

## **THIRD DIVISION**

**[ A.M. No. P-98-1280, October 16, 1998 ]**

**SPOUSES AMADO AND LOLITA PECSON, COMPLAINANTS, VS.  
SHERIFF VICENTE SICAT, JR., SHERIFF JOSE REGINO P.  
LIWANAG AND PROCESS SERVER BENJAMIN DACIA,  
RESPONDENTS.**

### **R E S O L U T I O N**

**ROMERO, J.:**

In a sworn letter complaint<sup>[1]</sup> filed with this Court, spouses Amado and Lolita Pecson charged Sheriff Regino P. Liwanag, RTC, Branch 57, Sheriff Vicente Sicat, Jr., Office of the Clerk of Court - RTC and Process Server Benjamin Dacia, Jr., Office of the Clerk of Court- MTCC, all of Angeles City with grave abuse of authority and grave misconduct.

Spouses Amado and Lolita Pecson were defendants in Civil Case No. 7239 entitled, "First Express Credit Corporation v. Amado Pecson, et al." before Branch 57, Regional Trial Court of Angeles City. For failure to comply with the terms of the judgment by compromise and through plaintiff's motion, a writ of execution was issued against herein complainant-spouses on September 27, 1996 addressed to respondent Sheriff Regino P. Liwanag for implementation.

Complainants opposed the issuance of the writ claiming that they already paid their obligation to the plaintiff. The RTC, however, still issued the writ of execution commanding respondent Liwanag to implement the same. Having been appointed as sheriff only four months earlier, respondent Liwanag asked Sheriff Vicente Sicat, Jr. of the RTC- Office of the Clerk of Court, Angeles City to accompany him, the latter being a more experienced sheriff. Process Server Benjamin Dacia tagged along because he allegedly had to serve a subpoena at the same barangay where the complainants reside. Respondents arrived at the complainants' residence at around 2:00 p.m. of October 11, 1996 but the complainants were not home so respondents waited at the main gate. At 6:00 p.m. Liwanag decided to enforce the writ even in the absence of the spouses.

Liwanag asked respondents Sicat and Dacia to look for a locksmith so that they can confiscate the 1996 Mitsubishi Lancer car parked at the garage. Liwanag also instructed the two respondents to summon a policeman and a barangay official to witness the enforcement of the writ but no barangay official came. The confiscated motor vehicle was immediately turned over to the plaintiff's representative, a certain Richard Caoili, without conducting any inventory and without waiting for any scheduled public auction sale. Complainants allege that the amount of P96,000.00 which was in the console box of the confiscated motor vehicle was also carted away and not accounted for by herein respondents. The said sum was allegedly loaned to the complainants by one Carmelino Allanigue and was intended to be used as a

deposit for the hospitalization of Amado Pecson's mother. Immediately upon having been informed of the car's seizure, Amado Pecson went to the police station to report the taking of the car and requested a policeman to accompany him to the house of Richard Caoili. However, they were not able to enter inside the house of Caoili nor were they able to talk to him.

Complainants allege that the writ of execution was unlawfully and irregularly implemented because Sheriff Sicat Jr and Process Server Dacia, Jr. were not deputized by respondent Sheriff Liwanag to assist the latter in the enforcement of the writ. Complainants also claim respondents did not even bother to coordinate with barangay officials or members of the complainant's household before serving the writ.

Finally, it is alleged that respondents created scandalous noises so as to embarrass the complainants during the enforcement of said writ.

In his comment,<sup>[2]</sup> Sheriff Liwanag vigorously and vehemently denied the allegations saying that there was nothing illegal or irregular in the implementation of the writ of execution inasmuch as it was done in accordance with law and in the presence of a police officer, a security guard, representatives of the plaintiff, two locksmiths and the complainants' employees.

Liwanag alleged that on October 11, 1996, he and the two respondents waited for the complainants for three (3) hours in front of the latter's gate. When it was already past 5:00 pm, he decided to implement the writ of execution. Complainant's car which was parked at the garage was seized and since it was locked, Liwanag secured the services and expertise of two locksmiths to open and start the engine in the presence of a police officer, a security guard, representatives of the plaintiff and the complainants' employees. The contents of the car were allegedly inspected and inventoried and a receipt thereof was duly acknowledged in writing by a certain Jesus Villavicencio, an employee of the complainants. Balermo Balansag, a security guard of the complainants was also present. Since it was already evening and there was hardly time to look for a government storage for said car, Liwanag requested plaintiff's representative, Richard Caoili, to temporarily store the car in the latter's warehouse. After a few days, the car was transferred to complainants' residence and the plaintiff was then required to post a bond which was duly submitted to the Court.

For his part, Sheriff Vicente Sicat, Jr. averred that he had no participation in the implementation of the writ of execution against complainants. He claims that he was merely requested by Sheriff Liwanag to accompany the latter in enforcing the writ as the usual practice among sheriffs and process servers of the court was to assist and accompany each other in the implementation of the writ to forestall or avoid any untoward incidents that may happen, specifically against parties who are belligerent and show acts of resistance.<sup>[3]</sup>

Process server Benjamin Dacia, on the other hand, claims that he did not take part in the implementation of the writ of execution. Dacia claims he was merely offered a ride by Sheriff Sicat, Jr. since the former was supposed to serve a court process in the same barangay where the two respondents were going. Upon reaching complainants' residence, Dacia was requested by his friend Sheriff Sicat to make

some verification with the Register of Deeds and the City Assessor. Thereafter, he was again requested by Sheriff Sicat, Jr. to see a locksmith and to fetch a police officer. Dacia, however, insists that he stayed outside of the premises of the complainant's residence and never entered the said place.<sup>[4]</sup>

In a Resolution dated December 10, 1997, the Third Division of this Court referred the complaint to Executive Judge Eliezer de los Santos, RTC, Angeles City for investigation, report and recommendation.

On March 20, 1998, Judge De los Santos submitted to the Court the result of his investigation and the following recommendation:

"WHEREFORE, premises considered, it is most respectfully recommended that:

1. For giving to the plaintiff's representative physical possession of the seized car without any authority from the court and for not properly inspecting the subject car and make a thorough inventory of the accessories and all items which may be found inside the car under the pretext that he did not intentionally touch or open the inside parts of the car as he was afraid he might cause damage to the same, respondent Sheriff Regino Liwanag may be held guilty for gross ignorance and inefficiency and incompetence in the performance of official duties and said respondent Liwanag should be made to pay a fine of P3,000.00.

2. For failing to caution respondent Sheriff Liwanag not to turn over possession of the car to the plaintiff's representative and for failing to properly advise said respondent Liwanag to make a thorough inventory of car accessories and all items which may be found inside the car, respondent Sheriff Vicente Sicat, Jr., a more senior and experienced sheriff, may also be found guilty for neglect of duty and incompetence in the performance of official duties and should be fined P1,000.00.

3. Process Server Benjamin Dacia be discharged from the complaint for having no direct participation in the implementation of the subject writ of execution.<sup>[5]</sup>

While he found respondent sheriffs Liwanag and Sicat liable for incompetence in the performance of their official duties, Judge de los Santos did not give credence to the claim of the complainants that the respondents took the sum of P96,000.00 placed in the console box of the seized vehicle. Judge de los Santos noted:

"It is very unlikely for Mr. Amado Pecson to leave that big amount of money in the car knowing that they will use the car the following morning. It became more dubious as he just borrowed the money with interest and was intended for the hospitalization of his mother. More so, if he badly needed the money, as he borrowed with interest for the hospitalization of his mother, he could have insisted, as he was then accompanied by a policeman, to check for himself the car and retrieve the money when they went to Richard Caoili's house the very same night it was seized."<sup>[6]</sup>