Supreme Court E-Library

WHEREFORE, the petition is hereby *DENIED* and the decision of the Court of Appeals dated November 29, 2000 in CA-G.R. CV No. 43421 *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-02-1539. January 24, 2002]
(Formerly OCA IPI No. 99-564-P)

RAMON C. CASANO, *petitioner, vs.* **ARNEL C. MAGAT, Sheriff IV, RTC - Office of the Clerk of Court, Biñan, Laguna,** *respondent.*

SYNOPSIS

Petitioner herein charged respondent with grave abuse of authority and/or gross ignorance of the law in proceeding with the extrajudicial foreclosure sale of real property notwithstanding the fact that the real estate mortgage contract contained no stipulation authorizing the mortgagee to extrajudicially foreclose the mortgage in case of non-payment of the mortgage debt. The Office of the Court Administrator recommended that respondent be adjudged guilty as charged and fined ₱5000.00 with stern warning that repetition of a similar offense would be dealt with more severely.

The Supreme Court agreed that respondent sheriff is administratively liable but only for neglect of duty. According to the Court, although amendments have already been introduced to Administrative Order No. 3 in reference to the Procedure in the Extra-Judicial Foreclosure of Mortgage making it now the specific duty of the Clerk of Court to examine applications

Supreme Court E-Library

for extrajudicial foreclosure of mortgages, however, during the time material to the act complained of, Administrative Order No. 3 specifically provide that it devolved upon the "Office of the Sheriff" to examine, upon receipt of an application for extrajudicial foreclosure of real estate mortgage, whether the applicant has complied with all the requirements under Act 3135. Respondent, therefore, should not have relied blindly on the mortgagee-applicant's assurance that there was such power in the real estate mortgage contract.

Respondent sheriff was fined in the amount of ₱5,000.00.

SYLLABUS

1. **CIVIL LAW; REAL ESTATE MORTGAGE; EXTRAJUDICIAL FORECLOSURE; PROPER ONLY WHEN SPECIFICALLY PROVIDED IN CONTRACT.** — Proceedings for the extrajudicial foreclosure of real estate mortgages 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*. As the title itself suggests and as provided in Sec. 1 of the Act, extrajudicial foreclosure sales are proper only when so provided in the real estate mortgage contract. Section 1 provides - When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale or redemption shall be effected, whether or not provision for the same is made in the power.

2. **ID.; ID.; ID.; DUTY TO EXAMINE APPLICATION THEREFOR; DEVOLVED UPON OFFICE OF THE SHERIFF BEFORE INTRODUCTION OF AMENDMENT TO ADM. ORDER NO. 3; APPLICATION IN CASE AT BAR.** — Although amendments have already been introduced to Administrative Order No. 3 re *Procedure in Extra-Judicial Foreclosure of Mortgage* making it now the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages during the time material to the act complained of, pars. 2 and 2 [c] of Administrative Order No. 3 specifically provide that it devolved upon the "Office of the Sheriff" to examine, upon receipt of an

Supreme Court E-Library

application for extrajudicial foreclosure of real estate mortgage, whether the applicant has complied with all the requirements under Act 3135. Thus when the application was filed in the instant case it was respondent Sheriff's specific duty to examine whether the attached real estate mortgage contract contained the requisite special power authorizing the mortgagee to extrajudicially foreclose the mortgage in case of non-payment of the mortgage indebtedness. Respondent should not have relied blindly, as he did, on the mortgagee-applicant's assurance that there was such a power in the real estate mortgage contract.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; BOUND TO DISCHARGE THEIR DUTIES WITH PRUDENCE.** — Aside from the fact that sheriffs are bound to discharge their duties with prudence, caution and attention which careful men usually exercise in the management of their affairs, respondent should have kept in mind that he was an agent of the law and of the court, not of the parties.

RESOLUTION

BELLOSILLO, *J.*:

RAMON C. CASANO, in a sworn Letter-Complaint dated 3 December 1998, charged respondent Arnel G. Magat, Sheriff IV, Office of the Clerk of Court, RTC, Biñan, Laguna, with Grave Abuse of Authority and/or Gross Ignorance of the Law in proceeding with the extrajudicial foreclosure sale of a real property in Biñan, Laguna, notwithstanding the fact that the real estate mortgage contract[1] contained no stipulation authorizing the mortgagee to extrajudicially foreclose the mortage in case of non-payment of the mortgage debt. Complainant alleged that he called respondent's attention to that fact in a letter dated 17 November 1998 but to no avail.[2]

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[1] Annex "B".

[2] Annex "D".

Supreme Court E-Library

In his *Comment* dated 6 March 1999 respondent Sheriff alleged that he proceeded with the sale notwithstanding complainant's letter-protest because it was his ministerial duty to do so; that upon apprising Atty. Reynaldo A. Cardeño, counsel for petitioner-mortgagee, of the protest the latter told him to proceed with the sale and assured him that the mortgagors must secure a temporary restraining order first before they could enjoin the foreclosure sale scheduled on 1 December 1998; and that although the auction sale proceeded as scheduled the effects thereof were "rendered of no force and effect" because of the mortgagee's failure to submit the required Affidavit of Publication.

In our Resolution dated 6 December 2000 we required the parties to manifest, within ten (10) days from notice, whether they were submitting this case for resolution on the basis of the pleadings already filed. Both complainant and respondent failed to comply within the period which expired on 11 February 2001. Hence, we consider the case submitted for resolution based on the pleadings already filed.

The record shows that on 30 October 1998 a *Petition* for extrajudicial foreclosure of real estate mortgage[3] was filed by Atty. Reynaldo A. Cardeño, counsel for Teresita Manabat, with the Office of the Provincial Sheriff, RTC-Biñan, Laguna, alleging that a Deed of Real Estate Mortgage was executed in Manabat's favor by the spouses Ricardo and Justina Casano over Lot 1508-A covered by TCT No. (T-43627) T-6108 of the Registry of Deeds of Laguna to secure a mortgage indebtedness in the amount of ₱300,000.00; that the Deed contained a stipulation constituting Teresita Manabat as the mortgagors' attorney-in-fact for purposes of filing an application for foreclosure under Act 3135; and, that the Casano spouses failed to pay the mortgage indebtedness despite formal demand and grace period given, hence, the application.

Acting on the application for foreclosure of mortgage, respondent Sheriff Arnel G. Magat issued on the same day a

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[3] Annex "A" of Affidavit-Complaint.

Supreme Court E-Library

Notice of Extrajudicial Sale[4] for the auction sale on 1 December 1998 at 10:00 o'clock in the morning.

Complainant, acting on behalf of the Heirs of mortgagor Ricardo Casano, sent a letter dated 17 November 1998 protesting the sale on the ground that the real estate mortgage contract did not contain any stipulation giving the mortgagee the right to foreclose the mortgage extrajudicially. The sale nevertheless proceeded as scheduled with the mortgagee as the highest bidder.[5] Hence, this administrative complaint.

The Office of the Court Administrator recommended in its Memorandum that respondent be adjudged guilty as charged and fined ₱5,000.00 with stern warning that repetition of a similar offense would be dealt with more severely.

We agree that respondent Sheriff is administratively liable but only for neglect of duty. Proceedings for the extrajudicial foreclosure of real estate mortgages 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*. As the title itself suggests and as provided in Sec. 1 of the Act, extrajudicial foreclosure sales are proper only when so provided in the real estate mortgage contract.[6] Section 1 provides —

> When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale or redemption shall be effected, whether or not provision for the same is made in the power.

Respondent Sheriff is now being held administratively liable for allegedly disregarding the foregoing provision, and for proceeding with the subject extrajudicial foreclosure sale

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[4] Annex "C".

[5] Per Minutes of Auction Sale executed by respondent Sheriff Arnel C. Magat.

[6] Regalado, *Remedial Law Compendium*, Vol. 1, 6th Rev. Ed., p. 750.

Supreme Court E-Library

notwithstanding the absence of the requisite special power in the real estate mortgage contract authorizing the mortgagee Teresita Manabat to foreclose the mortgage extrajudicially in case of non-payment.

For his defense, respondent Sheriff contended that he could not be held administratively liable because it was his ministerial duty to act on the application filed by the mortgagee Teresita Manabat.

The contention has no merit and cannot excuse respondent from administrative liability. Although amendments have already been introduced to Administrative Order No. 3 re *Procedure in Extra-Judicial Foreclosure of Mortgage*[7] making it now the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages[8] during the time material to the act complained of, pars. 2 and 2 [c] of Administrative Order No. 3 specifically provide that it devolved upon the "Office of the Sheriff" to examine, upon receipt of an application for extrajudicial foreclosure of real estate mortgage, whether the applicant has complied with all the requirements under Act 3135. Thus when the application was filed in the instant case it was respondent Sheriff's specific duty to examine whether the attached real estate mortgage contract contained the requisite special power authorizing the mortgagee to extrajudicially foreclose the mortgage in case of non-payment of the mortgage indebtedness. Respondent should not have relied blindly, as he did, on the mortgagee-applicant's assurance that there was such a power in the real estate mortgage contract. Counsel for the mortgagors already told respondent that there was none, and besides, a copy of the Real Estate Mortgage contract was attached to the application itself as Annex "A" for respondent's easy perusal. Assuming *arguendo* that respondent's duty to act on the application was merely ministerial as contended we have already said in *Machinery & Engineering Supplies, Inc. v. Court of Appeals, et al.*[9] that

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[7] In A.M. No. 99-10-05-0 dated 14 December 1999, as amended 1 March 2001 and further amended 7 August 2001.

[8] Effective 1 January 2000.

[9] 96 Phil. 70 (1954).

Supreme Court E-Library

the ministerial duty of a sheriff should have its limitations, *i.e.*, he ought to know what is inherently right and inherently wrong.[10] We ruled in that case that the provincial sheriff went beyond the scope of his authority when he seized, upon court order issued in a case for replevin, properties specified in the order notwithstanding the fact that the defendant at the time of the intended seizure protested the same on the ground that the properties sought to be seized were not personal properties. While the Court conceded that the issue might be a question of law too technical to be decided on the spot, it would not have cost the sheriff much time and difficulty to have brought the protest to the attention of the court concerned.

In the instant case, complainant's letter protesting the foreclosure sale was dated 17 November 1998 and received two (2) days later. The foreclosure sale was scheduled on 1 December 1998. As in the *Machinery & Engineering Supplies, Inc.* case, it would not have cost respondent Sheriff much to have considered the question more thoroughly either by perusing the real estate mortgage contract himself, which clearly showed that there was in fact no special power inserted authorizing an extrajudicial foreclosure, or else, brought the protest to the attention of his superiors and solicited their help. Respondent did neither. Instead he relied blindly on the assurances of counsel for the mortgagee that the latter was authorized under the real estate mortgage contract to foreclose extrajudicially. Aside from the fact that sheriffs are bound to discharge their duties with prudence, caution and attention which careful men usually exercise in the management of their affairs,[11] respondent should have kept in mind that he was an agent of the law and of the court, not of the parties.[12]

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[10] See also *Tay Chun Suy v. Court of Appeals*, G.R. No. 93640, 7 January 1994, 229 SCRA 151, 157.

[11] *Evangelista v. Penserga*, A.M. No. P-92-766, 27 March 1995, 242 SCRA 702, 709.

[12] *Remollo v. Garcia*, A.M. No. P-98-1276, 25 September 1998, 296 SCRA 77, 84.

Supreme Court E-Library

In *Elizabeth A. Tiongco v. Sheriffs Rogelio S. Molina and Arnel G. Magat*[13] we found respondent Sheriff Magat guilty of Dereliction of Duty and Negligence and fined him ₱5,000.00 with a "stern warning that a repetition of the same or similar act shall be dealt with more severely." The decision was promulgated on 4 September 2001. Since respondent Sheriff had not yet received the stern warning issued in *Tiongco* at the time the acts complained of in this case were committed in November-December 1998, the penalty to be imposed in this case could not be exacerbated by the warning in *Tiongco*.

WHEREFORE, for Neglect of Duty, respondent Sheriff Arnel C. Magat, RTC-Office of the Clerk of Court, Biñan, Laguna, is *FINED* ₱5,000.00 with *WARNING* that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

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[13] A.M. No. P-00-1373, 4 September 2001.