

LUZON DEVELOPMENT BANK, PETITIONER, VS. BENEDICTO C. CONQUILLA, CORNELIA C. CONQUILLA DOROTEA C. ORCINE AND FELICIANO S. CONQUILLA, RESPONDENTS.

G.R. NO. 163338. September 21, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In the present case, the Court stresses that the use of facts admitted in the Complaint will not subject the judgment based thereon to a claim of nullity grounded on lack of due process. Clearly, the facts alleged in the Complaint bound the plaintiff. Thus, the trial court correctly used the allegations or admissions therein as basis to grant the Motion to Dismiss, in the same manner that it could have done so on a motion to render judgment on the pleadings.

The Case

Before us is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the December 16, 2003 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 71589 and its April 14, 2004 Resolution[3] denying petitioner's Motion for Reconsideration. The challenged Decision disposed thus:

"IN VIEW OF THE FOREGOING, the order appealed from is SET ASIDE and the case REMANDED for further proceedings."[4]

The Facts

According to the CA, the facts are as follows:

"x x x. Feliciano Conquilla was the president of an educational institution located at Noveleta Cavite and known as Columbia College. He was joined by his children Benedicto, Cornelio and Dorotea in mortgaging the three properties on which the school sat and titled in their names as TCT No. T-593582 to 84 to secure a loan from the Luzon Development Bank. The transaction underwent a series of amendments. Initially, on March 7, 1996, they borrowed P4,720,000, which was increased to P7,220,000 on April 2 by way of a Promissory Note and Amendment Of Real Estate Mortgage. The Promissory Note appears to have been signed by the four in their personal capacities, but Feliciano's name in the Amendment of Real Estate Mortgage was preceded by the telling phrase Columbia College By. An amount of P2,500,000 was specifically earmarked for building construction. On May 2, they acknowledged a loan of P10,000,000 in a promissory note signed by them again without any qualification, and raising the amount for building construction to P2,780,000.

"After some months, Feliciano Conquilla applied for a restructuring of the loan. He wrote the bank that they had sought extra funding to finish the school building, and with the increased enrollment that would follow on the heels of their expansion program, assured that their loan obligations would be met. The request granted, they again issued on December 27, 1996 a Promissory Note for P12,242,000 payable monthly for the next five years.

"They failed to deliver on their promise, and by March 1998, their unpaid amortizations rose to more than P4 million. To prevent the impending foreclosure of the mortgaged properties, Feliciano filed in the name of Columbia College with the RTC of Cavite City [C]ivil [C]ase N-6659 against Luzon Development Bank and the notary public[,] Rolando Torres. This suit was filed on February 18, 1998. Less than a month later, on March 11, 1998, Judge Christopher [Lock] of Branch 88 of the court dismissed the case on the ground that the plaintiff failed to establish its cause of action. As mentioned in his order, the case was set for hearing on March 5, and on this date only Feliciano Conquilla appeared. Nothing more was said about the hearing, but it is difficult to see what else could happen in the absence of the other parties[,] and all the lawyers. 6 days later, in the order, he declared that there was no reason why the foreclosure of mortgage should be enjoined, and ruled that in the face of the clear admission of plaintiff that they were unable to settle their obligations[,] which were secured by the mortgage, defendants have a clear right to foreclose the mortgage[,] which is the remedy provided by law.

The next day, March 12, Feliciano Conquilla[,] joined by his wife Salud[,] filed case N-6669 in his own name[,] which still fell in the sala of Judge [Lock], praying for the same remedy of injunction against the foreclosure. On a motion to dismiss, he ruled that the complaint was a rehash of the one made in N-6659 and already dismissed. His order of March 16 contained this disquisition:

'Except for the allegations that the defendants did not comply with the requirement of notice and publication, and that the plaintiffs are now suing in their personal capacity, the averments in the complaint are mere rehash of the allegations in the complaint docketed as [C]ivil [C]ase No. N-6659[,] filed by the plaintiff Feliciano Conquilla on behalf of Columbia College Inc.[,] which has been dismissed by this court per its order dated March 11, 1998.

'It appearing from the opposition filed by the defendants that the latter (have) complied with the notice and publication requirements under Act 3135, and it appearing further that the plaintiffs (have) no cause of action to institute the present complaint, the reasons of which (have) already been discussed in the order of the court dated March 11, 1998, the prayer for the issuance of a temporary restraining order is hereby denied; and finding merit in the motion to dismiss filed by defendants, the same is granted. Consequently, let the complaint filed in this case be, as it is hereby dismissed.'

"With the cases out of the way, the properties were auctioned off to Luzon Development Bank. In June, it advised Columbia College through Feliciano of its right to buy back the lots within the redemption period. Not amenable to this solution, Feliciano Conquilla and his children filed the present case in January 1999, their final trump card against the inevitable outcome of the foreclosure proceeding.

"As the plaintiffs in LP 99-0019, the Conquillas alleged in their complaint that of the amount of the loan of P7.2 million agreed to on April 2, 1996, the defendant Luzon Development Bank failed to release to them the amount of P1,940,000, thus causing a breach of contract and rendering the foreclosure premature. The contract obligation was, furthermore, increased to over P12 million without further releases. Even as it bidded for the properties in the amount of over P18 million, it failed to turn over to them the difference between this price and the amount of the actual releases, representing a balance of about P13 million."[5]

The defendant bank moved to dismiss the Complaint on the ground that the case had already been barred by two prior judgments in Civil Case Nos. N-6659 ("First Case") and N-6669 ("Second Case").[6] On May 4, 2000, the trial court issued an Order dismissing Civil Case No. LP 99-0019 ("Third Case") on the ground of res judicata.[7] In denying the Motion for Reconsideration, the trial court explained that the causes of action in the Third Case were so intimately and closely related to those in the First and the Second Cases that to allow a re-litigation would constitute a circuity of suits.[8]

Respondents appealed this Order, alleging that the dismissal of the Third Case was a denial of their right to be heard;[9] that the First and the Second Cases did not constitute res judicata;[10] and that the foreclosure was

premature, because the entire loan had yet to be released.[11]

Respondents argued that the trial court had erred in dismissing Civil Case No. LP 99-0019 on the ground of res judicata. They added that the Third Case had a different cause of action and was not barred by the unfavorable judgments in the previous two cases.[12] While the First and the Second Cases were filed in order to prevent the mortgage foreclosure, the object of the Third Case was the nullification of the foreclosure proceedings and the collection of the balance of the loan.

Elaborating, respondents explained that of the P7.2 million loan agreed upon, only P5.28 million had been released at the time of the foreclosure.[13] Therefore, they argued, the foreclosure was premature and should be nullified.[14]

Further, respondents criticized the dismissal of the case by the Regional Trial Court (RTC) on the basis of a mere Motion to Dismiss. They argued that the RTC should have ordered petitioner to file a responsive pleading. Because the trial court had failed to do so, their Complaint was dismissed without trial on the merits. [15]

Lastly, respondents pointed out that petitioner bank should have been declared in default because of its failure to file a responsive pleading in Civil Case No. LP 99-0019. They theorized that its Motion to Dismiss, grounded on res judicata, was defective, considering that Rule 16 of the Rules of Court did not include res judicata among the grounds for dismissal. They contended that the grounds mentioned in Rule 16 were "prior judgment or statute of limitations," which were different from res judicata.[16]

Ruling of the Court of Appeals

The appellate court noted that the lower court had ordered the dismissal of the previous cases without any pretrial or trial.[17] Although the CA recognized that a formal trial was not necessary for a judgment to be on the merits, it nevertheless held that the parties should have been given the opportunity to be heard on their claims before judgment was passed. Thus, it ruled that the orders of dismissal were violative of respondents' right to due process.[18]

Additionally, the appellate court observed that the denial of the First Case was grounded on the failure of the Complaint to state a cause of action. Under Rule 16 of the Rules of Court, dismissals on this particular ground did not constitute res judicata.[19]

For these reasons, the CA remanded Civil Case No. LP 99-0019 to the trial court for further proceedings.

Hence, this Petition.[20]

Issues

Petitioner raised the following issues in its Memorandum:

"I. Whether or not the Court of Appeals acted without or in excess of jurisdiction or with grave abuse of discretion when they decided to remand the case back to the lower [court] despite finality of the order of dismissal[; and]

II. Whether or not the Court of Appeals' decision to remand the case to the lower court violates jurisprudence on forum shopping and res judicata."[21]

After going over the arguments of petitioner, the Court believes that the resolution of this case hinges on the principal issue of whether the dismissal of the First Case on the ground of failure to establish a cause of action operates as res judicata on the Third Case.

The Court's Ruling

The Petition is partially meritorious.

Main Issue:

Res Judicata

A case is barred by prior judgment or res judicata when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is -- between the first and the second actions -- identity of parties, of subject matter, and of causes of action.[22]

The parties do not dispute the fact that Branch 88 of the RTC of Cavite has jurisdiction over the First Case, and that its Order of dismissal has long become final and executory[23] because of respondents' failure to appeal it. There is no controversy, either, regarding the identity of the subject matter.

Therefore, the dispute lies only in the presence of the three remaining elements -- judgment on the merits, identity of parties, and identity of causes of action.

The Ground for Dismissal:

"Failure to Establish Cause of Action,"

Not "Failure to State a Cause of Action"

Preliminarily, we have to determine the actual ground for the dismissal of Civil Case No. N-6659. According to the CA, the ground for dismissal could not possibly be "failure to establish [respondents'] cause of action," as stated by the trial court, because there was no hearing on the case. Rather, the CA ruled that the ground for dismissal could only be "failure to state a cause of action" in the light of the fact that the trial court had looked only at the allegations in the Complaint. [24]

"Cause of action" is the act or omission by which a party violates a right of another.[25] It contains three elements: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the right of the plaintiff, and (3) a breach of the defendant's duty.

Civil Case No. N-6659 stated a cause of action: first, plaintiff (Respondent Feliciano) had a right to apply for an injunction to enjoin a premature foreclosure – a foreclosure before December 27, 2001; second, defendant (petitioner herein) had a duty not to foreclose the mortgage prematurely; third, the alleged breach arose when defendant applied for foreclosure in 1998, three years prior to the stipulated maturity of the loan.

From the foregoing, it is clear that plaintiff had a cause of action to apply for an injunction on the basis of the alleged breach. In other words, the allegations in the Complaint are sufficient to enable the trial court to grant the relief prayed for. Therefore, we do not agree that there was a "failure to state a cause of action"; on the contrary, there was no "insufficiency of allegations" in the pleading.

To repeat, the actual ground for dismissal was the insufficiency of the factual basis for the action.[26] It may be raised at any time after the questions of fact shall have been resolved on the basis of stipulations, admissions, or evidence presented.[27] Usually, the declaration that a plaintiff failed to establish a cause of action is postponed until after the parties are given the opportunity to present all relevant evidence on questions of fact.[28]

In the First Case, the trial judge clearly deviated from the usual course when he dismissed the Complaint on the ground of "failure to establish its cause of action" without giving the parties an opportunity to present their evidence. Under the special circumstances of this case, however, we find that the absence of a trial did not substantively deprive the respondents of their day in court.

Notably, the Complaint (and its Annexes) admitted that respondents' own default triggered the acceleration clause of the mortgage Contract. An acceleration clause is a stipulation stating that, on the occasion of the mortgagors' default, the whole sum remaining unpaid automatically becomes due and payable. The presence and activation of the acceleration clause, the validity of which was never questioned by respondents, negates their contention that the foreclosure was premature.

To state it simply, respondents are saying in their own pleading that the breach committed by petitioner bank is actually justified in the light of their breach of the agreement on the monthly installments. Hence, on the basis of their admission of their breach of their own obligations to the bank, the trial court found that petitioner had a right to foreclose the mortgage.

This is not a flimsy conclusion arrived at by the trial court. It is a fact derived from respondents' Complaint and its Annexes.[29] Being in the nature of a judicial admission made in the course of the proceedings, it did not require proof.[30] This factual admission in the pleadings on record dispensed with the need for petitioner to present evidence to prove the admitted fact.

Moreover, findings of fact are not unbendingly postponed until after trial, but may be made as soon as there is sufficient evidence available.[31] In the present case, the evidence that the trial court needed in order to make a decision on the matter was the admission contained in respondents' Complaint and its Annexes.

Although the procedure in the RTC was not conducted in the usual manner, this Court is not prepared to say that it deprived respondents of their right to due process. The factual finding that they defaulted on their monthly payments for a period of fifteen months was their own uncontroverted admission. If the trial court's factual finding was wrong, respondents should have sought a reconsideration of the matter by showing that no such admission was made, or that it was made through a palpable mistake.[32] A motion for reconsideration was the remedy provided them by law, but they took no such action. Thus, they are bound by their admission. On this basis, the trial court cannot be completely faulted for concluding that they failed to establish their cause of action.

What transpired in the court below is akin to a judgment on the pleadings. A judgment on the pleadings may be rendered by the court either on motion[33] of the plaintiff or *motu proprio*. [34] Such judgment is based exclusively upon the pleadings without introduction of evidence; therefore, it is proper whenever it appears that there is no controverted factual issue.

There was no controverted factual issue in the First Case because, in filing a Motion to Dismiss, petitioner was hypothetically admitting all the allegations in the Complaint. Although no motion for a judgment on the pleadings was filed by respondents, the trial court -- on the authority akin to that granted by Rule 18 Section 2(g) --decided *motu proprio* to render a judgment on the pleadings.

The only difference between what transpired in Civil Case No. N-6659 and a Rule 34 judgment on the pleadings is the absence of an answer in the former; instead, what was filed was a motion to dismiss. This procedural flaw could have injured, not the plaintiff (Respondent Feliciano), but the defendant (petitioner herein), because a judgment was rendered without giving it the opportunity to counter plaintiff's factual allegations. Considering, however, that the defendant did not object to this procedural lapse, it is clear that it had waived whatever procedural injury was caused by the court's action.

Dismissal on the Ground of
Failure to Establish Cause of Action,
a Judgment on the Merits

The CA ruled that Civil Case No. N-6659 did not operate as *res judicata*, because no trial had ever been conducted

in the trial court; hence, no judgment on the merits could have possibly been issued.[35]

While it is indisputable that there was no trial on the merits in Civil Case No. N-6659, the ruling was nonetheless a judgment on the merits. *Escarte v. Office of the President*[36] held that a ruling based on a motion to dismiss, without any trial on the merits or formal presentation of evidence, can still be a judgment on the merits.

"Merits" has been defined as a matter of substance in law, as distinguished from a matter of form; it refers to the real or substantial grounds of action or defense, as contrasted with some technical or collateral matter raised in the course of the suit.[37] A judgment is "on the merits" when it amounts to a legal declaration of the respective rights and duties of the parties, based upon the disclosed facts.[38]

In *Allied Banking Corporation v. CA*,[39] the trial court, after finding that "on the basis of the allegations of the Complaint, there [was] really no cause of action against defendant Alano,"[40] granted the Motion to Dismiss. Four months later, the plaintiff (Allied Bank) filed a new Complaint against Alano, which practically restated the causes of action in the earlier case. Both the trial and the appellate courts found that the filing of the second case was barred by *res judicata*. [41] The issue presented before the Court was whether the CA erred in affirming the dismissal of the second case on the ground of *res judicata*. [42] Petitioner contended that the judgment dismissing the earlier case for failure to state a cause of action was not a judgment on the merits.

In denying the Petition, this Court held that, although the Complaint had stated a cause of action, its allegations showed that Alano had not incurred any liability at all. The dismissal was on the merits,[43] because "it unequivocally determined the rights and obligations of the [bank] and [Alano] with respect to the causes of action and the subject matter of the case." [44]

Similarly, the Complaint in the present Civil Case No. N-6659 alleged a cause of action, but since plaintiff himself showed through his allegations that defendant had not incurred any liability, the trial court dismissed the Complaint. Through its Order of Dismissal, the RTC ruled on the issue presented before it -- the propriety of foreclosing the mortgaged property. Relevant portions of the Order are quoted as follows:

"Paragraph 5 of the complaint clearly show[s] that the [respondent] has not paid the amortizations due from December 1996 up to March 1998 or a period covering 15 months. Paragraph 4 of the promissory notes executed by the [respondent] also disclose[s] that the [respondent] agreed that in case of default in the payment of any of the installments and advance interest, the whole sum remaining unpaid shall automatically become due and payable. As it appears that there is a clear admission on the part of [respondent] that [he] failed to settle to the fullest [his] obligation, foreclosure is valid. Foreclosure is valid where the debtors, as in this case, are in default in the payment of their obligation.

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"x x x. In the case at bench, we fail to see any reason why the foreclosure of the mortgages should be enjoined. On the face of the clear admission of [respondent] that they were unable to settle their obligations which were secured by the mortgages, [petitioners] have a clear right to foreclose the mortgages[,] which is the remedy provided for by law." [45]

Contrary to the findings of the appellate court, the dismissal of Civil Case No. N-6659 was a dismissal on the merits. The Order was based on the finding that the Complaint contained an admission that respondents had violated the terms of the Mortgage Contract, a violation that gave petitioner the right to foreclose the mortgaged property. The judgment was on the merits, because it ruled that petitioner's defense was substantial enough to overcome the relief sought by respondents. The Order applied the law to the facts as stated in the Complaint; it was and is thus conclusive on the propriety of foreclosure and determinative of the legal rights and obligations of the parties with respect to the mortgage. The Order definitively put an end to the controversy and barred any

subsequent action on the same subject matter.

Even assuming *arguendo* that the ground for dismissal in the First Case was the "failure to state a cause of action," that particular Order of Dismissal was still a judgment on the merits and operated as *res judicata* on a subsequent case.

In *Manalo v. CA*,^[46] without any trial, the RTC dismissed CEB-11735 on the ground of failure to state a cause of action. When the same case was again filed, the respondent moved to dismiss on the ground of *res judicata*. The Motion was sustained by the trial court. Upon review before this Court, the petitioners alleged that the Order of dismissal in CEB-11735 did not constitute *res judicata*; the Order was not an adjudication on the merits, since the Complaint was dismissed for failure to state a cause of action.^[47]

This Court found no merit in the Petition. It ruled that *res judicata* had barred the subsequent Complaint despite the absence of a trial or a cause of action properly alleged. Since the Order of Dismissal actually ruled on the issues raised in the Complaint, the judgment constituted a bar on this case.^[48]

The same conclusion was arrived at in *Mendiola v. CA*.^[49] In that case, Petitioner Mendiola gave a special power of attorney (SPA) to another person to mortgage the former's parcels of land in Marikina for the purpose of financing their planned joint venture. Although they had already abandoned that business plan, the person who had been given an SPA nevertheless mortgaged Mendiola's properties to the Philippine National Bank (PNB). When the bank initiated foreclosure proceedings, Mendiola filed a separate case for injunction against it. The trial court sustained the Motion to Dismiss on the ground that the Complaint did not state a sufficient cause of action.^[50] During the pendency of Mendiola's appeal, the foreclosure pushed through, and the properties were sold at the auction.

Because of the turn of events, Mendiola filed a case to annul the auction sale. Again, PNB moved to dismiss on the ground that an appeal was still pending for the same cause of action. After due hearing, the trial court dismissed the second case on the ground of *litis pendentia*.^[51] The CA subsequently affirmed the dismissal of the first case.

Coming before this Court, petitioner therein maintained that the first case could not bar the second one, because the former, which was dismissed for failure to state a cause of action, had not ruled on PNB's right to foreclose the properties.

This Court ruled that the second case was dismissible under the principle of *res judicata*. It found that the dismissal of the first case, which was based on a Motion to Dismiss, was a judgment on the merits. It was rendered only after due consideration of the facts and evidence presented by both parties. The Order of Dismissal went into the substance of the relief sought by Mendiola (which was the issuance of a writ of injunction) and must be regarded as an adjudication on the merits.^[52]

These cases show that even a dismissal on the ground of "failure to state a cause of action" may operate as *res judicata* on a subsequent case involving the same parties, subject matter, and causes of action, provided that the order of dismissal actually ruled on the issues raised. What appears to be essential to a judgment on the merits is that it be a reasoned decision, which clearly states the facts and the law on which it is based.

In the present case, the Order of Dismissal in Civil Case No. N-6659 ruled on the right of petitioner to foreclose the property. It held that foreclosure was valid; and that the debtor was in default in the payment of his obligation.^[53] The Order of Dismissal also explained that the Mortgage Contract and the Promissory Notes had authorized the mortgagee to foreclose.^[54] It clearly looked into the facts as presented by respondents' pleadings and applied the law accordingly. Thus, based on *Manalo* and *Mendiola*, the Order carried the effect of *res*

judicata, it definitively settled the controversy between the parties.

Although Mendiola differs slightly from the instant case in the sense that the plaintiff in the former was given a hearing to argue the merits of his case, the procedural difference is not substantial enough to arrive at a different conclusion. Notably, in the present case, the uncontroverted admission of the Complaint rendered a hearing unnecessary. To reiterate, an admission in the course of the proceedings, such as that in the pleadings on record, does not require proof. In other words, the Complaint contained the facts that the trial court used to render a judgment on the merits.

Substantial Identity of Parties

Respondents argue that there is no identity of parties between the First Case and the Third Case.[55] The party in the First Case was Columbia College, Inc., represented by Feliciano S. Conquilla;[56] while the parties in the Third Case were Feliciano S. Conquilla, Benedicto C. Conquilla, Cornelio C. Conquilla, and Dorotea C. Orcine.[57] The parties in the latter case were the registered owners of the mortgaged properties.[58]

It is axiomatic that to invoke *res judicata*, absolute identity of parties is not required. A substantial identity of parties is sufficient.[59] There is substantial identity of parties when there is a community of interest between a party in the first case and that in the second one, even if the latter party was not impleaded in the first case.[60]

In the instant controversy, the Complaint alleged that Columbia College, Inc., was the only debtor.[61] But the CA found that the Promissory Note given to petitioner contained the signatures of all the four registered owners, without any qualification.[62] A Promissory Note is defined as "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer." [63] This definition shows that the makers or signatories of a promissory note have the duty to pay the amount stated on it.

Therefore, it is only logical that the present respondents were debtors, together with Columbia College, Inc. This fact explains why they are also claiming the balance of the loan, instead of merely asking for the nullification of the foreclosure of their property. Together with Columbia College, Inc., they are interested in annulling the contracted loan and in preventing the foreclosure of the properties.

Moreover, we find that Columbia College, Inc. claimed that it had mortgaged its properties to petitioner bank and executed the Promissory Note.[64] Reconciling this fact with the finding of the CA that respondents were the mortgagors,[65] we can only come to the conclusion that they and Columbia College were not only common debtors; all of them were also mortgagors.

Therefore, they were all parties to the same Contract, protecting the same interests, and seeking the same relief. Clearly, the actions were instituted for the protection of the common interest of respondents in the loan and the mortgage. They shared an identity of interest from which flowed an identity of relief sought; that is, to have the foreclosure nullified. Their identity of interest in the loan and the mortgaged property is enough to hold them privy-in-law; this fact meets the substantive requisite of identity of parties.

That the children-respondents were not joined in the First Case is not enough to show that there is no identity of parties. The joining of new parties does not remove a case from the operation of *res judicata*; otherwise, the litigants can easily renew the litigation by simply joining new parties.[66]

Identical Causes of Action

The fourth requisite of *res judicata* is identity of causes of action between the two cases.

The cause of action in the First Case arose from petitioner's alleged premature foreclosure of the mortgage. On the

other hand, the Third Case involves three alternative causes of action: (1) nullification of the foreclosure and the auction sale, (2) release of the balance of the loan, or (3) recovery of the excess proceeds of the sale.

Respondents insist that the two cases involve different causes of action, allegedly because the First Case seeks to prevent, and the Third Case to nullify, the foreclosure.[67] However, hornbook is the rule that identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought.[68]

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.[69]

The validity of the foreclosure in Civil Case No. LP 99-0019 is assailed by respondents on the ground of prematurity.[70] Despite the stipulation that the loan would mature only on December 27, 2001, the foreclosure of their mortgage took place on March 16, 1998.[71] Notably, that cause of action was the same as that raised, considered, and conclusively passed upon in Civil Case No. N-6659. In the latter case, Respondent Feliciano sought to prevent foreclosure by also contending that it was premature.[72]

In order to obtain the reliefs sought, respondents in both cases should have presented proof that the bank had no right to foreclose before December 27, 2001. By applying the "same evidence" test, it becomes readily apparent that the evidence or facts needed to sustain the cause of action in Civil Case No. N-6659 is the same as the evidence or facts needed to allow relief in Civil Case No. LP 99-0019. Tellingly, the first cause of action in Civil Case No. LP 99-0019 (nullification of foreclosure) is identical with that in Civil Case No. N-6659 (injunction of foreclosure).

This ruling finds support in *Mendiola*.^[73] In that case, we ruled that the actions to enjoin foreclosure and to annul the auction sale based on the same grounds were identical.

At any rate, the Order of Dismissal in the First Case was already a final judgment;^[74] hence, it was appealable. Respondents could have appealed it, but they did not. Having failed to appeal from that judgment, they may not abuse court processes by repeatedly re-filing the same case to obviate the conclusive effects of dismissal. It now operates as *res judicata*. Hence, respondents can no longer assail the validity of the foreclosure on the ground of prematurity.

The second cause of action in the Third Case (recovery of the balance of the loan) is likewise identical with that in the First Case. Respondents allege that petitioner bank released only P5.2 million of the total P7.42 million agreed upon;^[75] thus, there was a breach of the Contract. What respondents are saying is that petitioner has no right to foreclose, on the ground that it has yet to comply fully with its obligation. In other words, the foreclosure is allegedly premature and invalid.^[76] In order to sustain their claim, respondents should have presented proof that petitioner had no right to foreclose at the time of their application. It will be recalled that this was the same proof needed to sustain the claim in the First Case. Since the same evidence sustains both actions, they are considered to be the same for purposes of *res judicata*.

Moreover, the alleged failure of petitioner bank to release the balance of the loan was a fact already in existence at the time that the First Case was filed in court. If petitioner had really violated the terms of the loan agreement, this fact should have been pleaded by respondents in the First Case. If true, such fact bolstered the claim of respondents that petitioner had no right to foreclose. According to the principle of *res judicata*, a judgment is conclusive between the parties with respect to matters directly adjudged and to any other matter that may have

been raised in relation to it.[77] By failing to raise this matter in the first instance, respondents are deemed to have waived it. They can no longer cite any ground for invalidating the Mortgage Contract, which was already in existence at the time of the First Case.

In putting an end to litigation between the same parties over a subject that has already been adjudicated, the principle of *res judicata* is dictated by public interest. "Relitigation of issues already settled merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases." [78] "Even at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law and x x x parties should not be permitted to litigate the same issues over again." [79]

Remand of the New Cause of Action

A different fate befalls the third alternative cause of action in Civil Case No. LP 99-0019, which is for recovery of the excess proceeds of the foreclosure sale. Respondents allege that the mortgaged property was sold for P18,462,900, which allegedly far exceeded the amount of loan agreed upon by the parties.[80]

Under the "same evidence" test, this is a different cause of action from an injunction of foreclosure. As already discussed, Civil Case No. N-6659 requires proof that the mortgagee had no right to foreclose; on the other hand, the alternative cause of action in Civil Case No. LP 99-0019 requires proof that the bid price of the mortgaged property was in excess of the contracted loan. The two issues require different sets of evidence; there is no identity of causes of action.

Moreover, the recovery of the excess proceeds of the sale was not and could not be included in Civil Case No. N-6659, because it was a new cause of action that had arisen only after the foreclosure. It was not barred by *res judicata*, because it could not have been raised then. This is the only matter that may be remanded to the trial court.

If it is proven that the mortgaged property was foreclosed and sold for an amount exceeding the loan contracted, respondent must be allowed to recover the excess.[81] By the accessory nature of mortgage, the mortgagee has the right to foreclose the mortgaged property only to the extent of the loan secured by it. Any decision to the contrary abets unjust enrichment.

To stress, the recovery of the excess proceeds of the sale is the only cause of action that should be remanded to the lower court. Preliminarily, the trial court should first determine the amount of loan actually contracted by the parties, because the true amount is disputed. According to petitioner[82] and the CA,[83] the contracted loan was P12 million, but respondents maintain that the amount was only P7.42 million.[84] Afterwards, the court *quo* should limit itself to a determination of whether the property was sold for an amount exceeding the contracted loan, while taking into consideration the interests and costs of the sale. If the sale price of the mortgaged property is greater than the amount of indebtedness to the bank, the bank must be ordered to turn over the excess to respondents.

The lower court should no longer inquire into the validity of the mortgage loan and the right to foreclose. The resolution of these two matters have reached finality in Civil Case No. N-6659, which decided that petitioner had the right to foreclose on the presumption that the mortgage was also valid. If respondents are allowed to question the validity of the mortgage loan all over again, the consequent foreclosure would likewise have to be subjected to a review, which is no longer possible by operation of *res judicata*. Forever barred now are all questions regarding the validity of the Mortgage Contract and the subsequent foreclosure, questions that have been directly adjudged

or could have been raised and adjudged in Civil Case No. N-6659.

WHEREFORE, the Petition is PARTLY GRANTED. The assailed Decision and Resolution are hereby MODIFIED pursuant to the above discussion. The case is REMANDED to the Regional Trial Court of Cavite City for further proceedings, only on the matter of recovery of the alleged excess proceeds of the auction sale. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 12-29.

[2] Id., pp. 30-37. Seventeenth Division. Penned by Justice Mario L. Guariña III and concurred in by Justices Martin S. Villarama Jr. (Division chair) and Jose C. Reyes Jr.

[3] Id., p. 38.

[4] CA Decision, p. 7; rollo, p. 36.

[5] Id., pp. 2-5; rollo, pp. 31-34. Citations omitted.

[6] Id., pp. 5 & 34.

[7] RTC Order, p. 1; rollo, p. 43.

[8] RTC Resolution, p. 2; rollo, p. 45.

[9] Appellants' Brief, p. 5; rollo, p. 101.

[10] Id., pp. 4 & 100.

[11] Id., pp. 4-5 & 100-101.

[12] Id., pp. 4 & 100.

[13] Id., pp. 2 & 98.

[14] Id., pp. 4-5 & 100-101.

[15] Id., pp. 5 & 101.

[16] Id.

[17] Assailed Decision, pp. 1-2; rollo, pp. 30-31.

[18] Id., pp. 6-7 & 35-36.

[19] Id., pp. 7 & 36.

[20] This case was deemed submitted for decision on May 31, 2005, upon the Court's receipt of respondents' Memorandum, signed by Atty. Vicente M. Tagoc Jr. Petitioner's Memorandum, signed by Atty. Edgardo L. de Jesus of De Jesus and Associates, was received by the Court on May 30, 2005.

[21] Petitioner's Memorandum, p. 7; rollo, p. 78.

[22] Allied Banking Corporation v. CA, 229 SCRA 252, 258, January 10, 1994.

- [23] Petitioner's Memorandum, p. 11; rollo, p. 82.
- [24] CA Decision, p. 7; rollo, p. 36.
- [25] §2 of Rule 2 of the Rules of Court.
- [26] See *Dabuco v. CA*, 322 SCRA 853, 857-858, January 20, 2000.
- [27] See *Bank of America NT&SA v. CA*, 400 SCRA 156, 167-168, March 31, 2003; *Dabuco v. CA*, *supra*, 858.
- [28] *Dabuco v. CA*, *supra* at note 26, 859.
- [29] RTC Order, p. 1; rollo, p. 39.
- [30] §4 of Rule 129 of the Rules of Court.
- [31] See *Dabuco v. CA*, *supra*, p. 865, citing *Tan v. Director of Forestry*, 125 SCRA 302, October 27, 1983.
- [32] §4 of Rule 129 of the Rules of Court.
- [33] Rule 34 of the Rules of Court.
- [34] §2(g) of Rule 18 of the Rules of Court.
- [35] CA Decision, p. 7; rollo, p. 36.
- [36] 192 SCRA 1, 8, December 4, 1990.
- [37] *Escarte Jr. v. Office of the President*, *supra*.
- [38] See *Manalo v. CA*, 357 SCRA 112, 121, April 20, 2001; *Mendiola v. CA*, 258 SCRA 492, 500-501, July 5, 1996; *Escarte Jr. v. Office of the President*, *supra* at note 36.
- [39] 229 SCRA 252, January 10, 1994.
- [40] *Id.*, p. 255, per Davide Jr., J.
- [41] *Id.*, p. 256.
- [42] *Id.*, p. 257.
- [43] *Id.*, pp. 259-260.
- [44] *Id.*, p. 260, per Davide Jr., J. (now CJ).
- [45] RTC Order, pp. 2-3; rollo, pp. 40-41. Citations omitted.
- [46] *Supra* at note 38.
- [47] *Id.*, p. 120.
- [48] *Id.*, pp. 121-123.
- [49] *Supra* at note 38.
- [50] *Id.*, p. 496.
- [51] *Id.*, pp. 496-497.
- [52] *Id.*, pp. 500-501.

- [53] RTC Order, pp. 2-3; rollo, pp. 40-41.
- [54] Id., pp. 3 & 41.
- [55] Respondents' Memorandum, p. 2; rollo, p. 89.
- [56] RTC Order, p. 1; rollo, p. 39.
- [57] RTC Resolution, p. 1; rollo, p. 44.
- [58] Respondents' Memorandum, p. 2; rollo, p. 89.
- [59] Mendiola v. CA, supra at note 38, p. 501.
- [60] Sempio v. CA, 284 SCRA 580, 587, January 22, 1998.
- [61] Respondents' Memorandum, pp. 2-3; rollo, pp. 89-90.
- [62] CA Decision, p. 2; rollo, p. 31.
- [63] §184, The Negotiable Instruments Law (Act 2031).
- [64] RTC Order, p. 1; rollo, p. 39.
- [65] CA Decision, p. 2; rollo, p. 31.
- [66] See Anticamara v. Ong, 82 SCRA 337, 342, April 14, 1978.
- [67] Respondents' Memorandum, p. 2; rollo, p. 89.
- [68] Medija v. Patcho, 132 SCRA 540, 549-550, October 23, 1984; Ramos v. Pangasinan Transportation Co., Inc., 79 SCRA 170, 176, September 30, 1977.
- [69] Nabus v. CA, 193 SCRA 732, 742-743, February 7, 1991.
- [70] CA Decision, p. 4; rollo, p. 33.
- [71] Respondents' Memorandum, p. 4; rollo, p. 91.
- [72] RTC Order, p. 2; rollo, p. 40.
- [73] Supra at note 38.
- [74] Petitioner's Memorandum, p. 11; rollo, p. 82.
- [75] Respondents' Memorandum, pp. 1-2 & 88-89.
- [76] CA Decision, p. 4; rollo, p. 33.
- [77] §47(b) of Rule 39 of the Rules of Court.
- [78] Aguila v. J.M. Tuason & Co., Inc., 22 SCRA 690, 695, February 22, 1968, per Reyes, J.
- [79] Allied Bank Corporation v. CA, supra at note 22, 257, per Davide, Jr., J. (now CJ).
- [80] Respondents' Memorandum, p. 4; rollo, 91.
- [81] See Gorospe and Sebastian v. Gochangco, 106 Phil 425, October 30, 1959; Caparas v. Yatco and Alvela, 89 Phil 10, May 23, 1951.

[82] Petitioner's Memorandum, p. 3; rollo, p. 74.

[83] CA Decision, p. 3; rollo, p. 32.

[84] Respondents' Memorandum, pp. 1-2; rollo, pp. 88-89.

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