

METROPOLITAN BANK AND TRUST COMPANY, INC., PETITIONER, VS. EUGENIO PEÑAFIEL, FOR HIMSELF AND AS ATTORNEY-IN-FACT OF ERLINDA PEÑAFIEL, RESPONDENTS.

G.R. No. 173976. February 27, 2009

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-173976/>

NACHURA, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) dated July 29, 2005 and Resolution dated July 31, 2006. The assailed decision nullified the extrajudicial foreclosure sale of respondents' properties because the notice of sale was published in a newspaper not of general circulation in the place where the properties were located.

Respondent Erlinda Peñafiel and the late Romeo Peñafiel are the registered owners of two parcels of land covered by Transfer Certificate of Title (TCT) No. (350937) 6195 and TCT No. 0085, both issued by the Register of Deeds of Mandaluyong City. On August 1, 1991, the Peñafiel spouses mortgaged their properties in favor of petitioner Metropolitan Bank and Trust Company, Inc. The mortgage deed was amended on various dates as the amount of the loan covered by said deed was increased.

The spouses defaulted in the payment of their loan obligation. On July 14, 1999, petitioner instituted an extrajudicial foreclosure proceeding under Act No. 3135 through Diego A. Alleña, Jr., a notary public. Respondent Erlinda Peñafiel received the Notice of Sale, stating that the public auction was to be held on September 7, 1999 at ten o'clock in the morning, at the main entrance of the City Hall of Mandaluyong City. The Notice of Sale was published in *Maharlika Pilipinas* on August 5, 12 and 19, 1999, as attested to by its publisher in his Affidavit of Publication.[2] Copies of the said notice were also posted in three conspicuous places in Mandaluyong City.[3]

At the auction sale, petitioner emerged as the sole and highest bidder. The subject lots were sold to petitioner for P6,144,000.00. A certificate of sale[4] was subsequently issued in its favor.

On August 8, 2000, respondent Erlinda Peñafiel, through her attorney-in-fact, Eugenio Peñafiel, filed a Complaint[5] praying that the extrajudicial foreclosure of the properties be declared null and void. They likewise sought (a) to enjoin petitioner and the Register of Deeds from consolidating ownership, (b) to enjoin petitioner from taking possession of the properties, and (c) to be paid attorney's fees.

On June 30, 2003, the Regional Trial Court (RTC) rendered judgment in favor of petitioner:

ACCORDINGLY, judgment is hereby rendered as follows:

- The extrajudicial foreclosure of real estate mortgage instituted by defendants Metrobank and Notary Public Diego A. Alleña, Jr. over the two parcels of land covered by TCT Nos. (350937) 6195 and TCT No. 0085 is hereby declared VALID; and

- The counterclaim of herein defendants are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[6]

Respondents appealed to the CA, raising, among others, the issue of whether petitioner complied with the publication requirement for an extrajudicial foreclosure sale under Act No. 3135.

On this issue, the CA agreed with respondents. The CA noted that the law requires that publication be made in a newspaper of general circulation in the municipality or city where the property is situated. Based on the testimony of the publisher of Maharlika Pilipinas, it concluded that petitioner did not comply with this requirement, since the newspaper was not circulated in Mandaluyong City where the subject properties were located. Thus, in its Decision dated July 29, 2005, the CA reversed the RTC Decision, thus:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE. A new one is hereby entered declaring the extrajudicial foreclosure sale of the properties covered by TCT Nos. (350937) 6195 and 0085 NULL and VOID.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration[8] of the decision which the CA denied on July 31, 2006.

Petitioner now brings before us this petition for review on certiorari, raising the following issues:

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED TO APPLY THE PROVISIONS ON THE PUBLICATION OF JUDICIAL NOTICES UNDER SECTION 1 OF P.D. NO. 1079 TO THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE BY NOTARY PUBLIC OVER THE PROPERTIES COVERED BY TCT NO. (350927) 6195 AND TCT NO. 0085.

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT "MAHARLIKA PILIPINAS" IS NOT A NEWSPAPER OF GENERAL CIRCULATION IN MANDALUYONG CITY.

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVERSED AND SET ASIDE THE DECISION DATED JUNE 30, 2003 ISSUED BY THE REGIONAL TRIAL COURT OF MANDALUYONG CITY, BRANCH 208 AND DECLARED THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES COVERED BY TCT NO. (350937) 6195 AND TCT NO. 0085 NULL AND VOID.[9]

This controversy boils down to one simple issue: whether or not petitioner complied with the publication requirement under Section 3, Act No. 3135, which 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.[10]

We hold in the negative.

Petitioner insists that Maharlika Pilipinas is a newspaper of general circulation since it is published for the dissemination of local news and general information, it has a bona fide subscription list of paying subscribers, and it is published at regular intervals. It asserts that the publisher's Affidavit of Publication attesting that Maharlika Pilipinas is a newspaper of general circulation is sufficient evidence of such fact.[11] Further, the absence of subscribers in Mandaluyong City does not necessarily mean that Maharlika Pilipinas is not circulated therein; on

the contrary, as testified to by its publisher, the said newspaper is in fact offered to persons other than its subscribers. Petitioner stresses that the publisher's statement that Maharlika Pilipinas is also circulated in Rizal and Cavite was in response to the question as to where else the newspaper was circulated; hence, such testimony does not conclusively show that it is not circulated in Mandaluyong City.[12]

Petitioner entreats the Court to consider the fact that, in an Order[13] dated April 27, 1998, the Executive Judge of the RTC of Mandaluyong City approved the application for accreditation of Maharlika Pilipinas as one of the newspapers authorized to participate in the raffle of judicial notices/orders effective March 2, 1998. Nonetheless, petitioner admits that this was raised for the first time only in its Motion for Reconsideration with the CA.[14]

The accreditation of Maharlika Pilipinas by the Presiding Judge of the RTC is not decisive of whether it is a newspaper of general circulation in Mandaluyong City. This Court is not bound to adopt the Presiding Judge's determination, in connection with the said accreditation, that Maharlika Pilipinas is a newspaper of general circulation. The court before which a case is pending is bound to make a resolution of the issues based on the evidence on record.

To prove that Maharlika Pilipinas was not a newspaper of general circulation in Mandaluyong City, respondents presented the following documents: (a) Certification[15] dated December 7, 2001 of Catherine de Leon Arce, Chief of the Business Permit and Licensing Office of Mandaluyong City, attesting that Maharlika Pilipinas did not have a business permit in Mandaluyong City; and (b) List of Subscribers[16] of Maharlika Pilipinas showing that there were no subscribers from Mandaluyong City.

In addition, respondents also presented Mr. Raymundo Alvarez, publisher of Maharlika Pilipinas, as a witness. During direct examination, Mr. Alvarez testified as follows:

Atty. Mendoza: And where is your principal place of business? Where you actually publish.

Witness: At No. 80-A St. Mary Avenue, Provident Village, Marikina City.

Atty. Mendoza: Do you have any other place where you actually publish Maharlika Pilipinas?

Witness: At No. 37 Ermin Garcia Street, Cubao, Quezon City.

Atty. Mendoza: And you have a mayor's permit to operate?

Witness: Yes.

Atty. Mendoza: From what city?

Witness: Originally, it was from Quezon City, but we did not change anymore our permit.

Atty. Mendoza: And for the year 1996, what city issued you a permit?

Witness: Quezon City.

Atty. Mendoza: What about this current year?

Witness: Still from Quezon City.

Atty. Mendoza :So, you have no mayor's permit from Marikina City?

Witness: None, it's only our residence there.

Atty. Mendoza: What about for Mandaluyong City?

Witness: We have no office in Mandaluyong City.

Atty. Mendoza: Now, you said that you print and publish Maharlika Pilipinas in Marikina and Quezon City?

Witness: Yes.

Atty. Mendoza: Where else do you circulate your newspaper?

Witness: In Rizal and in Cavite.

Atty. Mendoza :In the subpoena[,] you were ordered to bring the list of subscribers.

Witness :Yes.

x x x x

Atty. Mendoza: How do these subscribers listed here in this document became (sic) regular subscribers?

Witness: They are friends of our friends and I offered them to become subscribers.

Atty. Mendoza: Other than this list of subscribers, you have no other subscribers?

Witness: No more.

Atty. Mendoza: Do you offer your newspaper to other persons other than the subscribers listed here?

Witness:

Yes, but we do not just offer it to anybody.[17] (Emphasis supplied.)

It bears emphasis that, for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same.[18] Petitioner correctly points out that neither the publisher's statement that Maharlika Pilipinas is being circulated in Rizal and Cavite, nor his admission that there are no subscribers in Mandaluyong City proves that said newspaper is not circulated in Mandaluyong City.

Nonetheless, the publisher's testimony that they "do not just offer [Maharlika Pilipinas] to anybody" implies that the newspaper is not available to the public in general. This statement, taken in conjunction with the fact that there are no subscribers in Mandaluyong City, convinces us that Maharlika Pilipinas is, in fact, not a newspaper of general circulation in Mandaluyong City.

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.[19] The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.[20]

True, 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, and that it is published at regular intervals.[21] Over and above all these, the newspaper must be available to the public in general, and not just to a select few chosen by the publisher. Otherwise, the precise objective of publishing the notice of sale in the newspaper will not be realized.

In fact, to ensure a wide readership of the newspaper, jurisprudence suggests that the newspaper must also be appealing to the public in general. The Court has, therefore, held in several cases that the newspaper must not be devoted solely to the interests, or published for the entertainment, of a particular class, profession, trade, calling, race, or religious denomination. The newspaper need not have the largest circulation so long as it is of general

circulation.[22]

Thus, the Court doubts that the publication of the notice of sale in *Maharlika Pilipinas* effectively caused widespread publicity of the foreclosure sale.

Noticeably, in the Affidavit of Publication, Mr. Alvarez attested that he was the "Publisher of *Maharlika Pilipinas*, a newspaper of general circulation, published every Thursday." Nowhere is it stated in the affidavit that *Maharlika Pilipinas* is in circulation in Mandaluyong City. To recall, Sec. 3 of Act No. 3135 does not only require that the newspaper must be of general circulation; it also requires that the newspaper be circulated in the municipality or city where the property is located. Indeed, in the cases[23] wherein the Court held that the affidavit of the publisher was sufficient proof of the required publication, the affidavit of the publisher therein distinctly stated that the newspaper was generally circulated in the place where the property was located.

Finally, petitioner argues that the CA, in effect, applied P.D. No. 1079[24] when it cited *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Company*,[25] which involved an extrajudicial foreclosure sale by a sheriff. Petitioner avers that the general reference to "judicial notices" in P.D. No. 1079, particularly Section 2[26] thereof, clearly shows that the law applies only to extrajudicial foreclosure proceedings conducted by a sheriff, and not by a notary public.[27] P.D. No. 1079 allegedly applies only to notices and announcements that arise from court litigation.[28]

The Court does not agree with petitioner that the CA applied P.D. 1079 to the present case. The appellate court cited *Fortune Motors* merely to emphasize that what is important is that the newspaper is actually in general circulation in the place where the properties to be foreclosed are located.

In any case, petitioner's concern that the CA may have applied P.D. 1079 to the present case is trifling. While P.D. No. 1079 requires the newspaper to be "published, edited and circulated in the same city and/or province where the requirement of general circulation applies," the Court, in *Fortune Motors*, did not make a literal interpretation of the provision. Hence, it brushed aside the argument that *New Record*, the newspaper where the notice of sale was published, was not a newspaper of general circulation in Makati since it was not published and edited therein, thus:

The application given by the trial court to the provisions of P.D. No. 1079 is, to our mind, too narrow and restricted and could not have been the intention of the said law. 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.[29]

Therefore, as it stands, there is no distinction as to the publication requirement in extrajudicial foreclosure sales conducted by a sheriff or a notary public. The key element in both cases is still general circulation of the newspaper in the place where the property is located.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated July 29, 2005 and Resolution dated July 31, 2006 in CA-G.R. CV No. 79862 are AFFIRMED.

SO ORDERED.

Quisumbing, Carpio, Carpio Morales, and Chico-Nazario, JJ., concur.

* Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

** Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 568 dated February 12, 2009.

*** Additional member per Raffle dated September 24, 2007.

**** In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

[1] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca de Guia-Salvador and Fernanda Lampas Peralta, concurring; rollo, pp. 27-45.

[2] Rollo, p. 100.

[3] Id. at 101.

[4] Id. at 72-73.

[5] Id. at 48-53.

[6] Id. at 198.

[7] Id. at 44.

[8] Id. at 46-47.

[9] Id. at 326.

[10] Emphasis supplied.

[11] Rollo, pp. 329-331.

[12] Id. at 332-334.

[13] Id. at 265.

[14] Id. at 332.

[15] Id. at 149.

[16] Id. at 150-161.

[17] Id. at 272-273.

[18] Ruiz, et al. v. Sheriff of Manila, et al., 145 Phil. 111, 114 (1970).

[19] Olizon v. Court of Appeals, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 156.

[20] Id. at 155.

[21] Perez v. Perez, G.R. No. 143768, March 28, 2005, 454 SCRA 72, 81.

[22] Id.

[23] *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.*, 332 Phil. 844 (1996); *Bonnevie, et al. v. Court of Appeals, et al.*, 210 Phil. 100 (1983).

[24] Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Bidding, Notices of Auction Sales and Other Similar Notices.

[25] *Supra* note 23

[26] Sec. 2 of P.D. No. 1079 provides:

SECTION 2. The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle: Provided, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: Provided, further, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city. (Emphasis supplied.)

[27] *Rollo*, pp. 327-328, 332-333.

[28] *Id.* at 331, 336.

[29] *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.*, *supra* note 23 at 850.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.