

THIRD DIVISION

[G.R. No. 166730, March 10, 2010]

**SPOUSES FERNANDO TORRES AND IRMA TORRES, PETITIONERS,
VS. AMPARO MEDINA AND THE EX-OFFICIO SHERIFF OF THE RTC
OF QUEZON CITY, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before this Court is a Petition for Review on *certiorari*,^[1] under Rule 45 of the Rules of Court, seeking to set aside the August 30, 2004 Decision^[2] and January 18, 2005 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 75847.

The facts of the case:

On July 28, 1994, respondent Amparo Medina (Medina) wrote a letter^[4] to the Office of the Sheriff, Regional Trial Court (RTC) of Quezon City, applying for the extrajudicial foreclosure of mortgage of the property of petitioner spouses Fernando and Irma Torres (Spouses Torres) which was covered by Transfer Certificate of Title No. RT-61056 (354973) and which is subject of a Deed of Mortgage^[5] dated December 20, 1993.

On May 27, 1997, the Office of the *Ex-Officio* Sheriff issued a Notice of Sheriff's Sale^[6] and, on June 30, 1997, sold at public auction the subject property to Medina being the highest bidder thereof. A Certificate of Sale^[7] was thereafter issued to Medina.

On September 21, 1999, the Spouses Torres filed a Complaint^[8] before the RTC of Quezon City for the declaration of nullity of the extrajudicial foreclosure of mortgage conducted by the *Ex-Officio* Sheriff. The same was docketed as **Civil Case No. Q-99-38781**.

In their Complaint, the Spouses Torres raised the following causes of action, to wit:

- a) the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;
- b) the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;

- c) the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";
- d) Since appellee sued appellants for violation of Batas Pambansa Blg. 22, there could arise a situation of double recovery of damages which is proscribed by law. If the extrajudicial foreclosure will be allowed and if appellants will be made to pay the amount of the checks subject of the criminal suit under B.P. Blg. 22, it would result in the unjust enrichment of appellee.^[9]

On July 20, 2000, Medina filed a Motion to Dismiss^[10] raising the grounds of *res judicata* and forum shopping. Medina argued that the Spouses Torres had filed an earlier Complaint^[11] praying for the annulment of the real estate mortgage involving the same property and which was docketed as **Civil Case No. Q-94-18962** before the RTC of Quezon City, Branch 216. Medina contended that said complaint was already dismissed as evidenced by the RTC's Decision^[12] dated March 7, 1997.

On December 27, 2001, the RTC issued an Order^[13] granting Medina's motion to dismiss the complaint. The RTC ruled that *res judicata* was present and that the Spouses Torres were guilty of forum shopping, to wit:

Thus, it is plain from the foregoing that the present action is identical to the case filed by plaintiffs against the defendant before the Regional Trial Court of Quezon City, Branch 216, hence, *res judicata* lies. The decision of the Regional Trial Court of Quezon City, Branch 216, dated March 7, 1997, has become final; the aforesaid court which rendered said decision had jurisdiction over the subject matter and the parties; the decision was on the merits; and there is an identity of parties, subject matter and causes of action between the present action and the case before the Regional Trial Court of Quezon City, Branch 216.

The Court also notes that while the plaintiffs here alleged separate causes of action in the instant complaint, they are actually using the very same grounds they have brought before Branch 216 of this Court to support their claim to annul the foreclosure proceedings. The validity of the real estate mortgage is again being assailed to ask for the annulment of the foreclosure proceedings conducted over the mortgaged property. It must be remembered that the validity of the real estate mortgage has been sustained by the decision in Civil Case No. 94-18962 which decision has already attained finality. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action. Plaintiffs cannot avoid the application of *res judicata* by simply varying the form of their action or by adopting a different method in presenting it.^[14]

The Spouses Torres appealed to the CA, which, in similar fashion, ruled that *res judicata* had already set in, the dispositive portion of which reads:

WHEREFORE, the Order dated December 27, 2001 is hereby AFFIRMED and the appeal is DISMISSED. Costs against appellants.

SO ORDERED.^[15]

The Spouses Torres then filed a Motion for Reconsideration^[16] dated August 30, 2004, which was, however, denied by the CA in the Resolution^[17] dated January 18, 2005.

Hence, herein petition, with the Spouses Torres raising the following assignment of errors, to wit:

A. THE COURT OF APPEALS GRAVELY ERRED WHEN IT IGNORED THAT THE CAUSE OF ACTION IN CIVIL CASE NO. Q-99-38781 AROSE MUCH LATER THAN THE CAUSE OF ACTION IN CIVIL CASE NO. Q-94-18962. HENCE, FORUM SHOPPING AND RES JUDICATA DO NOT APPLY.

A-1. ASSUMING WITHOUT ADMITTING THAT RES JUDICATA EXISTS IN THIS CASE, THE SAME WILL NOT BE HONORED IF ITS APPLICATION WOULD CONSTITUTE A SACRIFICE OF JUSTICE IN FAVOR OF TECHNICALITY;

B. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE CAUSES OF ACTION CANNOT BE IDENTICAL IF THE CAUSE OF ACTION IN ONE AROSE AFTER THE JUDGMENT IN THE OTHER;

C. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE EXTRAJUDICIAL FORECLOSURE OF MORTGAGE INSTITUTED BY PRIVATE RESPONDENT AMPARO MEDINA CONTRAVENES THE EQUITABLE PRINCIPLE OF UNJUST ENRICHMENT CODIFIED UNDER ARTICLE 22 OF THE NEW CIVIL CODE, AND WOULD AMOUNT TO DOUBLE RECOVERY EVEN AS THE B.P. BLG. 22 VIOLATIONS ARE STILL PENDING IN THE METROPOLITAN TRIAL COURT OF QUEZON CITY;

D. THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO RULE THAT THE PRIVATE RESPONDENT AMPARO MEDINA HAS ELECTED HER REMEDY WHEN SHE SUED PETITIONER FERNANDO TORRES ON A B.P. BLG. 22 VIOLATION, AND ENGAGED THE SERVICES OF A PRIVATE PROSECUTOR TO PROSECUTE THE SAME.

THE FILING OF THE B.P. BLG. 22 VIOLATION BARS AND EXCLUDES THE REMEDY OF FORECLOSURE OF MORTGAGE.^[18]

The petition is not meritorious.

At the crux of the controversy is the determination of whether or not *res judicata* bars the filing of Civil Case No. Q-99-38781.

Civil Case No. Q-94-18962 vis-a-vis Civil Case No. Q-99-38781

As borne from the records of the case, the Spouses Torres first instituted Civil Case No. Q-94-18962 before the RTC of Quezon City, Branch 216, which, among others, prayed for the nullity of the real estate mortgage, dated December 20, 1993.

On March 7, 1997, the RTC issued a Decision^[19] dismissing the complaint thereby upholding the validity of the real estate mortgage, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. DISMISSING the plaintiffs' complaint for lack of merit;
2. Ordering the plaintiffs, spouses Fernando Torres and Irma Torres, to pay defendant Amparo Medina, the sum of FIFTY THOUSAND (P50,000.00) PESOS as and by way of attorney's fees and to pay the costs of suit.

SO ORDERED.^[20]

The Spouses Torres appealed said Decision to the CA.

On February 18, 1998, the CA issued a Resolution^[21] dismissing the appeal, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the appellants' motion for extension of time to file appellants' brief is hereby DENIED for being filed out of time. The appeal is hereby DISMISSED.

SO ORDERED.^[22]

The Spouses Torres then filed a Motion for Reconsideration, which was, however, denied by the CA in the Resolution^[23] dated August 6, 1998.

Aggrieved, the Spouses Torres then sought relief from this Court.

On July 5, 1999, the Court's First Division issued a Resolution^[24] denying the petition of the Spouses Torres. On August 16, 1999, the First Division issued another

Resolution^[25] denying the motion for reconsideration. On September 7, 1999, an Entry of Judgment^[26] was rendered.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."^[27] *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.^[28]

The elements of *res judicata* are:

- (1) the judgment sought to bar the new action must be final;
- (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
- (3) the disposition of the case must be a judgment on the merits; and
- (4) there must be as between the first and second action identity of parties, subject matter, and causes of action.^[29]

In their petition, the Spouses Torres do not dispute the presence of the first three elements. They, however, dispute the presence of the last element, specifically arguing that the evidence necessary to establish the cause of action in Civil Case No. Q-99-38781 is different from that of Civil Case No. Q-94-18962. The Spouses Torres conclude that the evidence is not identical so as to place the causes of action within the prohibition based on *res judicata*.^[30]

This Court is not persuaded.

To reiterate, in Civil Case No. Q-99-38781, the Spouses Torres raised the following causes of action:

- a) the December 20, 1993 Deed of Real Estate Mortgage does not contain a period or term; hence, performance of the obligation has not yet become due as there is a need for judicial determination of the period or term;
- b) the June 28, 1994 Statement of Account is not the loan contemplated by law; therefore, it cannot serve as basis to foreclose extrajudicially the mortgage;
- c) the credit transaction is either void or unenforceable due to breach of Section 6(a) of Republic Act No. 3765, otherwise known as "The Truth in Lending Act";
- d) Since appellee sued appellants for violation of Batas Pambansa