



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**VICSAL DEVELOPMENT
 CORPORATION,**

Complainant,

- versus -

**ATTY. JENNIFER H. DELA CRUZ-
 BUENDIA, in her capacity as Ex-
 Officio Sheriff of the Office of the
 Clerk of Court – Regional Trial Court
 of Manila; and Messrs. NATHANIEL
 F. ABAYA, LUIS A. ALINA,
 LORELEX B. ILAGAN and MARIO
 P. VILLANUEVA, in their capacities
 as Sheriffs IV of the Office of the Clerk
 of Court – Regional Trial Court of
 Manila,**

Respondents.

A.M. No. P-12-3097

(Formerly OCA IPI No. 09-3311-P)

Present:

CARPIO, J.,
Chairperson,
BRION,
PERALTA,*
DEL CASTILLO, and
PEREZ, JJ.

Promulgated:

NOV 26 2012 *HON. CARPIO*

X-----X

DECISION

BRION, J.:

For consideration is the administrative complaint charging Sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva (*respondent sheriffs*), and Clerk of Court Jennifer H. dela Cruz-Buendia (*Atty. Buendia*) (*respondents, collectively*) with grave abuse of discretion/authority in relation to Section 9 and Section 14, Rule 39 of the

* Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1377 dated November 22, 2012.

Rules of Court, and Section 6, Canon IV of the Code of Conduct for Court Personnel.

The present case stems from the decision dated July 14, 2006 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 20-2005, entitled “Dell Equipment & Construction Corp. v. Vicsal Development Corporation.” The CIAC issued a writ of execution ordering Atty. Buendia, as Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila, to act under the following terms:

You are hereby commanded that, of the goods and chattels of Vicsal Development Corporation, x x x, you cause to be made the amount of ***Seventeen Million One Hundred One Thousand Six Hundred Six Pesos and 23/100 (₱17,101,606.23)*** plus interest of six percent (6%) per annum from the time of promulgation of this award until award becomes final and executory, thereafter a twelve percent (12%) per annum shall be paid by Respondent on any balance remaining until full settlement thereof, together with your lawful fees for the services of this execution, all in Philippine currency. You shall render the foregoing sums to the said Claimant, aside from your own fees on this execution, and that you likewise return this Writ unto this Commission within fifteen (15) days from date of receipt hereof, with your proceedings endorsed thereon. But if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said Respondent, you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this Writ within thirty (30) days from receipt hereof.¹ (italics and emphasis supplied)

Vicsal Development Corporation (*complainant*) refused to pay, arguing that the execution was premature. The respondent sheriffs garnished ₱58,966,013.70 from the complainant’s bank deposits in Cebu and in Manila.

On December 9, 2009, Metrobank released a cashier’s check for ₱21,445,714.20 in the name of Dell Equipment & Construction Corporation

¹ Rollo, p. 21.

(DECC) to DECC's counsel. After the satisfaction of the money judgment, the garnishment of the complainant's bank deposits was lifted; the CIAC also lifted the levy made by DECC's counsel on the complainant's real properties.

On February 2, 2010, the respondent sheriffs sent by mail to the CIAC a Sheriff's Return reporting the proceedings they had undertaken.

The Administrative Complaint

The complainant asserts that the respondent sheriffs did not follow the prescribed procedure under Section 9, Rule 39 of the Rules of Court.²

The complainant also asserts that the respondent sheriffs violated Section 14, Rule 39 of the Rules of Court when they omitted to: (1) include the fact of levy of the complainant's real properties in the Sheriff's Return; (2) file the Sheriff's Return within the prescribed period; and (3) serve the parties copies of the Sheriff's Return.

The complainant further argues that the respondent sheriffs failed and/or refused to implement the writ of execution within its terms, in violation of Section 6, Canon IV of the Code of Conduct for Court Personnel.

² According to the complainant: (1) there was no proper and written demand made by the respondent sheriffs; (2) it was denied the right to exercise the option provided in the aforesaid Rule; (3) there was simultaneous service of the notice of garnishment to the banks even before respondent Sheriff Alina left the complainant's premises; (4) there was no actual computation of the outstanding amount, which was prepared and served to the complainant; (5) a levy was immediately made on the complainant's real properties without initially enforcing the writ against the complainant's personal properties; (6) the garnishments of the bank deposits was made in bad faith; and (7) the amount of bank deposits garnished was excessive.

The Report and Recommendation of the Investigating Judge

In a *Minute* Resolution dated November 28, 2011, the Court assigned the case for formal investigation to Executive Judge Maximo M. dela Cruz, Jr. (*Investigating Judge*) of the Regional Trial Court of Manila. During the investigation, the parties presented their respective testimonial and documentary evidence.

After evaluation of the records and the evidence, the Investigating Judge submitted his Report and Recommendation dated July 17, 2012 to the Court, recommending:

- A. The administrative case for grave abuse of discretion/authority and violation of the Code of Conduct for Court Personnel filed against Respondent Atty. Jennifer H. dela Cruz-Buendia, Clerk of Court & Ex-Officio Sheriff, Regional Trial Court of Manila be DISMISSED for lack of merit.
- B. The Respondent Sheriffs Nathaniel Abaya, Luis Alina, Lorelex Ilagan and Mario Villanueva be found GUILTY of SIMPLE NEGLIGENCE OF DUTY and be meted a penalty of FINE equivalent to ONE MONTH salary.³

The Investigating Judge found no evidence that Atty. Buendia abused her authority or neglected to supervise the respondent sheriffs in implementing the writ of execution. The Investigating Judge observed that Atty. Buendia attended to the complainant's concerns despite being on leave of absence; she also required the respondent sheriffs to explain the garnishment of the complainant's bank deposits and the levy on the complainant's real properties.

The Investigating Judge also ruled that the respondent sheriffs did not violate Section 9, Rule 39 of the Rules of Court and Section 6, Canon IV of

³ Report and Recommendation, p. 40.

the Code of Conduct for Court Personnel, and found that the writ of execution was properly implemented.

Nevertheless, the Investigating Judge held the respondent sheriffs liable of violating Section 14, Rule 39 of the Rules of Court. The evidence showed that the respondent sheriffs failed to file the Sheriff's Return within the prescribed period and to furnish a copy thereof to the parties.

The Court's Ruling

Except for the recommended penalty, we find the findings of the Investigating Judge to be well-taken.

We state at the outset that the highest standard of professionalism in the performance of judicial tasks is demanded from every court personnel. The Court expects every court personnel to perform his/her duties promptly, with great care and diligence, having in mind the important role he/she plays in the administration of justice.⁴

With respect to a sheriff's duty in implementing writs, the case of *Cruz v. Villar*⁵ teaches us that:

"[S]heriffs and deputy sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice." Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They should always hold inviolate and invigorate the tenet that a public office is a public trust. [citations omitted]

⁴ *Garcera II v. Parrone*, 502 Phil. 8, 13 (2005).

⁵ 427 Phil. 229, 234-235 (2002).

The procedure in enforcing a money judgment is found in Section 9, Rule 39 of the Rules of Court:

SEC. 9. Execution of judgments for money, how enforced –

(a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. x x x.

x x x x

(b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x x

(c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who

shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

Under this rule, the duties of a sheriff are: (1) to first make a demand from the obligor for the immediate payment of the full amount stated in the writ of execution and of all lawful fees; (2) to receive payment in the form of cash, certified bank check payable to the obligee, or any other form of payment acceptable to the latter; (3) to levy upon the properties of the obligor, not exempt from execution, if the latter cannot pay all or part of the obligation; (4) give the obligor the opportunity to exercise the option to choose which property may be levied upon; (5) in case the option is not exercised, to first levy on the personal properties of the obligor, including the garnishment of debts due the obligor and other credits, *i.e.*, bank deposits, financial interests, royalties, commissions and other personal properties not capable of manual delivery or in the possession or control of third parties; and (6) to levy on real properties if the personal properties are insufficient to answer for the judgment.

In addition, Section 14, Rule 39 of the Rules of Court imposes upon a sheriff the duty to submit a Sheriff's Return, thus:

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.

These provisions underscore the ministerial nature of the functions of the sheriff's office. The sheriff has no discretion on the manner of

implementing a writ of execution. The sheriff must strictly abide by the prescribed procedure to avoid liability.

On grave abuse of authority

We agree with the Investigating Judge that no substantial evidence was adduced to prove that Atty. Buendia and the respondent sheriffs exceeded the limits of their authority in garnishing the complainant's bank deposits. There was also insufficient evidence to support the alleged violation of Section 6, Canon IV of the Code of Conduct for Court Personnel, which requires court personnel to "enforce rules and implement orders of the court within the limits of their authority."

In *Rafael v. Sualog*,⁶ we defined grave abuse of authority as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury"; it is an act characterized with "cruelty, severity, or excessive use of authority."

None of these circumstances are present in the case. The records show that after receiving the writ, Atty. Buendia reminded the respondent sheriffs to implement the execution according to the writ's terms and the prescribed procedure under Section 9, Rule 39 of the Rules of Court.

We note from the records that the respondent sheriffs served a copy of the writ of execution on the complainant's general counsel who refused to pay. The complainant's general counsel also refused to exercise the option under Section 9, Rule 39 of the Rules of Court. As the Investigating Judge observed:

[T]he repudiation of execution by the Complainant claiming that it was premature signified its express refusal to comply with the arbitral award and settle the same. The wordings of Rule 39[,] Section 9 (b) “*if the judgment obligor cannot pay all or part of the obligation*” suggest that what the provision contemplates is a situation of INABILITY or to be sure INCAPABILITY on the part of the judgment debtor to pay all or part of the judgment debt. Only in that situation will the option to choose arise, for clearly the choice is given so as to afford the judgment debtor the chance not to be the subject of any further proceedings that may cause such party harm. By the submissions of the Complainant, what it claimed to have offered was the Surety Bond, by showing a Certification from Pioneer Insurance and Surety Corporation, not even the bond itself. Also, as it was earlier discussed, the same was unacceptable.⁷ (italics and underscore supplied)

Section 9, Rule 39 of the Rules of Court does not prohibit the respondent sheriffs from garnishing the complainant’s bank deposits on the same day that a copy of the writ of execution was served on the judgment obligor. In *Torres v. Cabling*,⁸ we held that a sheriff is not required to give the judgment debtor time to raise cash. The reason for this is to ensure that the available property is not lost.⁹ We even disciplined a sheriff who failed to immediately levy on the personal properties of the debtor who refused to pay the amount stated in the writ of execution.¹⁰

We find no proof that the respondent sheriffs acted in bad faith in garnishing the complainant’s bank deposits. During the investigation, the respondent sheriffs denied this accusation and provided a satisfactory explanation: the bank secrecy laws prevent them from knowing or securing information on the amount of the complainant’s bank deposits with the garnishee banks. In other words, the respondent sheriffs could not have known that the bank deposits they garnished were in excess of the money judgment.

⁶ A.M. No. P-07-2330, June 12, 2008, 554 SCRA 278, 287.

⁷ Report and Recommendation, pp. 34-35.

⁸ 341 Phil. 325, 330 (1997).

⁹ *Ibid.*

Finally, the Investigating Judge's investigation also disclosed that it was the DECC's counsels, not the respondents, who were responsible for the levy on the complainant's real properties. The levy was made by the DECC's counsels without the respondents' knowledge and consent. The records show that the respondents immediately rectified the situation by asking the CIAC to lift the levy on the complainant's real properties.

On simple neglect of duty

While the records do not support the charge of grave abuse of authority, the evidence clearly establishes the respondent sheriffs' disregard of Section 14, Rule 39 of the Rules of Court.

Despite the clear language of Section 14, Rule 39 of the Rules of Court and the terms of the writ of execution, the respondent sheriffs failed to make a return within the prescribed period and/or to submit periodic reports. The respondent sheriffs likewise admitted that they failed to furnish the parties copies of the return.

We cannot accept the respondent sheriffs' explanation that they decided to extend the period to file the return because of their dilemma on whether to include in their report the levy on the real properties by the DECC's counsels. As an officer of the court, the respondent sheriffs should have known the proper action to take when questions relating to the writ require clarification.¹¹ The respondent sheriffs are also presumed to know what duties they must discharge.¹²

¹⁰ *Mangubat v. Camino*, 518 Phil. 333, 342-343 (2006).

¹¹ *Office of the Court Administrator v. Tolosa*, A.M. No. P-09-2715, June 13, 2011, 651 SCRA 696, 704.

¹² *Ibid.*

We have previously held that a sheriff's deviation from the procedure laid down by the Rules warrants disciplinary action.¹³ In *Atty. Bansil v. De Leon*,¹⁴ the Court declared that a lapse in following the prescribed procedure (such as the sheriff's failure to make a return) is equivalent to simple neglect of duty. Simple neglect of duty is 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."

Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. In the absence of circumstances affecting the imposable penalty, we impose on the respondent sheriffs suspension for one (1) month and one (1) day for simple neglect of duty.¹⁵

WHEREFORE, premises considered, respondent sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva are **GUILTY** of SIMPLE NEGLECT OF DUTY for violating Section 14, Rule 39 of the Rules of Court. The respondent sheriffs are hereby **SUSPENDED** for One (1) Month and One (1) Day with a STERN WARNING that a repetition of the same or similar offense shall be dealt with more severely.

The administrative charge of grave abuse of discretion/authority and violation of Section 6, Canon IV of the Code of Conduct for Court

¹³ *Id.* at 704-705.

¹⁴ 529 Phil. 144, 148 (2006).

¹⁵ See *Office of the Court Administrator v. Mary Lou C. Sarmiento, etc., et al.*, A.M. No. P-11-2912, April 10, 2012; and *Attys. Ricardo D. Gonzalez and Ernesto D. Rosales v. Arthur G. Calo, etc.*, A.M. No. P-12-3028, April 11, 2012.

WARNING that a repetition of the same or similar offense shall be dealt with more severely.

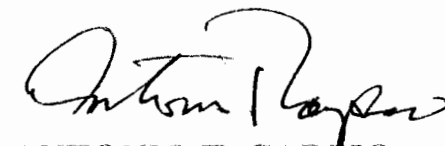
The administrative charge of grave abuse of discretion/authority and violation of Section 6, Canon IV of the Code of Conduct for Court Personnel against respondents Clerk of Court Jennifer H. dela Cruz-Buendia, and Sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva is **DISMISSED**.

SO ORDERED.

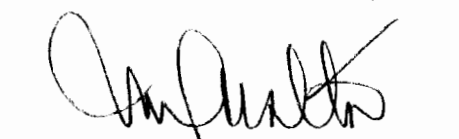


ARTURO D. BRION
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice