502 Phil. 8

THIRD DIVISION

[AM No. P-05-2030 [formerly A.M. OCA I.P.I. No. 04-1902-P], July 15, 2005]

CELESTINO A. GARCERA II, COMPLAINANT, VS. OTHELLO A. PARRONE, SHERIFF III, BRANCH III. MUNICIPAL TRIAL COURT IN CITIES OF NAGA CITY, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

For unduly delaying the service of a writ of demolition, Celestino A. Garcera II (complainant) charged respondent Othello A. Parrone, Sheriff III of the Municipal Trial Court in Cities (MTCC), Naga City, by a verified letter-complaint dated March 24, 2004 which was received in the office of the addressee Court Administrator on April 14, 2004.[1]

The facts which spawned the filing of the present case are as follows:

In a complaint for unlawful detainer filed by complainant's aunt Salvacion Garcera (Salvacion) against one Ramon Muñoz (Muñoz), Branch III of the MTCC-Naga rendered a decision[2] dated January 29, 2001 in favor of Salvacion, ordering Muñoz to, among other things, vacate the premises subject of the complaint.

Muñoz appealed the decision to the Regional Trial Court of Naga which, however, dismissed his appeal on June 22, 2001 for failure to file a memorandum.

The January 29, 2001 Decision of the MTCC became final and executory. A writ of execution was thus issued on August 9, 2001.[3]

As there was an improvement on the property subject of the unlawful detainer case, Salvacion filed a motion for the issuance of a writ of demolition which was granted by the MTCC on March 4, 2003. A Writ of Demolition[4] was accordingly issued on April 15, 2003.

In his complaint at bar, complainant alleges that, as attorney-in-fact of his aunt Salvacion, he "made several representations to [respondent] for the service of the writ of demolition and [had] already made payments to him but the writ was not implemented";[5] there was even a time when complainant, together with other persons, "was already in the place for the scheduled demolition, but [respondent] did not show up";[6] and in fact, "the possession of the land in question has not yet been delivered" as the improvement thereon still stands on the property.[7]

The Office of Court Administrator (OCA), by Indorsement[8] of April 21, 2004, required respondent to comment on the complaint which the OCA found as one for

"Non-Feasance and Conduct Prejudicial to the Best Interest of the Service."

By Comment[9] dated May 14, 2004, respondent, denying the charge against him, claims that he has been "religious in the performance of [his] assigned task as deputy sheriff"; the Writ of Demolition has been "fully satisfied" as evidenced by a Sheriff's Return[10] dated April 16, 2004; and if ever there was "a little delay" in the implementation of the writ, it was because he acceded, for "humanitarian reason[s]," to Muñoz' plea to give him allowance within which to remove and/or demolish the house/structure he introduced on the lot subject of the case.

In a Report[11] dated July 20, 2004, the OCA found respondent guilty of **dereliction of duty** and recommended that he be fined in the amount of P5,000.00 with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

By Resolution[12] of September 6, 2004, this Court required the parties to manifest whether they are submitting the case on the basis of the pleadings/records already filed and submitted.

Respondent, by letter[13] dated October 28, 2004, informed the Court "that [he] prepare[d] a joint manifestation to the effect that [he and respondent had] conformed to have the administrative matter . . . withdrawn or closed" but that complainant did not affix his signature thereon, the latter telling him that his silence and option not to respond to this Court's Resolution of September 6, 2004 would be considered as lack of interest on his part. Respondent, however, did not state in his letter whether he is submitting the case for decision based on pleadings/records already filed.

Upon the other hand, complainant, by letter[14] of November 28, 2004, informed this Court that contrary to respondent's October 28, 2004 letter, he is still interested in the further resolution of the merits of the present case.

Section 14 of Rule 39 of the Rules of Court directs an officer who is tasked to implement a writ of execution as follows:

> SEC. 14. *Return of writ of execution*. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Underscoring supplied)

A sheriff's duty to execute a valid writ is purely ministerial, not discretionary in connection with which this Court differentiates a ministerial act from a discretionary act in this wise: