

EN BANC

[**A.M. No. P-04-1887 (Formerly OCA IPI No. 03-1645-P), December 16, 2004**]

BERNABE B. ALABASTRO, C O M P L A I N A N T, VS. SAMUEL D. MONCADA, SR., SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 17, DAVAO CITY, R E S P O N D E N T.

D E C I S I O N

PER CURIAM:

This administrative matter stems from a complaint filed by Bernabe B. Alabastro charging Samuel D. Moncada, Sr., Sheriff IV, Regional Trial Court (RTC) of Davao City, Branch 17, with dishonesty.

Complainant Bernabe B. Alabastro was one of the defendants in Civil Case No. 18,841-87 for Delivery of Personal Property, Damages and Attorney's fees, entitled "*Firmwood Development Corp. v. Ray U. Velasco, Joseymour R. Ecobiza, Wilhelm Barlis and Bernabe Alabastro,*" that was filed before Branch 17 of the RTC of Davao City. On 29 November 1988, the trial court issued an Order in Civil Case No. 18,841-87, the dispositive portion of which reads:

Judgment is hereby rendered in favor of plaintiff, Firmwood Development Corporation and Intervenors Sta. Clara Housing Industries, Inc., ordering defendants RAY U. VELASCO, JOSEYMOUR R. ECOBIZA, WILHELM BURLIS and BERNABE ALABASTRO, their agents, privy and/or representative, to immediately cause the release from their possession and custody all the eleven (11) crates of plywood, consisting of Seven Hundred Seventy (770) pieces to plaintiff, Firmwood Development Corporation, its agent and/or representative, or to intervenor Sta. Clara Housing Industries, Inc., its agent and/or representative, or in the alternative in case of loss, to pay its declared value in the amount of One Hundred Forty Thousand (P140,000.00) pesos.^[1]

On 07 February 1989, the trial court issued another Order :

Defendants RAY U. VELASCO, JOSEYMOUR ECOBIZA, WILHELM BURLIS and BERNABE ALABASTRO, are moreover ordered to pay plaintiff the amount of P390.00 as filing fee; another amount of P390.00 as Judiciary Development Fund, P25.00 as sheriff's fee, and attorney's fees in the amount of P20,000.00 for plaintiff Firmwood Development and for Intervenor Sta. Clara Housing Industries, Inc., the amount of P30,000.00 as agreed upon, duly proved by Intervenor.^[2]

Defendants appealed the two (2) orders to the Court of Appeals with the latter dismissing the appeal and affirming the aforementioned orders.

The case was elevated to this Court *via* petition for review on *certiorari*. On 31 March 2000, this Court rendered a decision, the dispositive portion of which reads:

WHEREFORE, the petition is DENIED. The decision of the Court of Appeals of 31 January 1995 affirming the orders of the trial court is AFFIRMED. Petitioners are directed to deliver the possession of the eleven (11) crates of plywood to private respondents, or in case of loss or inability to restore possession thereof as required, to pay private respondents the declared value thereof in the amount of P140,000.00, and to pay private respondent Firmwood Development Corporation (FIRMWOOD) attorney's fees of P20,000.00 plus P805.00 for filing fee, Judiciary Development Fund and sheriff's fee, and also to respondent Sta. Clara Housing Industries, Inc., (STA. CLARA) attorney's fees of P30,000.00 as fixed by the trial court. Costs against petitioner.^[3]

As a consequence, the trial court issued on 02 October 2000 a writ of execution^[4] in Civil Case No. 18,841-87.

On 03 October 2000, respondent Samuel D. Moncada, Sr., Sheriff IV, assigned at RTC, Branch 17, implemented the said writ. Thereafter, he submitted to the Court a Sheriff's Return Service,^[5] which in part states:

Respectfully returned to the Honorable Court, Regional Trial Court, 11th Judicial Region, Branch 17, Hall of Justice, Ecoland, Matina, Davao City, herewith original Writ of Execution dated October 2, 2000, issued in the above-entitled case, with the information that the undersigned prepared a letter of demand requesting the Manager of the Philippine National Bank, Davao City regarding the cash deposit of the defendant Alabastro who posted the counterbond as required under Section 5, Rule 60 of the Rules of Court, evidenced by PNB Savings Account No. 148042 and turned over to the undersigned.

That on October 3, 2000, the Manager of the Philippine National Bank, Davao City, turned over to the undersigned the sum of ONE HUNDRED NINETY THOUSAND EIGHT HUNDRED FIVE (P190,805.00) PESOS, Philippine Currency classified as follows:

P140,000.00-	private respondent Firmwood Development Corporation and duly received by Mr. Rudyard Diploma as representative
20,000.00	- Attorney's fees
805.00	- Filing Fee, Judiciary Development Fund and Sheriff's fee

P20,805.00	- Total amount which (sic) also received by Mr. Rudyard Diploma as representative
P30,000.00	- Attorney's fees under check No. Pay to Sta. Clara Housing Industries, Inc.

That the money judgment under Writ of Execution was duly satisfied.

Davao City, Philippines, October 3, 2000.

(SGD)SAMUEL D. MONCADA
Sheriff IV

On 30 October 2000, respondent filed a manifestation^[6] stating, among other things, that the amount of One Hundred Ninety Thousand Eight Hundred Five Pesos (P190,805) was turned over to him by the Manager of the Philippine National Bank (PNB) of Davao City.

On 23 July 2001, complainant filed an *Ex Parte* Motion To Withdraw Bank Deposit,^[7] praying that his passbook with the PNB under Account No. 148042 be returned to him, and that he be allowed to withdraw whatever remained in his bank account considering that the judgment rendered in said case had already been fully satisfied.

On 24 June 2002, complainant filed an *Ex Parte* Motion To Resolve the Motion,^[8] but the same remained unresolved.

On 24 September 2002, the trial court issued an order^[9] directing the PNB Davao Branch to issue a new passbook for Account No. 148042 under the name of complainant Bernabe Alabastro, considering that his passbook has been missing and cannot be found/recovered despite efforts to locate the same.

On 30 October 2002, complainant filed an *ex parte* motion^[10] to direct respondent sheriff to explain why he withdrew P265,805.00 from PNB Savings Account No. 148042, instead of only P190,805.00, for the satisfaction of the money judgment rendered in the said case. On 06 November 2002, the trial court issued an order^[11] directing respondent sheriff to comment thereon.

On 11 November 2002, respondent sheriff submitted his explanation.^[12] He denies withdrawing Two Hundred Sixty-Five Thousand Eight Hundred Five Pesos from complainant's account. He claims he withdrew only the amount of One Hundred Ninety Thousand Eight Hundred Five Pesos. He further requests that an order be issued to direct the PNB to bring the ledger of the bank to show that there was indeed a withdrawal of P75,000, an amount in excess of the money judgment.

On 20 December 2002, complainant filed a motion^[13] praying that the appropriate action be taken on the dishonesty of respondent Samuel Moncada.

On 12 May 2003, Bernabe Alabastro filed a complaint^[14] with the Office of the Court Administrator (OCA) charging respondent Samuel D. Moncada, Sr., with dishonesty. The complaint alleged, among other things, the following:

10. Upon receipt of said order (Annex F), complainant went to PNB Davao Branch to verify the balance of his Savings Account No. 148042 (*which was then changed to No. 385-586617-9 by the bank due to its computerization system*), and he was shocked to find out that the amount actually withdrawn by the respondent from

complainant's said Savings Account No. 148042 with PNB was **P265,805.00** and **NOT P190,805.00**, which he FALSELY REPORTED TO THE Court (RTC 17), or with an excess in his withdrawal amounting to P75,000.00.

11. On October 30, 2002 complainant filed an

EX PARTE

MOTION TO DIRECT DEPUTY SHERIFF SAMUEL MONCADA TO EXPLAIN WHY HE WITHDREW P265,805.00 FROM PNB SAVINGS ACCOUNT NO. 148042 OF ATTY. BERNABE B. ALABASTRO INSTEAD OF ONLY P190,805.00 FOR THE SATISFACTION OF THE JUDGMENT AND TO EXPLAIN WHERE THE DIFFERENCE OF P75,000.00 WENT

Duly furnished the respondent, praying **that Deputy Sheriff Samuel Moncada be directed within five (5) days from receipt hereof to explain why he withdrew the sum of P265,805.00 from the Saving Account No. 148042 of Atty. Alabastro with PNB instead of only the sum of P190,805.00 for the satisfaction of the monetary judgment rendered in this case, and to explain where the difference of P75,000.00 went.**

A Duplicate Original Copy of said *EX PARTE* MOTION TO DIRECT DEPUTY SHERIFF etc. is attached hereto as **Annex "G."**

12. On November 6, 2002 the Court (RTC 17) issued an order directing the respondent to comment on the complainant's *EX PARTE* MOTION within ten (10) days from receipt of the order. A copy of the said Court order is attached hereto as **Annex "H."**
13. On November 11, 2002 respondent submitted an EXPLANATION to the Court (RTC 17) wherein he further revealed his true color of being a dishonest sheriff. His blatant dishonesty is shown by his statements in his said EXPLANATION, which reads:

Frankly speaking, the total amount withdrawn from the Philippine National Bank, Davao Branch is ONE HUNDRED NINETY THOUSAND EIGHT HUNDRED FIVE PESOS (P190,805.00) and not TWO HUNDRED SIXTY FIVE THOUSAND EIGHT HUNDRED FIVE PESOS (P265,805) Philippine Currency with a difference of SEVENTY FIVE THOUSAND PESOS (P75,000.00) Philippine Currency.

A Certified True Xerox of respondent's above EXPLANATION is attached hereto as **Annex "I."**

14. Because of respondent's blatant lies, complainant filed a MOTION FOR APPROPRIATE ACTION ON THE DISHONESTY OF SAMUEL

MONCADA, SHERIFF IV OF THIS HONORABLE COURT, furnished the respondent a copy thereof and attaching thereto **CERTIFIED TRUE XEROX** of the following, to wit:

1) Manager's Check No. 623370 P dated October 3, 2000 pay to the order of Firmwood Development Corp. and/or Samuel Moncada as Sheriff IV of RTC Br. 17, D.C. amounting to P160,805.00. The Reverse Side thereof clearly shows the name and signatures of SAMUEL D. MONCADA and the amount of **P160,805.00** paid to him is indicated by a computer print out.

2) Manager's Check No. 623371 P dated October 3, 2000 pay to the order of Sta. Clara Housing Industries, Inc. amounting to **P30,000.00**. The Reverse Side thereof shows the signature of Rudyard P. Diploma.

3) Manager's Check No. 623372 P dated October 3, 2000 **pay to the order of Samuel B. Moncada**, Sheriff IV (as Judiciary Development Fund) amounting to **P75,000.00**. **The Reverse Side thereof "clearly" shows the name and signatures of SAMUEL D. MONCADA, Sheriff IV, RTC, Br. 17, D.C.I.D. #614-867 AND THE AMOUNT OF P75,000.00 PAID TO HIM IS INDICATED BY A COMPUTER PRINT OUT. The total amount of money he received, which is 235,805 (P160,805.00 + P75,000.00 = P235,805.00) is also shown.**

The total amount of the above three checks is **P265,805.00**.

A copy of said MOTION FOR APPROPRIATE ACTION ON THE DISHONESTY OF SAMUEL MONCADA, SHERIFF IV OF THIS HONORABLE COURT is attached hereto as **Annex "J"** to form part hereof. (Underscoring supplied)

On 22 May 2003, Court Administrator Presbitero J. Velasco, Jr., required^[15] respondent Moncada to submit his comment within ten (10) days from receipt thereof.

On 18 July 2003, respondent Moncada filed an Urgent Motion For Extension Of Time To File Comment^[16] considering that he will still engage the services of a counsel, which was favorably acted upon by the Court Administrator.^[17]

On 15 August 2003, respondent filed his Comment dated 05 August 2003 explaining how the writ of execution was implemented leading to the withdrawal of an amount in excess of the money judgment. It reads, in part:

That pursuant to the WRIT OF EXECUTION the undersigned respondent together with the representative of the plaintiffs namely: RUDYARD DIPLOMA went to the bank depository of the defendant the PHILIPPINE NATIONAL BANK and garnished the deposit of the defendant;