SECOND DIVISION

[A.M. No. P-17-3627, September 05, 2018]

ERLINDA A. FOSTER, COMPLAINANT, VS. RODOLFO T. SANTOS, JR., SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, LAOAG CITY, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is an administrative complaint filed by complainant Erlinda A. Foster (complainant) charging respondent Rodolfo T. Santos, Jr., (respondent sheriff) Sheriff III of Branch 2, Municipal Trial Court in Cities (MTCC), Laoag City, with gross neglect of duty and inefficiency.

The Facts

Complainant filed an affidavit-complaint dated 6 May 2014 charging respondent sheriff with gross neglect of duty and inefficiency for failure to fully enforce the writs of execution issued by the MTCC, Branch 2 of Laoag City, in connection with Small Claims Case Nos. 2011-0077 and 2011-0079, entitled *Spouses David Foster and Erlinda Foster v. Atty. Jaime Agtang*.

Complainant alleged that on 9 December 2011, she and her husband filed two small claims cases against their former counsel, Atty. Jaime Agtang (Atty. Agtang): (1) Small Claims Case No. 2011-0077 for the P100,000 unpaid obligation; and (2) Small Claims Case No. 2011-0079 for the P22,000 unpaid obligation. The cases were raffled to MTCC, Branch 2, Laoag City.

On 24 January 2012, MTCC Presiding Judge Jonathan Asuncion rendered judgment in Small Claims Case Nos. 2011-0077 and 2011-0079, ordering Atty. Agtang to pay Spouses David and Erlinda Foster the amount of P100,000 and P22,000, respectively, plus interest and costs of the suits. The judgment became final and executory and on 23 April 2012, the trial court issued the corresponding writs of execution, which were received by respondent sheriff on 24 April 2012. Complainant paid the sheriffs fees for the implementation of the writs on 24 April 2012. When respondent sheriff failed to contact complainant for updates on the writs of execution, complainant sent a letter[1] dated 19 July 2012 to Judge Asuncion informing him of respondent sheriffs failure to enforce the writs of execution against Atty. Agtang. Complainant also furnished the Office of the Court Administrator (OCA) with a copy of the letter. In her letter, complainant expressed her disbelief and suspicion over respondent sheriffs inability to locate Atty. Agtang considering that the latter had been frequently seen in the Hall of Justice and the City Hall. Complainant surmised that Atty. Agtang's 39 years of law practice in Laoag City may

have caused him to wield considerable influence in the courts. Complainant also requested a meeting with Judge Asuncion regarding the matter.

On 25 July 2012, complainant met with Judge Asuncion, who assured her that respondent sheriff was doing his best to serve the writs of execution on Atty. Agtang. Judge Asuncion tried to allay complainant's fear of bias, stressing that such was unfounded considering that the judgments in the two cases were in her favor.

Subsequently, complainant learned that an Isuzu Crosswind, which was encumbered with China Bank in Laoag City, was registered under the name of Atty. Agtang. Complainant tried to verify the status of the encumbrance from China Bank, which refused to release any information without a court order. Thus, on 16 August 2012, complainant filed with the MTCC an *Ex Parte Manifestation/Motion* for the issuance of an order directing China Bank to submit to the court a statement of the status of the chattel mortgage on the Isuzu Crosswind.[2]

Meanwhile, on 16 September 2012, respondent sheriff sent a letter[3] to Judge Asuncion regarding the matters raised by complainant. In his letter, respondent sheriff explained that he tried to serve the writs of execution on Atty. Agtang at his law office but he was informed that Atty. Agtang seldom goes to the office. Respondent sheriff also went to Atty. Agtang's residence where he was told that Atty. Agtang was in Manila. He denied being biased in favor of Atty. Agtang, and alleged that he exerted efforts to locate properties registered in the name of Atty. Agtang in the event of nonpayment of the money judgment in cash. However, the Certification dated 14 September 2012 issued by the Land Transportation Office (LTO) shows that the Isuzu Crosswind registered in the name of Atty. Agtang was encumbered to China Bank,[4] and thus, cannot be levied. Also, per Certification of the Office of the Provincial Assessor of Ilocos Norte dated 17 August 2012,[5] the only real property registered under the name of Spouses Jaime and Eva Agtang is their residential home located in Vintar, Ilocos Norte, which under the law is exempt from execution of judgment. Respondent sheriff stated that he was still trying to locate Atty. Agtang in order to formally serve the writs of execution on him.

Relying on the letter of respondent sheriff, complainant waited for the execution of the judgment. When complainant still heard nothing from respondent sheriff, and the judgment remained unsatisfied, complainant sent a letter dated 21 August 2013 to Court Administrator Jose Midas Marquez, reporting the failure of respondent sheriff to implement the writs of execution against Atty. Agtang. Complainant stated that since filing the *Ex Parte Manifestation/Motion* on 16 August 2012, she has not heard anything from respondent sheriff. Complainant assumed that the writs were not served on Atty. Agtang, who still failed to contact her since the hearing on 24 January 2012.

In a letter dated 22 October 2013,[6] respondent sheriff requested complainant to furnish him a copy of a certificate of non-encumbrance from China Bank so he could levy the Isuzu Crosswind. Respondent sheriff stated in his letter that China Bank has not issued any certification to him despite his request and follow-up. In her letter-reply dated 12 November 2013,[7] complainant stated that she could not secure a certification of non-encumbrance from China Bank without a court order. Complainant questioned respondent sheriffs act of passing onto her the burden of securing the said certificate which should be the latter's duty. Complainant also

inquired from respondent sheriff whether he was able to serve the writs of execution on Atty. Agtang. On the same day, complainant wrote Judge Asuncion on the possibility of issuing a court order to China Bank to furnish the court with the certification of non-encumbrance as regards the Isuzu Crosswind owned by Atty. Agtang.[8]

Judge Asuncion issued an Order dated 21 November 2013,[9] directing Mr. Hipolito Arde, Chief of Office of LTO, Laoag City, to issue a certification indicating the status of the Isuzu Crosswind to determine whether it is still encumbered to China Bank. In a letter dated 23 January 2014, the Acting Records Officer of LTO sent a letter to Judge Asuncion with a certified true copy of the certificate of registration of the Isuzu Crosswind dated 16 July 2002 showing that the vehicle was encumbered to China Bank. On 7 May 2014, Judge Asuncion issued an order directing respondent sheriff to submit his report on the status of the writs of execution issued by the court on 23 April 2012.[10]

In his Comment dated 29 August 2014,[11] respondent sheriff explained that he did not neglect his duty to serve the writs of execution on Atty. Agtang, who was hard to locate because he seldom goes to his law office and was not at his residence in Laoag. He was finally able to serve the writs on Atty. Agtang on 18 September 2012. Respondent sheriff demanded from Atty. Agtang to pay the judgment obligation but Atty. Agtang said he would talk to complainant about the matter. Whenever respondent sheriff inquired about the judgment obligation, Atty. Agtang always replied that he was already talking with complainant to settle the matter. Respondent sheriff claimed that he requested the LTO and the Provincial Assessor's Office for certifications pertaining to vehicles and real properties registered in the name of Atty. Agtang for possible levy in the event of non-payment in cash of the judgment obligation. The Certification dated 14 September 2012 of the LTO shows that the Isuzu Crosswind vehicle registered in the name of Atty. Agtang was still encumbered to China Bank, and cannot therefore be levied. The Certification dated 17 August 2012 of the Office of the Provincial Assessor of Laoag City stated that no property is declared under the name of Atty. Agtang as sole owner, and that the only real property registered under the name of Spouses Jaime and Eva Agtang is their residential home, which is exempt from execution of judgment. Respondent sheriff stated that he tried to secure a certification of non-encumbrance from China Bank on the Isuzu Crosswind, but the latter never acceded to his request. Finally, respondent sheriff denied that he never made any report on the writ and in fact submitted a Sheriffs Report dated 9 May 2014,[12] in compliance with the court's order dated 7 May 2014.

OCA's Report and Recommendations

On 27 September 2016, the OCA submitted its report with the following recommendations:

> 1. the administrative complaint be RE-DOCKETED as a regular administrative matter against respondent Rodolfo T. Santos, Jr., Sheriff III, Branch 2, Municipal Trial Court in Cities, Laoag City, Ilocos Norte;
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> 2. respondent Sheriff Santos be found GUILTY of simple neglect of duty and be FINED in the amount of P20,000.00 with STERN WARNING that a

repetition of the same or a similar act shall be dealt with more severely by the Court; and

3. respondent Sheriff Santos be DIRECTED to fully implement WITH UTMOST DISPATCH the subject writs of execution issued in Small Claims Case Nos. 2011-0077 and 2011-0079 against Atty. Jaime Agtang.[13]

The OCA found respondent sheriff guilty of simple neglect of duty, which is classified as a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering the long years of service of respondent sheriff and since this is his first offense, the OCA recommended the penalty of a P20,000 fine instead of suspension to prevent any undue adverse effect on public service if respondent sheriff is suspended.

The Court's Ruling

The Court agrees with the OCA's finding that respondent sheriff is guilty of simple neglect of duty but increases the fine to an amount equivalent to his salary for one month.

A sheriffs duty to enforce the writ of execution is mandatory and purely ministerial.[14] As an agent of the law whose primary duty is to execute the final orders and judgments of the court, a sheriff has the ministerial duty to enforce the writ of execution promptly and expeditiously to ensure that the implementation of the judgment is not unduly delayed.[15] Thus, a sheriff should not wait for the litigants to follow-up the implementation of the writ before proceeding to enforce the writ of execution.[16]

Respondent sheriff received the writs of execution on 24 April 2012, but he was only able to serve the writs of execution on Atty. Agtang, the judgment obligor, on 18 September 2012. Despite service of the writs of execution on Atty. Agtang, respondent sheriff still failed to enforce the writs of execution. Respondent sheriff merely relied on Atty. Agtang's statement that he would personally settle the matter with complainant. When complainant filed the administrative complaint on 6 May 2014, or two years after respondent sheriff received the writs of execution, the said writs were still not fully enforced.

Under Section 9, Rule 39 of the Rules of Court,[17] respondent sheriff should have demanded from Atty. Agtang, the judgment obligor, the immediate payment of the full amount stated in the writs of execution and all the lawful fees. Respondent sheriff was remiss in his duty when he failed to compel Atty. Agtang to immediately pay the amount of the judgment debt, and instead granted the latter's request to personally settle his debts with complainant which was clearly a tactic to delay the execution of the judgment. It is only when the judgment obligor cannot pay all or part of the judgment debt that the sheriff shall levy on the properties of the judgment obligor or garnish the debts due the judgment obligor and other credits.

Not only was respondent sheriff negligent in enforcing the writs of execution, he also failed to observe the requirement on the return of the writs of execution as provided under Section 14, Rule 39 of the Rules of Court: