

THIRD DIVISION

[G.R. No. 189577, April 20, 2016]

**PHILIPPINE NATIONAL BANK PETITIONER, VS. SPS.
VICTORIANO & JOVITA FARICIA RIVERA, RESPONDENTS.**

D E C I S I O N

JARDELEZA, J.:

Before us is a Petition for Review on *Certiorari* assailing the Decision dated June 19, 2009^[1] and the Resolution dated September 11, 2009^[2] of the Court of Appeals (CA). The assailed decision and resolution set aside the Orders dated October 25, 2006^[3] and January 9, 2007^[4] of the Regional Trial Court, Branch 272, Marikina City (RTC) which dismissed the Complaint for Annulment of Sheriff's Sale with Damages^[5] filed by the respondents.

The Facts

On September 18, 1995, the Spouses Victoriano and Jovita Faricia Rivera (Spouses Rivera) executed a real estate mortgage^[6] in favor of the Philippine National Bank (PNB) over a parcel of land (land) covered by Transfer Certificate of Title (TCT) No. 288169^[7] of the Register of Deeds of Marikina City.

The mortgage was executed to secure the payment of the housing loans^[8] and revolving credit line^[9] 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 Dismiss^[13] 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 original.)

PNB also alleged that Act No. 3135^[15] 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 Opposition^[18] 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 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.

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:

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]