

THIRD DIVISION

[A.M. No. MTJ-00-1283 [Formerly OCA IPI No. 98-547-MTJ], March 03, 2004]

COL. OCTAVIO ALVAREZ, COMPLAINANT, VS. JUDGE AUGUSTUS C. DIAZ, ATTY. VICTORY EDRALIN AND MR. EFREN P. LUNA, METC, BRANCH 37, QUEZON CITY, RESPONDENTS.

R E S O L U T I O N

CORONA, J.:

This is an administrative complaint filed by Col. Octavio Alvarez against Judge Augustus C. Diaz, Clerk of Court Victory Edralin and Deputy Sheriff Efren Luna, all of the Metropolitan Trial Court of Quezon City, Branch 37, for grave abuse of authority, gross misconduct and solicitation of gifts relative to Civil Case No. 37-13857,^[1] for forcible entry, filed by the spouses Domingo and Celia Garcia. Complainant Alvarez was one of the defendants in the said forcible entry case which resulted in the demolition of his office, his tenants' houses and other structures at No. 21 Congressional Avenue, San Beda Village, Bahay Toro, Quezon City.

The facts follow.

On October 27, 1995, spouses Domingo and Celia Garcia filed a complaint for forcible entry against the tenants^[2] of complainant Alvarez before the Metropolitan Trial Court of Quezon City (MeTC).^[3] The case was raffled to Branch 37 presided over by herein respondent Judge Diaz.

On June 17, 1996, plaintiff spouses Domingo and Celia Garcia, through counsel, filed a Motion for Leave of Court to Admit Amended Complaint^[4] which dropped six of the defendants from the original complaint and added herein complainant Octavio Alvarez as one of the defendants.^[5]

On November 11, 1997, respondent Judge Diaz rendered a decision in favor of the plaintiffs, ordering complainant Alvarez and his co-defendants, Charlie Robles and Marlyn Cortez to (a) immediately vacate the subject premises; (b) remove all improvements, structures or houses erected thereon and (c) pay the plaintiffs the sum of P20,000 per month as reasonable compensation for the use and occupancy of the subject property, computed from August 1995 until the subject premises were finally vacated.^[6]

Complainant Alvarez received the decision on January 7, 1998. On January 14, 1998, he filed, through counsel, a Notice of Appeal^[7] and paid the corresponding appellate docket fees the next day, January 15, 1998.^[8]

However, on January 28, 1998, plaintiffs filed a Motion for Execution on the ground

that the decision of the MeTC had already become final for failure of the defendants therein (complainant Alvarez and his tenants) to pay the requisite appellate docket fees within the appeal period, as mandated by Section 5, Rule 40 of the Rules of Court.^[9]

In an order dated February 3, 1998, respondent Judge Diaz dismissed complainant Alvarez's Notice of Appeal for non-payment of docket fees within the appeal period.^[10] At the same time, Judge Diaz granted the plaintiff's Motion for Execution for failure of the defendants to file a *supersedeas* bond required under Section 19, Rule 70 of the Rules of Court to stay the execution of judgment. The writ of execution was issued on the same date.^[11]

On February 19, 1998, respondent Deputy Sheriff Luna personally served copies of the Notice to Vacate on all the defendants, except herein complainant Alvarez.^[12] According to the respondent deputy sheriff, complainant Alvarez neither lived nor held an office in the subject premises. Thus, the respondent deputy sheriff left the complainant's copy of the notice with one of his tenants, Penny Montelo.^[13] The Notice to Vacate gave all the defendants five days from receipt thereof within which to vacate the subject premises.

On February 26, 1998, the respondent deputy sheriff submitted to the MeTC his Sheriff's Report stating that he had served copies of the Writ of Execution and Notice to Vacate on the defendants but they refused to vacate, insisting that they owned the houses and other structures erected thereon.^[14]

The following day, February 27, 1998, plaintiffs filed an *ex parte* Motion for Demolition.^[15] On March 2, 1998, respondent Judge Diaz granted the motion and issued a Writ of Demolition.^[16]

On March 11, 1998, respondent sheriff, with the help of several men, demolished all the houses, structures and improvements on the subject premises, and turned over its possession to the plaintiffs.^[17]

On March 20, 1998, nine days after the demolition, respondent judge *motu proprio* issued an order reconsidering his order dated February 3, 1998, insofar as the dismissal of complainant Alvarez's Notice of Appeal was concerned. It appears that, on February 23, 1998, the MeTC received photocopies of the receipts of payment of the appellate docket fees by complainant Alvarez.^[18] Accordingly, the records of the case were forwarded to the Regional Trial Court on appeal.

Feeling that an injustice had been done to him, complainant Alvarez filed the instant administrative complaint against Judge Diaz, Clerk of Court Edralin and Deputy Sheriff Luna for grave abuse of authority, grave misconduct and solicitation of gifts.

In his sworn Complaint-Affidavit dated April 15, 1998, complainant Alvarez alleged:

2. The basis of the demolition illegally undertaken by the court personnel was the Writ of Execution dated February 3, 1998 issued by Honorable Judge Augustus C. Diaz that were marred

with grave abuse of authority, gross injustices, violations of laws and the Rules of Court, to wit:

- a. Said writ was issued inspite of PERFECTED Notice of Appeal submitted to MTC Br. 37 on January 14, 1998 or SEVEN (7) days after the Decision (dated November 11, 1997) was received by the undersigned on January 7, 1998.
- b. The Honorable MTC Br. 37 ordered the dismissal of the perfected Notice of Appeal x x x even without a request or Motion by the Plaintiffs, Leonardo & Celia Garcia. Said plaintiffs x x x "short cut" or "jumped the gun" by filing a motion for issuance of a Writ of Execution (minus a motion (*sic*) for dismissal of Notice of Appeal) where the Honorable Court with apparent bias, immediately issued TWO (2) orders rolled into one: one for dismissal of the Notice of Appeal and the other one was the issuance of the Writ of Execution. The Court DID NOT SET any hearing for the TWIN orders and DID NOT notified (*sic*) the undersigned nor his counsel of the issuance of both the TWO (2) writs (execution and demolition) x x x. And worst, the plaintiffs did not bother notifying the undersigned for their Motion for Writ of Demolition.
- c. For clarity, above mentioned TWIN orders were issued on February 3, 1998 which copies were furnished the counsel of the undersigned only on March 17, 1998 after SIX (6) days from the execution of the Demolition (the Writ of Demolition was also issued without notice and hearing) undertaken on March 11, 1998.
- d. Forgeries were committed by falsifying the receipt signatures and/or initials of the office of my former counsel on the following documents: paul
 1. x x x twin Orders for dismissal of the perfected Notice of Appeal together with the Writ of Execution dated February 3, 1998;
 2. x x x the order for the Writ of Demolition;

x x xx x xx x x
3. Aside from the above offenses, injustices and hastes (*sic*) in demolishing the houses of the undersigned and the quick turning over the property to the plaintiffs, the following offenses were committed: paul
 - (a) Sheriff Efren P. Luna and Branch Clerk of Court Victory Edralin who are casual acquaintances developed in previous civil cases in the same MTC Branch, sometime before Christmas in December 1995, twice asked the undersigned for P100,000.00 for the dismissal of the

complaint for Forcible Entry against me and tenants. x x x
The undersigned graciously refused, however both in several occasions solicited gifts such as a lady's wrist watch (Guchi brand), golden necklace and pendants, among others (*sic*) received by Atty. Victory Edralin before and after Christmas day of 1995, while Sheriff Efren Luna picked up from my residence before Christmas of 1995 a Dunhill men's jacket and P5,000.00 and asked and received from the undersigned outside of MTC Branch 37 office before New Year of same year a golden pendant and two bottles of Fundador liquor.

x x x

x x x

x x x

- (c) In the morning of February 20, 1998, upon receipt of the information from the tenants of the subject contested property that Sheriff Luna and Branch Clerk Atty. Edralin twice visited their houses and required them to voluntarily vacate the premises, otherwise their houses will be forcibly demolished and their personal properties will be confiscated as levies, the undersigned with counsel Atty. Rebeck Espiritu and accompanied (*sic*) RTC Judge Pedro Areola explained to MTC Br. 37 Judge Augustus Diaz that a perfected Notice of Appeal was already submitted rendering ipso facto the MTC lose (*sic*) jurisdiction over the case. It (*sic*) was explained the legal consequences of demolished (*sic*) tenanted houses because gleaned from the case folder of the complaint, there were NO NOTICE NOR SETTING OF HEARING for: (1) Dismissal of Notice of Appeal, (2) Issuance of Writ of Execution, (3) Notice to Vacate, (4) Sheriff's Report, (5) Motion for Writ of Demolition, and (5) Issuance of the order for the Writ of Demolition.
- (d) At this instance, it was discovered that the docket fee Official Receipts (nos. 6647869, 8413937, & 8408520) were detached from the files. This gave rise to an incident in the afternoon of January 20, 1998 when the undersigned saw plaintiff Leonardo Garcia in conference with Sheriff Efren Luna and Atty. Victory "Baby" Edralin in the office of the latter which after a while (*sic*) the former (Garcia) came out pocketing receipts. It could now be concluded that they detached the docket fee receipts in order for the court to succeed in demolishing the houses owned by the undersigned and quick (*sic*) turn over the contested lot to the Plaintiffs even before the houses are completely torn down.
- (e) On March 10, 1998, the undersigned once more visited Atty. Edralin who was able to talked (*sic*) with my counsel Atty. Rebeck Espiritu who again reiterated the court's commitment to withhold the demolition order. Unfortunately, the following day, March 11, at about 8:30 AM, TEN demolition crew led by Sheriff Luna and Atty.

Edralin and SPO4 Bert Cruz accompanied by plaintiff LEONARDO GARCIA, with at least Five (5) heavily armed men in civilian attires came at the lot contested. x x x The (sic) immediately started torning (sic) down the houses at No. 21 Congressional Ave., Quezon City against the protest of scared occupants. My son, Octavious Alvarez interceded but Sheriff Luna with his armed bodyguards shoved him away with a remark "order is order". The undersigned also arrived at about 9:30 AM and confronted Sheriff Luna who admitted that he was under the instruction of Atty. Edralin. He advised the undersigned to talk to Honorable Judge Augustus Diaz at the City Hall and he promised that he will withhold the demolition up to 3:00 o'clock in that afternoon to give me a chance to talk with Judge Diaz. At the City Hall however, at about 10:45 AM, the Honorable Judge upon seeing the undersigned hurried (sic) left his office thru the back door without leaving a word to any of his staff.

- (f) The undersigned (sic) returned back to site of demolition at about 11:45 to advised Sheriff Luna to await the return of Judge Diaz after lunch but it was shocking to find out that the property was already enclosed with GI sheets from the torn and uncomplete demolished (sic) houses which was heavily guarded by armed men. No one from the tenants was allowed to retrieved (sic) their remaining personal properties including one Sony 14 inches colored TV, an electric fan standard brand and an office table with some documents therein owned by the undersigned. The construction materials captured by these court personnel and plaintiffs worth no less than P500,000.00. The property was turned over to plaintiff Leonardo Garcia at exactly 1130 AM, THE SAME DAY or barely Three (3) hours too hastily, a total deception by the personnel of Court apparently for money.^[19]

Then Court Administrator Alfredo L. Benipayo, in his first indorsement dated September 8, 1998, directed respondent Judge Diaz, Clerk of Court Edralin and Deputy Sheriff Luna to answer.^[20]

Respondent Judge Diaz, in his Answer dated October 5, 1998, prayed for the dismissal of the complaint, alleging that:

The issue that there was no hearing for the motion for issuance of a writ of demolition was already *moot and academic*, as the decision included therein the demolition of the structures built on the premises.

It is alleged that there were forged signature (sic) on the Court Orders to signify their receipt by the parties. These allegedly forged signatures are that of Mr. Gabriel Eugenio, an employee of the Court, to indicate that they have been released through registered mail.

The defendant Octavio Alvarez received the decision on January 7, 1998. He had, therefore, until January 22, 1998 within which to file a notice of