

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
CITY PROSECUTION OFFICE
OLONGAPO CITY

MEMORANDUM FOR : EMILIE FE M. DELOS SANTOS
City Prosecutor

RE : I.S. No. III-10-INV-16J-01245

BASTIAAN JOHANNES ARNOLDUS
DERKSEN,
Complainant,

-versus-

GERLIE NINA ASINAS,
FE DELA CRUZ,
JESSABEL BALUTAN,
ROY LEONARD ANDERSON and
SHERIFF AMERLITO D. TWANO,
Respondents.

FOR VIOLATION OF ARTICLE 280 OF
THE REVISED PENAL CODE

D/A: October 11, 2016
D/S: December 12, 2016
D/R: January 19, 2017

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RESOLUTION

Complainant Bastiaan Johannes Arnoldus Derksen, a Dutch national, alleges that he is filing these criminal cases of Trespass to Dwelling by direct participation against Gerlie Nina Asinas, Fe dela Cruz and Jessabel Balutan and by indispensable cooperation against Roy Leonard Anderson, a Canadian National and against National Labor Relations Commission (NLRC) Sheriff Amerlito D. Twano for Violation of Domicile under Article 128 of the Revised Penal Code (RPC).

Complainant avers as these persons who are not occupants, actually entered his dwelling located at the 3F of No. 11 22nd place, West Bajac-Bajac, this city, against his will as lawful occupant, which was locked, without his prior knowledge and consent. They even utilized a key which he believed was already lost but was now confirmed to be stolen by them from him.

All of the respondents submitted their respective counter-affidavits and collectively denied the charges.

All of the private respondents aver that all of the allegations of the complainant are false. No persons accused have illegally trespassed his dwelling. The Sheriff, Amerlito D. Twano was serving a legal document upon the complainant in both instances (Addendum "A" -Notice of Levy Share of Stocks and Addendum

"B" - Notice of Sale on Execution of Personal Property). Complainant has provided a video disk that, if watched clearly negates all that he claims has occurred and the other defendants, excluding respondent Anderson who never entered the premises, were merely accompanying the sheriff at the latter's request to witness that the legal writ served upon the complainant was, in fact, served.¹

Respondent Fe dela Cruz and Girlie Nina Asinas allege that complainant makes a false accusation that his keys were stolen from him. The truth is, complainant gave the keys to Fe dela Cruz in June, 2015 when he told her to proceed to his home and wait for him there ostensibly for the purpose of work and who, upon going to his home was subjected to attempted sexual attack whereupon she fled his home with the keys he gave her.²

Respondent Roy Leonard Anderson alleges that complainant wrongfully claims that he (Anderson) provided "indispensable cooperation" yet bereft of any evidence that he cooperated with the parties involved. The only evidence that complainant has provided is a video of Anderson's car passing complainant's residence which is right behind the court which Anderson attends most daily due to the large number of cases currently prosecuted against the complainant and his accomplice, Murto Nel. Anderson drives pass complainant's home at least three times a week. With or without respondent Anderson, it is the duty of the sheriff to find ways to serve the writs/papers. Anderson drove the sheriff to complainant's residence to allow the sheriff to serve the complainant legal notices.³

All of the private respondents conclude that complainant is merely continuing to use any method at his disposal to upset respondents Fe dela Cruz, Jessebel Balutan and Girlie Nina Asinas to cause them to drop their legitimate charges against the complainant.⁴

Respondent Amerlito D. Twano alleges that he is a permanent employee of the NLRC Arbitration Branch III and duly designated Acting Sheriff since 1999 substantiating the same with a certified true copy of AO No. 4-9 dated April 23, 1999 marked in evidence as Exh. (sic) 1.

Sheriff Twano alleges that he did not force his way into the dwelling of complainant against the latter's will neither did he surreptitiously intrude the privacy of the home of complainant. The only reason he went to complainant's place was to serve the notice of levy against the shares of stocks of the individual respondents including complainant Bastiaan Johannes Arnoldus Derksen in an illegal dismissal case with money claims filed before the NLRC of San Fernando, Pampanga by Janice Quinto, et al. against My Cyber Staff, Inc., Murto Nel and complainant Bastiaan Johannes Arnoldus Derksen. He was accompanied by the complainants in the labor case and upon arrival at Bastiaan Johannes Arnoldus Derksen's place and unknown to him, one of the complainants' unlocked the gate of Derksen's place using a key which key he assumed to belong to one of the complainants whom he does not know personally. When complainant was nowhere

¹ Respective Kontra-Salaysay of the private respondents

² Kontra-Salaysay of Fe dela Cruz and Girlie Nina Asinas

³ Kontra-Salaysay of Roy Leonard Anderson

⁴ Respective Kontra-Salaysay of the private respondents

to be found, he posted said notice at the main entrance door of complainant's house pursuant to existing NLRC Rules on Execution and then left.

Complainant did not file any Reply-Affidavit despite the motion for extension filed on November 25, 2016,

We now resolve.

Dwelling place has been defined as any building or structure exclusively devoted for rest and comfort. (The Revised Penal Code, Justice Luis B. Reyes, Book II, 17th Ed. p. 607).


A compound or premises is neither a building nor a structure devoted for rest and comfort.

A judicious viewing and assessment of the video footage provided by the complainant belies that there was an entry into his dwelling place. Neither was there a blotter report either from the barangay authorities or the police station to corroborate the charges. Except for the testimony of the complainant given to his witness Jerome Fordan Bilog "that his apartment's door was unlocked by said persons during his absence of one week, even though he did not give anyone permission," which is basically self-serving, no allegation of unlocking of complainant's apartment's door was mentioned by Bilog in his affidavit. What was mentioned all throughout the statement of Bilog is about entering their premises without permission, nothing more, nothing less. Not even the relative that Bilog is mentioning on paragraph no. 3 of his Affidavit executed an affidavit for the purpose.

There being no entry into the dwelling place of complainant Bastiaan Johannes Arnoldus Derksen by either of the private respondents and/or by the public respondent, the instant complaint must fail.

WHEREFORE and for lack of probable cause, the charges of Violation of Article 280 of the Revised Penal Code (RPC) against Girlie Nina Asinas, Fe dela Cruz, Jessabel Balutan and Roy Leonard Anderson and the charge of Violation of Domicile under Article 128 of the same Code against NLRC Sheriff Amerlito D. Twano are hereby dismissed.

Olongapo City, January 19, 2017.


EVANGELINE V. TIONGSON
Assistant City Prosecutor (Prosecutor II)
MCLE Compliance No. V-009170
Valid from 04/15/2016 until 04/14/2019

APPROVED/DISAPPROVED:


EMILIE FE M. DELOS SANTOS

City Prosecutor *12/14/17*

MCLE Compliance No. V-0002299

05/08/2014