

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 5, 2019 which reads as follows:

**“A.M. No. P-19-4023 [Formerly OCA I.P.I No. 15-4454-P]-
Metropolitan Cebu Water District, represented by Ernie T. Delco, v.
El Cid R. Caballes, Sheriff IV, Office of the Clerk of Court,
Regional Trial Court, Cebu City**

In an Indorsement IC-OV-15-0367¹ dated May 4, 2015, Deputy Elmer M. Clemente, Deputy Ombudsman for Visayas, forwarded to the Office of the Court Administrator (OCA) an administrative complaint filed by Metropolitan Cebu Water District (MCWD) against El Cid R. Caballes (Sheriff Caballes), Sheriff IV of the Office of the Clerk of Court, Regional Trial Court (RTC) of Cebu City for gross misconduct, gross neglect of duty, gross dishonesty, conduct prejudicial to the best interest of the service, violation of Section 3(e) of Republic Act (R.A.) No. 3019, and violation of R.A. No. 6713, among others.

MCWD narrated in its Affidavit-Complaint² dated March 9, 2015 that it was involved in a case for reformation of contract and collection of damages, filed by Mactan Rock Industries, Inc. (MRII), before the Construction Industry Arbitration Commission (CIAC). On April 14, 2005, the CIAC promulgated a Decision adverse to MCWD. The latter then appealed said judgment to the Court of Appeals (CA), which affirmed the CIAC ruling in its Decision dated February 20, 2006. Undaunted, MCWD filed a petition for review before this Court, which merely affirmed with modification, in its July

¹ *Rollo*, p. 1.

² *Id.* at 4-13.

4, 2012 Decision in G.R. No. 172438,³ the disposition of the CA.⁴
Relevant portions of the dispositive thereof read:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

x x x x

2. Ordering [MCWD] to pay [MRII] under the reformed Clause 17 of the Water Supply Contract, the net amount of **Php12,126,296.00** plus legal interest of six percent (6%) per annum from March 15, 2004, the date of filing of the case with the [CIAC], and twelve percent (12%) per annum from the date this Decision becomes final and executory, until the foregoing amounts shall have been fully paid.

3. [MRII] and [MCWD] shall share the cost of arbitration equally.⁵

On December 12, 2012, said Decision became final and executory. An Alias Writ of Execution was, thus, issued by the CIAC on January 29, 2013, pertinent portions thereof read:

By virtue of the power vested in this Arbitral Tribunal under Section 20 of Executive Order No. 1008, we hereby command you that of the goods and chattels of [MCWD], you cause to be made the following sums of money:

1. Net amount of TWELVE MILLION ONE HUNDRED TWENTY SIX THOUSAND TWO HUNDRED NINETY SIX & 70/100 (Php 12,126,296.70) PESOS plus legal interest of Six (6%) Percent per annum from March 15, 2004, the date of filing of the case with the [CIAC], and twelve (12%) [percent] per annum from the date the Decision becomes final and executory, until the foregoing amounts shall have been fully paid; and
2. Reimbursement of the 50% of arbitration fees advanced by [MRII] in the amount of TWO HUNDRED EIGHTY SIX THOUSAND EIGHT HUNDRED THIRTY SEVEN PESOS & 21/100 (Php 286,837.21).⁶

Pursuant thereto, Sheriff Caballes issued a Notice of Demand to Satisfy Writ of Execution to MCWD and demanded from the latter the

³ *Mactan Cebu Water District v. Mactan Rock Industries, Inc.*, 690 Phil. 163 (2012).

⁴ *Rollo*, pp. 4-5.

⁵ *Mactan Cebu Water District v. Mactan Rock Industries, Inc.*, supra note 3, at 192.

⁶ *Rollo*, pp. 5-6.

amount of ₱19,513,698.87, inclusive of the principal amount, interest of 6% from March 15, 2004 to December 20, 2012, interest of 12% from December 21, 2012 to March 5, 2013, 50% of the arbitration fee, and the government commission due thereon in the sum of 5.5% for the first ₱4,000.00 and 3% in all sums in excess of ₱4,000.00, until the foregoing amounts shall have been fully paid.⁷

On April 29, 2013, the Land Bank of the Philippines (LBP) responded to said Notice through a letter, informing Sheriff Caballes that MCWD has an account with it, containing funds sufficient to fully satisfy the total judgment obligation of ₱19,513,698.87. This fact, according to MCWD, was acknowledged by Sheriff Caballes in his demand letter addressed to LBP dated September 18, 2013.⁸

Despite such knowledge of the sufficiency of funds in MCWD LBP account to satisfy its judgment obligation, Sheriff Caballes allegedly proceeded to serve Notices of Garnishment or Orders for Delivery of Money to 15 other accounts of MCWD to several other banks, totalling to the aggregate amount of ₱39,959,564.81, which clearly exceeded the judgment obligation to a substantial amount. MCWD claims that due to the alleged unlawful and excessive garnishments made by Sheriff Caballes, it cannot anymore use its funds, causing irreparable damage and prejudice to MCWD's business transactions.⁹

MCWD further points out that Sheriff Caballes willfully failed or refused to make a sheriff's report on the progress or outcome of the service of the writ of execution in violation of Section 14, Rule 39 of the Rules of Court.¹⁰

For his part, Sheriff Caballes explained that he was not aware of the sufficiency of MCWD's LBP account until his receipt of the LBP letter dated April 29, 2013 sometime in June 2013. According to him, in view of the finality of the Supreme Court Decision in G.R. No. 172438, the CIAC issued an Alias Writ of Execution on January 29, 2013 in favor of MRII against the assets of MCWD. In an Office Order Assignment dated March 5, 2013, he was assigned to

⁷ Id. at 6.

⁸ Id.

⁹ Id. at 6-7.

¹⁰ Id. at 8.

implement the writ, and, thus, he issued a Notice of Demand to Satisfy Writ of Execution.¹¹

By virtue of said order, from March 6 to 8, 2013, he already served the notices of garnishment to various depository banks of MCWD. From March 7 to 15, 2013, these banks made their respective responses to said notice of garnishment, except for LBP, which responded to the notice only on April 29, 2013. Said response letter was received by Sheriff Caballes sometime in June 2013. Thus, as of May 2, 2013, the deposit accounts reported to him amounted to merely ₱5,671,388.29, which was less than the judgment obligation. On even date, Sheriff Caballes claims that he made a follow-up with a certain Atty. Babel U. Yuhayco, LBP Legal Officer, about LBP's official response to the notice of garnishment since he had not yet received any response from the said bank.¹²

In fine, Sheriff Caballes argued that he cannot be made administratively liable for allegedly garnishing properties in excess of the judgment obligation when at the time the notices of garnishment were sent to the depository banks, he had no certainty yet of the sufficiency of MCWD's LBP account to satisfy the judgment obligation.

As to the alleged failure to make a timely report to the CIAC, Sheriff Caballes admitted the delay, but explained that it was not deliberate on his part as it was merely due to the burden of a heavy workload. He points out that every week, he receives various writs from more than 20 branches of the RTC of Cebu City. He added that there are only three sheriffs assigned to the OCC-RTC and their task is not limited to the writs issued by the RTC of Cebu, but also includes judgments and writs issued by the CIAC like in this case, the Housing and Land Use Regulatory Board (HLURB), the Social Security Commission (SSC), and the Metropolitan Trial Courts (MeTCs) of San Fernando and Carcar City, Cebu. Hence, Sheriff Caballes pleads for the consideration of the Court regarding his failure to file his Sheriff's Report within the reglementary period.¹³

On October 6, 2016, the OCA recommended the re-docketing of the administrative complaint as a regular administrative matter, and for Sheriff Caballes to be found guilty of simple neglect of duty and to

¹¹ Id. at 47-48.

¹² Id. at 48-50.

¹³ Id. at 53-54.

be fined ₱2,000.00 therefor for his failure to timely submit his periodic report. The OCA, however, recommended the dismissal of the charge of abuse of authority for the alleged excessive garnishment. The OCA found that there was merely an apparent communication breakdown between Sheriff Caballes and the LBP due to the belated response of the latter to the notice of garnishment, coupled with the belated receipt thereof by Sheriff Caballes.¹⁴

After a careful evaluation of the case, the Court finds that the findings and recommendation of the OCA are well-taken, except for the recommended penalty.

With respect to the charge of abuse of authority for the alleged excessive garnishment of bank deposits, we are one with the OCA in finding no evidence to prove that Sheriff Caballes exceeded the limits of his authority in sending Notices of Garnishment to several depository banks of MCWD. Clearly, when these notices were sent to the respective banks on March 6 to 8, 2013, there was still uncertainty as to the sufficiency of said bank deposits to satisfy MCWD's judgment obligation. It was only upon receipt of these banks' respective responses to the notices when such sufficiency or insufficiency was ascertained.

Notably, unlike the other banks which reported on the sufficiency or insufficiency of MCWD's funds with them, LBP merely responded with a notification that the notice was referred to the Bank's Litigation Department for its official reply on March 11, 2013. Further, LBP requested "for sufficient time to make the official reply." LBP did not respond as to the sufficiency or insufficiency of MCWD's account until April 29, 2013, which response was received by Sheriff Caballes only sometime in the last week of June 2013.

As correctly found by the OCA, thus, Sheriff Caballes provided a satisfactory explanation and cannot be faulted for the belated response of LBP as to the sufficiency or insufficiency of MCWD's funds. In fact, Sheriff Caballes even made a follow-up with LBP on May 2, 2013 on the latter's official reply to the Notice of Garnishment. In fine, we find no proof that Sheriff Caballes acted in bad faith in garnishing MCWD's bank deposits with various banks.

¹⁴ Id. at 110-115.

While the records do not support the charge of abuse of authority, the evidence clearly established Sheriff Caballes' disregard of Section 14, Rule 39 of the Rules of Court, which provides:

SEC. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphases supplied)

The rules clearly provide that it is mandatory for sheriffs to execute and make return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires. The importance of this mandatory periodic reporting cannot be trivialized. It is an essential duty of sheriffs for the court, as well as the litigants, to be informed of the proceedings undertaken to implement the writ. It further enables the court to be aware of the efficiency, or otherwise, of court processes after promulgation of judgment. Simply put, the purpose of the sheriff's periodic reporting is to ensure the speedy execution of decisions.¹⁵

In this case, Sheriff Caballes, himself, admitted his failure to make the mandatory report regarding the implementation of the writ of execution, albeit he justified his omission with his heavy workload. He pointed out that, at any rate, he was able to submit a Progress Report on October 12, 2015.

The Progress Report dated October 12, 2015 invoked by Sheriff Caballes cannot exonerate him from liability. It was made more than two years from the last implementation of the writ. As opined by the OCA, it also appears that the filing of said Progress Report was a mere afterthought after he received the instant administrative complaint on September 1, 2015.¹⁶ Neither will his heavy workload

¹⁵ *Judge Badoles-Algodon v. Zaldivar*, 529 Phil. 436, 447-448 (2006).

¹⁶ *Rollo*, p. 114.

be considered as an adequate excuse for him to be remiss in the performance of his duty. To allow otherwise would permit every government employee charged with negligence and dereliction of duty to resort to the same convenient excuse to evade punishment.¹⁷

We have previously held that a sheriff's failure to make a return of the writ of execution constitutes simple neglect of duty, which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.¹⁸ The Court cannot countenance neglect of duty, for even simple neglect thereof lessens the people's confidence in the judiciary, and ultimately, in the administration of justice.

The recommended penalty of a fine amounting to ₱2,000.00, however, does not correspond to the range of penalties under Rule 10, Section 46, paragraph D(1) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Under said Rules, simple neglect of duty, if committed for the first time, is punishable by suspension for one month and one day to six months. The case of *Development Bank of the Philippines v. Famero*¹⁹ cited by the OCA, wherein the Court imposed the lenient fine of ₱2,000.00 to the erring sheriff is not applicable in this case. Aside from the fact that this is Sheriff Caballes' first infraction, none of the mitigating circumstances considered by the Court in said case exists in this case. Nevertheless, considering Sheriff Caballes' apparent heavy workload that he will leave unattended if suspended, as well as the alleged limited number of sheriffs in their jurisdiction, we deem it proper to impose the penalty of fine equivalent to his one month salary in order not to hamper the duties of his office.²⁰

WHEREFORE, the Court finds respondent El Cid R. Caballes, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Cebu City, **GUILTY** of simple neglect of duty and **FINES** him an amount equivalent to his salary for one (1) month, with a **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.

¹⁷ *Judge Baguio v. Lacuna*, 811 Phil. 13, 18 (2017).

¹⁸ *Atty. Bansil v. De Leon*, 529 Phil. 144, 148 (2006).

¹⁹ 715 Phil. 540 (2013).

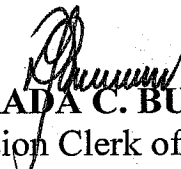
²⁰ *Atty. Sanglay v. Padua II*, 762 Phil. 314, 320 (2015).

Let a copy of this Resolution be attached to the records of El Cid R. Caballes in the Office of Administrative Services, Office of the Court Administrator.

This case is **RE-DOCKETED** as a regular administrative matter.

SO ORDERED. *Inting, J. was designated additional member per Special Order No. 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ¹¹²⁵
133-A

Metropolitan Cebu Water District
Complainant
c/o Mr. Ernie T. Delco
Lapu-lapu corner Magallanes Streets
6000 Cebu City

Mr. El Cid R. Caballes
Respondent – Sheriff IV
Office of the Clerk of Court
Regional Trial Court
6000 Cebu City

Office of Administrative Services (x)
Legal Office (x)
Court Management Office (x)
Financial Management Office (x)
Docket & Clearance Division (x)
OCA, Supreme Court

Hon. Jose Midas P. Marquez (x)
Court Administrator
Hon. Raul B. Villanueva (x)
Hon. Jenny Lind R. Aldecoa-Delorino (x)
Hon. Leo Tolentino Madrazo (x)
Deputy Court Administrators
Hon. Lilian Barribal-Co (x)
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