

EN BANC

[A.M. No. P-O1-1449 (formerly A.M. OCA IPI No. 99-574-P), February 24, 2003]

CLEMENTINO IMPERIAL, PETITIONER, VS. MARIANO F. SANTIAGO, JR., SHERIFF IV, RTC, BRANCH 139, MAKATI CITY, RESPONDENT.

DECISION

PER CURIAM:

In a sworn letter-complaint dated November 26, 1998,^[1] Clementino Imperial, President and Chairman of the Board of Laoang Shipping Corporation, charged respondent Mariano F. Santiago, Jr., Sheriff IV of the Regional Trial Court of Makati City (Branch 139) with Grave Abuse of Authority and Grave Misconduct for the illegal foreclosure of a pledge on the vessel M/V Angela Ceferina.

In his Comment dated April 29, 1999, respondent denies the alleged illegal foreclosure. He stressed that the foreclosure and auction sale was done in a legal and appropriate manner and that he issued a Certificate of Sale dated July 9, 1998 attesting that by virtue of a contract of pledge executed on November 7, 1995 by Richard Tang Tepace, for and in behalf of Laoang Shipping Corporation, respondent sold the vessel M/V Angela Ceferina in a public auction held on July 9, 1998 to Zoilo Uy, the highest bidder for Three Million Five Hundred Thousand Pesos (P3,500,000.00), conducted in front of the main entrance of the Gusali ng Katarungan, Zobel St., Makati City.^[2]

In his Reply, dated June 14, 1999, complainant contends that the alleged valid foreclosure is belied by a Certification dated November 15, 1998 of Atty. Engracio M. Escasinas, Jr., Clerk of Court VII and Ex-Officio Sheriff, stating that: per records of the court, the alleged foreclosure of pledge does not appear to have been filed or properly docketed in the record; the prescribed filing and commission on sale fees does not appear to have been paid; the public sale of the vessel could not physically be done in front of the Gusali ng Katarungan in Makati since the vessel could not be brought to said location; the pledge cannot be legally foreclosed in Makati City since it was executed in the City of Manila; the pledge does not conform to the legal requirements; the alleged publication of the notice of the Sheriff's sale did not pass through the raffle required before publication by any newspaper could be had; there is no record in the Office of the Clerk of Court and Ex-Officio Sheriff of the raffle first being done because no petition had been filed with the said office; the posting of Sheriff's sale does not appear to have been certified to and does not comply with the requirements of Certification of the posting of Affidavit; Richard Tepace is no longer the President of Laoang Shipping Corporation since he was ousted as hold-over president on April 6, 1998; Laoang Shipping Corporation which appears in the Registration of Ownership to be the owner of the vessel, with address at Laoang, N. Samar, was never notified; there was no notice made to MARINA where the vessel is

registered; respondent could not feign that he advised Zoilo Uy to pay the necessary fees required by the Office of the Clerk of Court after the auction sale; respondent issued a Certificate of Sale to Zoilo Uy dated July 9, 1998 without ensuring that the said fees were actually and properly paid; and respondent conspired with Richard Tepace and Zoilo Uy to deprive him (complainant) of his vessel by way of a false Certificate of Sale.^[3]

On January 22, 2001, the administrative case was re-docketed as a regular administrative matter and referred to then Executive Judge Florentino A. Thason, Jr., RTC (Branch 139) Makati City for investigation, report and recommendation.^[4] In a Resolution, dated March 19, 2001, the Court referred the case to the then First Vice Executive Judge Leticia P. Morales, RTC (Branch 140) Makati City in lieu of Judge Tuason, Jr. because of the administrative case filed by him against respondent, docketed as A.M. OCA IPI No. 00-791-P.^[5]

After conducting the necessary investigation, Judge Morales submitted her Report dated May 26, 2002. She found respondent guilty of Grave Abuse of Authority and Grave Misconduct. She pointed out that respondent evidently treated an extra-judicial foreclosure based on mortgage and a foreclosure based on a pledge as similar, if not the same; that such error cannot be treated as insignificant since the law treats the two securities as different, and it was inexcusable negligence, if not gross ignorance of the law on the part of the respondent to ignore such statutory differences. Judge Morales added that even the foreclosure proceeding adopted by the respondent was invalid inasmuch as the Certification of the Clerk of Court VII affirmed the non-existence of the foreclosure, the filing and recording, as well as payment of the necessary fees; and, that respondent in fact admitted his negligence as regards the payment of the necessary filing and docket fees. However, Judge Morales did not recommend a specific penalty to be meted out to the respondent.^[6]

In its Memorandum dated August 30, 2002, the Office of the Court Administrator (OCA) adopted the findings of the Investigating Judge and recommended to the Court the dismissal of respondent from the service.

The Court agrees with the OCA.

Respondent claims that he conducted a valid foreclosure on the vessel M/V Angela Ceferina as supported by an Affidavit of Publication,^[7] Certificate of Posting^[8] and Certificate of Sale.^[9] However, a close scrutiny of the extant evidence reveals otherwise.

The procedure for foreclosure of a pledge is set forth under Article 2112 of the Civil Code, to wit:

"Art. 2112. The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor

may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.” (Underscoring supplied)

Although it is only on February 12, 2001 that the Court in A.M. No. 01-1-01-0 clarified that the procedure in the foreclosure of pledge before a notary public does not require the submission of a petition for extra-judicial foreclosure before the Executive Judge of the appropriate Regional Trial Court, through the Clerk of Court/Ex-Officio Sheriff, it is expressly provided for in Article 2112, as above-quoted, that only a notary public can conduct a public auction after proper notice is sent to the debtor and owner of the thing pledged.

The fault of respondent could have been regarded as simple ignorance of the proper procedure or an error of judgment on his part but respondent sheriff betrayed himself and confirmed the charges against him when he testified during the investigation conducted by the Investigating Judge:

“Q- As a Sheriff, you know that in pledges, only the Notary Public can conduct foreclosure, not the Sheriff?

“A- What I know, I can.

“Q - In this case, you conducted this alleged foreclosure and auction sale concerning the vessel mortgaged under R.A. - (interrupted)

“A- Pledge Contract.

“Q- How long have you been a Sheriff?

“A- Nine (9) to ten (10) years.

“Q- So, you can distinguish between Pledge and Chattel mortgage?

“A- Yes.

“Q.- You know that in Pledges, only lawyers can conduct the foreclosure?

“A- As far as I know, I can also conduct foreclosure.

“Q.- In this case, you issued a Certificate of Sale on the same day, July 9, 1998, allegedly on the same day when the auction sale was made?

“A- Auction sale was in the morning.

“Q- So, you issued the certificate of Sale even knowing that there was no docket fees paid?

“A- That’s why I issued the certificate of Sale and told them to pay the required fees.

"Q- So, what you did, you first issued the Certificate of Sale and you told them to pay the legal fees?

"A- Yes.

"Q- When you issued the Certificate of Sale, the Certificate of Sale was not signed by Engracio Escasinas, Jr.?

"A- Yes.

"Q- And he has not even seen that Certificate of Sale?

"A- Yes.

"Q.- Nor the Certificate of Sale was even forwarded to the Office of the Clerk of Court?

"A- Yes, sir. I told when they should pay - (interrupted)

"Q- No, no, no. My question is, this Certificate of Sale was not even forwarded to the Office of the Clerk of Court?

"A- Yes.

"ATTY. SIRUELO:
That will be all.

"COURT:

"Q- As a matter of procedure, do you not forward the sale to the Clerk of Court?

"A- I told them, ma'am, to go to the Office of the Clerk of Court to pay considering that the Certificate of Sale will be registered.

"Q- As a Sheriff, is it not your duty to bring the Certificate of Sale there to be noted by Atty. Engracio Escasinas, Jr.?

"A- It's my fault, ma'am. I forgot to do it because of other tasks.^[10]

In claiming that he followed the procedure required in the foreclosure of a chattel mortgage, and in admitting before the Investigating Judge that he is well-aware that the proper requirement of law is that a petition for foreclosure of mortgage, real estate or chattel, must be filed first with the Clerk of Court before foreclosure or auction may commence,^[11] he sealed his fate. This is because the records lay bare the following facts:

1. Respondent totally ignored the specific reference in paragraph 4 of the Pledge Agreement^[12] that Article 2112 of the Civil Code is the applicable law.

2. No petition for foreclosure of chattel mortgage was ever filed before the Clerk of Court.^[13] Despite the lack of petition, respondent proceeded with the auction sale.
3. The prescribed filing and commission on sale fees were not paid^[14] yet respondent signed the certificate of sale merely because he trusted that Tepace will pay the fees. The explanation of respondent that: "it's only on my good faith and that's only my procedure because others usually pay"^[15], is absolutely weak and completely absurd.
4. The certificate of sale was not even forwarded to the Office of the Clerk of Court, and bears only the signature of respondent. ^[16]
5. When the Investigating Judge inquired why he did not recall the certification since no fees were paid, respondent replied that he simply forgot the transaction.^[17] Forgetfulness or failure to remember is never a rational or acceptable explanation.^[18]
6. Respondent failed to controvert the amounts received by him totalling One Hundred Sixty-Five Thousand Pesos (P165,000.00), as shown by the unofficial receipt issued and signed by him, to wit:

"PETITION FOR PUBLIC AUCTION
PARTIAL RECEIPT

1.	PUBLICATION	P	20,000.00
2.	POSTING	P	5,000.00
3.	NOTARIAL FEES	P	35,000.00
4.	JUDICIAL FUNDS	P	70,000.00
5.	SHERIFF'S FEES	P	35,000.00

RECEIVED the described amount from Mr. & Mrs. Uy for the implementation of the Extra-Judicial Foreclosure of M/V Ceferina."^[19]

Respondent and his counsel, Atty. Salvador D. Abong, did not appear in the subsequent investigation despite being fully notified and given the opportunity to explain on the amounts received. When the Investigating Judge required Process Server Aldwin Atilon to call respondent, the latter refused to come. Respondent instead told Atilon that the case should be submitted for resolution because he does not intend to present additional evidence other than the ones previously submitted and those admitted by him during the investigation.^[20]

Per Certification of the Clerk of Court, respondent did not remit said amounts nor did he secure the approval of the court.

Evidently, respondent grievously failed to comply with the requirements of Rule 141 of the Rules of Court, as follows:

"SEC. 3. *Persons authorized to collect legal fees.* - Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and