

HEIRS OF DECEASED SPOUSES DANIEL S. LUCENA, JR. AND LYDIA A. JACOB, REPRESENTED BY RONIA LUCENA FERRER, PLAINTIFFS-APPELLANTS, VS. CABANATUAN CITY RURAL BANK, INC., REPRESENTED ...

Ponente: SADANG, J.

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SADANG, J.:

Challenged in this appeal is the December 28, 2009 Order[1] of the Regional Trial Court (RTC) of Palayan City, Branch 40 in Civil Case No. 0568-P-09 granting the Motion to Dismiss filed by defendant-appellee Cabanatuan City Rural Bank, Inc. and the June 2, 2010 Order[2] denying the motion for reconsideration.

Records show that on October 2, 2009, plaintiffs-appellants heirs of spouses Daniel S. Lucena, Jr. and Lydia A. Jacob (hereafter, appellants) filed with the court a quo a Complaint[3] for annulment of real estate mortgage and foreclosure, with prayer for temporary restraining order, injunction and damages against defendant-appellee Cabanatuan City Rural Bank, Inc. (hereafter, CCRBI).

On October 7, 2009, in compliance with the October 5, 2009 Order[4] of the lower court, appellants filed an Amended Complaint[5] impleading Lorna Liwag, General Manager of CCRBI, and Ronaldo B. Erasga, OIC/Clerk of Court and Ex Officio Sheriff, as defendants.

The Amended Complaint alleged that: on September 22, 2009, Loreilyn Lucena received a Notice of Extra-Judicial Sale dated August 28, 2009 addressed to spouses Daniel and Lydia Lucena and signed by OIC/Clerk of Court and Ex-Officio Sheriff Ronaldo B. Erasga; the spouses Lucena "secured a mortgage with (CCRBI) which as of August 26, 2009 amounted to P312,116.67 and the mortgaged property is unlawfully set for foreclosure on October 9, 2009;" the mortgaged property is a land situated in Lusok, Bongabon, Nueva Ecija and covered by Transfer Certificate of Title No. EP No. 60316; upon the death of spouses Lucena, "the mortgage loan had been paid and there is nothing to foreclose;" the notice of foreclosure is not accompanied by a special power of attorney from appellants, promissory note, mortgage contract, and board resolution of CCRBI; and the land is covered by TCT No. EP No. 60316, an emancipation patent and the family home of appellants is exempt from foreclosure.

On October 8, 2009, the lower court conducted a hearing on the prayer for TRO. Appellants offered the testimony of Dolores Galera, the Notice of Extra-Judicial Sale, Notice of Auction Sale, Tax Declarations, TCT No. EP-60316, and Notice of Lis Pendens. CCRBI did not present witnesses but offered the Petition for Foreclosure, the Real Estate Mortgage (REM), Amended REM, and TCT No. EP-60316.[6]

On October 16, 2009, CCRBI filed a Motion to Dismiss[7] on the ground that the complaint does not state a cause of action against it. CCRBI averred that: appellants cannot complain that there were no documents attached to the notice of auction sale furnished them because under Section 3 of Act 3135, the Sheriff is not required to give said notice to the mortgagor. All that is required is posting of the notice for not less than twenty days in at least three

public places in the municipality or city where the property is situated and publication thereof once a week for at least three consecutive weeks in a newspaper of general circulation in said locality; pursuant to the Rules of Court, appellants should have adduced the receipt supporting their allegation of payment and, being an actionable document, the receipt should have been attached to or its substance set forth in the Complaint; because appellants failed to follow the rules, the case may be dismissed for lack of cause of action; had appellants gone to the court, they would have realized that the documents which they alleged should have been attached to the notice of auction sale had been annexed to the petition for extra-judicial foreclosure of real estate mortgage; paragraph 3 of the REM contains a special power of attorney in favor of mortgagor CCRBI; under Section 71 of the Comprehensive Agrarian Reform Law (CARL), an agricultural land may be a security for a loan; and under Article 155 of the Family Code, the family home is exempt from execution, forced sale, or attachment except for debts secured by mortgages on the premises before or after such constitution.

Appellants filed an Opposition to Motion to Dismiss[8] averring that by alleging failure to state a cause of action, CCRBI is deemed to have admitted the truth of the allegations in the Complaint.

On December 28, 2009, the trial court issued an Order[9] granting the Motion to Dismiss.

Appellants filed a Motion for Reconsideration[10] but it was denied in an Order[11] dated June 2, 2010; hence, appellants filed a Notice of Appeal[12] which the trial court approved on July 19, 2010.[13]

In this appeal, appellants raise the following:

ASSIGNMENT OF ERRORS

- THE LOWER COURT GRAVELY ERRED IN DISMISSING THE COMPLAINT, APPELLANTS HAVING STRONG CAUSE OF ACTION AGAINST APPELLEES.
- THE LOWER COURT GRAVELY ERRED IN NOT GIVING CONSIDERATION ON THE APPLICABILITY OF SECTION 1 OF ACT 3135, AS AMENDED/REPEALED REQUIRING SEPARATE PUBLIC INSTRUMENT THE POWER OF ATTORNEY TO FORECLOSE AND REGISTRABLE UNDER SECTION 64 AND 112 OF THE PROPERTY REGISTRATION DECREE, PRESIDENTIAL DECREE 1529.
- THE LOWER COURT GRAVELY ERRED IN NOT OBSERVING THAT DUE PROCESS WAS VIOLATED BY APPELLEE RURAL BANK TO THE GREAT PREJUDICE OF APPELLANTS.[14]

RULING

Simply stated, the issue to be resolved in this appeal is whether the Amended Complaint of appellants was correctly dismissed on the ground of failure to state a cause of action.

A cause of action exists if the following elements are present: 1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2) an obligation on the part of the named defendant to respect or not to violate such right; 3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[15]

It is axiomatic that a defendant moving to dismiss a complaint on the ground of failure to state a cause of action is regarded as having admitted all the averments thereof, at least hypothetically, the test of the sufficiency of the facts found in a petition as constituting a cause of action is being whether or not admitting the facts alleged the court could render a valid judgment upon the same in accordance with the prayer thereof. [16] Thus, in order to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint. [17] If the elements are not extant, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[18]

However, the rule that the sufficiency of a complaint must be determined on the face thereof and no evidence may be allowed and the issue determined only in light of the allegations admits of exceptions. Thus, it has been ruled that apart from the complaint, the court may also consider the documents^[19] attached to the complaint the due execution of which are not denied under oath by the defendant, the answer with counter-claim and other pleadings,^[20] and the evidence presented at the hearing of a motion for injunctive relief.^[21]

In this case, the Amended Complaint alleges that appellants' parents had mortgaged the land to CCRBI. Simply put, their cause of action is that the foreclosure by CCRBI is void because the loan was paid. They also anchored their cause of action on the failure of CCRBI to attach to the Notice of Extrajudicial Sale copies of the special power of attorney, the REM, and the CCRBI board resolution, as well as the fact that the land is covered by emancipation patent and their family home has been constituted thereon.

Upon a hypothetical admission of the allegation that "upon the death of the two mortgagors, the mortgage loan has been paid and there is nothing to foreclose," the complaint would seem to state a cause of action. There would indeed be no justification for the foreclosure if the loan was paid. However, considering that appellants' action is based on payment, it was incumbent on them to set forth therein the substance of the written instrument or document upon which their action is based and attach a copy thereof to the complaint. Thus, Section 7, Rule 8 of the Rules of Court provides:

Section 7. Action or defense based on document.- Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Unfortunately, appellants did not attach to the complaint the receipts evidencing payment of the loan and set forth the substance thereof. Then, at the hearing on the prayer for a TRO, the trial judge and the counsel for CCRBI repeatedly asked appellants' counsel if they have receipts to prove payment of the loan and said counsel finally admitted that they do not have receipts. The logical consequence of the non-presentation of the receipts is that the complaint may be dismissed for failure to state a cause of action. The lower court, as an exception to the rule, may consider the absence of receipts in resolving the motion to dismiss on the ground of failure to state a cause of action. Thus, in *City of Cebu v. Court of Appeals* it was ruled:

The error of both the RTC and respondent Court of Appeals in holding that the complaint failed to state a cause of action stems from their inflexible application of the rule that: when the motion to dismiss is based on the ground that the complaint states no cause of action, no evidence may be allowed and the issue should only be determined in the light of the allegations of the complaint. However, this rule is not without exceptions. In the case of *Tan v. Director of Forestry*, this Court departed from the aforementioned rule and held that, "xxx although the evidence of the parties were on the question of granting or denying injunction, the trial court correctly applied said evidence in the resolution of the motion to dismiss. Likewise, in *Marcopper Mining Corporation v. Garcia*, we sanctioned the act of the trial court in considering, in addition to the complaint, other pleadings submitted by the parties in deciding whether or not the complaint should be dismissed for lack of cause of action. This Court deemed such course of action but logical where the trial court had the opportunity to examine the merits of the complaint, the answer with counter-claim, the petitioner's answer to the counter-claim and its answer to the request for admission.^[22] (Underscoring supplied)

That appellants have not fully paid the loan is confirmed no less by their own allegation in their Appellants' Brief that their total payments on the loan of P312, 116.67 is P160,000.00.^[23] In this regard, appellants attached to their Appellants' Brief photocopies of receipts in a total amount that is less than P160,000.00.^[24] These receipts may not be considered in resolving the appeal because that would be violative of due process.^[25] Appellants should have attached the receipts to the complaint or presented them during the hearing on the TRO. Also, being

mere photocopies said documents have no probative value. They are considered secondary evidence which cannot be admitted to prove the contents thereof.[26]

We now come to the allegation in the complaint that the land is covered by an emancipation patent and appellants' family home has been constituted thereon. Even if these allegations are hypothetically admitted, the complaint would still fail to state a cause of action. CCRBI correctly cites Sec. 71[27] of the CARL which allows the mortgaging of agricultural lands covered by said law to secure loans of borrowers. Otherwise put, there is nothing in the law that prohibits the mortgage of land covered by CARL. Neither is there a law prohibiting the foreclosure of a family home. In fact, Article 155, paragraph (3), of the Family Code explicitly allows the forced sale of a family home "for debts secured by mortgages on the premises before or after such constitution."[28]

Finally, the allegation that appellants were not furnished copies of documents relating to the foreclosure also does not give rise to a cause of action. In extrajudicial foreclosures, the sheriff is not required under the law to give notice of the sale to the mortgagor. Personal notice to the mortgagor is not necessary.[29] What the law merely requires is the posting of the notice for not less than twenty days in at least three public places in the municipality or city where the property is situated and the publication thereof once a week for at least three consecutive weeks in a newspaper of general circulation in said locality.[30]

WHEREFORE, the appeal is DENIED. The Orders, dated December 28, 2009 and June 2, 2010, of the Regional Trial Court of Palayan City, Branch 40 in Civil Case No. 0568-P-09 are AFFIRMED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Records, p. 63-65

[2] Id., p. 89.

[3] Id., pp. 2-6.

[4] Id., p. 16.

[5] Id., pp. 18-23.

[6] TSN, October 8, 2009, Id.

[7] Record, pp. 46-51.

[8] Id., pp. 55-60.

[9] Id., pp. 63-65.

[10] Id., pp. 66-73.

[11] Id., p. 89.

[12] Id., p. 90.

[13] Id., p. 92.

[14] Rollo, pp. 51-52.

[15] Turner v. Lorenzo Shipping Corp., G.R. No. 157479, November 24, 2010; Luzon Development Bank v.

Conquilla, G.R. No. 163338, September 21, 2005; Swagman Hotels and Travel, Inc. v. Court of Appeals, G.R. No. 161135, April 8, 2005; Parañaque Kings Enterprises, Inc. v. Court of Appeals, 268 SCRA 727, citing Dulay v. Court of Appeals, 243 SCRA 220.

[16] Goodyear Philippines, Inc. v. Sy, G.R. No. 154554, November 9, 2005; Evangelista v. Santiago, G.R. No. 157447, April 29, 2005; Jimenez v. Jordana, G.R. No. 152526, November 25, 2004; Merrill Lynch Futures, Inc. v. Court of Appeals, 211 SCRA 824 (1992).

[17] Philippine Bank of Communications v. Trazo, G.R. No. 165500, August 30, 2006; Peltan Development, Inc. v. Court of Appeals, G.R. No. 117029, March 19, 1997; Consolidated Dairy Products v. Court of Appeals, G.R. No. 100401, August 24, 1992.

[18] Macaslang v. Zamora, G.R. No. 156375, May 30, 2011; Bank of America NT&SA v. Court of Appeals, G.R. No. 120135, March 31, 2003; Uy v. Hon. Victorino P. Evangelista, G.R. No. 140365, July 11, 2001; Dabuco v. Court of Appeals, G.R. No. 133775, January 20, 2000.

[19] Asia Banking Corp. v. Walter E. Olsen & Co., 48 Phil. 529; Jimenez Jr. v. Jordana, *supra*.

[20] Goodyear Philippines, Inc. v. Sy, *supra*; Alberto v. Court of Appeals, 390 Phil. 253 (2000); Marcopper Mining Corp. v. Garcia, 227 Phil. 166, July 30, 1986.

[21] Tan v. Director of Forestry, 125 SCRA 302.

[22] 258 SCRA 175, citations omitted.

[23] Rollo, p. 37.

[24] *Id.*, Annexes 'C' to 'J,' pp. 64-71.

[25] People v. Toledo, Sr., G.R. No. 139961, May 9, 2001; Ong v. Court of Appeals, G.R. No. 117103 January 21, 1999.

[26] Dantis v. Maghinang, Jr., G.R. No. 191696, April 10, 2013.

[27] Section 71. Bank Mortgages. — Banks and other financial institutions allowed by law to hold mortgage rights or security interests in agricultural lands to secure loans and other obligations of borrowers, may acquire title to these mortgaged properties, regardless of area, subject to existing laws on compulsory transfer of foreclosed asset and acquisition as prescribed under Section 16 of this Act.

[28] Spouses Fortaleza v. Spouses Lapitan, G.R. No. 178288, August 15, 2012.

[29] Ramirez v. The Manila Banking Corp., G.R. No. 198800, December 11, 2013; Global Holiday Ownership Corp. v. Metropolitan Bank and Trust Co., G.R. No. 184081, June 19, 2009; Metropolitan Bank and Trust Co. v. Wong, G.R. No. 120859, June 26, 2001.

[30] Section 3, Act No. 3135.

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