

THIRD DIVISION

[A.M. No. P-10-2739 [Formerly OCA I.P.I. No. 08-3015-P], August 24, 2011]

**WILFRIED ERDENBERGER, COMPLAINANT, VS. JOHN V. AQUINO,
CLERK OF COURT, REGIONAL TRIAL COURT, OFFICE OF THE
CLERK OF COURT, OLONGAPO CITY, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before us is an administrative complaint^[1] dated November 26, 2008, filed by complainant Wilfried Erdenberger, a German national, against Atty. John V. Aquino, Clerk of Court VI, *Ex-Officio* Sheriff, Regional Trial Court, Office of the Clerk of Court, Olongapo City for Violation of the Code of Conduct and Ethical Standards for Public Officials and Employees and Neglect of Duty relative to Civil Case No. 102-0-200 entitled, *Wilfried Erdenberger v. Priscilla C. Sahagun*, for extrajudicial foreclosure of real estate mortgage under Act No. 3135 as amended.

The antecedent facts are as follows:

On October 22, 1999, complainant granted a loan to Priscilla C. Sahagun (Sahagun) in the amount of P200,000.00, payable for a period of 2 years with interest. As a security for the said loan, both parties entered into a real estate mortgage contract involving a commercial lot with improvements.

Sahagun failed to pay her loan. Thus, on December 11, 2000, complainant filed an application for extrajudicial foreclosure of mortgage under Act No. 3135 as amended, at respondent clerk of court's office.

On February 15, 2001, the subject real property was subsequently sold at a public auction wherein complainant was declared the highest bidder. A certificate of sale was then issued by respondent. Thereafter, on March 29, 2001, a Certificate of Sale was registered with the Register of Deeds of Olongapo City.

On June 28, 2002, complainant requested for the issuance of the Final Deed of Sale, considering that the redemption period had already expired and that Sahagun failed to exercise her right of redemption.

However, in a letter dated May 4, 2004, respondent advised complainant that he cannot issue the Final Deed of Sale, considering the pendency of the civil case of Annulment of Mortgage and Sheriff's Sale with Specific Performance, docketed as Civil Case No. 131-0-2002, which Sahagun filed on March 14, 2002.

Complainant alleged that due to the refusal of respondent to issue the Final Deed of Sale, he filed a petition for mandamus to compel respondent to issue the Final Deed

of Sale. On May 27, 2005, the trial court rendered its Decision granting the petition for mandamus, and ordered respondent clerk of court to issue the Final Deed of Sale in favor of complainant.

On September 1, 2005, complainant filed a Petition for the Issuance of Writ of Possession.

On December 13, 2005, a Writ of Possession was issued by the court in favor of complainant.

On July 11, 2005, respondent issued the Final Deed of Sale to complainant.

Complainant pointed out that respondent's refusal to issue the Final Deed of Sale for several years should be considered reasonable ground to hold him liable for neglect of duty.

Complainant likewise asserted that no temporary restraining order or injunctive writ was issued to prevent the issuance of the subject final deed of sale; thus, he claimed the delay was uncalled for.

Furthermore, complainant claimed that due to the delay of the issuance of the Final Deed of Sale for several years, he was deprived of his property right.

On December 11, 2008, the Office of the Court Administrator (OCA) directed respondent Atty. John V. Aquino to file his Comment on the instant complaint against him.

In his Comment dated January 21, 2009, respondent denied that he committed any act of irregularity. He claimed that he attended to complainant's case with due order and propriety. Thus, he prayed that the instant complaint against him be dismissed for lack of merit.

In a Memorandum dated October 27, 2009, the OCA found respondent guilty of simple neglect of duty and recommended that he be fined in the amount of Five Thousand Pesos (P5,000.00).

RULING

We agree with the findings and recommendation of the OCA.

Indeed, in extrajudicial foreclosure of real estate mortgage, the rule is upon the expiration of the one year redemption period, it forecloses the obligors' right to redeem and that the sale thereby becomes absolute. The time-honored precept is that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function which cannot be enjoined or stayed, even by an action for annulment of the mortgage or the foreclosure sale itself.^[2] The issuance of the final deed of sale, therefore, is mere formality.

Thus, in the instant case, the failure of respondent to issue the final deed of sale for more than three (3) years clearly shows that he had been remiss in the performance