

THIRD DIVISION

[A.M. No. P-02-1568 (Formerly OCA I.P.I. No. 00-1015-P), April 25, 2002]

CRISTE A. TA-OCTA, COMPLAINANT, VS. SHERIFF IV WINSTON T. EGUIA, SHERIFF IV EDWIN G. TORRES, REGIONAL TRIAL COURT, ILOILO CITY, BRANCH 26 AND BRANCH 38, RESPECTIVELY, RESPONDENTS.

DECISION

VITUG, J.:

In a complaint, dated 20 March 2000, filed with the Office of the Executive Judge of the Regional Trial Court ("RTC") of Iloilo City, Criste Ta-Octa charged respondent sheriffs Winston Eguia and Edwin Torres with grave abuse of authority in connection with a petition for foreclosure of chattel mortgage instituted by AC (Iloilo) Lenders, Inc., against complainant Ta-Octa for the latter's failure to comply with the conditions of the Chattel Mortgage and Promissory Note he had executed on 02 July 1999. The chattel mortgage covered a one (1) unit motor vehicle, viz:

Make	:	FUSO
Type	:	Fighter Tanker
Motor NO.	:	6D14-563562
Serial No.	:	FK335J-530111
Plate No.	:	FEA-691

Complainant claimed that the petition for foreclosure of chattel mortgage had been served by respondent sheriffs on the same day it was filed with the Office of Provincial/City Sheriff of Iloilo, without any raffle being first conducted and sans the approval of the trial court. He asserted that no notice or demand from either AC (Iloilo) Lenders, Inc., or respondents had been made before possession of the motor vehicle was taken away from him nor did respondents issue any receipt on the accessories of the vehicle. Complainant said that respondents, after taking possession of the subject vehicle, hid it instead of having it parked at the grounds of the Hall of Justice. Complainant added that respondents had made erasures on the entry in the foreclosure book at the Office of the Sheriff when the petition for foreclosure of mortgage was filed and recorded.

Executive Judge Tito A. Gustilo required respondents to submit their respective answers to the complaint.

In their joint comment, respondents averred that they had complied with the procedure for extrajudicial foreclosures of mortgages. The petition was filed and docketed, and the filing fees were duly paid with the Office of the Clerk of Court. Respondents, however, admitted that the petition was immediately served, without a raffle having first been conducted because of the fear, entertained by AC Lenders,

Inc., that complainant might abscond. In fact, respondents already found the subject vehicle at the house of a relative of complainant. Respondents were informed that complainant had pending criminal cases before the municipal trial courts for violation of Batas Pambansa Blg. 22. Respondents denied having made erasures on the entries in the foreclosure book and, by way of substantiating the denial, submitted the affidavits of Josephine Marie Lagura and Jonalyn Gasataya, employees both assigned at the Office of the Clerk of Court ("OCC") of the Regional Trial Court of Iloilo City and tasked with receiving, docketing and updating the entries in the Sheriff and Notary Public Foreclosure cases filed before the OCC. In her affidavit, Josephine Lagura attested that on 22 February 2000 (the date when petition was filed), the Rural Bank of Guimbal, through its counsel, had filed notarial foreclosure incidents which she erroneously docketed in the Sheriff's Foreclosure Book, and the mistake was only discovered when Atty. Gerry Sumaculub, Assistant Clerk of Court, reviewed the book. She claimed that the erasures and erroneous entries were done in good faith. Jonalyn Gasataya, in her affidavit, corroborated the statements of Josephine.

The Executive Judge conducted an investigation pursuant to Administrative Order No. 6, dated 30 June 1975.^[1] In his report of 13 October 2000, Judge Gustilo stated that -

"After a thorough reading and evaluation of the evidence both oral and documentary submitted by the complainant and the respondents the undersigned Executive Judge finds respondents Sheriff Winston T. Eguia and Edwin G. Torres, of RTC, Branch 26 and Branch 38, respectively, Guilty for violation of Administrative Circular No. 3-98, dated February 5, 1998, and Administrative Order No. 3, dated October 9, 1984, which mandates the raffling of extra-judicial foreclosure of mortgage shall be strictly enforced by the Executive Judge among the deputy sheriffs in order to avoid an unequal distribution of cases and fraternization between sheriffs and the applicant mortgagee."

The Investigating Judge recommended that the penalty of one month suspension, without pay, be imposed on respondents.

The Office of the Court Administrator, in its memorandum of 02 March 2001, adopted *in toto* the findings and recommendation of the Investigating Judge.

The Court sees the findings of the Investigating Judge and the Office of the Court Administrator to be well-taken but finds the recommended penalty of suspension, given the circumstances, a bit too harsh.

A.M. No. 99-10-05-0, issued by the Court En Banc on 07 August 2001 and made effective on 01 September 2001, provides for the procedure in the extra-judicial foreclosure of mortgage, thusly:

"1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Officio Sheriff.