

## EN BANC

**[ A.M. No. P-04-1768.(Formerly A.M. OCA No. 02-1305-P), February 11, 2004 ]**

**FILOMENA MENESES, COMPLAINANT, VS. ALBERTA S. ZARAGOZA, SHERIFF III, METC, BRANCH 45 PASAY CITY, RESPONDENT.**

### RESOLUTION

#### PER CURIAM:

This is a complaint filed by Filomena Meneses against Albert S. Zaragoza, Sheriff III of the Metropolitan Trial Court, Branch 45, Pasay City, charging him with dereliction of duty and incompetence relative to Civil Case No. 963-98, entitled "Filomena Meneses vs. Romeo Sucgang."

Complainant alleged that respondent failed to comply with the trial court's writ of execution and demolition order, despite the fact that he demanded from her the amount of P30,000 purportedly to defray demolition expenses.

In his comment dated March 13, 2002, respondent denied having received the amount of P30,000 and averred the following defenses:

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5. That I take this opportunity to point out this early the high improbability of even the assertions of the alleged witness of Mrs. Meneses who stated under oath "na noong Setyembre 20, 2001 bandang ika-sampu ng umaga nanduon ako sa dulo ng bahay ni Filomena Meneses. At may dumating na sheriff na ang pangalan ay Albert Zarago[z]a. Siya ay humingi kay Filomena Meneses ng panggastos sa pagpapaalis kay Romeo Sucgang ng halagang P30,000.00. At nakita ko rin na ibinigay ni Filomena Meneses ang makapal na pera na tig-limang daang piso. Binilang muna ni Albert Zarago[z]a ang pera bago inilagay sa waller niya." This is a bare faced lie because of the impossibility of putting in a wallet such big amount which is certainly bulky;

6. As to the statement of Mrs. Meneses and her witness that I received the money from her on September 20, 2001, the same is likewise incredible as it is inconsistent with the records of the case as how could I ask money from her then in order to demolish the house of Romeo Sucgang when the Order of the Court directing the demolition was only issued on November 26, 2001. The said Order was issued on November 26, 2001 and I immediately served the notice of demolition. Unfortunately, the house was always closed at the time. On the said day, Mrs. Meneses went to out Office and told

me that somebody was in the house of Mr. Sucgang. As my blood pressure on that day was unstable, I asked our Process Server to serve the Notice but unfortunately, when our Process Server served the same, nobody was inside the subject house. I was not able to immediately enforce the Writ because my doctor advised me to lie low on my activities because my blood pressure then was unstable for which reason I was always not available.<sup>[1]</sup>

On the recommendation of the Court Administrator, this Court referred the case to the Executive Judge of the Metropolitan Trial Court of Pasay City for investigation, report and recommendation.<sup>[2]</sup>

In his investigation report dated November 20, 2002, Executive Judge Pedro B. Corales disclosed that:

xxx    xxx    xxx.

Complainant, FILOMENA MENESES, (MENESES, for brevity), is the plaintiff in Civil Case No. 963-98, entitled "FILOMENA MENESES v. ROMEO SUCGANG," for EJECTMENT that was raffled to Metropolitan Trial Court, Branch 45, Pasay City presided by HON. JUDGE ZENAIDA G. LAGUILLES; whereas, respondent ALBERT S. ZARAGO[Z]A, (ZARAGO[Z]A, for brevity), is assigned as SHERIFF III of said court.

On 29 March 1999, JUDGE LAGUILLES decided in favor of MENESES. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter and all persons claiming rights under him to:

1. Vacate the aforementioned property described as Lot 24, Block 15 located at 1821 Tramo Street, Pasay City;
2. Pay fair rental on the subject lot pegged at the rate of P1,500.00 a month from September 15, 1990 until the property shall have been actually vacated;
3. Pay attorney's fees in the amount of P10,000.00; and
4. Pay the cost of the suit."

SUCGANG, the defendant in the ejectment case, appealed the adverse decision to the RTC. The RTC affirmed *en toto* the decision of the MeTC. SUCGANG, not satisfied with the decision of the RTC, went to the Court of Appeals and finally to the Supreme Court. However, the appellate courts dismissed his petitions.

In the meantime, during the pendency of the appeal, SUCGANG posted a supersedeas bond for ONE HUNDRED SEVENTY EIGHT THOUSAND (P178,000.00) PESOS.

On 13 April 2000, JUDGE LAGUILLES, granted the motion of MENESES for the issuance of a writ of execution to release the supersedeas bond posted by the defendant in favor of the plaintiff in the total amount of ONE HUNDRED SEVENTY EIGHT THOUSAND (P178,000.00) PESOS (Annex "A," complainant's memorandum).

This Order was not executed because SUCGANG appealed to the Court of Appeals where the records of the case were elevated.

On 02 July 2001, JUDGE LAGUILLES reiterated the Order dated 13 April 2000, (Annex "B," complainant's memorandum).

On 16 July 2001, MENESES, through her counsel, filed an "Ex-Parte Motion To Appoint A Special Sheriff" (Annex "D," complainant's memorandum), alleging among others that:

"That the sheriff assigned to this Honorable Court appears to have his hands full with other writs of execution previously issued, and most of the time he is not available, as he also follows up cases outside Metro Manila. As a consequence, he cannot probably follow up the issuance of the Writ of Execution in the above-entitled case and the subsequent service of the said writ with the bonding company."

On 24 July 2001, ZARAGO[Z]A sent a notice to the insurance company to pay the amount of ONE HUNDRED SIXTY THOUSAND (P160,000.00) PESOS (Annex "C," complainant's memorandum).

On 11 September 2001, MENESES received ONE HUNDRED SIXTY THOUSAND (P160,000.00) PESOS from SUCGANG, the supersedeas bond (Exhibit "C").

On 27 September 2001, ZARAGO[Z]A submitted his "partial report" (Annex "E," complainant's memorandum) which reads as follows:

"WHEREAS, on September 20, 2001, the undersigned Sheriff served the copy of Writ of Execution and Notice to vacate giving the defendant to vacate the premises subject of this case within five days to voluntarily vacate the premises.

After the lapse of five days the undersigned Sheriff went to the address of the defendant and was found out that the said defendant was not able and still refused to vacate the premises."

On 15 November 2001, JUDGE LAGUILLES, granted the motion of MENESES for writ of demolition (Annex "G," complainant's memorandum). Accordingly, on 26 November 2001, the Court issued the writ of demolition.

On 03 February 2002, MENESES, not assisted by her counsel, filed her "EX-PARTE MOTION TO APPOINT SPECIAL SHERIFF" (Exhibit "B"), alleging among others that:

"Plaintiff, to this Honorable Court, most respectfully moves for the appointment of special sheriff, in lieu of sheriff Albert Zarago[z]a, because of the following reasons:

That Sheriff Albert Zarago[z]a promised to demolize (sic) the dwelling structure of Romeo Sucgang on December 04, 2001, but he failed to do so, in spite of the fact that he has already received the demolition expenses that he asked for in the amount of P30,000.00.

That Sheriff Albert Zarago[z]a again asked for a second chance to carry out the demolition on January 7, 2002, but as usual he failed to do so. Like the first promised date, he never went to the site of the demolition together with his helper and the policemen to maintain peace and order during the demolition job, as he promised.

That my co-owner of the lot where the Sucgang structure is located already needs the place. So please help me by appointing a special sheriff to do the job of demolition."

On the same day, JUDGE LAGUILLES, in a marginal note, denied the said motion "in view of the fact that the Branch Sheriff has already reported for work and that he promised to proceed with the demolition within one (1) week from today."

However, on 11 February 2002, MENESES signed a handwritten document (Exhibit "1"), wherein she allowed SUCGANG to stay in the premises until 11 March 2002.

Notably, MENESES filed the motion for appointment of special sheriff and the handwritten document after she had filed her letter-complaint against Zarago[z]a with the Office of the Court Administrator on 15 January 2002.

#### THE VERSION AND EVIDENCE OF THE COMPLAINANT

##### THE TESTIMONY OF MENESES

On 20 September 2001, at around 10:00 in the morning, Zarago[z]a passed by her house on his way to serve a copy of the "notice to vacate" upon SUCGANG and demanded THIRTY THOUSAND (P30,000.00) PESOS from her. Allegedly, he would use the money in paying the policemen and other persons during demolition.

In the presence of MARIETTA VICTORIA, one of her lessees, she initially gave TWENTY THOUSAND (P20,000.00) PESOS to the respondent, but the latter asked for additional TEN THOUSAND (P10,000.00) PESOS. Respondent put the money in his clutch bag. She has plenty of cash at that time because she had just received the supersedeas bond from SUCGANG and she has saving from her other business.

The respondent repeatedly promised to her that he would demolish the house of SUCGANG, but he failed to do so because he was always out of the office on the pretext that he was following up other cases in the field or he was sick. It was only on 04 December 2001 when the "notice of demolition" was finally served on SUCGANG, not personally by respondent, but by MANOLO MANUEL GARCIA, the process server in MeTC, Branch 45.

Respondent served the "notice to the insurance" only on 24 July 2001, after she filed her motion to appoint special sheriff on 17 July 2001.

She has an agreement with respondent that on 11 September 2001 he would be in his office to receive for her ONE HUNDRED SIXTY THOUSAND (P160,000.00) PESOS from SUCGANG, but again he was absent. Hence, upon the suggestion of the branch clerk of court of MeTC, Branch 45, SUCGANG paid directly to her.

The supersedeas bond is for ONE HUNDRED SEVENTY EIGHT THOUSAND (P178,000.00) PESOS, but respondent collected only ONE HUNDRED SIXTY THOUSAND (P160,000.00) PESOS from SUCGANG and did not bother to collect anymore the balance of EIGHTEEN THOUSAND (P18,000.00) PESOS.

She agreed to extend the demolition of the house of SUCGANG because Zarago[z]a suddenly appeared in her house and she could not do anything since the case already passed through the barangay.

On 13 March 2002, the demolition was completed, not by respondent, but by SUCGANG. In the process, other portions of the house were also destroyed.

#### THE TESTIMONY OF MARIETTA VICTORIA

On 20 September 2001, at about 10:00 in the morning, she was in the house of MENESES and she saw her counting money. When she was through, MENESES gave the money to Zarago[z]a, which the latter put in his wallet. She heard that the money would be used for "pagpapaalis kay Romeo Sucgang" and that respondent would serve the "notice of demolition."

Her affidavit was marked as (Exhibit "D," for complainant and Exhibit "2," for the respondent).

#### THE VERSION AND EVIDENCE OF THE RESPONDENT

##### THE TESTIMONY OF Zarago[z]a

He denied that he demanded THIRTY THOUSAND (P30,000.00) pesos from the complainant on 20 September 2001 and alleged that it was impossible for him to ask for demolition expenses because there was no demolition order yet at that time.