

THIRD DIVISION

[G.R. NO. 146531, March 18, 2005]

**DOMINGO R. MANALO, PETITIONER, VS. PAIC SAVINGS BANK
AND THERESE V. VARGAS, RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated December 21, 2000 of the Court of Appeals in CA-G.R. SP No. 60966, "*Domingo R. Manalo vs. PAIC Savings Bank, represented by the Liquidator/Receiver, PDIC, and Therese Villanueva Vargas.*"

The factual antecedents as borne by the records are:

On July 19, 1983, S. Villanueva Enterprises, Inc., represented by its president, Therese Villanueva Vargas, impleaded as a respondent, obtained a P3,000,000.00 loan from PAIC Savings and Mortgage Bank, also a respondent. As security for the loan, respondents mortgaged two (2) lots situated in Pasay City covered by Transfer Certificate of Title (TCT) No. 6076 of the Registry of Deeds, same city.

However, respondent Vargas failed to pay the loan. Consequently, the mortgage was foreclosed and the lots were sold at public auction to respondent bank, being the highest bidder.

On December 4, 1984, a Certificate of Sale^[2] was issued to respondent bank and eventually registered with the Registry of Deeds of Pasay City.

On October 14, 1991 or seven years later, respondent Vargas filed with the Regional Trial Court (RTC), Branch 116, Pasay City, a complaint for annulment of mortgage and extrajudicial foreclosure against respondent bank, docketed as Civil Case No. R-8477. In due course, the RTC rendered a Decision dated July 22, 1993 dismissing the complaint for lack of merit. On appeal, the Court of Appeals, in a Decision dated October 28, 1996, affirmed the RTC Decision, sustaining the legality of the mortgage and the foreclosure proceedings. The Decision of the Appellate Court then became final and executory.

Meantime or on June 22, 1992, respondent bank filed with the RTC, Branch 112, Pasay City, a petition for issuance of a writ of possession, docketed as Civil Case No. 9011-P. After hearing, or on April 2, 1998, the court granted the petition and issued a writ of possession.

Earlier or on December 23, 1992, respondent Vargas sold to Armando Angsico the lots for P18,000,500.00. Then on August 24, 1994, respondent Vargas leased to

Domingo R. Manalo, petitioner, a portion of the same lots consisting of 450 square meters for a period of ten (10) years with a monthly rental of P22,500.00. Later, or on June 29, 1997, Angsico assigned and transferred to petitioner all his rights to the property as shown by a Deed of Assignment and Transfer of Rights.

On May 7, 1998, petitioner filed with the RTC, Branch 231, Pasay City, a complaint for specific performance and damages, docketed as Civil Case No. 98-0868. Impleaded as defendants are respondent bank, its liquidator and/or receiver PDIC, and respondent Vargas. In his complaint, petitioner alleged that he has legal interest in the subject lots, having initially leased a portion of the same from respondent Vargas and then purchased the whole area from Angsico. He prayed that the trial court issue a **writ of mandamus** compelling respondent bank (1) to allow him to redeem and/or repurchase the subject lots for P18,000,000.00; and (2) to release to him TCT No. 6076.

Instead of filing an answer, respondent bank filed a motion to dismiss the complaint on the following grounds: (1) the trial court has no jurisdiction over the subject property; and (2) the complaint fails to state a sufficient cause of action. Respondent bank averred that petitioner has no legal interest in the subject lots since as early as December 4, 1985, the title thereto was consolidated in its name when respondent Vargas, petitioner's predecessor-in-interest, failed to exercise her right of redemption.

On September 29, 1998, the RTC issued an Order denying respondent bank's motion to dismiss the complaint. Thus, respondent bank, on October 7, 1998, filed its answer alleging as affirmative defenses that the complaint failed to state a cause of action and that the trial court has no jurisdiction over the case.

On September 4, 2000, the RTC rendered a Decision dismissing the complaint for "lack of an enforceable cause of action," thus:

"WHEREFORE, in the light of the aforementioned reasons, for lack of an enforceable cause of action, the case is hereby DISMISSED with costs against the plaintiff.

SO ORDERED."

On appeal, the Court of Appeals rendered the assailed Decision dated December 21, 2000 affirming the RTC Decision and holding that petitioner's complaint failed to state a cause of action, thus:

"To begin with, the present petition for Mandamus on appeal should have been outrightly dismissed considering that such extraordinary remedy under Rule 65 is not available under the facts obtaining. Mandamus is a writ issued in order to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill a contractual obligation or to compel a course of conduct, nor to control or review the exercise of discretion. Petitioner must show a clear legal right to the thing demanded with the corresponding imperative duty of the respondent to perform the act required. It never issues in doubtful cases. The writ will not issue to compel anything to which the petitioner is not entitled by law. Mandamus does not confer power nor impose duties. It simply commands to exercise a power

already possessed and to perform a duty already imposed (*Tangonan vs. Paño*, 137 SCRA 245 [1985]; *University of San Agustin vs. Court of Appeals*, 230 SCRA 761 [1994]).

"At bar, we cannot see any legal justification to compel PAIC Bank to accept the proposed P18,000,000.00 redemption money and to release the subject title. This is not the idea of a ministerial duty under the law.

"Essentially, the case at hand could be one for specific performance, as what the court a quo said in the first paragraph of the challenged decision.

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"In the case at bar, what succinctly appears on records is the indubitable fact that appellant has no cause of action against PAIC Bank. It may be true that earlier the motion to dismiss of PAIC Bank on this point was denied by the court a quo. Yet, such resolution did not preclude the trial court to later on declare, after trial, that indeed there was no cause of action, especially so when the defense of lack of cause of action is averred in the answer as one of the affirmative defenses.

"Under the Rules of Court, a cause of action is defined as an act of omission of one party in violation of the legal right of the other which causes the latter injury (*Rebodillo vs. Court of Appeals*, 170 SCTA 800 [1989]). It is composed of: (1) the plaintiff's primary right and defendant's corresponding primary duty, whatever may be the subject to which they relate to his person, character, property or contract; and (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated. The cause of action is determined not by the prayer of the complaint but by the facts alleged (*Nicanor de Guzman, Jr. vs. Court of Appeals*, 192 SCRA 507 [1990]).

"Here, the absence of cause of action of the appellant becomes more apparent when we consider the following:

(a) Logic and common sense dictate that one can only sell what he owns and the buyer acquires only what the seller can offer. **On June 29, 1997, when Angsico sold the lot to Manalo, Angsico was not the owner of the subject property simply because at the time he (Angsico) purchased the same property from Vargas and/or S. Villanueva on December 23, 1992, said sellers were no longer the lawful owners of the property. As correctly pointed out by the appellees, after the expiration of the one (1) year redemption period and no redemption was made on December 5, 1985, PAIC Bank ipso facto became the legal owner in fee simple of the subject lot and its improvements, being the highest bidder in the auction sale and the vendee in the Sheriff's Certificate of Sale duly registered a year before and which entitles it to the issuance of a new certificate of title in his name** (*People's Financing Corp. vs. Court of Appeals*, 192 SCRA 34 [1990]; *Sumerariz vs. Development Bank*