



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

PHILIPPINE NATIONAL BANK
Petitioner,

- versus -

SPS. VICTORIANO & JOVITA
FARICIA RIVERA,
Respondents.

G.R. NO. 189577

Present:
VELASCO, JR., *J.*, Chairperson
BRION,*
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

April 20, 2016

x ----- x

DECISION

JARDELEZA, *J.*:

Before us is a Petition for Review on *Certiorari* assailing the Decision dated June 19, 2009¹ and the Resolution dated September 11, 2009² of the Court of Appeals (CA). The assailed decision and resolution set aside the Orders dated October 25, 2006³ and January 9, 2007⁴ of the Regional Trial Court, Branch 272, Marikina City (RTC) which dismissed the Complaint for Annulment of Sheriff's Sale with Damages⁵ filed by the respondents.

The Facts

On September 18, 1995, the Spouses Victoriano and Jovita Faricia Rivera (Spouses Rivera) executed a real estate mortgage⁶ in favor of the

* Designated as additional Member per Raffle dated December 2, 2009.

¹ Penned by CA Associate Justice Fernanda Lampas-Peralta, with Associate Justices Andres B. Reyes, and Apolinario D. Bruselas, Jr. concurring.

² *Id.* at 48.

³ *Id.* at 157-159.

⁴ *Id.* at 160.

⁵ *Id.* at 119-122.

⁶ *Id.* at 66-72.

CONTINUED TRUE COPY
[Signature]
VELASCO, JR., *J.*
Chairperson
JUN 14 2016

Philippine National Bank (PNB) over a parcel of land (land) covered by Transfer Certificate of Title (TCT) No. 288169⁷ of the Register of Deeds of Marikina City.

The mortgage was executed to secure the payment of the housing loans⁸ and revolving credit line⁹ obtained by the Spouses Rivera from PNB. The mortgage was eventually foreclosed and the land was sold at public auction.¹⁰

On December 28, 2005, the Spouses Rivera filed a Complaint for Annulment of Sheriff's Sale with Damages (Complaint) against PNB and Julia Coching Sosito (Sosito), alleging that: 1) the Spouses Rivera mortgaged the land in favor of PNB; 2) the land was sold through public auction on September 9, 2004 by Sosito, sheriff of Branch 272, RTC Marikina City; 3) the Spouses Rivera did not receive the notice of the auction sale as it was sent to the wrong address at 26 Verdi Street, Ideal Subdivision, Fairview, Quezon City when in fact, PNB knew the Spouses' correct address; and 4) had the Spouses been informed of the auction sale, they would have informed Sosito that they had already paid their obligation to PNB.¹¹ The Spouses Rivera prayed that they be awarded moral and exemplary damages, plus attorney's fees.¹²

Sosito did not file any answer or responsive pleading. On the other hand, PNB filed a Motion to Dismiss¹³ arguing that the Spouses Rivera had no cause of action against it because they were duly notified of the auction sale, to wit:

In the case at bar, plaintiffs miserably failed to establish a cause of action in their case against defendant as **all transactions made between them and the Bank were all in accordance with long standing and accepted banking practices, regarding the granting of loans and the availments of the credit facilities extended to plaintiffs. The loan and mortgage contracts between the Bank and plaintiffs were properly and officially documented. By affixing their signatures on the said contracts, they were deemed charged with knowledge of all the stipulated charges imposed by the Bank and cannot, by any stretch of the imagination, feign ignorance at this late stage. Moreover, and more importantly, the Bank observed and complied with all the stringent requirements under Act No. 3135, as amended, regarding the extra-judicial foreclosure sale of plaintiff's mortgaged property.**¹⁴ (Emphasis in the

⁷ *Id.* at 73-74.

⁸ *Id.* at 75-91.

⁹ *Id.* at 92-97.

¹⁰ *Id.* at 118.

¹¹ *Id.* at 39.

¹² *Id.* at 121.

¹³ *Id.* at 123-153.

¹⁴ *Id.* at 128.

original.)

PNB also alleged that Act No. 3135¹⁵ does not require personal notice to the mortgagor in case of auction sale and the Spouses Rivera failed to attach the official receipts to show their substantial payments of the amortizations.¹⁶ PNB prayed that the Complaint be dismissed with prejudice for lack of cause of action.¹⁷

The Spouses Rivera filed their Opposition¹⁸ to the Motion to Dismiss, stressing that there was no proper notice and the obligation to PNB had been fully paid.

In an Order dated October 25, 2006, the RTC dismissed the Complaint for lack of cause of action, to wit:

After a careful perusal of the allegations in plaintiffs' complaint for Annulment of Sheriff's Sale with damages against defendants PNB and Julia Coching Sosito, it is very patent that the same failed to state a cause of action. There being a proper notice to plaintiffs of the auction sale of their mortgaged property, defendants had not violated any rights of plaintiffs from which a cause of action had arisen. As appearing on the face of plaintiffs' Complaint and their annexes, there is no showing that there is flaw or defect in the conduct of the sheriff's sale of their mortgaged property that would warrant its annulment and to hold defendants liable for damages.¹⁹

The dispositive portion of the Order reads as follows:

WHEREFORE, in view of the foregoing, defendant PNB's Motion to dismiss is hereby GRANTED and the plaintiff's Complaint filed against both defendants is ordered DISMISSED for lack of cause of action.

SO ORDERED.²⁰

The Spouses Rivera filed a Motion for Reconsideration but the same was denied in an Order dated January 9, 2007. The Spouses Rivera then filed an appeal to the CA.

In a Decision dated June 19, 2009, the CA set aside the assailed Orders and remanded the case to the trial court for further proceedings.

The CA held that the allegations in the Complaint sufficiently made

¹⁵ An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages (1924).

¹⁶ *Rollo*, p. 143.

¹⁷ *Id.* at 151.

¹⁸ *Id.* at 154-156.

¹⁹ *Id.* at 159.

²⁰ *Id.*

out a cause of action against PNB. It ruled that the trial court erred in considering extraneous matters, such as PNB's assertion that the spouses were notified of the auction sale and that personal notice is not required by law when it ordered the dismissal of the complaint.²¹ The dispositive portion of the Decision reads as follows:

WHEREFORE, the appealed Orders dated October 25, 2006 and January 9, 2007 of the trial court are set aside and the case is remanded to the trial court for further proceedings.

SO ORDERED.²²

PNB filed a Motion for Reconsideration which was denied by the CA in a Resolution dated September 11, 2009. Hence, this appeal.

In its Petition for Review on *Certiorari*,²³ PNB asserts that the CA seriously erred when it set aside and reversed the order of the trial court dismissing the case. The respondent spouses failed to meet the essential elements for a valid cause of action to exist, *i.e.*, they failed to show that they have a legal right and that PNB had a correlative duty to respect or not to violate such right. More importantly, no such act or omission was committed by PNB which may be considered a violation of the respondents' rights. PNB also maintains that the respondents' allegation of payment should not constitute a sufficiently stated cause of action. Lastly, it maintains that the findings of the CA run counter to the time-honored principle that no notice of auction sale is required to be sent to the mortgagors in case of extrajudicial foreclosure sales.

The Issue

The sole issue for our consideration is whether the CA erred in setting aside the Orders of the RTC and remanding the case to the trial court for further proceedings.

Our Ruling

We deny the petition.


The CA correctly set aside the RTC Orders and remanded the case to the trial court for further proceedings. Like the CA, we find that there is an apparent confusion over the ground relied upon for the dismissal of the case, as shown by the parties' pleadings, as well as the challenged Order of the RTC.

For the guidance of the bar and the bench, we explain.

²¹ *Rollo*, pp. 43-46.

²² *Id.* at 46.

²³ *Id.* at 13-37.



Failure to state a cause of action and lack of cause of action distinguished

We have consistently held that there is a difference between failure to state a cause of action, and lack of cause of action. These legal concepts are distinct and separate from each other.

Section 2, Rule 2 of the Revised Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates a right of another. Its elements are as follows:

- 1) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
- 2) An obligation on the part of the named defendant to respect or not to violate such right; and
- 3) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.²⁴

Lack of cause of action refers to the insufficiency of the factual basis for the action.²⁵ Dismissal due to lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff.²⁶ It is a proper ground for a demurrer to evidence under Rule 33 of the Revised Rules of Civil Procedure, which provides:

Section 1. *Demurrer to evidence.* — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

In this case, the RTC could not have dismissed the Complaint due to lack of cause of action for as stated above, such ground may only be raised after the plaintiff has completed the presentation of his evidence.

If the allegations of the complaint do not state the concurrence of the above elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action which is the proper remedy under Section 1 (g) of Rule 16 of the Revised Rules of Civil Procedure, which provides:

²⁴ *Agoy v. Court of Appeals*, G.R. No. 162927, March 6, 2007, 517 SCRA 535, 541.

²⁵ *Zuniga-Santos v. Santos-Gran*, G.R. No. 197380, October 8, 2014, 738 SCRA 33, 39.

²⁶ *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 106-107.

Section 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x

(g) That the pleading asserting the claim states no cause of action; x x x

The case of *Hongkong and Shanghai Banking Corporation Limited v. Catalan*²⁷ laid down the test to determine the sufficiency of the facts alleged in the complaint, to wit:

The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.²⁸

By filing a Motion to Dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint.²⁹ When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should, as a rule, be based only on the facts alleged in the complaint.³⁰

Applying the foregoing principles to this case, the CA correctly found that the Complaint filed by the Spouses Rivera sufficiently stated a cause of action for annulment of sheriff's sale. We quote with favor the relevant portion of the Decision:

Thus, by filing a motion to dismiss on the ground that the complaint does not state a cause of action, defendant-appellee PNB hypothetically admits the material allegations in the complaint. These material allegations read:

3. That plaintiff is the owner of a parcel of residential lot with improvements located at blk 17 lot 2 La Colina Subdivision, Parang, Marikina City which it mortgaged to defendant PNB x x x;

4. That plaintiff came to know that said property had been sold at public auction on September 9, 2004 by co-defendant sheriff, x x x and that the

²⁷ G.R. Nos. 159590-91, October 18, 2004, 440 SCRA 498.

²⁸ *Id.* at 510-511.

²⁹ *Vitangcol v. New Vista Properties, Inc.*, G.R. No. 176014, September 17, 2009, 600 SCRA 82, 93.

³⁰ *Id.*

highest bidder was defendant PNB x x x;

5. That there was no notice received by the plaintiff regarding this auction sale as a careful verification would show that the notice was sent to the wrong address at 26 Verdi Street, Ideal Subdivision, Fairview, Quezon City when defendant PNB knows fully well my correct address;

6. That had plaintiff been formally informed of the auction sale he could have made known to co-defendant sheriff that he has already paid his obligation of defendant corporation considering that plaintiff had made a total payment to defendant PNB in the amount of P2,292,159.62 which is even more than the amount of P2,250,000.00 being claimed by defendant PNB.

The foregoing allegations of non-receipt by plaintiffs-appellants of any notice of the auction sale and their full payment of their obligation to defendant-appellee PNB are hypothetically admitted by the latter and sufficiently make out a cause of action against defendants-appellees. Whether said allegations are true or not are inconsequential to a determination of the sufficiency of the allegations in the complaint.³¹

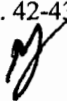
Allegation of payment of the mortgage loan

Like the CA, we also observe that the RTC did not address the respondents' allegation that they had fully paid the mortgage loan. As correctly stated by the CA, "[o]n this basis alone, the trial court should have denied the motion to dismiss because the complaint sufficiently alleged a cause of action."³²

In an action for annulment of sheriff's sale on the ground that payment of the mortgage loan had already been made, an allegation to that effect would be sufficient to state a cause of action. For if payment were already made, then there would have been no basis for the auction sale because the obligation had already been satisfied.

Hypothetically admitting such fact, PNB's foreclosure of the mortgage and sale of the subject property constituted an act in violation of the respondents' rights over their property for which they may maintain an action for recovery of damages or other appropriate relief.

³¹ Rollo, pp. 42-43.
³² Id. at 44.



*Personal notice in extrajudicial
foreclosure of mortgage*

PNB alleges that personal notice is not required in extrajudicial foreclosures. The general rule is that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary. Section 3³³ of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.³⁴ However, in several instances, we recognized that the parties may stipulate otherwise, thus in *Metropolitan Bank and Trust Company v. Wong*,³⁵ we explained:

...a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

"Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city."

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. *Nevertheless*, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:

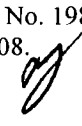
"all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St., Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the

³³ Section 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

³⁴ *Ramirez v. Manila Banking Corporation*, G.R. No. 198800, December 11, 2013, 712 SCRA 610.

³⁵ G.R. No. 120859, June 26, 2001, 359 SCRA 608.




opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.³⁶ (Citations omitted.)


The determination of the veracity of the allegations on payment as well as PNB's compliance with the notice requirement under the law are better ventilated in actual trial where evidence may be presented, refuted, and ultimately decided upon. Thus, remand to the trial court is necessary.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit. The Decision dated June 19, 2009 and the Resolution dated September 11, 2009 of the Court of Appeals are **AFFIRMED**. The case is hereby **REMANDED** to the trial court for further proceedings.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

³⁶ *Id.* at 614-615.

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.



PRESBITERO J. VELASCO, JR.

*Associate Justice
Chairperson, Third Division*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified 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

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 14 2016