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THIRD DIVISION

[G.R. No. 232004; October 6, 2021]

PHILIPPINE SAVINGS BANK, *Petitioner, v.* **JOSEPHINE CO,** *Respondent.*

D E C I S I O N

LEONEN, *J.*:

Notwithstanding the absence of an express directive under Act No. 3135, principles of due process and the utmost diligence of banks require that mortgagors be personally notified of extrajudicial foreclosures of their mortgages prior to public auctions.

For resolution is a Petition for Review[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Decision[2] and Resolution[3] of the Court of Appeals.

On January 25, 2006, Josephine Co (Co) loaned ₱10,000,000.00 from Philippine Savings Bank. The loan was secured by a real estate mortgage over a portion of land at the corner of Singalong St. and Fermin St., Manila, covered by Transfer Certificate of Title (TCT) No. 259982. The loan and mortgage were evidenced by a Promissory Note with Real Estate Mortgage (Promissory Note).[4]

Paragraph 19 of the Promissory Note provides:

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[1] *Rollo*, pp. 3-15.

[2] Id. at 22-29. The December 8, 2016 Decision in CA-G.R. CV No. 105507 was penned by Associate Justice Jhosep Y. Lopez (now a member of this Court), with the concurrence of Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Court of Appeals Manila, Fifteenth Division.

[3] Id. at 30-31. The May 30, 2017 Resolution in CA-G.R. CV No. 105507 was penned by Associate Justice Jhosep Y. Lopez (now a member of this Court), with the concurrence of Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Court of Appeals Manila, Former Fifteenth Division.

[4] Id. at 7, 23.

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19. Consequences of Default – *Upon the occurrence of any of the foregoing events of default, the Bank may, at its option and WITHOUT NEED OF NOTICE OR DEMAND*, exercise any or all of the following remedies:

...

19.6 *Foreclose the Mortgage. The Bank being hereby appointed by the Client as attorney-in-fact, with full power of substitution, to enter upon and take possession of the mortgaged property/ies without need of any court order or authority other than herein granted and to sell and dispose of the same to the highest bidder at public auction without need of a court order pursuant to Act 3135 as amended.* The Bank is authorized (i) to hold and retain possession of said property/ies, (ii) to collect all rents due on the same and to apply such rent to the payment of the obligation hereby secured and (iii) to perform all other acts and administration and management in the most advantageous manner for the best interest of the Bank[.][5] (Emphasis supplied)

In addition, Paragraph 60 of the Promissory Note states:

60. Stipulation on the address of CLIENT/S. All correspondents relative to this AGREEMENT, including demand letters, summons, subpoenas or notification of any judicial or extra-judicial actions shall be sent to the CLIENT/S at the address given above or at the address that may hereafter be given in writing by the CLIENT/S to the BANK and the mere act of sending any correspondence by mail or personal delivery to the said address shall be valid and effective notice to the CLIENT/S for all legal purposes, and the fact that any communication is not received by the CLIENT/S or that it has been returned unclaimed to the BANK, or that no person was found at the address given, or that the address given is fictitious, or cannot be located, shall not excuse or relieve the CLIENT/S from the effect of such notice.[6]

On January 25, 2006, Philippine Savings Bank annotated the mortgage on TCT No. 271203, which is registered under the name of Co.[7]

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[5] Id. at 9-10.

[6] Id. at 10-11.

[7] Id. at 23.

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Subsequently, Philippine Savings Bank instituted the foreclosure of Co's mortgage after she defaulted on the payment of her loan. Philippine Savings Bank was the sole and highest bidder at the public auction. Thus, the property covered by TCT No. 271203 was transferred to Philippine Savings Bank, and TCT No. 281141 was issued in its favor.[8]

On February 27, 2013, Co filed a complaint for annulment of foreclosure proceedings with prayer for injunctive relief, claiming, among others, that the mortgage was foreclosed without prior notice of her unpaid outstanding obligation.[9]

During trial, Co initially testified that she neither received the ₱10,000,000.00 loan nor executed the Promissory Note. However, she later admitted that she recalled agreeing to secure a loan, and knew that she was in default after paying only two months of the monthly installment. She claimed that she had been waiting for a demand letter from Philippine Savings Bank.[10]

Philippine Savings Bank presented evidence showing that Co had obtained the loan and executed the Promissory Note with Real Estate Mortgage. It further claimed that when Co defaulted, Philippine Savings Bank sent her a demand letter to the address stated in the Promissory Note. After no payment was made, Philippine Savings Bank applied for extrajudicial foreclosure of the mortgaged property, complying with the requirements of notification under Act No. 3135 as seen in the notice of extrajudicial sale, a certificate of posting, and an affidavit of publication.[11]

After trial on the merits, the Regional Trial Court in its April 27, 2015 Decision dismissed Co's complaint.[12] It held that Co was not entitled to personal notice of foreclosure. It reasoned that Section 3 of Act No. 3135 requires only the posting of the notice of sale in

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[8] Id.

[9] Id.

[10] Id. at 42.

[11] Id. at 42-43.

[12] Id. at 40-45, penned by Presiding Judge Jean Marie A. Bacorro-Villena of the Regional Trial Court Branch 28, Manila.

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three public places and the publication of notice in the newspaper, but does not require notice to be served on the mortgagor absent an agreement between the parties.[13] The trial court found that the parties had no agreement entitling Co to personal notice.[14]

The dispositive portion of the Regional Trial Court Decision reads:

> **WHEREFORE,** this case is **DISMISSED**. The plaintiff is **ORDERED** to pay defendant [₱]15,000 as attorney's fees.
>
> No costs.
>
> **SO ORDERED.**[15] (Emphasis in the original)

Co sought reconsideration of the trial court's Decision, but this was denied.[16] Thus, Co appealed to the Court of Appeals.[17]

In its December 8, 2016 Decision,[18] the Court of Appeals granted Co's appeal. It agreed with the Regional Trial Court that generally, in extrajudicial foreclosures, personal notice to a mortgagor is not necessary. However, it found that Philippine Savings Bank undertook to notify Co prior to the foreclosure proceedings by including Paragraph 60 in its Promissory Note. To support this conclusion, it cited *Global Holiday Ownership Corporation v. Metropolitan Bank & Trust Company*,[19] where this Court held that a provision similar to Paragraph 60 was an undertaking to personally notify the mortgagor prior to extrajudicial foreclosure.[20]

Thus, because Philippine Savings Bank was a subsidiary of the mortgagee in *Global Holiday*, and because Paragraph 60 of the Promissory Note reads substantially the same as the provision

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[13] Id. at 44.

[14] Id.

[15] Id. at 45.

[16] Id. at 23, 51.

[17] Id. at 24.

[18] Id. at 22-29.

[19] 607 Phil. 850 (2009) [Per J. Ynares-Santiago, Third Division].

[20] *Rollo*, pp. 26-28.

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in *Global Holiday*, the Court of Appeals held that Paragraph 60 was an undertaking to notify Co of judicial and extrajudicial actions pertaining to their agreement, at the address specified. The Court of Appeals reasoned further that since Philippine Savings Bank did not notify Co regarding the foreclosure sale, it violated a provision in their Real Estate Mortgage:[21]

> In the instant case, defendant-appellee undertook to give plaintiff-appellant notice of judicial and extrajudicial actions relative to its agreement, at the address given by the latter. Considering that during the trial of the case, defendant-appellee did not refute the allegation of plaintiff-appellant that no notice was sent to her prior to the foreclosure sale, then defendant-appellee violated a provision in the Real Estate Mortgage. Defendant-appellee cannot renege on a requirement it has incorporated in an agreement, which has itself prepared and signed.
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> With the stipulation under paragraph 60 of the Real Estate Mortgage, plaintiff-appellant's right to be furnished with personal notice of the extrajudicial foreclosure proceedings has been properly established. Thus, the conduct of the extrajudicial foreclosure sale without proper notice rendered the proceedings null and void. Consequently, all other proceedings and documents related to, and which emanated from the said foreclosure sale are likewise null and void.[22]

The dispositive portion of the Court of Appeals' Decision reads:

> **WHEREFORE,** the instant appeal is GRANTED. The Decision of the Regional Trial Court Branch 28 of Manila City dated 27 April 2015 and its Order dated 12 August 2015 are REVERSED AND SET ASIDE. The extrajudicial foreclosure proceedings and auction sale conducted on 14 September 2006, the Certificate of Sale over the mortgaged property covered by TCT No. 271203, and the TCT No. 281141 in the name of defendant-appellee Philippine Savings Bank are hereby declared null and void. Consequently, TCT No. 271203 in the name of plaintiff-appellant Josephine Co is reinstated. The award of attorney's fees in favor of defendant-appellee is likewise deleted.
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> **SO ORDERED.**[23] (Emphasis in the original)

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[21] Id.

[22] Id. at 28.

[23] Id. at 29.

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Philippine Savings Bank sought reconsideration of the Decision, but the Court of Appeals denied this in its March 30, 2017 Resolution.[24]

Thus, petitioner Philippine Savings Bank filed this Petition for Review on *Certiorari*.[25] Respondent Co filed a Comment,[26] to which petitioner filed its Reply.[27] Thereafter, the parties filed their respective Memoranda.[28]

Petitioner argues that the text of the Promissory Note is the law between the parties. The Promissory Note states that petitioner may foreclose the mortgage without need of notice or demand.[29] Petitioner insists that the Court of Appeals erred in finding that Paragraph 60 in the Promissory Note was an undertaking to notify respondent in case of foreclosure.[30] Further, it argues that *Global Holiday* is not on all fours with this case, because in that case, there was no stipulation between the parties there regarding waiver of notice or demand as a consequence of default.[31] In any case, notice was sent to respondent by registered mail.[32]

On the other hand, respondent, relying solely on *Global Holiday*, insists that Paragraph 60 of the Promissory Note mandates that correspondence pertaining to the parties' agreement must be sent to respondent's address.[33] On the text of Paragraph 19, respondent asserts:

To trivialize par. 60 which mandates that all correspondents [*sic*] relative to this Agreement, including demand letters, summonses,

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[24] Id. at 30-31.

[25] Id. at 3-15.

[26] Id. at 83-92.

[27] Id. at 97-102.

[28] Id. at 114-128 and 130-142.

[29] Id. at 136-137.

[30] Id. at 138-139.

[31] Id.

[32] Id. at 140.

[33] Id. at 123.

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subpoenas, or notification of any judicial or extra-judicial foreclosure actions shall be sent to the client's address[.] PSBank cited par. 19.6 which states that the bank being appointed by the Client as atty.-in-fact [*sic*], with full power of substitution, to enter upon and take possession of the mortgage property/ies without need of any court order or authority other than herein granted and to sell and dispose of the same to the highest bidder at public auction without need of a court order pursuant to Act 3135 as Amended.

Again, this is misplaced because par. 60 states that all correspondents [sic] which includes extra-judicial or judicial actions must be sent to respondent, there was no correspondence regarding the intended judicial or extra-judicial action. An act violative of Act 3135 for par. 60 is an exception to the rule.

Having a Special Power of Attorney does not mean that PSBank has a blanket authority and can do whatever it wants without regard to the rules and regulations imposed by Act 3135 especially if it derogates the constitutional and legal rights of the bank's clients. Bank business is imbued with public interest, hence its clients must be protected from unlawful and illegal schemes of Banks who has a battery of lawyers to defend its business practices, no matter how unfair it is. They have unlimited resources including power and influence and the public must be wary of this phenomenon.[34]

The sole issue for this Court's resolution is whether or not petitioner Philippine Savings Bank's failure to personally notify respondent Josephine Co of the extrajudicial foreclosure of her mortgaged property voids the foreclosure.

This Court finds that respondent was entitled to personal notification of the extrajudicial foreclosure. The petition is denied.

I

This Court has repeatedly held that personal notice to a mortgagor is not necessary in extrajudicial foreclosure proceedings under Act No. 3135. Thus, as early as 1983, in *Bonnevie v. Court of Appeals*,[35] this Court emphasized that personal notice on the

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[34] Id. at 124.

[35] 210 Phil. 100 (1983) [Per J. Guerrero, Second Division].

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mortgagor is excluded from the requirement on notice under Act No. 3135:

Most importantly, Act No. 3135 does not require personal notice on the mortgagor. The requirement on notice is that:

> 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.[36]

Since then, this Court has consistently interpreted Section 3 of Act No. 3135 as an exhaustive enumeration of requirements on proper notice for purposes of extrajudicial foreclosure proceedings. Because the only notice required under Act No. 3135 is a notice of sale addressed to the public, this Court has repeatedly concluded that notice to the mortgagor is not mandated under the law.

Accordingly, in Administrative Matter No. 99-10-05-0,[37] this Court issued guidelines and rules governing the extra-judicial foreclosure of mortgages. A request had been made that personal notice to a debtor-mortgagor be required in extrajudicial foreclosures. This Court denied the request, citing *Bonnevie*:

(1) to GRANT the aforesaid request for the correction of Circular No. 7-2002, *except No. 3 regarding the addition of a provision for personal notice of extrajudicial foreclosure of real estate mortgages to the debtor-mortgagor, which is hereby denied. Personal notice to the debtor-mortgagor in case of the extrajudicial foreclosure of real estate mortgage is not required by Act No. 3135 (Bonnevie v. Court of Appeals, 125 SCRA 122 (1983))*, being merely the enforcement of the agreement of the parties to a contract (*Community Savings and Loan Association, Inc. v. Court of Appeals*, 153 SCRA 564 (1987)). The addition of such requirement can only make the procedure for extrajudicial foreclosure cumbersome; and

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[36] Id. at l09-110.

[37] Re: Procedure in the Extra-Judicial Foreclosure of Mortgages, A.M. No. 99-10-05-0, February 26, 2002.

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(2) to AMEND Sec. 4(b)(l) of its Circular No. 7-2002 so as to make it read as follows:

> Sec. 4. The Sheriff [t]o whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:
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> ....
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> b. (1) In case of foreclosure of real estate mortgage, cause the publication of the notice of sale by posting it for not less than twenty (20) days in at least three (3) public places in the municipality or city where the property is situated and if such property is worth more than four hundred (₱400.00) pesos, by having such notice published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality or city (Sec. 3, Act No. 3135, as amended). The Executive Judge shall designate a regular working day and definite time each week during which said notice shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in Sec. 1 of P.D. No. 1079, which distribution shall be effected by raffle (A.M. No. 01-1-07-SC, Oct. 16, 2001). *UNLESS OTHERWISE STIPULATED BY THE PARTIES TO THE MORTGAGE CONTRACT, THE DEBTOR-MORTGAGOR NEED NOT BE PERSONALLY SERVED A COPY OF THE NOTICE OF THE EXTRAJUDICIAL FORECLOSURE*.[38] (Emphases supplied)

Thus, pursuant to *Bonnevie*, the guidelines and rules on extrajudicial foreclosure specified that personal notice to a mortgagor is not necessary for the validity of an extrajudicial foreclosure sale.

A revisit of this Court's reading of Act No. 3135 is in order. It is time to reconsider *Bonnevie*, as well as this Court's guidelines and rules on extrajudicial foreclosure, in light of its subsequent doctrines, and with greater consideration to principles of due process.

I (A)

Under the current reading of the law on extrajudicial foreclosure, the process of selling the mortgaged property is, by default, in the hands of one party, namely, the mortgagee/lender.

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[38] Id.

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Act No. 3135 spells out only the following requirements regarding the sale of property under extrajudicial foreclosures: the sale must be made in the province where the property is situated, and in certain cases, the sale must be made in the stipulated location within the province, or within the municipal building of the municipality where at least part of the property is situated.[39] Notices of the sale must be made by posting them in three public places within the municipality or city where the property is located, and published once a week for three consecutive weeks in a newspaper of general circulation within the municipality or city;[40] that the property is sold in a public auction, between 9:00 a.m. and 4:00 p.m., under the direction of certain people.[41] After the sale, the debtor/mortgagor, or his successors in interest, or any judicial creditors or judgment creditors, or any person with a lien on the property subsequent to the mortgage, may exercise the right of redemption within one year from the sale.[42]

Thus, under this reading, the sale of the mortgagor's property could proceed without the owner having any idea that it is occurring, and without any opportunity to dispute the circumstances under which it is occurring.

Fundamental fairness demands that this reading be revisited.

I (B)

The right to property is protected under the due process clause of the Constitution such that the deprivation of property must be attended by due process of law.

It is true that the due process clause generally refers to a limitation on the acts of government, and not to private individuals such as petitioner. However, the right to due process has, on occasion, been applied even to relationships between private persons, such as in employment contracts, and contracts between students and the academic institutions in which they are enrolled.

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[39] Act No. 3135 (1924), sec. 2.

[40] Act No. 3135 (1924), sec. 3.

[41] Act No. 3135 (1924), sec. 4.

[42] Act No. 3135 (1924), sec. 6.

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In particular, the directive that an employer serve written notice upon, and provide opportunity to be heard to, an employee whose employment is sought to be terminated[43] has been characterized by this Court as a due process requirement.[44] Similarly, the directive requiring schools to conduct a due investigation before imposing a penalty upon any student has been related to the student's right to due process.[45]

The procedures to be followed in terminating labor and enrollment contracts were not the result of this Court's direct application of the due process clause. Rather, they were provided for under the Labor Code and the Manual of Regulations for Private Schools, respectively. This has been recognized as the concept of due process applied by statute in the private sector.[46]

This recognition that law, as well as rules and regulations, can govern private relationships in order to ensure the fundamental right to due process, creates sufficient space for this Court to revisit *Bonnevie*, and to require personal notice on the mortgagor, notwithstanding the silence of Act No. 3135 on the matter.

Indeed, in *De La Salle University, Inc. v. Court of Appeals*,[47] this Court explained how deeply embedded the due process clause is in Philippine society at large:

> The Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history. The

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[43] Article 292 of the Labor Code requires an employer to furnish written notice to an employee whose services he wishes to terminate, stating the causes for termination, and affording said employee with the opportunity to be heard, and to defend his case.

[44] *Perez v. Philippine Telegraph and Telephone Co.*, 602 Phil. 522 (2009) [Per J. Corona, En Banc].

[45] *Guzman v. National University*, 226 Phil. 596 (1986) [Per J. Narvasa, En Banc].

[46] J. Brion, Separate Concurring Opinion in *Perez v. Philippine Telegraph and Telephone Co.*, 602 Phil. 522, 544-555 (2009) [Per J. Corona, En Banc].

[47] 565 Phil. 330 (2007) [Per J. Reyes, Third Division].

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constitutional behest that no person shall be deprived of life, liberty or property without due process of law is solemn and inflexible.[48] (Citations omitted)

The right to due process is so basic that its assurance must be the general rule and not the exception.

It is in this light that we must view the myriad cases wherein this Court took every opportunity to read a contractual provision mentioning the mortgagor's address as a commitment on the part of the mortgagee to notify said mortgagor in case of extrajudicial foreclosure.

I (C)

Time and time again, this Court has reiterated that personal notice is not necessary under Act No. 3135, and refused to invalidate foreclosures on the ground of lack of personal notice on the mortgagor.[49]

Notwithstanding this, this Court has also developed a very stable doctrine allowing it to declare extrajudicial foreclosures invalid in the absence of such personal notice, on the basis of contract.

Metropolitan Bank and Trust Company v. Wong[50] reiterated that personal notice to the mortgagor is not necessary for the validity of an extrajudicial foreclosure, but found contractual basis to hold that the mortgagee was nonetheless bound to notify the mortgagor:

In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:

> "all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42

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[48] Id. at 356.

[49] *Government Service Insurance System v. Court of Appeals*, 252 Phil. 552 (1989) [Per J. Regalado, Second Division]; *Bohanan v. Court of Appeals*, 326 Phil. 375 (1996) [Per J. Bellosillo, First Division]; *Cruz v. Court of Appeals*, 269 Phil. 175 (1990) [Per J. Gancayco, First Division].

[50] 412 Phil. 207 (2001) [Per J. Sandoval-Gutierrez, Third Division].

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> Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights.[51]

It must be pointed out that a plain reading of the text of the contractual provision in *Wong* reveals no specific and clear undertaking to personally notify the mortgagor in case of extra-judicial foreclosure. The contract simply contains an address where correspondence should be sent. Indeed, the conclusion in *Wong* contravenes an earlier case, *Cortes v. Intermediate Appellate Court*,[52] where this Court construed a similar paragraph in a way more in accord with common usage of English:

> It is crystal clear from the above provision that personal notice to the mortgagor is not necessary; only posting and publication, in some cases, are required.
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> But in pleading their case, petitioners invoke paragraph 10 of the Deed of Mortgage (*vide*, p. 28, *Rollo*) which provides:
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> > "10. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at _____ or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee."
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> While the above stipulation points to a place (which, notably was clearly stated) where all correspondence relative to the mortgage are to be sent, *it does not specifically require that personal notice of foreclosure sale be given to petitioner. The said paragraph 10 presumes that a specific correspondence is made but does not definitely require which correspondence must be made.* It would, therefore, be erroneous to say that notice of extrajudicial foreclosure to the petitioners is required for such is not the clear intention of the parties, and, thus, may not be pursued. (Rule 130, Section 10).
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> But even if the contrary were true, the sending of "All correspondence relative to this mortgage ..." to the petitioners may only be deemed, at

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[51] Id. at 216-217.

[52] 256 Phil. 979 (1989) [Per J. Paras, Second Division].

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the most, as an expression of a general intent. As such, it may not prevail against the parties' specific intent that Act No. 3135 be the controlling law between them. This is so since "a particular intent will control a general one that is inconsistent with it." (Rule 130, Sec. 10). It is clear from the Deed of Mortgage that the Mortgagee Bank (DBP) may, under any of the specific circumstances enumerated, proceed to "foreclose this mortgage ... extrajudicially under Act No. 3135, as amended[.]" (p. 28, *Rollo*). Having invoked the said Act, it shall "govern the manner in which the sale and redemption shall be effected" (Sec. 1, Act 3135). And as already shown earlier Act 3135 does not require personal notice of the foreclosure sale to the mortgagor. Incidentally, it was found by the trial court that notices of the foreclosure sale were duly posted and published in accordance with law. As such, petitioners are in estoppel; they cannot now deny that they were not informed of the said sale.[53] (Emphasis supplied)

Thus, *Cortes* examined the text of the contractual provision and held it was not an undertaking to personally notify the mortgagor in case of extrajudicial foreclosure. It was only a stipulation of address to which mail would be sent, in case anything would be mailed to the mortgagor.

Although the textual reasoning in *Cortes* is sound, it is a stray case. Subsequent cases have followed the conclusion in *Wong*.[54] Thus, where a contract stipulates a mortgagor's address for purposes of service, notwithstanding the absence of words specifically requiring personal notice of foreclosure be given to a mortgagor, this Court has consistently held that failure to notify prior to extrajudicial foreclosure of a mortgage invalidates the foreclosure.

Cortes explained why the text of the contractual provision was insufficient to establish an additional obligation to personally notify, whereas *Wong* and the succeeding cases made no similar

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[53] Id. at 984-985.

[54] *See Paradigm Development Corp. of the Philippines v. Bank of the Philippine Islands*, 810 Phil. 539 (2017) [Per J. Reyes, Third Division]; *Ramirez v. The Manila Banking Corp.*, 723 Phil. 674 (2013) [Per J. Villarama, Jr. First Division]; *Lim v. Development Bank of the Phils.*, 713 Phil. 24 (2013) [Per J. Del Castillo, Second Division].

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effort at statutory construction. Thus, in numerous cases,[55] this Court has held similarly-worded provisions as constituting additional undertakings to personally notify the mortgagor prior to extrajudicial foreclosure.

This Court has attributed these decisions to an express contractual agreement between the parties. However, a review of the stipulations in these cases suggests that the decisions were based more on a duty to ensure the observance of due process in extrajudicial foreclosure processes, rather than the parties' intentions, as embodied in their mortgage agreements. Indeed, the decisions invalidating the extrajudicial foreclosures on the basis of contract contain no attempts at statutory construction. In lieu of such analysis, an emphasis on the protection of rights is offered. Thus, *Wong* pointed out:

> While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[56] (Citation omitted)

Pasno v. Ravina,[57] which involves personal notice to a mortgagor's estate, points out the importance of notice in the foreclosure of mortgages:

> The power of sale given in a mortgage is a power coupled with an interest which survives the death of the grantor. One case, that of *Carter v. Slocomb* ([1898], 122 N. C., 475), has gone so far as to hold that a sale after the death of the mortgagor is valid without notice to the heirs of the mortgagor. However that may be, conceding that the power of sale is not revoked by the death of the mortgagor, nevertheless in view of the silence of Act No. 3135 and in view of what is found in section 708 of the Code of Civil Procedure, it would be preferable to reach the conclusion that the mortgagee with a power of sale should be made to

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[55] Id.

[56] 412 Phil. 207, 220 (2001) [Per J. Sandoval-Gutierrez, Third Division].

[57] 54 Phil. 378 (1930) [Per J. Malcolm].

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foreclose the mortgage in conformity with the procedure pointed out in section 708 of the Code of Civil Procedure. That would safeguard the interests of the estate by putting the estate on notice while it would not jeopardize any rights of the mortgagee. The only result is to suspend temporarily the power to sell so as not to interfere with the orderly administration of the estate of a decedent. A contrary holding would be inconsistent with the portion of our law governing the settlement of estates of deceased persons.[58]

Although *Pasno* involves notice to a mortgagor's estate, and not to the mortgagor himself, it nonetheless creates space to read further into Act No. 3135, to require the observance of certain procedure, notwithstanding its silence.

II

It may be tempting to apply the reasoning in *Wong* to dismiss the petition without further discussion. However, what differentiates the Promissory Note in this case from the agreement interpreted in *Wong* is that Paragraph 60 expressly pertains to a stipulation as to respondent's address. Moreover, Paragraph 19 of the agreement in this case expressly states that, as a consequence of default, petitioner may foreclose the mortgage "without need of notice or demand." This diminishes the applicability of the reasoning in *Wong*, and compels this Court to consider, more closely, the reason this Court so quickly concludes that parties to a contract have created the mortgagor's right to personal notice, notwithstanding the absence of definite words suggesting such intention.

As discussed above, due process requires that a mortgagor be notified, to afford him or her an opportunity to safeguard his or her rights, prior to the extrajudicial foreclosure of his or her mortgage, and the sale of his or her property.

The current reading of Act No. 3135 affords no safeguards whatsoever for the mortgagor. The publication requirement under Act No. 3135 is not intended as a notification for the mortgagor,

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[58] Id. at 382.

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but rather for the public, to enable participation in the auction sale of the foreclosed property.

Although the line of cases succeeding *Wong* recognize that parties to a mortgage can agree that the mortgagor is entitled to personal notice, the right to personal notice should not be one which is opt-in.

Moreover, the business of banking is imbued with public interest, and banks should conduct their business in a way that observes the highest degree of diligence to their clients.[59]

WHEREFORE, the Petition is **DISMISSED**. The December 8, 2016 Decision and May 30, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 105507 are **AFFIRMED**. The extrajudicial foreclosure proceedings and auction sale conducted on September 14, 2006, the Certificate of Sale over the mortgaged property covered by TCT No. 271203, and the TCT No. 281141 in the name of petitioner Philippine Savings Bank are hereby declared null and void. Consequently, TCT No. 271203 in the name of respondent Josephine Co is reinstated. The award of attorney's fees in favor of Philippine Savings Bank is deleted.

SO ORDERED.

Carandang, Zalameda, Rosario, and *Dimaampao*,[*] *JJ.*, concur.

APPEARANCES OF COUNSEL

Emmelyn F. Belison-De Pedro for petitioner.
Axel V. Gonzalez for respondent.

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[59] *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453, 473 (2005) [Per J. Tinga, Second Division].

[*] Designated additional member per Special Order No. 2839 dated September 16, 2021.