

The Amicable Settlement reached by the parties before the Barangay Lupon is susceptible to legal enforcement. However, the Local Government Code mandates that it is the Lupon itself which is tasked to enforce by execution the amicable settlement or arbitration award within six (6) months from the date of settlement. Upon the lapse of such time, the settlement may only be enforced by filing an action before the appropriate court. Section 417 of the Local Government Code reads:

SEC. 417. *Execution* .– The amicable settlement or arbitration award may be enforced by execution by the [L]upon within six (6) months from the

date of the settlement. After the lapse of such time, the settlement may be enforced by action in the proper city or municipal court.

Clearly, the implementation of the Notice of Execution was then outside the legitimate concern of the MTCC, of any of its officers or of any other judicial officer. The barangay chairman's letter to the MTCC seeking assistance in the enforcement of the Amicable Settlement is not by any measure the court action contemplated by law as it does not confer jurisdiction on the MTCC over the instant dispute. Such could be accomplished only through the initiation of the appropriate adversarial proceedings in court in accordance with Section 417 of the Local Government Code. The OCA correctly stated that there is no justiciable case filed before the MTCC that could have prompted respondents to act accordingly.

Mere presence of a sheriff in a place of execution where the court has no business is frowned upon. Such act elicits the appearance of impropriety.^[14] Participation or intervention in the process is a more grievous act which exacts a more stringent sanction. And whether it is unexplained presence or active participation, the act gives rise to the impression that the execution of the Amicable Settlement is upon lawful order of the court.

The situation at bar did not involve any court order. The execution was undertaken only under the authority of the barangay chairman, not even that of the Lupon. Even if it was done under the auspices of the Lupon, the presence of respondents would still not be warranted. Both the barangay chairman and the Lupon are components of the local government unit which, in turn, is subsumed under the executive branch of government. As the intended execution of the settlement in this instance was inherently executive in nature and, therefore, extrajudicial, it necessarily follows that judicial officers cannot participate in the exercise. The misdeeds of respondents unnecessarily put the integrity of the court to which they are assigned and the dignity of the institution that is the judiciary on the line.

The fact of willful participation is penalized especially when the acts of the judicial officer concerned are not within his or her legal authority. Complainant alleged that respondents actually participated in the execution of the Amicable Settlement and the OCA observed that these allegations were not sufficiently refuted by respondents.^[15] More tellingly, the defense of respondents that they were acting under the order of the Clerk of Court is belied by the directive^[16] issued by the latter directing respondents to explain their presence at the site of the implementation of the Notice of Execution.

Furthermore, the functions of sheriffs, such as respondents, are enumerated under the 2002 Revised Manual for Clerks of Court, as follows:

2.2.4.1 serves and/or executes writs and processes addressed and/or assigned to him by the Court and prepares and submits returns of his proceedings;

2.2.4.2 keeps custody of attached properties or goods;

2.2.4.3 maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him; and