

**SPOUSES CRESENCIA SOLLANO AND PATERNO SOLLANO,
PLAINTIFFS-APPELLANTS, VS. SHERIFF IV CHRISTOPHER GARCIA
AND ORIENT ZENITH LENDING CORPORATION,
DEFENDANTS-APPELLEES.**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is an appeal from the Order[1] dated June 27, 2011 issued by the Regional Trial Court, Branch 10, Cebu City dismissing the Complaint of plaintiffs-appellants spouses Paterno Sollano and Cresencia Sollano (“spouses Sollano”) against herein defendants-appellees.

The controversy between the parties arose when the defendant-appellee Orient Zenith Lending Corporation (“defendant Orient”) filed an Extrajudicial Foreclosure of Real Estate Mortgage (REM) against spouses Sollano due to the latter's failure to pay their loan obligation plus interest in favor of defendant Orient in the amount of Php1,390,882.26.

While the Extrajudicial Foreclosure of REM was pending, spouses Sollano filed a Complaint[2] before the court a quo seeking the for the annulment or declaration of nullity of notice of sale thru public auction, declaratory relief, production of disclosure statement, accounting, release of mortgage, injunction, damages, and attorney's fees, with prayer for the issuance of a temporary restraining order (TRO) on the foreclosure proceedings (“the Complaint”).

Spouses Sollano alleged in their Complaint that although the REM does not provide any interest rate for their loan obligation defendant Orient is collecting an unconscionable interest rate of 3% per month.[3] They also alleged that said interest rate was based on the eternally ballooning outstanding balance instead on the supposed monthly amortization.[4] They added that the REM did not provide any period as to how many months of equal payment there were until the obligation is considered duly paid.[5] Further, they contended that the REM was a contract of adhesion.[6]

As another cause of action, spouses Sollano alleged that defendant Orient failed to show to them their Loan Ledger to give them information as to how their previous payments were applied, and that no disclosure statement was shown to them in violation of the Truth in Lending Act.[7] Thus, they demanded from defendant Orient an accounting of their loan obligation in order to reflect their true and actual outstanding balance,[8] considering that they have already fully paid their loan obligation.[9]

Then, in support of their claim for the declaration of nullity of the foreclosure proceedings and the notice of sale, spouses Sollano alleged that the promissory notes in support of the application of the foreclosure of the REM reflect a different amount than that of the REM.[10] They also aver that the application for extrajudicial foreclosure was improper because the application was signed by one Rogelio Oliva who did not show any authority to file such application.[11] Because of the alleged illegal acts of defendant-appellee Orient, Spouses Sollano also demanded claims for damages.[12]

In order to restrain the pending extrajudicial foreclosure of their property, spouses Sollano alleged matters in support of their application for TRO. Their bases were the alleged usurious rates, the pending demand for accounting in order to verify their payments, and the alleged violation of the Truth in Lending Act.[13]

Defendant Orient, on the other hand, moved to dismiss the Complaint on the following grounds, among others: 1) failure to comply with the condition precedent for filing the Complaint pursuant to AM No. 99-10-05-O or the Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages; and 2) for failure of the Complaint to state a cause of action.[14]

The trial court, at first, granted the preliminary injunction/TRO applied for by the plaintiffs-appellants spouses Sollano, but subsequently lifted the same upon the motion of defendant Orient to reconsider the grant of TRO/preliminary injunction.

Consequently, on June 27, 2011, the trial court also granted the motion to dismiss filed by defendant Orient and, at the same time, lifted the preliminary injunction/TRO granted in favor of spouses Sollano. In dismissing the Complaint, the trial court relied heavily on the provision of AM No. 99-10-05-O, to wit:

“1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.”[15]

The trial court declared that the procedure in the above provision should be complied with as a condition precedent before filing the action, that is, “the complaint should be verified and supported by evidence of payment.” Since no evidence of payment was given by spouses Sollano, the same being a condition precedent in filing of the claim, the trial court dismissed the Complaint pursuant to Section 1 (j), Rule 16 of the Rules of Court. In addition, it ruled that spouses Sollano have no cause of action against defendant Orient as the former were the ones who failed to pay their obligation to the latter.

The dispositive portion of the June 27, 2011 Order reads:

“WHEREFORE, PREMISES CONSIDERED, this Court RESOLVES:

1. To GRANT the Motion for Reconsideration and consequently lifting the Order granting the Prayer for a Writ of Preliminary Injunction; and,
2. To DISMISS the case for lack of cause of action.”[16]

Aggrieved by this ruling, spouses Sollano filed this appeal and assigned to the court a quo the following errors:

“I. THE HONORABLE COURT A QUO ERRONEOUSLY HELD THAT THE REQUIREMENTS SET FORTH IN SUPREME COURT RESOLUTION A.M. NO. 99-10-05-O ARE CONDITIONS PRECEDENT FOR FILING THE INSTANT ACTION;

II. THE HONORABLE COURT A QUO ERRONEOUSLY DISMISSED THE INSTANT CASE FOR LACK OF CAUSE OF ACTION DESPITE THE FACT THAT THE ALLEGATIONS IN THE COMPLAINT AND THE EVIDENCE ON RECORD SHOW OTHERWISE.”[17]

Spouses Sollano mainly contend that their Complaint should not have been dismissed by the trial court on the basis of their non-compliance with AM No. 99-10-05-O as the latter is not a condition precedent in filing the Complaint. They also aver that their Complaint sufficiently alleged their cause of action against defendant-appellee Orient thus it should not have been dismissed.[18] Meanwhile, defendant-appellee Orient maintained that AM No. 99-10-05-O is a condition precedent in filing a complaint seeking the annulment of the foreclosure proceedings and defended the trial court's ruling.[19]

The parties' arguments in their respective briefs boil down to the following issues: 1) whether or not compliance with AM No. 99-10-05-O is a condition precedent in filing the Complaint; and, 2) whether or not the Complaint of spouses Sollano failed to state a cause of action against herein defendants-appellees.

We find for plaintiffs-appellants spouses Sollano.

Plaintiffs-appellants spouses Sollano correctly contended that compliance with AM No. 99-10-05-O is not a condition precedent in filing the Complaint. Thus, non-compliance with the same does not automatically dismisses their Complaint pursuant to Section 1 (j), Rule 16 of the Rules of Court.

En Banc Resolution A.M. No. 99-10-05-0, Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ of preliminary injunction against foreclosure of a mortgage may be issued, it provides, thus:

“(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a status quo order.”

The above-quoted provisions of AM No. 99-10-05-O clearly specify that the same only applies in the issuance of a temporary restraining order or a writ of preliminary injunction against a foreclosure proceeding.

A writ of preliminary injunction is an ancillary or preventive remedy, it may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action.[20]

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[21]

Being an ancillary remedy, the requirements for the a writ of preliminary injunction to enjoin a foreclosure proceeding should not be made to apply to the principal action. Otherwise stated, the requirements of AM No. 99-10-05-O should only apply to the ancillary remedy and not to the principal action. Non-compliance thereof could only mean that the applicant of the writ of preliminary injunction is not entitled thereto, and that he cannot enjoin the foreclosure proceedings. The principal action continues despite the the applicant's non-entitlement to the ancillary remedy he applied for.

As can be gleaned from the Complaint, plaintiffs-appellants spouses Sollano's principal action is for the annulment or declaration of nullity of notice of sale thru public auction, declaratory relief, production of disclosure statement, accounting, release of mortgage, damages, and attorney's fees. These principal actions

continue despite non-compliance with AM No. 99-10-05-O because non-compliance thereof only renders the ancillary remedy of a writ of preliminary injunction unavailable to plaintiffs-appellants spouses Sollano.

Thus, it is error for the trial court to dismiss plaintiffs-appellants spouses Sollano's Complaint on the ground of non-compliance with AM No. 99-10-05-O. Because of this non-compliance, the action of the trial court is limited only to denial of plaintiffs-appellants' application for preliminary injunction/TRO, and the main action alleged in the Complaint is not affected thereby.

Anent the second issue, We find the allegations in the Complaint sufficient to raise a cause of action.

The trial court stated in its June 27, 2011 Order that the basis for its dismissal of the Complaint is Section 1(g) Rule 16 of the Rules of Court, that is the Complaint failed to state a cause of action, considering that none of the elements of a cause of action appeared in the Complaint. However, the fallo of the decision reads that the case was dismissed for lack of cause of action. To address this difference, We apply the oft-repeated rule that "where there is a conflict between the fallo and the ratio decidendi or body of the decision, the fallo controls." [22]

Considering that the fallo of the Order controls, We find that the trial court prematurely ruled that the plaintiffs-appellants do not have a cause of action against defendants-appellees.

We bear to stress that dismissal based on the failure to state cause of action and dismissal based on the lack of cause of action are different from each other.

In the case of *Macaslang v. Zamora*, [23] the Supreme Court differentiated failure to state a cause of action and lack of cause of action as bases for dismissal of the action, thus:

"On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:

xxx What is contemplated, therefore, is a failure to state a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the pleading. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence does not prove a cause of action. This is, therefore, a matter of insufficiency of evidence. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

- (a) The legal right of the plaintiff;
- (b) The correlative obligation of the defendant; and
- (c) The act or omission of the defendant in violation of said legal right.

If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. Failure to state a cause of action may be raised at the earliest stages of an action through

a motion to dismiss, but lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented.”[24]

In this light, We cannot consider that the Complaint could be dismissed based on lack of cause of action because questions of fact have not yet been resolved on the basis of the stipulations, admissions, or evidence presented. Without these, the trial court cannot properly determine whether the present case of plaintiffs-appellants against defendant Orient indeed lack a cause of action. Ruling on the merits and dismissing the case for lack of cause of action without parties' presentation of their respective pieces of evidence is tantamount to the denial of plaintiffs-appellants' right to due process.

Accordingly, the argument of defendant Orient in its brief that it was plaintiffs-appellants spouses Sollano who failed to pay their loan obligation despite demand cannot be summarily accepted as truth without the parties presenting evidence to prove their claims. It must be noted that the main contention of the plaintiffs-appellants hammers on the invalidity of the REM and promissory notes, the illegality of interest rates, and the illegality of the foreclosure proceedings, and these issues must be resolved in a trial and not in a mere motion to dismiss.

Nevertheless, even considering that the trial court dismissed the Complaint for failure to state a cause of action, We still find and hold the trial court to have erred in dismissing the Complaint based on such ground.

Our jurisprudence is consistent in holding that “in dismissal for failure to state a cause, the inquiry is into the sufficiency, not the veracity, of the material allegations. The test is whether the material allegations, assuming these to be true, state ultimate facts which constitute plaintiff's cause of action, such that plaintiff is entitled to a favorable judgment as a matter of law. The general rule is that inquiry is confined to the four corners of the complaint, and no other.”[25]

Thus, “in determining the existence of a cause of action, only the statements in the complaint may properly be considered. If the allegations in a complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be averred by the defendants. The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.”[26]

Applying the above test, We find that plaintiffs-appellants spouses Sollano have sufficiently stated a cause of action in their Complaint for the annulment or declaration of nullity of notice of sale thru public auction, declaratory relief, production of disclosure statement, accounting, release of mortgage, damages, and attorney's fees.

Clearly the trial court could render a valid verdict in accordance with the prayer of the Complaint if the following allegations, among others, were hypothetically admitted:

- 1) that the REM does not provide for interest rate and period;
- 2) that the interest imposed is unconscionable;
- 3) that the plaintiffs-appellants have paid their obligation but do not have knowledge of how their payments were applied;
- 4) that the REM is a contract of adhesion;
- 5) that the defendant Orient violated the Truth in Lending Act;
- 6) that promissory notes were inconsistent with the REM.

Assuming the above allegations to be true, they indeed state ultimate facts, which constitute plaintiff's cause of

action. With these allegations hypothetically admitted, the elements of a cause of action are satisfied.

For instance, it is the legal right of the plaintiffs-appellants to be given information on the particularities of their loan obligation, the interest rates, the period of their REM, and how their payments were applied. In turn, it is defendant Orient's obligation to give this information, but this information was denied from plaintiffs-appellants in violation of their right. Clearly, regardless of the veracity of these allegations, they verily state a cause of action.

Moreover, the Complaint cannot be dismissed on the basis of the defendant Orient's defense that the REM and the promissory notes are protected by the presumption of regularity because the determination of the validity of the REM and the promissory notes could only be threshed out in a full-blown hearing as the same would necessarily require the presentation of evidence. As held in one case,[27] "the interpretation of a document requires introduction of evidence which is precisely disallowed in determining whether or not a complaint states a cause of action."

Verily, the allegations in plaintiffs-appellants' Complaint furnish sufficient bases by which the action can be maintained, as such, the same should not be dismissed regardless of the defenses that may be averred by defendant Orient.

Thus, in light of the foregoing considerations, the trial court should have given due course to the Complaint filed by plaintiffs-appellants spouses Sollano and should have denied defendant-appellee Orient's motion to dismiss.

WHEREFORE, the instant appeal is GRANTED. The June 27, 2011 Order of the Regional Trial Court, Branch 10, Cebu City is ANNULLED and SET ASIDE which dismissed plaintiffs-appellants' Complaint. Consequently, the Complaint dated November 26, 2008 filed by spouses Paterno and Cresencia Sollano is hereby REINSTATED. Accordingly, this case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*] Acting Chairperson in lieu of Justice Ramon L. Hernando per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Records, pp. 262-265.

[2] Records, pp.2-16.

[3] Records, p. 3.

[4] Ibid.

[5] Ibid. p. 3-4.

[6] Ibid. p. 4.

[7] Ibid. pp. 4-5.

[8] Ibid. p. 5.

[9] Ibid.

[10] Ibid. p. 7.

[11] Ibid. p. 6.

- [12] Ibid. pp. 9-10.
- [13] Ibid. pp. 11-13.
- [14] Records, pp. 39-46.
- [15] See Decision, Records, p. 263.
- [16] Records, p. 265.
- [17] Rollo, p. 51.
- [18] See Appellants' Brief, Rollo, pp. 50-61.
- [19] See Appellee's Brief, Rollo, pp. 68-83.
- [20] China Banking Corporation v. CA, G.R. No. 121158, December 5, 1996.
- [21] Buyco v. Baraquia, G.R. No. 177486, 21 December 2009.
- [22] Obra v. Spouses Badua, et al., G.R. No. 149125, August 9, 2007.
- [23] G.R. No. 156375, May 30, 2011.
- [24] Emphasis and underscoring supplied.
- [25] Dabuco, et al. v. Court of Appeals, et al., G.R. No. 133775, January 20, 2000.
- [26] Misamis v. David, G.R. No. 129928, August 25, 2005.
- [27] Ibid.

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