

## EN BANC

[ A.M. No. P-05-1999, February 22, 2008 ]

**ANGELES A. VELASCO, Complainant, vs. ATTY. PROSPERO V. TABLIZO, Respondent.**

### DECISION

**CARPIO, J.:**

#### The Case

This is an administrative complaint Atty. Angeles A. Velasco (complainant) filed against Atty. Prospero V. Tablizo (respondent), Clerk of Court and *Ex-Officio* Provincial Sheriff, Regional Trial Court (RTC), Office of the Clerk of Court, Virac, Catanduanes. Complainant charged respondent with gross neglect of duty and misconduct.

#### The Facts

Complainant is the counsel of record in Civil Case Nos. 489<sup>[1]</sup> and 466.<sup>[2]</sup> On 11 May 1999, Judge Nieto T. Tresvalles (Judge Tresvalles), Municipal Trial Court, Judicial Region V, Virac, Catanduanes, rendered a Decision<sup>[3]</sup> in Civil Case No. 489 favorable to complainant's clients, the plaintiffs. On 18 May 1999, complainant filed a motion for immediate execution<sup>[4]</sup> of the Decision. On 25 May 1999, Judge Tresvalles issued a writ of execution<sup>[5]</sup> stating that the Decision had become final and executory, and commanding respondent to (1) eject the defendant from the property; (2) demand from the defendant P47,500 rent plus arrears and interest, P15,000 attorney's fees, and other costs; (3) make reports; (4) file the reports with the trial court; and (5) levy on the defendant's real properties if there were no sufficient personal properties to cover the obligation. On 5 July 1999, respondent received the writ. He refused to implement it.

On 27 January 1999, Judge Tresvalles rendered a Decision<sup>[6]</sup> in Civil Case No. 466 favorable to complainant's clients, the plaintiffs. On 11 February 1999, complainant filed a motion for immediate execution<sup>[7]</sup> of the Decision. On 24 February 1999, Judge Tresvalles issued a writ of execution<sup>[8]</sup> stating that the Decision had become final and executory, and commanding respondent to (1) eject the defendant from the property; (2) restore the possession of the property to the plaintiffs; (3) demand from the defendant an amount equivalent to the average yield of the property or cost of rent, P10,000 attorney's fees plus P700 for every court appearance, and other costs; (4) make reports; (5) file the reports with the trial court; and (6) levy on the defendant's real properties if there were no sufficient personal properties to cover the obligation. On 26 February 1999, respondent received the writ. He refused to implement it.

On 23 February 2000 and 1 March 2000, complainant filed with the Office of the Court Administrator (OCA) and Office of the Deputy Ombudsman for Luzon, respectively, a complaint<sup>[9]</sup> against respondent. Since the acts complained of were related to respondent's functions as an officer of the court, the Office of the Deputy Ombudsman for Luzon referred the matter to the OCA.

In its 1st Indorsement<sup>[10]</sup> dated 11 May 2000, the OCA referred the complaint to respondent for comment. Respondent did not file his comment. In its 1st Tracker<sup>[11]</sup> dated 27 November 2001, the OCA directed respondent to file his comment. Respondent did not file his comment. In a Resolution<sup>[12]</sup> dated 9 April 2003, the Court required respondent to file his comment. Respondent did not file his comment. In a Resolution<sup>[13]</sup> dated 10 January 2005, the Court dispensed with the filing of the comment and referred the matter to the OCA for evaluation, report, and recommendation.

### **The OCA's Report and Recommendations**

In its Memorandum<sup>[14]</sup> dated 10 March 2005, the OCA stated that respondent should be held liable for failing to implement the writs of execution. The OCA recommended that the case be re-docketed as a regular administrative matter and that respondent be fined P20,000.

In a Resolution<sup>[15]</sup> dated 25 April 2005, the Court re-docketed the case as a regular administrative matter and, in a Resolution<sup>[16]</sup> dated 14 June 2006, the Court required the parties to manifest if they were willing to submit the case for decision based on the records already filed. Since both parties did not file any manifestation, the Court considered them to have waived their compliance with the 14 June 2006 Resolution.

### **The Court's Ruling**

The Court finds respondent liable for gross neglect of duty and refusal to perform official duty.

RTC clerks of court are *ex-officio* sheriffs within their territorial jurisdiction. As *ex-officio* sheriffs, they perform certain functions,<sup>[17]</sup> including the implementation of writs of execution.<sup>[18]</sup> In *Bautista v. Orque, Jr.*,<sup>[19]</sup> the Court held that *ex-officio* sheriffs have the sworn duty to enforce the writs placed in their hands.

Judge Tresvalles issued two writs of execution explicitly commanding respondent to (1) eject the defendants from the property; (2) restore the possession of the property to the plaintiffs; (3) demand from the defendants sums of money; (4) make reports; (5) file the reports with the trial court; and (6) levy on the defendants' real properties if there were no sufficient personal properties to cover the obligation.

The implementation of writs of execution is *mandatory*<sup>[20]</sup> and *ministerial*.<sup>[21]</sup> When writs are placed in the hands of sheriffs, they must implement them promptly and

strictly to the letter.<sup>[22]</sup> Sections 9(a) and (b), 10(c), and 14 of Rule 39 of the Rules of Court clearly provide the procedure to be followed in the execution of judgments:

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.** The judgment obligor shall pay x x x the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

x x x x

(b) *Satisfaction by levy.* — **If the judgment obligor cannot pay all or part of the obligation x x x, 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.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon x x x.

SEC. 10. *Execution of judgments for specific act.* —

x x x x

(c) *Delivery or restitution of real property.* — **The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property.**

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.** (Emphasis ours)

As the officer charged with the implementation of writs of execution, and following the provisions of the Rules of Court, respondent should have (1) demanded from the defendants the immediate payment of the full amount stated in the writs of execution and all lawful fees, (2) received the lawful fees from the defendants and turned them over within the same day to the clerk of court of the court that issued the writs, (3) levied on the properties of the defendants if they cannot pay all or part of the obligation, (4) demanded the defendants to vacate the property and restore its possession to the plaintiffs, and (5) made returns on the writs of execution to the court that issued them.

Respondent did nothing. He refused to perform his official duty without justifiable reasons and totally ignored the provisions of the Rules of Court. In his complaint<sup>[23]</sup> dated 4 February 2000, complainant stated that:

[I]n evident bad faith and gross negligence x x x Ex-Officio Provincial Sheriff Atty. Prospero Tablizo failed and refused and still fails and refuses to implement and enforce the x x x [25 May 1999] Writ of Execution x x x until the present or a period of almost eight (8) months; [and]

x x x x

[I]n evident bad faith and gross negligence x x x Ex-Officio Provincial Sheriff Prospero Tablizo failed and refused and still fails and refuses to implement and enforce the [24 February 1999] Writ of Execution x x x in Civil Case No. 466 until the present or a period of almost twelve (12) months.