

**MILAGROS B. MERCADO A.K.A MILAGROS M. LACSON,
PLAINTIFF-APPELLANT, VS. CHINA BANKING CORPORATION,
MANILA REGISTRY OF DEEDS AND MANILA RTC EX-OFFICIO
SHERIFF, DEFENDANTS-APPELLEES.**

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is an appeal filed by the plaintiff-appellant Milagros B. Mercado a.k.a. Milagros M. Lacson (“plaintiff-appellant”) seeking a review of the Order[1] dated April 8, 2013 promulgated by Presiding Judge Carolina C. Icasiano-Sison of Branch 18 of the Regional Trial Court (“RTC”) of Manila, National Capital Judicial Region, in Civil Case No. 12-128925 which dismissed the complaint for annulment of promissory notes, real estate mortgage and foreclosure with damages filed by the plaintiff-appellant.

The material and relevant facts of the case, as culled from the record, are as follows:

On September 22, 1986, plaintiff-appellant obtained a loan from defendant-appellee China Banking Corporation (“China Bank”) for the amount of P500,000.00. As a security for the indebtedness, the plaintiff-appellant executed a Real Estate Mortgage[2] of a parcel of land located in Tondo, Manila and covered by Transfer Certificate of Title No. 168586[3] in favor of defendant-appellee China Banking Corporation. The mortgage was further amended on July 13, 1989[4] and on March 8, 1993[5] which increased the plaintiff-appellant's credit facility to P1,500,000.00 and P4,000,000.00 respectively.

Payments for the obligation were directly debited in the plaintiff-appellant's bank account with China Bank. Plaintiff-appellant was likewise required to execute several promissory notes in favor of the defendant-appellee bank in line with the loan.

Several years later, or on August 10, 2006, China Bank filed a petition for extrajudicial foreclosure of real estate mortgage[6] of plaintiff-appellant's property with the Office of the Ex-Officio Sheriff of the RTC of Manila. The mortgage was then extrajudicially foreclosed and the property acquired in public auction by the defendant-appellee bank as the highest bidder thereof.

On October 6, 2006, plaintiff-appellant received a statement of account[7] from China Bank which indicated that her outstanding obligation already amounted to P14,580,946.25, interest and penalties included.

Subsequently, the plaintiff-appellant filed a Petition for Injunction with the Regional Trial Court of Manila against defendant-appellee bank. The case was then docketed as Civil Case No. 06-116171.

On July 15, 2011, Branch 30 of the RTC of Manila rendered its Decision which declared valid and effective the extrajudicial foreclosure of the plaintiff-appellant's real estate mortgage. An Amended Decision dated November 2, 2011 was further promulgated by the same court which merely declared valid and binding the monthly interest charges imposed upon the plaintiff-appellant's indebtedness.

As a consequence thereof, on March 23, 2012, the plaintiff-appellant filed another complaint for Annulment of Promissory Notes, Real Estate Mortgage and Foreclosure with Damages[8] with the RTC of Manila against the defendant-appellee bank which was docketed as Civil Case No. 12-128925.

In the said complaint, herein plaintiff-appellant alleged that the 1997 and 1999 Amended Real Estate Mortgage in favor of China Bank as well as the promissory notes issued in line therewith should be annulled and declared void on account of the fraudulent acts committed by the defendant-appellee bank. She likewise claimed that the defendant-appellee bank failed to comply with the procedural requirement of posting and notice during the extrajudicial foreclosure of the mortgage of her property.

In response thereto, defendants-appellees filed a Motion to Dismiss[9] on November 29, 2012 based on the following grounds: lack of jurisdiction, res judicata, forum shopping, prescription and laches.

The defendants-appellees averred that the judgment in Civil Case No. 06-116171 entitled “Milagros S. Mercado v. China Banking Corporation, Jennifer H. dela Cruz-Buendia in her Capacity as the Ex-Officio Sheriff, Regional Trial Court, Manila rendered on November 2, 2011 by Presiding Judge Lucia P. Purugganan of Branch 30 of the Regional Trial Court of Manila which declared valid and effective the extrajudicial foreclosure of the mortgage of real property of the plaintiff-appellant constituted an absolute bar to the filing of the present complaint. For the defendants-appellees, said judgment which attained finality on December 5, 2011 had already categorically declared as valid the loan obligations and extrajudicial foreclosure of mortgage of real property of the plaintiff-appellant.

Consequently, on April 8, 2013, the trial court issued the assailed Order, pertinent portions of which read as follows:

“In the instant complaint, it may be true that herein plaintiff had filed an action for annulment of promissory notes, real estate mortgage and foreclosure with damages. However, a cursory reading of the amended Decision dated November 2, 2011 would show that the co-equal court has already adjudicated and declared valid and effective the extrajudicial foreclosure of mortgage conducted by the parties. Herein plaintiff cannot file for a separate action praying that the foreclosure be annulled for being void. This can only be raised properly on an appeal of judgment, not in a separate proceeding.

“In the same vein, the amended Decision of Branch 30 carries with it the effect of conclusiveness of judgment. Thus, any right, fact, or matter in issue which is involved in the determination of an action, if judgment thereto has already been rendered, cannot be litigated again between the same parties. The present complaint may have a different prayer, however, the previous Amended Order of Branch 30 RTC Manila has already closed all opportunities to determine all necessary and related issues in a different tribunal when the plaintiff was able to introduce her claims in the original proceeding, save in cases of appeal.

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“Verily, this court cannot pass upon the issues raised in the Plaintiff's complaint. The co-equal court has already decided that the foreclosure proceedings were valid which would include all valid documents corresponding thereto. For this court to give merit on the instant complaint is tantamount to a grave abuse of discretion and encroachment of jurisdiction.

“The plaintiff had all the right and opportunity to raise all incidental issues in RTC Branch 30 and consequently, the court already adjudicated not only the interest rates but, likewise, already gave merit to the issues regarding foreclosure and mortgage. Needless to say, this court is confronted with a case having the same res, parties and issue and to give merit to the complaint may result in the invalidation of the Amended Decision of RTC Branch 30.

“Be that as it may, the issue on foreclosure of mortgage has already been resolved. There is nothing to enjoin and a civil case for annulment of foreclosure of mortgage is not the proper remedy in our jurisdiction.

“In view of the foregoing, the Motion to Dismiss filed by Defendant China Banking Corporation is hereby GRANTED. Accordingly, the Complaint filed by Milagros S. Mercado before this Court is hereby DISMISSED.

“SO ORDERED.”

Aggrieved, the plaintiff-appellant filed this instant appeal raising as lone error the following act that was purportedly committed by the trial court, to wit:

THE COURT A QUO ERRED IN DISMISSING THE SUIT FOR ANNULMENT WITHOUT ANY EVIDENCE ON A MERE MOTION TO DISMISS BASED ON RES JUDICATA WHEN THE SUBJECT MATTER, ISSUES AND CAUSES OF ACTION ARE DIFFERENT FROM THE INJUNCTION CASE.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant appeal to be devoid of merit.

The plaintiff-appellant asseverated that, contrary to the findings of the trial court, there is no identity of issues and subject matter between the annulment and injunction cases that she filed against defendant-appellee bank.

The plaintiff-appellant averred that the central issue in the injunction case was the validity of monthly interest rates and penalty charges as stipulated in the promissory notes in favor of China Bank. On the other hand, the issues in the annulment case were the validity of the real estate mortgage and extrajudicial foreclosure of real property. Further, the plaintiff-appellant insinuated that the prayer in the injunction and annulment cases were likewise not identical as the first case sought for the deletion of the interest and penalty charges, while the second case prayed for the annulment of the mortgage and the foreclosure thereof, among others.

Res judicata literally means a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgment[10]. Res judicata lays the rule that an existing final judgment or decree rendered on the merits and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit[11].

The elements of res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be, as between the first and second action, identity of parties, subject matter and causes of action[12].

In the case at bench, it is beyond dispute that the Amended Decision rendered by Branch 30 of the Regional Trial Court of Manila in Civil Case No. 06-116171 had already attained finality on December 5, 2011[13]. The judgment was rendered by a court having jurisdiction over the subject matter and the parties. Also, the disposition of the case was a judgment on the merits.

With respect to the last element of res judicata, both the injunction suit and the annulment case involved the plaintiff-appellant and defendant-appellee bank as parties thereto. Therefore, the only question left for determination is the presence or lack of identity of cause of action and subject matter between the two cases.

The Supreme Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of res judicata. One test of identity is the absence of inconsistency test where it is determined whether the judgment sought will be inconsistent with the prior

judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions[14].

This Court finds that the causes of action in both the injunction and annulment cases inevitably deal with the validity of the real estate mortgage and the foreclosure thereof. Although the plaintiff-appellant did not admit it, the conclusion is certain in that any affirmative relief that this Court may grant on her causes of action in the annulment case would affect the validity of the real estate mortgage and extrajudicial foreclosure thereof, issues which could no longer be revived, as the same had already been settled in the injunction suit.

In Civil Case No. 06-116171, the plaintiff-appellant already assailed the validity of the extrajudicial foreclosure of mortgage the plaintiff-appellant's real property as evidenced from the reliefs sought for by her in her Motion for Partial Reconsideration[15], to wit:

“WHEREFORE, Plaintiff respectfully prays that this Honorable Court MODIFY its Decision dated 4 July 2011 by declaring invalid the extrajudicial foreclosure of the mortgage conducted by Defendants since the alleged principal amount subject of the mortgage is not definite and final, and that the Writ of Preliminary Injunction issued on 4 December 2006 be reinstated and declared permanent.”

More importantly, Branch 30 of the RTC of Manila had already resolved the issues in relation to the validity of the promissory notes, real estate mortgage and extrajudicial foreclosure of the mortgage of the plaintiff-appellant's property. Portions of the November 2, 2011 Order[16] issued by Judge Lucia P. Purugganan which denied the plaintiff-appellant's Motion for Reconsideration and granted the defendants-appellees' motion for the modification of the Decision read as follows:

“In asking that the court's finding as to the validity of the obligations be revisited and reconsidered, plaintiff points out that due credit and consideration was not accorded to her testimony that there were suspicious entries or transactions in her passbooks which she did not authorize and/or was unaware of. She contends that this clearly shows that she did not consent to the credit increases and additional loans that were extended to her by defendant bank.

“As observed by defendant, though, this new theory with regard to the alleged fraudulent or unauthorized increases was never raised by plaintiff as an issue during trial. What was argued and stressed by plaintiff all throughout the proceedings was that she never consented, nor was she informed, of the increases in the interest rates on the loans that she have made.

“Be that as it may, a consideration of this new theory or contention will still not result in the reversal of the assailed decision. As had already found by the court, plaintiff's hand and consent on all the pertinent loan documents and instruments were clearly shown by her signature thereon. A bare denial or allegation of lack of knowledge thereof will not suffice to overcome the inference that logically would be had on those signatures.”

In the same manner, no less than the Amended Decision of Branch 30 of the RTC of Manila in Civil Case No. 06-116171 clearly resolved the issue on the validity of the plaintiff-appellant's loan obligation, particularly the promissory notes and the real estate mortgage, as well as the extrajudicial foreclosure of the mortgaged property. Pertinent portions of the Amended Decision[17] are cited herein, thus:

“The present action seeks to nullify the imposition and increase in penalty charges and interest rates made by defendant Bank against plaintiff for being violative of the rule on mutuality of contracts, as well as the consequential foreclosure of the mortgaged property that the former has given to secure her obligation to the latter.

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“Considering the validity of the obligation, particularly the stipulation with regard to the imposition and basis of the monthly interest charges, the foreclosure of the subject property is warranted. xxx

“WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring valid and effective the extrajudicial foreclosure of the mortgage conducted by defendants; xxx”
(Emphasis supplied)

Verily, the distinction raised by the plaintiff-appellant that the injunction case involved questions on the interest and penalty charges on the loan while the annulment case seeks to nullify the promissory notes, real estate mortgage and extrajudicial foreclosure is illusory. The cause of action for both cases is the alleged nullity of the promissory notes and the real estate mortgage due to their falsified or spurious nature. It is this nullity of the promissory notes and real estate mortgage which the plaintiff-appellant also sought to establish in the annulment case. It is also this nullity of the indebtedness and real estate mortgage which she asserted in the injunction case as basis for seeking to nullify the foreclosure and enjoin the consolidation of title. Clearly, the trial court cannot decide the annulment case without ruling on the validity of the mortgage of property which issue was already within the jurisdiction of the trial court in the injunction suit.

Indeed, there can be no determination of the propriety of the extrajudicial foreclosure of the real estate mortgage in the injunction case without necessarily ruling on the validity of the real estate mortgage which is also the subject of the annulment case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both and creates a possibility that the two rulings will conflict with each other[18].

It is also worthy to stress that the doctrine of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept – conclusiveness of judgment – states that a fact or question, which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority[19].

In order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required, but merely identity of issues[20].

Based on the foregoing, the validity of the real estate mortgage and the extrajudicial foreclosure thereof can no longer be attacked, more so because the decision in the injunction suit in Civil Case No. 06-116171 which declared as valid and binding the extrajudicial foreclosure of real estate mortgage had already become final and entry of judgment had already been entered in our books.

Thus, we find no error in the assailed order issued by the court *a quo* declaring that there exists, in fact, *res judicata*. As succinctly put in *FELS Energy, Inc. v. Province of Batangas*[21], *res judicata*, as a ground for dismissal, is based on two grounds, namely: (1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation --- *republicae ut sit litium*; and (2) the hardship on the individual of being vexed twice for the same cause --- *nemo debet bis vexari et eadem causa*. A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness[22].

On a final note, the substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the real estate mortgage or should alter the designation or form of the action. The well-entrenched rule is that a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated[23].

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant appeal. The Order dated April 8, 2013 promulgated by Branch 18 of the Regional Trial Court of Manila in Civil Case No. 12-128925 is hereby AFFIRMED.

SO ORDERED.

Elbinias and Paredes, JJ., concur.

[1]Record, Civil Case No. 12-128925, Order, pp. 139-143.

[2] Ibid, pp. 31-36.

[3] Ibid, pp. 24-28.

[4] Ibid, pp. 37-38.

[5] Ibid, pp. 39-40.

[6] Ibid, pp. 64-66.

[7] Ibid, p. 62.

[8] Ibid, Complaint, pp. 1-23.

[9] Ibid, Motion to Dismiss, pp. 110-119.

[10]Manila Electric Company v. Philippine Consumers Foundation, Inc., 425 Phil. 65, 78, citing 46 Am. Jur. § 514.

[11] Oropeza Marketing Corporation v. Allied Banking Corporation, 441 Phil. 551, 563 (2002).

[12] Republic v. Court of Appeals, G.R. No. 103412, February 3, 2000, 324 SCRA 560, 565, citing Casil v. Court of Appeals, 285 SCRA 264, 276 (1998).

[13] Supra, Note No. 1, p. 120.

[14] Tan v. Valdehueza, No. L-38745, August 6, 1975, 66 SCRA 61, 64.

[15] Supra, Note No. 1, pp. 121-129.

[16] Supra, Note No. 1, Order, pp. 130-131.

[17] Supra, Note No. 1, Amended Decision, pp. 68-79.

[18] Asia United Bank v. Goodland Company, G.R. No. 191388, March 9, 2011.

[19] Heirs of Clemencia Parasac v. Republic of the Philippines, G.R. No. 159910, May 4, 2006, 489 SCRA 498, 517-518.

[20] Ibid.

[21] G.R. No. 168557, February 19, 2007, 516 SCRA 186.

[22] Ibid, FELS Energy case.

[23] Ramos v. Pangasinan Transportation Company, Inc., 169 Phil. 172, 179 (1977).

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