

[CV No. 73306, May 13, 2010]

**SPOUSES ANTONIO AND EVELYN RAMOS, PLAINTIFFS-
APPELLANTS, VS. OFFICE OF THE CLERK OF COURT, RTC,
QUEZON CITY, OFFICE OF THE EX-OFFICIO SHERIFF OF THE RTC,
QUEZON CITY, MERCEDES S. GATMAYTAN (IN HER CAPACITY AS
THE EX-OFFICIO/SHERIFF OF THE RTC OF QUEZON CITY),
DEFENDANTS; ALLIED BANKING CORPORATION, DEFENDANT-
APPELLEE.[*]**

Before this Court is an appeal from the Omnibus Resolution^[1] dated September 25, 2001 of the Regional Trial Court, National Capital Judicial Region, Branch 218, Quezon City, in Civil Case No. Q-01-44646, entitled "Sps. Antonio and Evelyn Ramos, Plaintiffs, versus Allied Banking Corporation, et al., Defendants." the dispositive portion of which states:

"Prescinding from the foregoing, the Complaint thus fails to state a cause of action as against defendant bank, conformably with the ruling of the Supreme Court in the case of Fil-Estate Golf and Development, Inc. vs. Court of Appeals, 265 SCRA 614, citing the case of Marcopper Mining Corporation vs. Garcia, whereby the Court is allowed to consider not only the Complaint but also the annexes attached thereto as well as the evidence on record in the determination of whether or not the Complaint states a cause of action.

Hence, to reiterate, defendant bank's 'Motion to ' is GRANTED and the Complaint DISMISSED as against it.

SO ORDERED."

The facts are:

In a Complaint^[2] for Specific Performance, Injunction, Annulment of Foreclosure Proceedings with Prayer for Preliminary Injunction and Temporary Restraining Order against defendant-appellee and the defendants, plaintiffs-appellants Spouses Antonio and Evelyn Ramos (Sps. Ramos for brevity) alleged that: they are the owners and proprietors of A.R. Line Materials Center, Inc., a small enterprise engaged in the business of trading and distribution of electrical materials, products and supplies; sometime in January 1997, plaintiffs-appellants Sps. Ramos obtained a loan of P13,000,000.00 with defendant-appellee Allied Banking Corporation (ABC for brevity) consisting of two (2) Promissory Notes in the amounts of Seven Million Pesos (P7,000,000.00)^[3] and Six Million Pesos (P6,000,000.00)^[4] with interest rates at 16.5% and 15.25%, respectively; to secure the said loan, they executed in favor of defendant-appellee ABC a Deed of Real Estate Mortgage⁵ over two (2) parcels of land situated in Quezon City consisting of 1,114.40 square meters and 1,125 square meters, respectively, and covered by Transfer Certificates of Title(TCT) Nos. RT-40765 (297310) and RT-61624 (297316), respectively, with the Register of Deeds of Quezon City: they were able to pay religiously the monthly interest amortizations on the said loan until November 1997 when financial crisis affected

their business; by reason thereof, they failed to meet their monthly obligations for the years 1998 to 1999; defendant-appellee ABC sent letters⁶ to plaintiffs-appellants Sps. Ramos reminding them of their outstanding obligations; upon reading of the letters, they were astonished to learn that their outstanding obligations had ballooned to more than three (3) times the total amount of the principal; they inquired from defendant-appellee ABC why their obligation ballooned to such amount (P42,317,241.46) and they were informed that it was due to the accumulation of interest and penalties, they negotiated with defendant-appellee ABC for the full settlement of their obligation; on January 12, 2000, plaintiff-appellant Antonio Ramos wrote^[7] defendant-appellee ABC, through its Kamias Branch Manager, Elbe Dominguez, that they were considering selling one of their mortgaged properties, the "Katipunan Property", which is covered by TCT No. RT-61624 (297316) to satisfy their outstanding obligation; they also requested for a moratorium on the payment of the principal and the waiver of interest and penalty charges, and for the recomputation of the interest charged on the outstanding principal; initially, defendant-appellee ABC was amenable to a dacion en pago agreement by applying the value of the Katipunan Property against plaintiff-appellants Sps. Ramos, outstanding obligation while the remaining balance will be amortized by the latter; defendant-appellee ABC even sent proposals to plaintiffs-appellants Sps. Ramos embodying the dacion on pago agreement, waiving all penalty charges and imposing an interest rate of only 14%^[8]; plaintiffs-appellants Sps. Ramos manifested their willingness to agree to the proposal; as requested by defendant-appellee ABC they caused the appraisal of the Katipunan Property; said property was appraised at P22,500.00 per square meter as of January 18, 2000 by Valencia Appraisal Corporation^[9] which was considerably higher than defendant-appellee ABC's own appraisal; during the negotiations, they refused defendant-appellee ABC's proposal to include the other property where the former's family home and office are situated; eventually, defendant-appellee ABC began to ignore plaintiffs-appellants Sps. Ramos' follow-ups for the rest of 2000; later on, they received a letter^[10] from defendant-appellee ABC demanding the payment of the P16,000,000.00 loan within five (5) days from receipt thereof, otherwise their properties would be foreclosed, they requested for a negotiation, detailed accounting and breakdown of their outstanding obligation, but their pleas were ignored by defendant-appellee ABC; they later received a Notice of Extra-Judicial Sale dated May 11, 2001 informing them of the public auction of their mortgaged properties on June 19, 2001 at 10:00 a.m.; they were surprised when they discovered that defendant-appellee ABC imposed an interest rate of 27% and 28.5% respectively, as well as penalty of 36% on their loan for the period from November 1997 to February 2001 in its application for extra-judicial foreclosure^[11]; they negotiated for the postponement of the public auction sale to July 23, 2001 at 10:00 A.M. which was approved by defendant-appellee ABC after plaintiffs-appellants Sps. Ramos agreed to pay for the expenses for the republication of the new date of sale; again, they requested for the renegotiation of their obligations and for clarification and recomputation of the interest and penalty charges, the application of the proper interest rates for the corresponding periods and/or waiver of the unreasonable interest and penalty charges on their loans, but the same proved futile.

On August 29, 2001, defendant-appellee ABC filed a Motion to Dismiss^[12] on the ground that the allegations of the Complaint failed to state a cause of action against defendant-appellee ABC. Defendant-appellee ABC claimed that it has no obligation to furnish plaintiffs-appellants Sps. Ramos with statements of account from

November 1997; that it was authorized under the promissory notes to impose uniform interest rates of 27% and 28.5% and 36% penalty charges on plaintiffs-appellants Sps. Ramos' outstanding obligation from November 1997; and it did not violate R.A. No. 3765, otherwise known as The Truth in Lending Act. In support of its Motion to Dismiss, it offered the following exhibits, to wit: Exhibit "1" and submarkings - Promissory Note No. 97-54436 dated May 19, 1997; Exhibit "2" - Promissory Note No. 97-54460 dated July 1, 1997; Exhibit "3" - Deed of Real Estate Mortgage; Exhibit "4" - Demand Letter dated March 5, 2001; Exhibit "5" - Unsigned document dated March 3, 2000; Exhibit "6" and submarkings - Letter dated June 15, 2001; Exhibit "7" - Promissory Note No. 97-04452; Exhibit "8" - Loan Ledger* for Promissory Note. 97-04452; Exhibit "9" - Loan Ledger for Promissory Note No. 97-04436; Exhibit "10" - Loan Ledger for Promissory Note No. 97-04460; Exhibit "11" - Statement of Account; Exhibit "12" - Letter dated February 16, 2000; and Exhibit "13" and submarking - Demand Letter dated January 22, 2001.^[13]] On September 25, 2001 the lower court issued the assailed resolution granting defendant-appellee ABC's motion to dismiss and dismissing plaintiffs-appellants Sps. Ramos' complaint. Hence, this appeal with the following assignment of errors:

"With all due respect, the court a quo erred:

1. In holding that the complaint failed to state a cause of action;
- 2 In denying the prayers of the plaintiffs for annulment of foreclosure proceedings, for preliminary injunction, and for a temporary restraining order."^[14]

The appeal is devoid of merit.

The lower court correctly dismissed the complaint for plaintiffs-appellants Sps. Ramos' failure to state a cause of action against defendant-appellee ABC.

A cause of action is an act or omission of the defendant in violation of the legal right of the plaintiff.^[15] It exists if the following elements are present: 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) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.^[16]

In this case, the core of plaintiffs-appellants Sps. Ramos, appeal is the issue of sufficiency of their complaint against defendant-appellee ABC.

The test of the sufficiency of the facts to constitute a cause of action is whether admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.^[17]

Applying the aforementioned test in this case, the issue is whether or not plaintiffs-appellants Sps. Ramos were indeed in default with their obligation. In answering this query, the lower court stated that plaintiffs-appellants Sps. Ramos were in default, rendering the full amount of their loan as due and demandable, hence, they no longer had the personality to negotiate the interest rate thereof.

Aside from the allegations in the complaint, the lower court likewise took into consideration the annexes attached thereto as well as the evidence on record in the determination of whether or not the complaint states a cause of action pursuant to the ruling in *Fil-Estate Golf and Development, Inc. vs. CA*^[18] citing the case of *Marcopper Mining Corporation vs. Garcia*. This doctrinal pronouncement was reiterated in the case of *Nadela vs. City of Cebu*, *supra* wherein the Supreme Court held that:

"Nevertheless, in *Tan vs. Director of Forestry and Santiago v. Pioner Savings and Loan Bank*, evidence submitted by the parties during a hearing in an application for a writ of preliminary injunction was considered by the court in resolving the motion to dismiss. In *Lianto v. AN Dimaporo*, this Court held that trial court properly dismiss a complaint on a motion to dismiss due to lack of action even without hearing, by taking into consideration the discussion in said motion and the opposition thereto. In *Marcopper Mining Corporation v. Garcia*, this Court ruled that the trial court did not err if (sic) considering other pleadings, aside from the complaint, in deciding whether or not the complaint should be dismissed for lack of cause of action."

Plaintiffs-appellants Sps. Ramos argue that defendant-appellee ABC has the obligation to furnish them with a correct statement of their account before the foreclosure of their properties. Such that when defendant-appellee ABC extra-judicially foreclosed their properties with the bloated amount as basis, they were deprived of them without due process. Plaintiffs-appellants Sps. Ramos posit that defendant-appellee ABC's application of interest rates which grossly exceeded those stated in the two promissory notes, violates their right, for the latter has no right to collect from them any amount more than their legal obligation. Otherwise stated, plaintiffs-appellants Sps. Ramos claim that defendant-appellee ABC has no authority to impose interest rates which were not stipulated in their agreement.

Contrary to their allegations, plaintiffs-appellants Sps. Ramos failed to show that the interest rates imposed by defendant-appellee ABC are incorrect and illegal. Truth is, the promissory notes which plaintiffs-appellants Sps. Ramos alleged as the sources and bases of their legal state that:

"I/We agree that on each interest payment due date, I/We shall negotiate with the Bank at the place of payment the interest rate shall govern this Note for the relevant succeeding Interest Period. My failure to negotiate the interest rate with the Bank on any interest payment due date shall authorize the Bank to set the interest at the market rate prevailing on the relevant Interest Period as determined by the Bank. Should I/We fail to agree on the interest rate that shall govern any succeeding Interest Period. I/We shall prepay the unpaid balance of the principal and all the accrued interest and charges thereon within five (5) days from the immediately preceding interest due date."

Under the said promissory note, plaintiffs appellants Sps. Ramos are obligated to negotiate with defendant-appellee ABC on each interest payment on the due date as to the interest rate that shall govern for the next relevant succeeding interest period. Defendant-appellee ABC was likewise authorized to set the interest at the prevailing market rate if plaintiffs-appellants Sps. Ramos fail to negotiate with the