

SPOUSES FERNANDO TORRES AND IRMA TORRES, PETITIONERS, VS. AMPARO MEDINA AND THE EX-OFFICIO SHERIFF OF THE RTC OF QUEZON CITY, RESPONDENTS.

G.R. No. 166730. March 10, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the August 30, 2004 Decision[2] and January 18, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 75847.

The facts of the case:

On July 28, 1994, respondent Amparo Medina (Medina) wrote a letter[4] to the Office of the Sheriff, Regional Trial Court (RTC) of Quezon City, applying for the extrajudicial foreclosure of mortgage of the property of petitioner spouses Fernando and Irma Torres (Spouses Torres) which was covered by Transfer Certificate of Title No. RT-61056 (354973) and which is subject of a Deed of Mortgage[5] dated December 20, 1993.

On May 27, 1997, the Office of the Ex-Officio Sheriff issued a Notice of Sheriff's Sale[6] and, on June 30, 1997, sold at public auction the subject property to Medina being the highest bidder thereof. A Certificate of Sale[7] was thereafter issued to Medina.

On September 21, 1999, the Spouses Torres filed a Complaint[8] before the RTC of Quezon City for the declaration of nullity of the extrajudicial foreclosure of mortgage conducted by the Ex-Officio Sheriff. The same was docketed as Civil Case No. Q-99-38781.

In their Complaint, the Spouses Torres raised the following causes of action, to wit:

a)

the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;

b)

the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;

c)

the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";

d)

Since appellee sued appellants for violation of Batas Pambansa Blg. 22, there could arise a situation of double recovery of damages which is proscribed by law. If the extrajudicial foreclosure will be allowed and if appellants will be made to pay the amount of the checks subject of the criminal suit under B.P. Blg. 22, it would result in the unjust enrichment of appellee.[9]

On July 20, 2000, Medina filed a Motion to Dismiss[10] raising the grounds of res judicata and forum shopping. Medina argued that the Spouses Torres had filed an earlier Complaint[11] praying for the annulment of the real estate mortgage involving the same property and which was docketed as Civil Case No. Q-94-18962 before the RTC of Quezon City, Branch 216. Medina contended that said complaint was already dismissed as evidenced by the RTC's Decision[12] dated March 7, 1997.

On December 27, 2001, the RTC issued an Order[13] granting Medina's motion to dismiss the complaint. The RTC ruled that res judicata was present and that the Spouses Torres were guilty of forum shopping, to wit:

Thus, it is plain from the foregoing that the present action is identical to the case filed by plaintiffs against the defendant before the Regional Trial Court of Quezon City, Branch 216, hence, res judicata lies. The decision of the Regional Trial Court of Quezon City, Branch 216, dated March 7, 1997, has become final; the aforesaid court which rendered said decision had jurisdiction over the subject matter and the parties; the decision was on the merits; and there is an identity of parties, subject matter and causes of action between the present action and the case before the Regional Trial Court of Quezon City, Branch 216.

The Court also notes that while the plaintiffs here alleged separate causes of action in the instant complaint, they are actually using the very same grounds they have brought before Branch 216 of this Court to support their claim to annul the foreclosure proceedings. The validity of the real estate mortgage is again being assailed to ask for the annulment of the foreclosure proceedings conducted over the mortgaged property. It must be remembered that the validity of the real estate mortgage has been sustained by the decision in Civil Case No. 94-18962 which decision has already attained finality. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action. Plaintiffs cannot avoid the application of res judicata by simply varying the form of their action or by adopting a different method in presenting it.[14]

The Spouses Torres appealed to the CA, which, in similar fashion, ruled that res judicata had already set in, the dispositive portion of which reads:

WHEREFORE, the Order dated December 27, 2001 is hereby AFFIRMED and the appeal is DISMISSED. Costs against appellants.

SO ORDERED.[15]

The Spouses Torres then filed a Motion for Reconsideration[16] dated August 30, 2004, which was, however, denied by the CA in the Resolution[17] dated January 18, 2005.

Hence, herein petition, with the Spouses Torres raising the following assignment of errors, to wit:

A. THE COURT OF APPEALS GRAVELY ERRED WHEN IT IGNORED THAT THE CAUSE OF ACTION IN CIVIL CASE NO. Q-99-38781 AROSE MUCH LATER THAN THE CAUSE OF ACTION IN CIVIL CASE NO. Q-94-18962. HENCE, FORUM SHOPPING AND RES JUDICATA DO NOT APPLY.

A-1. ASSUMING WITHOUT ADMITTING THAT RES JUDICATA EXISTS IN THIS CASE, THE SAME WILL NOT BE HONORED IF ITS APPLICATION WOULD CONSTITUTE A SACRIFICE OF JUSTICE IN FAVOR OF TECHNICALITY;

B. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE CAUSES OF ACTION CANNOT BE IDENTICAL IF THE CAUSE OF ACTION IN ONE AROSE AFTER THE

JUDGMENT IN THE OTHER;

C. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE EXTRAJUDICIAL FORECLOSURE OF MORTGAGE INSTITUTED BY PRIVATE RESPONDENT AMPARO MEDINA CONTRAVENES THE EQUITABLE PRINCIPLE OF UNJUST ENRICHMENT CODIFIED UNDER ARTICLE 22 OF THE NEW CIVIL CODE, AND WOULD AMOUNT TO DOUBLE RECOVERY EVEN AS THE B.P. BLG. 22 VIOLATIONS ARE STILL PENDING IN THE METROPOLITAN TRIAL COURT OF QUEZON CITY;

D. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE PRIVATE RESPONDENT AMPARO MEDINA HAS ELECTED HER REMEDY WHEN SHE SUED PETITIONER FERNANDO TORRES ON A B.P. BLG. 22 VIOLATION, AND ENGAGED THE SERVICES OF A PRIVATE PROSECUTOR TO PROSECUTE THE SAME. THE FILING OF THE B.P. BLG. 22 VIOLATION BARS AND EXCLUDES THE REMEDY OF FORECLOSURE OF MORTGAGE.[18]

The petition is not meritorious.

At the crux of the controversy is the determination of whether or not res judicata bars the filing of Civil Case No. Q-99-38781.

Civil Case No. Q-94-18962 vis-a-vis Civil Case No. Q-99-38781

As borne from the records of the case, the Spouses Torres first instituted Civil Case No. Q-94-18962 before the RTC of Quezon City, Branch 216, which, among others, prayed for the nullity of the real estate mortgage, dated December 20, 1993.

On March 7, 1997, the RTC issued a Decision[19] dismissing the complaint thereby upholding the validity of the real estate mortgage, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. DISMISSING the plaintiffs' complaint for lack of merit;
2. Ordering the plaintiffs, spouses Fernando Torres and Irma Torres, to pay defendant Amparo Medina, the sum of FIFTY THOUSAND (P50,000.00) PESOS as and by way of attorney's fees and to pay the costs of suit.

SO ORDERED.[20]

The Spouses Torres appealed said Decision to the CA.

On February 18, 1998, the CA issued a Resolution[21] dismissing the appeal, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the appellants' motion for extension of time to file appellants' brief is hereby DENIED for being filed out of time. The appeal is hereby DISMISSED.

SO ORDERED.[22]

The Spouses Torres then filed a Motion for Reconsideration, which was, however, denied by the CA in the Resolution[23] dated August 6, 1998.

Aggrieved, the Spouses Torres then sought relief from this Court.

On July 5, 1999, the Court's First Division issued a Resolution[24] denying the petition of the Spouses Torres. On August 16, 1999, the First Division issued another Resolution[25] denying the motion for reconsideration. On

September 7, 1999, an Entry of Judgment[26] was rendered.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." [27] Res judicata lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. [28]

The elements of res judicata are:

- (1) the judgment sought to bar the new action must be final;
- (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
- (3) the disposition of the case must be a judgment on the merits; and
- (4) there must be as between the first and second action identity of parties, subject matter, and causes of action. [29]

In their petition, the Spouses Torres do not dispute the presence of the first three elements. They, however, dispute the presence of the last element, specifically arguing that the evidence necessary to establish the cause of action in Civil Case No. Q-99-38781 is different from that of Civil Case No. Q-94-18962. The Spouses Torres conclude that the evidence is not identical so as to place the causes of action within the prohibition based on res judicata. [30]

This Court is not persuaded.

To reiterate, in Civil Case No. Q-99-38781, the Spouses Torres raised the following causes of action:

- a)
the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;
- b)
the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;
- c)
the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";
- d)
Since appellee sued appellants for violation of Batas Pambansa Blg. 22, there could arise a situation of double recovery of damages which is proscribed by law. If the extrajudicial foreclosure will be allowed and if appellants will be made to pay the amount of the checks subject of the criminal suit under B.P. Blg. 22, it would result in the unjust enrichment of appellee. [31]

This Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of res judicata. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. [32]

This Court finds that the first three causes of action inevitably deal with the validity of the real estate mortgage. Although the Spouses Torres do not admit it, the conclusion is certain in that any affirmative relief that this Court may grant on said causes of action would affect the validity of the real estate mortgage; an issue which could no longer be revived, as the same has been settled.

In Civil Case No. Q-94-18962, the Spouses Torres already assailed the validity of the Real Estate Mortgage dated December 20, 1993 as evidenced from the reliefs sought for by them, to wit:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court to render judgment as follows:

- Declaring the x x x Deed of Real Estate Mortgage dated 20 December 1993 (Exhibit E) void;
- Declaring that x x x all RCBC checks issued pursuant to the Deed of Real Estate Mortgage dated 20 December 1993 as likewise void;
- Directing defendant Register of Deeds of Quezon City to cancel the annotation of the real estate mortgage in TCT No. RT-61056; x x x [33]

In dismissing the Complaint, the RTC decision in Civil Case No. 94-18962 was categorical in upholding the validity of the instrument, to wit:

The contention that the Deed of Real Estate Mortgage dated December 20, 1993 should also be annulled being the fruit of the previous voidable contracts deserves scant consideration. The same was found to have the essential elements of a valid contract x x x.

x x x x

Corollarily, the Deed of Real Estate Mortgage, dated December 20, 1993, being perfectly valid, defendant Amparo Medina has the right to its registration in her favor. x x x [34]

It bears stressing that the doctrine of res judicata actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept - conclusiveness of judgment - states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required, but merely identity of issues.[35]

Based on the foregoing, the validity of the real estate mortgage can no longer be attacked, more so because the decision in Civil Case No. Q-94-18962 has become final and Entry of Judgment has already been entered in our books.

It therefore goes without saying that the foreclosure of the mortgage is a right given to Medina as the same is embodied in the Deed of Real Estate Mortgage, to wit:

x x x x

That it is further understood that if the MORTGAGOR shall well and truly perform the obligation above contracted then this Mortgage shall be null and void; otherwise, it shall remain in full force and effect and may be foreclosed extrajudicially under Act 3135 as amended.[36]

Thus, this Court finds no error in the decisions of the lower court and the appellate court declaring that there exists, in fact, *res judicata*. As succinctly put in *FELS Energy, Inc. v. Province of Batangas*,[37] *res judicata*, as a ground for dismissal, is based on two grounds, namely:

(1) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation --- *republicae ut sit litium*; and (2) the hardship on the individual of being vexed twice for the same cause --- *nemo debet bis vexari et eadem causa*. A conflicting doctrine would subject the public peace and quiet to the will and dereliction of individuals and prefer the regalement of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[38]

Anent the fourth cause of action in Civil Case No. Q-99-38781, this Court finds that the Spouses Torres had already raised, in Civil Case No. 94-18962, the fact that eleven (11) counts of Batas Pambansa Bilang (B.P. Blg.) 22 violations are pending with Branch 36, Metropolitan Trial Court (MeTC), Quezon City.[39] Thus, the RTC is correct in its observation that *res judicata* lies, as the Rizal Commercial Banking Corporation (RCBC) checks referred to in the complaint in Civil Case No. Q-99-38781 are the very same documents subject of Civil Case No. Q-94-18962.[40]

The foregoing findings notwithstanding, the Spouses Torres contend that the election of Medina from sue them for violation of B.P. Blg. 22 bars Medina from the remedy of foreclosure of mortgage. The Spouses Torres, citing *Bank of America NT & SA v. American Realty Corporation (Bank of America)*,[41] thus argue:

x x x the remedies available to the mortgage creditor are deemed alternative and not cumulative. Notably, an election of one remedy operates as a waiver of the other. For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.[42]

The argument of the Spouses Torres is misplaced. The doctrine found in *Bank of America*, and in related cases, finds no application to the case at bar, as the filing of a B.P. Blg. 22 case is not the "collection suit" contemplated by law and jurisprudence, which bars a mortgagee from later on electing to foreclose the mortgaged property.

Section 1 of B.P. Blg. 22 provides:

Section 1. Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

It bears stressing that in *Que v. People*,[43] this Court stated that the clear intention of the framers of B.P. Blg. 22 is to make the mere act of issuing a worthless check *malum prohibitum*. In prosecutions for violation of B.P. Blg.

22 therefore, prejudice or damage is not a pre-requisite for conviction. In the later case of *People v. Nitafan*,^[44] this Court ruled that the agreement surrounding the issuance of the checks need not be first looked into since the law has clearly provided that the mere issuance of any kind of check, regardless of the intent of the parties, i.e., whether the check is intended merely to serve as a guarantee or deposit, but which check is subsequently dishonored, makes the person who issued the check liable. The intent of the law is to curb the proliferation of worthless checks as a means of payment of obligations.

That B.P. Blg. 22 is not the "collection suit" contemplated by law can be seen by the fact that the law seeks to punish the mere issuance of a "bum" check notwithstanding the presence of damage or prejudice to the offended party.

Lastly, the Spouses Torres also argue that the equitable principle of unjust enrichment bars the extrajudicial foreclosure of the mortgage, in the wise:

If private respondent Amparo Medina were to be allowed the extrajudicial foreclosure that she caused to be conducted, and eventually owned the properties covered by TCT No. RT-61056 (354973) and at the same time is awarded the sum of Php 4,730,000.00 (including interest) in the eleven (11) counts of B.P. Blg. 22 violations now pending at the Metropolitan Trial Court of Quezon City, Branch 36, then she would have recovered twice the same loan transaction that took place in the first quarter of 1993. Private respondent Amparo Medina will be twice richer.^[45]

Again, these arguments are misplaced. In *Lazaro v. Court of Appeals*,^[46] notwithstanding petitioner Lazaro's claim that she had already paid her obligation, this Court still found her liable for violation of B.P. Blg. 22, thus:

That the obligation of Marlyn Lazaro to complainant Chua has been extinguished by the conveyance by the former of her car to Chua does not also justify the cancellation of the indemnity awarded. It should be noted that BP 22 provides that a fine of not less than but not more than double the amount of the dishonored check may be imposed by the court. In the case of *Esler vs. Ledesma*, this Court stated that a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime. Clearly, the fine provided for in BP 22 was intended as an additional penalty for the act of issuing a worthless check. This is the only logical conclusion, since the law does not require that there be damage or prejudice to the individual complainant by reason of the issuance of the worthless check.^[47]

There can be no double compensation as the indemnity award is distinct from the underlying obligation of the check. Thus, a person guilty of violating B.P. Blg. 22 may be subject to imprisonment or a fine at the discretion of the court and the fact that the underlying obligation has been paid is of no moment. There will be instances, of course, that the court will also order the guilty party to pay the face value of the check if the underlying obligation has not yet been satisfied; however, the same will not apply to the case at bar, as Medina has already been compensated for the loan after foreclosing the mortgage. The Spouses Torres will, therefore, only have to pay a fine or suffer imprisonment if found guilty in their pending cases for violation of B.P. Blg. 22 subject to the rule of preference embodied in Supreme Court Administrative Circular 12-2000.^[48]

The Spouses Torres argue that *res judicata* should not apply if it will sacrifice justice to technicality.^[49] Indeed, as cited by the Spouses Torres, this Court has on occasion disregarded the application of *res judicata*, however, this Court finds that the same consideration should not be given in herein petition.

In the first place, the Spouses Torres only filed their complaint in Civil Case No. Q-99-38781 after more than two years had already lapsed from the time the ex-officio sheriff sold the property in question at public auction. The foreclosure proceeding was an action in rem, and therefore, the Spouses Torres cannot feign knowledge thereof. More importantly, the Spouses Torres were not completely left without any remedy as they still had the right of redemption, which expired one year from and after the date of the registration of the Certificate of Sale. In the

absence of evidence to the contrary, this Court must assume that no attempt to redeem the property was undertaken by the Spouses Torres and that they simply allowed their right and remedy to lapse by their inaction.

In addition, the Spouses Torres have already lost their right to question the validity of the real estate mortgage, for most part due to the negligence of their counsel.[50] More importantly, the decision upholding the validity of the real estate mortgage is already final; hence, the same can no longer be questioned in another proceedi

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