



Republic of the Philippines  
**Supreme Court**  
 Manila

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**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

AUG 10 2018

**THIRD DIVISION**

**THE OFFICE OF THE COURT  
 ADMINISTRATOR,**

Complainant,

- versus -

**HON. SELMA P. ALARAS,  
 PRESIDING JUDGE, BRANCH  
 62, REGIONAL TRIAL COURT,  
 MAKATI CITY,**

Respondent.

**A.M. No. RTJ-16-2484**

Present:

VELASCO, JR., J., *Chairperson*,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GESMUNDO, JJ.

Promulgated:

July 23, 2018

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**DECISION**

**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<sup>1</sup> 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*.<sup>2</sup>

<sup>1</sup> *Rollo*, pp. 5-11.  
<sup>2</sup> *Id.* at 12.

On May 30, 2013, the Office of the Bar Confidant indorsed the *Affidavit-Complaint* to the Office of the Court Administrator (OCA).<sup>3</sup>

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.

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<sup>3</sup> Id. at 1.

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 EJF 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.<sup>4</sup>

On November 23, 2015, upon the recommendation of the Office of the Court Administrator (OCA),<sup>5</sup> 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.<sup>6</sup>

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<sup>4</sup> Id. at 303-306.

<sup>5</sup> Id. at 303-308.

<sup>6</sup> Id. at 309-310.

In her Comment,<sup>7</sup> Judge Alaras explained that both her November 13, 2012 Order<sup>8</sup> and the ensuing Writ of Temporary Restraining Order (TRO)<sup>9</sup> plainly indicated that the TRO was valid and effective only for 20 days;<sup>10</sup> 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;<sup>11</sup> 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;<sup>12</sup> 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."<sup>13</sup>

In its Report dated October 19, 2016,<sup>14</sup> the OCA found Judge Alaras guilty of gross ignorance of the law, and recommended her to be fined in the amount of ₱10,000.00, 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 respondent Judge's impartiality and eventually, undermine the people's faith in the administration of justice. Judges must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.

x x x x

In the instant case, it was unnecessary to add in the order and in the TRO the phrase "*until further orders from this court*". By doing so, it caused confusion as to the duration of the TRO. It would appear that the Judge Alaras arrogated unto herself the power to extend the life of the TRO after the lapse of the twenty (20)-day period, the TRO automatically terminates without need of any action from the court and having no discretion to extend the same.

However, it does not appear that the issuance of the order and the TRO was motivated by bad faith. Bad faith does not simply denote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud.

<sup>7</sup> Id. at 311-317

<sup>8</sup> Id. at 318-320.

<sup>9</sup> Id. at 321.

<sup>10</sup> Id. at 314.

<sup>11</sup> Id. at 315.

<sup>12</sup> Id.

<sup>13</sup> Id. at 316.

<sup>14</sup> Id. at 325-329.

It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

Judge Alaras' non-observance of the basic procedural requirement in issuing a TRO amounts to gross ignorance of the law or procedure. Since there is no showing that she was motivated by bad faith in rendering the assailed order and TRO and this is her first offense, a fine of Php10,000.00 is sufficient.<sup>15</sup>

In its resolution dated December 5, 2016,<sup>16</sup> the Court resolved to re-docket the case as a regular administrative matter against Judge Alaras.

### **Ruling of the Court**

The recommendation to sanction Judge Alaras is unacceptable.

Gross ignorance of the law is undoubtedly a serious offense. By their training and education in the law, present-day judges are expected to be fully conversant with the basics of the law they are enforcing and implementing. They can do so only if they adhere to the procedures set by the relevant rules enunciated by the Court to guide them in the daily endeavor to ensure a smooth, effective and efficient administration of justice. Their adherence must be with care and circumspection, and they should not take any direction that is too far from the paths carefully mapped out by the *Rules of Court*.

The concept of gross ignorance of the law as an offense for judges has been expounded in *Department of Justice v. Misleng*,<sup>17</sup> viz.:

**Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.** Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Misleng. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. **A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends**

<sup>15</sup> Id. at 327-329.

<sup>16</sup> Id. at 330.

<sup>17</sup> A.M. No. RTJ-14-2369 (formerly OCA I.P.I. No. 12-3907-RTJ), July 26, 2016, 798 SCRA 225, 234-235.

**this presumption and subjects the magistrate to corresponding administrative sanctions.**

**For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.** Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order. (Emphasis supplied.)

Did the respondent Judge traverse the standards defined by the Court as to be liable for gross ignorance of the law?

We rule that Judge Alaras did not.

Judge Alaras issued the TRO to be effective “within a period of twenty (20) days from date hereof or until further orders from this Court.” The tenor of the TRO obviously confined its effectivity to the 20-day period provided under Section 5, Rule 58 of the *Rules of Court*. Given the circumstances, the additional phrase “*until further orders from this Court*” was an obvious surplusage and clearly unnecessary. Hence, the TRO cannot be regarded as grossly erroneous. We should consider the phrase a mere oversight on the part of Judge Alaras in light of her setting the application for the writ of preliminary injunction for hearing immediately upon her issuance of the TRO. Such hearing negated the notion that she intended the TRO to be effective for an indefinite period.

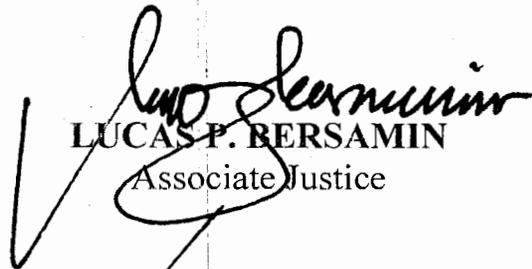
The assailed TRO issued by Judge Alaras could not be equated with the TRO issued by Judge Gorgonio Ybañez that was held to be wrongfully issued in *Pahila-Garrido v. Tortogo*,<sup>18</sup> a ruling cited by the OCA in its Report. The TRO of Judge Ybañez expressly stated its effectivity to be until

<sup>18</sup> G.R. No. 156358, August 17, 2011, 655 SCRA 553, 557.

further orders of the court, and did not mention the 20-day limiting period imposed by the *Rules of Court*. Also, the party enjoined by the TRO issued by Judge Ybañez sought a clarificatory order as to the period of effectivity. In contrast, the party affected by Judge Alaras' did not seek any clarification, denoting that such party understood the extent of the effectivity of the TRO. Moreover, the TRO issued by Judge Alaras was not shown to have been issued in bad faith.

**WHEREFORE**, the Court **DISMISSES** the complaint for gross ignorance of the law against respondent **JUDGE SELMA P. ALARAS**, Presiding Judge of the Regional Trial Court, Branch 62, in Makati City for its lack of merit.

**SO ORDERED.**

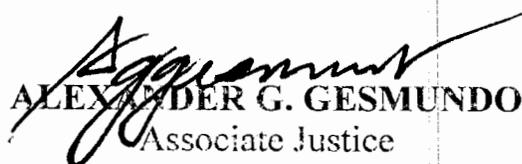
  
LUCAS P. BERSAMIN  
Associate Justice

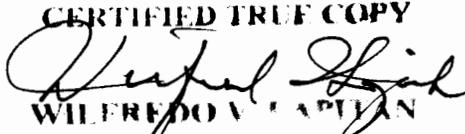
**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
MARVIC M.V.F. LEONEN  
Associate Justice

  
SAMUEL R. MARTINEZ  
Associate Justice

  
ALEXANDER G. GESMUNDO  
Associate Justice

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