

## SECOND DIVISION

[ G.R. NO. 146519, August 08, 2005 ]

**RURAL BANK OF CALINOG (ILOILO), INC., PETITIONER, VS.  
COURT OF APPEALS, SPOUSES GREGORIO CERBAÑA AND FILMA  
CERBO-CERBAÑA, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

In this Petition<sup>[1]</sup> dated January 16, 2000, Rural Bank of Calinog (Iloilo), Inc. assails the *Decision*<sup>[2]</sup> of the Court of Appeals dated November 18, 1999, which granted the petition for *certiorari* filed by private respondents, reversed and set aside the order of dismissal issued by the trial court,<sup>[3]</sup> and reinstated the complaint filed against petitioner, and its *Resolution*<sup>[4]</sup> dated November 24, 2000, which denied petitioner's motion for reconsideration.

The antecedents, quoted from the assailed Decision, are as follows:

Petitioners and Carmen Cerbo represented by petitioners filed Civil Case No. 97016 for annulment of the certificate of sale at public auction, accounting and damages against private respondents.

Petitioners alleged that Carmen D. Cerbo executed a real estate mortgage over her property covered by Transfer Certificate of Title No. T-118033, in favor of private respondent Rural Bank of Calinog (Calinog Bank for brevity); that the mortgage was foreclosed and the subject property was sold at public auction with private respondent Calinog Bank as the highest bidder; that petitioners redeemed the subject property by depositing the amount of P18,000.00 to private respondent Calinog Bank; that to complete payment of the total redemption price of the subject property, petitioners obtained a loan from private respondent Rural Bank of Dingle, Iloilo, (Dingle Bank, for brevity) in the amount of P109,000.00; that to secure payment of the loan obtained from private respondent Dingle Bank petitioners mortgaged the subject property in favor [of] private respondent Dingle Bank; that petitioners have paid the loan obtained from private respondents; that on September 26, 1996, petitioners received a Notice of Sale at public auction of the subject property allegedly for failure to pay the mortgage debt; that petitioners demanded from private respondents an accounting of all payments made and the holding in abeyance by private respondent Dingle Bank of the public sale; that the public sale proceeded as scheduled and the subject property was adjudicated in favor of private respondent Calinog Bank; that because of the failure of the private respondents to account all payments made by and for petitioners the mortgaged property was unjustly foreclosed.

On October 21, 1998, private respondent Calinog Bank moved for the dismissal of the petitioners' complaint.

Private respondent Calinog Bank contended that Carmen Cerbo is the only one who has a cause of action against it because she was the one who executed the Contract of Real Estate Mortgage; that since Carmen Cerbo is already dead, the case should be dismissed against private respondent Calinog Bank; that petitioners do not have the legal personality to represent the late Carmen Cerbo; that petitioners lack cause of action against private respondent Calinog Bank.

Petitioners opposed the motion to dismiss filed by private respondent Calinog Bank. Petitioners contended that as heirs of Carmen Cerbo, they have the personality and the cause of action to institute the action against private respondent Calinog Bank.

On February 2, 1999, assailed order was issued granting private respondent Calinog Bank's motion to dismiss.

Petitioners filed a motion for reconsideration of the order granting private respondent Calinog Bank's motion to dismiss. The same was denied by public respondent.<sup>[5]</sup>

Aggrieved by the order of the trial court, the Spouses Cerbaña, private respondents herein, filed with the appellate court a petition for *certiorari* contending that the dismissal of the case was improper and that they are the real parties-in-interest in the case being children of the late Carmen Cerbo and having paid the redemption price to petitioner Rural Bank of Calinog.

In granting the petition, the Court of Appeals distinguished between lack of capacity to sue and lack of personality to sue. The first refers to the plaintiff's general disability to sue, such as on account of minority, incompetence, lack of juridical personality or other disqualifications; the second refers to the fact that the plaintiff is not the real party in interest. Since private respondents filed the civil suit not just as representatives of Carmen Cerbo but also for and in their own behalf, the appellate court found them to have both capacity and personality to sue.

The appellate court further ruled that the allegations of the complaint furnish sufficient basis to maintain the same and should not have been dismissed by the trial court. Private respondents need not be parties to the mortgage contract in order to have a cause of action to recover the payments which they allege to have paid the bank in excess of the redemption price.

Moreover, the case falls under the recognized exceptions to the rule that *certiorari* cannot take the place of appeal since the trial court dismissed the complaint only because Carmen Cerbo was already dead at the time of the filing of the complaint. According to the Court of Appeals, this is tantamount to clear abuse of discretion.

Petitioner asserts that private respondents do not have a cause of action against it because they did not claim that they were instituting an action as heirs of Carmen Cerbo; petitioner has the right to demand payment of the redemption price; there

was no undue delivery of money to petitioner because private respondents merely paid the redemption price; and the appellate court did not declare that the trial court committed grave abuse of discretion but merely a clear abuse of discretion.

In their *Comments*<sup>[6]</sup> dated March 11, 2003, private respondents aver that the instant petition is merely a restatement of the issues already passed upon by the Court of Appeals. They reiterate that they instituted the complaint independent of Carmen Cerbo.

We gave due course to the petition and required the parties to submit their respective memoranda.<sup>[7]</sup> In compliance with the Court's resolution, petitioner and private respondents filed their memoranda respectively dated May 20, 2003<sup>[8]</sup> and May 21, 2003.<sup>[9]</sup>

The principal legal question raised in the instant petition is whether the complaint filed by private respondents with the trial court states a cause of action.

A cause of action 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 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.<sup>[10]</sup>

In determining whether the allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege the facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. If the allegations in a complaint can furnish a sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite or uncertain.<sup>[11]</sup> Moreover, a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof.<sup>[12]</sup>

An examination of the complaint reveals that it sufficiently alleges a cause of action against petitioner. The pertinent portions of the complaint are reproduced below:

5. That Carmen D. Cerbo executed that Real Estate Mortgage on April 5, 1988 involving her property covered by Transfer Certificate of Title No. T-118033 of the Registry of Deeds for the Province of Iloilo, in favor of Rural Bank of Calinog, Inc., a copy of said Real Estate Mortgage is hereto attached as Annex "A";

6. That for failure to pay the mortgage indebtedness of Carmen D. Cerbo to Rural Bank of Calinog, Inc., foreclosed the mortgaged property and adjudicated the same in its favor as the highest bidder at the time of public auction sale for a price of P63,616.65 as shown by Certificate of Sale at Public Auction hereto attached as Annex "B";