

THIRD DIVISION

[G.R. No. 102305, October 13, 1999]

**FRANCISCO G. ZARATE AND CORAZON TIROL-ZARATE,
PETITIONERS, VS. REGIONAL TRIAL COURT OF KALIBO, AKLAN
(BRANCH 2), SPOUSES TOMAS HAUTEA AND RHILYN HAUTEA,
PROVINCIAL SHERIFF OF ILOILO MAGDALENA LOMETILLO,
DEPUTY PROVINCIAL SHERIFF OF ILOILO MANOLITO FERRER,
REGISTER OF DEEDS OF AKLAN, ELEUTERIO PEREZ, AND THE
DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

GONZAGA_REYES, J.:

Before us is a Petition for Review on *Certiorari* on pure questions of law (with prayer for the issuance of a restraining order and/or writ of preliminary injunction) of the Order of the Regional Trial Court^[1] (RTC) of Aklan, Branch 2, dated June 26, 1991 dismissing petitioner's complaint in Civil Case No. 4184 entitled "Francisco G. Zarate, et. al. vs. Spouses Tomas Hautea and Rhilyn Hautea, et. al."

The following facts are undisputed:

Pursuant to a judgment rendered in Civil Case No. 16131 by the Regional Trial Court of Iloilo in favor of Tomas Hautea against Francisco Zarate^[2], the Provincial Sheriff of Iloilo in coordination with the Provincial Sheriff of Aklan, sold on execution a parcel of land, Lot 2, Plan Psu-136835, LRC Case No. A-56, L.R.C., Case No. N-9192, covered by TCT No. 5143 registered in the name of the plaintiffs-spouses Francisco Zarate and Corazon Tirol-Zarate. When the one (1) year period for redemption was about to expire, Francisco Zarate and his wife, Corazon Tirol-Zarate (ZARATES), the petitioners herein, filed a case for annulment of the execution sale with damages and prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order against the spouses Tomas and Rhilyn Hautea (HAUTEAS), the Provincial Sheriffs of Iloilo and Aklan, and the Register of Deeds of Aklan, the respondents herein. The ZARATES claimed that under the provisions of Section 14^[3], Executive Order No. 81 otherwise known as "THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES" and the rulings of the Supreme Court in the cases of *Associated Insurance and Surety Co., Inc. vs. Register of Deeds of Pampanga*^[4] and *Development Bank of the Philippines vs. Leonardo Jimenez and Corazon Benito*^[5], subject parcel of land is exempt from attachment and execution since said parcel of land was mortgaged to the Development Bank of the Philippines (DBP) by the ZARATES. A restraining order was issued by the court whereby the HAUTEAS were restrained for a period of twenty days from consolidating the title of the said parcel of land and from taking

possession of the same from the plaintiffs and/or from alienating the same. To protect its interests, DBP filed a complaint in intervention with prayer for the issuance of a writ of preliminary injunction. The court admitted said complaint in intervention in Civil Case No. 4184. However, despite the presence of a temporary restraining order and during the pendency of the case, DBP foreclosed the mortgage of the ZARATES and enforced its superior lien over the property on the basis of its prior mortgage over the lot. DBP and its counsel could not be held in contempt since DBP's extrajudicial foreclosure and public auction sale of the subject property was in accordance with P.D. 385^[6] and the mortgage agreement between ZARATES and DBP. Consequently, the HAUTEAS filed a "Motion To Drop Defendants-Spouses Hautea From The Case And/Or To Dismiss The Complaint And The Complaint In Intervention Against Defendants-Spouses Hautea" alleging that the complaints have been rendered moot and academic by DBP's foreclosure of the subject property. DBP likewise filed a motion to withdraw their complaint in intervention, which was not opposed by either the petitioners or respondents. On the other hand, the ZARATES filed a motion to amend their complaint in order to allege that aside from the fact that the execution sale was invalid since the property subject of the sale was exempt from execution, the sale was invalid also because the respondents failed to comply with all the notice requirements prescribed by law particularly Sec. 18^[7], Rule 39 of the Rules of Court and Section 1^[8] of P.D. 1079^[9].^[10]

On June 26, 1991, the respondent trial court issued the Order now questioned in this appeal denying the ZARATES motion to amend the complaint and ordering the dismissal of the case for annulment of the execution sale in favor of the HAUTEAS. The order states:

"After a careful consideration of the foregoing facts and the intervening circumstances of this case, the Court noted the following observations. Firstly, the instant complaint filed by the plaintiff spouses, Francisco and Corazon Zarate, for annulment of execution sale over their aforesaid property covered by Transfer Certificate of Title No. T-5143, may be noted, was primarily premised on the alleged violation by the defendants of the provisions of Sec. 14 of Executive Order No. 81, otherwise known as the 1986 Revised Charter of the Development Bank of the Philippines (DBP), and the provisions of Sec. 2, Commonwealth Act No. 489 in relation to Sec. 9 of RA No. 85, which specifically provides that properties mortgaged with the DBP are exempt from attachment and execution. The aforementioned property of plaintiffs, Zarate, has been mortgaged with the DBP in the original amount of P136,000.00 and P44,000.00 on November 19, 1976 and on March 23, 1981, respectively. This mortgage, however, during the pendency of this case was extrajudicially foreclosed by the DBP on January 11, 1991 and the property was sold at public auction with the DBP adjudged as the highest bidder. As a consequence of this foreclosure and auction sale of the property, it has rendered the position of the DBP untenable and was constrained to withdraw their complaint in intervention. So, what remains of the case, was the original complaint of the plaintiffs.

Secondly, the aforecited provision of the 1986, revised charter of the DBP and the provisions of CA No. 489 in relation to RA No. 85, are believed intended only to protect the interests of the DBP as a government corporation and do not apparently apply or cover private persons as the herein plaintiffs. It follows therefore that any violation of these laws by the defendants, the same constitutes an infraction only against the legal rights of the DBP and do not apply to herein plaintiffs Zarate. Similarly, with the foreclosure and sale of the subject property, it has also rendered this action unenforceable. Likewise, no further allegations have been stated in the complaint as to what legal rights of the plaintiffs Zarate may have been violated nor has reflected any particular act or omission by the herein defendants in violation of said rights by the plaintiffs. In sum, the complaint states no cause of action.

Primary is the rule that "every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claims or defenses xxx." (Section 1, Rule 8. Revised Rules of Court of the Philippines).

In the case at bar, these are wanting, the allegations or recital of facts contained in the complaint as the alleged violation by the defendants of the revised DBP Charter and other pertinent laws could not be availed of by the herein plaintiffs as the same is only intended to protect the interests of the DBP as a government entity. Likewise, any proposed amendment to be made on the complaint is believed could not also cure the defects.

IN VIEW OF THE FOREGOING grounds and observations, the motion to amend the complaint is hereby DENIED and this case is ordered as it is hereby ordered DISMISSED.

SO ORDERED."^[11]

Motion for reconsideration was denied;^[12] hence this petition on pure questions of law wherein the ZARATES assign the following errors:

"I. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN HOLDING THAT PETITIONERS ARE NOT THE REAL PARTIES IN INTEREST TO FILE THE COMPLAINT BASED ON E.O. NO. 81. PETITIONERS AS OWNERS-MORTGAGORS OF THE SUBJECT PROPERTY, HAVE THE REQUISITE STANDING AND INTEREST TO INVOKE E.O. NO. 81.

II. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN DISMISSING THE COMPLAINT ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION UNDER E.O. NO. 81, DESPITE THE FACT THAT THE COMPLAINT STATED NOT JUST ONE BUT SEVERAL VALID PRINCIPAL CAUSES OF ACTION AGAINST PRIVATE RESPONDENTS AND RESPONDENT PUBLIC OFFICIALS.

III. THE RESPONDENT TRIAL COURT GRAVELY ERRED IN DENYING PETITIONERS' MOTION TO ADMIT THE AMENDED COMPLAINT."^[13]

Both public and private respondents agree that the present case has been rendered moot and academic since the foreclosure and sale of the subject property to the DBP