

ADORACION PAGUYO, COMPLAINANT, VS. CHARLIE S. GATBUNTON, RESPONDENT.

A.M. NO. P-06-2135 (Formerly OCA I.P.I. No. 05-2281-P). May 25, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

This is an administrative complaint for grave abuse of authority and/or gross ignorance of the law filed by complainant Adoracion Paguyo against the herein respondent Charlie S. Gatbunton, Sheriff IV of the Regional Trial Court (RTC), Branch 4, Balanga, Bataan. The complaint stemmed from respondent's alleged irregular extrajudicial foreclosure of a real estate mortgage constituted on the property of complainant Adoracion Paguyo and her husband Danilo S. Paguyo, Sr.

As culled from the record, the antecedent facts are as follows:

On September 9, 2002, the spouses Danilo Paguyo, Sr. and Adoracion Paguyo, by way of security for a loan of P20,000.00 which they obtained from Jeanlyn's Lending Investor, executed in favor of the latter a Deed of Real Estate Mortgage[1] over their residential property located in Mariveles, Bataan.

On February 11, 2003, an application for the extrajudicial foreclosure[2] of the aforesaid mortgage pursuant to Act 3135, as amended, was filed with the Regional Trial Court, Branch 4, Balanga, Bataan by the spouses Celso Garcia and Jenelita Garcia, owners and operators of Jeanlyn's Lending Investor, it being alleged thereunder that the Paguyo spouses defaulted in the payment of their loan obligation and the interests due thereon since January 9, 2003.

Thereafter, a Notice of Sheriff's Sale[3] was issued by the respondent, therein setting the public auction sale of the mortgaged realty on April 11, 2003. The notice was posted on February 24, 2003 and subsequently published in Sierra Pacific News in its issues of March 12, 15 and 19, 2003.[4] However, instead of the auction sale being held on April 11, 2003, as announced, the same was actually conducted by the respondent on December 1, 2003 with Jenelita Garcia emerging as the highest bidder.[5]

Claiming that the conduct by the respondent sheriff of the extrajudicial foreclosure proceedings against their property was highly irregular and patently illegal, complainant Adoracion Paguyo filed with the Office of the Court Administrator (OCA) the basic sworn letter-complaint[6] in this case, charging respondent with grave abuse of authority and/or gross ignorance of the law. In said letter-complaint, docketed as OCA IPI No. 05-2281, complainant Adoracion Paguyo essentially alleged that the loan obligation secured by the real estate mortgage in question, including all interest due, was already fully paid by her and her husband even before the Garcia spouses filed the application for extrajudicial foreclosure; that the respondent sheriff has no authority to extrajudicially foreclose the mortgage because no special power of attorney is attached to or incorporated in the Deed of Real Estate Mortgage authorizing the extrajudicial foreclosure of the mortgage pursuant to Act 3135, as amended; and the extrajudicial foreclosure, assuming it could be done, was nonetheless fatally defective since there was no republication of the sheriff's Notice of Sale vis-a-vis the auction conducted on December 1, 2003.

In his Comment[7] to the complaint, the respondent sheriff denied the charges against him, claiming that it is his ministerial duty to proceed with the auction sale of the mortgaged property because it has already been approved by the Ex-Officio Provincial Sheriff and Acting Clerk of Court, Priscilla S. Salazar. He added that the application for extrajudicial foreclosure was sufficient in form and substance since it is stated therein that the Paguyos violated the conditions of the mortgage contract by defaulting in the payment of their loan obligation. As regards the auction sale having been conducted on December 1, 2003 and not on the date it was originally set, respondent explained that after the posting and publication of the Notice of Sheriff's Sale which set the auction on April 11, 2003, the spouses Garcia requested him for the deferment of the auction to enable the Paguyos to settle their loan obligation but nonetheless failed; that thereafter the Garcias asked him to proceed with the auction sale but he relented and gave the Paguyos a 15-day grace period to settle their obligation but still failed, prompting him to reschedule and conduct the auction on December 1, 2003, after reposting the Notice of Sheriff's Sale and informing the Paguyos about it.

In its Report[8] of January 4, 2006, the OCA finds no basis to hold the respondent liable for his failure to check if the deed of real estate mortgage in question incorporates a Special Power of Attorney authorizing the mortgagee to extrajudicially foreclose the mortgage in case the debtor fails to pay the obligation upon its maturity. On the same breath, however, the OCA faults the respondent sheriff for conducting the auction sale of the mortgaged property on December 1, 2003 without republishing the Notice of Sheriff's Sale with the corresponding change in the date of the auction. The OCA thus recommended the re-docketing of the case as a regular administrative matter and that respondent be penalized to pay a fine of P10,000 for gross ignorance of the law with a warning that repetition of the same or similar offense shall be dealt with more severely.

In its Resolution of March 6, 2006,[9] the Court ordered the re-docketing of the case as an administrative matter, and, via a separate resolution of the same date, required the parties to manifest if they are willing to submit the case for resolution based on the pleadings on record. In their respective manifestations,[10] the parties agreed.

We partly concur with the OCA.

Proceedings for the extrajudicial foreclosure of real estate mortgage are governed by Act 3135, as amended, entitled "An Act To Regulate The Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages." Under Section 1 of the Act, extrajudicial foreclosure sales are proper only when so provided under a special power inserted in or attached to the mortgage contract.

While the Deed of Real Estate Mortgage in this case contains no special power authorizing the Garcia spouses as mortgagees to extrajudicially foreclose the mortgage in case the Paguyos defaulted in their loan obligation, nonetheless, the respondent sheriff cannot be held administratively liable for proceeding with the extrajudicial foreclosure of the mortgage in question.

Concededly, it is provided for in Administrative Order No. 3 series of 1984 (re: Procedure in Extrajudicial Foreclosure of Mortgage)[11] that it is the sheriff's duty to examine if the application for extrajudicial foreclosure of real estate mortgage has complied with the requirements under Section 4 of Act 3135, as amended. However, amendments had already been introduced to Administrative Order No. 3 by making it the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages.[12] The very recent amendment is now provided for in Circular No. 7-2002[13] issued on January 22, 2002 and which became effective on April 22, 2002. Sections 1 and 2(a) of said Circular specifically state that:

Sec. 1. All applications for the extrajudicial foreclosure of mortgage whether under the direction of the Sheriff or a notary public pursuant to Act No. 3135, as amended, and Act No. 1508, as amended shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff. (A.M. No. 99-10-05-0, as

amended, March 1, 2001).

Sec. 2. Upon receipt of the application, the Clerk of Court shall:

a. Examine the same to insure that the special power of attorney authorizing the extrajudicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage. (Act No. 3135, Sec. 1, as amended) (Emphasis ours)

We note that in this case, the application for extrajudicial foreclosure was filed on February 11, 2003, obviously after the amendment of Administrative Order No. 3. Hence, the duty to examine said application to determine whether the deed of mortgage contains or incorporates a special power authorizing the spouses Garcia to extrajudicially foreclose the mortgage in the event of nonpayment of the loan by the Paguyos devolved upon the Clerk of Court, not on the respondent sheriff. Hence, respondent cannot be held administratively liable for proceeding with the foreclosure sale.

However, for his having conducted the auction sale of the mortgaged property on December 1, 2003 without causing the republication of Notice of Sheriff's Sale with the new auction date, the Court holds the respondent sheriff liable, not for "gross ignorance of the law" as recommended by the OCA because there is no such administrative offense, but for inefficiency and incompetence in the performance of his official duties under Section 52(A)(16) of the Revised Uniform Rules on Administrative Cases in the Civil Service.

Section 4(b) of the same Circular 7-2002 is explicit that the sheriff shall cause the publication of the Notice of Sheriff's Sale in a newspaper of general circulation in the municipality or city where the property is situated. In full, said Section 4(b) states:

Sec. 4. The sheriff to whom the application for extrajudicial foreclosure of mortgage was raffled shall do the following:

- x x x

- (1) In case of foreclosure of real estate mortgage, cause the publication of the notice of sale by posting it for not less than twenty (20) days in at least three (3) public places in the municipality or city where the property is situated and if such property is worth more than four hundred (P400.00) pesos, by having such notice published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality or city (Sec. 3, Act No. 3135, as amended). x x x

In *Development Bank of the Philippines v. Court of Appeals*,^[14] the Court emphasized the need for the republication of the Notice of Sheriff's Sale of a postponed extrajudicial sale for the latter's validity. In that case, we held, citing *Ouano v. CA*:^[15]

x x x republication in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale. Another publication is required in case the auction sale is rescheduled, and the absence of such republication invalidates the foreclosure sale.

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Publication, therefore, is required to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. To allow the parties to waive this jurisdictional requirement would result in converting into a private sale what ought to be a public auction.

Here, the only Notice of Sheriff's Sale which was published in *Sierra Pacific News* refers to the scheduled sheriff's sale on April 11, 2003. Nowhere is there any record to show that a new Notice of Sheriff's Sale for the December 1, 2003 auction sale was actually published. Likewise, while respondent sheriff explained the reason for his

deferment of the auction sale on the originally scheduled date, none whatsoever was proffered by him regarding his failure to publish a new notice for the rescheduled date of the auction.

Time and time again, this Court has reminded sheriffs that, as court employees, they must conduct themselves with propriety and decorum - their actions must be above suspicion at all times. As we emphasized in *Tagaloguin v. Hingco, Jr.*:^[16]

x x x the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff down to the lowliest clerk should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must be characterized with propriety and decorum, but above all else, must be above and beyond suspicion. For every employee of the judiciary should be an example of integrity, uprightness and honesty.

Thus, for failing to do what was incumbent upon him under the law, which was to publish in a newspaper of general circulation the notice of the rescheduled auction sale of the mortgaged real property, we find respondent sheriff to have been inefficient and incompetent in the performance of his official duties, an offense punishable under Section 52(A)(16) of the Revised Uniform Rules on Administrative Cases in the Civil Service (Civil Service Commission Resolution No. 991936) with suspension of six (6) months and one (1) day to one (1) year for the first offense.

WHEREFORE, respondent Charlie S. Gatbunton, Sheriff IV of the RTC, Branch 4, Balanga, Bataan, is administratively found GUILTY of inefficiency and incompetence in the performance of his official duties and meted the penalty of SUSPENSION for six (6) months and one (1) day without pay with a stern WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Azcuna, JJ., concur.
Corona, J., on leave.

[1] Rollo, p. 6.

[2] Id. at 9.

[3] Id. at 10.

[4] Id. at 11.

[5] Id. at 12.

[6] Id. at 1-5.

[7] Id. at 17-22.

[8] Id. at 44-47.

[9] Id. at 49.

[10] Id. at 50-51.

[11] Administrative Order No. 3, Series of 1984, pertinently provides the following:

TO: ALL EXECUTIVE JUDGES AND CLERKS OF COURT OF THE
REGIONAL TRIAL COURTS

SUBJECT: Procedure in Extrajudicial Foreclosure of Mortgage

xxx xxx xxx

- All applications for extrajudicial foreclosure of mortgage under Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff;

- Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Office of the Sheriff to:

a) receive and docket said application and to stamp the same with the corresponding file number and date of filing;

b) collect the filing fees therefor and issue the corresponding official receipt;

c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under its direction or under the direction of a notary public, pursuant to Section 4 of Act 3135, as amended;

xxx xxx xxx. (Emphasis Ours);

[12] In Administrative Matter No. 99-10-05-0 dated December 14, 1999 as amended March 1, 2001 and further amended August 7, 2001, it is pertinently provided that:

- All applications for extrajudicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Oficio Sheriff.

- Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:

xxx xxx xxx

c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the sheriff or a notary public, pursuant to Sec. 4 of Act 3135, as amended;

xxx xxx xxx. (Emphasis Ours)

[13] Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (re Procedure in Extrajudicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001.

[14] G.R. No. 125838, June 10, 2003, 403 SCRA 460, 469, 470.

[15] G.R. No. 129279, March 4, 2003, 398 SCRA 525.

[16] A.M. No. P-05-2008, June 21, 2005, 460 SCRA 360, 373.

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