

THIRD DIVISION

[A.M. NO. P-04-1872, January 31, 2006]

**MANUEL V. MENDOZA, COMPLAINANT, VS. ANGEL L. DORONI,
SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 77, QUEZON
CITY, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is an administrative complaint for misconduct and gross negligence filed by complainant Manuel V. Mendoza ("complainant") against Angel L. Daroni ("respondent"), Sheriff IV of the Regional Trial Court, Branch 77, of Quezon City ("RTC").

Originally, complainant filed this complaint against Joy Manalang Bulaitan, Clerk of Court of RTC, and respondent. However, in the 16 August 2004 Resolution, the Court dismissed the case against Joy Manalang Bulaitan for insufficiency of evidence. Hence, only the case against respondent was docketed as a regular administrative matter. [1]

The Facts

The Metropolitan Trial Court ("MeTC") of Quezon City rendered a Decision [2] dated 26 March 2002 in Civil Case No. 38-26931 entitled "Atty. Manuel V. Mendoza v. Edgar A. Cariaga, et al." for forcible entry and damages. The MeTC issued a writ of execution on 4 September 2002 ordering the defendants to vacate the property and restore complainant's peaceful possession. [3] The MeTC Sheriff successfully enforced the writ as evidenced by the Sheriff's Return dated 22 January 2003. [4]

The defendants in Civil Case No. 38-26931 appealed the MeTC decision. On 10 September 2003, the RTC reversed the appealed decision. The dispositive portion of the RTC's Decision reads:

WHEREFORE, premises considered, the appealed decision dated March 26, 2002, of the Court a quo in Civil Case No. 38-26931 is hereby reversed and set aside. Accordingly, the complaint for forcible entry against the defendants-appellants is hereby dismissed.

Nevertheless, defendants-appellants are hereby ordered to pay to each of the owners of the structures in the subject property the amount of Fifteen Thousand Pesos (P15,000.00) as financial assistance.

SO ORDERED. [5]

Defendants filed a Motion for Execution [6] while complainant filed a Motion for Reconsideration [7] and an Opposition [8] to the Motion for Execution. On 6 November 2003, the RTC denied complainant's motion and opposition, and ordered the issuance of a writ of execution. [9] The Branch Clerk of Court issued the writ directing respondent to "execute the decision rendered in this case." [10]

On 11 November 2003, respondent, accompanied by members of the Philippine National Police, served the writ. Respondent issued a Certificate of Turn-Over of the property on the same date. [11]

In a Complaint dated 1 December 2003, complainant asserted that respondent was guilty of misconduct and gross negligence in the following instances: [12]

1. He enforced the writ of execution without serving a prior notice to vacate in violation of Section 10(c), [13] Rule 39, of the 1997 Rules of Civil Procedure and relevant jurisprudence.
2. He ejected complainant from the property although the decision, especially the dispositive portion, did not provide for ejectment. Furthermore, he placed Genuino Ice Co. in possession of the property although it was not a party to the case.
3. He delivered possession of the ice-making machines and equipment although it was not included in the case.
4. He failed to enforce the money judgment in favor of the owners of the destroyed structures in the amount P15,000 each.

In his Comment [14] dated 6 February 2004, respondent denied complainant's allegations. Respondent claimed that he has consistently exhibited good performance of duties in his fifteen years of government service. He further states that the complaint against him is premature and impermissible because of a pending motion ("Omnibus Motion") [15] to reconsider the order granting the writ of execution filed on 13 November 2003 and the pending motion to quash ("Supplementary Omnibus Motion") [16] the writ of execution filed on 21 November 2003.

Specifically, respondent assailed complainant's allegations, as follows:

1. There is an inconsistency in complainant's allegation that "[t]here is nothing in the dispositive portion of the judgment that ordered complainant to vacate the property and surrender possession to Genuino Ice Co. or to the defendants-appellants x x x" vis-á-vis the failure to give prior notice to vacate. Following complainant's argument, if the decision did not provide for complainant's ejectment, then Section 10(c), Rule 39 will not apply to the present case. Hence, respondent did not violate the requirement of giving prior notice to vacate in cases of ejectment. [17]
2. Respondent asserted that he never ordered the caretaker and the security guard to leave the property. Respondent pointed out that

the caretaker and the security guard never left the property but only transferred what appeared to be sleeping bags from the sleeping quarters to the guardhouse. As of the date of filing respondent's Comment, complainant's security guards were still present in the property. Respondent stated that this belies complainant's claim that respondent ejected complainant from the property. [18]

Respondent refuted complainant's contention that respondent placed a non-party to the case in possession of the property. As stated in the Certificate of Turn-Over, respondent transferred possession of the property to defendant Cariaga and not to Genuino Ice Co. [19]

3. Respondent claimed he acted in good faith and with the best of intentions when he turned over the machineries and equipment in the ice plant to defendant Cariaga. Respondent believed it was his obligation to ensure the proper safekeeping of the machineries and equipment to prevent pilferage. [20]
4. Respondent insisted that when he served the writ, he also tried to locate the whereabouts of the four owners of the destroyed structures. Nobody knew how to contact them and the RTC Judge who handled the case inhibited himself. Thus, respondent did not have another opportunity to implement the decision. [21]

In a Joint Manifestation [22] dated 18 May 2004, respondent stated that Presiding Judge Rogelio M. Pizarro [23] had issued an Order denying complainant's Omnibus Motion and Supplementary Omnibus Motion in this wise:

x x x (1) The record of this case show [sic] defendants had been ejected from the premises by virtue of a writ of execution issued in the lower court and hence given the fact that the appealed case against them had been dismissed they should automatically be restored in possession of the subject premises; (2) Although the Decision failed inadvertently to order the restitution of possession in favor of the defendants in the dispositive portion, the implementation thereof is nonetheless approved as proper consequence of the dismissal thereof; (3) The 3-day notice rule under Section 10(c) [sic] Rule 39 of the 1997 Rules of Civil Procedure does not mean that the occupant therein can be removed only after 3 days but within such period and thus may include the day the Writ was served upon them; and (4) Further movant offered no compelling reason to warrant anew a modification of the November 6, 2003 Decision.

SO ORDERED. [24]

On 30 July 2004, the Office of the Court Administrator ("OCA") issued a Report ("Report") [25] recommending that respondent be fined P10,000 for not implementing fully the writ of execution.

In the Resolution dated 16 August 2004, the Court docketed the case against

respondent as a regular administrative matter. Further, the Court required complainant and respondent to manifest if they were willing to submit the case for decision based on the pleadings.

On 13 September 2004, respondent submitted a Manifestation and a Motion [26] asserting that respondent did not eject complainant from the property to this date. Respondent asked for an ocular inspection of the premises to prove this fact.

In the 6 October 2004 Resolution, the Court denied the motion for ocular inspection and gave respondent ten days from notice to submit additional documentary evidence.

On 14 October 2004, complainant filed his Comment stating that he had no objection to an ocular inspection. Complainant stated that respondent removed him from actual possession of 1,100 square meters out of the 1,565 square meters of land.

On 18 November 2004, complainant filed a Manifestation stating that he was willing to submit the case for decision based on the pleadings on record.

On 22 November 2004, respondent filed his Compliance. He refuted complainant's allegation of ejectment by showing pictures of the property. He submitted a copy of the RTC's order denying the Omnibus Motion and Supplemental Omnibus Motion. He also submitted a copy of the Court of Appeals' Resolutions denying complainant's "Urgent Last and Final Motion for Extension to file Petition for Review," "Supplementary Petition," "Manifestation and Motion" and "Petition for Review."

In a Resolution dated 15 December 2004, the Court noted respondent's Compliance and referred the case to the OCA for re-evaluation, report and recommendation.

The OCA's Evaluation and Recommendation

In its Report dated 30 July 2004, the OCA found respondent liable for violating Section 10(c), Rule 39 of the 1997 Rules of Civil Procedure and for not enforcing the money judgment. The OCA's Evaluation reads:

x x x

Complainant alleged that respondent Sheriff committed misconduct for implementing the writ of execution without prior Notice to Vacate the premises in violation of Section 10 (e) [sic] Rule 39 of the 1997 Rules of Civil Procedure which provides that:

(e) [sic] Delivery or restitution of real property – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peacefully vacate the property within three (3) days, and restore possession thereof to the judgment oblige [sic]; x x x

This allegation was not denied by respondent Sheriff. In his COMMENT dated February 6, 2004, he stated that:

(f) On November 11, 2003, Atty. Joy Manalang Balauitan, Branch Clerk of Court of RTC Branch 77, Quezon City, handed to the undersigned a writ of execution dated November 6, 2003;

(g) On the same day, November 11, 2003, one of the defendant-appellants in Civil Case No. 2 Q-03-48950, Edgar A. Cariaga came to the office and requested the undersigned to serve the writ which he acceded.

On the same date (November 11, 2003) respondent Sheriff turned over the possession of the property subject of Civil Case No. Q-03-48-950 to Edgardo Cariaga as shown in the turn over receipt issued by the respondent in violation of complainant's right to a three (3) day notice to vacate the premises.

Complainant claimed that he was illegally ejected because the dispositive portion and the body of the decision did not provide for his ejection. This allegation of the complainant is not correct for in the case of Forcible Entry and Detainer, the main action is priority of possession. The legal right to the property is not essential to the possessor's cause of action.

When complainant filed the complaint for forcible entry against the defendants in Civil Case No. 26931, the latter was in actual possession of the property subject of the complaint. The possession of the property was transferred to the complainant after the court decided the case in his favor and, the writ of execution was issued on motion. After the decision of the lower court was reversed by the higher court, it follows that the possession of the property should be restored to the persons who [were] in possession of the property before the case of Forcible Entry and Damages was filed by the complainant.

Respondent sheriff is also liable for not enforcing the money judgment in favor of the owners of the structures in the property the amount P15,000.00 each as financial assistance after he turned over the possession of the subject property to defendant-appellants. Respondent should not have turned over the possession of the property subject of litigation unless the money judgment in favor of the owners of the structures is satisfied. Moreover, there is no showing that respondent Sheriff demanded from the defendant-appellants the full payment of the money judgment. If he cannot find the owners of the structures, as he claimed, the money could be deposited in the Office of the Clerk of court under the custody of the court for proper disposition. [27]

The OCA recommended that the Court penalize respondent with a fine of P10,000.

After re-evaluating this case, the OCA remained firm in its finding that respondent is liable for the offense. In the OCA Memorandum dated 12 April 2005, it states:

x x x

Notably, nothing in the additional evidence submitted by the respondent shows his compliance with the aforementioned rules. Thus, our previous findings should remain.