

SECOND DIVISION

[A.M. No. P-98-1260, January 14, 1998]

**PHILIPPINE BANK OF COMMUNICATIONS, COMPLAINANT, VS.
CESAR TORIO, EFREN GUMBOC, NILO CABANG AND JUANITO
LINDO, RESPONDENTS.**

DECISION

REGALADO, J.:

This administrative case arose from three complaints filed by the Philippine Bank of Communications (PBCom), against respondents Cesar Torio, Efren Gumboc, Nilo Cabang and Juanito Lindo, deputy sheriffs of Branch 76, 78, 82, and 83, respectively, of the Regional Trial Court if Quezon City. Respondents were charged with gross misconduct for having prematurely implemented the decision of the Court of Appeals in C.A.-G.R. SP No. 40636, entitled "PBCom v. Hon. Pedro Santiago, et. al.," promulgated on September 13, 1996, with the use of unwarranted and unnecessary force and intimidation.

On January 2, 1996, Branch 28 of the Regional Trial Court of Quezon City rendered a decision in Civil Case No. Q-95-22625, entitled "Falcon Garments Corporation Quality Labels, Inc., et al. v. PBCom," ordering defendant therein to restore immediately to the current account of plaintiff corporation a sum of money plus interest, and to operate said current account in accordance with the instructions of plaintiff. In addition, defendant was ordered to pay plaintiff its loan with interest, as well as to pay damages, attorney's fees, and litigation expense.^[1]

The foregoing decision was appealed by PBCom to the Court of Appeals where it was docketed as C.A.-G.R. SP No. 40636. On February 9, 1996, a motion for execution of judgment pending appeal was filed by plaintiff. PBCom opposed the motion.^[2]

On March 13, 1996, Judge Percival Lopez of Branch 78 of the Regional Trial Court of Quezon City inhibited himself from the case.^[3] The case was re-raffled to Branch 101 of the same trial court where the motion was heard and the incident was submitted for resolution.

On May 7, 1996, the trial court issued an order granting the motion for a writ of execution pending appeal upon a bond to be filed by plaintiff and conditioned to answer for damages which may be sustained by defendants therein.^[4] The required bond was filed on May 14, 1996.

On September 13, 1996, plaintiff corporation filed an *ex parte* motion for issuance of an alias writ of execution pending appeal.^[5] The trial court granted the motion on the same date and directed Sheriffs Efren Cachero, Efren Gumboc, Nilo Cabang, Cesar Torio, and Juanito Lindo to implement the aforestated order of May 7, 1996^[6]

which was quoted in the alias writ. Pursuant thereto, personal properties of complainant bank were levied upon and a notice of levy and sale thereof was made by Sheriff Cesar Torio.^[7] That same day, a decision was promulgated by the Court of Appeals in C.A.-G.R. SP No. 40636 affirming the decision in Civil Case No. Q-95-22625.

Later that day, Sheriffs Torio and Gumboc of Branches 76 and 78 of the Regional Trial Court of Quezon City implemented the alias writ of execution at the PBCom Ayala Branch. Accompanied by a certain Atty. Mahinay of the Mahinay Law Offices and armed men from the Makati Police Force, said sheriffs presented to the manager of PBCom Ayala Branch a copy of the decision and the original writ of execution pending appeal in Civil Case No. Q-95-22625.^[8]

The bank manager demanded an alias writ of execution as the original writ presented by the sheriffs had allegedly expired. He also demanded a certificate of finality or entry of judgment of C.A.-G.R. SP No. 40636. Torio and Gumboc were allegedly unable to present said documents but, over the objection of the bank employees, they took funds of the bank from its vault and the teller's booths in the sum of P1,705,793.47.^[9] Torio and Gumboc issued receipts for the amount taken and then left the bank.^[10]

That same afternoon, respondents Cabang and Lindo of Branches 82 and 83 of the Regional Trial Court of Quezon City, together with a certain Atty. Acosta and representatives of Falcon Garments Corporation, the prevailing party in Civil Case No. Q-95-22625, allegedly entered the premises of PBCom Crossroad Branch and presented the writ of execution pending appeal dated May 14, 1996, the same writ presented in the PBCom Ayala Branch.^[11]

When the presentation of an alias writ of execution in Civil Case No. Q-95-22625 and the certificate of finality of the decision of the Court of Appeals in C.A.-G.R. SP No. 40636 was demanded for them, respondents allegedly could not present said documents. They nevertheless proceeded to take all the cash in the teller's booths over the objections of the bank employees. Cabang and Lindo were able to take with them the sum of P187,760.00.^[12]

Three days later, or on October 16, 1996, respondents Torio and Gumboc, together with a certain Atty. Romy Pejo of the Mahinay Law Office and around ten armed policemen from the Makati Police Force, allegedly barged into the PBCom Buendia Branch and presented to its manager a copy of the decision of the Court of Appeals in C.A.-G.R. SP No. 40636 and the same writ of execution pending appeal dated May 14, 1996 issued in Civil Case No. Q-95-22625.^[13] Torio and Gumboc allegedly tried to enforce said judgment and writ by ordering the bank employees to open the bank vault.

The bank employees refused to do so and demanded from these respondents an alias writ of execution as the writ presented had allegedly expired. Respondents were also asked to present a certificate of finality or entry of judgment in C.A.-G.R. SP No. 40636. Torio and Gumboc ignored said demands and, in an arrogant and high-handed manner, forthwith proceeded to cut open the door of the bank vault with the use of an acetylene torch and to pound it with a sledgehammer, despite the

remonstrations of the bank manager. It was only when a temporary restraining order issued by the Supreme Court was later served upon them that they ceased from causing further damage to the property of the bank.^[14]

On October 15, 1996, an administrative complaint against Sheriffs Torio and Gumboc was filed in behalf of complainant bank with the Office of the Chief Justice by Atty. Sebastian F. Caponong, Jr., manager of the legal department of PBCom. Said complaint was with regard to the alleged irregularities committed by respondents in the implementation of the decision of the Court of Appeals in C.A.-G.R. SP No. 40636 on September 16, 1996 at the PBCom Buendia Branch.^[15]

The following day, another administrative complaint was filed against Torio and Gumboc, likewise by PBCom through its counsel. Said complaint concerned the alleged irregularities committed by respondents on September 13, 1996 at the PBCom Ayala Branch.^[16]

On October 21, 1996, a third administrative complaint was filed by PBCom through its counsel against Sheriffs Cabang and Lindo. The charge was for the alleged premature implementation of the decision of the Court of Appeals in C.A.-G.R. SP No. 40636 on September 13, 1996 at the PBCom Crossroad Branch.^[17]

On January 22, 1997, respondents were ordered by the Court to file their comments.^[18] Torio and Gumboc filed a joint comment on March 26, 1997^[19] while Cabang and Lindo filed a joint comment on March 31, 1997.^[20]

Torio and Gumboc denied the charges of gross misconduct, claiming that the same were baseless. They averred that when they implemented the decision in C.A.-G.R. SP No. 40636, they merely complied with the order of the trial court directing them to implement it, as stated in the alias writ of execution which, contrary to the allegations of complainant bank, they presented to the PBCom Ayala Branch management when it was demanded from them.^[21] They asserted that when they were informed that a restraining order was issued by the Supreme Court for them to stop the execution of the judgment, they immediately ceased from further implementing the same.^[22]

Cabang and Lindo likewise denied the charges filed against them. According to these respondents, on September 16, 1996 they, the representatives of plaintiff Falcon Garments Corporation and its counsel, Atty. Acosta, proceeded to the PBCom Crossroad Branch and presented to the bank cashier and officers an alias writ of execution. They then instructed the cashier and tellers to turn over the cash held by them. The sum of P183,565.00 was allegedly turned over to Cabang and Lindo who issued receipts therefor to the lawyer of the bank. When a temporary restraining order was transmitted to the bank through a facsimile machine and shown to them, they immediately desisted from further acts and left the place.^[23]

With regard to the incident which allegedly occurred in the PBCom Buendia Branch on September 16, 1996, Cabang and Lindo denied any involvement in the same. They claimed that they never went to said branch and had no knowledge whatsoever of the events that transpired in the establishment on that day.^[24]

On June 9, 1997, the Court referred the case to the Office of the Court Administrative (OCA) for evaluation, report and recommendation.^[25] In a recommendation dated September 26, 1997, submitted by the OCA, it was opined that the implementation by respondents of the judgment against complainant was valid. An alias writ of execution of the judgment in said case had been issued by the Regional Trial Court of Quezon City directing respondents to implement the decision in Civil Case No. Q-95-22625, then the subject of the case on appeal. Hence, it was incumbent upon respondents to implement the writ.

However, while respondents validly complied with the foregoing order of the trial court, the manner in which Torio and Gumboc implemented the same in the PBCom Buendia Branch was decried as uncalled for, if not abusive. In the implementation of the judgment and the enforcement of the writ, said respondents used unnecessary force and caused the destruction of the bank vault over the objections of the employees of the establishment. It was accordingly recommended that they be severely reprimanded.

With regard to Cabang and Lindo, said respondents were found to have acted within the bounds of their authority in implementing the subject judgement and in enforcing the writ in the PBCom Crossroad Branch. It was therefore recommended that the complaint against them be dismissed for lack of merit.

We agree in part with the recommendation. It is basic that the duty imposed upon the sheriff to execute a valid writ is ministerial and not directory. A purely ministerial act or duty is one which an officer or tribunal performs in a given set of facts, in a prescribed manner, and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done.^[26]

We are persuaded by the finding of the OCA that there was no irregularity committed by Torio and Gumboc in their enforcement of the writ of execution in the PBCom Ayala Branch. Neither was there any irregularity in the conduct of Cabang and Lindo in their enforcement of the writ in the PBCom Crossroad Branch.

The alias writ of execution issued by the trial court directing respondents to implement the decision in said case left respondents no options. Respondents were mandated to comply with the court order and, in doing so, it was sufficient for the justification of their acts that the process was regular on its face and issued by competent authority.^[27] Their duty was complied with when they presented the writ and a copy of the decision to the employees of the PBCom Ayala Branch and PBCom Crossroad Branch on September 13, 1996.

The allegations of complainant that the writ of execution presented had expired and thus could not be enforced against the bank cannot be sustained. The factual findings of the OCA was that an alias writ of execution was issued by the trial court and was validly enforced by respondents when they presented the same to the bank managers and seized the cash held by the establishment in satisfaction of the judgment. Cabang and Lindo cannot therefore be held liable for the charges filed against them concerning the events which transpired in the PBCom Crossroad Branch on September 13, 1996. Neither can Torio and Gumboc held liable for the charges filed against them regarding the incident which took place in the PBCom Ayala Branch on the same day.