



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**PUERTO AZUL LAND, INC. and TERNATE UTILITIES, INC.,**  
Petitioners, **G.R. No. 213020**

**Present:**

- versus -

**EXPORT INDUSTRY BANK, INC.,** (formerly named Urban Bank, Inc.), through its **TRUST DEPARTMENT** (formerly named Urban Trust Department); **PACIFIC WIDE HOLDINGS, INCORPORATED; PHILIPPINE BUSINESS BANK – TRUST and INVESTMENT CENTER; HON. RACQUELEN ABARY-VASQUEZ,** in her capacity as Executive Judge, and **ATTY. MARIVIC S. TIBAYAN,** in her capacity as Clerk of Court and *Ex-Officio* Sheriff, both of the Regional Trial Court of Pasay City  
Respondents.

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

**Promulgated:**

20 MAR 2017

X-----X

**DECISION**

**PERALTA, J.:**

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court, seeking to reverse and set aside the Order<sup>1</sup> dated June 30, 2014 of the public respondent Executive Judge<sup>2</sup> of the Regional Trial Court of Pasay City in File No. REM 04-025 for Extrajudicial Foreclosure of Real

<sup>1</sup> Rollo, pp. 41-A-45.  
<sup>2</sup> Judge Racquelen Abary-Vasquez.

Estate Mortgage under Act No. 3135,<sup>3</sup> as amended, and to enjoin the public respondent Clerk of Court and *Ex-Officio* Sheriff<sup>4</sup> from implementing the said Order, the dispositive portion of which reads:

**WHEREFORE**, foregoing considered, the Clerk of Court of the Regional Trial Court of Pasay City is hereby ordered to release in favor of PHILIPPINE BUSINESS BANK-TRUST and INVESTMENT CENTER, the successor trustee, the amount of PESOS: FIVE HUNDRED SEVENTY MILLION (Php570,000,000.00) representing the entire bid price paid by SMDC, after deducting the costs of the sale and other legal charges, if any.

SO ORDERED.<sup>5</sup>

The factual and procedural antecedents are as follows:

Petitioner Puerto Azul Land, Inc. (*PALI*) is the owner and developer of the Puerto Azul Complex in Ternate, Cavite. To finance its operations and the development of Puerto Azul into a satellite city with residential areas, resort, tourism and retail commercial centers with recreational areas, *PALI* obtained loans from various creditors. As security for its obligations amounting to ₱627,000,000.00, *PALI*, as borrower, and its accommodation mortgagors, *i.e.*, Ternate Development Corporation (*TDC*), petitioner Ternate Utilities, Inc. (*TUI*), and Mrs. Trinidad Diaz-Enriquez, executed with Urban Bank Incorporated (*UBI*) a Mortgage Trust Indenture (*MTI*)<sup>6</sup> dated February 3, 1995 and the Supplemental Mortgage Trust Indenture (*SMTI*)<sup>7</sup> date March 21, 1995. Among the properties that served as security for the loans were *TUI*'s two (2) parcels of land situated in Pasay City and covered by Transfer Certificate of Title (*TCT*) No. T-133164.

*PALI*'s business problems started when the Philippine Stock Exchange rejected the listing of its shares in its initial public offering, which drove away potential investors and real estate buyers from the business venture. Due to the ensuing 1997 Asian financial crisis and the decline of the real estate market, *PALI* failed to keep up with the payments of its debts and obligations.

On July 29, 2004, Export and Industry Bank, Inc. (*EIB*), which was later merged with *UBI*, filed a petition for extrajudicial foreclosure of real estate mortgage<sup>8</sup> with the Office of the Clerk of Court and *Ex-Officio* Sheriff

<sup>3</sup> As amended by Act No. 4118 – An Act to Amend Act Number Thirty-One Hundred and Thirty-Five, entitled “An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.”

<sup>4</sup> Atty. Marivic S. Tibayan.

<sup>5</sup> *Rollo*, p. 45.

<sup>6</sup> *Id.* at 46-99.

<sup>7</sup> *Id.* at 100-103.

<sup>8</sup> *Id.* at 104-108.

of the Regional Trial Court (RTC) of Pasay City. In its petition docketed as REM No. 04-025, EIB sought to foreclose the mortgage constituted on TUI's properties covered by TCT No. T-133164 to satisfy PALI's outstanding obligations as of June 30, 2004, namely: ₱311,000,000.00 exclusive of interest, penalty charges, attorney's fees and other incidental expenses. Attached to the petition is a demand letter<sup>9</sup> dated May 3, 2004, stating that PALI's outstanding account, inclusive of interest and penalties, as of March 31, 2004 is ₱1,386,279,000.00.

On September 14, 2004, PALI filed a Petition for suspension of payments and rehabilitation with the RTC of Manila entitled "*In the Matter of the Corporate Rehabilitation/Suspension of Payments of Puerto Azul Land, Inc.*," the case was docketed as Civil Case No. 04-110914 and raffled to Branch 24 of the said RTC (*rehabilitation court*).

On September 17, 2004, the rehabilitation court, after finding that the petition was sufficient in form and substance, issued a Stay Order pursuant to Section 6, Rule 4 of the Interim Rules on Corporate Rehabilitation,<sup>10</sup> (a) staying the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor, (b) prohibiting PALI from making any payment of its liabilities outstanding as of the date of filing of the petition, (c) prohibiting PALI from selling, encumbering, transferring, or disposing any of its properties except in the ordinary course of business, and (d) appointing Patrick V. Caoile as rehabilitation receiver.<sup>11</sup>

In the meantime, the properties covered by TCT No. T-133164 were levied upon by the Treasurer's Office of Pasay City for non-payment of realty taxes.

On March 3, 2005, EIB filed an Urgent Motion to order PALI and/or the mortgagor TUI/rehabilitation receiver to pay all the taxes due on TCT No. T-133164.

On March 31, 2005, the rehabilitation court modified the Stay Order by excluding from its coverage TCT No. T-133164, to wit:

Accordingly, and as being invoked by the creditor movant, this Court hereby modifies the Stay Order of September 17, 2004, in such a manner that TCT No. 133164, which is mortgaged with creditor movant Export and Industry Bank, Inc. is now excluded from the Stay Order. As such, Export and Industry Bank, Inc., may settle the above-stated realty taxes of third party mortgagor with the local government of Pasay City. In

<sup>9</sup> *Id.* at 348-349.

<sup>10</sup> A.M. No. 008-10-SC (2000).

<sup>11</sup> *Puerto Azul Land, Inc. v. Pacific Wide Realty and Development Corporation*, G.R. No. 184000, September 17, 2004, 735 SCRA 333, 335-336.

return, and to adequately protect the creditor movant Export and Industry Bank, Inc., the latter may foreclose on TCT No. 133164.

SO ORDERED.

On April 12, 2005, PALI filed an Urgent Motion for a *status quo* order, praying that the Stay Order be maintained, and that the enforcement of the claim of Pasay City be held in abeyance pending the hearing of its motion.

On August 16, 2005, the rehabilitation court issued an Order, maintaining its March 31, 2005 Order, and reiterating that TCT No. T-133164 is excluded from the Stay Order and that EIB may foreclose it and settle the delinquency taxes of third-party mortgagor TUI with the local government of Pasay City.

Aggrieved by the Order dated August 16, 2005, PALI filed with the CA a petition for *certiorari* under Rule 65. The case was docketed as CA-G.R. SP No. 91996 and entitled, "*Puerto Azul Land, Inc. v. The Regional Trial Court of Manila, Br. 24; Sheriff IV of Pasay City Virgilio F. Villar; and Pacific Wide Realty & Development Corporation (as substitute for Export and Industry Bank, Inc.)*"

On December 13, 2005, the rehabilitation court rendered a Decision<sup>12</sup> approving PALI's petition for suspension of payments and rehabilitation, thus:

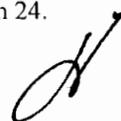
The rehabilitation of the petitioner, therefore, shall proceed as follows:

1. The creditors shall have, as first option, the right to be paid with real estate properties being offered by the petitioner in *dacion en pago*, which shall be implemented under the following terms and conditions:

a. The properties offered by the petitioner shall be appraised by three appraisers, one to be chosen by the petitioner, a second to be chosen by the bank creditors, and the third to be chosen by the Receiver. The average of the appraisals of the three (3) chosen appraisers shall be the value to be applied in arriving at the *dacion* value of the properties. In case the *dacion* amount is less than the total of the secured creditor's principal obligation, the balance shall be restructured in accordance with the schedule of payments under option 2, paragraph (a). In case of excess, the same shall [be] applied in full or partial payment of the accrued interest on the obligations. The balance of the accrued interest, if any, together with the penalties, shall [be] condoned.

<sup>12</sup>

Penned by Judge Antonio M. Eugenio, Jr., Regional Trial Court of Manila, Branch 24.



2. Creditors who will not opt for *dacion* shall be paid in accordance with the restructuring of the obligations as recommended by the Receiver as follows:

a) The obligations to secured creditors will be subject to a 50% haircut of the principal, and repayment shall be semi-annually over a period of 10 years, with a 3-year grace period. Accrued interests and penalties shall be condoned. Interest shall be paid at the rate of 2% p.a. for the first 5 years and 5% p.a. thereafter until the obligations are fully paid. The petitioner shall allot 50% of its cash flow available for debt service for secured creditors. Upon completion of payments to government and employee accounts, the petitioner's cash flow available for debt service shall be used until the obligations are fully paid.

b) One-half (1/2) of the principal of the petitioner's unsecured loan obligations to other creditors shall be settled through non-cash offsetting arrangements, with the balance payable semi-annually over a period of 10 years, with a 3-year grace period, with interest at the rate of 2% p.a. for the first 5 years and 5% p.a. from the 6th year onwards until the obligations are settled in full. Accrued interest and penalties shall be condoned.

c) Similarly, one-half (1/2) of the petitioner's obligations to trade creditors shall be settled through non-cash offsetting arrangements. The cash payments shall be made semi-annually over a period of 10 years on a *pari passu* basis with the bank creditors, without interest, penalties and other charges of similar kind.

WHEREFORE, the rehabilitation of petitioner Puerto Azul Land, Inc. is hereby approved in accordance with the foregoing pronouncements by the Court. Subject to the following terms and conditions:

1. Immediately upon the implementation of the rehabilitation of the petitioner, the Rehabilitation Receiver shall inform the Court thereof;

2. The Rehabilitation Receiver, creditors, and the petitioner shall submit to the Court at the end of the first year of the petitioner's rehabilitation, and annually thereafter until the termination of the rehabilitation, their respective reports on the progress of the petitioner's rehabilitation, specially the petitioner's compliance with the provisions of the plan as modified by the Rehabilitation Receiver;

3. The Rehabilitation Receiver shall report to the Court any change in the assumptions used in the Rehabilitation Plan, its projections, and forecasts, that may be brought about by the settlement through *dacion en pago* of any of the obligations and to recommend corresponding changes, if any, in such assumptions, projections, and forecasts;

4. The rehabilitation of the petitioner is binding upon the creditors and all persons who may be affected by it, including the creditors, whether or not they have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled.

The petitioner is hereby strictly enjoined to abide by the terms and conditions set forth in this Order and the provisions of the Interim Rules on Corporate Rehabilitation.

The Rehabilitation Receiver is hereby directed to perform his functions and responsibilities pursuant to Section 14 of the Interim Rules, with particular emphasis on the following:

"u) To be notified of, and to attend all meetings of the board of directors and stockholders of the debtors";

"v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate";

"w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan";

x x x x

"y) To recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

SO ORDERED.<sup>13</sup>

Dissatisfied with the terms of the rehabilitation plan and the qualifications of the rehabilitation receiver, EIB filed with the Court of Appeals (CA) a petition for review under Rule 42. The case was docketed as CA-G.R. SP No. 92695 and entitled, "*Export Industry Bank v. Puerto Azul Land, Inc.*"

Meanwhile, on December 11, 2006, a Loan Sale and Purchase Agreement<sup>14</sup> (LSPA) was executed between EIB and private respondent Pacific Wide Realty and Development Corporation (PACWIDE) whereby EIB sold to PACWIDE for only ₱150,000,000.00 the non-performing loans that it extended to PALI and Silahis International Hotel, Inc. in the total amount of ₱825,000,000.00, 44.58% of which, or ₱368,200,000.00, constituted PALI's loan.

<sup>13</sup> *Pacific Wide Realty and Dev't Corp. v. Puerto Azul Land, Inc.*, 620 Phil. 520, 525-527 (2009).

<sup>14</sup> *Rollo*, pp. 109-118.

On March 16, 2007, the CA rendered a Decision<sup>15</sup> in CA-G.R. SP No. 91996, declaring the properties covered by TCT No. T-133164 to be subject of the Stay Order of the rehabilitation court. The *fallo* of the Decision reads:

**WHEREFORE**, above premises considered, the instant Petition is **GRANTED**. The October 19, 2005 *Order* of the Regional Trial Court of Manila, Br. 24, in Civil Case No. 04-110914 is hereby declared **NULL** and **VOID** and the properties covered by TCT No. 133164 are hereby **DECLARED** subject to and covered by the September 17, 2004 stay order. Accordingly, Public Respondent Sheriff Virgilio F. Villar, or his substitute or equivalent, is **ORDERED** to immediately cease and desist from enforcing the Amended Notice of Sheriff's Sale, dated February 8, 2007, and from conducting the sale at public auction of the parcels of land covered by TCT No. 133164 on March 20, 2007, or at anytime thereafter. No costs.

**SO ORDERED.**<sup>16</sup>

Dissatisfied with the CA Decision, EIB, later substituted by Pacific Wide Realty and Development Corporation (PWRDC), filed a petition for review on *certiorari* under Rule 45, which was docketed as G.R. No. 178768 and entitled "*Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*"

On May 17, 2007, the CA rendered a Decision<sup>17</sup> in CA-G.R. SP No. 92695, dismissing the petition for review, and affirming *in toto* the rehabilitation court Decision dated December 13, 2005. Aggrieved by the CA Decision, PWRDC also filed a petition for review on *certiorari* under Rule 45, which was docketed as G.R. No. 180893 and likewise entitled "*Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*" Thereafter, the Court ordered the consolidation of G.R. No. 178768 and G.R. No. 180893.

On November 25, 2009, the Court rendered a Decision in the consolidated cases entitled "*Pacific Wide Realty and Dev't. Corp v. Puerto Azul Land, Inc.*,"<sup>18</sup> the *fallo* of which states:

**WHEREFORE**, in view of the foregoing, (1) the Decision dated May 17, 2007 and the Resolution dated October 30, 2007 of the Court of Appeals in CA-G.R. SP No. 92695 are hereby **AFFIRMED**; and (2) the Decision dated March 16, 2007 and the Resolution dated June 29, 2007 of the Court of Appeals in CA-G.R. SP No. 91996 are hereby **SET ASIDE**.

<sup>15</sup> Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

<sup>16</sup> *Pacific Wide Realty and Dev't Corp. v. Puerto Azul Land, Inc.*, *supra* note 13, at 530. (Emphasis in the original)

<sup>17</sup> Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Amelita G. Tolentino and Mariflor Punzalan-Castillo, concurring.

<sup>18</sup> 620 Phil. 529 (2009); Penned by Associate Justice Antonio Eduardo B. Nachura, with Associate Justices Renato C. Corona, Minita V. Chico-Nazario, Teresita J. Leonardo-de Castro and Diosdado M. Peralta, concurring.-

The October 19, 2005 Order of the Regional Trial Court of Manila in Civil Case No. 04-110914 is hereby **AFFIRMED**. The property covered by TCT No. 133164 is hereby declared excluded from the coverage of the September 17, 2004 Stay Order.

No costs.

**SO ORDERED.**<sup>19</sup>

The Court resolved in the negative the two issues, namely: (1) whether the terms of the rehabilitation plan are unreasonable and in violation of the non-impairment clause; and (2) whether the rehabilitation court erred when it allowed the foreclosure of the accommodation mortgagee's property and excluded the same from the coverage of the Stay Order. Finding nothing onerous in the stipulations in PALI's rehabilitation plan, the Court held that the restructuring of PALI's debts is part and parcel of its rehabilitation, and is not prejudicial to the interest of PWRDC as secured creditor. It sustained the CA's affirmation of PALI's Rehabilitation Plan, including those terms which its creditors had found objectionable, *i.e.*, the 50% "haircut" reduction of the principal obligations and the condonation of accrued interest and penalty charges. It also found no reversible error when the rehabilitation court removed TCT No. T-133164 from the coverage of the Stay Order, since the Interim Rules on Corporate Rehabilitation only covers the suspension of the enforcement of all claims against the debtors, its guarantors, and sureties not solidarily liable with the mortgagor, and is silent on the enforcement of claims against accommodation mortgagors, such as TUI.

With the resignation of EIB as trustee of the MTI on November 4, 2011, however, private respondent Philippine Business Bank–Trust and Investment Center (*PBB-Trust*) was appointed as a new trustee to administer the MTI, pursuant to a Memorandum of Agreement dated December 29, 2011 entered into by and among the following parties: (1) EIB, as the outgoing trustee; (2) PBB-Trust, as the successor-trustee; (3) Pacific Wide Holdings Inc., as the majority lender; and (4) Philippine Deposit Insurance Corporation (*PDIC*), as the minority lender.

On August 30, 2013, an Entry of Judgment in *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc.*<sup>20</sup> was issued.

In a letter<sup>21</sup> dated January 24, 2014, PBB-Trust requested (1) that a new notice of sale be issued setting the sale at public auction of the properties covered by TCT No. T-133164; (2) that said notice be served,

<sup>19</sup> *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul Land, Inc.*, *supra*, at 538. (Emphasis in the original)

<sup>20</sup> *Supra*, at 529.

<sup>21</sup> *Rollo*, pp. 180-189.

published and posted; and (3) that the foreclosure sale be conducted in accordance with Act No. 3135, as amended. PBB-Trust, as successor-trustee, claimed that it was authorized by the majority lenders, namely, Pacific Wide and PDIC, in a meeting called for the purpose to effect such foreclosure.

On February 25, 2014, Sheriff Virgilio F. Villar, for the *Ex-Officio* Sheriff of Pasay City, issued a New Notice of Sheriff Sale,<sup>22</sup> setting the auction sale of TCT No. 133164 on April 10, 2014 to satisfy PALI's obligation in the amount of ₱311,000,000.00, plus interests, penalties, publication of the notice of sale and expenses of the foreclosure proceedings.

On April 3, 2014, PALI and TUI filed a Petition for Declaratory Relief<sup>23</sup> before the RTC of Pasay City, seeking a judicial declaration of the parties' respective rights and obligations under the MTI and the SMTI, in relation to the Financial Rehabilitation and Insolvency Act of 2010, the LSPA and the terms and conditions of the approved rehabilitation plan. They prayed for the following reliefs:<sup>24</sup>

1. Issuance of a 72-hour temporary restraining order and, eventually, a writ of preliminary injunction, restraining the Clerk of Court and *Ex-Officio* Sheriff and the Sheriff of the RTC Pasay City (a) from conducting an auction sale over the properties covered by TCT No. T-133164, and (b) from issuing a Certificate of Sale in the event that such an auction sale is held; and
2. Rendition of a decision declaring that (a) the September 17, 2004 Stay Order of the RTC of Manila, Branch 24, applies to the properties covered by TCT No. T-133164, considering that such properties are necessary for the corporate rehabilitation of PALI; and (b) EIB and PWRDC cannot foreclose on the mortgage constituted over the subject properties covered by TCT No. T-133164 based on the allegations set forth in the Petition for Extrajudicial Foreclosure dated July 27, 2004 filed before the Clerk of Court of the RTC of Pasay City

On April 10, 2014, with the denial of PALI's and TUI's application for temporary restraining order, and pursuant to the New Notice of Sheriff's Sale,<sup>25</sup> the mortgaged properties covered by TCT No. T-133164 were sold on auction to SM Development Corporation (*SMDC*) for having submitted the highest bid in the amount of ₱570,000,000.00. However, proceeds of the

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<sup>22</sup> *Id.* at 137-141.

<sup>23</sup> *Id.* at 151-179.

<sup>24</sup> *Id.* at 176-177.

<sup>25</sup> *Id.* at 137-141.

sale were deposited to the Regional Trial Court, Pasay City, pending determination of the actual payee of the bid price, considering that EIB, the mortgagee bank, is already closed.

In a letter<sup>26</sup> dated April 14, 2014, TUI requested for the release in its favor of the amount of ₱488,641,500.00 representing the alleged surplus amount after deducting the amount of its supposed indebtedness to EIB in the amount of ₱81,358,500.00. In a letter<sup>27</sup> of even date, PBB-Trust claimed that the total bid price of ₱570,000,000.00 should be remitted to them, being the successor-trustee of mortgagee bank EIB, pursuant to the Memorandum of Agreement executed on December 29, 2011.

In an Order<sup>28</sup> dated April 24, 2014, the Executive Judge advised the parties to avail of the appropriate legal remedies to protect their rights and interest. She also ruled that, in the meantime, the bid price of ₱570,000,000.00, which was deposited with the Land Bank of the Philippines, shall continue to be held in trust by the Regional Trial Court of Pasay City until the court of proper jurisdiction shall have finally determined the rightful recipient of the subject bid price, and/or the respective amount due the claimants. She held as follows:

In view of the conflicting claims of TUI and [PBB-Trust], which will need the presentation of evidence by both parties in a full-blown trial, the Office of the Executive Judge, which only exercises administrative functions, has no judicial discretion to determine which, between the two (2) claimants, has the better right to receive the proceeds of the bid price.

Moreover, this Office notes that there are two (2) related cases involving the same parties: a case for Declaratory Relief pending before Branch 231 of this Court, the resolution of which will affect the propriety of the auction sale of the TUI property conducted on April 10, 2014. The other is the Corporate Rehabilitation case pending before RTC, Branch 24, Manila (The "*Rehabilitation Court*"), which is in a better position to interpret and determine the amount corresponding to the fifty percent (50%) loan reduction of PALI pursuant to the approved Rehabilitation plan.<sup>29</sup>

In a letter<sup>30</sup> dated May 2, 2014, PBB-Trust sought a reconsideration of the Order dated April 24, 2014, and requested for the release in its favor of the amount of ₱570,000,000.00 representing the amount tendered and paid by SMDC as bid price relative to the properties covered by TCT No. T-133164, subject of the extrajudicial foreclosure sale.

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<sup>26</sup> *Id.* at 146-149.

<sup>27</sup> *Id.* at 286-288.

<sup>28</sup> *Id.* at 293.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 302-310.

In a Notice dated May 9, 2014, the Executive Judge set a conference among the parties to thresh out issues regarding the disposition of the bid price tendered by SMDC.

TUI argued as follows: (1) the obligation of the principal borrower, PALI, arising from the MTI dated February 3, 1995, the SMTI dated March 21, 1995 and related instruments is not ₱311,000,000.00 but only ₱81,358,500.00 as of April 2014; (2) pursuant to the Petition for Rehabilitation and Suspension of Payments, the RTC-Manila, Branch 24, approved the Rehabilitation Plan submitted by the Rehabilitation Receiver; (3) in the Decision of the Supreme Court dated November 25, 2009, the consolidated cases of "*PACWIDE REALTY AND DEVELOPMENT CORPORATION v. PUERTO AZUL LAND, INC.*" the rehabilitation plan called, among others, for a 50% reduction on PALI's obligation, the imposition of 2% annual interest for the first five years and 5% interest rate thereafter until the obligation is fully paid; (4) pursuant to a Loan Sale Purchase Agreement dated December 11, 2006, the loan obligations of PALI and another corporation, Silahis International Hotel (*SIH*), were sold by EIB to *PACWIDE* for ₱150,000,000.00 [44.58% represented PALI's obligation and 55.42% for *SIH*'s obligation]; (5) the ₱150,000,000.00 purchase price equitably reduced PALI's loan obligation to ₱81,358,500.00 as of April 2014, or 44.58% of the total purchase price; and (6) that as purchaser-assignee of the PALI loan, *PACWIDE* cannot recover from PALI more than what it had paid EIB for the loan.

PBB-Trust countered that: (1) it was grave error for the manager's check representing the bid price to have been issued in the name of the "Regional Trial Court of Pasay City" as it should have been issued in the name of PBB-Trust, or at least, to the creditor it represents; (2) it is the ministerial duty of the Executive Judge to release the total bid price to the creditor; (3) to refuse to subsequently release the amount to PBB-Trust or to the creditors it represents is erroneous because the remittance of the full bid amount to the mortgagee merely creates a cause of action on the part of the debtor against the former for the collection of the alleged excess amount that the mortgagee received; and (4) PBB-Trust has authority to receive the proceeds of the foreclosure sale.

Meanwhile, on May 14, 2014, the Executive Judge approved the Certificate of Sheriff's Sale,<sup>31</sup> stating (1) that the properties covered by TCT No. T-133164 which were mortgaged to secure the outstanding obligation of ₱311,000,000.00 exclusive of interest, penalty charges, attorney's fees and other incidental expenses, were foreclosed and sold to SMDC, the highest bidder, in an auction sale on April 10, 2014, in the amount of

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<sup>31</sup> *Id.* at 143-145.



₱570,000,000.00; (2) that the bid price was deposited in the meantime to the RTC of Pasay City, pending determination of the actual payee of the bid price, considering that the mortgagee bank, EIB, is already closed; and (3) the Sheriff's Commission under Sec. 21 (d) of Rule 141 of the Rules of Court, as amended, in the total amount of ₱25,650,800.00 was paid on April 15, 2014.

After hearing the parties' respective arguments and receiving their respective memoranda,<sup>32</sup> the Executive Judge issued the assailed Order dated June 30, 2014, ordering the Clerk of Court to release in favor of PBB-Trust the amount of ₱570,000,000.00, representing the entire bid price paid by SMDC, after deducting the costs of the sale and other legal charges. The Executive Judge ruled, thus:

At the outset, it must be emphasized that this Office only exercises administrative supervision over the Office of the Clerk of Court and *Ex-officio* Sheriff. It, likewise, wishes to clarify that it is not unreasonably withholding release of the bid price paid by SMDC. Simply, this Office is exercising the necessary care and due diligence in the performance of its functions in view of the peculiar circumstances in this case, *viz.*:

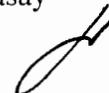
1. The *Petition for Extrajudicial Foreclosure* was originally filed by EIB as the foreclosing mortgagee, on 29 July 2004. In view of the legal intricacies and supervening events which delayed the proceedings for several years, the auction sale was finally conducted on 10 April 2014. Despite having been closed by the *Bangko Sentral ng Pilipinas* and placed under PDIC receivership, EIB remains, on record, as the formal applicant/foreclosing mortgagee as of the date of the auction sale.

2. After the Pasay Property fetched a high price during the 10 April 2014-auction sale, TUI now asserts that it is entitled to the amount in excess of PALI's obligation to EIB, citing the 50% haircut reduction which it claimed should benefit and reduce PALI's loan obligation with EIB.

3. As a general rule, the bid price shall be paid to the foreclosing mortgagee after deducting the costs of sale. Any balance shall be paid to the junior encumbrancer, and should there be an excess, to the mortgagor. However, in the instance case, there exists a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the rehabilitation plan and the subsequent sale by EIB of its loan accounts to PACWIDE.

Confronted, therefore, with the foregoing issues, the most prudent, logical and legal recourse then was to have the check, representing the bid price of SMDC, issued in the name of the "Regional Trial Court of Pasay

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<sup>32</sup>*Id.* at 311-340.

City”, and deposited to its Fiduciary Fund with the Land Bank of the Philippines pending the determination of the issues.

At any rate, applying the relevant law and based on the records of the case, this Office hereby resolves to release the full amount of the bid price less the costs of sale and other charges to the foreclosing mortgagee-assignee, without prejudice to the right of the mortgagor TUI to claim the surplus, if any, in a proper proceeding.

Sec. 4 of Rule 68 of the Rules on Civil Procedure provides:

*Sec. 4. Disposition of proceeds of sale.* The money realized from the sale of the mortgaged property under the regulations herein before prescribed shall, after deducting the costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other encumbrancers, the same shall be paid to the junior encumbrances, in the order of their priority, to be ascertained by the court”. x x x

By the accessory nature of a real estate mortgage, the mortgagee has the right to foreclose the mortgaged property only to the extent of the loan secured by it. Any decision to the contrary abets unjust enrichment. By its very nature, the surplus arising from a foreclosure sale stands in the place of the collateral itself in respect to liens thereon or vested rights therein. The surplus is constructively, at least, real property and belongs to the mortgagor. The right of a mortgagor to the surplus is a substantial right that prevails over rules of technicality. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund, and being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. Even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but as far as it concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption. Thus, it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will simply give the mortgagor a cause of action to recover such surplus.

Initially, this Office was inclined to release only the amount claimed as appearing in the *Petition for Extrajudicial Foreclosure* totaling the sum of Php311,000,000.00 representing the principal amount of indebtedness appearing in the Petition. This Office, however, notes that the amount of outstanding claims was qualified by the phrase “exclusive of interests, penalty charges, attorney’s fees, and other incidental expenses.” That means that there is an imperative need to verify from the records the true and actual unpaid obligation subject of foreclosure proceedings, as well as to levy the proper fees and charges.

A closer review of the records reveals that there is a sound basis to release the entire amount of the bid price paid by SMDC to the foreclosing mortgagee-assignee:

*First*, despite the fact that on its face, the Petition is anchored on the principal loan obligation of Php311,000,000.00, as of 30 June 2004, Paragraph 9 of the Petition itself is clear that the amount claimed is

exclusive of interest, penalty charges, attorney's fees, and other incidental expenses. This opens the door to a subsequent presentation of the true and actual financial obligation of PALI to the borrower.

*Second*, in a letter dated 24 January 2014, PBB-Trust submitted a Statement of Account as of December 2013 (Annex "U") reflecting the alleged current and actual unpaid obligation of the borrower, PALI, secured by the property of the accommodation mortgagor, TUI, amounting to Php2,105,735,800.00

*Third*, TUI is not without any legal remedy in the event that the current and actual amount of the obligation of PALI is finally determined, and it be shown that there is a balance in the bid price. As previously discussed, the foreclosing mortgagee, by law, is under obligation to return the excess amount to the owner of the property, TUI. If the mortgagee refuses, then, it will give rise to a cause of action for the recovery of the excess amount.

Unfortunately, this Office cannot exercise adjudicatory functions and is, therefore, not in a position to interpret the applicability of the "50% haircut reduction in the obligation", as well as to compute "the reduced interest rate" pursuant to the Rehabilitation Plan approved by the rehabilitation court. Neither is this Office authorized to determine the effects of the Loan Purchase Agreement on the actual computation of the obligation of PALI to PACWIDE. These issues should be resolved by, and left to the sole and exclusive jurisdiction of rehabilitation and/or courts of proper jurisdiction.<sup>33</sup>

Aggrieved by the Executive Judge's Order dated June 30, 2014, petitioners filed this petition for *certiorari* under Rule 65.

Petitioners argue that the Executive Judge gravely abused her discretion when she ordered the release in favor of PBB-Trust the entire bid amount of ₱570,000,000.00, considering that:

- i. [T]he approval of the Rehabilitation Plan by the Rehabilitation Court as sustained with finality by this Honorable Court, which plan called for a fifty percent (50%) reduction on PALI's obligation, and the sale by EIB to Pacwide for only ₱150,000,000.00 of the former's non-performing loans which it extended to PALI and Silahis in the amount of ₱825,900,000.00
- ii. [T]he petition for extrajudicial foreclosure filed by EIB only sought to satisfy a loan in the principal total amount of ₱311,000,000.00 without specifying in the petition the amount of interest and other costs.
- iii. EIB paid docket fees on its petition for extrajudicial foreclosure only for the amount of ₱311,000,000.00 and neither Pacwide nor PBB-Trust paid the requisite docket fees to foreclose the subject properties to satisfy a loan of more than ₱311,000,000.00, let alone

<sup>33</sup>

*Id.* at 42-45. (Citations omitted.)

for the amount of ₱2,105,735,800.00 as stated in the latter's statement of account.

- iv. [T]he appointment of PBB-Trust as successor-trustee of EIB is irregular considering that the provisions under the MTI for the appointment of a successor-trustee were not complied with.<sup>34</sup>

The petition is meritorious.

The Court shall resolve first the procedural issues regarding the doctrine of hierarchy of courts, the necessity of a motion for reconsideration before the filing of a petition for *certiorari* under Rule 65, and the rule on forum shopping.

In *The Diocese of Bacolod v. Commission on Elections*,<sup>35</sup> the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. Recognized exceptions to the said doctrine are as follows:

- (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
- (b) when the issues involved are of transcendental importance;
- (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter;
- (d) the constitutional issues raised are better decided by the Court;
- (e) where exigency in certain situations necessitate urgency in the resolution of the cases;
- (f) the filed petition reviews the act of a constitutional organ;
- (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and
- (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.<sup>36</sup>

The Court shall directly resolve the petition for *certiorari* and prohibition because it includes novel questions that are dictated by public welfare and the advancement of public policy, in view of the peculiar

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<sup>34</sup> *Id.* at 17-18.

<sup>35</sup> G.R. No. 205728, January 21, 2015, 747 SCRA 1.

<sup>36</sup> *The Diocese of Bacolod v. Commission on Elections, supra* at 45-49.

circumstances in the case, as noted by the Executive Judge in the assailed Order dated June 30, 2014, to wit:

1. The *Petition for Extrajudicial Foreclosure* was originally filed by EIB as the foreclosing mortgagee, on 29 July 2004. In view of the legal intricacies and supervening events which delayed the proceedings for several years, the auction sale was finally conducted on 10 April 2014. Despite having been closed by the *Bangko Sentral ng Pilipinas* and placed under PDIC receivership, EIB remains, on record, as the formal applicant/foreclosing mortgagee as of the date of the auction sale.

2. After the Pasay Property fetched a high price during the 10 April 2014-auction sale, TUI now asserts that it is entitled to the amount in excess of PALI's obligation to EIB, citing the 50% haircut reduction which it claimed should benefit and reduce PALI's loan obligation with EIB.

3. As a general rule, the bid price shall be paid to the foreclosing mortgagee after deducting the costs of sale. Any balance shall be paid to the junior encumbrancer, and should there be an excess, to the mortgagor. However, in the instant case, there exists a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the rehabilitation plan and the subsequent sale by EIB of its loan accounts to PACWIDE.<sup>37</sup>

Although the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*, the rule is subject to the following exceptions:

- a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- b. where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;
- d. where, under the circumstances, a motion for reconsideration would be useless;
- e. where petitioner was deprived of due process and there is extreme urgency for relief;
- f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- g. where the proceedings in the lower court are a nullity for lack of due process;
- h. where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and
- i. where the issue raised is one purely of law or where public interest is involved.<sup>38</sup>

<sup>37</sup> Rollo, pp. 42-43.

<sup>38</sup> *Delos Reyes v. Flores*, 628 Phil. 170, 178-179 (2010), citing *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 402 Phil. 356, 370-371 (2001).

The main issue raised in this petition for *certiorari* and prohibition is one purely of law, *i.e.*, whether the Executive Judge gravely abused her discretion, amounting to lack or excess of jurisdiction, when she issued the June 30, 2014 Order, releasing in favor of PBB-Trust the entire bid amount of ₱570,000,000.00, despite the presence of a genuine dispute on the amount due the foreclosing mortgagee-assignee as a consequence of the approved rehabilitation plan and the subsequent sale by EIB to PACWIDE. Such issue is capable of being reviewed by determining what the relevant law and jurisprudence provide with respect to the facts stated in the assailed June 30, 2014 Order, without need of reviewing the probative value of the evidence on record.

Granted that petitioners also raised a factual issue on the computation of PALI's outstanding loan obligation,<sup>39</sup> along with other questions of law regarding the validity of the appointment of PBB-Trust as successor-trustee of EIB, and the effect of the approved rehabilitation plan and Article 1634<sup>40</sup> of the New Civil Code on PALI's obligation, these are mere peripheral issues raised in support of the incidental reliefs prayed for in the event that the assailed June 30, 2014 Order is annulled and set aside. In fact, the Court will only resolve the main issue of grave abuse of discretion, as it agrees with the Executive Judge that these incidental issues ought to be resolved in the courts of proper jurisdiction.

Settled is the rule that forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.<sup>41</sup> The elements of forum shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.<sup>42</sup>

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<sup>39</sup> *Rollo*, p. 173. See Petition for Declaratory Relief, p. 23.

<sup>40</sup> Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest of the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

<sup>41</sup> *Villanueva v. Court of Appeals*, 671 Phil. 467, 480 (2011).

<sup>42</sup> *Id.*



Here, the second and third elements of forum shopping are absent. The rights asserted and the reliefs prayed for in the petition for declaratory relief are not identical with those raised in the present petition for *certiorari* and prohibition.

In the petition for declaratory relief, petitioners mainly seek (1) to enjoin the Clerk of Court and *Ex-officio* Sheriff of the RTC of Pasay City from conducting an auction sale and eventually issuing a certificate of sale over the properties covered by TCT No. T-133164; and (2) to declare pursuant to the Financial Rehabilitation and Insolvency Act of 2010<sup>43</sup> (*FRIA*) that EIB and PACWIDE cannot foreclose on the mortgage constituted on the properties covered by TCT No. T-133164, because they are covered by the September 17, 2004 Stay Order of the Rehabilitation Court, and are necessary for PALI's corporate rehabilitation. In sum, petitioners pray for a determination of their rights under the FRIA in relation to the MTI and SMTI they executed with EIB, which was later succeeded by PBB-Trust, and to prevent the conduct of the foreclosure sale.

On the other hand, the petition for *certiorari* and prohibition at bench imputes against the Executive Judge grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing the June 30, 2014 Order, releasing to PBB-Trust the amount of ₱570,000,000.00 representing the entire proceeds of the auction sale of the properties covered by TCT No. T-133164. In contrast to the petition for declaratory relief which merely calls for the interpretation of a law and a contract, the instant petition for *certiorari* and prohibition seeks to nullify the June 30, 2014 Order, and to prohibit the Clerk of Court and *Ex-Officio* Sheriff of RTC of Pasay City from implementing the same, for having been issued with grave abuse of discretion.

Resolving the substantive issue of whether the Executive Judge committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when it ordered the release of the entire amount of the bid price paid by SMDC to PBB-Trust, the foreclosing mortgagee-assignee, despite the fact that there is a genuine dispute not only on the amount due, but also as to the validity of PBB-Trust's appointment as successor-trustee of EIB under the MTI, the Court rules in the affirmative.

The Executive Judge cited three (3) circumstances as the "sound basis" of her June 30, 2014 Order to release the entire bid price to PBB-Trust, namely: (1) despite the fact that the petition for extrajudicial foreclosure is anchored on the loan obligation of ₱311,000,000.00 as of June 30, 2004, it is also clear that the amount claimed is exclusive of

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<sup>43</sup>

Republic Act No. 10142.



interest, penalty, charges and other expenses; (2) PALI's alleged actual unpaid obligation as of December 2013 secured by TCT No. T-133164, amounts to ₱2,105,735,800.00; and (3) TUI has a legal remedy in the event that the actual amount of PALI's obligation is finally determined.

Despite having noted in the June 30, 2014 Order that there is still a "genuine dispute" on the amount due to the foreclosing mortgagee-assignee, PBB-Trust, as a result of the rehabilitation plan covering PALI and the sale of EIB's loan accounts to PACWIDE, the Executive Judge erroneously estimated that the interest, penalties and other expenses alone would far exceed PALI's ₱311,000,000.00 principal loan obligation, and authorized the release of the entire ₱570,000,000.00 auction sale proceeds to PBB-Trust. In doing so, the Executive Judge exceeded her administrative supervision over extrajudicial foreclosure sales, as she virtually adjudicated the said dispute, and allowed one party to enjoy the subject proceeds even before the courts of proper jurisdiction could resolve the pending issues between the opposing parties.

Well-aware of the need to present the true and actual financial obligation of PALI under the MTI, the Executive Judge herself pointed out in the June 30, 2004 Order that she cannot exercise adjudicatory functions and is not, therefore, in the position (1) to interpret the applicability of the "50% haircut reduction in the obligation;" (2) to compute "the reduced interest rate" pursuant to the Rehabilitation Plan approved by the rehabilitation court; and (3) to determine the effect of the LSPA on the actual computation of PALI's obligation to PACWIDE.<sup>44</sup> In justifying its April 24, 2014 Order<sup>45</sup> that the ₱570,000,000.00 bid price deposited with the Land Bank of the Philippines shall continue to be held in trust by the RTC of Pasay City, the Executive Judge emphasized the need for the presentation of evidence on the conflicting claims of TUI and PBB-Trust in a full-blown trial to determine which between them has the better right to receive the proceeds of the bid price. As further noted by the Executive Judge, the resolution of the case for declaratory relief pending before Branch 231 of the RTC of Pasay City will affect the propriety of the auction sale of the TUI property conducted on April 10, 2014, whereas the rehabilitation court is in a better position to interpret and determine the amount corresponding to the 50% loan reduction of PALI pursuant to the approved rehabilitation plan.

Notwithstanding the conflicting claims between TUI and PBB-Trust which must be resolved first before the courts of proper jurisdiction, the Executive Judge reversed her April 24, 2014 Order and released the entire ₱570,000,000.00 bid price of SMDC in favor of PBB-Trust. Aside from inviting doubt, if not suspicion, the assailed June 30, 2014 Order of the Executive Judge smacks of grave abuse of discretion, so patent and gross as

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<sup>44</sup> *Rollo*, p. 45.

<sup>45</sup> *Id.* at 293.



to amount to an evasion of positive duty or virtual refusal to perform the duty enjoined by, or to act at all in contemplation of the law.<sup>46</sup>

The Executive Judge also gravely erred in relying on the jurisprudence<sup>47</sup> to the effect that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, such fact alone will not affect the validity of the sale, but will simply give the mortgagor a cause of action to recover such surplus. Contrary to the ruling of the Executive Judge, it is pointless to require petitioners to file another action to recover the surplus of extrajudicial foreclosure sale. To sustain private respondents' similar contention that the proper remedy to determine whether there is indeed a surplus from the extrajudicial foreclosure sale in the filing of a separate action for sum of money will only result in multiplicity of suits. Following private respondents' submission, the court where the intended action would be filed would still have to wait and rely on the ruling of the rehabilitation court as to the effect of an approved rehabilitation plan which requires a "50% haircut reduction" and condonation of interest and penalties on PALI's obligation. In the same vein, Branch 231 of the RTC of Pasay City would also have to decide first whether the LSPA executed by EIB in favor of PACWIDE would further equitably reduce PALI's obligation in accordance with Article 1634<sup>48</sup> of the New Civil Code on Assignment of Credits and Other Incorporeal Rights. Suffice it to state that Section 6, Rule 63 provides that if before the final termination of the case, a breach or violation of an instrument or a statute should take place, the action for declaratory relief may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper.

There is, likewise, no merit in private respondents' claim that it is the ministerial duty of the Executive Judge to release the proceeds of the extrajudicial foreclosure sale to PBB-Trust, pursuant to Section 4, Rule 68 of the Rules of Court, which provides:

Section 4. *Disposition of proceeds of sale.* The money realized from the sale of the mortgaged property under the regulations herein before prescribed shall, after deducting the costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other encumbrancers, in the order of their priority, to be ascertained by the court.

<sup>46</sup> *Ganaden, et al., v. The Hon. Court of Appeals, et al.*, 261, 665 Phil. 267 (2011).

<sup>47</sup> *Spouses Suico v. PNB*, 558 Phil. 265 (2007) and *Sulit v. Court of Appeals*, 335 Phil. 914, 931 (1997).

<sup>48</sup> Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest of the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

Under the above rule, the disposition of the proceeds of the foreclosure sale shall be in the following order: (a) pay the costs of sale; (b) pay off the mortgage debt to the person foreclosing the mortgage; (c) pay the junior encumbrancers, if any, in the order of priority; and (d) give the balance to the mortgagor, his agent or the person entitled to it.<sup>49</sup>

Contrary to private respondents' claim, it is not part of the Executive Judge's ministerial supervisory authority to order the release of proceeds of the entire bid price to a person other than the one foreclosing the mortgage, *i.e.*, EIB, which is already closed.<sup>50</sup> More so, since petitioners have a pending petition for declaratory relief before Branch 231 of the RTC of Pasay City, questioning the appointment of PBB-Trust as the successor-trustee of EIB under the MTI, as well as the exact computation of PALI's outstanding obligation secured by TCT No. T-133164, in light of the approved rehabilitation plan and the LSPA, which supposedly equitably reduced the mortgaged debt.

To recall, between July 29, 2004 when EIB initially sought to extrajudicially foreclose the properties covered by TCT No. T-133164 and January 24, 2014 when PBB-Trust resumed such foreclosure proceeding, EIB executed a LSPA on December 11, 2006, conveying to PACWIDE PALI's obligations under Promissory Note Nos. 994810-11 in the total amount of ₱311,000,000.00. EIB also resigned as trustee under the MTI on November 4, 2011, and was succeeded by PBB-Trust on December 29, 2011, pursuant to a Memorandum of Agreement between PACWIDE (the majority lender) and PDIC (the minority lender). Thus, when PBB-Trust sought to push through with the extrajudicial foreclosure sale of TCT No. T-133164 on January 24, 2014, petitioners filed a petition for declaratory relief before the RTC of Pasay City, questioning the authority of EIB to pursue such foreclosure sale. Petitioners likewise asserted that the loan obligation of PALI to EIB as of April 2014 was reduced to ₱81,358,500.00 on account of the 50% "haircut" reduction pursuant to the approved rehabilitation plan of PALI, and due to the supposed equitable reduction under the LSPA executed between EIB and PACWIDE.

In light of the issues pertaining to the effect of the rehabilitation plan and the LSPA on PALI's obligation for which TCT No. T-133164 was extrajudicially foreclosed, and the validity of the appointment of PBB-Trust as successor-trustee of EIB under the MTI, which must be both resolved with finality before the courts of proper jurisdiction, private respondents cannot insist that it is still part of the ministerial duty of the Executive Judge to order the release of the entire bid price in favor of PBB-Trust. The same pending and unresolved issues preclude the Court from granting petitioners' alternative relief in the instant petition to direct the Clerk of Court to release

<sup>49</sup> *Spouses Suico v. PNB*, supra note 47, at 279-280.

<sup>50</sup> *Rollo*, p. 144.

to TUI the amount of ₱488,641,500.00 out of the ₱570,000,000.00 proceeds of the auction sale of its properties and to hold the amount of ₱83,808,387.01 in trust for the lawful trustee under the MTI and the SMTI upon the latter's due appointment by PALI and the majority lenders.<sup>51</sup>

A ministerial duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.<sup>52</sup> Notably, in issuing the 30 June 2004 Order releasing of the entire bid price in favor of PBB-Trust, the Executive Judge had to set a conference for the parties to resolve their conflicting claims, hear and receive their respective arguments and memoranda thereon, before ultimately reversing her April 24, 2014 Order and directing them to avail of legal remedies to protect their rights and interest before the proper courts for lack of adjudicatory authority over the issues. Rather than the performance of a ministerial duty, the aforesaid conduct of the Executive Judge before issuing her assailed Order reveals an exercise of discretion.

Moreover, the Executive Judge gravely abused her discretion in releasing SMDC's entire bid price of ₱570,000,000.00 in favor of PBB-Trust, despite the fact that PBB-Trust failed to pay the correct filing fees for PALI's outstanding account, inclusive of interest, penalties and other incidental expenses, amounting to ₱1,778,609,000.00 as of December 3, 2013.

Chapter X, Section 1 of Administrative Matter (*A.M.*) No. 03-8-02-SC<sup>53</sup> provides that it shall be the duty of the Executive Judge to ensure strict compliance with the rules on extrajudicial foreclosure of mortgage. In line with her responsibility for the management of courts within her administrative area, the Executive Judge is also tasked to supervise directly the work of the Clerk of Court who is also the *Ex-Officio* Sheriff.<sup>54</sup> Supervision is not a meaningless matter, but an active power which at least implies authority to inquire into facts and conditions in order to render the power real and effective.<sup>55</sup> No less than Section 7 of A.M. No. 04-2-04-SC<sup>56</sup>

<sup>51</sup> *Id.* at 33.

<sup>52</sup> *Spouses Marquez v. Spouses Alindog*, 725 Phil. 237, 249 (2014).

<sup>53</sup> Chapter X. Miscellaneous Functions. Section 1. Extra-Judicial Foreclosure of Mortgage. – Executive Judges shall ensure strict compliance by the Clerk of Court with the provisions of the Resolution dated 14 December 1999 of the Supreme Court *En Banc* in A.M. No. 99-10-05-0 as amended by the Resolutions dated 30 January 2001 and 7 August 2001, subject to Circular No. 1-2000 dated 3 January 2000 and Circular No. 7-2002 dated 22 January 2002 prescribing procedures in extra-judicial foreclosure of mortgages.

<sup>54</sup> A.M. No. 99-10-05-0, as amended, Procedure in Extra-judicial Foreclosure of Mortgage, *En Banc* Resolution dated 30 January 2001.

<sup>55</sup> *Planas v. Gil*, 67 Phil. 62, 77 (1939).

<sup>56</sup> “Re: Revised Upgrading Schedule of the Legal Fees in the Supreme Court and the Lower Courts under Rule 141 of the Rules of Court.” *En Banc* Resolution dated 28 August 2007 which adopted the

provides that matters relating to the propriety and correctness of the assessment and collection of docket fees are judicial in nature and should only be determined by the regular court. In OCA Circular No. 42-05, the Court Administrator<sup>57</sup> emphasized that any question relating to the correct or proper assessment and collection of docket fees of a particular case should be submitted before the court having jurisdiction of said case, and that the question should be resolved by the judge concerned within a reasonable period of time. Thus, the Executive Judge should have ensured first that the Clerk of Court performed her duty to collect the correct filing fees pursuant to Rule 141, Section 7(c), as amended by A.M. No. 00-2-01-SC, upon receipt of the application for extrajudicial foreclosure sale of mortgage.<sup>58</sup>

Supreme Court Administrative Circular No. 3-98<sup>59</sup> states, among other matters, that no written request/petition for extrajudicial foreclosure of real estate mortgages shall be acted upon by the Clerk of Court, as *Ex-Officio* Sheriff, without the corresponding fee having been paid and the receipt thereof attached to the request/petition as provided for in Section 7(c) of Rule 141 of the Rules of Court. Corollarily, A.M. No. 99-10-05-0, as amended,<sup>60</sup> provides that upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to, among other things, collect the filing fees therefor, and issue the corresponding official receipt, pursuant to Rule 141, Section 7 (c), as amended by A.M. No. 00-2-01-SC, to wit:

*Sec. 7. Clerks of Regional Trial Courts. –*

x x x x

(c) For filing requests for extrajudicial foreclosure of real estate or chattel mortgage, if the amount of indebtedness, or the mortgagee's claim is:

x x x x

9. .... ₱500,000.00 or more but not more than ₱1,000,000.00	2,000.00
10. .... For each ₱1,000.00 in excess of ₱1,000,000.00	10.00

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Guidelines in the Implementation of Section 1 or Rule 141 of the Rules of Court, as amended, took effect on 3 September 2007.

<sup>57</sup> Now Supreme Court Associate Justice Presbitero J. Velasco, Jr.

<sup>58</sup> A.M. No. 99-10-05-0, as amended, Procedure in Extra-judicial Foreclosure of Mortgage, *En Banc* Resolution dated 30 January 2001.

<sup>59</sup> Subject: (A) Raffle of Extrajudicial Foreclosure of Mortgage Cases Among Sheriffs, and (B) Supplement to and Clarification of the Procedure in Extrajudicial Foreclosure of Mortgages in Different Locations Covering One Indebtedness. Dated 5 February 1998 and signed by Chief Justice Andres R. Narvasa.

<sup>60</sup> A.M. No. 99-10-05-0, Procedure in Extra-Judicial Foreclosure of Mortgage, as amended by *En Banc* Resolution dated 1 March 2001.



The Court notes that when EIB filed a Petition for Extrajudicial Foreclosure of Mortgage dated July 29, 2004, it paid the total legal fees of ₱3,133,095.00<sup>61</sup> only for the outstanding total principal obligation as secured by the MTI and the SMTI in the amount of ₱311,000,000.00. Attached to EIB's petition, however, is a demand letter stating that as of March 31, 2004, PALI's outstanding account, inclusive of interest and penalties and other incidental expenses, is ₱1,386,279,000.00.<sup>62</sup> Applying the aforecited Section 7 (c), Rule 141, EIB should have paid filing fees in the amount of ₱13,854,790.00,<sup>63</sup> failing which resulted in a huge deficit in the amount of ₱10,721,695.00.<sup>64</sup>

In the meantime, however, PALI was placed under rehabilitation, TCT No. T-133164 was excluded from the Stay Order of the rehabilitation court, and the foreclosure proceedings was suspended for almost a decade. It was only on August 30, 2013 that an Entry of Judgment was issued in *Pacific Wide Realty and Dev't. Corp. v. Puerto Azul*<sup>65</sup> where the Court finally upheld the validity of PALI's rehabilitation plan and the exclusion of TCT No. T-133164 from the Stay Order of the rehabilitation court. Per the Minutes of the Meeting<sup>66</sup> of the Creditors of PALI on September 26, 2013, Atty. Jord Jharoah B. Valenton, counsel of PBB-Trust, mentioned that the amount to be indicated in the petition for foreclosure will determine the filing fee to be paid. Ricky L. Ricardo, General Manager of Pacific Wide Holdings, Inc., also said that there is a possibility that the filing fee previously paid by EIB can be applied to the re-filing of the foreclosure proceedings inasmuch as the nullity of the earlier order (approving the foreclosure) was due to a technicality in the publication of the notice filed by the Sheriff. Ricardo added, however, that if a petition for a higher amount will be made, there will definitely be additional filing fee to be paid.

Despite knowing that the amount indicated in the petition for foreclosure determines the filing fee, PBB-Trust, through Atty. Valenton, merely wrote the Executive Judge a letter dated January 24, 2014, seeking the issuance of a new notice of sale of TCT No. T-133164, and the posting and publication of such notice, without paying the correct filing fee for extrajudicial foreclosure of real estate mortgage under Section 7 (c), Rule 141. PBB-Trust did not even bother to indicate in its letter dated January 24, 2014 the actual unpaid obligation of PALI secured by the MTI, but merely attached thereto a Statement of Account as of December 3, 2013, stating PALI's loan obligation, inclusive of the 12% interest rate and 24% penalty, in the total amount of ₱2,105,735,800.00.<sup>67</sup> Such omission misled the

<sup>61</sup> *Rollo*, p. 351.

<sup>62</sup> *Id.* at 348.

<sup>63</sup>  $\text{₱}1,386,279,000.00 - 1,000,000.00 = \text{₱}1,385,279,000.00 - \text{₱}2,000.00$   
 $\text{₱}1,385,279,000.00 / 1,000.00 = \text{₱}13,854,790.00 * \text{₱}10 = \text{₱}13,852,790.00 (+ \text{₱}2000) = \text{₱}13,854,790.00$

<sup>64</sup>  $\text{₱}13,854,790.00 - 3,133,095.00 = \text{₱}10,721,695.00$

<sup>65</sup> *Supra* note 13.

<sup>66</sup> *Rollo*, pp. 190-193.

<sup>67</sup> *Id.* at 350.

Executive Judge into believing that the EIB's petition for extrajudicial foreclosure also covers Promissory Note (PN) No. 994809 for ₱57,200,000.00, when in fact it pertains only to PN Nos. 994810 and 994811 for ₱155,500,000.00 each, or a total amount of ₱311,000,000.00. A careful review of the same statement of account, however, shows that as of December 3, 2013, PALI's total outstanding loan obligation, inclusive of interest and penalty, should only be ₱1,778,609,000.00 because the loan obligation covered by PN No. 994809 in the total amount of ₱327,126,800.00 should be deducted from the aforesaid total loan obligation of ₱2,105,735,800.00.

Private respondents cannot fault the Clerk of Court for failing to assess the correct filing fee because EIB's petition for extrajudicial foreclosure hardly indicated the full amount of PALI's indebtedness. EIB's petition only stated the principal obligation in the total amount of ₱311,000,000.00, without stating the exact amount of interests, penalty charges, attorney's fees and other incidental expenses, which would place the total outstanding obligation at ₱1,386,279,000.00 as of March 31, 2004. In view of the failure to assess the correct filing fees and considering the legal disputes which delayed the foreclosure sale of the properties covered by TCT No. T-133164 until January 24, 2014 when PBB-Trust requested to push through with the auction sale, the Clerk of Court of Pasay City should reassess and collect the proper filing fees for EIB's petition for extrajudicial foreclosure dated July 29, 2004, pursuant to Rule 141 of the Rules of Court, as amended by then A.M. No. 00-2-01-SC, based on PALI's outstanding account of ₱1,778,609,000.00 as of December 3, 2013. It is not amiss to stress the importance of filing fees, for they are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries, and fringe benefits of personnel, and others.<sup>68</sup> The payment of said fees, therefore, cannot be made dependent on the result of the action taken without entailing tremendous losses to the government and to the judiciary in particular.<sup>69</sup>

In light of the foregoing disquisitions, the Court no longer finds necessity to resolve the other issues raised by the parties.

**WHEREFORE**, the petition for *certiorari* is **GRANTED**. The assailed Order dated June 30, 2014 of the Pasay City Executive Judge in File No. REM 04-025 is **REVERSED** and **SET ASIDE**, and her Order dated April 24, 2014 is **REINSTATED**. Accordingly, Philippine Business Bank-Trust and Investment Center (*PBB-Trust*) is **ORDERED** to **DEPOSIT** in the Fiduciary Fund of the Regional Trial Court (*RTC*) of Pasay City with the Land Bank of the Philippines the amount of Five Hundred Seventy Million (₱570,000,000.00), representing the entire bid price paid by SM

<sup>68</sup> *Home Guaranty Corp. v. R-II Builders, Inc, et al.*, 660 Phil. 517, 543 (2011).

<sup>69</sup> *Id. Citing Suson v. Court of Appeals*, 343 Phil. 820, 825 (1997).

Development Corporation, which shall continue to be held in trust by the said RTC until the courts of proper jurisdiction shall have finally determined the rightful recipient of the subject bid price and/or the respective amounts due the claimants.

The Clerk of Court of the RTC of Pasay City is also **ORDERED** to **REASSESS** and determine the correct amount of filing fees for the Petition for Extrajudicial Foreclosure dated July 29, 2004, pursuant to Rule 141 of the Rules of Court, as amended by then A.M. No. 00-2-01-SC, based on PALI's outstanding account of ₱1,778,609,000.00 as of December 3, 2013, less the ₱3,133,095.00 that Export and Industry Bank had paid as legal fees. Further, the Executive Judge of the Regional Trial Court of Pasay City is **ORDERED** to **DIRECT** PBB-Trust to pay the said filing fees, as determined by the Clerk of Court.

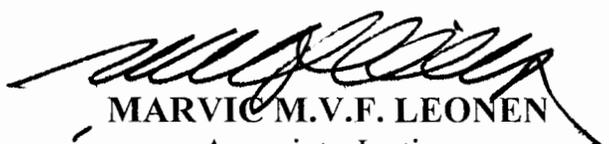
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**SAMUEL R. MARTIRES**  
Associate Justice

**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

