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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GOTESCO PROPERTIES, INC.,
Petitioner,

-versus-

SOLIDBANK CORPORATION (NOW METROPOLITAN BANK AND TRUST COMPANY),
Respondent.

G.R. No. 209452

Present:

CARPIO, *J., Chairperson,*
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

Promulgated:
26 JUL 2017

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DECISION

LEONEN, *J.*:

The requirement for publication of a Notice of Sale in an extrajudicial foreclosure is complied with when the publication is circulated at least in the city where the property is located.

This is a Petition for Review on Certiorari[1] assailing the May 31, 2013 Decision[2] and October 7, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 97748. The Court of Appeals affirmed the Decision of the

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1 *Rollo*, pp. 10–39.

2 Id. at 41–62. The Decision, promulgated on May 31, 2013, was penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Franchito N. Diamante of the Special Fourteenth Division, Court of Appeals, Manila.

3 Id. at 64–65. The Resolution, promulgated on October 7, 2013, was penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Elihu A. Ybañez and Franchito N. Diamante of the Former Special Fourteenth Division, Court of Appeals, Manila.

Regional Trial Court, which dismissed the complaint filed by petitioner Gotesco Properties, Inc. (Gotesco) for the annulment of the foreclosure proceeding. The Court of Appeals also upheld the issuance of a writ of possession for respondent Solidbank Corporation (Solidbank), now Metropolitan Bank and Trust Company (Metrobank).

In 1995, Gotesco obtained from Solidbank a term loan of ₱300 million through its President, Mr. Jose Go (Mr. Go). This loan was covered by three (3) promissory notes. To secure the loan, Gotesco was required to execute a Mortgage Trust Indenture (Indenture) naming Solidbank-Trust Division as Trustee.[4]

The Indenture, dated August 9, 1995, obliged Gotesco to mortgage several parcels of land in favor of Solidbank.[5] One (1) of the lots mortgaged and used as a collateral was a property located in San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 387371-R.[6] A stipulation in the Indenture also irrevocably appointed Solidbank-Trust Division as Gotesco's attorney-in-fact.[7] Under the Indenture, Gotesco also agreed to "at all times maintain the Sound Value of the Collateral."[8]

When the loan was about to mature, Gotesco found it difficult to meet its obligation because of the 1997 Asian Financial Crisis.[9] On January 24, 2000, Gotesco sent a letter to Solidbank proposing to restructure the loan obligation.[10] The loan restructuring agreement proposed to extend the payment period to seven (7) years. The suggested period included a two (2)-year grace period.[11]

In its February 9, 2000 letter,[12] Solidbank informed Gotesco of a substantial reduction in the appraised value of its mortgaged properties. Based on an appraisal report submitted to Solidbank, the sound value of the mortgaged properties at that time was at ₱381,245,840.00.[13] Since the necessary collateral to loan ratio was 200%, Solidbank held that there was a deficiency in the collateral, which Gotesco had to address. Solidbank required Gotesco to replace or add to the mortgaged properties.[14]

Gotesco construed the February 9, 2000 letter as Solidbank's implied

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4 Id. at 42–43.
5 Id. at 43.
6 Id. at 42.
7 Id. at 56.
8 Id. at 52.
9 Id. at 16.
10 Id. at 43.
11 Id. at 20.
12 Id. at 72–73.
13 Id. at 72.
14 Id.

agreement to the loan restructuring proposal.[15] However, Gotesco found it unnecessary to address the alleged deficiency in the collateral. It insisted that the aggregate sound value of the mortgaged properties had not changed and was still at ₱1,076,905,000.00.[16]

Solidbank sent a demand letter dated June 7, 2000 to Gotesco as the loan became due.[17] Despite having received this demand letter, Gotesco failed to pay the outstanding obligation.[18]

Solidbank then filed a Petition for the Extrajudicial Foreclosure of the lot covered by TCT No. 387371-R through Atty. Wilfrido Mangiliman (Atty. Mangiliman), a notary public.[19]

In the Notice of Sale[20] dated July 24, 2000, the public auction of the land located in Pampanga, covered by TCT No. 387371-R, was announced to be held on August 24, 2000 at 10:00 a.m. However, pursuant to paragraph 5 of A.M. No. 99-10-05-0 dated December 14, 1999,[21] the Notice of Sale indicated that if the minimum requirement of two (2) bidders was not met, the sale was to be postponed and rescheduled on August 31, 2000.[22]

The public auction was held on August 31, 2000[23] and Solidbank was declared the winning bidder.[24]

On February 5, 2001, Gotesco filed a complaint before Branch 42, Regional Trial Court, San Fernando, Pampanga for Annulment of Foreclosure Proceedings, Specific Performance, and Damages against Solidbank, Atty. Mangiliman, and the Register of Deeds of San Fernando, Pampanga.[25]

Gotesco assailed the validity of the foreclosure proceeding claiming that it was premature and without legal basis.[26] According to Gotesco, the jurisdictional requirements prescribed under Act No. 3135 were not complied with. First, Solidbank did not furnish Gotesco copies of the

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15 Id. at 19.
16 Id. at 74, Certificate of Sound Value of Collateral dated July 28, 1999.
17 Id. at 105, Comment.
18 Id. at 105–106, Comment.
19 Id. at 44.
20 Id. at 75–76.
21 Adm. Matter No. 99-10-05-0 (2000) provides:
5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two, bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.
22 *Rollo*, p. 76.
23 Id. at 44.
24 Id. at 77–79, Certificate of Sale.
25 Id. at 42.
26 Id. at 44.

petition for extrajudicial foreclosure, notice of sale, and certificate of sale. Second, the filing fees were not paid. Lastly, even assuming the original period for loan payment was not extended, the prerequisites for the foreclosure proceeding provided in the Indenture were not met.[27]

Section 5.02 of the Indenture provided:

> 5.02. Foreclosure. **If any event of default shall have occurred and be continuing, the Trustee [Solidbank-Trust Division], on written instruction by the Majority Creditors [Solidbank], shall within three (3) Banking Days from receipt of such notice, give written notice to the Company [appellant], copy furnished all Creditors, declaring all obligations secured by this Indenture due and payable and foreclosing the Collateral. Upon such declaration, the [appellant] shall pay to the [Solidbank-Trust Division], within ten (10) days from receipt of such notice,** the amount sufficient to cover costs and expenses of collection, including compensation for the [Solidbank-Trust Division], its agents and attorneys.
>
> **In default of such payment, the [Solidbank-Trust Division] may proceed to foreclose this Indenture, judicially or extra-judicially under Act No. 3135, as amended.** Thereupon, on demand of the [Solidbank-Trust Division], the appellant shall immediately turn over possession of the Collateral to any party designated as the duly authorized representative of the [Solidbank-Trust Division], free of all charges. (Emphasis supplied.)[28]

In their Answer with Counterclaim, Solidbank alleged that it never entered into a restructuring agreement with Gotesco. Solidbank claimed that it complied with the publication and posting requirements laid down by Act No. 3135. It also asserted that Gotesco's complaint was insufficient because it failed to state a cause of action.[29]

On October 31, 2001, Solidbank filed an Ex-Parte Petition for the Issuance of a Writ of Possession[30] before Branch 48, Regional Trial Court,

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27 Id.

28 Id. at 53, as quoted in the Decision of the Court of Appeals. The parties did not attach a copy of the Indenture to the petition.

29 Id. at 45.

30 Act No. 3135, sec. 7, as amended by Act 4118, provides:
Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of

San Fernando, Pampanga.[31]

The two (2) cases were consolidated before Branch 42, Regional Trial Court, San Fernando, Pampanga.[32] However, the presiding judge of Branch 42 recused himself after disclosing that he was a depositor in Metrobank, previously Solidbank. The case was re-raffled to Branch 47.[33]

In its May 4, 2011 Decision,[34] Branch 47, Regional Trial Court, San Fernando, Pampanga dismissed Gotesco's complaint for the annulment of the foreclosure proceeding and granted the Writ of Possession in Solidbank's favor:

> **WHEREFORE**, premises considered, the plaintiff's Complaint in Civil Case No. 12212 is hereby **DISMISSED** for lack of merit.
>
> On the other hand, the Ex-Parte Petition in LRC No. 762 is hereby **GRANTED**. Accordingly, let a writ of possession over the property covered by Transfer Certificate of Title No. 387371-R be issued against Gotesco Properties, Inc., and all persons claiming rights under it.
>
> **SO ORDERED.**[35] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration, which was denied on September 6, 2011.[36]

Gotesco appealed the rulings before the Court of Appeals. It argued that contrary to the trial court's finding, the restructuring agreement was perfected. The foreclosure was premature because Gotesco was not in default. Solidbank also failed to adhere to the stipulation which required that in the event of default, a notice shall be given to Gotesco. Moreover, Mr. Go allegedly was not authorized to appoint Solidbank as an attorney-in-fact.[37]

In its May 31, 2013 Decision,[38] the Court of Appeals affirmed the decision of the Regional Trial Court. It ruled that there was no perfected restructuring agreement between the parties.[39] It cited Article 1319 of the Civil Code,[40] which requires absolute acceptance of the offer before it can be

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possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

31 *Rollo*, p. 13.
32 Id. at 95.
33 Id. at 48.
34 Id. at 41–42.
35 Id. at 42, as quoted in the Court of Appeals Decision.
36 Id. at 49.
37 Id. at 50–51.
38 Id. at 41–62.
39 Id. at 50.
40 CIVIL CODE, art. 1319 provides:

considered a binding contract.[41] It found that Gotesco failed to prove that Solidbank clearly and unequivocally accepted the proposal for loan restructuring.[42]

The Court of Appeals also declared that Gotesco was in default.[43] It quoted Section 4.03 of the Indenture, which provided:

> The Company *[Gotesco/appellant]* shall at all times maintain the Sound Value of the Collateral at a level equal to that provided for under Sec. 2.01 of this Indenture and, for such purpose, shall make such substitutions, replacements, and additions for or to the Collateral.
>
> If at any time, in the opinion of the Trustee *[Solidbank-Trust Division]* and the Majority Creditors *[Solidbank/appellee]*, the Sound Value of the Collateral is impaired, or there is substantial and imminent danger of such impairment, the *[appellant]* shall, upon demand of *[Solidbank-Trust Division]*, effect the substitution of the Collateral or part thereof with another or others and/or execute additional mortgages on other properties and/or deposit cash with the *[Solidbank-Trust Division]* satisfactory to the *[Solidbank-Trust Division]* and *[Solidbank]*.[44] (Emphasis in the original)

Under the Indenture, Gotesco agreed to provide additional collateral "[i]f at any time, in the opinion of the Trustee and the Majority Creditors, the Sound Value of the Collateral is impaired."[45] Gotesco should have provided the additional security demanded by Solidbank after learning that the value of the properties used as collateral had been reduced significantly. When Gotesco "chose to rely on its opinion, over and above and contrary to the opinion of the Trustee and the Creditor," it defaulted on its obligation.[46] Thus, the Court of Appeals ruled that Gotesco's refusal to address the inadequacy of the collateral was sufficient reason for Solidbank to foreclose the property.

The Court of Appeals found that the requisites under Section 3 of Act No. 3135 were satisfied.[47] The Notice of Sale was physically posted in the Office of the Clerk of Court, the Registry of Deeds, and the Capitol Grounds.[48] Alongside the posting, the Notice of Sale was published in

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Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

41 *Rollo*, p. 51.
42 Id.
43 Id.
44 Id. at 52, as quoted in the Decision of the Court of Appeals.
45 Id.
46 Id.
47 Id. at 57.
48 Id. at 58.

Remate in its issues dated July 29, 2000, August 5, 2000, and August 12, 2000.[49] The Court of Appeals rejected Gotesco's allegation that the publication was invalid for being published in a newspaper not printed in the city where the property was located. According to the Court of Appeals, the fact that *Remate* was published in Metro Manila, not in Pampanga, did not mean that it was not a newspaper of general circulation.[50] It was still a newspaper of general circulation; thus, the publication was valid. The Court of Appeals ruled, "[t]he Notice of Sale, Affidavit of Publication, and Affidavit of Posting sufficiently prove that the jurisdictional requirements regarding publication of the Notice were complied with."[51] There was also documentary evidence proving that contrary to Gotesco's claim, it received a demand letter from Solidbank.[52]

The Court of Appeals also determined that Mr. Go had the authority to agree to the conditions related to securing the loan.[53] It examined the Secretary's Certificate which quoted verbatim the Board Resolution authorizing Mr. Go to enter into the loan agreement:[54]

> Resolution No. 95-015
>
> RESOLVED, AS IT HEREBY RESOLVED, that the Corporation [appellant] be as it is hereby authorized, to enter into a Mortgage Trust Indenture (MTI) arrangement with Solidbank Corporation-Trust Division.
>
> RESOLVED FURTHER, that the [appellant], be as it is hereby authorized to secure a loan in the amount of THREE HUNDRED MILLION only (P300,000,000.00) PESOS from Solidbank Corporation [appellant] under said Mortgage Trust Indenture on such items, conditions, and stipulations that the [appellant] may think fit for the purpose of the loan and to mortgage the [appellant]'s assets as security and/or collateral for the loan and other credit facilities.
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> RESOLVED FURTHER, that JOSE C. GO, be, as he is hereby authorized, to negotiate and accept the terms and conditions and to sign, execute and deliver any and all promissory notes, bonds, mortgages and all other documents necessary in the execution of the aforesaid resolutions with the said banks, for and in behalf of the [appellant].[55]

Lastly, since there was no third party with adverse interest that occupied the property, the issuance of the Writ of Possession was ministerial.[56]

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49 Id. at 57.
50 Id. at 58.
51 Id. at 57.
52 Id. at 53.
53 Id. at 56.
54 Id. at 55.
55 Id. at 55–56.
56 Id. at 61.

The dispositive portion of the Court of Appeals May 31, 2013 Decision provided:

> **WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**. The Decision dated May 4, 2011, and the Order dated September 6, 2011, of the Regional Trial Court, Branch 47, San Fernando, Pampanga in the consolidated cases docketed as Civil Case No. 12212 and LRC No. 726, are hereby **AFFIRMED**. Costs against appellant Gotesco Properties Incorporated.
>
> **SO ORDERED.**[57] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration but it was denied in the Resolution[58] promulgated on October 7, 2013.

Hence, this Petition for Review on Certiorari was filed on November 28, 2013.[59]

In this Petition, petitioner Gotesco maintains that the foreclosure proceeding is null and void. It insists that respondent Solidbank agreed to restructure its loan, granting a "payment period of seven (7) years with two (2) years grace period."[60] It continues to argue that respondent impliedly accepted petitioner's proposal when it asked for an increase in the collateral.[61] Respondent reneged on the restructuring agreement when it caused the foreclosure of the property prematurely.

Petitioner claims that it was not notified that it was in default. Under the Indenture, the foreclosure proceeding can only be initiated upon petitioner's failure to pay within 10 days after receipt of the notice of default. Allegedly, respondent did not send any notice. Respondent's failure to prove that it sent a demand letter means the obligation is not yet due and demandable.[62]

Petitioner avers that the mortgage is void because the principal obligation it secured was still inexistent when the Indenture was signed. The mortgage was executed on August 9, 1995. The promissory notes representing the loans were dated August 14, 1995, August 21, 1995, and August 28, 1995. Since the mortgage was only an accessory contract, "it cannot stand alone absent a principal obligation to secure."[63]

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57 Id. at 61–62.
58 Id. at 64–65.
59 Id. at 10–39.
60 Id. at 20.
61 Id. at 19.
62 Id. at 23.
63 Id. at 30–31.

Petitioner alleges that Mr. Go was not sanctioned by Gotesco's Board of Directors "to appoint the bank as the attorney-in-fact to conduct an extra-judicial foreclosure."[64] Thus, the subsequent proceedings are void.

Moreover, petitioner insists that Section 3 of Act No. 3135 was violated. The law requires that the Notice of Sale be posted for not less than 20 days before the day of the auction sale. According to the Affidavit of Posting by Janet Torres, Atty. Mangiliman's law clerk,[65] the Notice of Sale was posted on August 15, 2000.[66] Since the auction sale was conducted on August 31, 2000, the 20-day period was not followed.[67]

Petitioner further contends that the publication of the Notice of Sale in *Remate* was defective. Petitioner is of the opinion that the Notice of Sale should have been published in newspapers "published, edited and circulated" in the same city or province where the foreclosed property was located.[68] Since the land being sold was situated at San Fernando, Pampanga and *Remate* was printed and published in Manila, petitioner suggests that the publication requirement was violated.[69]

Consequently, since the foreclosure proceeding was void, there was no basis for the issuance of the Writ of Possession. Possession of the property must revert back to petitioner.

Thereafter, respondent filed a Comment[70] and a Supplemental Comment[71] to the Petition. Respondent denies that it agreed to restructure petitioner's loan. It emphasized that petitioner has not shown any concrete proof that respondent accepted the proposal. Moreover, the alleged restructuring agreement was not offered in evidence and cannot be considered by this Court.[72]

In its Comment, respondent explains that it is of no moment that the mortgage agreement was executed before the promissory notes. Jurisprudence has recognized that a mortgage can secure present and future obligations.[73] In any case, since petitioner is arguing that the obligation was restructured, it is now estopped from questioning the validity of the Indenture.[74]

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64 Id. at 30.
65 Id. at 57–58.
66 Id. at 80.
67 Id. at 24.
68 Id. at 25.
69 Id. at 26.
70 Id. at 91–123.
71 Id. at 124–136.
72 Id. at 99.
73 Id. at 103.
74 Id.

Respondent argues that petitioner cannot claim that it was not notified of the default. Respondent submitted a return card which indicated that the demand letter dated June 7, 2000 informing Gotesco of its default was received by petitioner.[75] There is also a provision in the promissory note, which states that failure to pay the amounts due makes the obligation immediately due, without need for notice or demand.[76]

Respondent took the position that Mr. Go was clearly authorized by the Board of Directors to sign the Indenture. Since the appointment of Solidbank-Trust Division as an attorney-in-fact was an integral part of the agreement, petitioner was bound by Mr. Go's assent. In any case, this contention was not alleged in the Complaint; hence, it is immaterial.[77]

According to respondent, Section 3 of Act No. 3135 was complied with. *Remate* is a newspaper of general circulation. It is among the newspapers accredited by the Regional Trial Court where a notice of sale can be published.[78] Petitioner also cannot raise for the first time on appeal the allegation that the Notice of Sale was defective for being posted less than 20 days before the auction sale.[79]

Respondent holds that the Writ of Possession was validly issued because its issuance was ministerial.

A Reply[80] was filed by petitioner on May 20, 2014 in compliance with this Court's March 17, 2014 Resolution.

On August 28, 2015, petitioner filed a Motion for Voluntary Inhibition[81] of the ponente. Petitioner sought the inhibition of Associate Justice Marvic M.V.F. Leonen, former Dean of the College of Law of the University of the Philippines, for his ties with Metrobank Foundation.[82] The ponente allegedly had a working relationship with respondent.[83] First, he was an awardee of the professorial chair of the Metrobank Foundation.[84] Second, he was chosen as a speaker in the Metrobank Professorial Chair and Metrobank's Country's Outstanding Police Officers in Service.[85]

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75 Id. at 105.
76 Id. at 103.
77 Id. at 107.
78 Id. at 113.
79 Id. at 111.
80 Id. at 168–186.
81 Id. at 188–193.
82 Id. at 189.
83 Id. Gotesco considers Metropolitan Bank and Trust Company (formerly Solidbank Corporation) and Metrobank Foundation as the same corporation.
84 Id. "[I]n the Metrobank Foundation Professorial Chair Lecture Series, Volume 1, 2004, 2009, it is indicated that [Justice Leonen] had a professorial chair in Constitutional Law while he was Dean of the UP College of Law and the Vice Chair of the Department of Constitutional Law, PHILJA."
85 Id.

Respondent opposed the Motion for Voluntary Inhibition as "none of the grounds for mandatory inhibition exist[s] in the present instance."[86]

In this Court's January 25, 2016 Resolution,[87] the Motion for Inhibition was denied for lack of merit. The Internal Rules of the Supreme Court[88] provide several grounds for inhibition in addition to those stated under Rule 137, Section 1[89] of the Rules of Court. There was no need for the ponente to inhibit since none of the enumerated circumstances was attendant in this case. Justices are not given unfettered discretion to desist from hearing a case.[90] Mere imputation of bias or partiality is not enough; there must be a just and valid cause for inhibition to prosper.[91]

On March 20, 2017, respondent filed a Motion for Resolution claiming the case is ripe for resolution.[92]

There are three (3) issues to be resolved before this Court:

First, whether the foreclosure was premature;

Second, whether the requirements under Section 3 of Act No. 3135 were complied with; and

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86 Id. at 195.

87 Id. at 201.

88 Adm. Matter No. 10-4-20-SC (2010), Rule 8, sec. 1 provides:
Section 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:
(a) the Member of the Court was the ponente of the decision or participated in the proceedings in the appellate or trial court;
(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3 (c) of this rule;
(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and
(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.
A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.
The inhibiting Member must state the precise reason for the inhibition.

89 RULES OF COURT, Rule 137, sec. 1 provides:
Section 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

90 *Pagoda Philippines Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 341 (2005) [Per J. Panganiban, Third Division].

91 Id.

92 *Rollo*, p. 202.

Finally, whether the Writ of Possession was properly issued.

I.A

Petitioner defaulted in its obligation. Thus, respondent was within its rights to foreclose the property.

Section 5 of the Indenture provided:

> 5.01 Events of Default. Each of the following shall constitute an Event of Default under this Indenture:
>
> (a) **the Company shall fail to pay at stated maturity, by acceleration or otherwise to any Creditor any amount due and owing under a Secured Principal Document**;
>
> (b) any event of default under the Secured Principal Documents shall occur;
>
> (c) any representation or warranty or statement made or furnished to this Trustee by or on behalf of the Company in connection with this Indenture shall prove to have been false in any material respect when made or furnished or deemed made;
>
> (d) the Company shall default in the due performance or observance of any provision contained herein and such default continues unremedied for thirty (30) days after notice to the Company by the Trustee; or
>
> (e) **the lien created by this Indenture shall be lost or impaired** or shall cease to be a first and preferred lien upon the Collateral.[93] (Emphasis supplied)

Petitioner defaulted in its obligation twice. First, when it failed to pay the loan according to the terms of the promissory note. Second, when it failed to provide the additional collateral demanded by respondent.

Petitioner never refuted that it defaulted in its payment of the loan. In its Stipulation of Facts/Admissions and Proposed Marking of Exhibits, petitioner admitted to proposing the loan restructuring because of its inability to meet the loan payments.[94] The loan restructuring agreement would have given Petitioner an additional "payment period of seven (7) years with two (2) years grace period on principal payment."[95]

However, as the Court of Appeals correctly held, that there was no perfected restructuring agreement between the parties. The Civil Code requires absolute acceptance of the offer before it can be considered a

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93 Id. at 104–105.
94 Id. at 104.
95 Id. at 20.

binding contract:

> Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

Mendoza v. Court of Appeals[96] tells us that "[o]nly an absolute and unqualified acceptance of a definite offer manifests the consent necessary to perfect a contract."[97]

For a proposal to bind a party, there must be proof that it consented to all the terms on offer.[98] To prove that the original period of payment was extended, petitioner must show that respondent unequivocally accepted the offer. In this case, petitioner did not present any shred of evidence which would prove that respondent agreed to restructure the loan. At best, petitioner only alleged that it sent a letter to respondent to ask for a debt restructuring. However, sending a proposal is not enough. There must be proof that respondent expressly accepted the offer. Without an absolute acceptance, there is no concurrence of minds.[99] Thus, this Court cannot bind respondent to stipulations it never consented to.

Petitioner points to respondent's February 9, 2000 letter claiming that if respondent had not agreed to the proposal, it would not have asked for additional collateral.[100]

However, respondent's February 9, 2000 letter showed no indication that it extended the loan's payment period. It did not even mention any restructuring proposal. The demand to address the deficiency in the loan's security cannot be interpreted as an implied agreement to restructure the loan.

Notably, petitioner did not offer the alleged restructuring agreement in evidence. As respondent points out, the theory that the loan was restructured is hinged on the January 24, 2000 letter from petitioner.[101] However, this letter which allegedly proposed the restructuring of petitioner's obligation

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96 412 Phil. 14 (2001) [Per J. De Leon, Jr., Second Division].
97 Id. at 28.
98 Id.
99 *Vda. de Urbano v. Government Service Insurance System*, 419 Phil. 948, 975–976 (2001) [Per J. Puno, First Division].
100 *Rollo*, p. 19.
101 Id. at 99.

was not offered in evidence.[102] Under the rules, this Court cannot consider any evidence not formally offered.[103] In *Spouses Ong v. Court of Appeals,*[104] this Court exonerated a common carrier from liability because the police report finding it liable was not formally offered in evidence. This Court explained:

> A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences. Opposing parties will be deprived of their chance to examine the document and to object to its admissibility. On the other hand, the appellate court will have difficulty reviewing documents not previously scrutinized by the court below.[105] (Citation omitted)

Since the loan restructuring which Gotesco proposed was not accepted, there is no question that petitioner defaulted on the payment of its loan.

Petitioner's failure to provide the additional collateral demanded by respondent constituted another Event of Default under the Indenture.

Under the Indenture, petitioner agreed to maintain the value of the collateral at a level at least equal to the required collateral cover. Section 4.03 of the Indenture provided:

> The Company [Gotesco/appellant] shall at all times maintain the Sound Value of the Collateral at a level equal to that provided for under Sec. 2.01 of this Indenture and, for such purpose, shall make such substitutions, replacements, and additions for or to the Collateral.
>
> **If at any time, in the opinion of the Trustee [Solidbank-Trust Division] and the Majority Creditors [Solidbank/appellee], the Sound Value of the Collateral is impaired, or there is substantial and imminent danger of such impairment, [appellant] shall, upon demand of [Solidbank-Trust Division], effect the substitution of the Collateral** or part thereof with another or others and/or execute additional mortgages on other properties and/or deposit cash with the [Solidbank-Trust Division] satisfactory to the [Solidbank-Trust Division] and [Solidbank].[106] (Emphasis supplied)

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[102] Id. at 43 and 99.

[103] RULES OF COURT, Rule 132, sec. 34 provides:
Section 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[104] 361 Phil. 338 (1999) [Per J. Panganiban, Third Division].

[105] Id. at 350.

[106] *Rollo*, p. 52, as quoted in the Decision of the Court of Appeals.

On February 9, 2000, respondent wrote to petitioner claiming that the appraised value of the mortgaged properties decreased.[107] Respondent then asked petitioner to "address the deficiency in the required collateral."[108] The letter, in part, provided:

> At present, the outstanding secured obligations covered by the [Mortgage Trust Indenture are] P300 Million, which MPC is held solely by Solidbank Corporation. The reduction in the collateral values of the properties shall therefore impair the required collateral to loan ratio of 200%.
>
> In this regard, we urge you to address the deficiency in the required collateral cover soonest and make the necessary substitution, replacements and/or additions on the mortgaged properties. Section 4.03 of the [Mortgage Trust Indenture] requires that [Gotesco Properties, Inc.] shall maintain at all times the Sound Value of the mortgaged property at a level at least equal to the required collateral cover.[109]

Petitioner chose not to heed this demand and insisted that the aggregate sound value of the mortgaged properties was still at ₱1,076,905,000.00.[110] It added:

> 42. And even assuming arguendo that the value of the mortgaged properties has vent down, the fact remains that being a real estate property, it could not go down more than 50% of the value thereof. Thus, at best the least valuation of these mortgaged properties would be no less than P600 million, which is more than enough to cover the balance of the loan obligations.[111]

The determination of whether the collateral is impaired lies on respondent. As the Court of Appeals aptly put, petitioner ignored respondent's demand "to its ruination."[112]

Under the Civil Code,[113] there is default when a party obliged to

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107 Id. at 72.
108 Id.
109 Id. The letter did not state what "MPC" was.
110 Id. at 74, Certificate of Sound Value of Collateral dated July 28, 1999.
111 Id. at 19–20.
112 Id. at 52.
113 CIVIL CODE, art. 1169 provides:
Article 1169. *Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.*
However, the demand by the creditor shall not be necessary in order that delay may exist:
(1) When the obligation or the law expressly so declare; or
(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphasis supplied)

deliver something fails to do so. In *Social Security System v. Moonwalk Development & Housing Corp.*,[114] this Court enumerated the elements of default:

> In order that the debtor may be in default it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially and extrajudicially. Default generally begins from the moment the creditor demands the performance of the obligation.[115] (Citations omitted)

When respondent asked to have the mortgaged properties replaced, it was requiring petitioner to comply with its obligation to sustain the loan's security at an appropriate level. Clearly, petitioner defaulted when it refused to heed respondent's demand for additional collateral, as expressed in the February 9, 2000 letter. This gave respondent enough reason to foreclose the property.

I.B

Petitioner argues that the foreclosure should not have been initiated because it was not notified that an event of default occurred. It claims that under the Indenture, it should have been notified that it was in default and that the obligation was due and demandable. After such notice, it should have been given 10 days to settle the debt. Petitioner avers that the foreclosure proceeding could only be initiated upon failure to pay after the lapse of the 10-day period.[116]

Petitioner claims it did not receive any demand letter. Gotesco's first witness, Arturo M. Garcia, testified that Gotesco did not receive any written demand.[117] On the other hand, respondent avers that it sent a demand letter dated June 7, 2000 to petitioner.[118] As proof, respondent submitted a return card which indicated that the letter was accepted by the addressee.

This Court rules for respondent.

Documentary evidence will generally prevail over testimonial evidence.[119] As the Court of Appeals noted, the return card submitted by respondent proves that the demand letter was received by petitioner.[120] This

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[114] 293 Phil. 129 (1993) [Per J. Campos, Jr., Second Division].
[115] Id. at 141.
[116] *Rollo*, p. 21.
[117] Id. at 22.
[118] Id. at 105.
[119] *Government Service Insurance System v. Court of Appeals*, 293 Phil. 699, 710 (1993) [Per J. Melo, Third Division].
[120] *Rollo*, p. 53 and 105.

Court is inclined to give more evidentiary weight to documentary evidence as opposed to a testimony which can be easily fabricated.[121] In any case, the question of whether the letter was received is a factual matter better left to the lower courts. Since the factual findings of appellate courts are conclusive and binding upon this Court when supported by substantial evidence, this Court sees no reason to disturb the findings of the Court of Appeals.[122]

I.C

The contention that Mr. Go did not have the authority to appoint Solidbank-Trust Division as an attorney-in-fact for the purpose of selling the mortgaged property is untenable. As the Court of Appeals correctly pointed out:

> Since Mr. Go was authorized to sign the Indenture, and the provision of appointment of the [respondent] as attorney-in-fact in the event of foreclosure is an integral portion of the terms and conditions of the Indenture, Mr. Go was, therefore, authorized and invested with the power to appoint an attorney-in-fact.[123]

In any case, petitioner is not allowed to bring a new issue on appeal. Since the question regarding Mr. Go's authority was only presented before the Court of Appeals, it deserves scant consideration.

Canada v. All Commodities Marketing Corporation[124] explained that raising a new argument on appeal violates due process:

> As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present evidence *in contra* to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner at this stage to change his theory would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[125] (Citations omitted)

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121 *Government Service Insurance System v. Court of Appeals*, 293 Phil. 699, 710 (1993) [Per J. Melo, Third Division].

122 *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 10 [Per J. Leonen, Second Division].

123 *Rollo*, p. 56.

124 590 Phil. 342 (2008) [Per J. Nachura, Third Division].

125 Id. at 347–348.

II.A

As to the validity of the foreclosure proceeding, this Court rules in the affirmative.

Section 3 of Act No. 3135 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.

Section 3 of Act No. 3135 requires that the Notice of Sale be a) physically posted in three (3) public places and b) be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the city where the property is situated.

Petitioner claims that since the foreclosed property was located in Pampanga, the publication of the Notice of Sale in *Remate* was not valid. Petitioner suggests that the Notice of Sale could only be published in a newspaper printed in the city where the property was located. It posits that because *Remate* was printed and published in Manila, not in San Fernando, Pampanga, the publication was defective.[126]

Petitioner is mistaken.

Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Co.[127] already considered this argument and ruled that this interpretation is too restricting:

> Were the interpretation of the trial court (sic) to be followed, even the leading dailies in the country like the 'Manila Bulletin,' the 'Philippine Daily Inquirer,' or 'The Philippine Star' which all enjoy a wide circulation throughout the country, cannot publish legal notices that would be honored outside the place of their publication. But this is not the interpretation given by the courts. For what is important is that a paper should be in general circulation in the place where the properties to be foreclosed are located in order that publication may serve the purpose for which it was intended.[128]

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126 *Rollo*, pp. 24–28.
127 332 Phil. 844 (1996) [Per J. Hermosisima Jr., First Division].
128 Id. at 850.

If notices are only published in newspapers printed in the city where the property is located, even newspapers that are circulated nationwide will be disqualified from announcing auction sales outside their city of publication.[129] This runs contrary to the spirit of the law which is to attain wide enough publicity so all parties interested in acquiring the property can be informed of the upcoming sale.[130] This Court ruled:

> 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. [131]

The crucial factor is not where the newspaper is printed but whether the newspaper is being circulated in the city where the property is located. Markedly, what the law requires is the publication of the Notice of Sale in a "newspaper of general circulation," which is defined as:

> To be a newspaper of general circulation, it is enough that "it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals" . . . The newspaper need not have the largest circulation so long as it is of general circulation.[132]

Verily, there is clear emphasis on the audience reached by the paper; the place of printing is not even considered.

The Court of Appeals pointed out that *Remate* is an accredited publication by the Regional Trial Court of Pampanga.[133] As argued by respondent:

> 94. It merits judicial notice that the newspaper where the Notice of Sale was published is chosen by raffle among newspaper publications accredited by the Regional Trial Court with territorial jurisdiction over the real property to be foreclosed. It can be safely presumed that the RTC in this regard imposed standards and criteria for these newspapers to qualify

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129 Id.
130 *Olizon v. Court of Appeals*, 306 Phil. 162 (1994) [Per J. Regalado, Second Division].
131 Id. at 172–173.
132 *Bonnevie v. Court of Appeals*, 210 Phil. 100, 111 (1983) [Per J. Guerrero, Second Division].
133 *Rollo*, p. 58.

> for the raffle, among the criteria being that they [are] newspapers of general circulation in the locality. More so in this instance, when it merits judicial notice that the Remate, is one of the most widely circulated tabloids in the country.[134]

II.B

As to the alleged defect with the posting requirement, petitioner argues that the Notice of Sale was posted less than the required 20 days. Respondent points out that this issue was alleged for the first time before this Court and should not be considered.

This Court rules for respondent.

Records show that petitioner only raised this argument in the Petition for Review submitted before this Court. The alleged defect was not raised before the lower courts. Notably, this is not the first time petitioner raised a new issue on appeal. As previously discussed, it raised Mr. Go's alleged lack of authority for the first time before the Court of Appeals. This Court reiterates that this practice cannot stand because raising new issues on appeal violates due process.[135]

In any case, the alleged defect in the posting is superficial. The Notice of Sale was posted on August 15, 2000,[136] while the auction sale took place on August 31, 2000.[137] The Notice of Sale was posted for 16 days, only four (4) days less than what the law requires.

The object of a Notice of Sale in an extrajudicial foreclosure proceeding is to inform the public of the nature and condition of the property to be sold and the time, place, and terms of the auction sale. Mistakes or omissions that do not impede this objective will not invalidate the Notice of Sale.[138] *Olizon v. Court of Appeals*[139] explained:

> 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

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134 Id. at 113.

135 *Canada v. All Commodities Marketing Corp.*, 590 Phil. 342, 347–348 (2008) [Per J. Nachura, Third Division].

136 *Rollo*, p. 80, Affidavit of Posting.

137 Id. at 44.

138 *Olizon v. Court of Appeals*, 306 Phil. 162, 172–173 (1994) [Per J. Regalado, Second Division].

139 *Olizon v. Court of Appeals*, 306 Phil. 162 (1994) [Per J. Regalado, Second Division].

> 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.[140] (Citation omitted)

III

Generally, the purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession during the redemption period. Section 7 of Act No. 3135, as amended by Act No. 4118, provides:

> Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

It is ministerial upon the trial court to issue such writ upon an ex parte petition of the purchaser.[141] However, this rule admits an exception.[142]

The last sentence of Rule 39, Section 33 of the Rules of Court is instructive:

> Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance

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[140] Id. at 173.

[141] *Spouses Edralin v. Philippine Veterans Bank*, 660 Phil. 368, 381 (2011) [Per J. Del Castillo, First Division].

[142] *China Banking Corp. v. Spouses Lozada*, 579 Phil. 454, 478–480 (2008) [J. Chico-Nazario, Third Division].

> and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied.)

This is in line with this Court's pronouncement in *Saavedra v. Siari Valley Estates, Inc.*[143] that:

> Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.[144]

This Court in *China Banking Corp. v. Spouses Lozada*[145] discussed that when the foreclosed property is in the possession of a third party, the issuance of a writ of possession in favor of the purchaser ceases to be ministerial and may no longer be done ex parte.[146] However, for this exception to apply, the property must be held by the third party adversely to the mortgagor.[147]

The Court of Appeals correctly held that this case does not fall under the exception.[148] Since it is the petitioner, and not a third party, who is occupying the property, the issuance of the Writ of Possession is ministerial.

There is also no merit to petitioner's argument that the Writ of Possession should not be issued while the complaint for the annulment of the foreclosure proceeding is still pending. *Fernandez v. Spouses Espinoza*[149] already ruled that a pending case assailing the validity of the foreclosure proceeding is immaterial:

> Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the

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143 106 Phil. 432 (1959) [Per J. Montemayor, En Banc].
144 Id. at 436.
145 579 Phil. 454 (2008) [J. Chico-Nazario, Third Division].
146 Id. at 473–474.
147 Id.
148 *Rollo*, p. 61.
149 574 Phil. 292 (2008) [Per J. Chico-Nazario, Third Division].

> annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[150] (Citation omitted)

As the winning bidder, respondent is entitled to the Writ of Possession.

WHEREFORE, the Petition for Review on Certiorari is hereby **DENIED**. The assailed Decision of the Court of Appeals dated May 31, 2013 and Resolution dated October 7, 2013 in CA-G.R. CV No. 97748 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

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[150] Id. at 307.

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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