

THIRTEENTH DIVISION

[CA-G.R. CV No. 95636, November 24, 2014]

HEIRS OF DECEASED SPOUSES DANIEL S. LUCENA, JR. AND LYDIA A. JACOB, REPRESENTED BY RONIA LUCENA FERRER, PLAINTIFFS-APPELLANTS, VS. CABANATUAN CITY RURAL BANK, INC., REPRESENTED BY LORNA LIWAG, GENERAL MANAGER, AND RONALDO B. ERASGA, OIC/CLERK OF COURT AND EX OFFICIO SHERIFF, DEFENDANTS-APPELLEES.

DECISION

SADANG, J.:

Challenged in this appeal is the December 28, 2009 Order^[1] of the Regional Trial Court (RTC) of Palayan City, Branch 40 in Civil Case No. 0568-P-09 granting the Motion to Dismiss filed by defendant-appellee Cabanatuan City Rural Bank, Inc. and the June 2, 2010 Order^[2] denying the motion for reconsideration.

Records show that on October 2, 2009, plaintiffs-appellants heirs of spouses Daniel S. Lucena, Jr. and Lydia A. Jacob (hereafter, appellants) filed with the court a quo a Complaint^[3] for annulment of real estate mortgage and

foreclosure, with prayer for temporary restraining order, injunction and damages against defendant-appellee Cabanatuan City Rural Bank, Inc. (hereafter, CCRBI).

On October 7, 2009, in compliance with the October 5, 2009 Order^[4] of the lower court, appellants filed an Amended Complaint^[5] impleading Lorna Liwag, General Manager of CCRBI, and Ronaldo B. Erasga, OIC/Clerk of Court and Ex Officio Sheriff, as defendants.

The Amended Complaint alleged that: on September 22, 2009, Loreilyn Lucena received a Notice of Extra-Judicial Sale dated August 28, 2009 addressed to spouses Daniel and Lydia Lucena and signed by OIC/Clerk of Court and Ex-Officio Sheriff Ronaldo B. Erasga; the spouses Lucena "secured a mortgage with (CCRBI) which as of August 26, 2009 amounted to P312,116.67 and the mortgaged property is unlawfully set for foreclosure on October 9, 2009;" the mortgaged property is a land situated in Lusok, Bongabon, Nueva Ecija and covered by Transfer Certificate of Title No. EP No. 60316; upon the death of spouses Lucena, "the mortgage loan had been paid and there is nothing to foreclose;" the notice of foreclosure is not accompanied by a special power of attorney from appellants, promissory note, mortgage contract, and board resolution of CCRBI; and the land is covered by TCT No. EP No. 60316, an emancipation patent and the family home of appellants is exempt from foreclosure.

On October 8, 2009, the lower court conducted a hearing on the prayer for TRO. Appellants offered the testimony of Dolores Galera, the Notice of Extra-Judicial Sale,

Notice of Auction Sale, Tax Declarations, TCT No. EP-60316, and Notice of Lis Pendens. CCRBI did not present witnesses but offered the Petition for Foreclosure, the Real Estate Mortgage (REM), Amended REM, and TCT No. EP-60316.^[6]

On October 16, 2009, CCRBI filed a Motion to Dismiss^[7] on the ground that the complaint does not state a cause of action against it. CCRBI averred that: appellants cannot complain that there were no documents attached to the notice of auction sale furnished them because under Section 3 of Act 3135, the Sheriff is not required to give said notice to the mortgagor. All that is required is posting of the notice for not less than twenty days in at least three public places in the municipality or city where the property is situated and publication thereof once a week for at least three consecutive weeks in a newspaper of general circulation in said locality; pursuant to the Rules of Court, appellants should have adduced the receipt supporting their allegation of payment and, being an actionable document, the receipt should have been attached to or its substance set forth in the Complaint; because appellants failed to follow the rules, the case may be dismissed for lack of cause of action; had appellants gone to the court, they would have realized that the documents which they alleged should have been attached to the notice of auction sale had been annexed to the petition for extra-judicial foreclosure of real estate mortgage; paragraph 3 of the REM contains a special power of attorney in favor of mortgagor CCRBI; under Section 71 of the Comprehensive Agrarian Reform Law (CARL), an agricultural land may be a security for a loan; and under Article 155 of the Family Code, the family home is exempt from execution, forced sale, or attachment except for debts secured by mortgages on the premises before or after such constitution.

Appellants filed an Opposition to Motion to Dismiss^[8] averring that by alleging failure to state a cause of action, CCRBI is deemed to have admitted the truth of the allegations in the Complaint.

On December 28, 2009, the trial court issued an Order^[9] granting the Motion to Dismiss.

Appellants filed a Motion for Reconsideration^[10] but it was denied in an Order^[11] dated June 2, 2010; hence, appellants filed a Notice of Appeal^[12] which the trial court approved on July 19, 2010.^[13]

In this appeal, appellants raise the following:

ASSIGNMENT OF ERRORS

1. THE LOWER COURT GRAVELY ERRED IN DISMISSING THE COMPLAINT, APPELLANTS HAVING STRONG CAUSE OF ACTION AGAINST APPELLEES.
2. THE LOWER COURT GRAVELY ERRED IN NOT GIVING CONSIDERATION ON THE APPLICABILITY OF SECTION 1 OF ACT 3135, AS AMENDED/REPEALED REQUIRING SEPARATE PUBLIC INSTRUMENT THE POWER OF ATTORNEY TO FORECLOSE AND REGISTRABLE UNDER SECTION 64 AND 112 OF THE PROPERTY

3. THE LOWER COURT GRAVELY ERRED IN NOT OBSERVING THAT DUE PROCESS WAS VIOLATED BY APPELLEE RURAL BANK TO THE GREAT PREJUDICE OF APPELLANTS.^[14]

RULING

Simply stated, the issue to be resolved in this appeal is whether the Amended Complaint of appellants was correctly dismissed on the ground of failure to state 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; 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 the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.^[15]

It is axiomatic that a defendant moving to dismiss a complaint on the ground of failure to state a cause of action is regarded as having admitted all the averments thereof, at least hypothetically, the test of the sufficiency of the facts found in a petition as constituting a cause of action is being whether or not admitting the facts alleged the court could render a valid judgment upon the same in accordance with the prayer thereof.^[16] Thus, in order to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint.^[17] If the elements are not extant, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.^[18]

However, the rule that the sufficiency of a complaint must be determined on the face thereof and no evidence may be allowed and the issue determined only in light of the allegations admits of exceptions. Thus, it has been ruled that apart from the complaint, the court may also consider the documents^[19] attached to the complaint the due execution of which are not denied under oath by the defendant, the answer with counter-claim and other pleadings,^[20] and the evidence presented at the hearing of a motion for injunctive relief.^[21]

In this case, the Amended Complaint alleges that appellants' parents had mortgaged the land to CCRBI. Simply put, their cause of action is that the foreclosure by CCRBI is void because the loan was paid. They also anchored their cause of action on the failure of CCRBI to attach to the Notice of Extrajudicial Sale copies of the special power of attorney, the REM, and the CCRBI board resolution, as well as the fact that the land is covered by emancipation patent and their family home has been constituted thereon.

Upon a hypothetical admission of the allegation that "upon the death of the two mortgagors, the mortgage loan has been paid and there is nothing to foreclose," the complaint would seem to state a cause of action. There would indeed be no