

## THIRD DIVISION

[ G.R. No. 192971, January 10, 2018 ]

**FLORO MERCENE, PETITIONER, V. GOVERNMENT SERVICE  
INSURANCE SYSTEM, RESPONDENT.**

### DECISION

**MARTIRES, J.:**

This petition for review on certiorari seeks to reverse and set aside the 29 April 2010 Decision<sup>[1]</sup> and 20 July 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 86615 which reversed the 15 September 2005 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 220, Quezon City (RTC).

#### The Facts

On 19 January 1965, petitioner Floro Mercene (*Mercene*) obtained a loan from respondent Government Service Insurance System (GSIS) in the amount of P29,500.00. As security, a real estate mortgage was executed over Mercene's property in Quezon City, registered under Transfer Certificate of Title No. 90535. The mortgage was registered and annotated on the title on 24 March 1965.<sup>[4]</sup>

On 14 May 1968, Mercene contracted another loan with GSIS for the amount of P14,500.00. The loan was likewise secured by a real estate mortgage on the same parcel of land. The following day, the loan was registered and duly annotated on the title.<sup>[5]</sup>

On 11 June 2004, Mercene opted to file a complaint for Quieting of Title<sup>[6]</sup> against GSIS. He alleged that: since 1968 until the time the complaint was filed, GSIS never exercised its rights as a mortgagee; the real estate mortgage over his property constituted a cloud on the title; GSIS' right to foreclose had prescribed. In its answer,<sup>[7]</sup> GSIS assailed that the complaint failed to state a cause of action and that prescription does not run against it because it is a government entity.

During the pre-trial conference, Mercene manifested that he would file a motion for judgment on the pleadings. There being no objection, the RTC granted the motion for judgment on the pleadings.<sup>[8]</sup>

#### The RTC Decision

In its 15 September 2005 decision, the RTC granted Mercene's complaint and ordered the cancellation of the mortgages annotated on the title. It ruled that the real estate mortgages annotated on the title constituted a cloud thereto, because the annotations appeared to be valid but was ineffective and prejudicial to the title. The trial court opined that GSIS' right as a mortgagee had prescribed because more than ten (10) years had lapsed from the time the cause of action had accrued. The RTC stated that prescription ran against GSIS because it is a juridical person with a

separate personality, and with the power to sue and be sued. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1) Declaring the Real Estate Mortgage dated January 19, 1965, registered on March 24, 1965 and Real Estate Mortgage dated May 14, 1965 registered on May 15, 1968, both annotated at the back of Transfer Certificate of Title No. 90435 of the Registry of Deeds of Quezon City, registered in the name of plaintiff Floro Mercene married to Felisa Mercene, to be ineffective.

2) Ordering the Registry of Deeds of Quezon City to cancel the following entries annotated on the subject title 1) Entry No. 4148/90535: mortgage to GSIS and; 2) Entry No. 4815/90535: mortgage to GSIS.

3) The other claims and counter-claims are hereby denied for lack of merit.<sup>[9]</sup>

Aggrieved, GSIS appealed before the CA.

### ***The CA Ruling***

In its 30 January 2015 decision, the CA reversed the RTC decision. The appellate court posited that the trial court erred in declaring that GSIS' right to foreclose the mortgaged properties had prescribed. It highlighted that Mercene's complaint neither alleged the maturity date of the loans, nor the fact that a demand for payment was made. The CA explained that prescription commences only upon the accrual of the cause of action, and that a cause of action in a written contract accrues only when there is an actual breach or violation. Thus, the appellate court surmised that no prescription had set in against GSIS because it has not made a demand to Mercene. It ruled:

WHEREFORE, the appeal is GRANTED. The decision appealed from is REVERSED and SET ASIDE. The complaint for Quieting of Title is hereby DISMISSED.<sup>[10]</sup>

Mercene moved for reconsideration, but the same was denied by the CA in its assailed 7 April 2011 resolution.

Hence, this present petition raising the following:

### **Issues**

#### **I**

**WHETHER THE COURT OF APPEALS ERRED IN CONSIDERING ISSUES NOT RAISED BEFORE THE TRIAL COURT;**

#### **II**

**WHETHER THE COURT OF APPEALS ERRED IN DISREGARDING THE JUDICIAL ADMISSION ALLEGEDLY MADE BY GSIS; AND**

#### **III**

# **WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE REAL ESTATE MORTGAGES HAD YET TO PRESCRIBE.**

## **THE COURTS RULING**

The petition has no merit.

### ***Related issues addressed by the trial courts***

Mercene assails the CA decision for entertaining issues that were not addressed by the trial court. He claims that for the first time on appeal, GSIS raised the issue on whether the loans were still effective in view of his nonpayment. A reading of the CA decision, however, reveals that the appellate court did not dwell on the issue of nonpayment, but instead ruled that prescription had not commenced because the cause of action had not yet accrued. Hence, it concluded that the complaint failed to state a cause of action. The appellate court did not focus on the question of payment precisely because it was raised for the first time on appeal. It is noteworthy that, in its answer, GSIS raised the affirmative defense that Mercene's complaint failed to state a cause of action.

### ***Only ultimate facts need be specifically denied***

Further, Mercene insists that GSIS had judicially admitted that its right to foreclose the mortgage had prescribed. He assails that GSIS failed to specifically deny the allegations in his complaint, particularly paragraphs 11.1 and 11.2 which read:

11.1. The right of the defendant GSIS, to institute the necessary action in court, to enforce its right as a mortgagee, under Real Estate Mortgages dated January 19, 1965 and May 14, 1968, respectively, by filing a complaint for judicial foreclosure of Real Estate Mortgage, with the Regional Trial Court of Quezon City, against the plaintiff, as the mortgagor, pursuant to Rule 68 of the 1997 Rules of Civil Procedures (Rules, for brevity); or by filing a petition for extra-judicial foreclosure of real estate mortgage, under Act. 3135, as amended, with the Sheriff, or with the Notary Public, of the place where the subject property is situated, for the purpose of collecting the loan secured by the said real estate mortgages, or in lieu thereof, for the purpose of consolidating title to the parcel of land xxx in the name of the defendant GSIS, has already prescribed, after ten (10) years from May 15, 1968. More particularly, since May 15, 1968, up to the present, more than thirty-five (35) years have already elapsed, without the mortgagee defendant GSIS, having instituted a mortgage action[s] against the herein plaintiff-mortgagor.

x x x

11.2. Since the defendant GSIS has not brought any action to foreclose either the first or the second real estate mortgage on the subject real property, so as to collect the loan secured by the said real estate mortgages, or in lieu thereof, to consolidate title to the said parcel of land, covered by the documents entitled, first and second real estate mortgages, in the name of the defendant GSIS, notwithstanding the lapse of ten (10) years from the time the cause of action accrued, either then (10) years after May 15, 1968, or after the alleged violation by the