

SECOND DIVISION

[G.R. No. 149715, May 29, 2002]

UNITED COCONUT PLANTERS BANK, PETITIONER, VS. HON. VICENTE L. YAP, IN HIS CAPACITY AS EXECUTIVE JUDGE OF THE REGIONAL TRIAL COURT OF PASAY CITY AND ATTY. PEPITO S. CELESTINO, IN HIS CAPACITY AS CLERK OF COURT AND EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF PASAY CITY, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated April 30, 2001, and the resolution denying reconsideration, dated August 23, 2001, of the Court of Appeals,^[1] which sustained an order of respondent Judge Vicente L. Yap of the Regional Trial Court of Pasay City making petitioner United Coconut Planters Bank (UCPB) pay the amount of P18,089,900.00 as notarial commission in connection with the extrajudicial foreclosure of real estate mortgages.

The facts are undisputed.

On February 28, 2000, petitioner UCPB filed a petition for extrajudicial foreclosure of certain real estate mortgages in the Regional Trial Court of Pasay City. In the auction sale held on April 13, 2000, petitioner was the highest bidder, and the mortgaged properties were awarded to it. However, the corresponding certificate of sale was withheld pending petitioner's payment of the amount of P18,089,900.00 as commission of the notary public in the sale of property as required by Administrative Circular No. 3, in relation to Circular A.M. No. 00-2-01-SC, which took effect on March 1, 2000.

On June 27, 2000, petitioner UCPB wrote to respondent Judge Yap of the RTC of Pasay City requesting approval of the certificate of sale in its favor without having to pay the notarial commission. However, its request was denied by respondent judge who, in a resolution dated June 30, 2000, required payment of the commission as a condition for the approval of the certificate of sale.^[2]

Petitioner filed a petition for certiorari and mandamus contending that Circular A.M. No. 00-2-01-SC, which increased the fees of sheriffs and notaries public conducting extrajudicial foreclosure sales, could not be applied because its application for extrajudicial foreclosure was filed on February 28, 2000, before the new rates took effect on March 1, 2000. Originally filed with this Court, the petition for certiorari and mandamus was referred to the Court of Appeals for appropriate action.^[3]

On April 30, 2001, the Court of Appeals dismissed the petition for certiorari and mandamus. It ruled that Circular A.M. No. 00-2-01-SC, which increased the rates of

commissions of sheriffs and notaries public in extrajudicial foreclosures, is a procedural rule which may be applied to cases pending at the time it went into effect. Although petitioner in this case filed its application for extrajudicial foreclosure on February 28, 2000, two days before Circular A.M. No. 00-2-01-SC took effect on March 1, 2000, the appeals court noted that the new rates had already become effective at the time the auction sale was conducted on April 13, 2000. Petitioner filed a motion for reconsideration, but its motion was likewise denied.^[4] Hence this appeal.

Petitioner reiterates its contention that Circular A.M. No. 00-2-01-SC, which increased the fees payable to sheriffs and notaries public conducting foreclosure sales, cannot be applied to this case considering that its application for extrajudicial foreclosure was filed on February 28, 2000. In the alternative, it argues that in any event the sheriff's or notary public's commission cannot exceed P100,000.00, as provided by the amendment to Circular A.M. No. 99-10-05-0, which took effect on March 1, 2001.

First. What is in issue in this case is the amount to be paid by petitioner for the issuance to it of a certificate of sale as the highest bidder in the auction sale. Administrative Circular No. 3 of this Court, as amended by Administrative Circular No. 3-98, provides that –

No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned paragraph 3 of Section 9(I) of Rule 141 of the Rules of Court shall have been paid.

Section 9 of Rule 141 referred to at that time authorized sheriffs to collect, among other fees, the following:

(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (P4,000.00) pesos, four (4%) per centum.
2. On all sums in excess of four thousand (P4,000.00) pesos two (2%) per centum.

Effective March 1, 2000, these fees were increased by virtue of the amendment of Rule 141 by Circular A.M. No. 00-2-01-SC as follows:

SEC. 9. *Sheriffs and other persons serving processes.* –

. . . .

(I) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit:

1. On the first four thousand (P4,000.00) pesos, five (5%) per centum.
2. On all sums in excess of four thousand (P4,000.00) pesos, two and one-half (2.5%) per centum.

. . . .