

## EN BANC

[ **A.M. No. P-09-2610 (Formerly A.M. OCA IPI No. 09-3072-P), August 13, 2009** ]

**ATTY. HECTOR P. TEODOSIO, COMPLAINANT, VS. ROLANDO R. SOMOSA, EDGAR CORDERO, AND RODOLFO HARO, SHERIFFS, MUNICIPAL TRIAL COURT IN CITIES (MTCC), ILOILO CITY, AND GANI LACATAN AND CAMILO DIVINAGRACIA, JR., SHERIFFS, REGIONAL TRIAL COURT (RTC), ILOILO CITY, RESPONDENTS.**

### DECISION

#### PER CURIAM:

Before this Court is a letter-complaint<sup>[1]</sup> dated July 3, 2007 filed by complainant Atty. Hector P. Teodosio against respondent Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., Deputy Sheriffs of the Regional Trial Court (RTC) of Iloilo City, and respondents Sheriffs Rolando Somosa, Edgardo Cordero and Rodolfo Haro, Deputy Sheriffs of the Municipal Trial Court in Cities (MTCC) of Iloilo City, with the Office of the Court Administrator (OCA) relative to the irregular manner of implementing the writ of execution issued by the MTCC, Branch 2, Bacolod City, Negros Occidental in Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*.

The antecedent facts are as follows:

On August 27, 2004, the MTCC, Branch 2, Bacolod City, Negros Occidental, rendered a Decision<sup>[2]</sup> on the civil aspect of Criminal Case Nos. 03-6-5516 to 03-6-5542, 03-9-6218 to 03-9-6270, 03-10-6498 to 03-10-6549, entitled *People of the Philippines v. Mary Ann Ng*, for violation of *Batas Pambansa Bilang 22* filed by therein private complainant Lita Gamboa against therein accused Mary Ann Ng, President and Chief Executive Officer (CEO) of Nueva Swine Valley, Inc. (Nueva Swine). Said decision was based on an amicable settlement entered into between accused Ng and Keylargo Commodities Trading (Keylargo), represented by therein private complainant Lita Gamboa, wherein the former agreed to pay on installment basis her civil liability in the form of post dated checks she will issue, for and in behalf of Nueva Swine.

When therein accused Ng failed to comply with the terms and conditions of the judgment, therein private complainant, through her counsel, moved for the execution of the decision. On August 4, 2006, the MTCC issued a Writ of Execution,<sup>[3]</sup> which reads in part:

NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment on the civil aspect of the cases; to levy the goods and chattels of the accused, except those which are exempt from

execution and to make the sale thereof in accordance with the procedure outlined by Rule 39, Revised Rules of Court, and in such cases made and provided together with all your lawful fees for the service of this Writ.

In case sufficient personal property of the accused cannot be found whereof to satisfy the amount of the said judgment, you are hereby directed to levy the real property of said accused and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment. You shall only sell so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees, and make a report to this Court every thirty (30) days on the proceedings taken until the judgment is satisfied in full, or its effectivity expires.

On January 22, 2007, Judge Ma. Lorna Demonteverde, Presiding Judge of the MTCC, Branch 2 of Bacolod City, issued an Order<sup>[4]</sup> directing the City Sheriff and/or the Provincial Sheriff of Iloilo to serve a copy of the writ on therein accused Ng.

On May 30, 2007, Nicolasito Solas, *Ex-Officio* Sheriff and Clerk of Court of the MTCC, Iloilo City directed herein respondents, Sheriffs Johnny Tugado, Rolando Somosa, Edgardo Cordero, and Rodolfo Haro, to implement the writ.<sup>[5]</sup> Co-respondents, Sheriffs Gani Lacatan and Camilo Divinagracia, Jr., both Deputy Sheriffs of the Province of Iloilo, were also approached by Juanito Gamboa, President of Keylargo, to implement said writ.

On May 31, 2007, respondents proceeded to Nueva Swine's hog farm at Barangay Talokgangan, Banate, Iloilo to implement the writ. Upon reaching the place, they introduced themselves and explained to the officer-in-charge (OIC) their purpose, as accused Ng was not around. They then served upon the OIC a copy of the writ, together with the decision, and demanded the money judgment. When the OIC failed to produce the money, respondents levied and took away 675 pigs and, thereafter, delivered them to Keylargo for safekeeping. A Notice of Levy on Execution<sup>[6]</sup> was issued on the same day to accused Ng.

On June 1, 2007, complainant sought a 72-hour Temporary Restraining Order (TRO) with the RTC, Branch 66 of Barotac Viejo, Iloilo, which the latter granted,<sup>[7]</sup> enjoining respondents, their agents and other persons acting for and on their behalf, from removing, transferring, disposing of and selling the swine in the hog farm of Nueva Swine in Brgy. Talokgangan, Banate, and in Nueva Invencion, Barotac Viejo, Iloilo, and from selling or disposing the swine already taken, which would be preserved and maintained in its present location under supervision of the sheriff of the court. Despite the TRO, respondent sheriffs issued a Sheriff's Notice of Sale on Execution,<sup>[8]</sup> setting the auction sale of the pigs levied on June 5, 2007, 10:00 a.m., at the Victorias Milling Corporation Farm Site in Victorias City, Negros Occidental.

On June 3, 2007, complainant Atty. Hector Teodosio, counsel for Nueva Swine, wrote Judge Roger Patricio, Executive Judge of the RTC of Iloilo City and Sheriff Gerry Sumaculub, Clerk of Court and *Ex-Officio* Provincial Sheriff of Iloilo City, asking for information on the sheriffs who implemented the writ of execution. On June 7, 2007, he likewise wrote Judge Amalik Espinosa, Executive Judge of the MTC of Iloilo City and Sheriff Nicolasito Solas, City Clerk of Court and *Ex-Officio* City Sheriff of the

MTC of Iloilo City, to obtain the same information.

On June 4, 2007, Judge Rogelio Amador of the RTC, Branch 66 of Iloilo City issued an Order extending the 72-hour TRO to a full 20 days, or until June 21, 2007, and setting the case for a preliminary injunction on June 15, 2007. Said Order was served and received by the Provincial and City Sheriffs of Iloilo.<sup>[9]</sup>

On June 5, 2007, respondents personally turned over all levied hogs to the MTCC, Branch 2 of Bacolod City.<sup>[10]</sup>

On June 7, 2007, Branch Sheriff Emilio Portal of the MTC, Branch 2, Bacolod City, conducted the public auction sale of the levied hogs.<sup>[11]</sup>

In a letter complaint dated July 3, 2007 and filed on July 9, 2007 with the OCA, complainant alleged that although he had previously sought information from Atty. Sumaculub of the RTC of Iloilo, and Mr. Solas of the MTC of Iloilo, on the purported irregular implementation of the writ of execution in *People of the Philippines v. Mary Ann Ng*, both had not replied. Complainant then sought help from the OCA requesting it to direct Atty. Sumaculub and Mr. Solas to furnish him the said information.

On July 19, 2007, the OCA separately indorsed the complaint dated July 3, 2007 and filed before it on July 9, 2007, to Executive Judges Patricio and Espinosa for immediate action and investigation.

In compliance with said directive of the OCA, Executive Judge Patricio set the initial hearing on August 7, 2007.

On August 14, 2007, Executive Judge Patricio issued an Order directing the respondents to submit their respective counter-affidavits within ten (10) days from receipt thereof.

In his Affidavit<sup>[12]</sup> dated August 14, 2007, complainant alleged that he went to the facilities of Nueva Swine on June 1, 2007 to stop the implementation of the writ of execution against the properties of his client, Nueva Swine. Upon reaching the farm, he saw about seven armed men in Philippine National Police (PNP) uniform posted outside the gate while swine were being loaded into cargo trucks provided by Keylargo. Complainant approached respondents Sheriffs Tugado, Cordero and Somosa and asked for the necessary documents that gave them authority to implement the execution. After going over the documents, he informed the respondents that the swine being levied upon belonged to Nueva Swine and not to accused Ng. Respondents, however, told him that they would only stop the implementation of the writ if a TRO would be issued. Thus, on that same day, complainant filed a petition for prohibition with prayer for TRO and preliminary injunction, which the RTC granted. Thereafter, armed with the TRO, complainant returned to Nueva Swine and presented the TRO to respondents Sheriffs Divinagracia and Lacatan. When complainant left the premises, however, he was told by Nueva Swine's manager, Dr. Matis Donglal, Jr., that respondents insisted on transporting the swine. Complainant then returned to Nueva Swine to stop the attempt at removing or transporting the swine out of the premises.

Complainant further averred that on June 2, 2007, he received a text message from an employee of Nueva Swine that respondents Tugado, Somosa, Lacatan and Divinagracia were trying to enter the gate of the farm to serve a notice of levy, a notice of sale and inventory documents. He advised the employee not to receive said documents or to sign any receipt. Respondents, however, left the documents at the gate of Nueva Swine.

Complainant added that the swine levied upon were sold at a public auction on June 7, 2007 without any notice to Nueva Swine or accused Ng, and in violation of the TRO. He argued that respondents illegally levied the swine owned by his client and not by accused Ng, and that they violated existing laws and administrative circulars of the Court when it implemented the writ in the absence of the judgment obligor, accused Ng.

To support the complainant's testimony, Dr. Donglal, Production Manager and Farm Veterinarian of Nueva Swine, submitted his Affidavit<sup>[13]</sup> dated August 13, 2007. He stated that sometime on May 31, 2007, at about 8:00 a.m., 30 men, ten of whom were in PNP uniform, entered the premises of Nueva Swine. Two of them introduced themselves as Sheriffs Lacatan and Divinagracia and showed him a writ of execution and a decision rendered against accused Ng. Despite having informed respondents that Nueva Swine did not belong to accused Ng, they ordered their companions to get the swine from the pigpens and load them into the cargo trucks. They also ordered their companions to slaughter one pig of imported variety, which was then cooked into *lechon* (roasted pig) on the premises. As respondents were accompanied by armed men, Dr. Donglal was not able to do anything. He further claimed that the taking of the swine lasted until the afternoon of June 1, 2007, when complainant and Sheriff Jonel Tupas of the RTC, Branch 66 of Barotac Viejo, came with a copy of the TRO. However, after complainant left the premises, respondents insisted on transporting the swine, prompting Dr. Donglal to call up complainant for assistance. Dr. Donglal estimated that about 383 swine, one cow, and a slaughtered pig were taken from the farm.

On the other hand, respondents Lacatan, Divinagracia, Somosa and Haro alleged in their Joint Counter-Affidavit<sup>[14]</sup> dated August 29, 2007 that prior to the implementation of the writ, respondent Sheriff Tugado, head of the group, together with Keylargo's representative, went to Bacolod City to verify certain matters before implementing the writ on May 31, 2007. On June 1, 2007, complainant arrived at Nueva Swine and ordered the closure and padlocking of the main gates of the corporation. Respondent Sheriff Tugado forced open the padlock and implemented the writ pursuant to the MTCC Order dated May 30, 2007. They levied the swine after Dr. Donglal failed to pay the monetary obligation of accused Ng. The corporation was furnished a copy of the consolidated report on the inventory of the pigs taken from the piggery. Unfortunately, the officers refused to receive it, so they reported the matter to the police station for record purposes. Respondents averred that they discontinued implementation of the writ on June 1, 2007 at around 5:30 p.m., upon being informed that a TRO had been issued by the RTC, Barotac Viejo. Although they were not yet served a copy of the TRO, they nevertheless stopped levying on the property of Nueva Swine.

In their Joint Counter-Affidavit<sup>[15]</sup> dated August 29, 2007, respondents Lacatan and Divinagracia argued that they were informed by Keylargo's President, Juanito

Gamboa, that accused Ng, as President of Nueva Swine, issued the subject checks on behalf of the corporation to pay for the feeds delivered by Keylargo to Nueva Swine, pursuant to their business relationship which began in 1998. They implemented the writ of execution on May 31, 2007, together with some members of the PNP and a group of individuals provided by Juanito Gamboa, upon the directive of the Clerk of Court of MTCC, Iloilo City. They also coordinated with the deputy sheriff of RTC, Branch 66, Barotac Viejo, Iloilo and the Barotac Viejo PNP and police officers of the Presidential Management Group, Sara, Iloilo. In implementing the writ, they said that they had explained their purpose to Dr. Donglal and asked for the whereabouts of accused Ng, but he told them that she was in Manila. Dr. Donglal called up accused Ng, but the latter refused to talk to them. Hence, they implemented the writ after the corporation failed to pay the judgment obligation by levying the swine and loading them into the cargo trucks provided by Keylargo. They were also given pieces of roasted pork. They later learned that a pig had been slaughtered by the head of the group and provided by Juanito Gamboa, upon the suggestion of Dr. Donglal, because their provision for food was missing. They averred that the employees of the corporation were aware of the slaughtering of the pig and had not objected thereto. The implementation of the writ lasted until 6:00 p.m. of June 1, 2007 when complainant arrived and served upon them a copy of the TRO. An argument ensued between them and complainant but to avoid trouble, they decided to unload the swine which were already taken before the TRO was served upon them.

On August 14, 2007, Executive Judge Espinosa submitted his report, viz:

x x x x

In summation, it was the late City Court Deputy Sheriff Johnny Tugado, assigned at Branch 3, MTCC-Iloilo, who actively facilitated the preparatory matters, with the active participation of a lawyer/practitioner Atty. Gelacio Lira by way of following up with Branch 2, MTCC- Bacolod City, as far as, the implementation of the Writ of Execution, issued by said Court, as well as the Order, dated January 22, 2007.

It was sheriff Tugado who got hold of the original copies of said Court document, but he did not present it to Mr. Nicolasito Solas, the MTCC-Iloilo City Clerk of Court/*Ex-Officio* City Sheriff, instead showed to the latter, only a photocopy thereof. Yet, Mr. Solas issued an office order, directing the four City Deputy Sheriffs to comply and execute the order of Judge Demonteverde. He also wrote a letter request to RTC Clerk of Court Atty. Jerry Sumaculub for him to provide RTC Sheriffs to assist his City Sheriffs to implement the said Order, who granted said letter request by issuing a memorandum to RTC Sheriffs Camilo Divinagracia, Jr. and Gani Lacatan.

These sheriffs therefore comprised the team that were responsible for the implementation of the Order, and Writ of Execution issued by Branch 2, MTCC-Bacolod City. The overall team leader was the late Deputy Sheriff Tugado, who actively made the preparation, in coordination with the complainant, for its implementation, which entailed financial and monetary considerations for police assistance, labor force, transportation