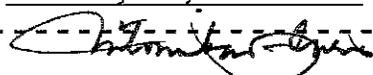


EN BANC

A.M. No. P-22-066 (Formerly OCA IPI No. 19-4965-P) – DIOSDADO M. PEREZ, complainant, versus ATTY. JILLIAN T. DECILOS, CLERK OF COURT VI, BRANCH 14, REGIONAL TRIAL COURT, NASUGBU, BATANGAS, respondent.

Promulgated:

February 14, 2023

X ----- X  


CONCURRING OPINION

CAGUIOA, J.:

I concur.

There is no dispute that Atty. Decilos stalled the implementation of the November 13, 2018 Writ of Execution and the subsequent July 31, 2019 Notice to Vacate by directing the court sheriff to hold the implementation thereof. In doing so, Atty. Decilos cited as legal basis Section 4, Rule 52 of the Rules of Court,<sup>1</sup> which provides:

Section 4. *Stay of execution.* – The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct.

This reasoning, as aptly pointed out by the *ponencia*, is misplaced. As the *ponencia* correctly reasoned:

x x x *First*, Sec. 4, Rule 52 relates to a motion for reconsideration of a judgment or final resolution filed by the adverse party in the case within 15 days from notice thereof. It does not pertain to any other motion, such as the Motion for Reconsideration of the June 17, 2019 RTC Order, which denied the spouses Trinidad's Urgent Motion to Stay Execution. *Second*, the spouses Trinidad are not parties to Civil Case No. 1198.<sup>2</sup>

Be that as it may, I do not agree with the recommendation of the Judicial Integrity Board (JIB) that Atty. Decilos should be held liable for gross ignorance of law and gross neglect of duty.<sup>3</sup>

For one, there was no evidence presented to prove that Atty. Decilos acted in bad faith. As held in the recent case of *Tallado v. Judge Racoma*,<sup>4</sup> members of the bench cannot be held liable for official acts, no matter how

<sup>1</sup> *Ponencia*, p. 3.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> A.M. No. RTJ-22-022, August 23, 2022.



erroneous they may be, provided he or she acted in good faith.<sup>5</sup> This confirms the Court's statement in an earlier case, *Department of Justice v. Judge Mislang*,<sup>6</sup> to wit:

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, **it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.**<sup>7</sup> (Emphasis supplied)

If these standards apply in assessing a magistrate's liability for gross ignorance of law, then with more reason should they be made to apply to clerks of courts. While Atty. Decilos erred when he prevented the court sheriff from implementing the Writ of Execution and Notice to Vacate, the JIB should not be too quick in characterizing his actions with bad faith and holding him liable for gross ignorance of law. To be sure, there is no indication that Atty. Decilos was motivated by bad faith, dishonesty, or hatred. On the contrary, as aptly observed by the *ponencia*, "x x x the claim of manifest partiality against Atty. Decilos is speculative and lacks sufficient factual basis."<sup>8</sup> Consequently, it cannot also be said that Atty. Decilos exhibited bad faith, dishonesty, or hatred, against Osato Corporation.

To my mind, Atty. Decilos' action was just a case of an erroneous or mistaken understanding and application of court procedures. While these lapses are not commendable, they are within the parameters of tolerable misjudgment. Therefore, he should not be austere punished for even We, members of the bench, are not infallible. Hence, the law provides for remedies of appeals, reconsiderations, and the like.

For another, there was no evidence to prove that the consequences of Atty. Decilos' decision was so serious or grave to rise to the level of gross neglect of duty. In *Clemente v. Bautista*,<sup>9</sup> the Court categorically held that:

Neglect of duty is the failure of an employee to give one's attention to a task expected of him. **Gross neglect is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.**<sup>10</sup> (Emphasis supplied)

Gross neglect of duty or gross negligence is defined in *Re: Complaint of Aero Engr. Darwin A. Reci Against Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia Relative to Criminal Case No. 05-236956 (Re: Reci)*,<sup>11</sup> as follows:

<sup>5</sup> Id.

<sup>6</sup> 791 Phil. 219 (2016).

<sup>7</sup> Id. at 228.

<sup>8</sup> *Ponencia*, p. 5.

<sup>9</sup> 710 Phil. 10 (2013).

<sup>10</sup> Id. at 16-17.

<sup>11</sup> 805 Phil. 290 (2017).

x x x Gross neglect of duty or gross negligence “**refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully [sic] and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.**” It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>12</sup> (Emphasis supplied)

The JIB finds Atty. Decilos guilty of gross neglect of duty because, as *ex-officio* sheriff, he should not have prevented the implementation of a writ of execution, which becomes a ministerial duty after issuance thereof. While indeed, there was dereliction of duties on the part of Atty. Decilos, an examination of the attendant circumstances would show that although Atty. Decilos improperly applied the Rules, he still exercised care in the performance of his duties and was definitely not indifferent to the consequences of his actions. In fact, based on Atty. Decilos’ explanation in his Comment, it appears that he was too careful in exercising his functions, to wit:

x x x Atty. Decilos explained that when the spouses Trinidad filed the aforesaid Motion for Reconsideration on July 16, 2019, the RTC, through Judge de Jesus, issued an Order dated July 19, 2019 setting the said motion for hearing on September 25, 2019 at 8:30 a.m. Thereafter, Judge de Jesus went on official leave and left for the USA. As the motion was yet to be resolved by the RTC, Atty. Decilos argued that the implementation of the writ would be tantamount to pre-empting the motion hearing on September 25, 2019.<sup>13</sup>

All told, as correctly ruled by the *ponencia*, the charges against Atty. Decilos for gross ignorance of law and gross neglect of duty should be dismissed for lack of merit.<sup>14</sup> This stance is further bolstered by the fact that spouses Trinidad actually filed a Notice of Filing of Third Party Claim (Notice) on February 20, 2019, to wit:

To be clear, the June 17, 2019 Order of the RTC narrated that the Urgent Motion to Stay Execution stated **that spouses Trinidad filed their Notice of Filing of Third Party Claim with the RTC on February 20, 2019.**<sup>15</sup> (Emphasis supplied)

While the Court is not made fully aware of the status of the Notice, even the *ponencia* noted that “x x x the circumstances surrounding the February 20, 2019 [Notice] may shed light on the errors committed by Atty. Decilos, and affect the administrative penalty to be imposed x x x.”<sup>16</sup>

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<sup>12</sup> Id. at 292.

<sup>13</sup> *Ponencia*, pp. 3-4.

<sup>14</sup> Id. at 7.

<sup>15</sup> Id. at 6.

<sup>16</sup> Id.



From the foregoing, it can be reasonably assumed that the existence of bad faith, dishonesty, or hatred, and palpable or flagrant breach of duty, which are material in a finding of gross ignorance of law and gross neglect of duty, respectively, is questionable. Indeed, the fact that spouses Trinidad filed the Notice should be appreciated to at least support a finding that Atty. Decilos' action was made in good faith. Consequently, Atty. Decilos should not be held liable for both gross ignorance of law and gross neglect of duty.

On this note, I agree with the *ponencia* that Atty. Decilos should be held liable for only simple neglect of duty, which is "the failure of an employee or official to give proper attention to a task expected of him or her."<sup>17</sup>

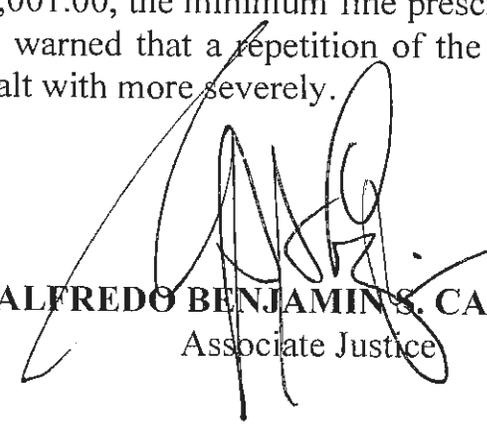
Under Rule 140 of the Rules of Court, as amended, if the respondent is found guilty of a less serious charge, such as simple neglect of duty in the performance or non-performance of official functions, any of the following sanctions shall be imposed: (a) suspension from office without salary and other benefits for not less than one (1) month nor more than six (6) months; or (b) a fine of more than ₱35,000.00 but not exceeding ₱100,000.00. The imposition of any of the foregoing penalties is within the discretion of the Court, as evidenced by the disjunctive word "or".<sup>18</sup>

As aptly ruled by the *ponencia*, the fact that this is Atty. Decilos' first offense may be considered by the Court as a mitigating circumstance for purposes of determining the appropriate penalty to be imposed in the instant case.<sup>19</sup> Under Rule 140, if one or more mitigating circumstances and no aggravating circumstances are present, the Court may impose penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under the Rules.<sup>20</sup>

Following these guidelines I **CONCUR** with the *ponencia in toto*. Atty. Decilos should be held liable only for simple neglect of duty; fined an amount of ₱17,500.50, which is half of ₱35,001.00, the minimum fine prescribed for simple neglect of duty; and sternly warned that a repetition of the same of similar acts in the future shall be dealt with more severely.

CERTIFIED TRUE COPY

  
MARIA LUISA M. SANTILLA  
Deputy Clerk of Court and  
Executive Officer  
OCC-Ea Banc, Supreme Court

  
ALFREDO BENJAMINS S. CAGUIOA  
Associate Justice

<sup>17</sup> *Re: Reci*, supra note 11.

<sup>18</sup> See Note under Further Amendments to Rule 140 of the Rules of Court (Annotated Version), Sec. 17.

<sup>19</sup> *Id.*, Sec. 19 (1)(a):

In several cases, the Court considered the circumstance of being a first-time offender in mitigating the penalty of the respondent.

<sup>20</sup> Rule 140, as amended, Section 20.