

THIRD DIVISION

[G.R. No. 242570, September 18, 2019]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. ELENITA V. ABELLO, MA. ELENA ELIZABETH A. FIDER, JONATHAN V. ABELLO, MANUEL V. ABELLO, JR. AND VINCENT EDWARD V. ABELLO, RESPONDENTS.

DECISION

REYES, A., JR., J.:

Before this Court is a petition for review on *certiorari*^[1] filed by Philippine National Bank (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision^[2] dated January 31, 2018 of the Court of Appeals (CA) Cebu City in CA-G.R. CV No. 05501 and its Resolution^[3] dated September 4, 2018, denying the Motion for Reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision^[4] dated August 26, 2014 of the Regional Trial Court (RTC) of Bacolod City, Branch 49, in Civil Case No. 08-13309, which ordered the cancellation of memorandum of encumbrances annotated on Transfer Certificates of Title (TCT) Nos. T-127632, T-82974 and T-58311.

The Antecedent Facts

On November 21, 2008, a Complaint for Cancellation/Discharge of Mortgage/Mortgage Liens was filed by Elenita V. Abello (Elenita), Ma. Elena Elizabeth A. Fider, Jonathan Abello, Manuel V. Abello (Manuel) and Vincent Edward B. Abello (collectively, the respondents) against the petitioner before the RTC of Bacolod City, Branch 49.^[5]

The complaint involves parcels of land covered by TCT Nos. T-127632, T-82974, and T-58311, all located at Bacolod City, registered under the names of Manuel and Elenita (the Spouses Abello). Inscribed on the TCTs were various encumbrances. On TCT No. T-127632, the following mortgages, all in favor of the petitioner, were entered:

Date of Mortgage	Amount in Php	Date Inscribed
September 18, 1963	5,890.00	August 9, 1968
February 21, 1968	6,600.00	February 22, 1968
August 14, 1973	50,000.00	August 23, 1973
October 8, 1973	Increasing	October 11,

(amendment to August 14 1973)	50,000.00 to 94,200.00	1973
Deed of Agreement dated March 18, 1974 increasing Respondents credit limit accommodations of Manuel Abello	75,000	March 18, 1974

Over the two other lots covered by TCT Nos. T-82974 and T-58311, inscribed were the real estate mortgage (REM) obtained by the Spouses Abello from the petitioner on October 30, 1975 for the amount of P227,000.00, under Entry No. 80024, which was made on November 4, 1975.^[6]

Manuel died on October 14, 1998, consequently, his heirs, herein respondents, executed a Declaration of Heirship^[7] on June 5, 2003 authorizing Elenita to act as administrator of the estate.

In their complaint, the respondents sought for the cancellation of the inscriptions claiming that since the petitioner made no action against them since 1975, the action has already prescribed. Accordingly, the respondents argued that they should be discharged as a matter of right and the encumbrances cancelled.^[8]

Ruling of the RTC

After trial, the RTC rendered its Decision^[9] on August 26, 2014, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against the Defendants:

- 1.) The Register of Deeds of the Province of Negros Occidental, is directed to cancel the memorandum of encumbrances (Real Estate Mortgage) appearing at the back of TCT No. T-127632, as Entry Nos. 91194, 131237, 181203, 182910 and 188486.
- 2.) The Register of Deeds of Bacolod City is directed to cancel the memorandum of encumbrance (Real Estate Mortgage) appearing at the back of TCT No. T-82974 and T-58311, as Entry No. 80024.
- 3.) The Counterclaim of the Defendant PNB is ordered dismissed.
- 4.) No costs.

SO ORDERED.^[10]

In its decision, the RTC found merit in the respondents' complaint on the basis of

prescription. In holding that prescription has already set in, the RTC reckoned the period of prescription from the date of inscription on the TCT. Thus, it explained that the right to foreclose the mortgage on TCT No. T-127632 accrued on March 19, 1984, while those in TCT Nos. T-82974 and T-58311 on November 5, 1985.^[11]

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.^[12]

Ruling of the CA

On appeal to the CA, the latter dismissed the petition in its Decision^[13] dated January 31, 2018, *viz.:*

WHEREFORE, the instant appeal is DENIED. The Decision dated August 26, 2014 rendered by the [RTC], Branch 49 of Bacolod City is AFFIRMED *in toto*.

SO ORDERED.^[14]

In so ruling, the CA found the allegations of the complaint sufficient to establish a cause of action. The CA held that the type of credit, loan terms and condition, and the date of maturity of the principal loan are not material elements of the case, and as such need not be alleged.^[15]

The CA also found, on the basis of the accounting notice sent by the petitioner, that the institution of a mortgage action has already prescribed. The CA explained that the period of prescription begin to run from the time Manuel stopped paying the mortgage debt on December 31, 1985, whereas the petitioner sent a demand only on January 8, 2002.^[16]

The petitioner filed a Motion for Reconsideration of the said decision, but the same was denied by the CA in its Resolution^[17] dated September 4, 2018.

Thus, this petition for review for *certiorari* whereby, the petitioner submits that the CA and the RTC erred in ordering the cancellation of the subject encumbrances. The petitioner argues first, that the complaint filed by the respondents should have been dismissed for failure to state a cause of action. Then, even assuming the existence of such cause of action, the action cannot prosper as the respondents, by their admission of liability, in effect, waived the right to raise the defense of prescription.

For their part, the respondents aver in their Comment^[18] that there is no merit in the instant petition. The respondents argue that the petitioner's own admissions as to the particulars of the loan and REM could be relied upon in determining the period of prescription, and ultimately, cause of action.

Verily, the issue in this appeal is whether or not the CA erred in ordering the cancellation of the annotated encumbrances on the subject TCTs.

Ruling of the Court

The petition is **meritorious**.

A complaint that fails to state **or** lacks cause of action is dismissible. The Court, in *Dabuco v. CA*,^[19] discussed the difference between the dismissal of the complaint on the ground of "failure to state cause of action" and "lack of cause of action," to wit:

As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand. The former refers to the **insufficiency of allegation in the pleading**, the latter to the **insufficiency of factual basis for the action**. Failure to state a cause may be raised in a Motion to Dismiss under Rule 16, while lack of cause may be raised any time. Dismissal for failure to state a cause can be made at the earliest stages of an action. Dismissal for lack of cause is usually made after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented.^[20] (Emphases Ours)

Thus, in "failure to state a cause of action," the examination is limited to the complaint^[21] in that whether it contains an *averment* of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery.^[22] The test is whether or not, admitting hypothetically the allegations of fact made in the complaint, a judge may validly grant the relief demanded.^[23]

In contrast, a complaint "lacks of cause of action" when it presents questions of fact that goes into *proving the existence* of the elements of the plaintiffs cause of action. Thus, in dismissing the complaint on this ground, the court, in effect, declares that the plaintiff is not entitled to a favorable judgment for failure to substantiate his or her cause of action by preponderance of evidence. Considering that questions of fact are involved, the dismissal of the complaint due to "lack of cause of action" is usually made after trial, when the parties are given the opportunity to present all relevant evidence on such question of fact.^[24]

Succinctly, "failure to state cause of action" refers to insufficiency of allegation in the pleading; whereas, "lack of cause of action" deals with insufficiency of evidence^[25] or insufficiency of factual basis for the action.^[26]

The Court ruled in the recent case of *Mercene v. Government Service Insurance System*,^[27] that the commencement of the prescriptive period for REMs is crucial in determining the existence of cause of action. Prescription, in turn, runs in a mortgage contract not from the time of its execution, but rather a) when the loan became due and demandable, for instances covered under the exceptions set forth