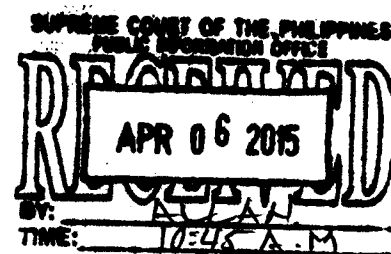




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **11 March 2015** which reads as follows:

"G.R. No. 206668 - Metropolitan Bank & Trust Co. v. Spouses Trinidad and Alfredo Villena.

This is a petition for review on *certiorari* seeking to reverse and set aside the August 23, 2012 Decision¹ and the March 27, 2013 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 91080 which affirmed the May 15, 2014 Decision³ of the Regional Trial Court, Branch 74, Antipolo City (RTC).

On May 22, 1997 and September 19, 1997, Spouses Trinidad S. Villena and Alfredo S. Villena (*respondents*) obtained two loans in the aggregate amount of ₱1,300,000.00 from Metropolitan Bank and Trust Co. (*Metrobank*). To secure the said loans, respondents executed a deed of real estate mortgage⁴ and, subsequently, an agreement on existing mortgage⁵ in favor of Metrobank over a parcel of land located in Antipolo, Rizal, covered by Transfer Certificate of Title (TCT) No. N-123633.

Respondents, however, defaulted on the payment of their loan despite written demand. On August 4, 1998, Metrobank initiated an extrajudicial foreclosure proceeding over the mortgage property, pursuant to Act No. 3135, before the notary public of Antipolo, Rizal. On September 11, 1998, the mortgaged property was sold at a public auction for the amount of ₱1,858,910.54 to Metrobank as the sole and highest bidder. The Certificate of Sale⁶ was issued and it was registered with the Registry of Deeds of Marikina City on November 11, 1998.

After the lapse of the one-year redemption period, Metrobank filed an affidavit of consolidation of ownership⁷ to consolidate its title to the foreclosed property. On January 5, 2000, the Register of Deeds cancelled TCT No. 123633 and issued, in its stead, TCT No. 385570 in the name of Metrobank.

¹ Penned by Associate Justice Francisco P. Acosta with Associate Justice Fernanda Lampas-Peralta and Associate Justice Angelita A. Gacutan, concurring; *rollo*, pp. 32-41.

² *Id.* at 42.

³ *Id.* at 131-137.

⁴ *Id.* at 62-63.

⁵ *Id.* at 64.

⁶ *Id.* at 72-75.

⁷ *Id.* at 74-75.

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On July 31, 2000, respondents filed a complaint for nullity of extrajudicial foreclosure and to declare void the notarial consolidation of title plus damages before the RTC. They alleged that Metrobank failed to post and publish the notice of the foreclosure sale. They also claimed that Metrobank was the only bidder and the amount of ₱1,858,910.54 was grossly inadequate.

In its Answer with Counterclaims, Metrobank denied the material allegations in respondents' complaint. It also attached a copy of the Certificate of Sale to show compliance with Act No. 3135.

In its decision, dated May 15, 2006, the RTC ruled in favor of respondents and annulled the foreclosure sale conducted on September 11, 1998. It found that the mortgage property was worth a lot more than the bid price and that Metrobank failed to cause the posting and publication of the notice of foreclosure sale. Furthermore, it held that Metrobank failed to republish the rescheduling of the foreclosure sale.

Metrobank moved for reconsideration and attached the photocopies of the Notice of Sale,⁸ Certificate of Posting of Notice of Sale,⁹ Affidavit of Publication,¹⁰ and newspaper clippings¹¹ to establish its compliance with the requirements of Act No. 3135. The said motion for reconsideration, however, was denied by the RTC on September 20, 2006.

Aggrieved, Metrobank filed an appeal before the CA. In its assailed decision, dated August 23, 2012, the CA held that Metrobank failed to present the relevant documents to show compliance with posting and publication under Act No. 3135. The CA noted that the documents attached in the motion for reconsideration filed by Metrobank were not properly offered in evidence. Metrobank moved for reconsideration, but the motion was denied in the assailed CA resolution, dated March 27, 2013.

Hence, this petition.

ISSUE

WHETHER THE CA ERRED IN UPHOLDING THE RTC RULING NULLIFYING THE FORECLOSURE SALE.

⁸ Id. at 224.

⁹ Id. at 227.

¹⁰ Id. at 226.

¹¹ Id. at 226.

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Metrobank argues that the notice, posting and publication requirements under Act No. 3135 were never raised as issues in the pre-trial and even during the trial. Further, it asserts that foreclosure proceedings enjoy the presumption of regularity. The burden of showing non-compliance with the legal requirements of the foreclosure lies with respondents.

In a resolution, dated July 1, 2013,¹² the Court required respondents to submit their comment on the present petition. A copy of the resolution was sent to respondents' address at **509 M. V. De Los Santos St. Sampaloc, Manila.**

In its November 11, 2013 Resolution,¹³ however, the Court noted that the said July 1, 2013 resolution was returned to respondents with a postal carrier's notation "RTS-Moved." In the Court's Resolution,¹⁴ dated February 19, 2014, the Court required Metrobank to exert more effort in locating the current address of respondents.

In its Compliance,¹⁵ filed on April 4, 2014, Metrobank stated that respondents' addresses, based on its previous demand letter, dated June 11, 1998, were **Blk. 55, Lot 1, Soldiers Hill Subdivision, Muntinlupa City and 488 V. Pasco Street, Barangay San Isidro, Cainta, Rizal.** In the June 11, 2014 Resolution, the Court noted Metrobank's compliance.¹⁶

On October 1, 2014, the Court issued another resolution¹⁷ stating that the June 11, 2014 and July 1, 2013 resolutions were returned and remained unserved to respondents with notation "RTS, Unknown" and "RTS, Insufficient Address" when sent to the two addresses earlier provided by Metrobank. In the same resolution the Court required Metrobank to submit the current and complete address of respondents within ten (10) days from notice." On November 5, 2014, Metrobank manifested that it already submitted all the known addresses of respondents and that it could no longer comply with the Court's resolution. Accordingly, Metrobank respectfully prayed that the case be submitted for decision.

The Court's Ruling

The petition lacks merit.

¹² Id. at 234.

¹³ Id. at 238.

¹⁴ Id. at 242.

¹⁵ Id. at 248-250.

¹⁶ Id. at 267.

¹⁷ Id. at 269-270.

On the procedural aspect, Metrobank continuously failed to provide the court with the correct address of respondents as the notices kept returning with postal notations of “Moved, Unknown and Insufficient Address.” Thus, the Court’s July 1, 2013 resolution, requiring respondents to submit their comment, remained unserved.

It is an elementary rule that when a party files any pleading or motion, a copy thereof must be served on the adverse party. The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.¹⁸ The respondents, as adverse party, must be given an opportunity to be heard through their comment, before the case can be presented for adjudication.

In this case, Metrobank has the responsibility to supply the correct address of respondents. Under Section 5, Rule 56 of the 1997 Rules of Civil Procedure,¹⁹ an appeal may be dismissed *motu proprio* on the ground of failure to comply with the directive or order of the Court without justifiable cause. On such ground alone, that Metrobank failed to comply with its undertaking despite several directives of the Court and without any justifiable excuse, the present petition must be dismissed.

Even if the procedural error would be set aside, the petition still lacks merit on substantive ground. The RTC found that Metrobank failed to cause the posting and publication of the notice of foreclosure sale as required by Section 3 of Act No. 3135.²⁰ Failure to comply with such, especially the publication of the notice, shall render the foreclosure sale void. Publication is required to give the extrajudicial foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. To allow the parties to waive this jurisdictional requirement would result in converting into a private sale what ought to be a public auction.²¹

¹⁸ *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013, 709 SCRA 276.

¹⁹ Rule 56, Section 5. Grounds for dismissal of appeal. — The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

- (a) Failure to take the appeal within the reglementary period;
- (b) Lack of merit in the petition;
- (c) Failure to pay the requisite docket fee and other lawful fees or to make a deposit for costs;
- (d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;
- (e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause;
- (f) Error in the choice or mode of appeal; and
- (g) The fact that the case is not appealable to the Supreme Court.

²⁰ Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

²¹ *PNB v. Spouses Maraya*, 615 Phil. 462, 468 (2009).

The findings of fact of the trial court were affirmed by the CA. The appellate court held that Metrobank failed to offer in evidence the relevant documents to show compliance with posting and publication under Act No. 3135. The Court has consistently held that the findings of the CA and other lower courts are, as a rule, accorded great weight, if not binding upon it, save for the most compelling and cogent reasons.²²

The Court, thus, finds no reversible error in the ruling of the CA and affirms the nullity of the extrajudicial foreclosure sale for non-compliance of Metrobank with the requirements of posting and publication of the notice of sale. The denial of the present petition is without prejudice to any foreclosure proceedings that might be instituted by Metrobank, subject to statutory limitations and the rules.

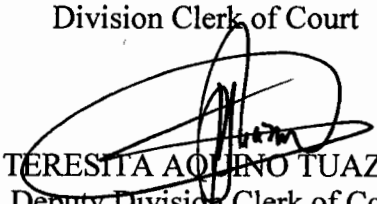
WHEREFORE, the petition is **DENIED**. The August 23, 2012 Decision and the March 27, 2013 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 91080 are hereby **AFFIRMED** *in toto*.

SO ORDERED."

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA AQUINO TUZON
Deputy Division Clerk of Court *Aug 31/13*

²² *Republic v. Judge Mangotara*, 638 Phil. 353, 443 (2010).

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JUDGMENT DIVISION (x)

Supreme Court, Manila

Please notify the Court of any change in your address.

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Mr