



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

METROPOLITAN BANK AND TRUST COMPANY,

Petitioner,

Present:

CARPIO, *J.*, Chairperson,
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

**S.F. NAGUIAT ENTERPRISES,
INC.,**

Respondent.

Promulgated:
MAR 18 2015

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DECISION

LEONEN, J.:

This case calls for the determination of whether the approval and consent of the insolvency court is required under Act No. 1956, otherwise known as the Insolvency Law, before a secured creditor like petitioner Metropolitan Bank and Trust Company can proceed with the extrajudicial foreclosure of the mortgaged property.

This is a Petition for Review¹ under Rule 45, seeking to reverse and set aside the November 15, 2006 Decision² and June 14, 2007 Resolution³ of

Designated acting member per S.O. No. 1951 dated March 18, 2015.

¹ *Rollo*, pp. 15–84.

² *Id.* at 86–94. The Decision was penned by Associate Justice Rodrigo V. Cosico (Chair) and concurred in by Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo of the Sixth Division.

³ *Id.* at 95–99. The Resolution was penned by Associate Justice Rodrigo V. Cosico (Chair) and concurred in by Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo of the Former

the Court of Appeals (Sixth Division) in CA-G.R. SP No. 94968. The questioned Decision and Resolution dismissed Metropolitan Bank and Trust Company's Petition for Certiorari and Mandamus⁴ and denied its subsequent Motion for Reconsideration and Clarification.⁵

Sometime in April 1997, Spouses Rommel Naguiat and Celestina Naguiat and S.F. Naguiat Enterprises, Inc. (S.F. Naguiat) executed a real estate mortgage⁶ in favor of Metropolitan Bank and Trust Company (Metrobank) to secure certain credit accommodations obtained from the latter amounting to ₱17 million. The mortgage was constituted over the following properties:

- (1) TCT No. 58676⁷ – a parcel of land in the Barrio of Pulung Bulu, Angeles, Pampanga, with an area of 489 square meters; and
- (2) TCT No. 310523 – a parcel of land in Marikina, Rizal, with an area of 1,200.10 square meters.⁸

On March 3, 2005, S.F. Naguiat represented by Celestina T. Naguiat, Eugene T. Naguiat, and Anna N. Africa obtained a loan⁹ from Metrobank in the amount of ₱1,575,000.00. The loan was likewise secured by the 1997 real estate mortgage by virtue of the Agreement on Existing Mortgage(s)¹⁰ executed between the parties on March 15, 2004.

On July 7, 2005, S.F. Naguiat filed a Petition for Voluntary Insolvency with Application for the Appointment of a Receiver¹¹ pursuant to Act No. 1956, as amended,¹² before the Regional Trial Court of Angeles City and which was raffled to Branch 56.¹³ Among the assets declared in the Petition was the property covered by TCT No. 58676 (one of the properties mortgaged to Metrobank).¹⁴

Presiding Judge Irin Zenaida S. Buan (Judge Buan) issued the Order¹⁵ dated July 12, 2005, declaring S.F. Naguiat insolvent; directing the Deputy Sheriff to take possession of all the properties of S.F. Naguiat until the appointment of a receiver/assignee; and forbidding payment of any debts

⁴ Id. at 86 and 94.

⁵ Id. at 95 and 99.

⁶ Id. at 115–116.

⁷ Id. at 118–123.

⁸ Id. at 116.

⁹ Id. at 114. The loan was evidenced by a non-negotiable promissory note, PN No. 411-369748-119-016-99 dated March 3, 2005. The loan was due on April 2, 2005.

¹⁰ Id. at 117.

¹¹ Id. at 124–129. The case was docketed as SP. Proc. No. 7248.

¹² By Act Nos. 3544, 3616, and 3962.

¹³ *Rollo*, p. 130.

¹⁴ Id. at 106.

¹⁵ Id. at 131–132.

due, delivery of properties, and transfer of any of its properties.

Pending the appointment of a receiver, Judge Buan directed the creditors, including Metrobank, to file their respective Comments on the Petition.¹⁶ In lieu of a Comment, Metrobank filed a Manifestation and Motion¹⁷ informing the court of Metrobank's decision to withdraw from the insolvency proceedings because it intended to extrajudicially foreclose the mortgaged property to satisfy its claim against S.F. Naguiat.¹⁸

Subsequently, S.F. Naguiat defaulted in paying its loan.¹⁹ On November 8, 2005, Metrobank instituted an extrajudicial foreclosure proceeding against the mortgaged property covered by TCT No. 58676²⁰ and sold the property at a public auction held on December 9, 2005 to Phoenix Global Energy, Inc., the highest bidder.²¹ Afterwards, Sheriff Claude B. Balasbas prepared the Certificate of Sale²² and submitted it for approval to Clerk of Court Vicente S. Fernandez, Jr. and Executive Judge Bernardita Gabitan-Erum (Executive Judge Gabitan-Erum). However, Executive Judge Gabitan-Erum issued the **Order**²³ **dated December 15, 2005** denying her approval of the Certificate of Sale in view of the July 12, 2005 Order issued by the insolvency court. Metrobank's subsequent Motion for Reconsideration was also denied in the **Order**²⁴ **dated April 24, 2006**.

Aggrieved by both Orders of Executive Judge Gabitan-Erum, Metrobank filed a Petition²⁵ for certiorari and mandamus before the Court of Appeals on June 22, 2006. S.F. Naguiat filed its Manifestation²⁶ stating that it was not interposing any objection to the Petition and requested that the issues raised in the Petition be resolved without objection and argument on its part.²⁷

On November 15, 2006, the Court of Appeals rendered its Decision dismissing the Petition on the basis of Metrobank's failure to "obtain the permission of the insolvency court to extrajudicially foreclose the mortgaged property."²⁸ The Court of Appeals declared that "a suspension of the foreclosure proceedings is in order, until an assignee [or receiver,] is elected or appointed [by the insolvency court] so as to afford the insolvent debtor

¹⁶ Id. at 133.

¹⁷ Id. at 133–136. The Manifestation and Motion was dated September 5, 2005.

¹⁸ Id. at 134.

¹⁹ Id. at 100 and 114. The principal amount of the loan was ₱1,575,000.00.

²⁰ Id. at 100–103.

²¹ Id. at 148.

²² Id. at 104–105.

²³ Id. at 106–107.

²⁴ Id. at 108–113.

²⁵ Id. at 170–239.

²⁶ Id. at 242–244.

²⁷ Id. at 242.

²⁸ Id. at 93.

proper representation in the foreclosure [proceedings].”²⁹

Metrobank filed a Motion for Reconsideration and Clarification, which was denied by the Court of Appeals in its Resolution dated June 14, 2007.³⁰ The Court of Appeals held that leave of court must be obtained from the insolvency court whether the foreclosure suit was instituted judicially or extrajudicially so as to afford the insolvent estate’s proper representation (through the assignee) in such action³¹ and “to avoid the dissipation of the insolvent debtor’s assets in possession of the insolvency court without the latter’s knowledge.”³²

Hence, the present Petition for Review was filed. Petitioner contends that the Court of Appeals decided questions of substance in a way not in accord with law and with the applicable decisions of this court:

A.

By ruling that there must be a *motion for leave of court* to be filed and granted by the insolvency court, before the petitioner, as a secured creditor of an insolvent, can extrajudicially foreclose the mortgaged property, which is tantamount to a judicial legislation.

B.

By ruling that the Honorable Executive Judge Bernardita Gabitan-Erum did not abuse her discretion in refusing to perform her ministerial duty of approving the subject certificate of sale, despite the fact that the petitioner and the designated sheriff complied with all the requirements mandated by Act No. 3135, as amended, circulars, administrative matters and memorandums issued by the Honorable Supreme Court.

C.

By ruling that the action of the Honorable Executive Judge Bernardita Gabitan-Erum is proper in denying the approval of the Certificate of Sale on the grounds that the issuance of the Order dated 12 July 2005 declaring respondent insolvent and the pendency of the insolvency proceeding forbid the petitioner, as a secured creditor, to foreclose the subject mortgaged property.³³ (Emphasis supplied)

On October 20, 2007, S.F. Naguiat filed a Manifestation³⁴ stating that it interposed no objection to the Petition and submitted the issues raised therein without any argument.

²⁹ Id. at 94.

³⁰ Id. at 99.

³¹ Id. at 98.

³² Id.

³³ Id. at 35–36.

³⁴ Id. at 290–292. Respondent filed a Manifestation instead of a Comment as directed in the court’s Resolution dated September 12, 2007. (*Rollo*, p. 289)

On November 28, 2007, the court resolved “to give due course to the petition [and] to decide the case according to the pleadings already filed[.]”³⁵

The issues for resolution are:

First, whether the Court of Appeals erred in ruling that prior *leave of the insolvency court* is necessary before a secured creditor, like petitioner Metropolitan Bank and Trust Company, can extrajudicially foreclose the mortgaged property.

Second, whether the Court of Appeals erred in ruling that Executive Judge Gabitan-Erum did not abuse her discretion in refusing to approve the Certificate of Sale.

Petitioner argues that nowhere in Act No. 1956 does it require that a secured creditor must first obtain leave or permission from the insolvency court before said creditor can foreclose on the mortgaged property.³⁶ It adds that this procedural requirement applies only to civil suits, and not when the secured creditor opts to exercise the right to foreclose extrajudicially the mortgaged property under Act No. 3135, as amended, because extrajudicial foreclosure is not a civil suit.³⁷ Thus, the Court of Appeals allegedly imposed a new condition that was tantamount to unauthorized judicial legislation when it required petitioner to file a Motion for Leave of the insolvency court.³⁸ Said condition, petitioner argues, defeated and rendered inutile its right or prerogative under Act No. 1956 to independently initiate extrajudicial foreclosure of the mortgaged property.³⁹

Nonetheless, petitioner contends that the filing of its Manifestation before the insolvency court served as sufficient notice of its intention and, in effect, asked the court’s permission to foreclose the mortgaged property.⁴⁰

Petitioner further contends that “the powers and responsibilities of an Executive Judge in extrajudicial foreclosure proceedings, in line with Administrative Order No. 6, is merely to supervise the conduct of the extrajudicial foreclosure of the property”⁴¹ and to oversee that the procedural requirements are faithfully complied with,⁴² and when “the Clerk of Court and Sheriff concerned complied with their designated duties and

³⁵ Id. at 295.

³⁶ Id. at 39.

³⁷ Id. at 42–43. Petitioner cites the ruling in *Supena v. De la Rosa*, 334 Phil. 671, 677–678 (1997) [Per J. Hermosisima, Jr., First Division], which states that “extrajudicial foreclosures are not judicial proceedings, actions or suits.”

³⁸ Id. at 38–39.

³⁹ Id. at 38.

⁴⁰ Id. at 49.

⁴¹ Id. at 63.

⁴² Id.

responsibilities under the [administrative] directives and under Act No. 3135, as amended, and the corresponding filing and legal fees were duly paid, it becomes a ministerial duty on the part of the executive judge to approve the certificate of sale.”⁴³ Thus, Executive Judge Gabitan-Erum allegedly exceeded her authority by “exercising judicial discretion in issuing her Orders dated December 15, 2006 and April 24, 2006 . . . despite the fact that Sheriff Balasbas complied with all the notices requirements under Act No. 3135, [as] amended, . . . and the petitioner and the highest bidder paid all the requisite filing and legal fees[.]”⁴⁴

Furthermore, citing *Chartered Bank v. C.A. Imperial and National Bank*,⁴⁵ petitioner submits that the order of insolvency affected only unsecured creditors and not secured creditors, like petitioner, which did not surrender its right over the mortgaged property.⁴⁶ Hence, it contends that the Court of Appeals seriously erred in holding as proper Executive Judge Gabitan-Erum’s disapproval of the Certificate of Sale on account of the Order of insolvency issued by the insolvency court.⁴⁷

Finally, petitioner points out that contrary to the Court of Appeals’ ruling, “there is nothing more to suspend because the extrajudicial foreclosure of the mortgaged property was already a *fait accompli* as the public auction sale was conducted on December 9, 2005 and all the requisite legal fees were paid and a Certificate of Sale was already prepared.”⁴⁸ “The only remaining thing to do [was] for the . . . Executive Judge to sign the Certificate of Sale, which she . . . refused to do.”⁴⁹

The Petition has no merit.

I

A look at the historical background of the laws governing insolvency in this country will be helpful in resolving the questions presented before us.

The first insolvency law, Act No. 1956, was enacted on May 20, 1909. It was derived from the Insolvency Act of California (1895), with a few provisions taken from the United States Bankruptcy Act of 1898.⁵⁰ Act No.

⁴³ Id. at 64.

⁴⁴ Id. at 64–65.

⁴⁵ 48 Phil. 931, 938–956 (1921) [Per J. Araullo, En Banc].

⁴⁶ Id. at 66–79.

⁴⁷ Id. at 65.

⁴⁸ Id. at 79–80.

⁴⁹ Id. at 80.

⁵⁰ See *Sun Life Assurance Company of Canada v. Ingersoll and Tan Sit*, 42 Phil. 331, 336 (1921) [Per J. Street, En Banc] and *Mitsui Bussan Kaisha (Ltd.) v. Hongkong & Shanghai Banking Corporation*, 36 Phil. 27, 37 (1917) [Per J. Trent, En Banc].

1956 was entitled “An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors.” The remedies under the law were through a suspension of payment⁵¹ (for a debtor who was solvent but illiquid) or a discharge from debts and liabilities through the voluntary⁵² or involuntary⁵³ insolvency proceedings (for a debtor who was insolvent).

⁵¹ Act No. 1956 (1909), sec. 2 provides:

SEC. 2. Petition. — The debtor who, possessing sufficient property to cover all his debts, be it an individual person, be it a sociedad or corporation, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared in the state of suspension of payments by the court, or the judge thereof in vacation, of the province or of the city in which he has resided for six months next preceding the filing of his petition.

He shall necessarily annex to his petition a schedule and inventory in the form provided in sections fifteen, sixteen, and seventeen of this Act, in addition to the statement of his assets and liabilities and the proposed agreement he requests of his creditors.

⁵² Act No. 1956 (1909), sec. 14 provides:

SEC. 14. Application. — An insolvent debtor, owing debts exceeding in amount the sum of one thousand pesos, may apply to be discharged from his debts and liabilities by petition to the Court of First Instance of province or city in which he has resided for six months next preceding the filing of such petition. In his petition he shall set forth his place of residence, the period of his residence therein immediately prior to filing said petition, his inability to pay all his debts in full, his willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors, and an application to be adjudged an insolvent. He shall annex to his petition a schedule and inventory in the form hereinafter provided. The filing of such petition shall be an act of insolvency.

⁵³ Act No. 1956 (1909), sec. 20 provides:

SEC. 20. Petition; Acts of insolvency. — An adjudication of insolvency may be made on the petition of three or more creditors, residents of the Philippine Islands, whose credits or demands accrued in the Philippine Islands, and the amount of which credits or demands are in the aggregate not less than one thousand pesos: Provided, That none of said creditors has become a creditor by assignment, however made, within thirty days prior to the filing of said petition. Such petition must be filed in the Court of First Instance of the province or city in which the debtor resides or has his principal place of business, and must be verified by at least three of the petitioners. The following shall be considered acts of insolvency, and the petition for insolvency shall set forth one or more of such acts: (1) That such person is about to depart or has departed from the Philippine Islands, with intent to defraud his creditors; (2) that being absent from the Philippine Islands, with intent to defraud his creditors, he remains absent; (3) that he conceals himself to avoid the service of legal process for the purpose of hindering or delaying or defrauding his creditors; (4) that he conceals, or is removing, any of his property to avoid its being attached or taken on legal process; (5) that he has suffered his property to remain under attachment or legal process for three days for the purpose of hindering or delaying or defrauding his creditors; (6) that he has confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying or defrauding any creditor or claimant; (7) that he has willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying or defrauding his creditors; (8) that he has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder, delay, or defraud any one of his creditors; (9) that he has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits with intent to delay, defraud, or hinder his creditors; (10) that he has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance, or transfer of his estate, property, rights, or credits; (11) that being a merchant or tradesman he has generally defaulted in the payment of his current obligations for a period of thirty days; (12) that for a period of thirty days he has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and (13) that an execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment. The petitioners may, from time to time, by leave of the court, amend and correct the petition, so that the same shall conform to the facts, such amendment or amendments to relate back to and be received as embraced in the original petition. The said petition shall be accompanied by a bond, approved by the court, with at least two sureties, in such penal sum as the court shall direct, conditioned that if the petition in insolvency be dismissed by the court, or withdrawn by the petitioner, or if the debtor shall not be declared an insolvent, the petitioners will pay to the debtor alleged in the petition to be insolvent all costs, expenses, and damages occasioned by the proceedings in insolvency, together with a reasonable counsel fee to be fixed by the court. The court may, upon motion, direct the filing of an additional bond, with different sureties, when deemed necessary.

The objective of suspension of payments is the deferment of the payment of debts until such time as the debtor, which possesses sufficient property to cover all its debts, is able to convert such assets into cash or otherwise acquires the cash necessary to pay its debts. On the other hand, the objective in insolvency proceedings is “to effect an equitable distribution of the bankrupt’s properties among his creditors and to benefit the debtor by discharging⁵⁴ him from his liabilities and enabling him to start afresh with the property set apart for him as exempt.”⁵⁵

Act No. 1956 was meant to be a complete law on insolvency,⁵⁶ and debts were to be liquidated in accordance with the order of priority set forth under Chapter VI, Sections 48 to 50 on “Classification and Preference of Creditors”; and Sections 29 and 59 with respect to mortgage or pledge of real or personal property, or lien thereon. Jurisdiction over suspension of payments and insolvency was vested in the Courts of First Instance (now the Regional Trial Courts).⁵⁷

The Civil Code⁵⁸ (effective August 30, 1950) established a system of concurrence and preference of credits, which finds particular application in insolvency proceedings.⁵⁹ *Philippine Savings Bank v. Hon. Lantin*⁶⁰ explains this scheme:

Concurrence of credits occurs when the same specific property of the debtor or all of his property is subjected to the claims of several creditors. The concurrence of credits raises no questions of consequence where the value of the property or the value of all assets of the debtor is sufficient to pay in full all the creditors. However, it becomes material when said assets are insufficient for then some creditors of necessity will not be paid or some creditors will not obtain the full satisfaction of their claims. In this situation, the question of preference will then arise, that is to say who of the creditors will be paid ahead of the others. (Caguioa, *Comments and Cases on Civil Law*, 1970 ed., Vol. VI, p. 472.)⁶¹

The credits are classified into three general categories, namely, “(a) special preferred credits listed in Articles 2241⁶² and 2242,⁶³ (b) ordinary

⁵⁴ However, under Section 52 of Act No. 1956, no discharge is granted to an insolvent corporation.

⁵⁵ *In the Matter of the Estate of Mindanao Motor Line, Inc. v. Alforque*, 156 Phil. 71, 76 (1974) [Per J. Ruiz Castro, First Division].

⁵⁶ *Philippine Trust Company and Smith, Bell & Company, Ltd. v. L.P. Mitchell, et al.*, 59 Phil. 30, 35–36 (1933) [Per J. Malcolm, En Banc]; *Ingersoll v. The Philippine National Bank*, 43 Phil. 308, 313 (1922) [Per J. Johns, En Banc].

⁵⁷ Act No. 1956 (1909), secs. 2, 14, and 20.

⁵⁸ CIVIL CODE, arts. 2241–2251.

⁵⁹ CIVIL CODE, art. 2237 provides:

ART. 2237. Insolvency shall be governed by special laws insofar as they are not inconsistent with this Code.”

⁶⁰ 209 Phil. 382 (1983) [Per J. Gutierrez, Jr., First Division].

⁶¹ *Id.* at 388–389.

⁶² CIVIL CODE, art. 2241 provides:

ART. 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

preferred credits listed in Article 2244[,]⁶⁴ and (c) common credits under

- (1) Duties, taxes and fees due thereon to the State or any subdivision thereof;
- (2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
- (3) Claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;
- (4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;
- (5) Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed;
- (6) Claims for laborers' wages, on the goods manufactured or the work done;
- (7) For expenses of salvage, upon the goods salvaged;
- (8) Credits between the landlord and the tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;
- (9) Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;
- (10) Credits for lodging and supplies usually furnished to travellers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;
- (11) Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested;
- (12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credit;
- (13) Claims in favor of the depositor if the depositary has wrongfully sold the thing deposited, upon the price of the sale.

In the foregoing cases, if the movables to which the lien or preference attaches have been wrongfully taken, the creditor may demand them from any possessor, within thirty days from the unlawful seizure.

⁶³ CIVIL CODE, art. 2242 provides:

ART. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

- (1) Taxes due upon the land or building;
- (2) For the unpaid price of real property sold, upon the immovable sold;
- (3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;
- (4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;
- (5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;
- (6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;
- (7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;
- (8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;
- (9) Claims of donors or real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;
- (10) Credits of insurers, upon the property insured, for the insurance premium for two years.

⁶⁴ CIVIL CODE, art. 2244 provides:

ART. 2244. With reference to other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

- (1) Proper funeral expenses for the debtor, or children under his or her parental authority who have no property of their own, when approved by the court;
- (2) Credits for services rendered the insolvent by employees, laborers, or household helpers for one year preceding the commencement of the proceedings in insolvency;
- (3) Expenses during the last illness of the debtor or of his or her spouse and children under his or her parental authority, if they have no property of their own;
- (4) Compensation due the laborers or their dependents under laws providing for indemnity for damages in cases of labor accident, or illness resulting from the nature of the employment;

Article 2245.”⁶⁵

The special preferred credits enumerated in Articles 2241 (with respect to movable property) and 2242 (with respect to immovable property) are considered as mortgages or pledges of real or personal property, or liens within the purview of Act No. 1956.⁶⁶ These credits, which enjoy preference with respect to a specific movable or immovable property, exclude all others to the extent of the value of the property.⁶⁷ If there are two or more liens on the same specific property, the lienholders divide the value of the property involved *pro rata*, after the taxes on the same property are fully paid.⁶⁸

“Credits which are specially preferred because they constitute liens (tax or non-tax) in turn, take precedence over ordinary preferred credits so far as concerns the property to which the liens have attached. The specially preferred credits must be discharged first out of the proceeds of the property to which they relate, before ordinary preferred creditors may lay claim to any part of such proceeds.”⁶⁹

“In contrast with Articles 2241 and 2242, Article 2244 creates no liens on determinate property which follow such property. What Article 2244 creates are simply rights in favor of certain creditors to have the cash and other assets of the insolvent applied in a certain sequence or order of priority.”⁷⁰

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- (5) Credits and advancements made to the debtor for support of himself or herself, and family, during the last year preceding the insolvency;
 - (6) Support during the insolvency proceedings, and for three months thereafter;
 - (7) Fines and civil indemnification arising from a criminal offense;
 - (8) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;
 - (9) Taxes and assessments due the national government, other than those mentioned in articles 2241, No. 1, and 2242, No. 1;
 - (10) Taxes and assessments due any province, other than those referred to in articles 2241, No. 1, and 2242, No. 1;
 - (11) Taxes and assessments due any city or municipality, other than those indicated in articles 2241, No. 1, and 2242, No. 1;
 - (12) Damages for death or personal injuries caused by a quasi-delict;
 - (13) Gifts due to public and private institutions of charity or beneficence;
 - (14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation.

These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively.

⁶⁵ CIVIL CODE, art. 2245 provides:

ART. 2245. Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference. *Republic v. Judge Peralta*, 234 Phil. 40, 49 (1987) [Per J. Feliciano, En Banc].

⁶⁶ CIVIL CODE, art. 2243.

⁶⁷ CIVIL CODE, arts. 2246 and 2248.

⁶⁸ CIVIL CODE, arts. 2247 and 2249. *Republic v. Judge Peralta*, 234 Phil. 40, 50 (1987) [Per J. Feliciano, En Banc]; *De Barretto v. Villanueva*, G.R. No. L-14938, December 29, 1962, 6 SCRA 928, 931 [Per J. J.B.L. Reyes, En Banc].

⁶⁹ *Republic v. Judge Peralta*, 234 Phil. 40, 50 (1987) [Per J. Feliciano, En Banc].

⁷⁰ *Id.* at 51.

It was held that concurrence and preference of credits can only be ascertained in the context of a general liquidation proceeding that is *in rem*, such as an insolvency proceeding, where properties of the debtor are inventoried and liquidated and the claims of all the creditors may be bindingly adjudicated.⁷¹ The application of this order of priorities established under the Civil Code in insolvency proceedings assures that priority of claims are respected and credits belonging to the same class are equitably treated.

Conformably, it is the policy of Act No. 1956 to place all the assets and liabilities of the insolvent debtor completely within the jurisdiction and control of the insolvency court without the intervention of any other court in the insolvent debtor's concerns or in the administration of the estate.⁷² It was considered to be of prime importance that the insolvency proceedings follow their course as speedily as possible in order that a discharge, if the insolvent debtor is entitled to it, should be decreed without unreasonable delay. "Proceedings of [this] nature cannot proceed properly or with due dispatch unless they are controlled absolutely by the court having charge thereof."⁷³

In 1981, Presidential Decree No. 1758 amended Presidential Decree No. 902-A, the Securities and Exchange Commission charter. Under its terms,⁷⁴ jurisdiction regarding corporations that sought suspension of payments process was taken away from the regular courts and given to the Securities and Exchange Commission.⁷⁵ In addition, an alternative to suspension of payments — rehabilitation — was introduced. It enables a corporation whose assets are not sufficient to cover its liabilities to apply to the Securities and Exchange Commission for the appointment of a rehabilitation receiver and/or management committee⁷⁶ and then to develop

⁷¹ *De Barretto v. Villanueva*, G.R. No. L-14938, December 29, 1962, 6 SCRA 928, 932 [Per J. J.B.L. Reyes, En Banc], cited in *Philippine Savings Bank v. Hon. Lantin*, 209 Phil. 382, 388–390 (1983) [Per J. Gutierrez, Jr., First Division].

⁷² *De Amuzategui v. Macleod*, 33 Phil. 80, 82 (1915) [Per J. Moreland, En Banc].

⁷³ Id. at 84.

⁷⁴ Pres. Decree No. 1758 (1981), sec. 3 provides:

SEC. 3. Section 5 of the same Presidential Decree is hereby amended by adding thereunder subparagraph (d) to read as follows:

d) Petitions of corporations, partnerships or association to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

⁷⁵ *Ching v. Judge Capistrano*, 278 Phil. 214, 224 (1991) [Per C.J. Fernan, Third Division].

⁷⁶ Pres. Decree No. 1758 (1981), sec. 4 provides:

SEC. 4. Sub-paragraphs c), d), h), and m) of Section 6 of Pres. Decree No. 902-A, as amended by Pres. Decree No. 1653, is hereby further amended to read as follows:

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors. Provided, however, That the Commission may, in appropriate cases, appoint a Rehabilitation Receiver who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are

a rehabilitation plan with a view to rejuvenating a financially distressed corporation. However, the procedure to avail of the remedy was not spelled out until 20 years later when the Securities and Exchange Commission finally adopted the Rules of Procedure on Corporate Recovery on January 4, 2000.

Shortly thereafter, with the passage of Republic Act No. 8799 or The Securities Regulation Code on July 19, 2000, jurisdiction over corporation rehabilitation cases was reverted to the Regional Trial Courts designated as commercial courts or rehabilitation courts.⁷⁷ This legal development was implemented by the Interim Rules of Procedure on Corporate Rehabilitation (made effective in December 2000), which was later replaced by A.M. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation of 2008.

Act No. 1956 continued to remain in force and effect until its express repeal on July 18, 2010 when Republic Act No. 10142,⁷⁸ otherwise known as the Financial Rehabilitation and Insolvency Act of 2010, took effect. Republic Act No. 10142 now provides for court proceedings in the

provided for in the succeeding paragraph d) hereof. Provided, further, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

d) To create and appoint a management committee, board, or body upon petition or motu proprio to undertake the management of corporations, partnerships or other associations in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of and control over, all the existing assets and property of such entities under management; to evaluate the existing, assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission. Provided, however, That the Commission, may, on the basis of the findings and recommendation of the management committee, of rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred.

⁷⁷ SEC. 5. *Powers and Functions of the Commission.*

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

⁷⁸ An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals.

rehabilitation or liquidation of debtors, both juridical and natural persons, in a “timely, fair, transparent, effective and efficient”⁷⁹ manner. The purpose of insolvency proceedings is “to encourage debtors . . . and their creditors to collectively and realistically resolve and adjust competing claims and property rights”⁸⁰ while “maintain[ing] certainty and predictability in commercial affairs, preserv[ing] and maximiz[ing] the value of the assets of these debtors, recogniz[ing] creditor rights and respect[ing] priority of claims, and ensur[ing] equitable treatment of creditors who are similarly situated.”⁸¹ It has also been provided that whenever rehabilitation is no longer feasible, “it is in the interest of the State to facilitate a speedy and orderly liquidation of [the] debtors’ assets and the settlement of their obligations.”⁸²

Unlike Act No. 1956, Republic Act No. 10142 provides a broad definition of the term, “insolvent”:

SEC. 4. *Definition of Terms.* - As used in this Act, the term:

.....

(p) *Insolvent* shall refer to the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.

Republic Act No. 10142 also expressly categorizes different forms of debt relief available to a corporate debtor in financial distress. These are out-of-court restructuring agreements,⁸³ pre-negotiated rehabilitation,⁸⁴ court-supervised rehabilitation,⁸⁵ and liquidation (voluntary and involuntary).⁸⁶ An insolvent individual debtor can avail of suspension of payments,⁸⁷ or liquidation.⁸⁸

During liquidation proceedings, a secured creditor may waive its security or lien, prove its claim, and share in the distribution of the assets of the debtor, in which case it will be admitted as an unsecured creditor; or maintain its rights under the security or lien,⁸⁹ in which case:

1. [T]he value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the

⁷⁹ Rep. Act No. 10142 (2010), sec. 2.

⁸⁰ Rep. Act No. 10142 (2010), sec. 2.

⁸¹ Rep. Act No. 10142 (2010), sec. 2.

⁸² Rep. Act No. 10142 (2010), sec. 2.

⁸³ Rep. Act No. 10142 (2010), chap. IV.

⁸⁴ Rep. Act No. 10142 (2010), chap. III.

⁸⁵ Rep. Act No. 10142 (2010), chap. II.

⁸⁶ Rep. Act No. 10142 (2010), chap. V.

⁸⁷ Rep. Act No. 10142 (2010), sec. 94.

⁸⁸ Rep. Act No. 10142 (2010), secs. 103 and 105.

⁸⁹ Rep. Act No. 10142 (2010), sec. 114.

property is less than the claim . . . the [creditor] will be admitted . . . as a creditor for the balance. If its value exceeds the claim . . . the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;

2. [T]he liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
3. [T]he secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.⁹⁰

A secured creditor, however, is subject to the temporary stay of foreclosure proceedings for a period of 180 days,⁹¹ upon the issuance by the court of the Liquidation Order.⁹²

Republic Act No. 10142 was to govern all petitions filed after it had taken effect, and all further proceedings in pending insolvency, suspension of payments, and rehabilitation cases, except when its application "would not be feasible or would work injustice, *in which event the procedures set forth in prior laws and regulations shall apply.*"⁹³

The relevant proceedings in this case took place prior to Republic Act No. 10142; hence, the issue will be resolved according to the provisions of Act No. 1956.

II

Act No. 1956 impliedly requires a secured creditor to ask the permission of the insolvent court before said creditor can foreclose the mortgaged property.

⁹⁰ Rep. Act No. 10142 (2010), sec. 114.

⁹¹ Rep. Act No. 10142 (2010), sec. 113(e).

⁹² (A) The Liquidation Order.

Sec. 112. *Liquidation Order.* – The Liquidation Order shall:

- (a) declare the debtor insolvent;
- (b) order the liquidation of the debtor and, in the case of a juridical debtor, declare it as dissolved;
- (c) order the sheriff to take possession and control of all the property of the debtor, except those that may be exempt from execution;
- (d) order the publication of the petition or motion in a newspaper of general circulation once a week for two (2) consecutive weeks;
- (e) direct payments of any claims and conveyance of any property due the debtor to the liquidator;
- (f) prohibit payments by the debtor and the transfer of any property by the debtor;
- (g) direct all creditors to file their claims with the liquidator within the period set by the rules of procedure;
- (h) authorize the payment of administrative expenses as they become due;
- (i) state that the debtor and creditors who are not petitioner/s may submit the names of other nominees to the position of liquidator; and
- (j) set the case for hearing for the election and appointment of the liquidator, which date shall not be less than thirty (30) days nor more than forty-five (45) days from the date of the last publication.

⁹³ Rep. Act No. 10142 (2010), sec. 146.

When read together, the following provisions of Act No. 1956 reveal the necessity for *leave of the insolvency court*:

- (A) Under **Section 14**, “[a]n insolvent debtor, owing debts exceeding in amount the sum of one thousand pesos, may apply to be discharged from his debts and liabilities by petition to the Court of First Instance of the province or city in which he has resided for six months next preceding the filing of such petition. In his petition, he shall set forth his place of residence, the period of his residence therein immediately prior to filing said petition, his inability to pay all his debts in full, his willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors, and an application to be adjudged an insolvent. *He shall annex to his petition a schedule and inventory in the form hereinafter provided.* The filing of such petition shall be an act of insolvency.”

- (B) Under **Section 16**, “[the] inventory must contain, besides the creditors, an accurate description of all the real and personal property, estate, and effects of the [insolvent], including his homestead, if any, together with a statement of the value of each item of said property, estate, and effects and its location, and a statement of the incumbrances thereon. All property exempt by law from execution shall be set out in said inventory with a statement of its valuation, location, and the incumbrances thereon, if any. The inventory shall contain an outline of the facts giving rises [sic], or which might give rise, to a right of action in favor of the insolvent debtor.”

- (C) Under **Section 18**, upon receipt of the petition, the court shall issue an order declaring the petitioner insolvent, and directing the sheriff *to take possession of, and safely keep, until the appointment of a receiver or assignee, all the debtor’s real and personal property*, except those exempt by law from execution. The order also forbids the transfer of any property by the debtor.

- (D) Under **Section 32**, once an assignee is elected and qualified, the clerk of court shall assign and convey to the assignee *all the real and personal property of the debtor*, not exempt from execution, and such *assignment shall relate back to the commencement of the insolvency proceedings*, and by operation of law, shall *vest the title to all such property in the assignee*.

With the declaration of insolvency of the debtor, insolvency courts “obtain full and complete jurisdiction over all property of the insolvent and of all claims by and against [it.]”⁹⁴ It follows that the insolvency court has exclusive jurisdiction to deal with the property of the insolvent.⁹⁵ Consequently, after the mortgagor-debtor has been declared insolvent and the insolvency court has acquired control of his estate, a mortgagee may not, without the permission of the insolvency court, institute proceedings to enforce its lien. In so doing, it would interfere with the insolvency court’s possession and orderly administration of the insolvent’s properties.⁹⁶

It is true that under Section 59 of Act No. 1956, the creditor is given the option to participate in the insolvency proceedings by proving the balance of his debt, after deducting the value of the mortgaged property as agreed upon with the receiver or determined by the court or by a sale of the property as directed by the court; or proving his whole debt, after releasing his claim to the receiver/sheriff before the election of an assignee, or to the assignee. However, Section 59 of Act No. 1956 proceeds to state that when “the property is not sold or released, and delivered up, or its value fixed, the creditor [is] not allowed to prove any part of his debt,” *but the assignee shall deliver to the creditor the mortgaged property*. Hence, explicitly under Section 59 and as a necessary consequence flowing from the exclusive jurisdiction of the insolvency court over the estate of the insolvent, the mortgaged property must first be formally delivered by the court or the assignee (if one has already been elected) before a mortgagee-creditor can initiate proceedings for foreclosure.⁹⁷

Here, the foreclosure and sale of the mortgaged property of the debtor, without leave of court, contravene the provisions of Act No. 1956 and violate the Order dated July 12, 2005 of the insolvency court which declared S.F. Naguiat insolvent and forbidden from making any transfer of any of its properties to any person.

Petitioner would insist that “respondent was given the opportunity to

⁹⁴ *De Amuzategui v. Macleod*, 33 Phil. 80, 82 (1915) [Per J. Moreland, En Banc].

⁹⁵ *Cu Unjieng e Hijos v. Mitchell*, 58 Phil. 476, 478–480 (1933) [Per J. Malcolm, En Banc], *citing Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734 (1931); *Tirth Dharmdas v. Buenaflor*, 57 Phil. 483, 485 (1932) [Per J. Street, En Banc]; *De Krafft v. Velez*, 34 Phil. 854, 856–857 (1916) [Per J. Johnson, En Banc].

⁹⁶ *Cu Unjieng e Hijos v. Mitchell*, 58 Phil. 476, 481 (1933) [Per J. Malcolm, En Banc], *citing Straton v. New*, 283 U.S. 318 (1931). *See also Rizal Commercial Banking Corporation v. Royal Cargo Corporation*, 617 Phil. 764, 780 (2009) [Per J. Carpio Morales, Second Division] where this court stated that “foreclosure suits may be initiated even during insolvency proceedings, as long as leave must first be obtained from the insolvency court” as what the petitioner in that case did. The case involved an extrajudicial foreclosure of a chattel mortgage initiated by petitioner with leave of the insolvency court.

⁹⁷ In *Villamar v. Barrios*, 68 Phil. 430, 436 (1939) [Per J. Villa-Real, En Banc], this court declared that “the insolvency court has authority and jurisdiction to pass upon an incidental motion filed by an alleged mortgagee, praying that the assignee be ordered to deliver certain goods of the insolvent allegedly mortgaged, and to determine, upon hearing the parties, if the mortgage relied upon by the alleged mortgagee is legal and valid (*Chase de Krafft v. Velez*, 34 Phil. 854, *Giberson vs. A. N. Jureidini Bros.*, 44 Phil. 216)[.]”

be represented in the public auction sale conducted on December 9, 2005⁹⁸ because it received a copy of the Notice of the Sheriff's Sale on November 11, 2005;⁹⁹ and the Notice of Auction Sale was published in a newspaper of general circulation.¹⁰⁰ However, respondent allegedly opted not to participate by not attending the public auction sale.¹⁰¹

Such was to be expected because when the foreclosure proceeding was initiated, respondent was already declared insolvent. Indeed, upon the adjudication of insolvency, the insolvent ceased to exist and was in effect judicially declared dead as of the filing of the insolvency petition and by the nature of things had no further interest in the property covered by the mortgage.¹⁰² Under Section 32 of Act No. 1956, title to the insolvent's estate relates back to the filing of the insolvency petition upon the election of the assignee who shall thereafter act on behalf of all the creditors. Under Section 36, the assignee has the power to redeem all valid mortgages or sell property subject to mortgage. Thus, the extrajudicial foreclosure of the mortgaged property initiated by petitioner *without leave of insolvency court* would effectively exclude the assignee's right to participate in the public auction sale of the property and to redeem the foreclosed property¹⁰³ to the prejudice of all the other creditors of the insolvent.

Petitioner filed its Manifestation and Motion before the insolvency court on September 7, 2005,¹⁰⁴ praying that it would no longer file the Comment required as it opted to exercise its right to extrajudicially foreclose the property mortgaged and that it "be allowed to temporarily withdraw its active participation in the . . . proceeding pending the outcome of the extrajudicial foreclosure proceeding of the mortgaged property."¹⁰⁵

Petitioner should have waited for the insolvency court to act on its Manifestation and Motion before foreclosing the mortgaged property and its lien (assuming valid) would not be impaired or its claim in any way jeopardized by any reasonable delay. There are mechanisms within Act No. 1956 such as Section 59 that ensure that the interests of the secured creditor are adequately protected. Parenthetically, mortgage liens are retained in insolvency proceedings. What is merely suspended until court approval is

⁹⁸ *Rollo*, p. 49.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 50.

¹⁰¹ *Id.* at 49–50.

¹⁰² *See O'Brien v. Del Rosario and Bank of the Philippine Islands*, 49 Phil. 657, 666 (1926) [Per J. Johns, En Banc].

¹⁰³ *Director of Lands v. Lagniton*, 103 Phil. 889, 893 (1958) [Per J. Labrador, En Banc], *citing* 21 Am. Jur. 176, held: "Ordinarily, statutory authority to redeem property sold under execution is granted to the judgment debtor or his successor in interest, but is sometimes also granted to the 'owner' of the property, which means any owner of the real estate whose interest was subject to the payment of the judgment upon which it was sold, without regard to whether he is the judgment debtor or claims under him. Redemption is proper where made by the debtor's grantee, or assignee, or assignee for the benefit of creditors, or assignee or trustee in insolvency proceedings. . . ."

¹⁰⁴ *Rollo*, p. 133.

¹⁰⁵ *Id.* at 134.

obtained is the creditor's enforcement of such preference.

On the other hand, to give the secured creditor a free hand in foreclosing its collateral upon the initiation of insolvency proceedings may frustrate the basic objectives of Act No. 1956 of maximizing the value of the estate of the insolvent or obtaining the highest return possible from its sale for the benefit of all the creditors (both secured and unsecured).

III

Executive Judge Gabitan-Erum did not unlawfully neglect to perform her duty when she refused to approve and sign the Certificate of Sale, as would warrant the issuance of a writ of mandamus against her.

An executive judge has the administrative duty in extrajudicial foreclosure proceedings to ensure that all the conditions of Act No. 3135 have been complied with before approving the sale at public auction of any mortgaged property.¹⁰⁶

“Certain requisites must be established before a creditor can proceed to an extrajudicial foreclosure, namely: first, there must have been the failure to pay the loan obtained from the mortgagee-creditor; second, the loan obligation must be secured by a real estate mortgage; and third, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extrajudicially.”¹⁰⁷

Furthermore, Act No. 3135 outlines the notice and publication requirements and the procedure for the extrajudicial foreclosure which constitute a condition *sine qua non* for its validity. Specifically, Sections 2, 3, and 4 of the law prescribe the formalities of the extrajudicial foreclosure proceeding:

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 the subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

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

¹⁰⁶ A.M. No. 99-10-05-0 dated December 14, 1999, as amended, in relation to Admin. Order No. 6 dated June 30, 1975.

¹⁰⁷ *Sycamore Ventures Corporation v. Metropolitan Bank and Trust Company*, G.R. No. 173183, November 18, 2013, 709 SCRA 559, 569 [Per J. Brion, Second Division].

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.

SEC. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses.

“*Mandamus* will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists.”¹⁰⁸

There was a valid reason for Executive Judge Gabitan-Erum to doubt the propriety of the foreclosure sale. Her verification with the records of the Clerk of Court showed that a Petition for Insolvency had been filed and had already been acted upon by the insolvency court prior to the application for extrajudicial foreclosure of the mortgaged properties. Among the inventoried unpaid debts and properties attached to the Petition for Insolvency was the loan secured by the real estate mortgage subject of the application for extrajudicial foreclosure sale.¹⁰⁹ With the pendency of the insolvency case, substantial doubt exists to justify the refusal by Executive Judge Gabitan-Erum to approve the Certificate of Sale as the extrajudicial foreclosure sale *without leave of the insolvency court* may contravene the policy and purpose of Act No. 1956.¹¹⁰

Act No. 3135 is silent with respect to mortgaged properties that are in *custodia legis*, such as the property in this case, which was placed under the control and supervision of the insolvency court. This court has declared that “[a] court which has control of such property, exercises exclusive jurisdiction over the same, retains all incidents relative to the conduct of such property. No court, except one having supervisory control or superior jurisdiction in the premises, has a right to interfere with and change that possession.”¹¹¹ The extrajudicial foreclosure and sale of the mortgaged

¹⁰⁸ *Angeles v. The Secretary of Justice, et al.*, 628 Phil. 381, 396 (2010) [Per J. Leonardo-De Castro, First Division].

¹⁰⁹ *Rollo*, p. 106.

¹¹⁰ *Angeles v. The Secretary of Justice, et al.*, (628 Phil. 381, 397–398 (2010) [Per J. Leonardo-De Castro, First Division]) held that in *Spouses Laburada v. Land Registration Authority* (350 Phil. 779, 789–793 (1998) [Per J. Panganiban, First Division]), “the issuance by the LRA officials of a decree of registration is not a purely ministerial duty in cases where they find that such would result to the double titling of the same parcel of land. In the same vein, . . . the Register of Deeds cannot be compelled by *mandamus* to comply with the RTC Order since there were existing transfer certificates of title covering the subject parcels of land and there [were] reason[s] to question the rights of those requesting for the issuance of the [new titles].”

¹¹¹ *Solidbank Corporation v. Goyu & Sons, Inc.*, G.R. No. 142983, November 26, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/142983.pdf>> 13 [Per J. Leonardo-De Castro, First Division], *citing Yau v. The Manila Banking Corporation*, 433 Phil. 701, 710 (2002) [Per J. Austria-Martinez, First Division]. *See also Villanueva v. Court of Appeals*, 314 Phil. 297 (1995) [Per J. Davide, Jr., First Division]; *Philippine Veterans Bank v.*

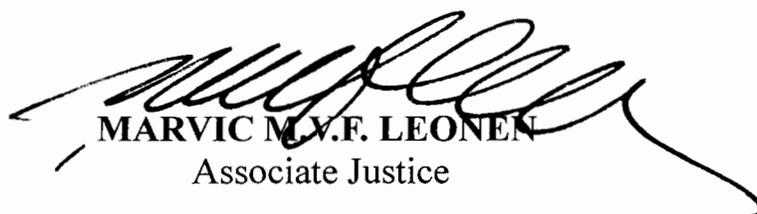
property of the debtor would clearly constitute an interference with the insolvency court's possession of the property.

Furthermore, Executive Judge Gabitan-Erum noticed that the President of the highest bidder in the public auction sale may be related to the owners of S.F. Naguiat Enterprises, Inc. The President of the highest bidder, Phoenix Global Energy, Inc., was a certain Eugene T. Naguiat.¹¹² "Among the incorporators of S.F. Naguiat Enterprises, Inc. [the insolvent corporation] [were] Sergio F. Naguiat, Maningning T. Naguiat, Antolin M. Tiglao, Nero F. Naguiat and Antolin T. Naguiat. Later[,] its capital was increased and the listed subscribers [were] Celestina T. Naguiat, Rommel T. Naguiat, Antolin T. Naguiat, Sergio T. Naguiat, Jr., Alexander T. Naguiat, Coumelo T. Naguiat, Fely Ann Breggs and Teresita Celine Quemer."¹¹³

Under the foregoing circumstances, the refusal of Executive Judge Gabitan-Erum to approve the Certificate of Sale was in accord with her duty to act with prudence, caution, and attention in the performance of her functions.

WHEREFORE, the Petition is **DENIED**, and the Court of Appeals' Decision dated November 15, 2006 and Resolution dated June 14, 2007 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

Intermediate Appellate Court, 258-A Phil. 424 (1989) [Per J. Medialdea, First Division]; *The Consolidated Bank and Trust Corporation (SOLIDBANK) v. Intermediate Appellate Court*, 234 Phil. 582 (1987) [Per J. Gutierrez, Jr., First Division].

¹¹² *Rollo*, p. 106.

¹¹³ *Id.*



ANTONIO T. CARPIO

Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ANTONIO T. CARPIO
Acting Chief Justice