



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

**BENJAMIN E. RAVAGO,**  
Petitioner,

**G.R. No. 188739**

**Present:**

- versus -

VELASCO, JR., J., *Chairperson,*  
PERALTA,  
VILLARAMA, JR.,,  
PEREZ,\* and  
JARDELEZA, JJ.

**METROPOLITAN BANK & TRUST  
COMPANY, substituted by BRIGHT  
VENTURES REALTY, INC.,**  
Respondents.

**Promulgated:**

August 5, 2015

*[Signature]*

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DECISION

**PERALTA, J.:**

Challenged in the instant petition for review on *certiorari* are the Decision<sup>1</sup> of the Court of Appeals (CA), dated February 17, 2009, and its Resolution<sup>2</sup> dated July 8, 2009 in CA-G.R. CV No. 88410.

The facts of the case are as follows:

Several times between October and December 1997, petitioner and his wife obtained loans from respondent bank the total of which amounted to ₱25,000,000.00.<sup>3</sup> The loans were secured by a real estate mortgage over a 1,506-square-meter lot with improvements owned by petitioner and his wife which is located in San Juan, Metro Manila.<sup>4</sup> Subsequently, petitioner and

\* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

<sup>1</sup> Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Edgardo P. Cruz and Vicente S.E. Veloso, concurring; *rollo*, pp. 10-21.

<sup>2</sup> Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Vicente S.E. Veloso and Priscilla Baltazar Padilla, concurring; *id.* at 27-28.

<sup>3</sup> See Exhibits "1", "1-A", "2", "2-A", "3", "3-A", "4", "4-A", "5", "5-A", "6", "6-A", "7", "7-A", "8", "8-A", records, pp. 42-57.

<sup>4</sup> See Exhibit "B", *id.* at 58-61.

*[Handwritten mark]*

his wife failed to pay their loan obligations. As a consequence, in February 1999, respondent bank initiated extrajudicial foreclosure proceedings over the mortgaged property through a notary public.<sup>5</sup> After compliance with the requirements of notice and publication, the notary public conducted a foreclosure sale of the subject lot on June 3, 1999 wherein respondent bank emerged as the highest bidder for the amount of ₱30,484,500.00.<sup>6</sup> Respondent bank was subsequently able to obtain title over the disputed property in its name.

On October 12, 2001, petitioner and his wife filed against respondent bank a Complaint for Annulment of Notarial Foreclosure Proceedings Including Auction Sale, Certificate of Sale and Consolidated Title with Damages and Injunction.<sup>7</sup> The action was filed with the Regional Trial Court (RTC) of Pasig City. Petitioner and his wife alleged, among others, that respondent bank's extrajudicial foreclosure of the subject property by means of a notary public did not comply with the procedure provided for under the provisions of Administrative Order No. 3, issued by the Supreme Court in October 1984, in relation to extrajudicial foreclosure proceedings under Act No. 3135; and that such failure to follow the procedure renders the foreclosure, as well as the issuance of the certificate of sale and the consolidated title in the name of respondent bank, null and void.

In its Answer,<sup>8</sup> respondent bank contended that Administrative Order No. 3 is simply a directive for executive judges in the management of courts within their respective administrative areas and that a petition for foreclosure with a notary public is not within the contemplation of the said Administrative Order because such petition is not filed with the court. As such, respondent bank argues that its non-compliance with the said administrative order does not render the foreclosure proceedings null and void.

After the issues were joined, trial ensued.

On April 21, 2006, the RTC rendered its Decision dismissing petitioner and his wife's Complaint. The RTC ruled, among others, that respondent bank's non-compliance with Administrative Order No. 3 did not render the notarial foreclosure proceedings pertaining to the subject lot null and void on the ground that such administrative order does not apply in the present case.

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<sup>5</sup> See Exhibit "A", *id.* at 14-17.

<sup>6</sup> See Exhibits "C" and "D", *id.* at 11-13.

<sup>7</sup> *Id.* at 1-8.

<sup>8</sup> *Id.* at 30-41.

Petitioner and his wife then filed an appeal with the CA. In its assailed Decision, the CA affirmed the RTC judgment.

Hence, the instant petition raising the following issues:

1. Is the petition for extra-judicial foreclosure done and conducted by a Notary Public pursuant to Act. 3135 exempt from the payment of docket fee?
2. Is a notarial foreclosure which took place prior to 1991 exempt from the payment of docket fee?<sup>9</sup>

Petitioner's basic contention in the present petition is that the extrajudicial foreclosure of the subject lot, which was conducted by a notary public, is null and void on the ground that respondent did not pay the docket fee.

The petition lacks merit.

At the outset, the Court agrees with the ruling of both the RTC and the CA that as early as the case of *China Banking Corporation v. Court of Appeals*,<sup>10</sup> this Court has already ruled that extrajudicial foreclosures conducted by a notary public do not come within the coverage of the provisions of Administrative Order No. 3 because they are not filed with the court. This Court held, thus:

Moreover, Administrative Order No. 3 is a directive for executive judges and clerks of courts which, under its preliminary paragraph is [i]n line with the responsibility of an Executive Judge, under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff, x x x, **Surely, a petition for foreclosure with the notary public is not within the contemplation of the aforesaid directive as the same is not filed with the court.** At any rate, Administrative Order No. 3 cannot prevail over Act No. 3135, as amended. It is an elementary principle in statutory construction that a statute is superior to an administrative directive and the former cannot be repealed or amended by the latter.<sup>11</sup>

Indeed, a closer analysis of the provisions of Administrative Order No. 3, prior to its amendment, would show that the said Order refers only to foreclosure proceedings conducted by the sheriff. However, this Court

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<sup>9</sup> *Rollo*, p. 39.

<sup>10</sup> 333 Phil. 158 (1996).

<sup>11</sup> *China Banking Corporation v. Court of Appeals*, *supra*, at 173. (Emphasis supplied)

subsequently introduced amendments to Administrative Order No. 3 by enacting A.M. No. 99-10-05-0.<sup>12</sup>

A comparative reading of the opening provisions of Administrative Order No. 3 and the amendatory sections of A.M. No. 99-10-05-0 would show that the former did not contemplate foreclosures conducted under the direction of a notary public. Pertinent provisions of Administrative Order No. 3 read, thus:

x x x                    x x x                    x x x

**In line with the responsibility of an Executive Judge, under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff,** the undersigned, pursuant to a resolution of this Court dated September 18, 1984, sets forth the procedure to be followed:

- 1. All applications for extra-judicial foreclosure of mortgage under 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.

x x x                    x x x                    x x x

On the other hand, the relevant provisions of A.M. No. 99-10-05-0 read as follows:

x x x                    x x x                    x x x

In line with the responsibility of an Executive Judge under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff, **and the issuance of commissions to notaries public and enforcement of their duties under the law,** the following procedures are hereby prescribed in extrajudicial foreclosure of mortgages:

- 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.

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<sup>12</sup> A.M. No. 99-10-05-0 was enacted on December 14, 1999 and took effect on January 15, 2000. It was later amended by Resolutions issued by the Supreme Court on January 30, 2001 and August 7, 2001.

x x x

x x x

x x x

It can be gleaned from the amendatory provisions of A.M. No. 99-10-05-0 that, upon effectivity of the said amendments on January 15, 2000, applications for extrajudicial foreclosures under the direction of a notary public are already among those which are required to be filed with the Executive Judge.

Hence, it is clear that prior to the effectivity of A.M. No. 99-10-05-0, applications for notarial foreclosures which are conducted by a notary public were not required to be filed with the court. This is precisely the reason why the Court in the *China Banking* case held that extrajudicial foreclosures conducted by a notary public do not come within the coverage of the provisions of Administrative Order No. 3, which, among others, require the sheriff to receive and docket the application for extrajudicial foreclosure and collect the prescribed filing fees.

In the present case, respondent filed its Petition For Extrajudicial Foreclosure of Real Estate Mortgage in February 1999 while the foreclosure sale was conducted on June 3, 1999, both of which happened before the effectivity of A.M. No. 99-10-05-0.

In connection with the foregoing discussions, this Court, in the case of *RPRP Ventures Management & Development Corporation v. Judge Guadiz, Jr., et. al.*,<sup>13</sup> had occasion to rule that the legal fees prescribed under the then existing Section 7(c), Rule 141 of the Rules of Court, with respect to requests for extrajudicial foreclosure of real estate or chattel mortgages, do not apply to applications for extrajudicial foreclosure of real estate mortgages filed with a notary public.<sup>14</sup> In the said case, the notarial foreclosure of the mortgaged property was conducted on December 9, 1999, which is also prior to the effectivity of A.M. No. 99-10-05-0. This Court held, thus:

Anent the petitioner's contention that Metrobank's Petition for Foreclosure of Real Estate Mortgage Contract is subject to the payment of the prescribed legal fees pursuant to Section 7 (c), Rule 141 of the Rules of Court, the same is inaccurate. Section 7 (c), Rule 141 of the Rules of Court requires the payment of docket fees when filing Petitions for Extrajudicial Foreclosure of real and chattel mortgages. However, the said provisions of the law pertains to petitions for foreclosure filed before the Office of the *Ex-Officio* Sheriff. In the present case, Section 7 (c), Rule 141 of the Rules

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<sup>13</sup> 640 Phil. 98 (2010).

<sup>14</sup> Under the present Rules, pursuant to A.M. No. 04-2-04, legal fees are already required to be paid with respect to requests for extrajudicial foreclosure of real estate or chattel mortgage by a notary public.

of Court is inapplicable, because the petition for extrajudicial foreclosure of real property mortgage was filed before a notary public.<sup>15</sup>

Finally, it bears to point out, that the requirement for the payment of legal fees with respect to requests for extrajudicial foreclosure of real estate or chattel mortgage by **both the sheriff or notary public** is now incorporated under the present Section 7(c), Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, which took effect on August 16, 2004.

**WHEREFORE**, the instant petition is **DENIED**. The Decision of the Court of Appeals, dated February 17, 2009, and its Resolution dated July 8, 2009, in CA-G.R. CV No. 88410 are **AFFIRMED**.

**SO ORDERED.**

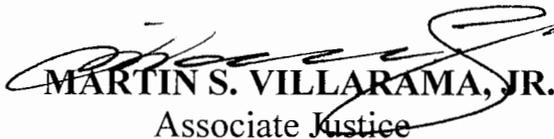


**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



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



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

<sup>15</sup> *RPRP Ventures Management & Development Corporation v. Judge Guadiz, Jr., et al., supra* note 13, at 107.

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice