

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND ROMEO BARILEA, RESPONDENTS.

G.R. No. 121251. June 26, 1998

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BELLOSILLO, J. :

May a complaint for damages arising from an alleged premature foreclosure of mortgage, with prayer for a writ of preliminary injunction, be dismissed on the ground that the foreclosure sought to be enjoined is already a fait accompli?

On 12 November 1991 private respondent Romeo Barilea filed a complaint for damages with the Regional Trial Court of Negros Occidental with a prayer for the issuance of a temporary restraining order and writ of preliminary injunction against petitioner Philippine National Bank (PNB) and the Provincial Sheriff of Negros Occidental.

The complaint alleged that: defendant Barilea (private respondent herein) obtained sugar crop loans with petitioner at its Victoria Branch to finance his sugarcane plantation in Sagay, Negros Occidental; he was granted a crop loan of P208,300.00 and, thereafter, another loan of P40,000.00 which would fall due on 31 August 1991 and 31 August 1992, respectively; the crop loans were secured by a mortgage on Barilea's parcel of land with an area of 2,804 square meters and covered by Transfer Certificate of Title No. T-12217 of the Register of Deeds of Cadiz City. Private respondent also alleged that on 29 September 1991, while he was harvesting and cutting canes for the purpose of milling the same, petitioner filed a petition for the sale of the mortgaged property under Act No. 3135 as amended with the Provincial Sheriff of Negros Occidental, and that, consequently, on 7 October 1991 the latter issued a Notice of Extrajudicial Sale by public auction of private respondent's property on 18 November 1991.

The complaint further stated that in October 1991 private respondent had partially harvested and milled his sugarcane at a sugar central after which quedans were prepared; that when private respondent was about to withdraw the quedans, he was informed that they were taken by petitioner. Private respondent contended that in filing the petition for the sale of the mortgaged property with the provincial sheriff, petitioner acted with malice and bad faith in order to embarrass him; that the petition was premature because the crop loans had not yet fallen due; and, that because of petitioner's malicious acts in filing the petition, private respondent suffered sleepless nights, mental torture, anxiety, public humiliation and public ridicule, thus entitling him to moral and exemplary damages in addition to the actual expenses incurred for which petitioner should be ordered to pay. Private respondent also prayed for the issuance of a temporary restraining order and writ of preliminary injunction to enjoin petitioner and the Provincial Sheriff from conducting the sale by public auction scheduled on 18 November 1991.[1]

Instead of filing an answer to the complaint, petitioner filed on 17 January 1991 a motion to dismiss[2] alleging that: petitioner had not acted maliciously and prematurely in filing the petition for foreclosure of mortgage; private respondent was granted four (4) loan accommodations by petitioner three (3) of which had already fallen due; because of the past due accounts of private respondent petitioner had the right to institute foreclosure proceedings; and, the other reliefs prayed for by private respondent, i.e., issuance of a restraining order and writ of

preliminary injunction, had been rendered moot and academic by the holding of the auction sale on 7 November 1991.

On 18 February 1992 private respondent filed an amended complaint increasing the amounts prayed for as moral damages and attorney's fees.

On 10 March 1992 the trial court issued an order dismissing the case for being moot and academic because the sale sought to be enjoined had already been conducted on 7 November 1991.[3] The motion for reconsideration by private respondent was denied.

Private respondent appealed the order of dismissal to the Court of Appeals. In its decision[4] of 28 June 1995, the Court of Appeals set aside the order dismissing the case. The appellate court found that the complaint of private respondent sought the payment of moral and exemplary damages on the ground that petitioner was actuated with malice and bad faith in filing the petition with the sheriff for the sale of the mortgaged property even if the crop loan of P40,000.00 had not yet matured. It also ruled that the issuance of a temporary restraining order and a writ of preliminary injunction was only a provisional remedy, and consequently, the foreclosure sale on 7 November 1991 did not render the case moot since the principal action for payment of damages still had to be litigated. The Court of Appeals remanded the case back to the trial court for proper proceedings.

Hence this petition alleging that the Court of Appeals erroneously failed to hold that (a) the dismissal of the case by the trial court was justified after it had become moot and academic with the foreclosure sale; (b) denial of the ancillary remedy of temporary restraining order was proper; and, (c) the foreclosure of the mortgage was valid in view of the contract between the parties and conformably with the mandatory requirements of PD No. 385.

The principal issue to be resolved is whether the complaint for damages based on the foreclosure of mortgage should now be dismissed in view of the foreclosure sale. The other issues raised by petitioner, i.e., whether the foreclosure sale was valid, and whether the claim of private respondent for damages was proper, are factual matters well within the domain of the trial court - and not of this Court.

The petition must fail. The Court of Appeals was correct in ruling that the dismissal of the complaint of private respondent by the trial court was not valid.

In a motion to dismiss on the ground that the complaint states no cause of action, the question to be resolved by the trial court is whether the facts alleged in the complaint are sufficient to constitute a cause of action and not whether the allegations of fact are true as the latter are hypothetically admitted.[5] Hence, a complaint sufficiently states a cause of action when the following questions are answered in the affirmative: (a) Does the complaint show the plaintiff has suffered an injury? (b) Is it an injury which the law recognizes as a wrong and for which it provides a remedy? (c) Is the defendant liable for the alleged wrong done? and, (d) If the defendant is liable, is there a legal remedy for such injury?[6]

Applying these criteria to the complaint of private respondent, the same alleged facts are sufficient to state a cause of action for damages. The complaint alleged that private respondent suffered actual expenses, moral anxiety and public humiliation, among others, as a result of the alleged premature and malicious filing of the petition for foreclosure of mortgage over private respondent's property; hence, the prayer for damages and attorney's fees.

In its motion to dismiss, petitioner's allegation that private respondent had no basis to claim for damages amounted to failure to state a cause of action. Since the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not have been dismissed regardless of the defense that may be raised by petitioner as defendant before the trial court.[7]

In the instant case, aside from the principal action for damages, private respondent sought the issuance of a temporary restraining order and writ of preliminary injunction to enjoin the foreclosure sale in order to prevent an alleged irreparable injury to private respondent. It is settled that these injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit. When the act sought to be enjoined had become *fait accompli*, only the prayer for provisional remedy should be denied. However, the trial court should still proceed with the determination of the principal action so that an adjudication of the rights of the parties can be had.

It was grave error for the trial court to dismiss the case simply because the basis for the issuance of the writ of injunction is no longer existent and thus moot and academic. A case becomes moot and academic when there is no more actual controversy between the parties^[8] or no useful purpose can be served in passing upon the merits.^[9] The foregoing circumstances do not obtain in the instant case. The holding of the extrajudicial sale did not in any way render the case moot and academic. As found by the Court of Appeals, there still remained for the resolution of the trial court the issue of whether private respondent is entitled to damages prayed for as a result of petitioner's act in filing a petition to foreclose the mortgage. Whether the filing of the petition for foreclosure was proper and whether private respondent suffered damages resulting from petitioner's acts are still unanswered questions which have to be determined and passed upon by the trial court after hearing the evidence of both parties in accordance with due process.

It is a rule of universal application that courts of justice are constituted to adjudicate substantive rights. While courts should consider public policy and necessity in putting an end to litigations speedily they must nevertheless harmonize such necessity with the fundamental right of litigants to an opportunity to be heard.^[10]

WHEREFORE, the Petition is DENIED. The decision of the Court of Appeals dated 28 June 1995 is AFFIRMED. The records of this case are remanded to the trial court with a directive to proceed and dispose of this case expeditiously.

SO ORDERED.

Davide Jr., (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Records, pp. 1-5.

[2] *Id.*, pp. 28-30.

[3] *Id.*, p. 58.

[4] Penned by Justice Bernardo Ll. Salas and concurred in by Justices Jaime M. Lantin and Ma. Alicia Austria-Martinez; Rollo, pp. 21-29.

[5] *Pinero v. Enriquez*, 81 Phil 774 [1949].

[6] Francisco, Vicente, *The Revised Rules of Court*, 1973 Ed., Vol. I p. 940, citing *Sutherland's Code Pleading, Practice and Forms*, p. 167.

[7] *Navoa v. Court of Appeals*, G.R. No. 59255, 29 December 1995, 251 SCRA 545.

[8] *Ozaeta v. Oil Industry Commission*, No. L-34574-79, 30 June 1980, 98 SCRA 417.

[9] *Philsugin v. Aspem*, No. L-34081, 19 August 1982, 115 SCRA 835.

[10] *Aguilar v. Court of Appeals*, G.R. No. 114282, 28 November 1995, 250 SCRA 371.

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