

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS. COURT OF APPEALS AND SANTIAGO (ISABELA) MEMORIAL PARK, INC., RESPONDENTS.

G.R. No. 143896. July 08, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by petitioner seeking to annul the Decision[1] of the Court of Appeals (CA) dated March 31, 2000 in CA-G.R. CV No. 47044, which reversed the Order of the trial court dated May 10, 1994, dismissing private respondent's complaint for failure to state a cause of action; and the Resolution dated July 3, 2000[2] denying petitioner's motion for reconsideration.

On December 20, 1993, private respondent Santiago (Isabela) Memorial Park, Inc. filed a complaint for redemption and specific performance with the Regional Trial Court of Santiago, Isabela, Branch 21, against herein petitioner Banco Filipino Savings & Mortgage Bank, the material and relevant allegations of which read as follows:

COMPLAINT

Plaintiff, by counsel, to this Honorable Court most respectfully alleges:

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- That in February 1981, plaintiff mortgaged the above described property in favor of defendant to secure a loan of P500,000.00 obtained by plaintiff from defendant;

- That due to the failure of plaintiff to pay the aforementioned loan, defendant foreclosed the mortgage and in consequence thereof Sheriff David R. Medina of this Honorable Court issued a SHERIFF'S CERTIFICATE OF SALE in favor of defendant which is dated October 9, 1990 and which instrument was inscribed at the back of TCT T-128647 of Isabela on January 21, 1991;

- That in a letter of the President of plaintiff dated August 6, 1991, plaintiff made manifest its interest to exercise its right of redemption and made an offer of P700,000.00 as redemption to defendant through the then Deputy Liquidator, ROSAURO NAPA; this started the negotiation for the redemption of the above described property;

- That in a letter of the Deputy Liquidator dated January 23, 1992, plaintiff was given up to the end of March 1992 to negotiate and make special arrangement for any satisfactory plan of payment for the redemption;

- That in a letter of the Deputy Liquidator dated March 12, 1992, plaintiff was directed to remit at least P50,000.00 to defendant which would manifest the interest and willingness of plaintiff to redeem the property, and forthwith on March 24, 1992, plaintiff remitted the sum of P50,000.00 to defendant which was duly

received by the latter under Official Receipt No. 279968 A dated March 24, 1992;

- That in a letter of the President of plaintiff dated January 20, 1993, plaintiff amended its first offer and made an offer of P1,000,000.00 as redemption which offer included a plan of payment;
- That between January 20, 1993 to November 1993, plaintiff exerted earnest efforts in order to finally effect the redemption, but defendant dilly dallied on the matter.
- That in a letter of Atty. ORLANDO O. SAMSON, Senior Vice President of defendant, dated November 5, 1993, there is a turn-around by defendant and is now demanding P5,830,000.00 as purchase price of the property, instead of the original agreed redemption;
- That the delay of the defendant in the finalization of the terms of redemption did not in any manner alter the right of plaintiff to redeem the property from defendant;
- That plaintiff is still in actual possession of the property and intend to remain in actual possession of the property, while defendant was never in actual possession of said property;
- That plaintiff is ready and willing to pay the redemption money, which is the total bank claim of P925,448.17 plus lawful interest and other allowable expenses incident to the foreclosure proceedings;
- That the latest actuations of defendant are indicative of the refusal of defendant to allow the exercise of redemption by herein plaintiff, reason for which there is a need for judicial determination of the rights and obligations of the parties to this case;
- That on account of the unlawful actuations of defendant in refusing the redemption of the property by plaintiff, the latter engaged the services of counsel for a fee of P30,000.00 which defendant should pay to plaintiff.

WHEREFORE, it is respectfully prayed of this Honorable Court that, after due hearing, judgment be rendered:

- ordering defendant to accept from plaintiff the lawful redemption amount which shall be determined by this Honorable Court;
- ordering defendant to execute the necessary instrument in order to effect the redemption of the property;
- ordering defendant to pay to plaintiff the sum of P30,000.00 by way of attorney's fees;

AND PLAINTIFF PRAYS for further reliefs just and equitable under the premises.

Petitioner filed a motion to dismiss on the ground that the complaint does not state a cause of action. It alleges that assuming that the allegations in the complaint are true and correct, still there was no redemption effected within one year from the date of registration of the sheriff's certificate of sale with the Register of Deeds on January 21, 1991, thus private respondent had lost its right to redeem the subject land. Petitioner claimed that the letter cited in paragraph 5 of the complaint was a mere offer to redeem the property which was promptly answered by a letter dated August 28, 1991, which categorically denied private respondent's offer and stated that when it comes to redemption, the basis of payment is the total claim of the bank at the time the property was foreclosed plus 12% thereof and all litigation expenses attached thereto or its present appraised value whichever is higher; that the letter mentioned in paragraph 6 of the complaint dated January 23, 1992 of the Deputy Liquidator was about negotiation and special arrangement and not redemption for at that stage the period of redemption had already expired; that the letter mentioned in paragraph 7 dated March 12, 1992 was of the postponement of the consolidation of the subject property and not of any extension for the period of redemption; that the amount of P50,000.00 remitted by private respondent was in consideration of the postponement of the consolidation of the property in petitioner's name and as manifestation of private respondent's sincerity to repurchase the foreclosed

property; that when private respondent remitted P50,000.00, the Deputy Liquidator of petitioner bank requested the legal counsel of petitioner to defer consolidation of property in petitioner's name; that in a letter dated November 5, 1993, petitioner's Senior Vice President declared that the subject property is available for repurchase in the amount of P5,830,600.00 to which private respondent in another letter asked for an extension of 30 days to make an offer.

Private respondent filed its opposition to the motion to dismiss alleging among others that the complaint states a cause of action; that the annexes of the motion to dismiss should not be considered in the resolution of such motion.

On May 10, 1994, the trial court rendered an Order^[3] dismissing the complaint. It ratiocinated that (1) the letter dated August 6, 1991 was an offer to redeem for P700,000.00 without any tender of the money; (2) the reply letter of petitioner dated August 28, 1991 stated that the redemption price is P1,146,837.81 representing the bank's claim of P925,448.17 plus 12% interest and expenses of foreclosure or the appraised value which was P1,457,650.00; (3) the March 12, 1992 letter of the petitioner categorically informed private respondent that the period for redemption had expired, however, the bank agreed to postpone the consolidation of title of the land in the bank's name up to the end of March 1992 if the plaintiff shall deposit P50,000.00 in order to avoid consolidation. Under Section 6 of Act 3135, on redemption of foreclosed property, it is provided that a debtor may redeem the property at anytime within one year from and after the date of sale, i.e., one year period to be reckoned from the registration of the sheriff's certificate of sale. The registration of sheriff's sale was on January 21, 1991 so that the redemption period was until January 21, 1992; that although there was an offer to redeem the property for P700,000.00 on August 6, 1991, which was within the redemption period, there was no tender of redemption price and the P700,000.00 offered was not the correct redemption price. It found that the complaint did not state that private respondent tendered the correct redemption price within the redemption period as required under Section 30 of Rule 39 of the Rules of Court. Private respondent's motion for reconsideration was denied in an Order dated July 25, 1994.^[4]

Private respondent filed its appeal with the CA which reversed the trial court in its assailed decision, the dispositive portion of which reads:

WHEREFORE, the Orders of the respondent trial court dated May 10, 1994, and July 25, 1994 are hereby REVERSED and SET ASIDE. The appellants are declared entitled to repurchase the property in question within THIRTY (30) days from notice hereof which shall be effected upon payment of the repurchase price of P925,448.17 less P50,000.00, which is the deposit on the redemption price, with legal interest from March 24, 1992, the time the contract extending the period of redemption of the property took effect until it is fully paid.^[5]

The CA ruled that:

A perusal of the allegations in the complaint shows that there was sufficient basis to make out a case against Banco Filipino. The complaint alleged that as early as August 6, 1991 or about six (6) months before the statutory period for redemption would expire, the appellant had exerted earnest efforts to effect the redemption of the property in question and that after an agreement had been reached by the parties, with the corresponding deposit on the redemption price had been given by the appellant, the appellee bank led the appellant to believe that the appellee was negotiating with the former in good faith. However, the true intention of the appellee bank was to refuse the redemption of the property as manifested by its act of increasing the amount of the redemption price after the period for redemption had expired and after a deposit on the redemption price had been duly accepted by it as evidenced by a receipt issued by the appellee.

Even assuming however that the appellant is now barred from exercising its right of redemption, yet it can still

repurchase the property in question based on a new contract entered into between the parties extending the period within which to purchase the property as evidenced by the appellee's Deputy Liquidator Rosauro Napa's letter to Belen Jocson dated March 12, 1992 and the letter addressed to Atty. German M. Balot, Legal Counsel, Banco Filipino - Santiago, Isabela dated April 7, 1992.

...

In the case of *Philippine National Bank vs. Court of Appeals*, the Court held: Indeed under Article 1482 of the Civil Code, earnest money given in a sale transaction is considered part of the purchase price and proof of the perfection of the sale. This provision, however, gives no more than a disputable presumption that prevails in the absence of contrary or rebuttal evidence. In the instant case, the letter-agreements themselves are the evidence of an intention on the part of herein private parties to enter into negotiations leading to a contract of sale that is mutually acceptable as to absolutely bind them to the performance of their obligations thereunder. The letter-agreements are replete with substantial condition precedents, acceptance of which on the part of private respondent must first be made in order for petitioner to proceed to the next step in the negotiations.

... [6]

In compliance with the CA decision, private respondent on April 27, 2000, made a tender of payment and consignment with the CA in the amount of P1,300,987.96 through a Philippine National Bank check which was duly receipted by the appellate court.[7]

Hence, the herein petition for review on certiorari filed by petitioner alleging that the appellate court erred in holding that (1) the allegations in the complaint of private respondent against petitioner are sufficient to constitute a cause of action for redemption and specific performance; and (2) respondent was entitled to repurchase back from petitioner its foreclosed property for only P925,448.17.

The basic issue is whether private respondent's complaint for redemption and specific performance states a cause of action against petitioner.

It is a well-settled rule that the existence of a cause of action is determined by the allegations in the complaint.[8] In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for.[9] Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test.[10]

Based on the allegations in the complaint, we find that private respondent has no cause of action for redemption against petitioner.

Paragraph 4 of the complaint states:

- That due to the failure of plaintiff to pay the aforementioned loan, defendant foreclosed the mortgage and in consequence thereof Sheriff David R. Medina of this Honorable Court issued a SHERIFF'S CERTIFICATE OF SALE in favor of defendant which is dated October 9, 1990 and which instrument was inscribed at the back of TCT T-128647 of Isabela on January 21, 1991;

The sheriff's certificate of sale was registered on January 21, 1991. Section 6 of Act 3135 provides for the requisites for a valid redemption, thus:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person

having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure,[11] insofar as these are not inconsistent with the provisions of this Act.

However, considering that petitioner is a banking institution, the determination of the redemption price is governed by Section 78 of the General Banking Act which provides:

In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

Clearly, the right of redemption should be exercised within the specified time limit, which is one year from the date of registration of the certificate of sale. The redemptioner should make an actual tender in good faith of the full amount of the purchase price as provided above, i.e., the amount fixed by the court in the order of execution or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

In case of disagreement over the redemption price, the redemptioner may preserve his right of redemption through judicial action which in every case must be filed within the one-year period of redemption.[12] The filing of the court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period. In this case, the period of redemption expired on January 21, 1992. The complaint was filed on December 20, 1992.

Moreover, while the complaint alleges that private respondent made an offer to redeem the subject property on August 6, 1991, which was within the period of redemption, it is not alleged in the complaint that there was an actual tender of payment of the redemption price as required by the rules. It was alleged that private respondent merely made an offer of P700,000.00 as redemption price, which however, as stated under paragraph 13 of the same complaint, the redemption money was the total bank claim of P925,448.17 plus lawful interest and other allowable expenses incident to the foreclosure proceedings. Thus, the offer was even very much lower than the price paid by petitioner as the highest bidder in the auction sale.

In *BPI Family Savings Bank, Inc. vs. Veloso*,[13] we held:

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

...

Whether or not respondents were diligent in asserting their willingness to pay is irrelevant. Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of the full

redemption price within said period.

Although the letter dated January 23, 1992 gave private respondent up to the end of March 1992, to negotiate and make special arrangement for a satisfactory plan of payment for the redemption, there was no categorical allegation in the complaint that the original period of redemption had been extended. Assuming arguendo that the period for redemption had been extended, i.e., up to end of March 1992, still private respondent failed to exercise its right within said period. This is shown by private respondent's allegation under paragraph 8 of its complaint that in a letter dated January 20, 1993, private respondent's President amended his first offer and made an offer of P1 million as redemption price. Notably, such offer was made beyond the end of the March 1992 alleged extended period. Thus, private respondent has no more right to seek redemption by force of law which petitioner was bound to accept.

We find that the CA also erred in stating that assuming appellant is now barred from exercising its right of redemption, it can still repurchase the property in question based on a new contract entered into between the parties extending the period within which to purchase the property.

The allegations in the complaint do not show that a new contract was entered into between the parties. The March 12, 1992 letter referred to by the CA as well as in the complaint only directed private respondent to remit at least P50,000.00 to petitioner as a manifestation of the former's interest and willingness to redeem the property. Thus, the P50,000.00 remitted by private respondent was only the first step to show its interest in redeeming the property. In no way did it establish that a contract of sale, as found by the CA, had been perfected and that the P50,000.00 remitted by private respondent is considered as earnest money.

Article 1475 of the Civil Code provides:

The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

There was no showing in the complaint that private respondent and petitioner had already agreed on the purchase price of the foreclosed property. In fact, the allegations in paragraphs 8 to 10 of the complaint show otherwise, thus:

- That in a letter of the President of plaintiff dated January 20, 1993, plaintiff amended its first offer and made an offer of P1,000,000.00 as redemption which offer included a plan of payment;
- That between January 20, 1993 to November 1993, plaintiff exerted earnest efforts in order to finally effect the redemption, but defendant dilly dallied on the matter.
- That in a letter of Atty. ORLANDO O. SAMSON, Senior Vice President of defendant, dated November 5, 1993, there is a turn-around by defendant and is now demanding P5,830,000.00 as purchase price of the property, instead of the original agreed redemption;

The complaint does not allege that there was already a meeting of the minds of the parties.

Based on the foregoing, there is no basis for the order of the CA to allow private respondent to repurchase the foreclosed property in the amount of P925,448.17 plus the expenses incurred in the sale of the property, including the necessary and useful expenses made on the thing sold.

WHEREFORE, the decision of the Court of Appeals dated March 31, 2000 is hereby REVERSED and SET ASIDE. The Order of the Regional Trial Court of Santiago, Isabela, Branch 21, dated May 10, 1994 in Civil Case

No. 2036 dismissing the complaint for redemption and specific performance is REINSTATED and AFFIRMED.

SO ORDERED.

Puno, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Justice Eubolo G. Verzola (now deceased), concurred in by Justices Roberto A. Barrios and Eriberto U. Rosario, Jr. (retired), Rollo, pp. 53-60.

[2] Rollo, pp. 61-62.

[3] Penned by Judge Fe Albano Madrid; Rollo, pp. 72-76.

[4] Rollo, pp. 77-78.

[5] Id., pp. 59-60.

[6] Id., pp. 57-58.

[7] Id., pp. 169-175.

[8] Republic vs. Estanzo, No. L-35512, February 29, 1988, 158 SCRA 282, 285.

[9] Peltan Development, Inc. vs. CA, G.R. No. 117029, March 19, 1997, 270 SCRA 82, 91.

[10] G & S Transport Corp. vs. CA, G.R. No. 120287, May 28, 2002, 382 SCRA 262, 274.

[11] Now Section 28 of Rule 39, 1997 Rules on Civil Procedure.

SEC. 28. Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed. - The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

[12] Hi-Yield Realty, Inc. vs. CA, G.R. No. 138978, September 12, 2002, 388 SCRA 655, 663.

[13] G.R. No. 141974, August 9, 2004, 436 SCRA 1, 6.

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