

SECOND DIVISION

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

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

R E S O L U T I O N

NACHURA, J.:

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

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

We disagree.

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

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

Sec. 2. Said sale *cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is the subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.*^[5]

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

Parañaque City.

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

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

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

"Action means *an ordinary suit in a court of justice*, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong."

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

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

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