

THIRD DIVISION

[G.R. No. 184252, September 11, 2009]

**CHINA BANKING CORPORATION, PETITIONER, VS. SPS.
WENCESLAO & MARCELINA MARTIR, RESPONDENTS.**

DECISION

Assailed is the November 28, 2007 Decision^[1] of the Court of Appeals in CA-G.R. CV No. 00477 which reversed the April 27, 2004 Decision^[2] of the Regional Trial Court of General Santos City, Branch 23; invalidated the foreclosure; and ordered the cancellation of the Certificate of Sale in favor of petitioner, China Banking Corporation. Also assailed is the August 6, 2008 Resolution^[3] which denied the motion for reconsideration.

In 1994, respondents, spouses Wenceslao and Marcelina Martir, executed real estate mortgages in favor of petitioner China Banking Corporation over three parcels of land described under TCT No. 50485, OCT No. (P-29452) (P-11287) P-1897, and OCT No. P-2754, as security for their credit line in the amount of P1,800,000.00.^[4] The loan was released in tranches, and for every amount released, respondents executed the corresponding promissory note.

On September 12, 1997, respondents failed to pay the monthly interests on the promissory notes, thus a demand letter dated October 8, 1997^[5] was sent reminding them of their obligation. Respondents still failed to pay; hence, the promissory notes and the credit line were no longer renewed by petitioner. A final demand letter dated December 29, 1997^[6] was sent through registered mail to respondents by petitioner's counsel. At that time, respondents' total obligation amounted to P1,705,000.00.

On May 20, 1998, upon the application of petitioner, the properties subject of the real estate mortgages were extrajudicially foreclosed and sold at public auction for P2,400,000.00 with petitioner as the sole bidder. A Certificate of Sale^[7] was issued in favor of petitioner on May 21, 1998, and registered with the Register of Deeds on June 6, 1998.

From March to May 1999, respondents sent series of letters^[8] to petitioner inquiring the amount of loan availed from the credit line, as well as the amount needed to redeem the foreclosed properties. Petitioner, however, failed to respond to the inquiry. In a letter dated May 11, 1999,^[9] respondents formally offered to pay the amount of P1,300,000.00 to petitioner. Said amount was based on petitioner's letter dated October 8, 1997 stating that the principal obligation amounts to P1,300,000.00.

On May 17, 1999, respondents filed a complaint for nullification of the foreclosure

proceedings^[10] alleging non-compliance with the jurisdictional requirements of publication, posting, registration, payment of filing fees and sheriff fees, and failure to report the extrajudicial foreclosure proceedings and sale to the Executive Judge. Respondents also imputed bad faith on the part of petitioner, which allegedly prevented them from redeeming their properties.

In a Decision dated April 27, 2004, the Regional Trial Court upheld the validity of the foreclosure proceedings, but stated that respondents' failure to redeem the properties was caused by petitioner. Hence, the trial court granted respondents the alternative remedy of redeeming the properties. The dispositive portion of the Decision reads:^[11]

WHEREFORE, considering that the case was filed in 1999, while the requirement for the payment of docket fees, as well as the registration fees required on the petition for foreclosure of mortgage per the Supreme Court Administrative Matter 99-10-05 regarding such procedure in extra-judicial foreclosure of mortgage took effect only on January 15, 2000, the foreclosure could not be invalidated even if there was non-compliance with the Court Administrative Matter 99-10-05. However, the expiration of the period to redeem being without the plaintiff having been able to do so, was caused by the defendant bank; therefore, the plaintiff is hereby granted the alternative remedy of redeeming the properties, in accordance with law and with the mortgage contract entered into by the parties.

SO ORDERED.

On appeal, the Court of Appeals reversed the decision of the trial court. It invalidated the foreclosure and ordered the cancellation of the registration of the Certificate of Sale in favor of petitioner. It also ordered respondents to pay petitioner their loans with interest, without prejudice to the right of petitioner to foreclose the real estate mortgage upon respondents' failure to pay their obligations. The dispositive portion of the November 28, 2007 Decision reads:^[12]

WHEREFORE, the appealed Decision of the Regional Trial Court of General Santos City, Branch 23 is REVERSED. The Register of Deeds of General Santos City is hereby ORDERED to cancel the registration of Certificate of Sale in favor of appellee Bank. Likewise, the appellants are ORDERED to pay the appellee Bank their loans with interest as stipulated in the contract of loan, without prejudice to the right of the appellee Bank to foreclose the real estate mortgage upon the appellants' failure to pay their obligations.

SO ORDERED.

Petitioner moved for reconsideration but was denied. Hence, the instant petition raising the following issues:^[13]

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT THE EXTRA-JUDICIAL FORECLOSURE SALE WAS VOID BASED ON THE GROUND THAT THE NEWSPAPER WHERE THE NOTICE OF AUCTION SALE WAS PUBLISHED WAS NOT AN "ACCREDITED NEWSPAPER," WHICH CONTENTION IS NOT A REQUIREMENT UNDER EXISTING LAWS AND JURISPRUDENCE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS RULING WHEN IT FAILED TO APPRECIATE THE FACT THAT THERE WAS SUBSTANTIAL COMPLIANCE IN BOTH THE POSTING OF THE NOTICE OF EXTRA-JUDICIAL FORECLOSURE SALE AS WELL AS THE PUBLICATION OF THE SAME IN A NEWSPAPER OF GENERAL CIRCULATION BY THE FORECLOSING NOTARY PUBLIC.

The petition is meritorious.

In invalidating the extrajudicial foreclosure and sale, the appellate court found that the posting and publication requirements were not met, thus:

In this case, the appellee Bank failed to comply with both the requirements of posting and publication. The notice of extrajudicial foreclosure and sale was posted in the barangay hall and Hall of Justice of General Santos City for only fourteen (14) days, i.e. from May 6 to May 20, 1998 in violation of the mandated twenty (20) day period. Likewise, the publication in SUN STAR, a local newspaper, was not valid on the ground that said newspaper is not an accredited newspaper of general circulation in General Santos City pursuant to P.D. No. 1079. This is confirmed by the Certification of Mr. Elmer D. Lastimosa, Clerk of Court VI, Office of the Clerk of Court of the Regional Trial Court, General Santos City, dated January 12, 1999 which states that:

x x x x

THIS IS TO CERTIFY that SUN-STAR, General Santos published by Ang Peryodiko Dabaw, Inc. with editorial and business address at Halieus Mall, Pendatun Avenue, corner Lukban Street, General Santos City **is not an accredited local newspaper insofar as this Court is concerned and therefore not qualified to publish judicial notices, court orders and summonses and all similar announcement arising from court litigation required by law to be published, as provided in Section 1 of P.D. No. 1079.**

x x x x

THIS IS TO FURTHER CERTIFY that SUN-STAR General Santos

has filed a "Petition for Accreditation" docketed as Miscellaneous Case No. 1797 now pending consideration before the sala of Honorable Executive Judge Antonio S. Alano.^[14]

The requirements for posting and publication in extrajudicial foreclosure are set out in Act No. 3135, as amended:

Sec. 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.

Jurisprudence, however, has decreed that the publication of the notice of sale in a newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirements of the law.^[15] The Court has elucidated that:

We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation, which is distributed nationwide, shall have a readership of more people than that posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence, the publication of the notice of sale in the newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.^[16]

The focal issue, then, is whether the requirement of publication was complied with.

Presidential Decree 1079, the governing law at the time of the subject foreclosure, requires that notices shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of

general circulation applies, thus:

Section 1. All notices of auction sales in extra-judicial foreclosure of real estate mortgage under Act No. 3135 as amended, judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies; Provided, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: Provided, further, That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: Provided, finally, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

Presidential Decree 1079 requires a newspaper of general circulation. A newspaper of general circulation 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. The newspaper must not also be devoted to the interest or published for the entertainment of a particular class, profession, trade, calling, race or religious denomination. The newspaper need not have the largest circulation so long as it is of general circulation.^[17]

Presidential Decree 1079, however, does not require accreditation. The requirement of accreditation was imposed by the Court only in 2001, through A.M. No. 01-1-07-SC or the *Guidelines in the Accreditation of Newspapers and Periodicals Seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle Thereof*. This circular cannot be applied retroactively to the case at bar as it will impair petitioner's rights.

Moreover, as held in *Metrobank v. Peñafiel*,^[18] the accreditation by the presiding judge is not conclusive that a newspaper is of general circulation, as each case must be decided on its own merits and evidence.

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.^[19]