

## SECOND DIVISION

**[ A.M. No. P-04-1767 (formerly OCA IPI No. 03-1576-P), August 12, 2004 ]**

**PHILIPPINE AIRLINES, INC., REPRESENTED BY EDUARDO CENIZA, PETITIONER, VS. SEVERINO DC BALUBAR, JR., SHERIFF IV, RTC, BRANCH 118, PASAY CITY, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

Before us is an affidavit complaint dated January 13, 2003, filed by Philippine Airlines, Inc. (PAL), represented by Eduardo R. Ceniza, against Severino DC Balubar, Jr., Deputy Sheriff of Branch 118 of the Regional Trial Court of Pasay City (RTC for brevity), for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act relative to the implementation of the writ of execution and his refusal to lift notices of garnishments on PAL's depository banks. The complaint was originally filed with the Ombudsman and through its Fact Finding, Intelligence and Research Office, it was referred to us on February 11, 2003 for appropriate action.<sup>[1]</sup>

PAL Employees Savings and Loan Association, Inc. (PESALA), a savings and loan association whose members are employees of PAL, filed an action for specific performance, damages, or declaratory relief against PAL and Jose Blanco in the RTC, docketed as Civil Case No. 97-1026. PESALA sought to enjoin PAL from implementing a ceiling of 40%, that is, only 40% of the salary of a PAL employee borrower can be deducted to pay the loan secured from PESALA. While the case was being tried, PESALA filed a motion to direct PAL to remit to them the amount of P44,488,716.41, representing the amount which were not deducted from the salaries of PESALA members from September 1997 to February 1998 by reason of the 40% limitation. On March 11, 1998, the trial court issued its Order as follows:

WHEREFORE, and based on the foregoing considerations, finding the motion of the plaintiff to be meritorious, the same is hereby GRANTED. Defendants are hereby ordered to remit to the plaintiff PESALA the total undeducted amount of P44,488,716.41 which corresponds to pay periods from September 1997 to February 15, 1998, and to cause the deductions in full in the succeeding pay periods in accordance with the deduction advice of the plaintiff.<sup>[2]</sup>

PESALA moved for the issuance of a writ of execution to collect the said amount from PAL which was denied by the trial court on the ground that the order sought to be executed was merely an interlocutory order and not yet final and executory. Subsequently, on December 4, 1998, the trial court issued an Order stating:

At today's hearing, Atty. Emmanuel Peña, defendants' counsel, and defendant Atty. Jose Blanco assured the Court that: 1) PAL will regularly remit to PESALA the full amount per pay period that is due to the latter;

and (2) PAL will likewise pay PESALA the balance on the previously undeducted amount of P44,488,716.41 by January 1999 (details on the payment were manifested by Atty. Blanco in open Court). [3]

The Order, dated March 11, 1998, requiring PAL to remit the amount of P44,488,716.41 to PESALA, elevated by PAL to the Court of Appeals through a petition for *certiorari*, [4] was denied. Entry of judgment was made on May 14, 1999.

PESALA subsequently filed a charge of indirect contempt against Jose Blanco, PAL President Avelino L. Zapanta, and PAL Chief Financial Officer Andrew L. Huang, docketed as Civil Case No. 00-0016, for the former's failure to comply with the Orders dated March 11, 1998 and December 4, 1998.

On November 6, 2002, the RTC rendered a decision finding respondents in Civil Case No. 00-0016 guilty of indirect contempt and ordered them to remit the sum of P44,488,716.41 to PESALA within three days from receipt of the decision.

PAL filed a notice of appeal in both Civil Cases Nos. 97-1026 and 00-0016. PESALA moved for execution pending appeal which was granted by Judge Gutierrez in an Order dated December 10, 2002. [5] The corresponding writ was issued the next day directing respondent sheriff Balubar, Jr. to:

....Make effective the above-stated Orders of this Honorable Court and that you cause Philippine Airlines, Inc., Jose C. Blanco, and Avelino Zapanta as representatives of PAL to implement/enforce the Orders dated March 11, 1998 and December 4, 1998 particularly for said defendants to immediately remit to the plaintiff PESALA the total amount of P44,488,716.41 which corresponds to pay period from September 1997 to February 15, 1998. [6]

On December 11, 2002, respondent sheriff served the writ of execution on PAL through its Legal Department. [7] On the same day, respondent sheriff served notices of garnishment [8] on PAL's depository banks, to wit: Allied Banking Corporation, Chase Manhattan Bank, China Banking Corporation, Equitable-PCI Bank, and Hongkong and Shanghai Banking Corporation.

On December 12, 2002, Allied Banking Corporation informed respondent that PAL has an account with it sufficient to cover the amount stated in the garnishment. [9]

On December 16, 2002, respondent served on Allied Bank, through its Senior Manager, copy furnished PAL, an order for the delivery of money. [10]

On December 18, 2002, complainant Ceniza, PAL's General Counsel and Corporate Secretary, wrote a letter to respondent sheriff requesting him to lift the notices of garnishment on the other bank deposits of PAL in excess of P44,488,716.41 since Allied Bank had already informed him of the sufficiency of PAL's account to cover the amount stated in the garnishment; and claiming that it is in violation of Section 9(c), Rule 39 of the Rules of Civil Procedure which provides that the garnishment shall cover only such amount as will satisfy the judgment and all lawful fees. [11]

On December 27, 2002, respondent served on Allied Bank a final order to deliver

the money and copy furnished PAL.<sup>[12]</sup>

On January 14, 2003, respondent wrote Allied Bank a letter copy furnished PAL, through its Legal Office, as follows:

As of to date you have not delivered the garnished money of Php44,488,176.41 despite the two (2) Orders of Delivery of Money dated December 16 and 27, 2002 served upon you by the undersigned. Since you have failed/refused to deliver the same within ten (10) days limit as prescribed by the Rules of Court, the undersigned will not lift the garnishment to the other depository banks of the defendants. Final demand is being requested for your compliance. Immediate lifting of garnishment on the other banks will be made after delivery of the garnished money. Your disobedience in the delivery of the money per writ of execution and garnishment is contemptuous of the Orders of the Court.<sup>[13]</sup>

In his complaint, Ceniza claims that respondent did not furnish them with copies of the order granting PESALA's motion for execution pending appeal and the writ of execution in violation of Section 2, Rule 13 of the 1997 Rules of Civil Procedure which provides that if any party appeared by counsel, service shall be made upon his counsel. He avers that the sheriff's act of ordering the Allied and the Chase Manhattan Banks to deliver the money would mean a total amount of P88,977,432.82, which is in excess of the amount ordered by the writ to be collected from PAL; that the sheriff's act of unusual and excessive haste in collecting the amounts in excess of P44,488,716.41 is proof of his corrupt motive in the execution of the appealed decision and his malicious intent to cause material damage and prejudice to PAL; that his refusal to lift the garnishment of PAL's deposit in excess of P44,488,716.41 shows his malicious intent to give PESALA unwarranted benefits, advantage, and preference in violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

Respondent filed his Comment wherein he alleges: He served the writ of execution pending appeal issued on December 11, 2002 on PAL through its legal department. Section 2, Rule 13 of the Rules of Court requiring service to counsel invoked by complainant does not apply to writ of execution as the Rule only applies to pleading, judgment, and other papers. Section 11 of Rule 39 shows that the writ should be served upon the party against whom the same is rendered. Thus, Rule 39 which specifically deals with writs of execution, should be applied rather than Rule 13 which is a general provision. He served the subject writ upon complainant's counsel thru registered mail. Due to PAL's failure to pay the judgment debt despite demand, he caused the garnishment of PAL's bank accounts in accordance with Section 9(c), Rule 39 of the Rules of Court. While Allied Bank informed him of PAL's sufficient account to cover the amount subject of the writ, the bank failed to deliver the same despite repeated demands. He informed Allied Bank, through a letter, that as soon as the garnished amount is delivered, the garnishment on the other banks shall be immediately lifted. PAL, using its influence on Allied Bank, refused the payment of judgment debt which is an open and clear defiance of the court proceedings. The delay in the lifting of the garnishment on the garnishee is caused by incidents beyond his control since garnishment cannot be lifted unilaterally by him but only upon order of the court which may be made upon report of the sheriff that the judgment has already been satisfied. None of the garnishee had delivered the

garnished amount despite repeated demands, thus, the judgment has not been satisfied in part or in full.

Complainant submitted a Manifestation and Motion averring that respondent lied when he said that "he nevertheless caused the service of the subject writ upon defendant's counsel thru registered mail." Complainant attached the affidavit of its paralegal who personally went to the trial court to secure copies of the Order and the writ of execution.

We referred the case to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation. The OCA's findings are as follows: Respondent sheriff committed a simple neglect of duty when it did not observe the procedure in the execution of money judgment under Section 9(a), Rule 39 of the Rules of Court. Under the rule, respondent should have first demanded the immediate payment of the judgment debt from any of the persons named or impleaded as parties in Civil Cases Nos. 97-1026 and 00-0016 and not merely serve the writ. It is only when the proper party refused to pay the judgment debt that respondent sheriff may proceed to levy the properties of PAL which shall then be applied to satisfy the amount stated in the writ.

Respondent should not be faulted for the alleged material damage suffered by PAL for the former's refusal to lift the notice of garnishment on PAL's other depository banks since the continued inaction of Allied Bank despite demands to deliver the money in their possession, delayed the full implementation of the subject writ. Thus, respondent is found not guilty of violation of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act).

The OCA recommended the reprimand of respondent sheriff for simple neglect of duty with warning that a repetition of a similar offense shall be dealt with more severely.

We agree with the findings of OCA with modification as to the imposable penalty.

Preliminary, we must first resolve the issue raised by complainant regarding the non-service to PAL's counsel of the Order granting the motion for execution pending appeal and the writ of execution allegedly in violation of Section 2, Rule 13 of the Rules of Court which provides:

Sec. 2 Filing and service, defined – Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

While it is true that the Order dated December 10, 2002 and the writ of execution dated December 11, 2002 were served on PAL's legal department and not to counsel, the latter, however, obtained from the court a copy of the same on December 12, 2002. And on the basis of said copy, counsel was able to file motions