

THIRD DIVISION

[A.M. No. RTJ-16-2484, July 23, 2018]

**THE OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT,
VS. HON. SELMA P. ALARAS, PRESIDING JUDGE, BRANCH 62,
REGIONAL TRIAL COURT, MAKATI CITY, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

Liability for gross ignorance of the law attaches when the respondent judge is found to have issued her assailed erroneous order, decision or actuation in the performance of official duties moved by bad faith, dishonesty, hatred, or some other like motive. Otherwise, her good faith prevails, and she must be absolved.

The Case

This administrative case stemmed from the *Affidavit-Complaint* dated May 23, 2013^[1] executed by Spouses Crescenciano M. Pitogo and Nova A. Pitogo charging Teofilo C. Soon, Jr., Sheriff IV of the Regional Trial Court in Mandaue City, Cebu with grave abuse of discretion and impropriety relative to Extrajudicial Foreclosure Case No. 12-09-2069 entitled *Planters Development Bank v. Spouses Crescenciano M. Pitogo and Nova Arcayan*.^[2]

On May 30, 2013, the Office of the Bar Confidant indorsed the *Affidavit-Complaint* to the Office of the Court Administrator (OCA).^[3]

In its Report dated September 14, 2015, the OCA summarized the antecedents as follows:

Complainants Spouses Crescenciano and Nova Pitogo are the President and Treasurer, respectively, of LSD Construction Corporation (LSDCC). On 13 July 2012, Planters Development Bank (PDB) filed with the RTC-OCC, Mandaue City, Cebu, a petition to extra-judicially foreclose the mortgage executed by complainants in favor of PDB to secure the loan obligation of LSDCC. A *Notice of Extra-Judicial Foreclosure Sale* setting the public auction on 14 November 2012 was issued by respondent Sheriff.

Meanwhile, on 4 October 2012, complainants filed with the RTC of Makati City a *Petition for Annulment of Foreclosure Sale with Prayer for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order (TRO) and Damages* against PDB and respondent Sheriff. The case was assigned to Judge Selma Palacio Alaras of Branch 62, docketed as Civil Case No. 12-961. In an Order dated 13 November 2012, Judge Alaras issued a TRO and directed PDB and respondent Sheriff to desist from proceeding with the foreclosure sale in EJP Case No. 12-09-2069 "until further orders

from this Court".

On 26 February 2013, Judge Alaras recused herself from the case and it was re-raffled to Branch 147, RTC, Makati City, presided by Judge Roland B. Moreno. On 3 April 2013, Judge Moreno set the case for status conference on 7 June 2013.

On 2 May 2013, complainants read in the *Sun Star*, a Cebu tabloid, a *Second Amended Notice of Extra-Judicial Foreclosure Sale* setting the public auction on 7 June 2013, the same date as the hearing of the status conference. On 21 May 2013, complainants went to the post office and received a copy of the notice and discovered that it was sent on 14 May 2013.

Complainants aver that they sent a text message to respondent Sheriff inquiring as to who scheduled the auction sale on 7 June 2013, only to be told that it was respondent Sheriff himself who scheduled it. They asked respondent Sheriff why the public auction was set on the same day as the status conference, and whether PDB had requested that particular date. Respondent Sheriff replied that he had no knowledge of the status conference and the only request of Atty. Gomos (PDB lawyer based in Cebu City) was to proceed with the auction since there was no order from the trial court to stop the foreclosure sale after the lapse of the twenty (20)-day TRO. Complainants warned respondent Sheriff that if the request of PDB was not reduced in writing, there must be something wrong with his notice and he should be ready to explain. Respondent Sheriff's response was that he will defend himself in the proper forum.

Complainants aver that they reminded respondent Sheriff of the order of Judge Alaras which directed him to hold in abeyance the foreclosure proceedings until further orders from the court. However, respondent Sheriff insisted that he was just performing a ministerial duty.

Complainants opine that respondent Sheriff committed grave abuse of discretion when he scheduled the public auction upon the verbal request of Atty. Gomos. They aver that the notice was deliberately scheduled on the same date as the status conference set by Judge Moreno. Respondent Sheriff should have asked Atty. Gomos why it took him that long to request a public auction since the twenty (20)-day period of the TRO already expired on 3 December 2012. They assert that respondent Sheriff should have first ascertained the facts instead of precipitately acceding to Atty. Gomos' request.

Lastly, complainants posit that respondent Sheriff acted in bad faith when he sent them the *Second Amended Notice of Extra-Judicial Foreclosure Sale* by regular registered mail only on 14 May 2013 when the public auction was scheduled on 7 June 2013.

In his Comment dated 22 August 2013, respondent Sheriff states that after PDB filed with the OCC-RTC, Mandaue City, Cebu, a *Petition for Extra-Judicial Foreclosure of Real Estate Mortgage* against complainants, he issued on 11 September 2012 the corresponding *Sheriff's Notice to*

Parties at Public Auction and *Notice of Extra Judicial Foreclosure Sale* and these notices were received by complainants on 26 September 2012, as evidenced by the post office registry receipt and return card.

On 19 September 2012, respondent Sheriff posted the *Notice of Extra-Judicial Foreclosure Sale* in three (3) conspicuous places at the Municipality of Consolacion, Cebu, and had the notice published in a newspaper of general circulation on 27 September, 4 October and 11 October 2012. However, complainants filed a civil case at the RTC, Makati City, docketed as Civil Case No. 12-961, seeking the annulment of the foreclosure sale, the issuance of a writ of preliminary injunction and TRO, and for damages.

On 25 October 2012, respondent Sheriff received an amended petition filed by PDB. He issued the corresponding *Sheriff's Amended Notice to Parties at Public Auction* and the *Amended Notice of Extra-Judicial Foreclosure Sale* and complainants received their copy of the notices on 7 November 2012. Respondent Sheriff also posted the *Amended Notice of Extra-Judicial Foreclosure Sale* in three (3) conspicuous public places in the Municipality of Consolacion, Cebu.

On 13 November 2012, Judge Alaras granted a TRO. The TRO was officially issued on the same day, with an additional directive to the PDB officials and respondent Sheriff to desist from giving due course to the foreclosure sale in EJC Case No. 12-09-2069 until further orders from the court.

Respondent Sheriff insists that he honored the TRO issued by Judge Alaras and held in abeyance the auction sale scheduled on 20 November 2012. Sometime in April 2013, after Judge Alaras already recused herself from hearing the case, respondent Sheriff received a letter from PDB requesting him to proceed with the extra-judicial foreclosure following the expiration of the twenty (20)-day period of the TRO. Consequently, he issued the *Sheriff's Second Amended Notice to Parties at Public Auction* and *Second Amended Notice of Extra-Judicial Foreclosure Sale*. However, complainant Cresenciano Pitogo filed with the RTC, Mandaue City, Cebu, Civil Case No. MAN-7069, entitled "*Sps. Pitogo and LSD Construction Corp. vs. PDB and Sheriff Soon*," for Specific Performance and Surrender of TCT No. 126508, Damages with Prayer for issuance of a TRO and Writ of Injunction.

When the RTC, Mandaue City, Cebu, did not issue a TRO, respondent Sheriff proceeded with the scheduled auction. He maintains that he strictly followed the rules on extra-judicial foreclosure of mortgage and avers that the instant complaint is sheer harassment.

In their *Reply* dated 5 September 2013, complainants accuse respondent Sheriff of misleading the Court. They claim that Civil Case No. MAN-7069, filed with the RTC, Mandaue City, is not related to Civil Case No. 12-961 where Branch 62, RTC, Makati City, issued a TRO. They claim that respondent Sheriff should have informed them of the written request of PDB to proceed with the auction sale. They insist that respondent Sheriff

should have consulted his superiors on what he should do with the request of PDB to proceed with the foreclosure sale, in relation to the TRO issued by Judge Alaras qualified by the phrase "*until further orders from this Court*".

Finally, in a *Withdrawal of Complaint* dated 12 November 2013, complainants inform the OCA that they have come to the understanding that respondent Sheriff was only performing his ministerial duty and that they no longer have any intention to pursue the charges they filed against him. They pray that the proceedings in the instant case be terminated.^[4]

On November 23, 2015, upon the recommendation of the Office of the Court Administrator (OCA),^[5] the Court resolved to:

x x x **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendations of the Office of the Court Administrator in the attached Report dated September 14, 2015 (Annex A). Accordingly:

- (1) the instant administrative complaint against Sheriff IV Teofilo C. Soon, Jr. is **DISMISSED** for lack of merit; and
- (2) Judge Selma Palacio Alaras, Regional Trial Court, Branch 62, Makati City, is required to **COMMENT** within ten (10) days from notice on why she should not be administratively held liable for gross ignorance of the law for issuing the Temporary Restraining Order dated November 13, 2012 in Civil Case No. 12-961 effective for an indefinite period.^[6]

In her Comment,^[7] Judge Alaras explained that both her November 13, 2012 Order^[8] and the ensuing Writ of Temporary Restraining Order (TRO)^[9] plainly indicated that the TRO was valid and effective only for 20 days;^[10] that the last paragraph) preceding the *fallo* of her November 13, 2012 Order and the last *Whereas* clause of the TRO conspicuously mentioned the 20-day limiting period, and were clear indications that Section 5, Rule 58 of the *Rules of Court* was faithfully observed;^[11] that after the release and service of the twin issuances, the parties appeared to have clearly understood that the TRO was valid only for 20 days considering that the party enjoined made no motion for clarification;^[12] and that it would have been highly illogical for her to still set the hearing for the application for the writ of preliminary injunction on November 22, 2012, or nine days after the issuance of the TRO, if she had intended the TRO's validity to be "indefinite."^[13]

In its Report dated October 19, 2016,^[14] the OCA found Judge Alaras guilty of gross ignorance of the law, and recommended her to be fined in the amount of P10,000.00, with a stern warning that the commission of the same or similar act would be dealt with more severely. The OCA observed that:

Judge Alaras failed to explain why she added in her order and in the writ the phrase "*until further orders from this court*". The instant administrative complaint could have been avoided if Judge Alaras carefully worded the order and writ in accordance with Section 5, rule 58 of the Rules of Court. This may erode the trust of the litigants in