

## FIRST DIVISION

[ G.R. NO. 149468, October 23, 2006 ]

### MARIE IOLE NACUA-JAO, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

#### D E C I S I O N

##### AUSTRIA-MARTINEZ, J.:

This resolves an appeal by Petition for Review under Rule 45 of the Rules of Court from the December 11, 2000 Decision<sup>[1]</sup> and June 17, 2001 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 54261.<sup>[2]</sup>

The material facts are summarized by the CA, thus:<sup>[3]</sup>

Marie Iole Nacua-Jao (Jao) filed a Complaint<sup>[4]</sup> with the Regional Trial Court (Branch XV), Naic, Cavite (RTC) against Spouses Jackson and Jennerie Gan (Spouses Gan), Lee Ching Hsien (Hsien) and China Banking Corporation (CBC) for Recovery of Property, Declaration of Nullity of Deeds and Title and Damages. In said Complaint, Jao alleged that she is the lawful owner of a parcel of land with improvements known as Lot No. 561, located at Ternate, Cavite and registered in her name under Transfer Certificate of Title (TCT) No. T-525552.<sup>[5]</sup> In September 1995, before leaving Cebu, she entrusted the owner's duplicate copy of T-525552 to Hsien. The following year, she wrote<sup>[6]</sup> Hsien demanding the return of the owner's duplicate copy of T-525552 but the latter failed to comply. Jao later found out that Hsien had sold the subject property to Spouses Gan by virtue of a Deed of Sale dated January 19, 1996,<sup>[7]</sup> and that the latter had caused the cancellation of T-525552 and the issuance in their names of TCT No. T-602202<sup>[8]</sup> covering the subject property. She also discovered that Spouses Gan mortgaged<sup>[9]</sup> said property to CBC as security for a loan of Php1,600,000.00, which mortgage is annotated on T-602202. She then wrote Spouses Gan and CBC, demanding the reconveyance of the subject property;<sup>[10]</sup> but her demand went unheeded. Thus, she filed the Complaint not only against Spouses Gan and Hsien but also against CBC<sup>[11]</sup> and prayed that the RTC nullify T-602202 and restore T-525552, cancel the mortgage in favor of CBC, and order defendants to pay her damages and attorney's fees.<sup>[12]</sup>

CBC filed a Motion to Dismiss<sup>[13]</sup> the Complaint on the ground of lack of cause of action. Jao vigorously opposed it.<sup>[14]</sup>

The RTC granted the Motion to Dismiss in an Order dated December 11, 1997, which reads:

After a thorough and careful examination of the arguments and contentions of both parties, defendant China Banking Corp. and plaintiff

Marie Iole Nacua-Jao, this Court finds the contentions and arguments of defendant China Banking Corp. contained in its Motion to Dismiss and in its Reply to the plaintiff's Opposition to be meritorious, therefore, the same is granted. On the other hand, plaintiff's contention in her Opposition and Rejoinder are found to be without merit and so therefore, this Court denies the same.

WHEREFORE, having granted the Motion to Dismiss of defendants China Banking Corp., this Court hereby orders the Complaint of plaintiff in the instant case as against defendant China Banking Corp. dismissed, as it is hereby dismissed.

SO ORDERED.<sup>[15]</sup>

Jao filed a Motion for Reconsideration but the RTC denied the same in its Order dated April 19, 1999, thus:

In her Motion for Reconsideration, plaintiff still failed to particularize the circumstances constituting fraud or mistake on the part of defendant China Banking Corp., thereby disregarding the provisions enunciated in Sec. 5, Rule 8 of the Rules of court.

x x x x

WHEREFORE, lacking merit, plaintiff's Motion for Reconsideration dated November 27, 1998 is denied, as it is hereby denied. On the other hand, defendant China Banking Corporation's Comment/Opposition to plaintiff's Motion for Reconsideration dated December 21, 1998 is hereby granted.

SO ORDERED.<sup>[16]</sup>

Jao filed a Petition for *Certiorari*<sup>[17]</sup> with the CA which denied the same in its December 11, 2000 Decision. It also denied Jao's Motion for Reconsideration<sup>[18]</sup> in a Resolution dated July 17, 2001.<sup>[19]</sup>

Hence, the present recourse to this Court, petitioner Jao raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE CASE ON THE GROUND OF LACK OF CAUSE OF ACTION

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT APPRECIATING THE MULTIPLICITY OF SUITS IN DISMISSING THE CASE.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING RESPONDENT CHINA BANKING CORPORATION AS AN

INDISPENSABLE OR NECESSARY PARTY IN THE CASE.

IV

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE COMPLAINT DID NOT ALLEGE THE PARTICULAR ACTS OF FRAUD.

V

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ASSUMING THAT RESPONDENT CHINA BANK WAS A MORTGAGEE IN GOOD FAITH WITHOUT HEARING.<sup>[20]</sup>

The petition is meritorious.

We resolve jointly the first, fourth and fifth issues, all these being interrelated.

The Motion to Dismiss subject matter of this Petition was filed by respondent before it filed an answer or responsive pleading to the Complaint. It is to be treated therefore as a Motion to Dismiss on the ground of failure to state a cause of action under Sec. 1(g),<sup>[21]</sup> Rule 16 of the Rules of Court.

To determine if a complaint states a cause of action, the test is whether, admitting the truth of the facts alleged therein, the court may render a valid judgment in accordance with the prayer. If the answer is "no," the complaint does not state a cause of action and should be dismissed forthwith. If "yes," then it does and must be given due course.<sup>[22]</sup> What are considered, however, are only the material allegations in the complaint, the appended annexes or documents and other pleadings of the plaintiff, or the admissions in the records.<sup>[23]</sup> Extraneous facts and circumstances are not taken into account.<sup>[24]</sup>

In its December 11, 1997 Order granting the Motion to Dismiss, the RTC failed to state clearly and distinctly its reasons for granting the Motion to Dismiss, contrary to Sec. 3,<sup>[25]</sup> Rule 16. It was only in its April 19, 1999 Order that the RTC made reference to the alleged failure of "xxx plaintiff xxx to particularize the circumstances constituting fraud or mistake on the part of defendant xxx,"<sup>[26]</sup> and to the claim of respondent that it is a mortgagee-in-good-faith.<sup>[27]</sup>

The CA affirmed the dismissal of the Complaint based on the following findings:

In the instant case, the petitioner relies on paragraph 15 of the complaint as the allegation narrating the connivance and conspiracy of the respondent bank with the other defendants. The said paragraph states:

15. That from the foregoing, therefore, it is very evident that the defendants had connived and conspired to effect the so-called sale and mortgage of Lot No. 561 and the transfer of the title thereof to defendant Gan spouses' name; xxx

It is obvious from the said paragraph that there is nothing therein which states the specific overt acts which show that the private respondent acted in conspiracy with the other defendants. There is no allegation that the respondent bank had prior knowledge or could have known with the exercise of due diligence, that the title presented by the Gan spouses was fraudulently acquired. Nowhere is it alleged in the complaint that the respondent bank had notice, information, or knowledge of any flaw or illegality in the action of the other defendants. Clearly then, the bare statement in paragraph 15 of the complaint does not establish any right or cause of action on the part of the petitioner against the respondent bank. It is a mere conclusion of law which is not sustained by the factual declarations, much less admitted by the respondent bank.<sup>[28]</sup>

We are unable to subscribe to the foregoing view of the CA. Even a cursory reading of the Complaint readily reveals a clear statement of the cause of action of petitioner. The Complaint reads:

x x x x

3. That plaintiff is the lawful owner of Lot No. 561 and its improvements xxx covered by Title No. T-525552 issued in her name xxx.

x x x x

9. That sometime this year, plaintiff was only shocked to learn that a falsified and fraudulent Deed of Absolute Sale executed on January 19, 1996 was presented to the Register of Deeds xxx in order to cause the cancellation of plaintiff's title xxx.

10. That consequently, TCT No. T-525552 xxx was illegally cancelled and replaced by TCT No. T-602202 in the name of defendant Gan spouses xxx.

x x x x

12. That Lot No. 561, now covered by TCT No. T-602202 (Annex "H") in the name of defendant Gan spouses is presently mortgaged to defendant China Banking Corporation in the amount of P1,600,000.00; the mortgage is annotated at the back of Annex "H" and the annotation is marked as Annex "H-1"; all the proceeds thereof went to defendant Gan Spouses.

13. That on knowing the falsification and the illegal cancellation of her title, plaintiff wrote defendant Jackson Gan and defendant China Banking Corporation protesting against the unlawful transactions that not only involved Lot No. 561 at Ternate, Cavite but also Lot No. 9, Blk. 89 at Paranaque, Metro Manila; machine copies of the letter-protests are hereto attached as Annexes "I" and "J", respectively, and made integral parts hereof;

x x x x