

FIRST DIVISION

[A.M. No. MTJ-04-1518, January 15, 2004]

ATTYS. VILMA HILDA D. VILLANUEVA-FABELLA AND WILMAR T. ARUGAY, COMPLAINANTS, VS. JUDGE RALPH S. LEE AND SHERIFF JUSTINIANO C. DE LA CRUZ JR., BOTH OF THE METROPOLITAN TRIAL COURT, BRANCH 38, QUEZON CITY, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Once more, we remind members of the judicial branch – judges and judicial personnel alike -- to be conscientious, diligent and thorough in the performance of their functions. At all times they must observe the high standards of public service required of them.

The Case and the Facts

In an administrative Complaint^[1] dated November 12, 2002, Attys. Vilma Hilda D. Villanueva-Fabella and Wilmar T. Arugay charged Judge Ralph S. Lee of the Metropolitan Trial Court (MeTC) of Quezon City (Branch 38) with manifest partiality, incompetence and gross ignorance of the law; and Sheriff Justiniano C. de la Cruz Jr. of the same MeTC, with unjust, oppressive, irregular and excessive enforcement of a writ of attachment. The factual antecedents of the matters are summarized by the Office of the Court Administrator (OCA) as follows:

“The complainants are counsels for the defendants in Civil Case No. [38]-28457 entitled ‘Star Paper Corporation vs. Society of St. Paul and Fr. Leonardo Eleazar’ for Sum of Money with Prayer for Preliminary Attachment. They narrated that on 19 June 2002, their clients were served a copy of the complaint and a Writ of Attachment by Sheriff Dela Cruz based on the plaintiff’s allegation that the defendants contracted a debt in bad faith with no intention of paying the same.

“On the aforementioned day, a printing machine was levied and delivered to the plaintiff’s warehouse, although there was an offer by the defendants to pay right there and then P223,457.75, the amount fixed in the order of attachment, but the plaintiff denied the defendants’ plea not to attach the machine, saying that [it] had already set [its] mind on attaching the same.

“Atty. Fabella, together with three (3) priests, asked the sheriff to levy on a less expensive machine but to no avail. She then told the sheriff that he [would] unnecessarily levy on the machinery because a cash deposit to discharge the attachment could be filed that same afternoon but he

just dismissed the same, saying that it takes time before the court could approve the counterbond.

"The complainants claim[ed] that Sheriff Dela Cruz violated x x x Rule 57, Section 7, 1997 Rules of Civil Procedure which provide[d] that in the attachment of personal property capable of manual delivery, [the property should] be taken and safely kept in the sheriff's custody. The machinery, according to complainants, [was] brought to [the] plaintiff's warehouse in San Francisco del Monte, Quezon City. The foregoing show[ed] that the implementation of the writ of attachment was marred by excessiveness, irregularity and oppressiveness.

x x x x x x x x x

"On 3 July 2002, Judge Lee granted the defendants' Urgent Motion to Discharge Attachment filed 19 June 2002. Thereafter, on 9 July 2002, an Urgent Ex-Parte Motion to Withdraw Cash Deposit was filed, without notice to the defendants and despite failure of the plaintiff to set such litigious motion for hearing and contrary to existing laws and jurisprudence. Judge Lee granted the same in his Order of 17 July 2002. Defendants only learned of the withdrawal when they received a copy of the said Order.

"A Motion for reconsideration of the 17 July 2002 Order was filed on 30 August 2002. Defendants stressed that the Motion to Withdraw Cash Deposit has no basis, shows no urgency, lacks notice and hearing, and is already a prejudgment of the case even before the pre-trial stage which is tantamount to the taking of property without due process of law.

"For failure of the plaintiff to appear at the pre-trial conference, the court granted the motion to declare the plaintiff as non-suited as well as the prayer to allow the ex parte presentation of the defense's evidence on its counterclaim.

"The plaintiff then filed a Verified Motion for Reconsideration of the Order declaring it as non-suited[,] which was set for hearing in the morning of 24 October 2002, the same day the aforementioned ex parte presentation of evidence was supposed to commence.

"Judge Lee was not around in the morning so the hearing on the motion did not materialize with the ex-parte presentation of evidence in the afternoon because the Clerk of Court refused to proceed for the reason that a motion for reconsideration had been filed the day before. The Clerk of Court then conferred with the respondent Judge in his chambers who produced a handwritten note granting the said motion. She explained to complainant Atty. Arugay that she did not notice that Judge Lee had already issued the Order granting such motion[;] thus, the ex parte presentation of evidence could not proceed.

"According to complainants, the Clerk of Court could not explain the irregularity in the granting of the plaintiff's Motion for Reconsideration and the fact that the same was swiftly resolved[,] while the defendants'

similar motion [had] not been resolved for more than two (2) months already.”^[2]

In his Comment^[3] dated January 9, 2003, respondent judge claimed that the Complaint was fatally defective, because complainants did not have legal personality to file it; neither did they present affidavits, verified statements or any authority to represent their clients. Further, the Complaint did not contain a certification of non-forum shopping, but instead had a handwritten verification not sworn to or subscribed before an administering officer.

He likewise assailed complainants’ allegations as hearsay. As to what had allegedly transpired during the implementation of the subject Writ of Attachment, he adopted the averments in respondent sheriff’s Comment^[4] alleging the presumption of regularity in the discharge of official functions.

Respondent judge admitted that he had committed a procedural error when he released the counter-bond^[5] to the plaintiff in the said civil case. However, when the defendants therein, through their Motion for Reconsideration, called his attention to the mistake, he immediately ordered^[6] the return^[7] of the counter-bond to the custody of the Office of the Clerk of Court. He cited jurisprudence to defend his acts and asserted his good faith and lack of malice. Moreover, he averred that he had not delayed the resolution of the Motion. Finally, he urged the Court to dismiss the instant Complaint outright for being instituted without basis and merely to harass him.

In his Comment,^[8] respondent sheriff claimed that after receiving the Writ of Preliminary Attachment, he sought its implementation through the assistance of the clerk of court of the MTC-Makati, Sheriff Ernesto Adan, and the Makati police. He allowed the parties in the civil case to negotiate for a settlement, but when the negotiations bogged down, he attached a printing machine that was not in use at the time.

He denied that there was abuse in the levy, claiming that the machine was an old 1970 model. Moreover, he said that, contrary to complainants’ allegation that the machine was valuable, no receipt to prove its true value was ever shown.

Respondent sheriff added that it was in his own belief and best judgment to temporarily place the delicate printing machine in the warehouse of the plaintiff for safekeeping. The machine was eventually returned to the defendants by virtue of the Order discharging the Writ. In fact, one of the complainants personally acknowledged receipt of the machine.

As to the allegation that he was arrogant, respondent sheriff claimed that he waited for more than three hours before exercising his ministerial function. Lastly, he adopted the averments in the Comment of respondent judge on other events that had transpired during the pendency of the civil case, the subject of the instant Complaint.

Evaluation and Recommendation of the OCA

The OCA opined that the provisions cited by complainants -- those in Sections 12

and 18 of Rule 57 of the 1997 Rules of Civil Procedure^[9] -- did not require the adverse party to be first notified and then heard before an attachment bond may be released. Considering that the bond posted by the attaching creditor would answer for the damages and costs the court may award the adverse party by reason of the attachment, the better practice was for the latter to be notified and heard before the motion to discharge attachment could be resolved.

According to the OCA, the error was corrected when respondent judge, on Motion for Reconsideration, reversed himself before the adverse party incurred any damage. The OCA emphasized that before the full disciplinary powers of this Court could befall a judge, the erroneous act should have been committed with fraud, dishonesty, corruption, malice or bad faith. It opined that such fact had not been clearly and convincingly shown in the instant case.^[10]

The OCA found that respondent sheriff had erred when he deposited the plaintiff's levied property in the warehouse and thereby lost actual or constructive possession thereof. The OCA said that this legal violation could not be justified by the weight and the condition of the machine, which could have been deposited in a rented private warehouse where it could have been guarded under his strict supervision.

Consequently, the OCA recommended that respondent judge "be REMINDED to be more circumspect in the performance of his duties and to keep abreast with the law and jurisprudence"; and that respondent sheriff "be SUSPENDED for one (1) month without pay for violation of Rule 57, Section 7(b) of the 1997 Rules of Civil Procedure with a WARNING that a repetition of the same or similar act(s) shall be dealt with more severely in the future."^[11]

The Court's Ruling

We agree with the findings and the recommendation of the OCA.

Administrative Liability

With respect to the charges against respondent judge, we find that his grant of the withdrawal of the cash deposit -- an Order he later reversed by ruling that the deposit be returned to the clerk of court -- was a mere error of judgment, not an act revealing gross ignorance of the law or procedure.

Attachment is a juridical institution intended to secure the outcome of a trial -- specifically, the satisfaction of a pecuniary obligation.^[12] Such order is enforced through a writ that may be issued at the commencement of an action,^[13] commanding the sheriff to attach property, rights, credits or effects of a defendant to satisfy the plaintiff's demand.^[14] Hence, the property of a defendant, when taken, is put in *custodia legis*.^[15]

In order to prevent the sheriff from levying an attachment on property, the defendant (also called the adverse party) may make a deposit or give a counter-bond in an amount equal to that fixed in the order of attachment. Such deposit or counter-bound is intended to secure the payment of any judgment that the plaintiff (also called the attaching party or the applicant to the writ) may recover in the

action.^[16] After a writ has been enforced, however, the adverse party may still move for the discharge of the attachment, wholly or in part, by also making a deposit or giving a counter-bond to secure the payment of any judgment^[17] the attaching party may recover in the action.^[18] The property attached shall then be released and delivered to the adverse party; and the money deposited shall be applied under the direction of the court to the satisfaction of any judgment that may be rendered in favor of the prevailing party.^[19]

In the instant case, respondent judge had ordered^[20] the withdrawal of the cash deposit of the defendant and released it in favor of the plaintiff, even before judgment was rendered. This action was clearly in violation of the Rules mandating that after the discharge of an attachment, the money deposited shall stand in place of the property released.^[21] However, the inadvertence^[22] of respondent judge was not gross enough to merit sanction.

First, he rectified himself within the period given for deciding motions. Section 15(1) of Article VIII of the Constitution mandates all trial courts to resolve all matters filed within three months from date of submission.^[23] The Motion for Reconsideration^[24] of the July 17, 2002 Order granting the withdrawal of the deposit was filed on August 30, 2002, and submitted for resolution on September 5, 2002,^[25] the date of hearing.^[26] The Order^[27] granting this Motion was then issued on November 4, 2002, well within the three-month period. The money was returned, and no prejudice was suffered by any of the parties.

Second, respondent judge owned up to his mistake^[28] in his Comment. This is an admirable act. Under the Code of Judicial Conduct, judges should be the embodiment of competence^[29] and should so behave at all times as to promote public confidence in the integrity of the judiciary.^[30] They must be faithful to the law.^[31] That respondent judge admitted his mistake shows his recognition of his fallibility and his openness to punishment, the imposition of which restores public confidence in the judicial system. His July 17, 2002 Order was merely an honest mistake of judgment -- an innocent error in the exercise of discretion -- but not a display of gross incompetence or unfaithfulness to the law.

We have already ruled that as long as the judgment remains unsatisfied, it would be erroneous to order the cancellation of a bond filed for the discharge of a writ of attachment.^[32] In like manner, it would be erroneous to order the withdrawal of a cash deposit before judgment is rendered. Be that as it may, "a [judge] may not be held administratively accountable for every erroneous order x x x he renders."^[33] Otherwise, a judicial office would be untenable,^[34] for "no one called upon to try the facts or interpret the law in the administration of justice can be infallible."^[35] For liability to attach for ignorance of the law, the assailed order of a judge must not only be erroneous; more important, it must be motivated by bad faith, dishonesty, hatred or some other similar motive.^[36] Certainly, mere error of judgment is not a ground for disciplinary proceedings.^[37]

Complainants alleged that respondent judge committed another violation of the Rules of Court when he granted^[38] the plaintiff's Urgent Ex-Parte Motion to