

## SECOND DIVISION

**[ A.M. No. P-05-1952 (formerly OCA IPI No. 03-1602-P), July 08, 2005 ]**

**F.F.I. DAGUPAN LENDING INVESTORS, INC., REPRESENTED BY  
JESSIE M. CO, MANAGER, COMPLAINANT, VS. VINEZ A.  
HORTALEZA, DEPUTY SHERIFF IV, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a complaint filed by F.F.I. Dagupan Lending Investors, Inc., through its manager Jessie Co, against Vinez A. Hortaleza, Deputy Sheriff IV of the Office of the Clerk of Court, Regional Trial Court (RTC), Dagupan City for abuse of authority and malversation.

The complaint dated March 10, 2003 alleges that: a writ of execution was issued by the Municipal Trial Court (MTC) of Dagupan City, Branch 2 on August 22, 2002 against spouses Olimpio and Loretta Nazareno and Teresita Uson, the defendants in Civil Case No. 13218; the writ was endorsed to the Office of the Clerk of Court for implementation and herein respondent was assigned to implement the same; on September 6, 2002, respondent went to the house of the defendants accompanied by Lincoln Magtuloy (Magtuloy), a representative of complainant's company, together with some policemen; respondent levied the personal properties of the defendants and among the properties taken by him was a motorized tricycle with sidecar which was voluntarily turned over by Olimpio Nazareno (Olimpio); when respondent made a notice of Levy and Sale, he did not include the motorized tricycle; when asked why he did not include said property, he "feigned to have omitted it" but assured complainant that said property shall be included in the scheduled execution sale; after the sale at public auction, respondent turned over the proceeds of the sale without however the proceeds of the motorized tricycle; when Magtuloy inquired about the tricycle, respondent told Magtuloy that it was sold for P4,000.00 but he spent it and promised to hand it over the following week; Magtuloy verified the actual circumstances of the said vehicle and was informed that the vehicle was actually sold for P11,000.00 and that it was not subjected to public auction but to a negotiated sale where respondent talked and convinced the defendant and owner of the vehicle to execute a deed of sale in favor of another person with an assurance that the proceeds of the sale will be applied as payment and satisfaction of the decision against the Nazarenos; when complainant tried to bring up the matter with respondent, he started to avoid complainant and even refused to further implement the partially satisfied writ and make a report to the court.<sup>[1]</sup>

Attached to the complaint were the affidavits of Magtuloy and Olimpio. Magtuloy's statement reiterated the contents of the complaint. Olimpio declared that: he is the owner of a motorized tricycle that was registered in his other known name "John

Nazareno"; his personal properties, including the tricycle, were levied to satisfy the judgment in Civil Case No. 13218; after the auction sale, he found out that all the properties taken were sold at public auction except the motorized tricycle which respondent never reported to have been levied; respondent made him sign a document stating that the proceeds of the sale of the tricycle will be handed to complainant; upon query from the complainant, however, he learned that no proceeds from the sale of the tricycle was ever given by respondent and that the tricycle was sold to a third person privately and not through bidding; he tried to confront respondent about the matter but respondent told him that he gave the proceeds to complainant; and from then on, respondent started avoiding him.<sup>[2]</sup>

After two motions for extension, respondent filed on June 19, 2003, a Comment/Affidavit stating that: after he levied the personal properties of the defendants, Olimpio went to his office and said that the tricycle levied was not Olimpio's but was owned by his son John Nazareno; he advised Olimpio to inform John to file with the court an Affidavit of Third Party Claim so that the tricycle will be released to John; while waiting for said affidavit, he scheduled the public auction of the levied personal properties of the Nazarenos, excluding the said tricycle; said properties were sold at P6,670.00 which he duly turned over to complainant through Magtuloy; he purposely did not include the tricycle in the auction sale for the reason that he was waiting for the affidavit of third party claim; the said tricycle is still in his possession awaiting further orders from the trial court whether to release or to proceed with the auction sale of the same; it is not true that the tricycle has already been sold to a private person and that he misappropriated the proceeds thereof; it is also not true that he is avoiding the representative of plaintiff; if Nazareno is now claiming in his affidavit that he is the owner of the tricycle then he (respondent) shall now proceed with the auction sale of the vehicle.<sup>[3]</sup>

On July 2, 2003, Jessie Co, Manager of complainant, filed a Reply/Affidavit stating that: respondent did not inform the trial court that he was able to levy a motorized tricycle and that it is being claimed by a third party; respondent also did not report that he was keeping the tricycle in his office; it is irregular for respondent to take in his personal possession the tricycle without even the party litigant knowing about it; the truth is respondent pleaded for extensions of time to file comment as he was trying to get back the vehicle from the person to whom he sold the same; the sworn statements of Magtuloy and Olimpio belie the claims of respondent; and in retaliation to the present administrative complaint, respondent is now refusing to enforce any writ granted by the trial court in favor of complainant company.<sup>[4]</sup>

On May 24, 2004, this Court issued a Resolution referring the case to the Executive Judge of the RTC of Dagupan City for his investigation, report and recommendation.<sup>[5]</sup>

Respondent filed a Manifestation and Motion before RTC Dagupan City, Branch 43, praying that the administrative case filed against him be dismissed in view of supervening events. Attached to said motion is a Resolution issued by the MTC of Dagupan City, Branch 2, dismissing the motion of complainant to cite respondent in contempt for his failure to implement the writ of execution for the satisfaction of judgment in Civil Case No. 13218. Said Resolution reads in part as follows:

Movant F.F.I. Dagupan Lending Investors, Inc., thru counsel, states that per Order dated March 4, 2003 respondent sheriff was directed by the Court to implement further the writ of execution issued for the satisfaction of the judgment in Civil Case No. 13218. For his apparent inaction, the Court came out with another Order on October 10, 2003 reiterating its earlier directive to implement the writ and to explain within a period of five (5) days from receipt thereof why the previously levied motorized tricycle had not been disposed of. Without filing any explanation, respondent sheriff scheduled the public auction of the motorized tricycle on November 3, 2003 which pushed through with the movant as the highest bidder for P7,000.00. Subsequently, respondent instructed movant to pay the corresponding sheriff's commission. However, he did not inform the movant about his pending motion before the Court to approve estimated storage fee even without having filed his (respondent) report on the auction sale. Movant filed its opposition upon learning of the motion to approve storage fee which was accordingly denied by the Court on December 10, 2003 with another directive to the respondent sheriff to turn over the proceeds realized from the auction sale to the same movant. His motion for reconsideration thereof having been denied outright, respondent sheriff has yet to comply with the directive of the Court on December 10, 2003 as well as to render the necessary report on the auction sale. Hence, the instant motion to cite respondent in contempt of court.

In his comment, respondent Sheriff Hortaleza cites heavy workload for his delay in the implementation of the subject writ having been task(sic), together with just one other fellow employee, to enforce writs and other processes issued by six (6) other courts. That he has complied with the Order dated October 10, 2003; and that after having disposed of the subject vehicle with the plaintiff as the highest bidder, it was twice verbally advised, thru its representative, to take custody of the same but failed without giving any reason up to the present.

After a careful examination of the record, the Court notes that after its directive embodied in the order of October 10, 2003, respondent Sheriff Hortaleza accordingly issued a Notice of Levy and Sale on Execution on October 20, 2003 setting the auction sale of the levied motorized tricycle on November 3, 2003. Likewise, he filed a written explanation with the Court on the same date of October 20, 2003 citing the alleged existence of a third-party claimant as the principal cause for the delay in the disposition of the levied property. Hence, it may not be claimed correctly that he defied the order of this Court dated October 10, 2003.

In fact, the auction sale slated on November 3, 2003 pushed through with the plaintiff-movant as the highest bidder for the motorized tricycle. Respondent sheriff filed his report thereon dated December 15, 2003. While it may be quite unexpected on the part of the respondent sheriff to personally claim for storage fee apparently on behalf of its intended beneficiaries, not to mention the fact that movant was not furnished a copy of the motion for the said purpose so it could act accordingly, nothing was concretely shown by the movant that such actuation was motivated by malice that could only be intended to deny plaintiff its due.

The Court is likewise not fully convinced that respondent sheriff apparently refused to deliver the proceeds of the auction sale to the movant. On the contrary, respondent asserts in his comment that he had twice advised the plaintiff, thru its representative, to take possession of the subject vehicle being the highest bidder. The instant motion was set for hearing on February 6, 2004 which could have been an opportunity for the plaintiff to controvert respondent's assertion but unfortunately it failed to show up. Under the premises, there is no reliable basis to conclude that respondent sheriff refused to deliver the motorized tricycle to its present rightful owner, the plaintiff. The Court therefore hesitates to exercise its drastic power of contempt bearing in mind its punitive character, specially where, as here, the allegations in support of the motion do not appear to have been indubitably established.

WHEREFORE, the instant motion to cite Sheriff Vinez Hortaleza in contempt of court is hereby denied.<sup>[6]</sup>

On September 27, 2004, Executive Judge Silverio Castillo issued his Resolution/Recommendation. He noted that complainant did not appear despite due notice of the hearing and that:

There is no basis for the complaint filed.

From the evidence presented, it is clear that the motorcycle subject of this case was subsequently sold at public auction with no less than the complainant as the highest bidder. The delay in the enforcement of the writ of the execution was due to the fact that the subject motor vehicle is registered to one John Nazareno. This even placed the respondent in a position to exercise caution rather than to sell the tricycle in a public auction in a hurry. The accusations labeled against the respondent that he sold the tricycle privately to another person at P11,000.00 instead of P4,000 as earlier stated by the respondent can not be appreciated by this Court. These accusations, pitted against the Sheriff's Report dated 15 December 2003, cannot overcome the presumption of regularity of performance of duty of a public official especially so that the latter is supported by a documentary evidence showing compliance with his bounden duties. To add, the accusation that the respondent malversed the proceeds of the tricycle must necessarily fail, because if the respondent indeed earlier sold the tricycle and pocketed the amount, then there can be no tricycle subject of a subsequent sale, which tricycle was even acquired by the complainant in the public auction, it being the sole and the highest bidder.

WHEREFORE, in view of the above, the administrative case leveled against the respondent Vinez Hortaleza is hereby respectfully recommended DISMISSED.

SO ORDERED.<sup>[7]</sup>

On January 26, 2005, the Court referred the case to the Office of the Court Administrator for its evaluation, report and recommendation.<sup>[8]</sup>