

FIRST DIVISION

[A.M. No. P-00-1399, February 19, 2001]

**PHILIPPINE BANK OF COMMUNICATIONS, COMPLAINANT, VS.
SHERIFF EFREN V. CACHERO, RESPONDENT.**

DECISION

KAPUNAN, J.:

The present administrative proceedings stem from the implementation of a writ of execution pending appeal issued in favor of Falcon Garments Corporation ("Falcon") against the Philippine Bank of Communications ("PBCom"). In *Philippine Bank of Communications vs. Court of Appeals*,^[1] where this Court held that there were no good reasons for the issuance of said writ of execution, PBCom alleged that Falcon employed irregular means in the enforcement of the writ. We noted therein that:

Falcon has ignored and has remained silent in regard to PBCom's charge of harassment and irregular resort to armed policemen and civilians with acetylene torches in the enforcement of the writ of execution pending appeal, thus lending credence to PBCom's complaint. However, it also appears that petitioner PBCom does not intend to pursue the administrative aspect of these alleged irregularities, its prayer in the petition being completely silent on these points. Nevertheless, we find it necessary to exhort both private respondent and its counsel, as well as public respondent sheriffs not to resort to such forms of harassment by using the strong arms of the law to the prejudice of any party. Barbaric acts such as those complained of have no place in a civilized society. It is even more abhorrent when such acts are with the participation or at the very least the acceptance of a member of the bar who, under his oath, has sworn to uphold the rule of law.

PBCom has apparently opted to pursue the administrative aspect of the allegedly irregular enforcement of the writ by filing a complaint against the implementing Sheriff, Efren V. Cachero, of Branch 101 of the Regional Trial Court of Quezon City.

The Office of the Court Administrator ("OCA") provides the following summary which, we find, faithfully adheres to the evidence presented by the parties:

Sometime in 1989, Falcon Garments Corporation (FALCON) opened a current account with the Philippine Bank of Communications (PBCom), BMA Quezon City Branch, FALCON obtained a loan from PBCom, but because it failed to pay its loan obligation, PBCom withdrew certain amounts from FALCON's current account as payment for the latter's outstanding balance under the loan contract. FALCON in turn filed suit at the RTC - Quezon City, docketed as Civil Case No. Q-95-22625 for the restoration by PBCom to its current account the unauthorized withdrawals totaling P12,729,092.78 made during the period 1990 to 1992, plus

interests, damages and attorney's fees.

PBCom denied liability and interposed a compulsory counterclaim equivalent to FALCON's loan of P4,700,000.00 plus interests, penalty damages and attorney's fees. The case was raffled to RTC-Quezon City, Branch 78, which rendered a decision on 2 January 1996 ordering PBCom to restore immediately to FALCON's current account the sum of P12,729,092.78 plus interest at the rate of 12% per annum to commence from the date of the filing of the complaint until the said amount was fully restored and to pay P500,000.00 as exemplary damages, P500,000.00 as attorney's fees and P200,000.00 as litigation expenses. FALCON was likewise ordered to pay PBCom its loan plus interest at the rate of 12% per annum to commence from the date of the filing of the complaint.

PBCom appealed the decision while FALCON filed a Motion for Execution Pending Appeal dated 7 February 1996. Due to the inhibition of the presiding judge of Branch 78, the case was reraffled to Branch 101 presided over by Judge Pedro T. Santiago. FALCON also filed on 7 May 1996 an Ex-parte Manifestation and Motion asking for a direct payment to it of the money judgment, instead of the restoration of the amount to its account, due to its already strained relations with PBCom. Judge Santiago granted the same and authorized the issuance of a writ of execution pending appeal. The writ was issued on 14 May 1996 and was served on 16 May 1996 to PBCom which sought the issuance by the Court of Appeals of a Temporary Restraining Order.

Service of the writ of execution pending appeal to the PBCom Buendia branch on 16 May 1996 was made by Efren V. Cachero, Branch Sheriff, RTC, Branch 101, Quezon City. The matter is now the subject of this administrative complaint lodged before this office by Atty Daniel V. Loagan of PBCom, charging Cachero with:

1. grave abuse of authority amounting to gross misconduct in office;
2. ignorance of the law and/or disobedience to the lawful order of the Court of Appeals;
3. highhandedness and arrogance; commission of acts unbecoming an officer of the court;
4. undue haste and oppressive manner; and
5. malicious desire to embarrass and ridicule PBCom and its personnel in the implementation of the writ.

Atty. Loagan supported his allegations with the Joint Affidavit dated 20 May 1996 executed by PBCom Branch Manager Elizabeth Mercado, Cashier Alison Sy, together with nine (9) of its employees, alleging among others that they witnessed the harassment and rudeness of Cachero in implementing subject writ, described and recounted as follows:

"On 16 May 1996 at around 2:30 p.m., Cachero together with at least 10 armed men in police uniform, officers of FALCON, members of the press (ABS-CBN) and other goons, in blatant disregard of rules and procedures, forcibly entered the bank by declaring that they were serving a writ of execution and threatening the bank guards that they will break the glass door should they be refused entry. Once inside the bank premises, Cachero shouted and declared 'Ako ang masusunod sa oras na ito, amin na iyang lahat ng pera na yan, kasi natalo kayo sa kaso.' Cachero served the writ to Ms. Mercado and proceeded to block the vault door by placing a chair in front of it. He then ordered the ABS-CBN crew to take footages of the implementation over the objection of Ms. Mercado. He also shouted and ordered Alison Sy to open the bank vault so they could get all the money inside but Sy refused to do so having no instructions from the head office. Hence Cachero and his men started destroying the first grill door with the use of acetylene torch and a big hammer. Ms. Mercado persuaded Cachero to stop because a Temporary Restraining Order (TRO) was already issued and on its way. But Cachero further proceeded to torch the Safe Deposit boxes found inside the vault. When Sy intervened, Cachero instead opted to destroy the cash vault lock combination. Still they could not open the cash vault even if they torched its side hinges. Instead, Cachero took the money amount to P20,000.00 inside a steel cabinet and the cash from the teller's drawers amounting to P140,000.00. When the TRO arrived and served on Cachero, he still took the money with him when he left the bank."

Also attached to the PBCom complaint were photographs of the damaged grill doors and vault of the bank as well as the sworn Spot Report of Head Guard of PBCom, Joiet Evangelio corroborating the Joint Affidavit of PBCom Branch Manager, cashier and employees that indeed Cachero used force and harassment in implementing the writ, passing himself off as a depositor when he and his men entered the bank premises.

In his Comment dated 10 September 1996, Cachero explained that on 15 May 1996 he conferred with the president of PBCom and demanded settlement of the money judgment. He was advised to pick up the Manager's Check the following day but the bank did not make good its promise. After having the writ blotted at the PNP Makati City Police Station he and his companions proceeded to the PBCom branch at Buendia. There he served the writ on the branch manager who requested to be given time to get in touch with the bank's Legal Department. When the branch manager failed to deliver to them the amount under the writ, he seized the amount of P160,730.53 and issued the corresponding receipt therefor.

The sheriff further explained that he was unable to fully implement the writ because the branch manager intentionally closed the bank vault. Having no other alternative, and being clothed with a writ and a surety bond, he used legal force to effect the implementation. Upon his receipt

of the TRO at 4:45 pm, that day, he immediately stopped the implementation and left the bank with the amount of P160,730.53.

Cachero supported his explanation with the Affidavit dated 21 August 1996 of Sheriff Angel Doroni, RTC, Branch 77, Quezon City. Doroni stated therein that he was the one who had the writ of execution blotted at the Makati City Police Station; that the implementation of the writ was carried out smoothly and in an orderly manner; that the amount taken by Cachero was properly receipted; and that it was proper for Cachero to use force because he was clothed with a writ of execution and a surety bond that would answer for the damaged vault and grill doors of the bank.

The investigation conducted by the undersigned on 15 January 1997 to 28 February 1997 disclosed that on 16 May 1996 at about 2:30 o'clock in the afternoon, Cachero entered the bank premises pretending to be a bank depositor, together with a representative from FALCON. Shortly thereafter, his escorts arrived, composed of policemen in five (5) Mobile Patrol Cars; a Major with a Swat Team; six (6) acetylene boys three (3) ABS-CBN crew; SPO2 Pablo de Guzman and Assisting Sheriff Angel Doroni. Respondent sheriff then asked the guard to accompany him to the bank manager, Elizabeth Mercado. He showed the writ to Ms. Mercado who was surprised because the writ was addressed to PBCom-BMA Quezon City branch and not her branch at Buendia, Makati City. Parenthetically, during the investigation, Cachero testified that upon the prodding of FALCON, he opted to implement the writ at the Buendia branch since the guards at the Quezon City head office outnumbered them.

Ms. Mercado then informed the bank's Legal Department by phone about the service of the writ and the bank lawyer talked with Cachero also over the phone and informed the latter that a TRO had been issued by the Court of Appeals and that he will fax a copy thereof to the branch. Cachero refused to recognize the faxed copy of the TRO and proceeded to implement the writ by taking possession of the moneys of the three (3) tellers of the bank totaling P140,730.53. He then directed Ms. Mercado to open the cash vault but the manager refused to do so without instructions from the head office. Cachero then directed his "acetylene" boys to torch and destroy the grill doors, and force open the cash vault until its lock combination was destroyed. Cachero ordered the torching of the side hinge of the vault but despite this, that portion of the vault could not be opened. He then took the P20,000.00 cash he found in a steel cabinet in the vault. When the original copy of the TRO arrived and was handed over to him, he stopped the torching of the cash vault, issued a receipt for the money he seized and left together with his companions.

The investigation also revealed that on 15 May 1996 Cachero had gone to see the President of PBCom at its head office. He notified the bank of the writ implementation but was advised to return the following day to collect the execution amount. On 16 May 1996 at 11:30 a.m., Cachero went to the bank but was unable to meet with any of the bank lawyers. He left and returned at 12:50 p.m. and left fifteen minutes later as there were