

FIRST DIVISION

[G.R. No. 175796, July 22, 2015]

**BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. SPOUSES
BENEDICTO & TERESITA YUJUICO, RESPONDENTS.**

DECISION

BERSAMIN, J.:

An action to recover the deficiency after extrajudicial foreclosure of a real property mortgage is a personal action because it does not affect title to or possession of real property, or any interest therein.

The Case

This appeal is taken by the petitioner to overturn the decision promulgated on March 31, 2006,^[1] whereby the Court of Appeals (CA) set aside the orders issued by the Regional Trial Court, Branch 60, in Makati City (Makati RTC) on October 17, 2003^[2] and February 1, 2005^[3] dismissing their action against the respondents to recover the deficiency after the extrajudicial foreclosure of their mortgage (Civil Case No. 03-450) on the ground of improper venue.

Antecedents

On August 22, 1996, the City of Manila filed a complaint against the respondents for the expropriation of five parcels of land located in Tondo, Manila and registered in the name of respondent Teresita Yujuico. Two of the parcels of land, covered by Transfer Certificate of Title (TCT) No. 261331 and TCT No. 261332, were previously mortgaged to Citytrust Banking Corporation, the petitioner's predecessor-in-interest, under a First Real Estate Mortgage Contract.^[4] On June 30, 2000, the Regional Trial Court in Manila (Manila RTC) rendered its judgment declaring the five parcels of land expropriated for public use. The judgment became final and executory on January 28, 2001 and was entered in the book of entries of judgment on March 23, 2001.^[5] The petitioner subsequently filed a *Motion to Intervene in Execution with Partial Opposition to Defendant's Request to Release*, but the RTC denied the motion for having been "filed out of time." Hence, the petitioner decided to extrajudicially foreclose the mortgage constituted on the two parcels of land subject of the respondents' loan. After holding the public auction, the sheriff awarded the two lots to the petitioner as the highest bidder at P10,000,000.00.^[6]

Claiming a deficiency amounting to P18,522.155.42, the petitioner sued the respondents to recover such deficiency in the Makati RTC (Civil Case No. 03-450). The respondents moved to dismiss the complaint on several grounds, namely: that the suit was barred by *res judicata*; that the complaint stated no cause of action; and that the plaintiff's claim had been waived, abandoned, or extinguished.^[7]

In its order issued on October 17, 2003, the Makati RTC denied the respondents' motion to dismiss, ruling that there was no *res judicata*; that the complaint stated a sufficient cause of action to recover the deficiency; and that there was nothing to support the claim that the obligation had been abandoned or extinguished apart from the respondents' contention that the properties had been subjected to expropriation by the City of Manila.^[8]

On November 4, 2003, the respondents moved for reconsideration, reiterating their grounds earlier made in their motion to dismiss.^[9]

In turn, the petitioner adopted its comment/opposition to the motion to dismiss.^[10]

The respondents then filed their reply,^[11] in which they raised for the first time their objection on the ground of improper venue. They contended that the action for the recovery of the deficiency, being a supplementary action of the extrajudicial foreclosure proceedings, was a real action that should have been brought in the Manila RTC because Manila was the place where the properties were located.^[12]

On February 1, 2005, the Makati RTC denied the respondents' motion for reconsideration for its lack of merit; and held on the issue of improper venue that:

It would be improper for this Court to dismiss the plaintiff's complaint on the ground of improper venue, assuming that the venue is indeed improperly laid, since the said ground was not raised in the defendant's Motion to Dismiss. On this point, it was held in the case of *Malig, et al. vs. Bush*, L-22761, May 31, 1969 that "an action cannot be dismissed on a ground not alleged in the motion therefore even if said ground, e.g., prescription, is provided in Rule 16."^[13]

Decision of the CA

Not satisfied, the respondents assailed the orders dated October 17, 2003 and February 1, 2005 by petition for *certiorari*.^[14] They submitted for consideration by the CA the following issues, namely:

x x x (WHETHER OR NOT) RESPONDENT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS ASSAILED ORDERS CONSIDERING THAT:

A. THE COMPLAINT A QUO IS BARRED BY RES JUDICATA.

B. THE COMPLAINT STATED NO CAUSE OF ACTION.

C. PRIVATE RESPONDENT'S CLAIM HAS BEEN WAIVED, ABANDONED OR OTHERWISE EXTINGUISHED.

D. VENUE WAS IMPROPERLY LAID.^[15]

On March 31, 2006, the CA granted the petition for *certiorari* of the respondents on the basis of the fourth issue, opining:

x x x x

Thus, **a suit for recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract; it is upon a written contract and upon an obligation of the mortgage-debtor to pay the deficiency which is created by law.** As such, the venue of an action for recovery of deficiency must necessarily be the same venue as that of the extrajudicial foreclosure of mortgage.

x x x x

In this regard, We take note that the parcels of land subject of the mortgage contract are located in Tondo, Manila, under Transfer Certificates of Title Nos. 216331 and 216332. On the other hand, the extrajudicial foreclosure of the real estate mortgage took place at the RTC of Manila on January 28, 2003. **Thus, the suit for judgment on the deficiency filed by respondent BPI against petitioners Yujuico, being an action emanating from the foreclosure of the real estate mortgage contract between them, must necessarily be filed also at the RTC of Manila, not at the RTC of Makati.**

x x x x^[16]

The CA denied the respondents' *Motion for Partial Reconsideration* and the petitioner's *Partial Motion for Reconsideration* on December 7, 2006.^[17]

Issues

Hence, this appeal by the petitioner, to assail the CA's dismissal of Civil Case No. 03-450 on the ground of improper venue upon the following grounds,^[18] namely:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS' DENIAL OF THE PETITIONER'S PARTIAL MOTION FOR RECONSIDERATION ON THE GROUND OF IMPROPER VENUE AS A RESULT DISMISSED THE COMPLAINT FOR SUM OF MONEY IS CONTRARY TO LAW.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS['] ACT OF