



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

VIRGINIA M. VENZON,  
*Petitioner,*

G.R. No. 178031

Present:

- versus -

CARPIO, *Chairperson,*  
PERALTA,\*  
DEL CASTILLO,  
PEREZ, *and*  
PERLAS-BERNABE, *JJ.*

RURAL BANK OF BUENAVISTA  
(AGUSAN DEL NORTE), INC.,  
represented by LOURDESITA  
E. PARAJES,  
*Respondent.*

Promulgated:  
AUG 28 2013


X ----- X

DECISION

DEL CASTILLO, *J.:*

Before us is a Petition for Review on *Certiorari*<sup>1</sup> questioning the December 14, 2006 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 01341-MIN which dismissed the Petition in said case, as well as its May 7, 2007 Resolution<sup>3</sup> denying reconsideration thereof.

*Factual Antecedents*

On January 28, 2005, petitioner Virginia M. Venzon filed a Petition<sup>4</sup> to nullify foreclosure proceedings and Tax Declaration Nos. 96-GR-06-003-7002-R and 96-GR-06-003-7003-R issued in the name of respondent Rural Bank of Buenavista (Agusan del Norte), Inc. The case<sup>5</sup> was docketed as Civil Case No. 

\* Per Special Order No. 1525 dated August 22, 2013.

<sup>1</sup> *Rollo*, pp. 3-33.

<sup>2</sup> *CA rollo*, pp. 48-51; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

<sup>3</sup> *Id.* at 71-73.

<sup>4</sup> *Id.* at 12-14.

<sup>5</sup> Entitled "Virginia M. Venzon, Petitioner, versus Rural Bank of Buenavista (Agusan del Norte), Inc., represented by Lourdesita Espina-Chan and Casiano A. Angchangco, Jr., Respondent."

5535 and raffled to Branch 5 of the Regional Trial Court (RTC) of Butuan City. Petitioner alleged that in 1983 she and her late spouse, George F. Venzon, Sr., obtained a ₱5,000.00 loan from respondent against a mortgage on their house and lot in Libertad, Butuan City, covered by Tax Declaration Nos. 28289 and 42710 issued in their names, which were later on replaced with Tax Declaration Nos. 96 GR-06-003-2884-R and 96 GR-06-003-2885-R; that she was able to pay ₱2,300.00, thus leaving an outstanding balance of only ₱2,370.00; that sometime in March 1987, she offered to pay the said balance in full, but the latter refused to accept payment, and instead shoved petitioner away from the bank premises; that in March 1987, respondent foreclosed on the mortgage, and the property was sold at auction for ₱6,472.76 to respondent, being the highest bidder; that the foreclosure proceedings are null and void for lack of notice and publication of the sale, lack of sheriff's final deed of sale and notice of redemption period; and that she paid respondent ₱6,000.00 on October 9, 1995, as evidenced by respondent's Official Receipt No. 410848<sup>6</sup> issued on October 9, 1995.

In its Answer with Counterclaims,<sup>7</sup> respondent claimed that petitioner did not make any payment on the loan; that petitioner never went to the bank in March 1987 to settle her obligations in full; that petitioner was not shoved and driven away from its premises; that the foreclosure proceedings were regularly done and all requirements were complied with; that a certificate of sale was issued by the sheriff and duly recorded in the Registry of Deeds; that petitioner's claim that she paid ₱6,000.00 on October 9, 1995 is utterly false; that petitioner's cause of action has long prescribed as the case was filed only in 2005 or 18 years after the foreclosure sale; and that petitioner is guilty of laches. Respondent interposed its counterclaim for damages and attorney's fees as well.

In her Reply,<sup>8</sup> petitioner insisted that the foreclosure proceedings were irregular and that prescription and laches do not apply as the foreclosure proceedings are null and void to begin with.

### ***Ruling of the Regional Trial Court***

On July 13, 2006, the trial court issued a Resolution<sup>9</sup> dismissing Civil Case No. 5535. It held that –

The plaintiff, however, may have erroneously relied the [sic] mandatorily [sic] requirement of the aforestated provision of law upon failure to consider that the other party is a Rural Bank. Under the R.A. No. 720 as amended, (Rural

---

<sup>6</sup> CA *rollo*, p. 16.

<sup>7</sup> Id. at 20-26.

<sup>8</sup> Id. at 35-36.

<sup>9</sup> Id. at 40-41; penned by Augustus L. Calo.

Bank Act) property worth exceeding ₱100,000.00 [sic] is exempt from the requirement of publication. This may have been the reason why the foreclosure prosper [sic] without the observance of the required publication. Moreover, neither in the said applicable laws provide [sic] for the impairment of the extrajudicial foreclosure and the subsequent sale to the public. The Court ruled in *Bonnevie, et al. vs. CA, et al.* that Act [N]o. 3135 as amended does not require personal notice to the mortgagor. In the same view, lack of final demand or notice of redemption are [sic] not considered indispensable requirements and failure to observe the same does not render the extrajudicial foreclosure sale a nullity.<sup>10</sup>

In other words, the trial court meant that under the Rural Banks Act, the foreclosure of mortgages covering loans granted by rural banks and executions of judgments thereon involving real properties levied upon by a sheriff shall be exempt from publication where the total amount of the loan, including interests due and unpaid, does not exceed ₱10,000.00.<sup>11</sup> Since petitioner's outstanding obligation amounted to just over ₱6,000.00 publication was not necessary.

Petitioner moved for reconsideration,<sup>12</sup> but in the September 6, 2006 Resolution,<sup>13</sup> the trial court denied the same.

### ***Ruling of the Court of Appeals***

Petitioner went up to the CA *via* an original Petition for *Certiorari*.<sup>14</sup> On December 14, 2006, the CA issued the first assailed Resolution<sup>15</sup> dismissing the Petition. It held that petitioner's remedy should have been an appeal under Rule 41 of the Rules of Court since the July 13, 2006 Resolution is a final order of dismissal. Petitioner received the Resolution denying her Motion for

---

<sup>10</sup> Id. at 41.

<sup>11</sup> Section 5 of Republic Act No. 720 (Rural Banks Act), as amended by Batas Pambansa Blg. 65, provides as follows:

Section 5. x x x

**The foreclosure of mortgages covering loans granted by Rural Banks and executions of judgments thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, including interests due and unpaid, does not exceed Ten Thousand Pesos (₱10,000.00) or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions.** It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the most conspicuous area of the Municipal Building, the Rural Bank and the Barangay Hall where the land mortgaged is situated during the period of sixty days immediately preceding the public auction or execution of judgment. Proof of publications as required herein shall be accomplished by affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case: Provided, That when a homestead or free patent land is foreclosed, the homesteader or free patent holder, as well as his heirs shall have the right to redeem the same within two years from the date of foreclosure in the case of land not covered by a Torrens title or two years from the date of registration of the foreclosure in the case of land covered by a Torrens title: Provided, finally, That in the case of borrowers who are mere tenants, the produce corresponding to their share may be accepted as security.

<sup>12</sup> CA *rollo*, pp. 43-44.

<sup>13</sup> Id. at 46.

<sup>14</sup> Id. at 3-9.

<sup>15</sup> Id. at 48-51.

Reconsideration on September 18, 2006;<sup>16</sup> but she filed the Petition for *Certiorari* on October 25, 2006 when she should have interposed an appeal on or before October 3, 2006. Having done so, her Petition may not even be treated as an appeal for the same was belatedly filed.

The CA added that the Petition does not provide a sufficient factual background of the case as it merely alleges a chronology of the legal remedies she took before the trial court which does not comply with the requirement under Section 3 of Rule 46.<sup>17</sup>

Petitioner moved for reconsideration<sup>18</sup> by submitting a rewritten Petition. However, in a Resolution dated May 7, 2007, the CA denied the same, hence the present Petition.

### Issues

Petitioner submits the following assignment of errors:

#### I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* THEREBY PREVENTING THE COURT FROM FINDING OUT THAT ACTUALLY NO EXTRAJUDICIAL FORECLOSURE WAS CONDUCTED BY THE OFFICE OF THE PROVINCIAL SHERIFF ON PETITIONER'S PROPERTY AT THE INSTANCE OF THE PRIVATE RESPONDENT.

#### II

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS REVERSIBLY ERRED IN NOT DISREGARDING TECHNICALITIES IN ORDER TO ADMINISTER SUBSTANTIAL JUSTICE TO THE PETITIONER.<sup>19</sup>

### *Petitioner's Arguments*

Petitioner claims that no extrajudicial foreclosure proceedings ever took place, citing a February 2, 2005 Certification issued by the Office of the Clerk of Court of Butuan City stating that the record pertaining to the foreclosure

---

<sup>16</sup> Id. at 4.

<sup>17</sup> Sec. 3. Contents and filing of petition; effect of non-compliance with requirements.

The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

x x x x

<sup>18</sup> CA *rollo*, pp. 55-61.

<sup>19</sup> *Rollo*, pp. 24, 27.

proceedings covering her property “could not be found [in spite] of diligent efforts to find the same.”<sup>20</sup> And because no foreclosure proceedings took place, there could not have been notice and publication of the sale, and no sheriff’s certificate of sale. For this reason, she claims that the CA erred in dismissing her case.

Petitioner adds that, technicalities aside, a Petition for *Certiorari* is available to her in order to prevent the denial of her substantial rights. She also argues that her payment to respondent of the amount of ₱6,000.00 in 1995 should be considered as a valid redemption of her property.

### ***Respondent’s Arguments***

For its part, respondent merely validates the pronouncements of the CA by citing and echoing the same, and holding petitioner to a strict observance of the rules for perfecting an appeal within the reglementary period, as it claims they are necessary for the orderly administration of justice,<sup>21</sup> as well as that which requires that only questions of law may be raised in a Petition for Review on *Certiorari*.

### **Our Ruling**

The Court denies the Petition.

The Court finds no error in the CA’s treatment of the Petition for *Certiorari*. The trial court’s July 13, 2006 Resolution dismissing the case was indeed to be treated as a final order, disposing of the issue of publication and notice of the foreclosure sale – which is the very core of petitioner’s cause of action in Civil Case No. 5535 – and declaring the same to be unnecessary pursuant to the Rural Banks Act, as petitioner’s outstanding obligation did not exceed ₱10,000.00, and thus leaving petitioner without basis to maintain her case. This constitutes a dismissal with the character of finality. As such, petitioner should have availed of the remedy under Rule 41, and not Rule 65.

The Court is not prepared to be lenient in petitioner’s case, either. Civil Case No. 5535 was instituted only in 2005, while the questioned foreclosure proceedings took place way back in 1987. Petitioner’s long inaction and commission of a procedural *faux pas* certainly cannot earn the sympathy of the Court.

Nor can the Court grant the Petition on the mere allegation that no foreclosure proceedings ever took place. The February 2, 2005 Certification

---

<sup>20</sup> Id. at 25.

<sup>21</sup> Citing *Ditching v. Court of Appeals*, 331 Phil. 665, 678 (1996).

issued by the Office of the Clerk of Court of Butuan City to the effect that the record of the foreclosure proceedings could not be found is not sufficient ground to invalidate the proceedings taken. Petitioner herself attached the Sheriff's Certificate of Sale<sup>22</sup> as Annex "A" of her Petition in Civil Case No. 5535; this should belie the claim that no record exists covering the foreclosure proceedings. Besides, if petitioner insists that no foreclosure proceedings took place, then she should not have filed an action to annul the same since there was no foreclosure to begin with. She should have filed a different action.

However, petitioner is entitled to a return of the ₱6,000.00 she paid to respondent in 1995. While this may not be validly considered as a redemption of her property as the payment was made long after the redemption period expired, respondent had no right to receive the amount. In its Answer with Counterclaims in Civil Case No. 5535, respondent simply alleged therein that –

**10. Defendant DENIES the allegations under paragraph 10 of the petition for being utterly false, highly self-serving and patently speculative, the truth being ---**

- Assumption cannot be had that there was an alleged foreclosure of the then property of the petitioner for the truth of the matter is that a foreclosure proceeding was duly conducted, which fact remains undisputable for so many years now.
- **Without necessarily admitting that payment of ₱6,000.00 was made**, the same however could hardly and could never be considered as redemption price for the following reasons ---
  - The redemption period had long lapsed when the payment of ₱6,000.00 was allegedly made. Thus, there is no point talking about redemption price when the redemption period had long been gone at the time the alleged payment was made.
  - Even x x x granting, without conceding, that the amount of ₱6,000.00 was a redemption price, said amount, however, could not constitute as a legal redemption price since the same was not enough to cover the entire redemption price as mandated by the rules and laws.<sup>23</sup> (Emphases supplied)

Interestingly, respondent did not deny being the issuer of Official Receipt No. 410848. Instead, it averred that petitioner's payment to it of ₱6,000.00 was *false and self-serving*, but in the same breath argued that, *without necessarily admitting that payment of ₱6,000.00 was made*, the same cannot be considered as redemption price.

---

<sup>22</sup> CA rollo, p. 15.

<sup>23</sup> Id. at 22. Emphases supplied.

By making such an ambiguous allegation in its Answer with Counterclaims, respondent is deemed to have admitted receiving the amount of ₱6,000.00 from petitioner as evidenced by Official Receipt No. 410848, which amount under the circumstances it had no right to receive. “If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted.”<sup>24</sup> “Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a ‘negative pregnant’ exists, and only the qualification or modification is denied, while the fact itself is admitted.”<sup>25</sup> “A denial in the form of a negative pregnant is an ambiguous pleading, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied.”<sup>26</sup> “[P]rofession of ignorance about a fact which is patently and necessarily within the pleader’s knowledge, or means of knowing as ineffectual, [is] no denial at all.”<sup>27</sup> In fine, respondent failed to refute petitioner’s claim of having paid the amount of ₱6,000.00.

Since respondent was not entitled to receive the said amount, as it is deemed fully paid from the foreclosure of petitioner’s property since its bid price at the auction sale covered all that petitioner owed it by way of principal, interest, attorney’s fees and charges,<sup>28</sup> it must return the same to petitioner. “If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.”<sup>29</sup> Moreover, pursuant to Circular No. 799, series of 2013 of the *Bangko Sentral ng Pilipinas* which took effect July 1, 2013, the amount of ₱6,000.00 shall earn interest at the rate of 6% *per annum* computed from the filing of the Petition in Civil Case No. 5535 up to its full satisfaction.

**WHEREFORE**, premises considered, the Petition is **DENIED**. The December 14, 2006 and May 7, 2007 Resolutions of the Court of Appeals in CA-G.R. SP No. 01341-MIN are **AFFIRMED**.

However, respondent Rural Bank of Buenavista (Agusan del Norte), Inc. is **ORDERED** to return to petitioner Virginia M. Venzon or her assigns the amount of ₱6,000.00, with interest at the rate of 6% *per annum* computed from the filing of the Petition in Civil Case No. 5535 up to its full satisfaction.

---

<sup>24</sup> *Bañares v. Atty. Barican*, 157 Phil. 134, 138 (1974).

<sup>25</sup> *Galofa v. Nee Bon Sing*, 130 Phil. 51, 54 (1968), citing *Ison v. Ison*, 115 SW 2d. 330, 272 Ky. 836 and 28 Words & Phrases 314.

<sup>26</sup> *Id.*, citing 41 Am. Jur. 429.

<sup>27</sup> *Vergara, Sr. v. Judge Suelto*, 240 Phil. 719, 730 (1987), citing Moran, Comments on the Rules, 1970 ed., Vol. 1, p. 335; *J.P. & Sons, Inc. v. Lianga Industries, Inc.*, 139 Phil. 77, 83 (1969); *Philippine Advertising Counsellors, Inc. v. Hon. Revilla*, 152 Phil. 213, 222 (1973); *Gutierrez v. Court of Appeals*, 165 Phil. 752, 757 (1976).

<sup>28</sup> CA rollo, p. 15.


<sup>29</sup> CIVIL CODE, Article 2154.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice*