

SPOUSES HERMES P. OCHOA AND ARACELI D. OCHOA, PETITIONERS, VS. CHINA BANKING CORPORATION, RESPONDENT.

G.R. No. 192877. March 23, 2011

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-192877/>

NACHURA, J.:

For resolution is petitioners' motion for reconsideration[1] of our January 17, 2011 Resolution[2] denying their petition for review on certiorari[3] for failing to sufficiently show any reversible error in the assailed judgment[4] of the Court of Appeals (CA).

Petitioners insist that it was error for the CA to rule that the stipulated exclusive venue of Makati City is binding only on petitioners' complaint for Annulment of Foreclosure, Sale, and Damages filed before the Regional Trial Court of Parañaque City, but not on respondent bank's Petition for Extrajudicial Foreclosure of Mortgage, which was filed with the same court.

We disagree.

The extrajudicial foreclosure sale of a real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages." Sections 1 and 2 thereof clearly state:

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

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.[5]

The case at bar involves petitioners' mortgaged real property located in Parañaque City over which respondent bank was granted a special power to foreclose extra-judicially. Thus, by express provision of Section 2, the sale can only be made in Parañaque City.

The exclusive venue of Makati City, as stipulated by the parties[6] and sanctioned by Section 4, Rule 4 of the Rules of Court,[7] cannot be made to apply to the Petition for Extrajudicial Foreclosure filed by respondent bank because the provisions of Rule 4 pertain to venue of actions, which an extrajudicial foreclosure is not.

Pertinent are the following disquisitions in *Supena v. De la Rosa*: [8]

Section 1, Rule 2 [of the Rules of Court] defines an action in this wise:

"Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement

or protection of a right, or the prevention or redress of a wrong."

Hagans v. Wislizenus does not depart from this definition when it states that "[A]n action is a formal demand of one's legal rights in a court of justice in the manner prescribed by the court or by the law. x x x." It is clear that the determinative or operative fact which converts a claim into an "action or suit" is the filing of the same with a "court of justice." Filed elsewhere, as with some other body or office not a court of justice, the claim may not be categorized under either term. Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the category of a court of justice. And as aptly observed by the complainant, if ever the executive judge comes into the picture, it is only because he exercises administrative supervision over the sheriff. But this administrative supervision, however, does not change the fact that extrajudicial foreclosures are not judicial proceedings, actions or suits.[9]

These pronouncements were confirmed on August 7, 2001 through A.M. No. 99-10-05-0, entitled "Procedure in Extra-Judicial Foreclosure of Mortgage," the significant portions of which provide:

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

1. All applications for extrajudicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Officio Sheriff.

Verily then, with respect to the venue of extrajudicial foreclosure sales, Act No. 3135, as amended, applies, it being a special law dealing particularly with extrajudicial foreclosure sales of real estate mortgages, and not the general provisions of the Rules of Court on Venue of Actions.

Consequently, the stipulated exclusive venue of Makati City is relevant only to actions arising from or related to the mortgage, such as petitioners' complaint for Annulment of Foreclosure, Sale, and Damages.

The other arguments raised in the motion are a mere reiteration of those already raised in the petition for review. As declared in this Court's Resolution on January 17, 2011, the same failed to show any sufficient ground to warrant the exercise of our appellate jurisdiction.

WHEREFORE, premises considered, the motion for reconsideration is hereby DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion,[*] Peralta, and Abad, JJ., concur.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

[1] Rollo, pp. 406-422.

[2] Id. at 404-405.

[3] Id. at 10-32.

[4] Dated February 16, 2010; id. at 39-53.

[5] Italics supplied.

[6] Paragraph 16 of the parties' Mortgage, which states:

16. The MORTGAGOR(S) and MORTGAGEE hereby agree that the necessary action for the foreclosure of this mortgage may be instituted by the MORTGAGEE at its option, in the Regional Trial Court in Makati, the MORTGAGOR(S) hereby waiving all right which he (it/they) may have to require that such action be instituted by the MORTGAGEE in the Regional Trial Court of the Province where the mortgaged properties are situated. The same exclusive venue (RTC Makati) shall apply for any and all other actions arising from, related with, or otherwise connected with this mortgage, whether filed by any one or all of the MORTGAGOR(S)/DEBTOR(S).

[7] Sec. 4. When Rule not applicable. - This Rule shall not apply -

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

[8] 334 Phil. 671 (1997).

[9] Id. at 677-678. (Citations omitted.)

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.