

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. HON. SILVERIO Q. CASTILLO AND CRISTINA TRINIDAD ZARATE ROMERO, RESPONDENTS.***G.R. No. 163827. August 17, 2011*

Ponente: VILLARAMA, JR., J.

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Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the July 21, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 53825 dismissing petitioner's petition for certiorari.

The antecedents follow:

Corazon Zarate Romero and his brother Gonzalo Zarate co-owned a property covered by Transfer Certificate of Title (TCT) No. 10070[2] of the Register of Deeds of Dagupan City. The subject property, located in Dagupan City, Province of Pangasinan, is a 1,705-square-meter lot with a four-storey hotel erected thereon.

It appears that sometime in 1975, Corazon and Gonzalo obtained a loan from petitioner Development Bank of the Philippines (DBP). As collateral, they executed a real estate mortgage[3] over the subject property in favor of DBP. On the alleged failure of the two borrowers to pay their amortizations, DBP foreclosed the real estate mortgage on September 15, 1983. Purportedly, no redemption was made within one year, and thus, DBP consolidated ownership over the subject property.

In March 1993, when Corazon passed away, her sole heir, her daughter respondent Cristina Trinidad Zarate Romero, asserted ownership over the subject property to the extent of one-half thereof. However, respondent discovered that the property was already registered as early as June 13, 1989 in the name of DBP under TCT No. 54142,[4] with TCT No 10070 in the names of her mother and uncle already cancelled.

Respondent filed before the Regional Trial Court (RTC) of Dagupan City a complaint[5] for reconveyance, quieting of title and damages with prayer for a temporary restraining order (TRO) and writ of preliminary injunction to prevent DBP from conducting any auction sale on the subject property during the pendency of the case. Respondent claimed that her uncle and DBP conspired in committing fraudulent acts relative to their true transaction and concealed the same from her mother, thereby depriving her of her right of redemption.

The RTC, after hearing, issued on November 24, 1998, a TRO[6] restraining DBP from proceeding with its scheduled auction of the disputed property on November 25, 1998. The dispositive portion of the trial court's order reads:

It appearing that plaintiff Cristina Trinidad Romero y Zarate is the sole heir of the late Maria Corazon Zarate Romero[,] co-owner of the ½ pro[-]indiviso of the property covered by TCT No. 10070 which at present is carried in TCT No. 54142 in the name of DBP[,] and to avoid irreparable damage that may arise [from] the auction sale (public bidding) scheduled on November 25, 1998[,] this Court hereby issues a Temporary

Restraining Order (TRO) AGAINST DEFENDANT Development Bank of the Philippines, Makati, Metro Manila from proceeding [with] the scheduled auction sale (public bidding) on November 25, 1998 at defendant's head office at SAM BCG for a period of twenty (20) days from receipt of this order.

SO ORDERED.[7]

DBP moved to lift the TRO arguing that it violates Section 2[8] of Presidential Decree (P.D.) No. 385[9] which prohibits the issuance of a restraining order, temporary or permanent, against government financing institutions like DBP to enjoin any action taken pursuant to the mandatory foreclosure clause of the decree.[10]

On December 14, 1998, the RTC denied DBP's motion to lift the TRO and granted respondent's plea for an injunctive writ.[11] The pertinent portions of the trial court's order reads:

To the honest evaluation of this Court what is unrestrainable is the right of government financial institutions to foreclose mandatorily all loans with arrearages including interest and charges amounting to at least twenty (20%) percent of the total outstanding obligation.

x x x x

To allay the fears of the plaintiff and to avoid any irreparable damage that may arise while the issues involved in the above case are still being resolved and determined by the Court in the light of the evidence so f[a]r presented, [considering that] there is a tendency on the part of the Development Bank of the Philippines of continuing the acts complained of (auction sale/Public bidding) and considering further [that] there [should] be no advantage ... given to one [party] to the prejudice of the other while this case is still pending in Court, it is hereby ordered that a WRIT of Preliminary Injunction be issued against defendant Development Bank of the Philippines from conducting any auction sale of the property involved in the above case (formerly covered by TCT No. 10070 and at [present] covered by TCT No. 54142), upon posting of a BOND by the plaintiff in the amount of P3 Million within five (5) days from receipt of this Order.[12]

On even date, DBP moved to reconsider[13] the December 14, 1998 Order and at the same time sought the dismissal of respondent's complaint on the sole ground that the same states no cause of action.[14]

On December 23, 1998, the writ of preliminary injunction[15] was issued in favor of respondent.

On March 8, 1999, the RTC denied DBP's motion for reconsideration of the denial of its motion for the lifting of the TRO. The RTC likewise denied in the same order DBP's motion to dismiss the complaint,[16] and ordered DBP to file an answer.

On March 23, 1999, DBP moved to reconsider the March 8, 1999 denial of its motion to dismiss.[17] But even before the RTC could resolve said motion, DBP filed its Answer[18] on April 5, 1999. A manifestation[19] was later filed by DBP indicating that the answer it filed was a mere cautionary measure or what is known as an answer ad cautelam and thus without prejudice to any right of action it may take and without any waiver of any of the grounds for the dismissal of the complaint and any favorable resolution or order that a superior court may issue hereinafter.

On April 20, 1999, the RTC issued an order[20] denying DBP's motion for reconsideration of its March 8, 1999 Order. The RTC in the same order emphasized that DBP already filed an answer thereby rendering the motion to dismiss moot and academic.

On June 23, 1999, DBP filed a petition for certiorari[21] before the CA assailing the following issuances of the RTC:

(1)

TRO dated November 24, 1998 (received by DBP on November 24, 1998) issued against DBP enjoining it from proceeding with the scheduled auction sale of the disputed property;

(2)

Order dated December 14, 1998 (received by DBP on December 16, 1998) denying its motion to lift the TRO and granting the respondents' prayer for a writ of preliminary injunction;

(3)

Order dated March 8, 1999 (received by DBP on March 18, 1999) denying DBP's motion to dismiss and motion for reconsideration of the December 14, 1998 Order; and

(4)

Order dated April 20, 1999 (received by DBP on April 23, 1999) denying DBP's motion for reconsideration of the March 8, 1999 order.

In its assailed decision, the CA dismissed the petition on procedural grounds. It held that the petition questioning the first three orders was filed late as the petition should have been filed within 60 days from receipt of the assailed orders. The CA noted that as regards the third order, DBP was notified of the denial of its motion for reconsideration of the December 14, 1998 Order on March 18, 1999 and thus only had until May 17, 1999 to question the same. The CA further stated that DBP's subsequent filing of its Answer to the complaint rendered its motion to dismiss moot and academic.

Hence, the present appeal.

DBP raises the following issues for this Court's consideration:

- WHETHER ... THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ORDER OF THE COURT A QUO ... DENYING DBP'S MOTION TO DISMISS....
- WHETHER ... THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ORDER OF THE COURT A QUO ... ISSUING THE TEMPORARY RESTRAINING ORDER AND THE PRELIMINARY INJUNCTION AGAINST PETITIONER DBP.
- WHETHER ... THE RULES OF PROCEDURE [SHOULD NOT] BE APPLIED IN A VERY RIGID AND TECHNICAL SENSE SO AS NOT TO FRUSTRATE THE PROMOTION OF SUBSTANTIAL JUSTICE.[22]

DBP insists that it is evident from the face of the complaint that respondent failed to state a cause of action. DBP contends that respondent's allegation of conspiracy between DBP and Gonzalo is bare and has no factual basis to stand on. Further, DBP claims that respondent has no legal right over the subject property as she did not inherit the same in the first place. At the time of death of respondent's mother, the property was not anymore owned by the latter and therefore not part of her estate. Thus, respondent has no legal right over the property and has no cause of action against DBP. And because she had no right to the property, the issuance of the TRO and injunctive writ were likewise improper. DBP also points to the following provisions of P.D. No. 385 that were allegedly violated with the issuance of the TRO and injunctive writ:

Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution

concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

Sec. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

X X X X

Respondent, for her part, counters that the CA was correct in dismissing the petition for certiorari for having been filed beyond the sixty (60)-day reglementary period. Also, respondent contends that the provisions of P.D. No. 385 relating to the proscription against the issuance of injunctive writs enjoining foreclosure sales are not applicable in the instant case. She points out that what the RTC enjoined is not an auction sale arising from the foreclosure of mortgage as the subject property had long been foreclosed and title thereto consolidated in the name of DBP. Rather, what the RTC enjoined was DBP's sale of the subject property through ordinary public bidding which is not within the ambit of P.D. No. 385.

The petition should be denied.

As correctly ruled by the CA, the petition for certiorari assailing the orders pertaining to the grant of the TRO and the writ of injunction were filed out of time. Notice of the issuance of the TRO was received by DBP on the same day it was granted, November 24, 1998; thus, the petition for certiorari should have been filed not later than January 23, 1999. The denial of the motion for reconsideration of the order granting the writ of injunction, on the other hand, was received by DBP on March 18, 1999 and thus, it had only until May 17, 1999 to file the petition for certiorari. DBP, however, filed its petition only on June 23, 1999.

As to DBP's motion to dismiss the complaint, we agree with the RTC and CA that the same should be denied, but not for the reason cited by said courts that it has been rendered moot and academic by DBP's filing of its answer but because the same lacks merit. Contrary to DBP's submission, a perusal of the allegations of the complaint clearly reveals respondent's cause of action against DBP. The complaint states,

X X X X

1.1 Plaintiff is the sole heir and successor-in-interest of the late Ma. Corazon Zarate-Romero, who died intestate on 6 March 1993.

X X X X

3. During her lifetime, plaintiff's predecessor-in-interest was the erstwhile owner pro-indiviso of that parcel of land, together with improvements, located in Dagupan City, which property used to be covered by Transfer Certificate of Title (TCT) No. 10070 of the Registry of Deeds of Dagupan City....

4. In or about the year 1975, defendant Zarate, who was co-owner of the subject property, secured various personal loan obligations from the defendant DBP in the aggregate amount of P2,000,000.00.

4.1 To secure such putative loan obligations of the defendant Zarate, the latter, who wielded moral ascendancy over his younger sister and herein plaintiff's predecessor-in-interest -- Ma. Corazon Zarate-Romero, cajoled and prevailed upon the latter to mortgage the entirety of the subject property in favor of defendant DBP,

including her one-half (1/2) pro-indiviso share in the same.

4.2 Accordingly, defendant Zarate assured the plaintiff's predecessor-in-interest that the mortgage would be for a brief period only and that he (defendant Zarate) would forthwith pay and settle in full all his personal loan obligations with the defendant DBP to ensure that said mortgage is cancelled in the soonest time possible.

5. At some point in time during the effectivity of the mortgage, however, defendant Zarate apparently saw an opportunity to claim the entirety of the subject property for himself, to the exclusion of plaintiff's predecessor-in-interest.

5.1 Emboldened by, and taking advantage of, the complete trust and confidence reposed upon him by the plaintiff's predecessor-in-interest anent the subject property, defendant Zarate conspired with the defendant DBP for the ostensible foreclosure of the subject property, with the end in view, however, of subsequently reacquiring the same for himself as sole owner.

6. Pursuant to such sinister plot hatched by defendants, defendant DBP foreclosed the subject property in September of 1983 and, thereafter, bought the same for itself in the sum of P2,253,101.00 during the auction sale conducted by the Deputy Sheriff of Pangasinan....

7. Significantly enough, and even before the lapse of the mortgagors' right of redemption over the subject property, the herein defendants entered into a Deed of Conditional Sale over the same, with the defendant DBP as seller, and the defendant Zarate as buyer....

7.1 Needless to state, all the aforescribed dealings, transactions and proceedings concerning the subject property -- from its fraudulent foreclosure up to the highly anomalous execution of the Deed of Conditional Sale over the same -- were concealed from plaintiff's predecessor-in-interest and even from the plaintiff herself after the death of her mother.

x x x x[23]

A cause of action is the act or omission by which a party violates a right of another.[24] A complaint states a cause of action when it contains three essential elements: (1) a right in favor of the plaintiff by whatever means and whatever law it arises; (2) the correlative obligation of the defendant to respect such right; and (3) the act or omission of the defendant violates the right of the plaintiff. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[25]

Evidently, all the above elements of a cause of action are alleged in the complaint: (1) the legal right of the respondent over the subject property foreclosed premised on the fact that she is the sole heir of one of the owners who is entitled to the right of redemption; (2) the correlative obligation of defendant DBP, as the foreclosing entity, to respect such right of redemption; and (3) the act or omission of the defendant in violation of the legal right, i.e., the act of DBP and its co-defendant Zarate to cause the ostensible foreclosure of the subject property and the subsequent execution of a deed of conditional sale between the defendants even prior to the lapse of redemption period to deprive respondent's mother of her right over the property.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated July 21, 2003 of the Court of Appeals in CA-G.R. SP No. 53825 is AFFIRMED.

No costs.

**SO ORDERED.**

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Sereno,[\*] JJ., concur.

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[\*] Designated additional member per Raffle dated August 8, 2011 in lieu of Associate Justice Mariano C. Del Castillo who recused himself due to prior action in the Court of Appeals.

[1] Rollo, pp. 36-46. Penned by Presiding Justice Cancio C. Garcia (now a retired member of this Court) with Associate Justices Eloy R. Bello, Jr. and Mariano C. Del Castillo (now a member of this Court) concurring.

[2] CA rollo, pp. 69-72.

[3] Id. at 105-117.

[4] Id. at 118-119.

[5] Id. at 57-68.

[6] Id. at 38-41.

[7] Id. at 41.

[8] Sec. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

In case a restraining order or injunction is issued, the borrower shall nevertheless be legally obligated to liquidate the remaining balance of the arrearages, paying ten percent (10%) of the arrearages outstanding as of the time of foreclosure, plus interest and other charges, on every succeeding thirtieth (30<sup>th</sup>) day after the issuance of such restraining order or injunction until the entire arrearages have been liquidated. These shall be in addition to the payment of amortizations currently maturing. The restraining order or injunction shall automatically be dissolved should the borrower fail to make any of the above-mentioned payments on due dates, and no restraining order or injunction shall be issued thereafter. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective charters and their respective contracts with their debtors, nor should this provision be construed as restricting the government financial institutions concerned from approving, solely at its own discretion, any restructuring, recapitalization, or any other arrangement that would place the entire account on a current basis, provided, however, that at least twenty percent (20%) of the arrearages outstanding at the time of the foreclosure is paid.

All restraining orders and injunctions existing as of the date of this Decree on foreclosure proceedings filed by said government financial institutions shall be considered lifted unless finally resolved by the court within sixty (60) days from date hereof.

[9] Requiring Government Financial Institutions to Foreclose Mandatorily All Loans with Arrearages, Including Interest and Charges, Amounting to at least Twenty Percent (20%) of the Total Outstanding Obligation.

[10] CA rollo, pp. 93-104.

[11] Id. at 42-53.

[12] Id. at 49, 53.

[13] Id. at 139-150.

[14] Id. at 130-136.

[15] Id. at 137-138.

[16] Id. at 54-55.

[17] Id. at 169-176.

[18] Id. at 177-182.

[19] Id. at 183-184.

[20] Id. at 56.

[21] Id. at 12-37.

[22] Rollo, p. 286.

[23] CA rollo, pp. 57-60.

[24] Section 2, Rule 2, 1997 Rules of Civil Procedure, as amended.

[25] See Heirs of Loreto C. Maramag v. Maramag, G.R. No. 181132, June 5, 2009, 588 SCRA 774, 784 and Bank of America NT & SA v. Court of Appeals, G.R. No. 120135, March 31, 2003, 400 SCRA 156, 167.

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