

HOME SAVINGS BANK & TRUST CO., PETITIONER, VS. HON. COURT OF APPEALS, CESAR D. DE ASIS AND DAISY B. DE ASIS, RESPONDENTS.

G.R. No. 87992. October 06, 1994

Ponente: VITUG, J.

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VITUG, J.:

This petition for certiorari assails the decision and resolution, dated 10 February 1989 and 14 April 1989, respectively, of the Court of Appeals. The dispositive portion of the decision referred to reads:

"WHEREFORE, (1) the order dismissing the complaint as against defendants Trident Mining Corporation, Olympic Mines Corporation, and Gregorio B. Licaros, is hereby declared to have been issued with grave abuse of discretion or in excess of jurisdiction; and is, therefore, hereby set aside. (2) Let this case be remanded to the lower court for continuation of the proceedings against the aforementioned defendants and for reception of evidence to determine whether the defendants-appellees Abelardo B. Licaros, Concepcion B. Licaros, and Home Savings Bank & Trust Co., Inc., still owe plaintiffs-appellants any balance resulting from compensation of their mutual obligations, as well as to determine whether the latter are entitled to be awarded the damages prayed for and, if so, the amounts thereof."[1]

The assailed resolution, in turn, states:

"After going over the Motion for Reconsideration filed by defendant-appellee Home Savings Bank & Trust Company thru counsel, seeking to set aside the decision in this case, we find no cogent reason to change, modify and/or otherwise reverse the decision, considering that the matters raised in the motion had already been considered and resolved in the decision; and therefore, the motion is hereby DENIED."[2]

The case arose when, sometime in February 1984, herein private respondents filed with the court a quo a complaint against Home Savings Bank & Trust Company, Trident Mining & Industrial Corporation, Olympic Mines & Development Corporation, Concepcion B. Licaros, Gregorio B. Licaros and Abelardo B. Licaros. The complaint prayed that -

"1. On the First Cause of Action, declaring that the obligation of Plaintiffs to Defendant Home in the amount of P636,537.80 has been fully paid by the compensation or off-setting of said obligation with the obligations of defendants TRIDENT and OLYMPIC to Plaintiff Cesar D. De Asis. In the event of such compensation or off-setting, there remains a balance due to said Plaintiff, ordering the defendants TRIDENT and OLYMPIC and the Licaros Family, jointly and severally, to pay such balance to Plaintiffs.

"2. On the Second Cause of Action, declaring the foreclosure of mortgage and the forthcoming sale in public auction of Plaintiffs' property null and void, being made in violation of the provisions of Act. No. 3135, as amended.

"3. On the Third Cause of Action, condemning defendants HOME and the Licaros Family, jointly and severally, to pay Plaintiffs the sum of P500,000.00 as moral damages.

"4. On the Fourth Cause of Action, condemning the defendants HOME and Licaros Family, jointly and severally, to pay Plaintiffs the sum of P100,000.00 as exemplary damages.

"5. On the Fifth Cause of Action, condemning the defendants HOME and Licaros Family, jointly and severally, to pay Plaintiffs the sum of not less than P50,000.00 as actual and compensatory damages, representing their expenses, attorney's fees and costs of this suit."[3]

The complaint sought the issuance of a writ of preliminary injunction to enjoin the sheriff of Quezon City and Home Savings Bank and Trust Company from any attempt to foreclose plaintiffs' property until after the case would have been finally decided.

Before trial on the merits could commence, the complaint, on motion of two of the defendants, namely, Abelardo B. Licaros and Concepcion B. Licaros, was ordered to be dismissed by the Regional Trial Court of Quezon City.

On appeal, the Court of Appeals set aside the order of dismissal, ratiocinating and concluding thusly:

"In the case at bar, since defendants Abelardo B. Licaros and Concepcion B. Licaros hypothetically admitted the facts alleged in the complaint, and our reading of the complaint shows that indeed, the complaint did state a cause of action against the defendants, we have no other recourse, therefore, but to grant the relief prayed for in the complaint.

"In the order denying plaintiffs' motion for reconsideration of its previous order dismissing the complaint, the lower court, by way of justifying the dismissal, stated categorically that, since plaintiffs sought to pierce the defendants' veil of the corporate fiction and to treat all of them as one and the same person, it had therefore treated the questioned motion to dismiss as benefiting all the defendants.

"Proceeding from such premise, then, the other defendants -- i.e. Home Savings Bank and Trust Company, Inc., Trident Mining and Industrial Corporation, Olympic Mines and Development Corporation, and Gregorio B. Licaros -- who did not join defendants Abelardo B. Licaros and Concepcion B. Licaros in filing said motion to dismiss, should also be held liable to plaintiffs, since these other defendants, 'treated as one and the same person,' were considered to have joined the motion and therefore to have also been favorably affected by the dismissal of the case.

"That ruling of the lower court, unfortunately, has no factual basis insofar as the other defendants are concerned as the record does not show that they had given any indication that they had joined or at least endorsed the motion in question. Therefore, insofar as these other defendants are concerned who did not file a similar motion, the lower court could not properly dismiss the action *motu proprio*, since for the lower court to do so without any formal motion, as it did affecting the other defendants, would be to act against the plaintiffs with grave abuse of discretion, if not in excess of jurisdiction.

"x x x x x x x x

"With respect to defendants Abelardo B. Licaros, Concepcion B. Licaros, and Home Savings Bank, whom we deem to have admitted the fact that appellants' obligation in favor of Home Savings Bank had been compensated by the obligations of Trident Mining and Olympic Mines in favor of appellants, their liability cannot still be determined since appellants themselves have no knowledge whether or not as the result of such compensation there still remains a balance in their favor. Hence, this matter has yet to be proved or disproved during trial in the lower court.

"As a consequence of the admissions by appellees Abelardo B. Licaros, Concepcion B. Licaros, and Home Savings Bank of the allegation in the complaint that the foreclosure of mortgage and impending public auction of appellants' property are null and void because such proceedings violated the provisions of Act No. 3135, as amended, necessarily such foreclosure and public auction should be set aside until after outcome of the main case against defendants Trident Mining, Olympic Mines, and Gregorio B. Licaros, where their respective

liability, if any, shall have been determined, considering that appellants sought to hold all the defendants liable jointly and severally.

"With regard to awarding moral damages, exemplary damages, actual damages, attorney's fees and litigation expenses -- which appellants also sought to recover from all the defendants jointly and severally --, the resolution of this matter may well be left to the discretion of the lower court where appellants can present evidence to substantiate the amounts they are praying for.

"Inevitably, then, the case has to be remanded for reception of evidence to establish the balance of amount, if any, claimed by appellants as resulting from the compensation of credits or obligations between the parties; and also to determine whether the other defendants Trident Mining, Olympic Mines and Gregorio B. Licaros, are liable to appellants and, if so, whether their liability shall be considered joint and several among themselves."[4]

The motion for reconsideration filed by Home Savings Bank having been denied, petitioner went to this Court.

In the instant petition for certiorari, Home Savings Bank & Trust Co., faults the appellate court thusly:

"1. THAT THE DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE NOT IN ACCORDANCE WITH LAW AND THE PREVAILING JURISPRUDENCE ON THE MATTER;

"2. THAT THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF ITS DECISION DATED FEBRUARY 10, 1989, ERRONEOUSLY RULING AS FOLLOWS:

"A. REMANDING THE CASE TO THE LOWER COURT FOR FURTHER PROCEEDINGS AS AGAINST OTHER DEFENDANTS ONLY AND WITH THE SPECIFIC EXCEPTION OF THE HEREIN PETITIONER THUS DENYING DUE PROCESS OF LAW TO THE LATTER.

"B. THE RESPONDENT COURT OF APPEALS DEEMED THE PETITIONER TO HAVE ACTUALLY ADMITTED THE PRIVATE RESPONDENTS' ALLEGATIONS IN THE COMPLAINT INSTEAD OF CONSIDERING THEM MERELY AS HYPOTHETICAL ADMISSIONS.

"C. AS A CONSEQUENCE OF THIS OBSERVATION OF THE RESPONDENT COURT OF APPEALS, IT SET ASIDE THE FORECLOSURE OF MORTGAGE AND THE PUBLIC AUCTION OF THE SUBJECT PROPERTY EVEN WITHOUT DUE HEARING DULY CONDUCTED THEREON.

We rule for petitioner.

While we agree with the appellate court that the court a quo has erred in the precipitate dismissal of the complaint, petitioner, however, cannot be thereby denied its day in court. In the resolution of a motion to dismiss, the truth of the facts alleged in the complaint are, it is true, theoretically admitted, but this admission, it must be emphasized, is merely hypothetical[5] and only for the purpose of resolving the motion. In case of denial, the movant is not to be deprived of the right to submit its own case and to present evidence to contrapose the allegations recited in the complaint. Neither will the grant of the motion to dismiss by a court a quo and the ultimate reversal thereof by an appellate court have the effect of foreclosing such a right. This rule must not be confused with a demurrer to evidence under Section 1, Rule 35, of the Rules of Court[6] which, if granted by the trial court, will have the effect of disentiing the movant to submit further evidence and of allowing the appellate court, on appeal, to decide the case on its merits on the basis of the evidence theretofore adduced.

WHEREFORE, the decision of the Court of Appeals, dated 10 February 1989, and its resolution of 14 April 1989, are MODIFIED by allowing petitioner to have its day in court conformably with our above opinion. No costs in this instance.

SO ORDERED.

Romero and Melo, JJ., concur.

Feliciano, (Chairman), and Bidin, JJ., on leave.

[1] Rollo, pp. 29-30.

[2] Rollo, p. 32.

[3] Rollo, pp. 22-23.

[4] Rollo, pp. 27-29.

[5] See *De Dios vs. Bristol Laboratories (Phils.) Inc.*, 55 SCRA 349.

[6] Section 1. Effect of judgment on demurrer to evidence. -- After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to represent evidence in his behalf.

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