

SECOND DIVISION

[A.M. NO. MTJ-05-1584 (FORMERLY A.M. OCA IPI NO. 03-1451-MTJ), March 31, 2005]

MARIA LILIA ZARATE, COMPLAINANT, VS. JUDGE CESAR O. UNTALAN AND SHERIFF ANTOLIN O. CUIZON, METROPOLITAN TRIAL COURT, BRANCH 39, QUEZON CITY, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

On July 29, 2003, Maria Lilia Zarate filed a complaint for dereliction of duty, abuse of authority, acts unbecoming of public officers and violation of the Code of Conduct against Judge Cesar O. Untalan and Sheriff Antolin O. Cuizon, both of the Metropolitan Trial Court of Quezon City, Branch 39.

The complaint has its roots in the Decision dated October 3, 2002 rendered by respondent Judge Untalan in Civil Case No. 28536 for unlawful detainer entitled *Maria Lilia Zarate v. Perry Mendiola*. The complainant was the prevailing party therein. In the said decision, the defendant was ordered to vacate the leased property and to pay the plaintiff P48,000.00 as back rentals from April 1, 2002 to June 1, 2002 and, thereafter, to pay P16,000.00 as monthly rental for the use and occupation of the subject premises beginning July 2002 and every month thereafter until the same is finally vacated by the defendant and possession thereof is surrendered and delivered to plaintiff; and to pay attorney's fees in the sum of P10,000.00 plus cost of suit.^[1]

In her complaint, the complainant made the following allegations:

5. That on November 22, 2002, a Writ of Execution was issued. The original copy of the writ of execution (which is supposed to be attached to the record of the case) was given to me by the respondent Sheriff Antolin O. Cuizon. A copy of the Writ of Execution is hereto attached as Annex "C" hereof;
6. That on November 29, 2002, the Writ of Execution was served on defendant Perry Mendiola. Before approaching the defendant, Sheriff Cuizon told the herein complainant not to go with him. According to him, he will be the one to talk to the defendant. He said, "Ako ang bahala. Huwag kang sasama sa loob. Ako lang ang makikipag-usap. Diskarte ko ito;"
7. That they spoke for about 40 minutes. After that, the Sheriff said, "May ibabayad naman pala, eh. Sabi ng tenant mo babayaran daw niya ang utang niya sa inyo. Alam mo ba kung magkano yung halaga ng wheel balancer and tire changer? That costs

P100,000.00. So I said, "Yon naman pala, eh. Bakit ayaw niya akong bayaran?;"

8. That the complainant went back to the MeTC to see the respondent Judge with the tenant. But when the sheriff was already there at Branch 39, he became different. He told me to forgive my tenant because he has no money to pay me. But I said, "Di ba meron siyang tire changer at wheel balancer na worth P100,000.00. Bakit di mo kinuha?" The Sheriff did not answer;
9. That the complainant tried to talk to the sheriff to convince him to levy on the tire changer and wheel balancer but he wouldn't. He favored the tenant instead of the complainant;
10. That the complainant asked respondent Judge Cesar O. Untalan about the writ of execution. He said he has nothing more to do with it because the case is already finished. It is now between the complainant and her tenant to talk. Complainant told the respondent Judge that she will file a motion for the appointment of the special sheriff, but he laughed and said, "I will deny your motion;"
11. That complainant went to see the lawyer, Atty. Confessor Sansano, to ask him if he can file a motion for the special sheriff, but he hesitated because according to him the sheriff might get back at him;
12. That the complainant wondered why the money judgment of the decision could not be satisfied. The tenant is a businessman who sells automobiles like Isuzu, Pajero, etc. He also sells tires like Yokohama, Goodrich, etc. His wife is a doctor. He owns a Honda Civic Car. In the leased premises were tires, magwheels, tire changer, wheel balancer and compressor. The Sheriff refused to levy on them. These things were still there to be levied upon as certified to by a son of an employer thereat, a copy of the certification is hereto attached as Annex "D" hereof;
13. That the complainant sought the assistance of another lawyer who wrote the Sheriff and inquired if the writ of execution has been served and satisfied. As per the certification of the Quezon City Post Office, the letter was received for the Sheriff by Ms. Mary Claire Lansang on April 23, 2003 but no response was received from the Sheriff. Copies of the letter and certification are hereto attached as Annexes "E" and "E-1" hereof;
14. That in not responding to the query of the complainant's counsel, the respondent Sheriff violated the Code of Conduct and Ethical Standards of Public Officials and Employees as well as Book V of Executive Order No. 292 for failure to act promptly on letters or request within fifteen (15) days from receipt;

15. That complainant checked with the MeTC about the progress of the writ of execution and she found out that a Sheriff's Report has been filed by respondent Cuizon. In the report, the sheriff stated that the Writ of Execution has been served and satisfied. He also stated that the complainant and the tenant had a verbal compromise for the latter to pay his back rentals. That is a big lie. There was no such agreement. The money judgment has not been satisfied; copy of the sheriff's report attached as Annex "F" hereof.
16. That in view of the aforesaid acts of the respondent, the complainant was not able to enforce the decision to its ultimate satisfaction to the damage and prejudice of the complainant.^[2]

The respondents filed a Joint Comment on September 17, 2003, where they denied the complainant's allegations. On the contrary, according to the respondent sheriff, when the writ of execution was served on November 29, 2002, the complainant refused to enter the premises, fearing that the defendant might hurt her. The respondent sheriff then explained the import of the writ of execution, to which the defendant replied that he had receipts to prove that he had already made payments, and offered to show the receipts before the respondent Judge in a conference with the complainant. The respondents further narrated, thus:

4. Complainant and the respondent sheriff rode on the same car in the proceeding to the sala of the respondent Judge. The defendant showed the receipts to the complainant and the respondent Judge and it was discovered that the defendant was in arrears for three (3) months only. The defendant agreed to vacate the premises by December 2002 and he will pay all the rentals;
5. Respondent Sheriff did not ask the complainant to forgive the defendant on his monetary obligation with the complainant. Complainant and the defendant voluntarily agreed before the respondent Judge that the arrears of the defendant is three (3) months only because of the receipts shown by the defendant. Defendant promised to pay the three (3) months arrears to the complainant herself. Complainant cannot deny the existence of this verbal compromise agreement. Complainant and the defendant said that there was no more need to reduce the agreement in writing because they will perform the agreement in good faith and they will abide [by] the agreement through word of honor.
6. Defendant in compliance with the agreement vacated the premises in December 2002. Complainant already exercises physical and material possession of the premises. Respondent Sheriff could not ascertain whether the defendant [had] fully paid the monetary obligation because the complainant did not inform the respondent as to the progress of their verbal agreement. ...^[3]

According to the respondents, the complainant herself is the one to blame if the monetary award had not yet been satisfied, since she did not inform the respondent sheriff as to the status of the payment of rentals. The respondent sheriff presumed in good faith that the complainant may have been paid or no longer interested. This

is why he submitted a Sheriff's Partial Report^[4] dated December 26, 2002 where he made substantially the same statement.

Pursuant to the recommendation of the Office of the Court Administrator in its Report^[5] dated March 22, 2004, the case was referred to Executive Judge Natividad G. Dizon, Regional Trial Court, Quezon City, Branch 39, for investigation, report and recommendation. ^[6]

The parties were required to submit their respective counter-affidavits and documentary evidence to support their allegations. Thereafter, the case was considered submitted for resolution.^[7]

In her Report and Recommendation dated December 28, 2004, the Investigating Judge made the following findings:

The Investigating Judge believes that the charges are meritorious as against the sheriff. The entire problem is brought about by the execution of the writ, a matter which is entirely in the hands of the sheriff. The money needed for the enforcement of the Writ was not a problem because Zarate had given money to her lawyer purposely for that. Sheriff Cuizon was aware of that, but he did not exert any effort to fully satisfy the judgment. He was complacent and miserably failed to talk with Zarate about the expenses needed. Was it because he was getting favors from defendant Mendiola? This is a query which is naturally triggered by the scenario.

Sheriff Cuizon made two Reports – Partial Sheriff's Report and Final Report. In his Final Report, he stated that the writ [was] fully satisfied. This is inaccurate and far from the truth. A Writ of Execution is satisfied only when it carries out the mandates of the Decision to the satisfaction of the judgment obligee.

Under Rule 39, Sec. 14 of the Rules of Court, the sheriff is required (1) To make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; (2) If the judgment cannot be satisfied in full, to make a report in court within 30 days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue making a report every 30 days in the proceedings being undertaken thereon until judgment is fully satisfied. Sadly, the sheriff failed to meet the above requirements. In his Sheriff's Report, he talked about the satisfaction of the judgment, but he levied no property, collected no proceeds from auction sale, which proceeds should be turned over to judgment obligee, as required by law. He talked about the satisfaction of the judgment when in fact, he does not know what actually transpired between Zarate and Mendiola. He found out that Mendiola was no longer in the premises. Hence, he presumed that all was settled. He does not know whether or not Mendiola left the premises unnoticed in order to escape his obligation to Zarate.^[8]

...

WHEREFORE, the foregoing circumstances considered, this Office