



Republic of the Philippines  
**Supreme Court**  
 Manila

**SPECIAL FIRST DIVISION**

**SPOUSES FLAVIO P. G.R. No. 201881**  
**BAUTISTA and ZENAIDA L.**  
**BAUTISTA,**  
 Petitioners,

Present:  
 LAZARO-JAVIER.,  
*Acting Chairperson,*  
 INTING,  
 ZALAMEDA,  
 LOPEZ, M., and  
 ROSARIO, JJ.

- versus -

**PREMIERE DEVELOPMENT**  
**BANK, substituted by**  
**SECURITY BANK SAVINGS**  
**CORPORATION, and ATTY.**  
**PACITA ARAOS,\* Senior**  
 Assistant Vice President and  
 Acting Head of Legal and  
 Collection Group,

Respondents.

Promulgated:  
**JUL 15 2024**  
*withhold*

X-----X

**RESOLUTION**

**INTING, J.:**

Before the Court is a Motion for Reconsideration<sup>1</sup> filed by respondent Premiere Development Bank<sup>2</sup> (Premiere Bank) seeking the

\* The Motion for Reconsideration was filed only on behalf of Premiere Bank and does not include Atty. Pacita Araos as movant.

<sup>1</sup> *Rollo*, pp. 254-262.

<sup>2</sup> The Court notes that Premiere Bank changed its corporate name to "Security Bank Savings Corporation." Nonetheless, for uniformity with the Decision dated September 5, 2018, the Court

reversal of the Court's Resolution<sup>3</sup> dated July 24, 2019. In the Resolution, the Court granted the Motion for Partial Reconsideration<sup>4</sup> of the spouses Flavio P. Bautista and Zenaida L. Bautista (collectively, the petitioners), modified its Decision<sup>5</sup> dated September 5, 2018, and held that Premiere Bank's action to foreclose the real estate mortgage executed by petitioners in favor of Premier Bank had already prescribed.

### *The Antecedents*

Petitioners are the registered owners of a parcel of land located in Rodriguez, Montalban, Rizal, with an area of 1,248 square meters and covered by Transfer Certificate of Title (TCT) No. 150668 (subject property).<sup>6</sup>

On January 7, 1994, petitioners obtained an agricultural loan from Premiere Bank in the amount of PHP 500,000.00.<sup>7</sup> The loan was evidenced by Promissory Note No. Agri-W-0001 (Promissory Note).<sup>8</sup> As security for the loan, petitioners executed a Real Estate Mortgage (REM) over the subject property. However, petitioners defaulted in their obligation to Premiere Bank.<sup>9</sup>

Thus, sometime in 1995, Premiere Bank filed its application for the extrajudicial foreclosure of the REM.<sup>10</sup> Notice of the extrajudicial foreclosure sale scheduled on November 17, 1995, was received by petitioners on October 17, 1995.<sup>11</sup> However, the sale did not push through because petitioners requested its postponement.<sup>12</sup> Notably, in their letters requesting the deferral of the extrajudicial foreclosure sale, petitioners acknowledged the receipt of the Computation Sheet from Premiere Bank as regards their outstanding loan obligation as of December 14, 1995. At that time, Premiere Bank computed petitioners' outstanding debt in the total amount of PHP 451,709.38. However, petitioners questioned the correctness and validity of the Computation Sheet. They asserted that

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continues to use the previous name of Premiere Bank in the present Resolution. [*Id.* at 121–123, Manifestation and Notice of Change of Name and Address of Respondent Bank]

<sup>3</sup> *Id.* at 250–253.

<sup>4</sup> *Id.* at 234–253.

<sup>5</sup> *Id.* at 223–233. Penned by Associate Justice Lucas P. Bersamin (Ret.) and concurred in by Chief Justice Teresita J. Leonardo-De Castro (Ret.) and Associate Justice Francis H. Jardeleza (Ret.), Associate Justices Mariano C. Del Castillo (Ret.) and Noel Gimenez Tijam (Ret.), on leave.

<sup>6</sup> *Id.* at 224, Decision dated September 5, 2018.

<sup>7</sup> *Id.* at 224–225.

<sup>8</sup> *Id.* at 131, Comment.

<sup>9</sup> *Id.* at 224–225, Decision dated September 5, 2018.

<sup>10</sup> *Id.* at 256, respondent's Motion for Reconsideration.

<sup>11</sup> *Id.* at 224, Decision dated September 5, 2018.

<sup>12</sup> *Id.* at 224–225.

several of the charges and fees included therein were unauthorized for being beyond the terms of the Promissory Note.<sup>13</sup>

From December 1995 to August 1996, several letters were exchanged between the parties wherein petitioners requested Premiere Bank to waive the penalties, fees, and other charges included in the Computation Sheet. However, petitioners' requests were unheeded, and the parties no longer communicated with each other after August 1996.<sup>14</sup>

Subsequently, petitioners received a notice that another extrajudicial foreclosure sale was scheduled on January 15, 2002. The notice was published and posted. However, the extrajudicial foreclosure sale did not push through because the representatives of Premiere Bank did not appear. Thus, the sale was rescheduled to February 18, 2002.<sup>15</sup>

Notably, there was no publication and posting of notice of the rescheduled extrajudicial foreclosure sale. Nonetheless, the sheriff proceeded with it on February 18, 2002. The subject property was sold to Premiere Bank as the lone bidder. A Certificate of Sale was then issued to Premiere Bank. At that time, petitioners' statement of account indicated that their outstanding loan obligation to Premiere Bank was PHP 2,062,254.26 as of February 18, 2002.<sup>16</sup>

Petitioners redeemed the subject property within the required period, tendering the amount of PHP 401,820.00. The sheriff issued a certificate of redemption in the name of petitioners, but Premiere Bank refused to accept the redemption price because it was less than the outstanding obligation of PHP 2,062,254.26.<sup>17</sup>

Premiere Bank then consolidated its ownership over the subject property and the Register of Deeds of Marikina City issued TCT No. 452198 in the name of Premiere Bank.<sup>18</sup>

#### *The Decision of the Regional Trial Court (RTC)*

On November 6, 2003, petitioners filed with Branch 77, RTC, San Mateo, Rizal, their Complaint for Annulment of Sale (complaint) which assailed the validity of the extrajudicial foreclosure sale held on February 18, 2002.<sup>19</sup> The complaint was docketed as Civil Case No. 1792.<sup>20</sup> Petitioners argued that the extrajudicial foreclosure sale was void because

<sup>13</sup> *Id.* at 16–17, Petition.

<sup>14</sup> *Id.* at 17–21, Petition.

<sup>15</sup> *Id.* at 225, Decision dated September 5, 2018.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 26, Petition.

<sup>20</sup> *Id.*

of lack of compliance with the publication and posting requirements required by Section 3,<sup>21</sup> Act No. 3135.<sup>22</sup>

On February 8, 2008, the RTC rendered judgment<sup>23</sup> dismissing petitioners' complaint. It determined that petitioners voluntarily waived the publication and posting requirements when they asked for a series of postponements of the extrajudicial foreclosure sale. It further ruled that petitioners waived any defect in the foreclosure sale and were thus estopped from questioning it given that they attempted to redeem the property from Premiere Bank.<sup>24</sup>

The RTC also determined that Premiere Bank's computation of petitioners' outstanding loan obligation was proper, being based on the terms agreed upon by the parties in the Promissory Note.<sup>25</sup>

Aggrieved, petitioners appealed the RTC Decision to the Court of Appeals (CA).

#### *The Decision of the CA*

On January 27, 2012, the CA rendered its Decision,<sup>26</sup> affirming the validity of the extrajudicial foreclosure sale held on February 18, 2002, despite the non-posting and non-publication of the notice of the rescheduled sale. It held that petitioners were estopped from challenging the validity of the extrajudicial foreclosure proceedings because they offered to redeem the subject property and tendered the redemption price without any condition or reservation.<sup>27</sup>

The CA also agreed with the RTC that Premiere Bank's computation of petitioners' outstanding loan obligation was regular and in accordance with the terms of the Promissory Note, which explicitly provides for the imposition of interest, penalties, and other charges in the event of default.<sup>28</sup>

<sup>21</sup> Act No. 3135, Section 3 reads:

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.

<sup>22</sup> "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," approved on March 6, 1924.

<sup>23</sup> A copy of the RTC Judgment is not attached to the *rollo*.

<sup>24</sup> *Rollo*, pp. 225–226, Decision dated September 5, 2018.

<sup>25</sup> *Id.* at 96–98, CA Decision.

<sup>26</sup> *Id.* at 92–99. Penned by Associate Justice Japar B. Dimaampao (now a Member of the Court) and concurred in by Associate Justice Danton Q. Bueser and Associate Justice Samuel H. Gaerlan (now a Member of the Court).

<sup>27</sup> *Id.* at 226–227, Decision dated September 5, 2018.

<sup>28</sup> *Id.* at 96–98, CA Decision.

Undaunted, petitioners filed with the Court a Petition for Review on *Certiorari*<sup>29</sup> (Petition) under Rule 45 of the Rules of Court, assailing the CA Decision. They insisted that the extrajudicial foreclosure sale held on February 18, 2002, was null and void for lack of compliance with the posting and publication requirements of Act No. 3135. Further, petitioners asserted that they cannot be deemed to be in estoppel and to have waived these requirements because they are mandatory under Act No. 3135.

Petitioners also ascribed error to the CA in holding that Premiere Bank's computation of their outstanding obligation was correct. They maintained that Premiere Bank charged petitioners with unconscionable interests and penalties, as well as unauthorized charges and other fees that were not included in the Promissory Note.

### *The Decision of the Court*

In the Decision<sup>30</sup> dated September 5, 2018, the Court partially granted the Petition and declared as null and void the extrajudicial foreclosure sale held on February 18, 2002, for lack of posting and publication, which are mandatory and jurisdictional under Act No. 3135, viz.:

WHEREFORE, the Court PARTIALLY GRANTS the petition for review on *certiorari*; and MODIFIES the decision promulgated on January 27, 2012 by:

(1) DECLARING NULL AND VOID: (a) the foreclosure sale held on February 18[,] 2002 of the property located in Rodriguez, Montalban, Rizal to Premiere Development Bank; and (b) the issuance of Transfer Certificate of Title No. 452198 of the Register of Deeds of Marikina City issued in the name of Premiere Bank;

(2) DIRECTING the Register of Deeds of Marikina City TO CANCEL Transfer Certificate of Title No. 452198 issued in the name of Premiere Development Bank; and TO REINSTATE Transfer Certificate of Title No. 150668 issued in the name of petitioners Spouses Flavio P. Bautista and Zenaida L. Bautista; and

(3) ORDERING the respondents to comply with the requirements of posting and publication of the extrajudicial foreclosure sale of the petitioners' property.

No pronouncement on costs of suit.

SO ORDERED.<sup>31</sup>

The Court explained that the posting and publication requirements under Act No. 3135 are not for the benefit of the mortgagor or the mortgagee. Instead, they are required for the benefit of third persons,

<sup>29</sup> *Id.* at 9-90.

<sup>30</sup> *Id.* at 223-233.

<sup>31</sup> *Id.* at 232-233.

particularly, “to secure bidders and to prevent a sacrifice of the property.”<sup>32</sup> The requirements are therefore imbued with public policy considerations. Hence, neither of the parties may waive the posting and publication requirements of the law; otherwise, the waiver “can convert into a private sale what ought to be a public auction,”<sup>33</sup> contrary to Section 4,<sup>34</sup> Act No. 3135.

However, as to the correctness of Premiere Bank’s computation of petitioners’ outstanding loan obligation, the Court held that this was a factual issue that is beyond the scope of a Rule 45 Petition. Thus, the findings of the courts *a quo* on this matter were undisturbed by the Court.

#### *The Partial Reconsideration of the Court’s Decision*

Petitioners filed their Motion for Partial Reconsideration,<sup>35</sup> praying that Item 3 of the *fallo* in the Court’s Decision be deleted. They argued that respondents Premiere Bank and Atty. Pacita Araos (collectively, respondents) should not have been directed to comply with the posting and publication requirements of Act No. 3135 because Premiere Bank’s action to foreclose the REM had already prescribed. They cited Article 1142 of the Civil Code, which states that a “mortgage action prescribes after ten years.” They pointed out that the ten-year prescriptive period must be reckoned from October 17, 1995, the date when they received the first notice of extrajudicial sale. To petitioners, the extrajudicial foreclosure proceedings did not toll the running of the prescriptive period because it was declared null and void by the Court.

In the now-assailed Resolution<sup>36</sup> dated July 24, 2019, the Court granted petitioners’ Motion for Partial Reconsideration, viz.:

WHEREFORE, the Court GRANTS the Motion for Partial Reconsideration filed by the petitioners and MODIFIES the decision promulgated on September 05, 2018 by deleting item (3) thereof.

The petitioner’s (sic) manifestation, stating that the motion for reconsideration was served to and received by the new counsel of Security Bank Savings Corporation (formerly Premiere Development Bank), Lariba Perez Mangrobang Dumbrique Avila & Fulgencio at

<sup>32</sup> *Sps. Bautista v. Premiere Development Bank*, 839 Phil. 792, 803 (2018), citing *PNB v. Nepomuceno Productions, Inc.*, 442 Phil. 655 (2002).

<sup>33</sup> *Id.* at 802.

<sup>34</sup> Act No. 3135, Section 4, states:

SECTION. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed,, in addition to his expenses.

<sup>35</sup> *Rollo*, pp. 234–240.

<sup>36</sup> *Id.* at 250–253.

Fourt Floor Security Bank Centre, 6775 Ayala Avenue, Makati City is  
NOTED.

SO ORDERED.<sup>37</sup>

The Court agreed with petitioners that Premiere Bank's action over the REM prescribes after 10 years under Article 1142 of the Civil Code. It explained that the foreclosure sale, having been declared null and void, did not produce any legal effect; hence, it did not toll the running of the prescriptive period. Given that Premiere Bank's action to foreclose the REM accrued on October 17, 1995—the date when petitioners first received notice of the foreclosure proceedings—the action for foreclosure of mortgage has already prescribed.

Thus, the present Motion for Reconsideration.<sup>38</sup>

#### *Premiere Bank's Arguments*

Premiere Bank argues that the prescriptive period for its action over the mortgage was tolled when it filed its application for extrajudicial foreclosure of the mortgage. It insists that it was able to timely avail itself of the remedy of extrajudicial foreclosure in 1995, which was well within the prescriptive period of 10 years under Article 1142 of the Civil Code. To Premiere Bank, the Court's Decision dated September 5, 2018, avoided only the extrajudicial foreclosure sale held on February 18, 2002, and not the entire extrajudicial foreclosure proceedings.<sup>39</sup>

In addition, Premiere Bank asserts that both the RTC and the CA recognized that petitioners had an outstanding loan obligation to the Bank in the total amount of PHP 2,062,254.26 as of February 28, 2002, a factual finding that is already final given that the Court did not disturb it in the Decision dated September 5, 2018.<sup>40</sup> Premiere Bank highlights the fact that petitioners never questioned the validity of the Promissory Note as well as the mortgage. It points out that petitioners have even admitted that they defaulted in the payment of their loan obligation to Premiere Bank.<sup>41</sup> It thus maintains that petitioners must be directed to pay their outstanding loan obligation.<sup>42</sup>

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<sup>37</sup> *Id.* at 251–252.

<sup>38</sup> *Id.* at 254–262.

<sup>39</sup> *Id.* at 256.

<sup>40</sup> *Id.* at 256–260.

<sup>41</sup> *Id.* at 256.

<sup>42</sup> *Id.* at 260.

### *The Petitioners' Arguments*

In their Opposition<sup>43</sup> to the Motion for Reconsideration, petitioners argue that Premiere Bank's action to foreclose the mortgage has prescribed in accordance with Article 1142 of the Civil Code. They insist that the extrajudicial foreclosure sale did not toll the prescriptive period because it was declared null and void, and thus, without any legal effect. They assert that allowing Premiere Bank to initiate another foreclosure proceedings would reward its serious violation of Act No. 3135.

Further, petitioners insist that Premiere Bank's action to collect on petitioners' loan obligation under the Promissory Note has likewise prescribed under paragraph 1, Article 1144<sup>44</sup> of the Civil Code, which provides that actions upon a written contract must be brought within 10 years from the time that the right of action accrues.

### *The Issues*

The core issues for resolution before the Court are as follows: (1) whether Premiere Bank's action to foreclose the mortgage has prescribed; and (2) whether petitioners may be directed to pay their outstanding loan obligation to Premiere Bank.

### *The Ruling of the Court*

The Motion for Reconsideration is denied for lack of merit.

Premiere Bank elected to collect upon the Promissory Note through the extrajudicial foreclosure of the mortgage which had already prescribed, and thus, has effectively waived the remedy of a personal action to collect the debt in view of the prohibition on splitting a single cause of action.<sup>45</sup> Hence, petitioners can no longer be directed to pay their outstanding loan obligation to Premiere Bank.

### *The extrajudicial foreclosure proceedings did not interrupt*

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<sup>43</sup> *Id.* at 280–284.

<sup>44</sup> Civil Code, Article 1144, paragraph 1 reads:  
ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:  
(1) Upon a written contract:

<sup>45</sup> *Asset Pool A (SPV-AMC), Inc. v. Spouses Berris*, G.R. No. 203194, April 26, 2021.



*the running of the prescriptive period.*

The Court has long decreed that, as stated in Article 1142 of the Civil Code, an action for foreclosure of mortgage prescribes in 10 years.<sup>46</sup> The period is counted from the time that the right of action accrues, *i.e.*, when the mortgagor defaults in the payment of its obligation to the mortgagee.<sup>47</sup>

Article 1155<sup>48</sup> of the Civil Code provides three modes through which prescription of an action may be interrupted: *first*, when the action is filed before the court; *second*, when there is a written extrajudicial demand by the creditors; and *third*, when there is any written acknowledgment of the debt by the debtor.

Premiere Bank argues that its action to foreclose the REM was interrupted through the *first* mode—through an action filed with the court—when it submitted its application for *extrajudicial* foreclosure of the mortgage with the Office of the Sheriff. The Court does not agree.

- a. The Office of the Sheriff is not a court of justice.

Article 1155 of the Civil Code refers to actions *filed with the court* that may interrupt the running of the prescriptive period. Strictly speaking, extrajudicial foreclosure sales are *not* judicial proceedings, actions, or suits<sup>49</sup> given that they only require posting and publication of the notices to be effected.<sup>50</sup> In *Supena v. De la Rosa*,<sup>51</sup> the Court explained:

... It is clear that the determinative or operative fact which converts a claim into an “action or suit” is the filing of the same with a “court of justice.” Filed elsewhere, as with some other body or office not a court of justice, the claim may not be categorized under either term. *Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the*

<sup>46</sup> *Núñez v. GSIS Family Bank*, 511 Phil. 735, 750 (2005).

<sup>47</sup> *Mercene v. Government Service Insurance System*, 823 Phil. 200, 210 (2018), citing *Maybank Philippines, Inc. v. Spouses Tarrosa*, 771 Phil. 423 (2015).

<sup>48</sup> CIVIL CODE, Article 1155 reads:

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

<sup>49</sup> *Office of the Court Administrator v. Fernandez*, A.M. No. RTJ-14-2379 (Notice), August 5, 2014.

<sup>50</sup> *A.G. Development Corp. v. CA*, 346 Phil. 136, 142 (1997).

<sup>51</sup> 334 Phil. 671 (1997).

*category of a court of justice.* And as aptly observed by the complainant, if ever the executive judge comes into the picture, it is only because he exercises administrative supervision over the sheriff. But this administrative supervision, however, does not change the fact that *extrajudicial foreclosures are not judicial proceedings, actions or suits.*<sup>52</sup> (Italics supplied; citations omitted)

The Court thus rules that the extrajudicial foreclosure proceedings initiated by Premiere Bank in 1995 is *not* an action filed with the court. Hence, it did not interrupt the prescriptive period for Premiere Bank to foreclose the mortgage.

- b. The delay in the proceedings was due to the fault of Premiere Bank.

Even if the extrajudicial foreclosure proceedings and Premiere Bank's answer to the Complaint for Annulment of Sale are considered as actions "filed with the court," they cannot interrupt the period of prescription because the delay in the resolution of the conflict between the parties was due to the fault of Premiere Bank, specifically, by the Bank's failure to comply with the jurisdictional requirements of extrajudicial foreclosure proceedings.

The late Senator Arturo M. Tolentino (Tolentino), a well-known Civil Law expert in the country,<sup>53</sup> explained that if an action is started within the prescriptive period but the plaintiff *desists* in its prosecution, or judgment is *unconditionally stayed* for one reason or another, the running of the prescriptive period is not interrupted.<sup>54</sup> Verily, the Court has held that while the commencement of the action would stop the running of the statute of limitations, its dismissal or voluntary abandonment by the plaintiff would leave the parties in exactly the same position as if no action had been commenced at all.<sup>55</sup> Instead, the action by reason of its dismissal or abandonment took no time out of the period of prescription, and the parties are left in exactly the same position as though no action had been commenced at all.<sup>56</sup>

<sup>52</sup> *Id.* at 677-678.

<sup>53</sup> *Sps. Hing v. Choachuy, Sr.*, 712 Phil. 337, 349 (2013); *Premiere Dev't Bank v. Central Surety & Insurance Co., Inc.*, 598 Phil. 827, 846 (2009); *Sulo sa Nayon, Inc. and/or Philippine Village Hotel, Inc. v. Nayong Pilipino Foundation*, 596 Phil. 715, 726 (2009).

<sup>54</sup> Tolentino, Arturo M. (1991). *Commentaries and Jurisprudence on the Civil Code of the Philippines* (Volume IV) (p. 49). Central Book Supply, Inc., Manila, Philippines.

<sup>55</sup> *Conspecto v. Fruto*, 31 Phil. 144, 150 (1915).

<sup>56</sup> *Id.*

Thus, in *Oriental Commercial Co. v. Jureidini, Inc.*,<sup>57</sup> therein plaintiff's action for collection of a sum of money was deemed prescribed even though she had earlier filed three other cases related to her claim, which were dismissed for lack of action or management by the plaintiff. The Court ruled that the other cases earlier filed did not interrupt the prescriptive period because therein plaintiff's *lack of management* of the earlier cases can only be interpreted as a *waiver or abandonment of her action*. Thus, the parties therein must be deemed left in exactly the same position as if no action had been commenced at all.<sup>58</sup>

The same principle in *Oriental Commercial* may be applied against Premiere Bank. Verily, the extrajudicial foreclosure proceedings subject of the case at hand did not result in the satisfaction of the debt due to Premiere Bank's own fault when it failed to comply with the publication and posting requirements in Act No. 3135. Its lack of proper management of the foreclosure proceedings can only be taken as a waiver or abandonment of its action. Thus, the extrajudicial foreclosure proceedings initiated by Premiere Bank in 1995 and the Bank's answer in Civil Case No. 1792 did not interrupt the prescriptive period for the foreclosure of the mortgage.

Premiere Bank's action to foreclose the mortgage must be reckoned from the date of petitioners' default. Based on the record, the earliest date when petitioners' default became apparent is October 17, 1995, the date when petitioners received notice of the extrajudicial foreclosure sale scheduled on November 17, 1995.<sup>59</sup> Counting from *October 17, 1995*, more than 10 years have certainly lapsed when Premiere Bank filed its Motion for Reconsideration on *October 29, 2019*. Thus, the action to foreclose the mortgage had prescribed.

- c. Petitioners' admission in the Petition that they defaulted on the payment of their loan is not tantamount to a written acknowledgment of debt under Article 1155 of the Civil Code.

Premiere Bank asserts that petitioners never questioned the *validity* of the Promissory Note and the REM. It also points out that petitioners have admitted that they defaulted on the payment of the loan. To Premiere Bank, these admissions may serve as basis for its continuing right to recover the debt from petitioners through foreclosure or payment.<sup>60</sup>

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<sup>57</sup> 71 Phil. 25 (1940).

<sup>58</sup> *Id.* at 29-30.

<sup>59</sup> *Rollo*, p. 15, Petition.

<sup>60</sup> *Rollo*, pp. 256-257, Motion for Reconsideration.

The Court is not persuaded.

Premiere Bank essentially argues that petitioners have *acknowledged* their debt to the Bank. Pertinently, under Article 1155 of the Civil Code, one of the modes to interrupt prescription is the presence of any written acknowledgment of the debt by the debtor.

Here, petitioners caused the preparation and filing of the Petition,<sup>61</sup> wherein they acknowledged having executed the Promissory Note and the mortgage.<sup>62</sup> It is also true that they admitted in the Petition that they defaulted in the payment of their loan obligation to Premiere Bank.<sup>63</sup>

Still, notwithstanding petitioners' admissions, the Petition cannot be taken as a written acknowledgment of a debt that could interrupt the prescriptive period to file an action for the recovery of petitioners' loan obligation.

For an acknowledgment of a debt to interrupt prescription under Article 1155 of the Civil Code, *it must be accompanied by or coupled with the purpose and intention of the debtor-acknowledger to interrupt the prescription then running.*<sup>64</sup> "The act must communicate the debtor's *specific intention of acknowledging the survival of another person's right*; it must be spontaneous, unequivocal and clear; and it can never be deduced from acts or conduct from which only indirect inferences can be made as to the debtor's acknowledgement of the effectiveness of the creditor's right."<sup>65</sup> It must also be *clear, specific, and recognize the right of the creditor to enforce its claim.*<sup>66</sup>

Thus, an acknowledgment in writing that a debt once existed but which does not contain an admission of a present subsisting debt on which the party is liable is insufficient to avoid the bar of the statute of limitations.<sup>67</sup>

Similarly, Tolentino points out that a written acknowledgment of a debt is insufficient under Article 1155 of the Civil Code if the debtor admits having received a statement of account of the indebtedness but

<sup>61</sup> *Id.* at 104, Verification and Certification against Forum-Shopping dated July 2, 2012, signed by petitioners and attached to the Petition.

<sup>62</sup> *Id.* at 14, Petition.

<sup>63</sup> *Id.* at 15-19, Petition.

<sup>64</sup> *Wise v. Watkins*, 62 So. 2d 653, (La. 1953); *Baker v. Wilder*, 204 La. 759, 774 (La. 1943); *Spears v. Nesbitt*, 197 La. 931, 938-39 (La. 1941); *English v. Blackman*, 189 La. 255, 262 (La. 1938); *Frost Lumber Industries v. Union Power Co.*, 182 La. 439, 450 (La. 1935); *Bremer v. North Central Texas Oil Co.*, 185 La. 917, 921-22 (La. 1936).

<sup>65</sup> *Rodriguez Narvaez v. Nazario*, 895 F.2d 38, 44 (1st Cir. 1990).

<sup>66</sup> *First Nat. Bank Bldg. Co. v. Dickson Denny*, 207 La. 298 (1945).

<sup>67</sup> *Dechand Roofing Supply Co. v. Schumaker*, 174 Kan. 82, 84-85 (Kan. 1953).

*declines* to recognize the correctness of the account for being *exorbitant*.<sup>68</sup> Moreover, if prescription has already set in, mere acknowledgement of the debt is not enough; instead, it must be coupled with a new and positive promise to pay in order to nullify the prescription that has already accrued.<sup>69</sup>

In the case at hand, the Petition is replete with statements from petitioners, wherein they questioned the propriety of Premiere Bank's computation of the outstanding loan obligation. While they acknowledged that they signed the Promissory Note and the mortgage, they denied that their liability to Premiere Bank under the loan documents amounted to PHP 2,062,254.26 as of February 18, 2002, supposedly because Premiere Bank included unauthorized fees and charges that were not agreed upon, while the interests and penalties imposed by the Bank were exorbitant and unconscionable. Further, the Petition does not contain any unconditional promise for petitioners to pay the loan obligation.

Evidently, the Petition did not clearly evince petitioners' specific intention to interrupt the prescription of Premiere Bank's action to collect the loan obligation. There is also no unequivocal and unqualified recognition of the right of Premiere Bank to enforce its claim. Perforce, it cannot be taken as a written acknowledgment of the debt that could be used as basis for Premiere Bank's alleged "right" to collect on petitioners' loan obligation under the Promissory Note. Instead, as discussed above, its action to collect on petitioners' loan obligation through foreclosure of the mortgage had already prescribed.

*Premiere Bank waived its right to file a separate action upon the Promissory Note when it elected to extrajudicially foreclose the mortgage.*

Premiere Bank maintains that its right to collect on the loan obligation was recognized by the Court when it essentially sustained the findings of the CA on the correctness of its computation of petitioners' outstanding loan obligation. Hence, it insists that petitioners must be directed to pay their loan obligation under the Promissory Note.

Premiere Bank's argument is unavailing.

<sup>68</sup> Tolentino, Arturo M. (1991). *Commentaries and Jurisprudence on the Civil Code of the Philippines* (Volume IV) (p. 51). Central Book Supply, Inc., Manila, Philippines, citing *Stewart v. Watts*, 15 La. Ann. 135 and *Shultz v. Houghton*, 36 La. Ann. 407.

<sup>69</sup> *Id.* at 52, citing *Succession of De Grange* (La. Ann.), 198 So. 784; *Glass v. Holomon* (La. Ann.), 197 So. 438; *Boyle v. Kitteridge*, 21 La. Ann. 273; *Frellsen vs. Grantt*, 25 La. Ann. 476.

It must first be clarified that the findings of the CA on the computation of petitioners' outstanding loan obligation, as sustained by the Court, did not at all include a determination on Premiere Bank's *continuing* right to collect on the Promissory Note. Instead, the CA's conclusion pertained to the correctness of the computation of petitioners' outstanding loan obligation under the Promissory Note *in relation to* the auction sale and the redemption price tendered by petitioners, which was rejected by Premiere Bank for being below the outstanding obligation in the total amount of PHP 2,062,254.26.

Simply, the foregoing findings of the CA were all in connection with the propriety of the foreclosure sale and the redemption proceedings related thereto. They are not disquisitions on the issue of whether Premiere Bank may still collect on petitioners' loan obligation despite the nullity of the extrajudicial foreclosure sale held on February 18, 2002. Thus, Premiere Bank cannot rely on these factual determinations in insisting that petitioners must be ordered to pay their debt.

On the contrary, the Court finds that directing petitioners to pay their outstanding loan obligation to Premiere Bank would contravene jurisprudence.

It is elementary that secured creditors, such as Premiere Bank, have three courses of action to collect on a loan obligation: (1) a personal action for the collection of the debt; (2) a real action to judicially foreclose the real estate mortgage; or (3) an extrajudicial judicial foreclosure of the mortgage.<sup>70</sup> These remedies are *alternative*, not cumulative, and the election or use of one remedy operates as a *waiver* of the others.<sup>71</sup>

Pertinent is the Court's ruling in *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*,<sup>72</sup> to wit:

... [A] remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provisions of Rule 68 of the Rules of Court. *As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended, by Act No. 4118.*<sup>73</sup> (Italics supplied)

<sup>70</sup> *Sycamore Ventures Corp. v. Metropolitan Bank and Trust Co.*, 721 Phil. 290, 297 (2013).

<sup>71</sup> *Id.*; *Bank of America NT & SA v. American Realty Corporation*, 378 Phil. 1279 (1999).

<sup>72</sup> 524 Phil. 92(2006).

<sup>73</sup> *Id.* at 116, citing *Bank of America NT & SA v. American Realty Corporation*, 378 Phil. 1279 (1999).

The reason for the foregoing rule is simple: a secured creditor, such as Premiere Bank, has a *single cause of action* against the debtor – to recover the credit obligation after the debtor defaults or fails to pay.<sup>74</sup> Authorizing the secured creditor to avail itself of its remedies cumulatively or successively would result in multiplicity of suits so offensive to justice and obnoxious to law and equity.<sup>75</sup> It would also be vexatious to the defendant, who would be subjected to suit in the place of its residence or of the residence of the plaintiff, and then again in the place where the property lies.<sup>76</sup>

Hence, when Premiere Bank opted to file its application for *extrajudicial foreclosure* of mortgage, it *waived* the remedy of a separate personal action for collection of the debt and chose to rely on the mortgage for payment, subject to a subsequent personal action for any unpaid balance in case the proceeds of the foreclosure sale are insufficient to satisfy the debt.<sup>77</sup> Resultantly, Premiere Bank can no longer recover the loan through a separate collection suit, as that would result in splitting of its single cause of action, which is prohibited.<sup>78</sup>

Given that Premiere Bank's action for foreclosure had prescribed, the Court cannot direct petitioners to pay their loan obligation to the Bank. A contrary ruling would be tantamount to an *indirect revival* of the personal action for collection that was already *waived* by the Bank and would result in the very evil sought to be prevented by the rule on the alternative remedies of the secured creditor, *i.e.*, to avoid multiplicity of suits and to protect defendants from vexatious litigation.

The Court is aware that in its Decision, it declared null and void the extrajudicial foreclosure *sale* held on February 18, 2002, for lack of publication and posting. As pointed out by Premiere Bank, it indisputably "exercised its right to foreclose the mortgaged properties."<sup>79</sup> Thus, "[w]hat was nullified [by the Court] was the *actual auction* on account of lack of republication and posting,"<sup>80</sup> not the election of respondents to extrajudicially foreclose the mortgage. Otherwise said, while the February 18, 2002, extrajudicial foreclosure sale is null and void and has no force and effect, Premiere Bank's election of the remedy of extrajudicial foreclosure sale of the mortgage is effective and must operate as a waiver of its other remedies to collect on the petitioners' loan obligation.

<sup>74</sup> *BPI Family Savings Bank, Inc. v. Vda. de Coscolluela*, 526 Phil. 419, 439 (2006).

<sup>75</sup> *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, 524 Phil. 92, 115–116 (2006).

<sup>76</sup> *Id.*

<sup>77</sup> *State Investment House, Inc. v. Court of Appeals*, 291 Phil. 35, 44 (1993); *Bank of the Philippine Islands v. Reyes*, 680 Phil. 718, 725 (2012).

<sup>78</sup> *See BPI Family Savings Bank, Inc. v. Vda. de Coscolluela*, 526 Phil. 419, 440 (2006).

<sup>79</sup> *Id.*

<sup>80</sup> *Rollo*, p. 256, Motion for Reconsideration.

In any event, as earlier discussed, *the parties are deemed left in exactly the same position as if no action was commenced at all* because of Premiere Bank's failure to ensure compliance with the requirements of Act No. 3135. As such, Premiere Bank is deemed to have abandoned its remedies to collect on the loan obligation of petitioners either through a personal action for collection of a sum of money, a judicial foreclosure, or an extrajudicial foreclosure.

As pointed out by petitioners, under paragraph 1 of Article 1144 and Article 1142 of the Civil Code, an action upon a written contract such as the Promissory Note, and an action to foreclose a mortgage, both prescribe in 10 years from the time the right of action accrues. Premiere Bank's right of action accrued when petitioners defaulted on their loan obligation in 1995, *which is about 29 years ago*. Thus, Premiere Bank's actions to collect on the loan obligation under the Promissory Note or through the mortgage had both prescribed. There is therefore no basis for the Court to direct petitioners to pay their supposed outstanding loan obligation to Premiere Bank.

In closing, the Court reminds respondents that Premiere Bank is an entity engaged in the business of banking, which is imbued with public interest; thus, it is expected to exercise *extraordinary* diligence in the conduct of its business and its financial dealings.<sup>81</sup> Foreclosure proceedings are necessarily part of the banking business, precisely because banks regularly enter into mortgage agreements as security for their loan transactions.<sup>82</sup> Thus, it was the duty of Premiere Bank, as the mortgagee, to comply *faithfully* with the statutory requirements of extrajudicial foreclosure under Act No. 3135.<sup>83</sup>

There is no quibbling that the posting and publication requirements of Act No. 3135 were not complied with as regards the extrajudicial foreclosure sale held on February 18, 2002. As a result, Premiere Bank is left with no other recourse to collect upon the Promissory Note. The situation, however, was brought about by Premiere Bank's own fault; hence, it must suffer the consequences of its own inaction or neglect in the extrajudicial foreclosure proceedings.

**WHEREFORE**, the Motion for Reconsideration is **DENIED WITH FINALITY**. No further pleadings shall be entertained.

<sup>81</sup> *Security Bank Savings Corp. v. Singson*, 780 Phil. 860, 870-871 (2016).

<sup>82</sup> *See Provident Savings Bank v. Court of Appeals*, 294 Phil. 143, 152 (1993).

<sup>83</sup> *Philippine Savings Bank v. Spouses Geronimo*, 632 Phil. 378, 390 (2010).




Let an entry of judgment be issued immediately. The Judicial Records Office is directed to submit its compliance within 10 days from notice.

**SO ORDERED.**



**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:




**AMY C. LAZARO-JAVIER**  
*Acting Chairperson*  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*



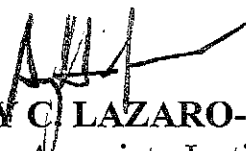
**MARION N. LOREZ**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*

**ATTESTATION**

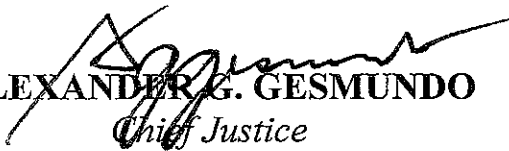
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**AMY C. LAZARO-JAVIER**  
Associate Justice  
*Acting Chairperson, Special First Division*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*