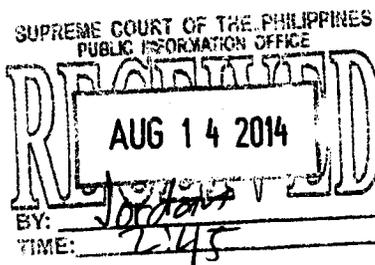




Republic of the Philippines  
Supreme Court  
Manila

EN BANC

NOTICE



Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated AUGUST 5, 2014, which reads as follows:*

**“A.M. No. RTJ-14-2379 (Office of the Court Administrator vs. Executive Judge Hermogenes C. Fernandez, RTC, San Carlos City, Pangasinan, Emmanuel D. Austria, Sheriff IV, and Angelito Dixon Dispo, Clerk III, Office of the Clerk of Court, RTC, San Carlos City, Pangasinan).** – On July 26, 2011, Auburn Power Technologies, Inc. (APTI) filed before the Regional Trial Court (RTC), San Carlos City, Pangasinan a petition<sup>1</sup> for extrajudicial foreclosure sale docketed as Spec. Proc. Case No. SCC-F-2011-49, involving a mortgaged property denominated as Lot No. 17 of the Cadastral Survey of Bayambang and described in the title as situated in “the *Barrio* of Poponto, Municipality of Bayambang, Province of Pangasinan.”<sup>2</sup>

Considering that the application for extrajudicial foreclosure alleged, and the title showed, that the property is located in Bayambang, which is within the territorial jurisdiction of the RTC of San Carlos City, the filing fees were duly assessed and collected by Atty. Alejandra P. Paningbatan (Atty. Paningbatan), Clerk of Court (CoC) VI, Office of the Clerk of Court (OCC) of the RTC, San Carlos City, Pangasinan.

On September 13, 2011, the extrajudicial foreclosure sale was raffled to Sheriff Emmanuel D. Austria (Sheriff Austria). When Sheriff Austria, however, was complying with the requirement of posting the notice of extrajudicial sale, he found out that *Barangay* Poponto is no longer part of the Municipality of Bayambang but of the Municipality of Bautista, which is within the territorial jurisdiction of the RTC of Villasis, Pangasinan. Immediately, Sheriff Austria reported this matter to Atty. Paningbatan in a letter dated October 7, 2011.<sup>3</sup> After seeking clearance from respondent Executive Judge Hermogenes C. Fernandez (Judge Fernandez), Atty. Paningbatan acted on Sheriff Austria’s report by indorsing Spec. Proc. Case

<sup>1</sup> *Rollo*, pp. 10-12.  
<sup>2</sup> *Id.* at 19.  
<sup>3</sup> *Id.* at 25.

No. SCC-F-2011-49 to the CoC and Ex-Officio Provincial Sheriff, OCC of the RTC, Villasis, Pangasinan.<sup>4</sup>

On December 9, 2011, Dr. Rafael M. Valdez (Dr. Valdez), President and Chief Technology Officer of APTI, wrote to respondent Judge Fernandez requesting the refund of the filing fees paid to the OCC of the RTC, San Carlos City since the records of the extrajudicial foreclosure sale were transmitted to the RTC of Villasis. Dr. Valdez also sought the refund of the cost of publication.<sup>5</sup>

In response, respondent Judge Fernandez directed Atty. Paningbatan to comment on the December 9, 2011 letter of Dr. Valdez. The comment was indorsed by respondent Judge Fernandez on December 15, 2011 to Court Administrator Jose Midas P. Marquez, through Deputy Court Administrator Raul B. Villanueva (DCA Villanueva), Office of the Court Administrator (OCA) with the request for guidance and/or appropriate action.<sup>6</sup>

In a letter<sup>7</sup> dated February 24, 2012, DCA Villanueva required respondent Judge Fernandez to submit information on the circumstances surrounding the inclusion of *Barangay* Poponto in the Municipality of Bautista as well as the court orders issued relative to Spec. Proc. Case No. SCC-F-2011-49.

In compliance with the letter of DCA Villanueva, respondent Judge Fernandez directed Atty. Paningbatan to gather the required information. In a report<sup>8</sup> dated June 21, 2012, Sheriff Austria apprised Atty. Paningbatan of the fact that the Certification he obtained from the Department of Interior and Local Government (DILG) Office in Bautista, Pangasinan,<sup>9</sup> the print out of the brief description/history of *Barangay* Poponto<sup>10</sup> and the Certification issued by the Municipal Planning and Development Coordinator of the Municipality of Bautista<sup>11</sup> yielded no specific/reliable data as to how and when *Barangay* Poponto became part of the Municipality of Bautista. On July 2, 2012, respondent Judge Fernandez conveyed the foregoing findings to the Office of DCA Villanueva.<sup>12</sup>

In the Resolution<sup>13</sup> dated April 2, 2013 in A.M. No. 13-3-51-RTC (*Re: Request for Refund of Filing Fees Paid to the RTC, OCC, San Carlos City, Pangasinan in Spec. Proc. Case No. SCC-F-2011-49*), the Court

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<sup>4</sup> Id. at 24.

<sup>5</sup> Id. at 7.

<sup>6</sup> Id. at 6.

<sup>7</sup> Id. at 26.

<sup>8</sup> Id. at 30.

<sup>9</sup> Id. at 31.

<sup>10</sup> Id. at 32.

<sup>11</sup> Id. at 33.

<sup>12</sup> Id. at 28.

<sup>13</sup> Id. at 34.



denied Dr. Valdez' request for refund for being contrary to OCA Circular No. 95-2010.<sup>14</sup> Moreover, the Resolution also required, among others, respondent Judge Fernandez to explain why he should not be administratively charged with improper conduct for authorizing the transfer of Spec. Proc. Case No. SCC-F-2011-49 to the RTC of Villasis, Pangasinan without authority from this Court.

Respondent Judge Fernandez filed his Explanation<sup>15</sup> dated May 15, 2013 claiming that he authorized the transfer of the case to the RTC of Villasis in utmost good faith for the purpose of calling the attention of said court to its jurisdiction over the case, after *Barangay* Poponto was found out to form part of the Municipality of Bautista.

In a Resolution<sup>16</sup> dated February 18, 2014, the Court resolved to re-docket this matter as a regular administrative complaint against respondent Judge Fernandez as A.M. No. RTJ-14-2379 and ordered the transmittal of the records of this case to the Presiding Justice of the Court of Appeals, for raffle among the Associate Justices thereat for investigation, report, and recommendation. After raffle, the case was assigned to Associate Justice Rebecca De Guia-Salvador (Justice De Guia-Salvador).

In her report and recommendation, Justice De Guia-Salvador did not find sufficient basis to sustain the charge of gross ignorance of the law and/or improper conduct. If at all, she recommended that respondent judge be admonished to be more circumspect in the performance of his official duties and responsibilities.

The Court agrees with the recommendation of Justice De-Guia Salvador to dismiss the complaint for gross ignorance of the law and/or improper conduct against respondent Judge Fernandez. The Court, however, does not find basis to admonish respondent Judge Fernandez in connection with his performance of his official duties.

Act No. 3135 otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages" is the governing law on extrajudicial foreclosure sales of real estate mortgages. Section 2 of the Act states the rule on venue in extrajudicial foreclosure sales, *viz*:

**Sec. 2. Said sale cannot be made legally outside of 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 subject to stipulation, such sale shall be made in said place or in the municipal building of the**

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<sup>14</sup> Re: Prohibition on the Substitution of Payment of Docket Fees from One Court Station to Another.

<sup>15</sup> *Rollo*, pp. 45-50.

<sup>16</sup> *Id.* at 91.

municipality in which the property or part thereof is situated. (Emphasis ours)

Also, this Court issued A.M. No. 99-10-05-0<sup>17</sup> as amended, which provides the procedure to be followed in extrajudicial foreclosure of mortgage. The rule, however, does not provide remedies in case the venue is improperly laid in petitions for extrajudicial foreclosure.

Here, the real property subject of the sale, which was initially determined to be situated in the Municipality of Bayambang, was later discovered to be situated in the Municipality of Bautista. Thus, by express provision of Section 2 of Act. No. 3135, the sale cannot be made outside of the Municipality of Bautista.

As such, after requiring Atty. Paningbatan to procure information to authenticate the fact that *Barangay* Poponto is, indeed, not part of the Municipality of Bayambang, respondent Judge Fernandez indorsed the records of Spec. Proc. Case No. SCC-F-2011-49 to the RTC of Villasis which has territorial jurisdiction over the subject property.

As a rule, transfer of venue of cases is governed by Section 5 paragraph 4, Article VIII of the 1987 Constitution which provides:

“Sec. 5. The Supreme Court shall have the following powers:

x x x x

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.”

Further, OCA Circular No. 36-97<sup>18</sup> which provides for the reorganization and strengthening of the OCA, directs the Legal Office of the OCA to take appropriate action on applications for transfer of venue of cases.

However, as pointed out by respondent Judge Fernandez, this Court held in the case of *Supena v. De la Rosa*<sup>19</sup> that petitions for extrajudicial foreclosure sale are, strictly speaking, not judicial proceedings, actions or suits. The Court ruled that:

It is clear that the determinative or operative fact which converts a claim into an “action or suit” is the filing of the same with a “court of justice.” Filed elsewhere, as with some other body or office not a court of justice, the claim may not be categorized under either term. Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a

<sup>17</sup> Procedure in Extra-Judicial Foreclosure of Mortgage, as amended by Resolutions dated January 30, 2001 and August 7, 2001.

<sup>18</sup> Reorganization and Strengthening of the Office of the Court Administrator.

<sup>19</sup> 334 Phil. 671 (1997).

petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the category of a court of justice. **And as aptly observed by the complainant, if ever the executive judge comes into the picture, it is only because he exercises administrative supervision over the sheriff. But this administrative supervision, however, does not change the fact that extrajudicial foreclosures are not judicial proceedings, actions or suits.**<sup>20</sup> (Emphasis ours)

As such, this Court finds no error on the part of respondent Judge Fernandez in indorsing Spec. Proc. Case No. SCC-F-2011-49 to the RTC of Villasis. In the absence of a specific rule or procedure in case of improperly laid venue of petitions for extrajudicial foreclosure sales, respondent Judge Fernandez merely enforced the rule that the extrajudicial foreclosure sale cannot be made legally outside of the place in which the property sold is situated.

Even granting that respondent Judge Fernandez erred in transferring the foreclosure sale, he could not be held administratively liable considering that there is no proof that such error was tainted with bias or partiality, fraud, dishonesty, bad faith, deliberate intent to do an injustice, or gross ignorance. To merit disciplinary action, the error or mistake must be gross or patent, malicious, deliberate or in bad faith.<sup>21</sup>

As a matter of policy, in the absence of fraud, dishonesty and corruption, the acts of a judge in his official capacity are not subject to disciplinary action.<sup>22</sup> Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.<sup>23</sup>

Misconduct is defined as any lawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause.<sup>24</sup> To justify the taking of disciplinary action, the judicial act complained of should be corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.<sup>25</sup> On the other hand, to constitute gross ignorance of the law, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty or corruption or had committed an error so egregious that it amounted to bad faith.<sup>26</sup>

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<sup>20</sup> Id. at 677-678.

<sup>21</sup> *Maylas, Jr. v. Judge Sese*, 529 Phil. 594, 599 (2006).

<sup>22</sup> *Salvador v. Judge Limsiaco, Jr.*, A.M. No. MTJ-06-1626, March 17, 2006, 485 SCRA 1, 5.

<sup>23</sup> *Balsamo v. Judge Suan*, A.M. No. RTJ-01-1656, September 17, 2003, 411 SCRA 189, 200.

<sup>24</sup> *SPO2 Yap v. Judge Inopiquez, Jr.*, 451 Phil. 182, 194 (2003).

<sup>25</sup> *Secretary of Justice v. Bullecer*, 155 Phil. 26, 31 (1974).

<sup>26</sup> *Antonio M. Lorenzana v. Judge Cecilia I. Austria, RTC, Br. 2, Batangas City*, A.M. No. RTJ-09-2200, April 2, 2014.

August 5, 2014

Although APTI was prejudiced by the denial of its request for refund of filing fees, the same cannot be attributed to respondent Judge Fernandez. Records of the case show that, since the petition filed by APTI together with the Deed of Real Estate Mortgage and Original Certificate of Title No. 17851, described the property as situated in *Barangay* Poponto, Bayambang, Pangasinan, Atty. Paningbatan docketed the same and collected the required filing fees. Upon discovery, however, that the same was not actually part of the Municipality of Bayambang but instead, the Municipality of Bautista, respondent Judge Fernandez indorsed the same to the RTC of Villasis. Clearly, respondent Judge Fernandez merely exercised his sound judgment after learning that the technical description of the subject parcel of land, which was claimed by APTI in its petition, was erroneously described as part of the Municipality of Bayambang.

Absent any showing that respondent Judge Fernandez was motivated by bad faith or ill motives in transferring the foreclosure sale, the charges of gross ignorance of the law and/or improper conduct against him must be dismissed.

**WHEREFORE**, premises considered, the administrative complaint against respondent Executive Judge Hermogenes C. Fernandez is **DISMISSED** for lack of merit." Sereno, C.J., on leave. (adv52)

Very truly yours,

  
ENRIQUETA E. VIDAL  
Clerk of Court

- Ours -

Court Administrator  
Hon. Jose Midas P. Marquez (x)

Deputy Court Administrators  
Hon. Raul B. Villanueva (x)  
Hon. Jenny Lind R. Aldecoa-Delorino (x)  
Hon. Thelma C. Bahia (x)

Supreme Court

Atty. Caridad A. Pabello (x)  
Chief, Office of Administrative Services

Atty. Lilian Barribal-Co (x)  
Chief, Financial Management Office

Atty. Marina B. Ching (x)  
Chief, Court Management Office

Atty. Wilhelmina D. Geronga (x)  
Chief, Legal Office  
OCA, Supreme Court

Judicial & Bar Council  
Hon. Aurora Santiago Lagman (x).  
Hon. Jose V. Mejia (x)  
Hon. Ma. Milagros N. Fernan-Cayosa (x)

JBC Secretariat (x)

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Supreme Court  
**[FOR UPLOADING PURSUANT TO A.M. No. 12-7-1-SC]**

**A. M. No. RTJ-14-2379**  
fam 8/5/14 [adv52] SR

Hon. Andres B. Reyes, Jr. (x)  
Presiding Justice  
Associate Justice Rebecca De Guia-Salvador (x)  
Court of Appeals, Manila

Executive Judge Hermogenes C. Fernandez (reg)  
Clerk of Court VI Alejandra Paningbatan (reg)  
Sheriff IV Emmanuel D. Austria (reg)  
Clerk III Angelito Dixon C. Dispo (reg)  
Office of the Clerk of Court  
Regional Trial Court, San Carlos City  
Pangasinan

The Executive Judge (reg)  
Office of the Executive Judge  
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