

FIRST DIVISION

[A.M. No. P-97-1250, October 06, 1997]

**DOMINADOR D. BORNASAL, JR., CLERK OF COURT AND EX-OFFICIO SHERIFF, RTC, VALENZUELA, METRO MANILA,
COMPLAINANT, VS. DEPUTY SHERIFF JAIME T. MONTES, RTC,
BRANCH 75, VALENZUELA, METRO MANILA, RESPONDENT.
D E C I S I O N**

HERMOSISIMA, JR., J.:

The Constitutional mandate^[1] requiring all public officers and employees to be accountable to the people at all times is a tall order. For its part, this Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability. Such violation merits a penalty commensurate to the gravity of the act but not without mercy and compassion when the facts surrounding the violate so dictate.

Petitioner charged respondent deputy sheriff with certain unauthorized acts relative to a petition for extrajudicial foreclosure of real estate mortgage which was lodged at the petitioner's office, by virtue of Act No. 3115, as amended, allowing extrajudicial foreclosure sales under the direction of the petitioner, as Ex-Oficio Sheriff.

In a Letter-Complaint dated April 3, 1996, addressed to Executive Judge Adriano R. Osorio of the Regional Trial Court of Valenzuela, Metro Manila, petitioner made the following allegations: (a) that upon examination of the subject petition for extrajudicial foreclosure dated December 6, 1995 docketed as Foreclosure Case No. 738-V-95 entitled "Fourleaf Fundlending and Development Corporation (FFDC) v. Sps. Baltazora Parras Calderon and Felino Calderon," petitioner realized that the real property involved was located at Taytay, Rizal, hence, he refused to issue a Notice of Sheriff's Sale; (b) that respondent deputy sheriff, together with a lady representative of FFDC argued that pursuant to the provisions of the Promisory Note between FFDC and the Spouses Calderon, the stipulated venue of any legal action relative to the contract of loan, secured by a real estate mortgage, shall be in Valenzuela, Metro Manila or in any competent court at the option of FFDC, as mortgagee; (c) that petitioner insisted that he could not conduct any foreclosure sale of the subject property which was located at Taytay, Rizal based on the limitation contained in Section 2 of Act No. 3135, as amended; (d) that on January 16, 1996, upon petitioner's advise, FFDC filed a withdrawal of its petition for extrajudicial foreclosure; (e) that on April 1, 1996, petitioner received summons from the Regional Trial Court of Antipolo, Rizal in a case for Annulment of Foreclosure, Specified Performance with Damages and Preliminary Injunction with Prayer for Urgent Issuance of a TRO filed by Spouses Calderon against him and FFDC as a consequence of the Notice of Sheriff's Sale in Foreclosure Case No. 738-V-95 signed by respondent deputy sheriff purportedly for and in behalf of the

petitioner; and (f) that respondent deputy sheriff issued the aforesaid Notice of Sheriff's Sale without authority from the petitioner and that the publication apparently effected in connection therewith was also unauthorized.

On April 3, 1996, in his Comment, respondent deputy sheriff categorically admitted all the accusations made by the petitioner against him in the latter's letter-complaint. However, by way of defense, respondent deputy sheriff invoked good faith and declared that his issuance of the Notice of Sheriff's Sale and its subsequent publication were prompted by the vehement request of Spouses Calderon.

After due deliberation, we are convinced that the unauthorized acts complained of constituted grave abuse of authority and gross misconduct which deserve a sterner penalty than reprimand as recommended by the Executive Judge.

It is evident from the record of this case that the defense of good faith under the circumstances is unavailing. As deputy sheriff, respondent could not have been honestly unaware of the legal consequences of his act of effecting a notice of sheriff's sale and its publication after a withdrawal of the petition for extrajudicial foreclosure or real estate mortgage was submitted by FFDC as petitioner/mortgagee.

In the instant case, the subject Notice of Sheriff's Sale was never included in the list of foreclosure cases to be raffled for publication as required by the rules in view of the fact that Foreclosure Case No. 738-V-95 was subsequently withdrawn upon petitioner's advice. Petitioner directed FFDC's lady representative to file FFDC's petition for extrajudicial foreclosure in the Office of the Clerk of Court that has jurisdiction over Taytay Rizal, in accordance with Section 2 of Act 3135, as amended, which provides that:

The sale shall be made in the province in which the property sold is situated and in case the place within said province in which the sale is to be made is the subject of stipulation, the sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated."

Respondent deputy sheriff ought to have been guided by his superior's advice regarding the withdrawal of the subject foreclosure case. As the enforcement arm of the judiciary, deputy sheriffs must at all times be circumspect in the performance of their duties. Respondent's act of signing the Notice of Sheriff's Sale apparently for and in behalf of his superior is a clear case of insubordination and gross misconduct. His alleged partiality in favor of the mortgagors to help them settle their obligation cannot be countenanced by this Court.

Once again, it is well to remind all persons serving the Government through its Judicial Arm that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is tasked with a heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but also, and above all else, be above suspicion.^[2]