

FIRST DIVISION

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

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

D E C I S I O N

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