

FIRST DIVISION

[G.R. NO. 172175, October 09, 2006]

**SPS. EXPEDITO ZEPEDA AND ALICE D. ZEPEDA, PETITIONERS,
VS. CHINA BANKING CORPORATION, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the January 24, 2006 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 89148 granting respondent China Banking Corporation's (Chinabank) petition to annul the Orders dated April 1, 2004^[2] and October 22, 2004^[3] of the Regional Trial Court of San Jose, Camarines Sur, Branch 30,^[4] in Civil Case No. T-947. Also assailed is the March 31, 2006 Resolution^[5] denying petitioners' motion for reconsideration.

The facts are as follows.

On February 18, 2003, spouses Expedito and Alice Zepeda filed a complaint for nullification of foreclosure proceedings and loan documents with damages^[6] against respondent Chinabank before the Regional Trial Court of San Jose, Camarines Sur, which was docketed as Civil Case No. T-947 and raffled to Branch 30. They alleged that on June 28, 1995, they obtained a loan in the amount of P5,800,000.00 from respondent secured by a Real Estate Mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-23136.

Petitioners subsequently encountered difficulties in paying their loan obligations hence they requested for restructuring which was allegedly granted by Chinabank. Hence, they were surprised when respondent bank extrajudicially foreclosed the subject property on October 9, 2001 where it emerged as the highest bidder.

Respondent bank was issued a Provisional Certificate of Sale and upon petitioners' failure to redeem the property, ownership was consolidated in its favor.

According to petitioners, the foreclosure proceedings should be annulled for failure to comply with the posting and publication requirements. They also claimed that they signed the Real Estate Mortgage and Promissory Note in blank and were not given a copy and the interest rates thereon were unilaterally fixed by the respondent.

Respondent bank's motion to dismiss was denied, hence it filed an answer with special affirmative defenses and counterclaim. It also filed a set of written interrogatories with 20 questions.

In an Order dated April 1, 2004, the trial court denied Chinabank's affirmative defenses for lack of merit as well as its motion to expunge the complaint for being

premature. The trial court reiterated its denial of Chinabank's affirmative defenses in its Order dated October 22, 2004 and directed the Clerk of Court to set the pre-trial conference for the marking of the parties' documentary evidence.

Aggrieved, respondent bank filed a petition for certiorari under Rule 65 which was granted by the Court of Appeals. It held that the trial court gravely abused its discretion in issuing the two assailed Orders. It ruled that compelling reasons warrant the dismissal of petitioners' complaint because they acted in bad faith when they ignored the hearings set by the trial court to determine the veracity of Chinabank's affirmative defenses; they failed to answer Chinabank's written interrogatories; and the complaint states no cause of action.

On March 31, 2006, petitioners' motion for reconsideration was denied hence, the instant petition raising the following issues:

I. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ISSUED THE ASSAILED DECISION DECLARING THAT THE PETITIONER[S'] COMPLAINT DATED 12 FEBRUARY 2003 HAS NO CAUSE OF ACTION.

II. CAUSE OF ACTION HAS BEEN SUFFICIENTLY ESTABLISHED IN THE COMPLAINT AND THE GROUND RELIED UPON BY THE PRIVATE RESPONDENT BANK ARE MERE EVIDENTIARY MATTERS.^[7]

The issues for resolution are: a) whether the complaint states a cause of action and b) whether the complaint should be dismissed for failure of petitioners to answer respondent's written interrogatories as provided for in Section 3(c), Rule 29 of the Rules of Court.

The petition is meritorious.

Anent the first issue, the Court of Appeals ruled that the complaint failed to state a cause of action because petitioners admitted that they failed to redeem the property and that ownership of the same was consolidated in the name of Chinabank.

A cause of action is a formal statement of the operative facts that give rise to a remedial right. The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant. Thus it "must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action." Failure to make a sufficient allegation of a cause of action in the complaint "warrants its dismissal."^[8]

As defined in Section 2, Rule 2 of the Rules of Court, a cause of action is the act or omission by which a party violates the right of another. Its essential 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.

It is, thus, only upon the occurrence of the last element that a cause of action arises, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief.^[9] In determining whether an initiatory pleading states a cause of action, "the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer?" To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters *aliunde* are not considered.

The court may consider in addition to the complaint the appended annexes or documents, other pleadings of the plaintiff, or admissions in the records.^[10]

In the instant case, petitioners specifically alleged that respondent bank acted in bad faith when it extrajudicially foreclosed the mortgaged property notwithstanding the approval of the restructuring of their loan obligation. They claimed that with such approval, respondent bank made them believe that foreclosure would be held in abeyance. They also alleged that the proceeding was conducted without complying with the posting and publication requirements.

Assuming these allegations to be true, petitioners can validly seek the nullification of the foreclosure since the alleged restructuring of their debt would effectively modify the terms of the original loan obligations and accordingly supersede the original mortgage thus making the subsequent foreclosure void. Similarly, the allegation of lack of notice if subsequently proven renders the foreclosure a nullity in line with prevailing jurisprudence.^[11]

We find the allegations in the complaint sufficient to establish a cause of action for nullifying the foreclosure of the mortgaged property. The fact that petitioners admitted that they failed to redeem the property and that the title was consolidated in respondent bank's name did not preclude them from seeking to nullify the extrajudicial foreclosure. Precisely, petitioners seek to nullify the proceedings based on circumstances obtaining prior to and during the foreclosure which render it void.

Anent the second issue, we do not agree with the Court of Appeals' ruling that the complaint should be dismissed for failure of petitioners to answer respondent bank's written interrogatories.

It should be noted that respondent bank filed a motion to expunge the complaint based on Section 3(c) of Rule 29 which states:

SEC. 3. *Other consequences.* - If any party or an officer or managing agent of a party refuses to obey an order made under section 1^[12] of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following: