

FIRST DIVISION

[A.M. NO. P-05-2016 (FORMERLY OCA I.P.I. NO. 04-1969-P), April 19, 2007]

PEDRO SALAZAR, EUSTAQUIA SALAZAR AND TERESITA SALAZAR, COMPLAINANTS, VS. EDMUNDO B. BARRIGA, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 5, CEBU CITY, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

This administrative case for grave misconduct was an offshoot of two civil cases filed in the Municipal Trial Court in Cities (MTCC), Branch 5, and the Regional Trial Court (RTC), Branch 12, both of Cebu City.

The first was Civil Case No. 35651 for unlawful detainer filed by Florentina Kintanar against her lessees, the complainants Pedro, Eustaquia and Teresita, all surnamed Salazar, for their failure to pay rentals and refusal to vacate her property.

The second was Civil Case No. CEB-29951 filed by the complainants against Kintanar for quieting of title on the ground that they actually owned the land being claimed by her (Kintanar).

After the trial in Civil Case No. 35651, the MTCC (of which respondent Edmundo Barriga was the sheriff) ordered the complainants to vacate the property for nonpayment of rentals to Kintanar. The complainants appealed the MTCC decision all the way to this Court, to no avail.

The case was returned to the MTCC for execution. The MTCC later on issued a writ of demolition.^[1]

On the complainants' motion, the RTC (in Civil Case No. CEB-29951) issued a writ of preliminary injunction enjoining respondent from implementing the writ.^[2] Subsequently, however, the RTC dismissed the complainants' case and recalled the writ of preliminary injunction.

Immediately thereafter ¹ even before receiving the official copy of the RTC order ¹ respondent showed up at complainants' residence. He informed them of his intention to demolish their property on the prodding of Kintanar who, he claimed, had promised to pay P30,000 for the job and had, in fact, already given him P5,000 as advance payment.

The complainants pleaded with respondent not to proceed with the demolition because the RTC's order of dismissal was not yet final and they intended to file a motion for reconsideration. According to the complainants, respondent told them he

could delay the demolition in exchange for P50,000. Respondent then left his cellular phone number with the complainants so they could call him up as soon as they were ready for the pay-off.

In the meantime, the complainants filed with the RTC an "urgent motion to stay the grant of the writ of preliminary injunction" previously issued in their favor (but recalled after the dismissal of Civil Case No. CEB-29951). The RTC granted the motion and issued an omnibus order restraining respondent from demolishing the complainants' property.

One of the complainants informed respondent that a copy of the RTC omnibus order was forthcoming but he nonetheless proceeded with the demolition. Hence, the complainants filed this complaint for grave misconduct against him.

In his comment,^[3] respondent denied demanding money from the complainants. He claimed that he would not risk his 33 years of government service for the measly amount of P50,000. Since the execution of the writ was ministerial, he had no choice but to carry it out.

The administrative complaint against respondent and his comment were referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA, however, suggested that only a full-blown investigation could determine whether or not respondent was guilty of the charges against him. The case was thus referred to Executive Judge Simeon P. Dumdum, Jr., of the RTC of Cebu City, for investigation, report and recommendation.^[4]

After hearing the parties, Judge Dumdum submitted the following report:

Respondent conducted the demolition with unusual alacrity, proceeding with the work even after he learned that the complainants were securing a temporary restraining order from the court'[C]ourt records show that the order was issued at 9:30 a.m., such that, when [complainant] Teresita Salazar called him up at 9:30 a.m., as [respondent himself] admitted, she must have informed him that the order had been issued. He should have stopped the demolition at that stage, and not wait until he was shown a copy of the order. Besides, he could easily have checked with the court, through telephone, if the order had really been issued.

The prudent and humane thing [that respondent should have done] would have been to give time to the complainants to produce the temporary restraining order before proceeding with the demolition. As it turned out, the order came in [after] about two hours. This only [confirmed] the suspicion that, as claimed by the complainants, the respondent indeed received [money] from [Kintanar], and was motivated to pursue the demolition with vigor by this and the fact that the complainants failed to raise the amount he asked for.

The circumstances reinforce [complainants' claim] that [respondent] tried to extract money from them.^[5]

Judge Dumdum found respondent guilty of grave misconduct and recommended his dismissal from the service with forfeiture of all benefits and disqualification from