

## **FIRST DIVISION**

**[ A.M. No. P-03-1703 (formerly OCA IPI-02-1436-P), September 18, 2003 ]**

**EDNA FE F. AQUINO, COMPLAINANT, VS. JOSE R. MARTIN,  
SHERIFF IV, RESPONDENT**

### **RESOLUTION**

**DAVIDE JR., C.J.:**

This is an administrative case against respondent Jose R. Martin, Sheriff IV of the Regional Trial Court (RTC), Cauayan City, Isabela, Branch 19, for dereliction of duty by reason of his non-implementation of the writs of execution issued in favor of Equity Machineries, Inc. (EMI) in various civil cases for collection of a sum of money.

In a sworn letter-complaint<sup>[1]</sup> of 20 June 2002, Ms. Edna Fe F. Aquino, Credit and Collection Manager of EMI, alleged that five writs of execution issued in favor of EMI in numerous civil cases were endorsed to the respondent for implementation. Some of these writs were issued as far back as year 2000. Despite repeated demands, the respondent deliberately failed to implement the writs and to inform EMI of the progress of the implementation of the writs.

In his comment<sup>[2]</sup> of 23 August 2002, Sheriff Martin admitted having received the writs of execution but declared that two of the writs of execution mentioned in the complaint were not within his area of responsibility. As to the other writs, he explained that for a number of times he, together with one Nelson Domingo, then collector of EMI and now a manager of its Santiago City Branch, tried to implement them. However, the judgment debtors had no money or property which could be levied upon. When he again wanted to implement the writs of execution, he learned that the corresponding sheriff's fees had not been paid yet despite demands.

Upon the recommendation<sup>[3]</sup> of the Office of the Court Administrator, this Court, in a Resolution<sup>[4]</sup> of 4 December 2002, referred the matter to Executive Judge Henedino P. Eduarte of the RTC of Cauayan City, Isabela, Branch 20, for investigation, report, and recommendation.

Accordingly, the Investigating Judge set the case for hearing. The documentary evidence submitted by the complainant show that because of the unjustified refusal of the respondent to take action on the writs of execution in Civil Cases Nos. 19-928 and 2239, she referred the matter to then Clerk of Court Atty. Raymundo B. Meris.

<sup>[5]</sup> The latter, in turn, issued Memo No. 01-2001 of 8 July 2001 directing the respondent to implement the writs of execution issued in favor of EMI.<sup>[6]</sup> Respondent, however, failed to comply with that memorandum. This prompted the legal counsel of the complainant to send to the respondent a letter demanding the immediate implementation of the said writs of execution and the three other writs in

Civil Cases Nos. 2306, 2336, and 2279, as well as the submission of periodic monthly reports on the writs.<sup>[7]</sup> The demand having been unheeded, the complainant filed this complaint against the respondent with the Office of the Court Administrator.<sup>[8]</sup>

For his part, the respondent presented as evidence his own affidavit<sup>[9]</sup> and that of Nelson Domingo.<sup>[10]</sup> In his affidavit, he claimed that he did his best to implement the writs of execution in Civil Cases Nos. 2239 and 19-928 for several times, during which he was accompanied by Nelson Domingo, then EMI's Collector. They, however, failed to collect even a single centavo because the judgment debtors refused to pay in cash. Neither could they find any personal or real property of the judgment debtors upon which to levy. However, he finally levied a Kia Pride in the possession of the judgment debtor in Civil Case No. 2239, as shown in the Sheriff's Report of 25 September 2002<sup>[11]</sup> and Sheriff's Notice of Levy and Auction Sale by Execution of 8 October 2002.<sup>[12]</sup> When he tried to implement the writ of execution in the two civil cases, he found out that the necessary legal fees for their implementation were not yet paid, but he still tried his best to implement the writs. As for the other writs of execution, respondent denied having received them.

Nelson Domingo stated in his affidavit that he is presently the Branch Manager of EMI in Santiago City and that he is aware that Sheriff Martin did his best to implement the writs of execution in Civil Cases Nos. 2239 and 19-928 because he personally accompanied the latter in executing the writs in his capacity as then EMI's Collection Agent. He added that they failed to collect because the judgment debtors questioned the liquidated damages and that the judgment debtor in Civil Case No. 19-928 promised to settle his obligation and to see a lawyer regarding the mode of payment.

To rebut respondent's sworn statement that the judgment debtors in Civil Case No. 19-928 did not have any property upon which to levy, the complainant submitted tax declarations<sup>[13]</sup> in their name showing that they have two parcels of land in Rizal, Santiago City. She also presented Official Receipt MVRN No. 86040821<sup>[14]</sup> dated 17 July 2001 to prove that the KIA Pride with plate number TJA-467, which was levied upon by the respondent to satisfy the judgment in Civil Case No. 2239, was not owned by the judgment debtor in the said case, but by a certain Elvira P. Dela Cruz.

In his Report and Recommendation of 2 April 2003, Judge Eduarte took judicial notice of Civil Cases Nos. 2239, 2306, 2336, 19-928, and 2279. He confirmed the existence of the writs of execution in the first three civil cases. He stated that the records in the fourth civil case could not be found, while the fifth case was not filed by EMI. After considering all the evidence, the Investigating Judge held:

His claim that the necessary fees for the execution of the writs were not yet paid is belied by his own admission that he tried his best to implement this but failed. Since he received the writs for execution, it is his duty to enforce them. The collection of legal fees for the execution of the writs is the concern of the Clerk of Court. He should have informed the Clerk of Court that the fees had not yet been paid, instead of using it