

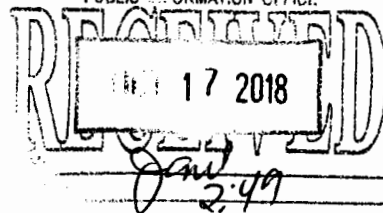


Republic of the Philippines

Supreme Court

Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



FIRST DIVISION

CARLOS GAUDENCIO M. MAÑALAC,
Complainant,

A.M. No. P-18-3875
(formerly OCA IPI No. 16-4577-P)

Present:

- versus -

LEONARDO-DE CASTRO, C.J.,
BERSAMIN,
DEL CASTILLO,
JARDELEZA, and
TIJAM, JJ.

HERNAN E. BIDAN, Sheriff IV,
Regional Trial Court, Branch 53,
Bacolod City,
Respondent.

Promulgated:
OCT 03 2018

X-----X

DECISION

DEL CASTILLO, J.:

The present administrative case arose from the notarized Complaint-Affidavit¹ filed with the Office of the Court Administrator (OCA) by Carlos Gaudencio M. Mañalac (Mañalac), for and on behalf of Philippine One Investment (SPV-AMC), Inc. (hereinafter PI One), against Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court (RTC), Bacolod City, Negros Occidental (respondent sheriff).

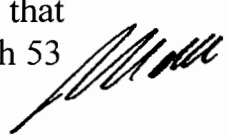
Complainant accused respondent sheriff with gross misconduct, grave abuse of authority, and conduct prejudicial to the best interest of the service relative to his actuations in SP Case No. M-6682, entitled “*In the matter of Petition for Rehabilitation with Prayer for Staying All Claims, Actions and Proceedings Against Philippine Investment One (SPV-AMC), Inc. v. Metropolitan Bank and Trust Company,*” and in Commercial Court Case No.

¹ Rollo, pp. 1-7.

05-057, entitled “*In the Matter of the Petition for Corporate Rehabilitation; Medical Associates Diagnostics Center, Inc., petitioner.*”

Complainant alleged that PI One was a special purpose vehicle created under Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Law of 2002; that it was undergoing corporate rehabilitation before Branch 149 of the RTC Makati in SP Case No. M-6682; that in said case, RTC-Branch 149 had issued a Stay Order dated September 23, 2008, which covered, among others, Transfer Certificate of Title No. 166-2015000786 registered in its name (subject lot); that it acquired the subject lot pursuant to a foreclosure proceeding because of the failure of Medical Associates Diagnostics Center, Inc. (MADCI) to pay off its mortgage on the subject lot; that it came into lawful possession of the subject lot by virtue of a Writ of Possession issued by Branch 61 of the RTC of Kabankalan City as shown in that court’s Order of October 20, 2015; that in the afternoon of May 13, 2016, its office (PI One), received a call from its security guards stationed in the subject lot to the effect that the former owner of the property Dr. Enigardo Legislador, Jr. in the company of respondent sheriff, as well as certain civilians, and security guards, “stormed” the subject lot in an apparent illegal take-over of the same; that its in-house counsel remonstrated with respondent sheriff that it had not received any court order, notice, writ or any other process in respect to the subject lot, which at the time was under *custodia legis* of the RTC-Makati, hence the take-over was illegal and should not be implemented; that as an officer of the court, respondent sheriff knew, or ought to have known, that he must first serve upon the adverse party, the court order, notice, writ or any other process before he (respondent sheriff) could proceed with its implementation; that respondent sheriff knew, or ought to have known, too, that a motion for the issuance of a writ of execution always contains a notice to the adverse party; that respondent sheriff’s blatant disregard of established law and procedure deprived complainant of its rights to due process, and unlawfully dispossessed it of the subject lot; that respondent sheriff’s overzealous implementation of the court’s processes, which was vitiated by lack of proper notice to the adverse party, constituted grave abuse of authority and conduct prejudicial to the best interest of the service.

In his Comment,² respondent sheriff countered that his impugned actions came within the ambit of his official duties as a court sheriff; that eight days before the alleged illegal take-over, or on May 5, 2016, Branch 53



² Id. at 33-37.

of RTC-Bacolod issued an Order³ which categorically declared that the foreclosure over the subject lot and that all proceedings thereon were null and void; that he proceeded with the implementation of the questioned Writ of Execution in good faith; that it is settled that it was his ministerial duty to execute a valid writ; and that complainant had not presented any substantial evidence to show that he acted beyond or outside his legal authority; hence it is presumed that he performed his official duties in due course. Respondent sheriff thus prayed that the Complaint-Affidavit be dismissed.

The OCA Report and Recommendation

In its Memorandum dated November 15, 2016,⁴ the OCA recommended that respondent sheriff be found guilty of abuse of authority and conduct prejudicial to the service, and that he be penalized with a fine of ₱10,000.00, plus a strong warning that a repetition of the same or similar offense shall be dealt with more severely by the Court.

The OCA cited verbatim the dispositive portion of the Order dated May 5, 2016, which was quoted in the writ of execution, to wit:

Furthermore, the court hereby declares the FORECLOSURE of the property of petitioner [MADCI], including the hospital, and subsequent proceedings taken thereafter as NULL and VOID. **PI One is ORDERED TO RESTORE IMMEDIATELY** petitioner to the possession of the [subject lot] and the hospital and its facilities. Pending compliance with the ORDERS above-stated, petitioner is hereby RESTORED to its ACTIVE STATUS in the above-entitled case.⁵ (Emphasis in the original)

The OCA held that the order to restore possession of the subject lot to MADCI was directed at PI One, and not at respondent sheriff; that respondent sheriff should have served a copy of the writ of execution on PI One, even as he ought to have accorded reasonable time and opportunity unto PI One to comply therewith; that it was only after PI One had in fact unjustifiably refused to surrender possession of the subject lot to MADCI, that respondent sheriff was well in his right or authority to oust PI One therefrom, conditioned upon the fact that prior and proper notice had been

³ Id. at 38-52; the OCA Memorandum (Id. at 58) referred to the Order dated May 5, 2016 as “the ‘Decision’ dated May 5, 2016”.

⁴ Id. at 56-60; signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office Legal Office Wilhelmina D. Geronga.

⁵ Id. at 53.

made upon PI One's counsel; that respondent sheriff should not have immediately taken possession of the subject lot and should not have placed MADCI in possession thereof on the very day of the issuance of the writ of execution, without prior notice to PI One's counsel; that respondent sheriff's interpretation of the Order and the writ of execution was clearly erroneous, if for no other reason than that respondent sheriff utterly failed to give notice to the other party that such a writ had in fact been issued, and to demand that PI One surrender possession of the subject lot within three days from the issuance of the writ, pursuant to Section 10(c), Rule 39, in relation to Section 2, Rule 13 of the Rules of Court; that respondent sheriff should have known that notice to the client and not to the counsel of record is not notice at all within the meaning of the law; that the requirement of notice is based on the rudimentary tenets of justice and fair play; that while respondent sheriff's duty in the execution of a writ was purely ministerial, he ought to have known that it was his bounden duty to scrupulously observe and comply with the Rules of Court in implementing the court's orders, writs, and processes; and that considering that respondent sheriff's violation was not tainted with malice or bad faith, a fine of ₱10,000.00 is appropriate under the circumstances.

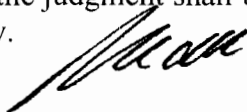
Ruling

It is hornbook law that “[a] sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39.”⁶ Thus it is provided —

SECTION 10. *Execution of judgments for specific act.*-

x x x x

(c) *Delivery or Restitution of Real Property.* – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.



⁶ *Calauan v. Madolaria*, 657 Phil 1, 9 (2011).

In *Calaunan v. Madolaria*,⁷ this Court ruled that “[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension”⁸ pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),⁹ which applies to the instant case,¹⁰ simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense.

At the risk of belaboring a point, while it is settled that respondent sheriff’s duty to implement the writ was ministerial,¹¹ it is equally settled that it was respondent sheriff’s mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.

With respect to the proper penalty, this Court notes that the OCA had appreciated one extenuating circumstance, *i.e.* “[respondent’s] violation of the procedure in the implementation of the writ is not so grave and absent a showing of malice and bad faith”.¹² Under Section 49(a), Rule 10 of the RRACCS, “the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.” Hence, suspension for one month and one day should be the appropriate imposable penalty. Even then, it has been held in some cases that suspension would not be practical as respondent’s work would be left unattended, for which reason a fine may be imposed instead, so that he can perform the duties of his office without interruption.¹³ Corollary thereto, it has been held that since sheriffs are actually discharging frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section

⁷ *Id.*

⁸ *Id.* at 9-10.

⁹ Civil Service Commission (CSC) Resolution No. 1101502, promulgated on November 8, 2011, and published on November 21, 2011.

¹⁰ The RRACCS has been repealed by the CSC Resolution No. 1701077, promulgated on July 3, 2017, also known as the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS); Section 124, Rule 23 thereof provides that, “[t]he provisions of the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of these Rules, provided it will not unduly prejudice substantive rights”; Section 125, Rule 23 thereof states that, “[said] Rules shall take effect after fifteen (15) days from date of publication in the Official Gazette, or in a newspaper of general circulation.”

¹¹ *Sabijon v. De Juan*, 752 Phil. 110, 122 (2015).

¹² *Rollo*, p. 60.

¹³ *Mariñas v. Florendo*, 598 Phil. 322, 331 (2009).

47(1)(b), Rule 10 of the RRACCS.¹⁴

Balancing all the equities in this case, this Court takes the view that the proper imposable fine should be equivalent to respondent sheriff's salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, having in view Sections 47(2) and (6), Rule 10 of the RRACCS, to wit:

SECTION 47. *Penalty of Fine.* – The following are the guidelines for the penalty of fine:

x x x x

2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

x x x x

6. The fine shall be paid to the agency imposing the same, computed on the basis of respondent's salary at the time the decision becomes final and executory.

x x x x¹⁵

WHEREFORE, Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court, Bacolod City, Negros Occidental, is hereby found **GUILTY** of simple neglect of duty for which he is hereby ordered to pay a **FINE** equivalent to one (1) month and one (1) day of his salary, computed on the basis of his salary at the time the decision becomes final and executory.

¹⁴ *Cabigao v. Nery*, 719 Phil. 475, 485 (2013), citing Section 47 (1) (b), Rule 10 of the RRACCS, viz. SECTION 47. *Penalty of Fine.* — The following are the guidelines for the penalty of fine:

1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

x x x x

b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and

x x x x

¹⁵ See also *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017, 823 SCRA 44, 57-58.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice