

EN BANC

[A.M. No. P-99-1351, November 24, 1999]

**RENATO G. CUNANAN, COMPLAINANT, VS. DEPUTY SHERIFF
ARTURO C. FLORES, RESPONDENT.**

D E C I S I O N

PER CURIAM:

Francisco Ong, attachment debtor in Civil Case No. 91-1108, entitled "Manuel C. Ho et. al. vs. Francisco Ong, et. al", thru his counsel, Atty. Renato G. Cunanan, complains against Arturo C. Flores, Deputy Sheriff of Branch 150 of the Regional Trial Court (RTC) of Makati City, for nonfeasance for failure to discharge his obligation under Rule 57, Sec. 7 (c) of the Rules of Court.

Records disclose that on May 3, 1991, pursuant to a writ of attachment issued by the RTC of Makati City in said civil case, respondent Deputy Sheriff Arturo C. Flores, accompanied by two other sheriffs, attached two motor vehicles and other personal properties of Francisco Ong, particularly described in the covering Sheriff's Return, as:

- a) two (2) units VESPA air compressor MT 21 F and MT-10P L;
- b) one (1) unit 555 metal cutter;
- c) one (1) unit cut-off wheel SP 305 A (type 3P);
- d) one (1) unit pipe threader Rolex Cupid No. SN-150;
- e) one (1) unit Daiden Welding Machine;
- f) one (1) unit Omega Power Washer HP Sprayer (orange);
- g) one (1) unit Ford Laser 1981, white, plate No. NHC 235; and
- h) one (1) unit Mitsubishi Lancer 1978, red, plate no. NEZ 429.

The aforementioned properties were stored at the courtyard and motorpool of the RTC of Makati City. A year later or on March 23, 1992, to be precise, respondent deputy sheriff received a notice from the administrator of the courthouse, informing him that the attached vehicles and pieces of equipment would have to be removed from the court premises to pave the way for the demolition of the motorpool building.

Respondent turned over the seized articles to the plaintiff (attaching creditor) on condition that the seized articles would be returned should he (respondent) be

ordered to give the same to Ong.

On November 12, 1993, the court *a quo* dissolved the writ of attachment and ordered the return of the attached properties of Ong. But it was only on November 26, 1993, that plaintiff surrendered the Ford Laser car and Ong refused to accept it unless all his seized properties were returned to him.

Despite pleas from respondent, plaintiff refused to turn over the other seized articles, and he changed his address without notice, later on. Almost a year after, or on August 25, 1994, the plaintiff turned over the red Lancer car to respondent. The other seized articles were returned on September 22, 1994.

When the articles and motor vehicles were finally given to Ong, the latter refused to accept them, as he noticed extensive damage to the red Lancer car, and the substitution of a majority of pieces of equipment with inferior brands. Indignant, Ong instituted the administrative case at bar against the respondent.

For his defense, respondent theorized that Ong knew of the delivery of the attached properties to the plaintiff but he (Ong) did not offer any objection. The physical appearance of subject properties changed as they were moved from the court premises and exposed to the elements for a long time.

The case was referred to Executive Judge Salvador S. Abad Santos for investigation, report and recommendation. After conducting the investigation, Executive Judge Abad Santos found respondent guilty, as charged, and recommended his dismissal from the service. Pertinent portions of the Report of Executive Judge Abad Santos, dated February 20, 1996, state:

"My own assessment of the evidence presented reveals the respondent sheriff's failed to discharge his obligation under Rule 57, Sec. 7 (c) of the Rules of Court.

(1) The record shows that respondent released the levied properties to the plaintiff upon being informed that such could no longer be accommodated in the motorpool and the Courthouse quadrangle. Such act of his was, however, without the previous knowledge and consent of the court. No explanation was offered for the obvious omission. Considering that as the officer of said court with the obligation under law to take attached properties and keep them safe in his custody, the respondent's precipitate action and reckless bestowal of trust upon the plaintiff is unjustified.

(2) Respondent's explanation regarding the damage to and the substitution of the properties to the effect that the items changed in physical appearance due to the length of time that they were exposed to the elements, is untenable. The damage suffered by the properties and the substitutions made could not have been caused by mere exposure to the elements, however long the exposure may have been. For instance, the "Notice of Levy on Execution/Attachment" signed by the respondent himself specifies one (1) unit welding machine DAIDEN type (Annex G) but the welding machine respondent attempted to return merely had "Daiden" written on it with a marking pen. The pipe threader that