

THIRD DIVISION

[A.M. No. P-03-1700 (formerly OCA IPI No. 01-1205-P), February 23, 2004]

**TEODORA A. CAPACETE AND RODOLFO CAPACETE,
COMPLAINANTS, VS. JOEL O. ARELLANO, SHERIFF IV, REGIONAL
TRIAL COURT, BRANCH 25, BIXIAN, LAGUNA, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

This administrative complaint^[1] filed by spouses Rodolfo and Teodora Capacete charges Joel O. Arellano, sheriff IV, assigned in the Regional Trial Court (RTC), Branch 25, Bixian Laguna, with grave misconduct and harassment.

The antecedent facts that gave rise to the complaint are as follows:

Complainant Rodolfo Capacete is one of the plaintiffs in Civil Case No. 89, entitled "*Alejandro Capacete and Rodolfo Capacete vs. Venancia Baroro, et. al.*" for illegal detainer filed with the Municipal Trial Court (MTC), Cabuyao, Laguna.

On June 4, 1989, the MTC rendered its Decision holding that as between the opposing parties, the defendants have the right of possession over Lot 88 with an area of 909 square meters situated at Barangay Marinig, Cabuyao, Laguna; and ordering the plaintiffs to vacate the premises and to pay the defendants jointly and severally the sum of P57,266.00 as rentals,^[2] PP100,000.00 as moral damages, and P30,000.00 as attorney's fees. On appeal,^[3] the RTC affirmed the MTC Decision *in toto*, prompting the plaintiffs to file with the Court of Appeals a petition for review. But it was dismissed. Upon the finality of the Court of Appeals Decision and upon defendants' motion, the RTC issued a "Writ of Execution."

In their affidavit-complaint, spouses Capacete alleged that on March 15, 2001, respondent sheriff issued a Notice of Levy, not on Lot 88, but on a parcel of land covered by Transfer Certificate of Title (TCT) No. 378033 in the name of complainant Rodolfo Capacete with an area of **168** square meters, also situated at Barrio Marinig, Cabuyao, Laguna. By levying on the wrong property and by repeatedly enforcing the writ, respondent sheriff is administratively liable for grave misconduct and harassment.

In his comment,^[4] respondent sheriff denied the charges which he considers malicious. He explained that in enforcing the final Decision, he merely complied with the "Writ of Execution" issued by the RTC on January 4, 2001. He served the "Notice to Vacate" upon the plaintiffs but they defied it.

On March 15, 2001, he caused the registration of the "Notice of Levy" on TCT No. T-378033 to satisfy the money judgment.

On August 31, 2001, he filed with the RTC the "Sheriff's Return."

In his Report and Recommendation dated March 21, 2003,^[5] Court Administrator Presbitero J. Velasco, Jr. found respondent sheriff guilty of gross negligence in the performance of his duty, thus:

"Respondent Sheriff erred in implementing the Writ of Execution issued by the Branch Clerk of Court of Branch 25, RTC, Bixian, Laguna. Respondent levied the property owned by spouses Rodolfo Capacete and Teodora Aguinaldo which was not the subject of the Writ of Execution. Paragraph (b) of the Writ of Execution issued to respondent to implement reads:

(b) As between plaintiffs Alejandro and Rodolfo Capacete, on one hand, and Venancia Baroro, on the other hand, declaring the latter to be the legitimate owners of Lot 88, Cad No. 455-D, with an area of 909 square meters, and located at Barangay Marinig, Cabuyao, Laguna (p. 17, Rollo).

In the Notice of Levy, respondent Sheriff levied, to satisfy the Writ of Execution, the property herein below described.

TCT No. T-378033

"A parcel of land (Lot 24-B of subd. Plan Psd-043404-04-7582, being a portion of Lot 24, Blk. 3 (LRC), Psd-728859, LRC Rec. No.) situated in the Bo of Marinig, Mun. of Cabuyao, Prov. of Laguna. Bounded on the x x x containing an area of One Hundred Sixty Eight (168) square meters, more or less.

After respondent issued a Notice of Levy addressed to the Register of Deeds of Calamba, Laguna on March 15, 2001, Atty. Oscar A. Reyes, counsel for the complainant, wrote the Register of Deeds requesting that the annotation at the back of TCT No. T-378033, by reason of the Notice of Levy be cancelled for the said property was not the subject of the Writ of execution dated January 4, 2001 issued by the RTC of Bixian, Laguna (p. 009, Rollo). Respondent received a copy of the letter on April 20, 2001. Despite the receipt of the said letter, respondent did not mention or explain the relation between the property that he levied and the property described in paragraph (b) of the Writ of Execution, despite their differences in land areas and in numbers of the lots.

The presumption of regularity in the performance of official functions does not apply where it is patent that the sheriff erred in implementing the writ of execution. Respondent sheriff, therefore, is guilty of gross negligence."

Court Administrator Velasco recommended that respondent sheriff be suspended from the service for three (3) months without pay.

Subsequently, this Court resolved to re-docket the complaint as a regular administrative matter. Pursuant to the Resolution of this Court dated April 28, 2003,