

EN BANC

[A.M. No. P-04-1892 (Formerly OCA-IPI No. 03-1622-P), September 30, 2004]

MANUEL TAN, COMPLAINANT, VS. JUSTINIANO C. DELA CRUZ, JR. SHERIFF III, METC, BRANCH 38 QUEZON CITY, RESPONDENT.

R E S O L U T I O N

PER CURIAM:

On April 24, 2003, Manuel Tan (Tan) filed a letter-complaint^[1] dated April 22, 2003 against Justiniano C. dela Cruz, Jr. (dela Cruz), Sheriff III, Metropolitan Trial Court (MeTC), Branch 38, Quezon City, charging the latter with Dereliction of Duty, Gross Misconduct, Acts Prejudicial to Public Service and Dishonesty.

The records disclose the antecedents:

Judgment^[2] was rendered in favor of Tan in Civil Case No. 38-25885 for ejectment against Edgar Mata (Mata). Thereafter, a *Writ of Execution*^[3] dated February 8, 2002 was issued upon Tan's motion.

On March 8, 2002, dela Cruz served a *Notification*^[4] to Mata and all persons claiming rights under him to vacate the premises within five (5) days from receipt of the notice and to pay the money judgment awarded in favor of Tan. The *Notification* was received by a certain Danilo Seran, an occupant of the subject premises.

Confusion as to the implementation of the writ arose when Mata's counsel, Atty. Faustino Tugade, Sr. (Atty. Tugade), filed an *Urgent Motion to Recall/Set-Aside Writ of Execution Issued Against "Angelita Somonod" But Being Enforced Against Defendant Edgar Mata*^[5] dated March 14, 2002 praying, among others, that the writ be set aside pending the determination of the *supersedeas* bond which Mata has to pay or deposit to stay the execution of the writ. Tan filed a *Comment/Opposition*^[6] dated March 20, 2002. Subsequently, Atty. Tugade filed a *Manifestation and Motion*^[7] dated April 19, 2002 praying that the writ be withdrawn allegedly because Mata is only an employee of the owners of the subject premises. The court denied the motion in its *Order*^[8] dated June 11, 2002.

Complicating matters further, Atty. Alberto Habitan (Atty. Habitan) wrote a letter^[9] dated July 17, 2002 to dela Cruz on behalf of his client, Amor Ubaldo-Cortez (Cortez) informing dela Cruz that Mata has long vacated the premises and that it is Cortez who is in possession of the subject premises. Further, Atty. Habitan informed dela Cruz that Cortez is taking steps to nullify Tan's title and requested dela Cruz to refrain from disturbing Cortez' possession.

One month later, Atty. Habitan filed a *Manifestation and Motion*^[10] dated August 16, 2002 alternatively praying that the *Writ of Execution* be declared moot and academic as Mata had already vacated the subject premises or that its implementation be held in abeyance considering the presentation of a title containing the same description, area and location as the property subject matter of the case.

Citing the foregoing events, Dela Cruz filed a *Sheriff's Report*^[11] dated August 26, 2002 stating the proceedings he has taken to implement the writ and informing the court that there is a need to amend the writ as it was issued against a certain Angelita Somonod instead of Mata.

However, before the writ could be amended, it appears that a *Temporary Restraining Order* (TRO) dated October 17, 2002 was issued by the Regional Trial Court (RTC) of Quezon City, Branch 82, upon the application of the Estate of Feliza Ubaldo-San Agustin in Civil Case No. Q02-47821, enjoining the MeTC to cease and desist from implementing the writ and to preserve the status quo.

After the TRO was lifted, Tan filed an *Urgent Ex-Parte Manifestation/Motion*^[12] dated February 24, 2003 praying that the *Writ of Execution* be amended to reflect the true name and identity of Mata and be immediately implemented. The motion was granted in the court's *Order*^[13] dated March 21, 2003 and an amended *Writ of Execution*^[14] of even date was forthwith issued.

On March 25, 2003 dela Cruz served another *Notification*^[15] to vacate the subject premises. A certain Augie Ubaldo received the *Notification*. However, on March 28, 2003, dela Cruz again received a letter^[16] from Atty. Habitan informing him that Mata had long vacated the subject property which is now occupied by Cortez. In light of this information, dela Cruz sought further instruction from the court in his *Sheriff's Report*^[17] dated March 31, 2003.

In its *Order*^[18] dated April 29, 2003, the court directed dela Cruz to proceed with the implementation of the writ. Thus, on April 30, 2003, dela Cruz implemented the writ, ejected all persons claiming rights under Mata from the premises, and turned over possession thereof to Tan who acknowledged receipt thereof. In his *Sheriff's Return*^[19] dated May 5, 2003, dela Cruz returned the writ fully satisfied as to the ejectment aspect but unimplemented as to the money judgment.

In his letter-complaint, Tan faults dela Cruz for the delay in the implementation of the writ after the first *Notification* was served upon the occupants of the subject premises. According to Tan, the writ was not implemented after the five (5)-day period to vacate given to the occupants in the first *Notification*. Again, after the second *Notification* was served, dela Cruz allegedly stalled the implementation of the writ when he asked for further instruction from the court just because of the letter from Atty. Habitan dated March 27, 2003. Tan also claims that he and dela Cruz agreed on the amount of P20,000.00 as sheriff's fees and that he gave the latter a partial advance payment of P5,000.00 with the balance to be paid upon the full implementation of the judgment.

On the other hand, in his *Comment*^[20] dated June 11, 2003, dela Cruz labels the

filing of the instant case against him as “premature and pure harassment.” After narrating the antecedent events, he asserts that he implemented the writ with dispatch and that Tan has intimated to him a desire to withdraw the complaint in light of the implementation of the writ.

On June 2, 2003, the Office of the Court Administrator (OCA) received a letter^[21] from Tan withdrawing his *Complaint* because the *Writ of Execution* has already been implemented to his complete satisfaction.

Upon the OCA’s recommendation in its *Agenda Report*^[22] dated January 13, 2004, we issued a *Resolution*^[23] dated March 1, 2004 referring the case to Executive Judge Natividad Dizon (Judge Dizon), RTC-Branch 106, Quezon City, for investigation, report and recommendation.

Pursuant to the Court’s directive, Judge Dizon submitted her *Report and Recommendation* dated June 29, 2004 recommending that dela Cruz be sternly warned and reprimanded for failing to comply with Section 9, Rule 141 of the Rules of Court on the procedure for determining, disbursing and liquidating sheriff’s expenses. Judge Dizon, however, found that the delay in the implementation of the writ was not attributable to dela Cruz considering the supervening events and filing of several pleadings bearing on the case over which dela Cruz had no control.

We do not wholly agree.

The Court notes dela Cruz’ virtual silence as regards Tan’s allegation that he and dela Cruz agreed on the amount of ₱20,000.00 as sheriff’s expenses and that he gave dela Cruz ₱5,000.00 as partial payment with the balance to be paid upon full implementation of the writ. A perusal of dela Cruz’ *Comment* and *Affidavit*^[24] reveals that while he denies all allegations contained in Tan’s letter-complaint, he fails to set forth the substance of the matters upon which he relies to support his denial. His general denial is thus tantamount to an admission that he received money from Tan without complying with Section 9, Rule 141 of the Rules of Court, which provides:

Sec. 9. Sheriffs and other persons service processes.--...

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff’s expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer travel, guards’ fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff’s expenses shall be taxed as costs against the judgment debtor.