

FIRST DIVISION

[G.R. No. 207914, January 18, 2017]

**FCD PAWNSHOP AND MERCHANDISING COMPANY, FORTUNATO C.DIONISIO, JR., AND FRANKLIN C. DIONISIO, PETITIONERS,
VS. UNION BANK OF THE PHILIPPINES, ATTY. NORMAN R. GABRIEL, ATTY. ENGRACIO M. ESCASINAS, JR., AND THE
REGISTRY OF DEEDS FOR MAKATI CITY, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

Assailed in this Petition for Review on *Certiorari*^[1] are the February 28, 2013 Decision^[2] of the Court of Appeals (CA) dismissing the herein petitioners' Petition for *Certiorari*^[3] in CA-G.R. SP. No. 126075, and its June 28, 2013 Resolution^[4] denying their Motion for Reconsideration^[5] in said case.

Factual Antecedents

Together with Felicitas Dionisio-Juguilon and Adelaida Dionisio, petitioners Fortunato C. Dionisio, Jr. (Fortunato) and Franklin C. Dionisio (Franklin) owned FCD Pawnshop and Merchandising Company, which in turn was the registered owner of a parcel of land in Makati under Transfer Certificate of Title No. (168302) S-3664, or TCT (168302) S-3664.

In 2009, Fortunato and Franklin entrusted the original owner's copy of TCT (168302) S-3664 to Atty. Rowena Dionisio. It was later discovered that the said title was used as collateral by Sunyang Mining Corporation (Sunsang) to obtain a P20 million loan from respondent Union Bank of the Philippines (UBP).

Civil Case No. 11-116 - for annulment of mortgage

On February 9, 2011, Fortunato and Franklin filed against UB, Sunyang, the Registry of Deeds of Makati, and several others Civil Case No. 11-116, a Petition^[6] to annul the Sunyang mortgage and claim for damages, based on the premise that TCT (168302) S-3664 was fraudulently mortgaged. The case was assigned to Branch 57 of the Regional Trial Court (RTC) of Makati (Branch 57).

Meanwhile, UB caused the extrajudicial foreclosure of the subject property, and it bought the same at the auction sale. In the Notice of Extrajudicial Sale^[7] published prior to the auction sale, however, the title to the subject property was at one point erroneously indicated as "Transfer Certificate of Title No. 163302 (S-3664);" but elsewhere in the notice, the title was correctly indicated as "Transfer Certificate of Title No. 163302 (S-3664)." The publisher later circulated an Erratum^[8] admitting its mistake, and it made the corresponding correction.

Civil Case No. 11-1192 - for annulment of foreclosure sale and certificate of sale

On account of perceived irregularities in the foreclosure and sale proceedings, Fortunato and Franklin filed December 2011 a Complaint^[9] against UBP, the Registry of Deeds of Makati, and several others for annulment of the extrajudicial foreclosure and certificate of sale issued, with injunctive relief. The case was docketed as Civil Case No. 11-1192 and assigned to Branch 133 of the Makati RTC (Branch 133).

In a written opposition, UBP claimed that the filing of Civil Case No. 11-1192 violated the rule against forum shopping.

Ruling of the Regional Trial Court in Civil Case No. 11-1192

On March 26, 2012, Branch 133 issued an Order^[10] dismissing Civil Case No. 11-1192 on the ground of forum shopping. It held:

The instant case involves the Annulment of Extra-Judicial Foreclosure Sale and Certificate of Sale with Prayer for Temporary Restraining Order and Preliminary Injunction, and Damages. However, a case for Annulment of Mortgage is still pending before the Regional Trial Court Makati City, Branch 57. The Annulment of Extra-Judicial Foreclosure Sale and the Annulment of Mortgage involves (sic) the same subject property described in the Transfer Certificate of Title No. (168302)-S-3664. While the plaintiffs alleged that the issue in the case before RTC 57 deals with the validity of the mortgage and the issue in the instant case deals with the validity of the foreclosure sale, this Court finds the same to be interrelated. The ruling on the validity of the Foreclosure Sale would also deal with the validity of the mortgage. Thus, there would be a possibility that the ruling on the said validity by this Court would be in conflict with ruling on the Annulment of Mortgage case which is now pending before the RTC Makati Branch 57.

As the Supreme Court consistently held x x x there is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court,' Hence, there is a clear showing of forum shopping which is a ground for the dismissal of this case.

WHEREFORE, in view of the foregoing[,] the instant case is hereby DISMISSED on the ground of forum shopping.

SO ORDERED.^[11]

Fortunato and Franklin moved to reconsider, but the trial court, in a June 14, 2012 Order,^[12] held its ground, stating among others that -

In the present case, there is no dispute that the plaintiffs clearly violated Section 4, Rule 2, of the Rules of Court apparently for splitting a cause of action by filing separately and independently the instant action which can be best pleaded in the annulment of mortgage earlier lodged.

Certainly, it would be for the best interest and benefit of the parties herein if the present action (annulment of foreclosure proceeding) is just pleaded as plaintiff's cause of action in the annulment of mortgage first lodged and now pending before RTC Branch 57, instead of being filed separately to save time and effort. x x x

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In the final analysis, although it may seem that the two cases contain two separate remedies that are both available to the plaintiffs, it cannot be said that the two remedies which arose from one wrongful act can be pursued in two different cases.

The rule against splitting a cause of action is intended to prevent repeated litigation between the same parties in regard to the same subject of controversy, to protect the defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits. It comes from the old maxim *nemo debet bis vexari, pro una et eadem causa* (no man shall be twice vexed for one and the same cause).

[13]

Ruling of the Court of Appeals

Petitioners filed an original Petition for *Certiorari*^[14] before the CA docketed as CA-G.R. SP. No. 126075. Claiming that there is no forum shopping, they argued that Civil Case No. 11-116 (annulment of mortgage) and Civil Case No. 11-1192 (annulment of foreclosure and sale proceedings) involve different subject matters; in the first, the subject is the mortgage constituted on the property and its validity, while the second covers the foreclosure and sale thereof, as well as the validity thereof; that the evidence required to prove the first case is not the same as that which must prove the second; that judgments obtained in the two cases will not be inconsistent with each other; and that the causes of action in both cases are not the same, as in fact the cause of action in the second case did not exist yet when they filed the first, but accrued only later. They added that there is no splitting of a single cause of action, and that as between the two cases, there is no identity of reliefs sought.

On February 28, 2013, the CA rendered the assailed Decision dismissing the Petition, stating thus -

In sum, the lone issue to be resolved is whether petitioners Fortunato and Franklin were guilty of forum-shopping when they successively filed the Annulment of Mortgage case and Annulment of Foreclosure Sale case.

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Given the foregoing considerations, We hold that petitioners Fortunato

and Franklin clearly violated the rule on forum-shopping as the elements of *litis pendentia* are present in the case at bench. Consider the following;

Firstly, it is undisputed that there is identity of parties representing the same interests in the two cases, both involving petitioners x x x and private respondent Bank. Notwithstanding that in the first case, FCD Pawnshop x x x was not indicated as a party and respondent Sunyang was not impleaded therein, it is evident that the primary litigants in the two actions are the same.

Secondly, in finding that the other elements of *litis pendentia* were present in the instant case, We deem it necessary to apply the case of *Goodland Company, Inc. vs. Asia United Bank et al.*^[15]

In *Goodland*, petitioner initially filed a Complaint for Annulment of Mortgage on the ground that the Real Estate Mortgage (REM) contract was falsified and irregularly executed. Subsequently, it filed a second case where it prayed for injunctive relief and/or nullification of the extrajudicial foreclosure sale by reason of, among others, defective publication of the Notice of Sale and falsification of the REM contract which was the basis of foreclosure, thus, rendering the latter as similarly null and void. The High Court found petitioner guilty of forum shopping ratiocinating that there can be no determination of the validity of the extrajudicial foreclosure and the propriety of the injunction in the Injunction case without necessarily ruling on the validity of the REM.

We stress, however, that unlike the *Goodland* case, the instant controversy involved a situation wherein the allegations in the Complaint for Annulment of Foreclosure did not explicitly and categorically raise the falsification of the REM contract as one of the grounds for declaring the annulment of the said foreclosure sale. Here, petitioners anchored their arguments on the alleged irregularities in the foreclosure proceedings, *i.e.*, different title numbers in the documents used or issued in the auction sale and that the Petition for Extrajudicial Foreclosure Sale was filed without authority. Nonetheless, after a careful study of the *Goodland* case, We are ever more convinced that the same is still instructive on the issue at hand. Consider the following pertinent portions of the case:

'x x x There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. **While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case x x x, these were simply the expected consequences of the REM transaction in the first case x x x. These eventualities are precisely what petitioner sought to avert when it filed the first case. Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee**

AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent and irregular execution and registration - the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee,

x x x

x x x **In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.** The procedural infirmities or non compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case. x x x'

While in the instant case, the Annulment of Foreclosure Sale was merely founded on irregularities in the foreclosure proceedings, without deliberately raising the alleged nullity of the REM, the foregoing clearly suggests that in resolving the said Annulment of Foreclosure Sale case, its determination will still be anchored upon and premised on the issue of the validity of REM. Parenthetically, should it be found that the mortgage contract is null and void, the proceedings based thereon shall likewise become ineffectual. The resolution of the Annulment of Foreclosure Sale case, therefore, is inevitably dependent on the effectivity of the REM transaction, thus, it can be said that both cases shall be substantially founded on the same transactions, same essential facts and circum1stances.

In addition, as correctly pointed out by the private respondent Bank, a careful scrutiny of the Complaint for Annulment of Foreclosure shows petitioners Fortunato and Franklin's repeated reference to the subject property as unlawfully and fraudulently mortgaged. As such, insofar as the determination of the validity of foreclosure proceedings is concerned, same evidence will have to be utilized as the antecedent facts that gave rise to both cases were the same.

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