

## FIRST DIVISION

[ A.M. NO. P-06-2139, March 23, 2006 ]

**SECURITY BANK CORPORATION, COMPLAINANT, VS. ROMEO C. GONZALBO, ARTURO A. RAMOS AND EDILBERTO C. DE CASTRO, RESPONDENTS**

### DECISION

#### **PANGANIBAN, CJ:**

The ministerial duty of sheriffs is to execute with reasonable celerity and promptness all writs placed in their hands. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed.

#### **The Case and the Facts**

This administrative case originates from an Affidavit-Complaint<sup>[1]</sup> filed by Titolaido E. Payongayong, in his capacity as the authorized representative of Security Bank Corporation. The case was filed against Romeo C. Gonzalbo, Arturo A. Ramos and Edilberto C. de Castro, all sheriffs of different branches of the Regional Trial Court (RTC) of Makati City.

The facts of the case including the Comments<sup>[2]</sup> of respondents were summarized by the Office of the Court Administrator (OCA) in its Report<sup>[3]</sup> dated September 20, 2004, as follows:

"Complainant Bank is one of the defendants in Civil Case No. 95-724 which was filed by Jose Teofilo T. Mercado and assigned to Branch 62 of the RTC of Makati City. A Writ of Possession was issued by the court on 15 January 2003 (Annex "C" of complainant), ordering and directing respondent Gonzalbo and three (3) other sheriffs to place the bank or any of its authorized representatives in complete, actual and peaceful possession over subject real property covered by Transfer Certificate of Title (TCT) No. 218413 to the absolute exclusion of plaintiff Mercado. Complainant Bank and Mercado previously constituted a real estate mortgage over this real property, which includes three (3) houses located at No. 36 Narra Avenue, South Forbes Park, Makati City.

"On 27 January 2003, respondent Gonzalbo and Sheriff Renato Flora went to the subject property to serve upon Mercado the writ of execution and the Notice to Vacate but the latter refused to receive the same. Thereafter, several appeals were filed by Mercado with the Court of Appeals, but no injunction was issued by said Court to forestall the execution of the writ.

"In spite of the foregoing, respondent Gonzalbo was able to serve the

writ again on Mercado only on 14 July 2003. On this occasion, Mercado received a copy of the writ and notice, but he refused to sign the receiving copy. He likewise made a comment that had it not been for his long time friend respondent Gonzalbo, he would not have received and/or accepted the copy. The notice gave Mercado a period of three (3) days within which to vacate and clear the subject property.

"On 17 July 2003, respondents Gonzalbo and Ramos together with the complainant's representative proceeded to the subject property only to find all the gates of the premises padlocked. They were denied entrance thereto by the security personnel. Complainants allege that respondents did not exercise extra effort to implement the writ and decided to leave the premises notwithstanding the protestations of complainant.

"Upon the request of respondents Gonzalbo and Ramos, the lawyers of complainant caused the preparation of a Motion for the Issuance of a Break Open Order. Acting on the aforesaid motion, the Court issued an Order stating that the power to break open is inherent upon the authority granted to the sheriff to enforce and/or implement the writ of possession. It was further ordered that the Southern Police District Office would provide police assistance to the respondents during the enforcement of the writ.

"Respondents Gonzalbo and Ramos along with the lawyers of the complainant proceeded to the premises again on 21 July 2003 to implement the writ. However, instead of insisting on its full implementation, said respondents told the lawyers to give Mercado a period of thirty (30) days or until 21 August 2003 within which to vacate and surrender the possession of the subject premises to avoid confrontation.

"On 21 August 2003, respondent Gonzalbo went to complainant bank to inform its representative that he had granted Mercado an extension of ten (10) days. Complainant's representative insisted that complainant Bank cannot afford to further delay the implementation of the writ. Respondent Gonzalbo told him that they would further discuss the matter on 25 August 2003 at respondent's office. However, when complainant's representative went to the office of respondent Gonzalbo, he was informed that the latter was in Bauan, Batangas for a personal engagement. Consequently, complainant Bank's representative requested respondent Ramos to enforce the writ, but the latter replied that he cannot do so because the documents pertaining to the implementation of the writ were in the possession of respondent Gonzalbo.

"On 1 September 2003, respondents Gonzalbo and Ramos, complainant's representative and lawyers accompanied by some policemen of the Southern Police District Office went to the subject property to enforce the writ. However, respondents Gonzalbo and Ramos did not immediately order the village manager of Forbes Park to assist them to enter the village but whiled their time to let the day end without the writ having been implemented.

"On 11 September 2003, the enforcement of the writ finally proceeded and respondents Gonzalbo, Ramos and de Castro were assisted by several police officers. It was already 4 o'clock in the afternoon when the respondents agreed among themselves to allow Mercado to pull-out his personal belongings and other properties for a period of five (5) days.

"On the agreed date of turn-over, it was discovered that the property was in complete disarray as fixtures and structures therein were either missing or destroyed. Per the valuation conducted, the amount of the damage and missing fixtures was calculated to be around P2,369,084[.]00. The security personnel of the bank who were detailed in the subject property for more than three (3) months have personal knowledge on the condition of the property before respondents allowed the pull-out of Mercado's personal belongings. Copies of the valuation report, Joint Affidavit of the security personnel, and the photographs of the missing fixtures and structures are attached as Annexes "F", "G", "H", "I", "J", "K", "L", "M", "N", "O" and "P" of the complainant.

"Complainant contended that had the respondents performed their duties properly, diligently and efficiently, damage on the part of the bank would have been prevented. It alleges that the foregoing actions of respondents Gonzalbo, Ramos and de Castro constitute **Gross Inefficiency** and **Neglect of Duty** in violation of the provisions of **Sections 4 (b), (c) and 5 (d) of Republic Act No. 6713** otherwise known as the **Code of Conduct and Ethical Standards for Public Officials and Employees**.

"Respondents Gonzalbo, Ramos and de Castro filed separate COMMENTS, all dated 17 March 2004.

"Respondent Gonzalbo admits the allegation that on 27 January 2003, together with respondent Flora and complainant's representative, went to the subject property to serve upon Mercado the writ and notice. After some discussions, Mercado was given a 60-day grace period within which to voluntarily and peacefully vacate or leave the premises without prejudice to the cases which Mercado filed before the Court of Appeals.

"On 14 July 2003, they went again to the premises to serve the notice to vacate but although Mercado received it, he refused to sign the same. Respondent denies the statement of Mercado that they are long time friends because if it were true, he would have inhibited himself from implementing the writ.

"Respondent and co-respondent Ramos, accompanied by the lawyers of the bank, some workers and several policemen, went to the premises to execute the break-open order on 21 July 2003 but Mercado told them that if they would insist upon implementing the said order, there would be a bloody confrontation. The workers were about to begin their work by taking out a door using an acetylene torch when Mercado fired several shots with his automatic machine pistol causing the respondents, the lawyers of the bank and the policemen to scamper away. Later, Atty.

Agustin Aldea, counsel of the complainant bank, and Atty. Ciriaco Macapagal, Mercado's lawyer entered into an agreement captioned as "Turn-Over of Possession" (attached as Annex "5" of the Complaint) stating that Mercado would be given a period of 30 days within which to vacate the premises and that some security guards of the bank would be posted thereat.

"On 20 August 2003, respondents Gonzalbo and Ramos and a certain Atty. Biñas went to the bank but they were not entertained. Thus, they proceeded to the premises to inspect it. They found out that one of three houses therein was empty, and the other two had only a few personal belongings which were already packed in cartons and ready for pull-out.

"Once more, on 1 September 2003, respondents Gonzalbo and Ramos, complainant's representatives and some policemen went to the premises. It was already late in the afternoon and when respondents insisted to fully implement the writ, a certain Major Obinque warned them that somebody might get hurt or be killed.

"Finally, on 11 September 2003, after a long negotiation between the parties, it was agreed upon that Mercado would pull-out his personal belongings from the premises within a period of five (5) days, and that all the security personnel of the bank as well as Mercado's security guards would leave the premises. Police authorities would be detailed thereat instead. The terms and conditions of the pull-out were not formulated by the respondents but by the parties themselves. He emphasizes that they had no knowledge whatsoever about the missing or destroyed fixtures or structures in the premises.

"Respondent Ramos' Comment basically contains the same declarations as those contained in Gonzalbo's. He attached to his Comment a certified true copy of the Order dated 21 July 2003 of Branch 62 of RTC-Makati City which granted the Motion for Issuance of Break-Open Order. He also attached as Annex "5", a photocopy of the 'Turn-over of Possession' dated 21 July 2003 which contains the agreement between the bank's lawyer, Atty. Agustin Aldea, and Mercado's lawyer, Atty. Ciriaco Macapagal.

"He further asserts that he and respondent Gonzalbo did not 'surreptitiously and clandestinely proceeded to the subject property upon Mercado's invitation and acceded to the latter's request for another ten (10)-day extension without the knowledge, consent and conformity of the bank' as they went to the bank first before proceeding to the subject property and the bank was aware that they would inspect the premises. Since they saw that Mercado had already packed most of his belongings, they deemed it best to grant the request of Mercado for an extension of 10 days for the orderly turn-over of the property.

"Respondent further asserts that during his fifteen (15) years of service as sheriff he has always performed his duties with diligence and dedication and the delay in the implementation of the writ was brought about by their efforts to peacefully turn-over the subject property to the