

ROSALINA BASA, COMPLAINANT, VS. ATTY. EMMA C. ONA, RESPONDENT.*Adm. Matter No. P-895. May 24, 1977*

Ponente: MUÑOZ PALMA, J.

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Complainant Rosalina Basa filed this administrative complaint against respondent Atty. Emma C. Ona, Clerk of Court of the Court of First Instance of Rizal and Ex-Officio Sheriff of Caloocan City, for "violation of law, remission of duty and grave misconduct" arising from an auction sale conducted on July 19, 1971, covering a real property owned by complainant and mortgaged to Ruben Alonzo and Salvador Monroy.

The following incidents led to the filing of this complaint:

As security for a loan of Fifty Thousand Pesos (P50,000.00) which she received from Ruben Alonzo and Salvador Monroy, Rosalina Basa executed a real estate mortgage on June 1, 1970 over a parcel of land covered by TCT No. 4235 (49607) of the Register of Deeds of Caloocan City. The loan was to be paid within one (1) year from date, with interest at the rate of 12% per annum and "in case of foreclosure, said mortgagees may proceed thereto judicially or extrajudicially in accordance with Act 3135, as amended, for the satisfaction of all (her) obligation, including attorney's fees in the sum equivalent to 25% of the obligation, plus all other expenses incidental to foreclosure proceedings." [1]

Basa failed to pay her indebtedness within the stipulated period, whereupon the mortgagees caused the extrajudicial foreclosure of the real estate mortgage as provided for in the contract. [2] Assistant City Sheriff Alejandro Reyes conducted the auction sale on July 19, 1971 after complying with the requirements of the law. [3] At the auction sale, Atty. Benjamin Alonzo submitted mortgagees' written bid for P69,568.50 with an accompanying statement of account as follows:

"Principal loan ----- P50,000.00

Interest at 12% per annum from

June 1, 1970 to July 19, 1971,

13 1/2 months ----- 6,750.00

25% of P50,000.00 as attorney's fees ----- 12,500.00

Sheriff's filing fee ----- 12.00

Publication fee ----- 306.50

T O T A L 69,568.50" [4]

This having been the only bid presented, the property was awarded to the mortgagees and the corresponding certificate of sale was issued by City Sheriff Emma C. Ona, now respondent. [5]

Complainant failed to redeem the property within the one year period allowed by law.

On October 20, 1972 complainant Basa and her children Erlinda, Edilberto, Elias and Henry, all surnamed Basa, filed Civil Case No. C-2573 with the Court of First Instance of Rizal, Br. XXXII, Caloocan City, naming as defendants, the mortgagees - Ruben Alonzo, Salvador J. Monroy, the latter's wife, Juliana Alonzo as well as the Register of Deeds of Caloocan City.[6] The complaint prayed, among other things, that the real estate mortgage executed by Rosalina Basa in favor of mortgagees on June 1, 1970 be declared null and void as to the one-half (1/2) pro-indiviso share over the property and the improvements thereon of the children of complainant, the same having been executed without their knowledge and consent; that the result of the auction sale of the foreclosed real estate property be set aside; or, as an alternative, that the period of redemption which expired on July 18, 1972 be extended; and that the Register of Deeds of Caloocan City be ordered to cancel TCT No. 45517 issued in the name of the mortgagees.

The parties in Civil Case No. C-2573 submitted a compromise agreement dated January 4, 1973 wherein it was agreed that the Basas would redeem the foreclosed property for the sum of P54,000.00 with interest at the rate of 1% per month, payable within six (6) months from date, and in case of failure to comply with the agreement the decision based on the compromise agreement would become final and executory and the Basas would immediately vacate the premises in question within thirty (30) days from the last day of the six months redemption period. In a decision dated January 4, 1973 the trial court approved the compromise agreement and rendered judgment based thereon.[7]

On June 30, 1973 the Basas filed an urgent motion praying for the extension of the period within which to redeem the subject property, stating therein that the Basas and the mortgagees appeared on June 25, 1973 before the Special Action Unit in Malacañang during which time the mortgagees gave the Basas an extension of six (6) months from July 4, 1973 to expire on or before December 31, 1973 within which to redeem the property in question. On July 9, 1973 the Basas again filed a motion to amend and/or set aside the trial court's judgment based on the compromise agreement in order to reflect the new agreement reached by the parties during the conference held before the Special Action Unit in Malacañang. The mortgagees filed an opposition to the second motion. In an order dated July 14, 1973 the trial court denied both motions filed by the Basas.[8]

On August 7, 1973 the mortgagees filed a motion for the issuance of a writ of execution of the decision of January 4, 1973 which was opposed by Rosalina Basa on the ground that the judgment of January 4, 1973 sought to be enforced was vacated by an agreement of August 13, 1973 (Exhibit "A") entered into by and between the parties before the Office of Civil Relations of the Philippine Constabulary at Camp Crame wherein Rosalina Basa was given an option to purchase or sell the subject property up to January 13, 1974. By order dated August 20, 1973 the trial court denied the motion for a writ of execution for being premature.[9]

On February 4, 1974 the mortgagees filed a second motion for the issuance of the writ of execution, the Basas having failed to exercise their option to purchase or sell the subject property and to vacate the premises within two (2) weeks from January 13, 1974 in accordance with their agreement of August 13, 1973.[10]

On February 15, 1974 the trial court ordered the issuance of a writ of execution. Deputy Sheriff Aguedo S. Mariano who served the writ submitted a return dated March 28, 1974 showing that the writ was served upon Mrs. Rosalina Basa on March 18, 1974 but the latter refused to sign an acknowledgement thereof; that Rosalina Basa was given ten (10) days to vacate the premises but despite the lapse of said period, she remained in possession of said premises.[11]

The mortgagees then filed on April 23, 1974 an "Ex Parte Motion to Break Open and Deliver the Possession of the Property" which was granted in an order dated April 30, 1974.[12] Deputy Sheriff Aguedo S. Mariano took

possession of the property and delivered the same to the mortgagees on May 3, 1974.[13] As a consequence, Rosalina Basa was completely divested of possession of subject property.

THE COMPLAINT

Rosalina Basa and her children, through counsel, subsequently filed with this Court on March 3, 1975 this letter-complaint against Caloocan City Sheriff Atty. Emma C. Ona for "violation of law, remission of duty and grave misconduct" alleging that they asked for an accounting of the proceeds of the auction sale conducted by Atty. Ona on July 19, 1971 but the latter refused and failed to render such accounting although it was her duty, under the law, to turn over the excess of the proceeds of the sale to the mortgagors considering that the mortgaged property was sold for P69,568.50 while the loan secured was only P50,000.00 thereby leaving an excess of P19,568.50.[14]

When asked to comment thereon, respondent vehemently denied the accusations of complainant. In her comment she quoted paragraph 3 of the Certificate of Sale issued on July 19, 1971 showing that the highest bidder (mortgagees Ruben Alonzo and Salvador Monroy) "did not pay anymore to the Sheriff of Caloocan City the said sum of SIXTY-NINE THOUSAND FIVE HUNDRED SIXTY-EIGHT and 50/100 (P69,568.50) PESOS, the sale price of the above-described real estate property together with all the improvements existing thereon, which amount had been merely credited to the FULL SATISFACTION of the mortgage debt mentioned in the said real estate mortgage contract, plus interest, attorney's fees, sheriff's fees and all other necessary expenses for the extrajudicial foreclosure and sale under Act 3135 as amended by Act 4118".[15]

On request of complainant herein this Court in its Resolution of November 26, 1975, directed respondent Ona to submit within ten (10) days from receipt a "specification of the respective amounts allocated to the different items mentioned in paragraph 3 of the Certificate of Sale dated July 19, 1971, to wit: the principal mortgage loan, interest, attorney's fees, sheriff's fees, and all other necessary expenses, which were credited against the sum of P69,568.50, the alleged total purchase price of the real estate property subject of the auction sale in question. In compliance thereof, respondent submitted the mortgagees' statement of account which accompanied the written bid they had filed with the Sheriff's Office.[16]

Because of complainant's assertion that the sum of P12,500.00 awarded as attorney's fees was "staggering" and that Atty. Ona "arbitrarily" fixed said attorney's fees the court resolved to refer the matter to Executive Judge Alberto Ubay of the Court of First Instance of Rizal, Branch XXXII, Caloocan City for investigation, report and recommendation.[17]

In his report dated May 5, 1976 the Investigating Judge stated:

"Having thus completely lost her fight against Ruben C. Alonzo and Salvador J. Monroy for the recovery of her property which was the subject of the litigation in Civil Case No. C-2573 above indicated, complainant Rosalina B. Basa now turned her guns against the Ex-officio City Sheriff, Atty. Emma C. Ona. It appears that complainant's counsel wrote a letter addressed to Deputy Sheriff Mariano who, in his reply dated January 9, 1975 (p. 22, Records) stated that 'the auction sale of Mrs. Basa's real estate was not conducted by the undersigned nor sold in connection with the above-captioned case' (Re: Erlinda B. Basa, et al. vs. Ruben C. Alonzo, et al., CFI of Caloocan City, Branch XXXII). From this portion of the letter of Deputy Sheriff Mariano, it is evident that complainant's counsel is of the wrong impression, as will be explained later, that the auction sale of Mrs. Basa's real estate was conducted in connection with, or pursuant to, the decision in said civil case. As further clearly stated by Deputy Sheriff Mariano, in his aforementioned letter to complainant's counsel, 'the action taken in connection thereto on my part was to comply with the Order from the Honorable Court to take possession of the subject premises and deliver the same to the defendants, Ruben Alonzo, et al. x x x.'

"That such indeed is the impression of counsel of complainant is further shown by the fact that their letter addressed to respondent Atty. Emma C. Ona dated January 27, 1975, is captioned 'Rosalina Basa vs. Ruben Alonzo, et al., Civil Case No. C-2573, CFI of Caloocan, Br. 32.' In that letter (p. 12, Records) in which counsel for complainant threatened to 'prosecute what we have hereinabove intimated' if within three (3) days they fail to hear from her, it was stated:

'As already stated in the said letter, your office caused the auction sale of Mrs. Basa's real estate of which the highest bid as per your certificate of sale was P69,568.50. Although the principal loan was only for P50,000.00 and although the parties concerned in an amicable settlement which served as the basis of the decision, the redemption amount was to be P54,000.00, our client was never favored with a reply as to the disposition of the purchase price, much less, did she receive the difference, as there must be, between her obligation and the bid as provided for by law.'

"Thus, it is clear that counsel for complainant is of the impression that the auction sale of Mrs. Basa's real estate of which the highest bid was P69,568.50 was made pursuant to 'the decision which was based on an amicable settlement, with the redemption amount fixed at P54,000.00, although the principal loan was only P50,000.00.' Thus, complainant's counsel contended that since the highest bid was P69,568.50, there must be a difference between the 'obligation and the bid as provided by law', and so the difference between the purchase price and the legal obligation of complainant should be turned over to the mortgagors. x x x x x x Complainant's counsel also questioned the authority of respondent to fix the attorney's fees in the subject extrajudicial foreclosure, alleging that 'the same is not expressly stipulated in the contract', and that such prerogative belongs to the Court.

x x x x x x x x x x

"It may also be noted that of the accounting rendered by respondent in which the proceeds of the auction sale in the amount of P69,568.50 was itemized, the only item questioned by complainant's counsel was the sum of P12,500.00 awarded or set aside for attorney's fees. x x x x x

"The question, therefore, to determine in the instant administrative matter is whether or not respondent Atty. Ona, in her capacity as Ex-Officio Sheriff, had arbitrarily fixed the amount of P12,000.00 as attorney's fees for lack of legal basis in so doing.

"It is evident that prior to the filing of the letter-administrative complaint which is the subject of this investigation, and subsequent letter-complaints above-indicated, neither complainant nor her counsel have read the Real Estate Mortgage in question (Exh. "1", p. 108, Records) which was quoted in full above. For if they have read or have taken the trouble of reading its provisions, they would have known from the start that the said 'Real Estate Mortgage' executed by complainant Rosalina Basa herself on June 1, 1970, provides in its fourth paragraph thereof 'that in case of foreclosure, said mortgagees may proceed thereto judicially or extrajudicially in accordance with Act 3135, as amended, for the satisfaction of all my obligations, including attorney's fees in the sum equivalent of 25% of the obligation, plus all other expenses incidental to foreclosure proceedings.' This is the legal authority or legal basis for respondent or her deputy sheriff, Alejandro Reyes, to have awarded the amount of P12,500.00 as attorney's fees, this amount being equivalent to 25% of the obligation. x x x x x x Considering that a contract is the law between the parties, there can, therefore, be no question that the amount of P12,500.00 set aside or awarded as attorney's fees by respondent pursuant to the said Real Estate Mortgage Contract, is the legal basis of the action taken by respondent and her Assistant Sheriff Alejandro Reyes, during that extrajudicial proceeding and auction sale of the property of complainant on July 19, 1971.

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"Furthermore, as indicated above, herein complainant, as one of the plaintiffs who entered into an amicable

settlement in Civil Case No. C-2573, wherein they settled only for the right granted to them to redeem the property in question in the amount of P54,000.00 within the period of six (6) months from January 4, 1973, with interest at 1% per month, complainant has impliedly waived or abandoned her right to question the legality or propriety of the auction sale during the extrajudicial proceedings held on July 19, 1971, in which, among others, the sum of P12,500.00 equivalent to 25% of her obligation, was awarded as attorney's fees in accordance with the express provisions of the Real Estate Mortgage Contract in question. The fact that complainant failed or was unable to redeem her property under the terms of the Compromise Agreement should not justify her in again reviving her previous contention that the award of P12,500.00 as attorney's fees was illegal or unconscionable. Complainant alone should suffer the effects of her previous actuations. Respondent herein acted within the limits of the law in the performance of her duty as Ex-Officio City Sheriff.

x x x"

Finding nothing illegal nor corrupt in the actuations of respondent, the Honorable Investigating Judge recommends the dismissal of the instant administrative complaint and the exoneration of respondent of all charges against her.

We concur with the findings and recommendation of the Honorable Investigating Judge.

WHEREFORE, respondent Atty. Emma C. Ona is exonerated of the charges against her, and this complaint is accordingly dismissed.

So Ordered.

Teehankee, (Chairman), Makasiar, Antonio, and Martin, JJ., concur.

[1] Exhibit "1", p. 108, rollo.

[2] Exhibit "2", p. 110, *ibid*.

[3] TSN of March 30, 1976, pp. 180-181, *ibid*.

[4] Exhibits "3" and "4", p. 111, *ibid*.

[5] Exhibit "6", p. 114, *ibid*.

[6] Civil Case Rec., p. 1.

[7] *ibid*., pp. 87-90.

[8] *ibid*., pp. 94-117.

[9] *ibid*., pp. 118-124.

[10] *ibid*., pp. 126-127.

[11] *ibid*., pp. 129-132.

[12] *ibid*., pp. 134 and 142.

[13] *ibid*., p. 143.

[14] p. 6, rollo.

[15] pp. 17-20, *ibid*.

[16] pp. 43, 50-52, *ibid*.

[17] pp. 53 and 56, *ibid.*

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