

SECOND DIVISION

[A.M. No. P-04-1884 (Formerly OCA-IPI No. 03-1656-P), December 09, 2004]

**QBE INSURANCE (PHILS.) INC. BY: MARCELINA F. VALLES,
COMPLAINANT, VS. CRESENCIANO K. RABELLO, JR., SHERIFF IV,
RTC, BRANCH 71 PASIG CITY, RESPONDENT.**

R E S O L U T I O N

TINGA, J,:

The instant administrative case arose from a *Complaint* dated 19 May 2003^[1] filed by Q.B.E. Insurance (Phils.) Inc., at the instance of Marcelina F. Valles, Financial Controller of the corporation, which charged Sheriff Cresenciano K. Rabello, Jr. with *Gross Misconduct, Grave Abuse of Authority and Deliberately Giving a False and Perjurious Manifestation and Motion* relative to Civil Case No. 68287 entitled "*Lavine Loungewear Mfg., Inc. v. Philippine Marine and Fire Insurance Corporation, et al.*" assigned to Branch 71 of the Regional Trial Court (RTC) of Pasig City.

Complainant alleged that respondent sheriff unlawfully and maliciously dragged Q.B.E. Insurance (Phils.), Inc. into the aforementioned civil case when the latter falsely reported to the court through an *Urgent Ex-Parte Manifestation and Motion*^[2] dated 24 May 2002 that defendant Rizal Surety and Insurance Company (Rizal Surety, for brevity) had changed its corporate name to Q.B.E. Insurance (Phils.) Inc. (QBE, for brevity). On the basis of the patently perjurious information in respondent's manifestation and motion, complainant averred, Judge Celso D. Laviña issued the *Order* dated 27 May 2002^[3] directing the implementation of the *Writ of Execution* against Rizal Surety under its new name QBE Insurance (Phils.), Inc.

A year later or on 24 March 2003, respondent sheriff swooped down on the offices of the QBE at Makati City, served a *Notice of Immediate Payment* and then garnished its bank accounts. Despite the representations of Atty. Ireneo U. Gacad, in-house counsel and Corporate Secretary of Rizal Surety, that said corporation is separate and distinct from QBE, respondent allegedly arrogantly refused to listen and even threatened to pull out the properties of QBE should it refuse to immediately pay.

On 25 March 2003 QBE filed an *Urgent Motion to Lift 27 May 2002 Order and 24 March 2003 Notice of Garnishment*.^[4] Subsequently, on 11 April 2003, QBE filed an *Affidavit of Third-Party Claim*.^[5] Instead of expediting service, respondent sent the notice of the filing of an *Affidavit of Third-Party Claim* to judgment obligee Haresh Ramnani by registered mail, rather than by personal service, and gave the latter ten (10) days within which to post the required indemnity bond. QBE added that although no indemnity bond was posted by judgment obligee Haresh Ramnani, respondent unlawfully refused to lift the garnishment on the bank accounts of QBE.

Finally, QBE alleged that respondent was fully aware that the trial court's decision in Civil Case No. 68627 had been appealed to the Court of Appeals and that the appellate court had issued an injunctive writ, enjoining and restraining the enforcement of the RTC decision yet he proceeded with the implementation of the *Writ of Execution*.

In compliance with the directive dated 5 June 2003^[6] of the Honorable Court Administrator, Presbitero J. Velasco, Jr., respondent submitted his *Comment* dated 31 July 2003,^[7] denying the allegations in the *Complaint*.

He explained that the *Order* dated 20 May 2002 directed him to enforce the *Writ of Execution* against the judgment debtors, among them Rizal Surety. Complying with the trial court's *Order*, he tried to serve the *Writ of Execution* upon Rizal Surety but he failed to do so because he was informed that the latter had changed its name to QBE Insurance (Phils.), Inc. Subsequently, on 24 May 2002 he submitted an *Ex-Parte Manifestation and Motion* informing the court of this development. Consequently, the court issued the *Order* dated 27 May 2002, authorizing the enforcement of the *Writ of Execution* against Rizal Surety and/or Q.B.E Insurance Company, Inc.

Respondent further alleged that notwithstanding the issuance of the *Order* dated 27 May 2002, he held in abeyance the implementation of the *Writ of Execution* upon the instructions of the judgment obligee, Haresh Ramnani, on the ground that he would first investigate the alleged change of name of Rizal Surety with the Office of the Insurance Commission and the Securities and Exchange Commission (SEC). Sometime in the first week of March 2003, Mr. Ramnani verbally requested him to proceed with the execution of the writ as Ramnani's investigation revealed that QBE and Rizal Surety are indeed one and the same entity. This was followed up by a letter-request on 24 March 2003^[8] from Ramnani and respondent then enforced the writ by serving a *Notice of Immediate Payment* to Rizal Surety and/or QBE at its office located at the 3rd Flr., Prudential Life Bldg., 843 A. Arnaiz Ave., Legaspi Village, Makati City and by levying its bank accounts in the ANZ Bank, Ayala branch. On the same occasion, Atty. Ireneo U. Gacad, Jr. conferred with Mr. Ramnani and they eventually entered into an arrangement whereby two checks amounting to a total sum of P5,000,000.00 were delivered to the latter as partial payment for his claims.

Respondent added that after complainant filed its *Urgent Motion to Lift 27 May 2002 Order and 24 March 2003 Notice of Garnishment* which Mr. Ramnani opposed, the latter requested him in a letter dated 28 April 2003^[9] not to act on the third-party claim since only the courts can determine the merits of the grounds relied upon by the complainant, which is essentially the same ground raised in their *Urgent Motion to Lift Notice of Garnishment*. Meanwhile, on 11 April 2003, QBE filed an *Affidavit of Third-Party Claim* anchored on the same arguments earlier raised in its *Urgent Motion to Lift*.

Respondent asserted that his report/*ex-parte* manifestation that Rizal Surety changed its name to QBE was made in good faith as it was based on what he saw in the office of Rizal Surety and the information relayed to him by the employees there. He argued that had QBE simply filed a third-party claim, he would have no

other recourse but to release the levied property under Section 16 of Rule 39 of the Rules of Court upon failure of the judgment creditor to post the required indemnity bond. But since QBE had earlier asked the court to lift the garnishment for the very same reasons advanced in the third-party claim, respondent asseverated that he had no option but to await the resolution of the court, otherwise he would have pre-empted the ruling of the court on the matter. Further, respondent stressed that in its *Order* dated 15 May 2003,^[10] the trial court denied QBE's motion for lack of merit and he contended that he was after all justified in not releasing the levied accounts.

Finally, on the charge that he defied the resolution of the Court of Appeals dated 5 August 2002 in C.A. G.R. No. 70292, granting QBE's Petition for Preliminary Injunction, respondent clarified that the injunction bond in the amount of fifty million pesos was never approved by the appellate court as it was allegedly defective. As a consequence thereof, no preliminary injunction was ever issued by the appellate court to restrain the enforcement of the *Writ of Execution*.

QBE filed its *Reply* dated 16 September 2003^[11] wherein it argued that under Section 16, Rule 39 of the Rules of Court, it becomes the ministerial duty of the Sheriff or the levying officer to release the garnished property upon the filing of a third-party claim unless the judgment obligee, on the sheriff's demand, files an indemnity bond in a sum not less than the value of the garnished property.

The Office of the Court Administrator (OCA) recommended that respondent be ordered to pay a fine of P5,000.00 for gross inefficiency and admonished to always discharge his responsibilities with due diligence and warned that a repetition of the same or similar act in the future shall be dealt with more severely.

The rule is that when a writ of execution is placed in the hands of a sheriff it is his duty to proceed with reasonable celerity and promptness to execute it pursuant to its mandate.^[12]

As officers of the Court, however, sheriffs and deputy sheriffs are bound to discharge their duties with utmost care and diligence, particularly in implementing the orders of the court, for if they err, they will affect the efficacy of the process by which justice is administered.^[13]

In the instant case, respondent asserted that the manifestation he filed before the trial court stating that Rizal Surety and Insurance Co. had recently changed its corporate name to QBE Insurance (Phils.) was based on what he saw in the office of Rizal Surety and information relayed to him by its employees. Respondent ought to be aware that execution could only be issued against a party and not against one who was not accorded his day in court^[14] and it was his bounden duty to see to it that the writ of execution would be implemented only upon properties unquestionably belonging to the judgment debtor. Property belonging to third persons cannot thus be levied upon.^[15]

It behooved respondent to confirm and establish the veracity of the information he received by making his own verification with the SEC. Instead of doing so, he unthinkingly accepted the representations of the employees of Rizal Surety and hastily filed the *Urgent Ex-Parte Manifestation and Motion* dated 24 May 2002, informing the trial court, among others, that Rizal Surety had changed its corporate