

THIRD DIVISION

[G.R. No. 173976, February 27, 2009]

**METROPOLITAN BANK AND TRUST COMPANY, INC., PETITIONER,
VS. EUGENIO PEÑAFIEL, FOR HIMSELF AND AS ATTORNEY-IN-
FACT OF ERLINDA PEÑAFIEL, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) dated July 29, 2005 and Resolution dated July 31, 2006. The assailed decision nullified the extrajudicial foreclosure sale of respondents' properties because the notice of sale was published in a newspaper not of general circulation in the place where the properties were located.

Respondent Erlinda Peñafiel and the late Romeo Peñafiel are the registered owners of two parcels of land covered by Transfer Certificate of Title (TCT) No. (350937) 6195 and TCT No. 0085, both issued by the Register of Deeds of Mandaluyong City. On August 1, 1991, the Peñafiel spouses mortgaged their properties in favor of petitioner Metropolitan Bank and Trust Company, Inc. The mortgage deed was amended on various dates as the amount of the loan covered by said deed was increased.

The spouses defaulted in the payment of their loan obligation. On July 14, 1999, petitioner instituted an extrajudicial foreclosure proceeding under Act No. 3135 through Diego A. Alleña, Jr., a notary public. Respondent Erlinda Peñafiel received the Notice of Sale, stating that the public auction was to be held on September 7, 1999 at ten o'clock in the morning, at the main entrance of the City Hall of Mandaluyong City. The Notice of Sale was published in *Maharlika Pilipinas* on August 5, 12 and 19, 1999, as attested to by its publisher in his Affidavit of Publication.^[2] Copies of the said notice were also posted in three conspicuous places in Mandaluyong City.^[3]

At the auction sale, petitioner emerged as the sole and highest bidder. The subject lots were sold to petitioner for P6,144,000.00. A certificate of sale^[4] was subsequently issued in its favor.

On August 8, 2000, respondent Erlinda Peñafiel, through her attorney-in-fact, Eugenio Peñafiel, filed a Complaint^[5] praying that the extrajudicial foreclosure of the properties be declared null and void. They likewise sought (a) to enjoin petitioner and the Register of Deeds from consolidating ownership, (b) to enjoin petitioner from taking possession of the properties, and (c) to be paid attorney's fees.

On June 30, 2003, the Regional Trial Court (RTC) rendered judgment in favor of petitioner:

ACCORDINGLY, judgment is hereby rendered as follows:

1. The extrajudicial foreclosure of real estate mortgage instituted by defendants Metrobank and Notary Public Diego A. Alleña, Jr. over the two parcels of land covered by TCT Nos. (350937) 6195 and TCT No. 0085 is hereby declared VALID; and
2. The counterclaim of herein defendants are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.^[6]

Respondents appealed to the CA, raising, among others, the issue of whether petitioner complied with the publication requirement for an extrajudicial foreclosure sale under Act No. 3135.

On this issue, the CA agreed with respondents. The CA noted that the law requires that publication be made in a newspaper of general circulation in the municipality or city where the property is situated. Based on the testimony of the publisher of *Maharlika Pilipinas*, it concluded that petitioner did not comply with this requirement, since the newspaper was not circulated in Mandaluyong City where the subject properties were located. Thus, in its Decision dated July 29, 2005, the CA reversed the RTC Decision, thus:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. A new one is hereby entered declaring the extrajudicial foreclosure sale of the properties covered by TCT Nos. (350937) 6195 and 0085 NULL and VOID.

SO ORDERED.^[7]

Petitioner filed a motion for reconsideration^[8] of the decision which the CA denied on July 31, 2006.

Petitioner now brings before us this petition for review on *certiorari*, raising the following issues:

- I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED TO APPLY THE PROVISIONS ON THE PUBLICATION OF JUDICIAL NOTICES UNDER SECTION 1 OF P.D. NO. 1079 TO THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE BY NOTARY PUBLIC OVER THE PROPERTIES COVERED BY TCT NO. (350927) 6195 AND TCT NO. 0085.
- II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT "MAHARLIKA PILIPINAS" IS NOT A NEWSPAPER OF GENERAL CIRCULATION IN MANDALUYONG CITY.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED AND SET ASIDE THE DECISION DATED JUNE 30, 2003 ISSUED BY THE REGIONAL TRIAL COURT OF MANDALUYONG CITY, BRANCH 208 AND DECLARED THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES COVERED BY TCT NO. (350937) 6195 AND TCT NO. 0085 NULL AND VOID.^[9]

This controversy boils down to one simple issue: whether or not petitioner complied with the publication requirement under Section 3, Act No. 3135, which provides:

SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, **such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.**^[10]

We hold in the negative.

Petitioner insists that *Maharlika Pilipinas* is a newspaper of general circulation since it is published for the dissemination of local news and general information, it has a *bona fide* subscription list of paying subscribers, and it is published at regular intervals. It asserts that the publisher's Affidavit of Publication attesting that *Maharlika Pilipinas* is a newspaper of general circulation is sufficient evidence of such fact.^[11] Further, the absence of subscribers in Mandaluyong City does not necessarily mean that *Maharlika Pilipinas* is not circulated therein; on the contrary, as testified to by its publisher, the said newspaper is in fact offered to persons other than its subscribers. Petitioner stresses that the publisher's statement that *Maharlika Pilipinas* is also circulated in Rizal and Cavite was in response to the question as to where else the newspaper was circulated; hence, such testimony does not conclusively show that it is not circulated in Mandaluyong City.^[12]

Petitioner entreats the Court to consider the fact that, in an Order^[13] dated April 27, 1998, the Executive Judge of the RTC of Mandaluyong City approved the application for accreditation of *Maharlika Pilipinas* as one of the newspapers authorized to participate in the raffle of judicial notices/orders effective March 2, 1998. Nonetheless, petitioner admits that this was raised for the first time only in its Motion for Reconsideration with the CA.^[14]

The accreditation of *Maharlika Pilipinas* by the Presiding Judge of the RTC is not decisive of whether it is a newspaper of general circulation in Mandaluyong City. This Court is not bound to adopt the Presiding Judge's determination, in connection with the said accreditation, that *Maharlika Pilipinas* is a newspaper of general circulation. The court before which a case is pending is bound to make a resolution of the issues based on the evidence on record.

To prove that *Maharlika Pilipinas* was not a newspaper of general circulation in Mandaluyong City, respondents presented the following documents: (a) Certification^[15] dated December 7, 2001 of Catherine de Leon Arce, Chief of the Business Permit and Licensing Office of Mandaluyong City, attesting that *Maharlika*

Pilipinas did not have a business permit in Mandaluyong City; and (b) List of Subscribers^[16] of *Maharlika Pilipinas* showing that there were no subscribers from Mandaluyong City.

In addition, respondents also presented Mr. Raymundo Alvarez, publisher of *Maharlika Pilipinas*, as a witness. During direct examination, Mr. Alvarez testified as follows:

Atty. Mendoza: And where is your principal place of business? Where you actually publish.
Witness: At No. 80-A St. Mary Avenue, Provident Village, Marikina City.

Atty. Mendoza: Do you have any other place where you actually publish *Maharlika Pilipinas*?
Witness: At No. 37 Ermin Garcia Street, Cubao, Quezon City.

Atty. Mendoza: And you have a mayor's permit to operate?
Witness: Yes.

Atty. Mendoza: From what city?
Witness: Originally, it was from Quezon City, but we did not change anymore our permit.

Atty. Mendoza: And for the year 1996, what city issued you a permit?
Witness: Quezon City.

Atty. Mendoza: What about this current year?
Witness: Still from Quezon City.

Atty. Mendoza: :So, you have no mayor's permit from Marikina City?
Witness: None, it's only our residence there.

Atty. Mendoza: What about for Mandaluyong City?
Witness: We have no office in Mandaluyong City.

Atty. Mendoza: Now, you said that you print and publish *Maharlika Pilipinas* in Marikina and Quezon City?
Witness: Yes.

Atty. Mendoza: Where else do you circulate your newspaper?
Witness: In Rizal and in Cavite.

Atty. Mendoza: :In the subpoena[,] you were ordered to bring the list of subscribers.
Witness: :Yes.