

SPECIAL TWENTIETH DIVISION

[CA-G.R. CV NO. 01066, June 27, 2014]

EMERENCIANA D. MEDINA, PLAINTIFF-APPELLANT, VS. ALMA D. MALAPAJO, DEFENDANT-APPELLEE.

D E C I S I O N

AZCARRAGA-JACOB, J.:

On appeal is the Order^[1] dated 30 November 2004 of the Regional Trial Court, Branch 18, Roxas City, dismissing Civil Case No. V-064-04,^[2] for "Declaration of Nullity of Foreclosure and Damages" filed by plaintiff-appellant Emerenciana Medina against defendant-appellee Alma Malapajo.

The Antecedent Facts

The facts on records show that on 08 July 2002 plaintiff Medina filed with the court *a quo* an action for *Specific Performance and Damages with Preliminary Injunction and Temporary Restraining Order* against defendant Malapajo. The case, docketed as Civil Case No. V-064-07-2002, involved an unpaid loan^[3] which plaintiff obtained from the defendant on 03 September 1998, and was secured by a real estate mortgage^[4] over a parcel of land situated at Bangbang Street, Roxas City, identified as Lot 733 of the Capiz Cadastre, comprising an area of 1,024 square meters, and covered by Transfer Certificate of Title (TCT) No. T-31739.

After the defendant filed an answer, the court *a quo* set the case for pre-trial conference. However, no pre-trial was conducted due to the prolonged series of postponements at the instance of plaintiff.

On 23 October 2003, plaintiff moved to archive the case for a period of three (3) months in order for her to consolidate all resources so she may be able to forge an amicable settlement with defendant. In her motion, plaintiff also prayed for the dismissal of the case if after such period no settlement or revival is made. This motion was favorably granted by the court *a quo* in the Order of 27 October 2003.

Five (5) months later, in March 2004, the court ordered the retrieval of the case from the archives and set the same for pre-trial conference. On the scheduled pre-trial conference on 01 June 2004, the trial court issued an Order^[5] dismissing the case, the full text of which reads as follows:

On October 27, 2003, this case was ordered archived, without opposition from the defendant, upon motion by the plaintiff with the condition that the same be dismissed if no settlement or revival is made at the end of three (3) months. Since no settlement or revival was brought to the attention of the Court after the lapse of three (3) months, the Court ordered the retrieval of the records from the archive and set the pre-trial

on any available pre-trial calendar of the Court, which was set for today, June 1, 2004 at 2:00 o'clock in the afternoon. When the pre-trial of this case was called, however, only counsel for the defendant appeared, without the plaintiff and counsel. The defendant moved for the dismissal of this case **pursuant to the condition attached by the plaintiff in her motion for the archival of this case to the effect that if no settlement or revival was made within three (3) months**, then the instant case be dismissed. Finding the defendant's motion well taken, the same is hereby granted. The instant complaint by the plaintiff is hereby dismissed.^[6]

Later, on 21 July 2004, plaintiff filed the complaint^[7] *a quo* for "nullity of foreclosure and damages" alleging, among other things, that that her total outstanding obligation of P1,200,000.00 as of 04 April 2003 is inaccurate or erroneous inasmuch as the 7% interest charge per month imposed by defendant, as well as the penalties she allegedly incurred, are unconscionable and excessive; and that the extrajudicial foreclosure of the mortgage over Lot 733 conducted on 01 April 2003 was null and void.

In response, defendant filed a Motion to Dismiss^[8] on grounds of *res judicata* and forum shopping. Defendant alleged that the complaint is barred by *res judicata* considering the dismissal of the first complaint for specific performance. Defendant also averred that the complaint violates the rule on forum shopping because the certification of non-forum shopping attached to it failed to state the fact of dismissal of the complaint for specific performance.

The Ruling of the Trial Court

In due time, the court *a quo* issued its now assailed Order,^[9] granting the motion to dismiss and decreeing the dismissal of the complaint *a quo*. The pertinent portions of the order read:

...[I]t is clear that the first and the second case between the same parties, involving the same property, **is anchored or based on one and the same cause of action which is the alleged erroneous computation in the loan obligation of the plaintiff to the defendant**. A cause of action may give rise to different remedies, and though the remedy prayed for in one case is not the same as that sought in a subsequent case, if both remedies arise from the same cause of action, there is *res adjudicata*. Thus, if, in the former case, plaintiff sought specific performance of a contract and, in the second rescission thereof, but the cause of action in the two cases is the same, that is, non-performance on the part of the defendant, the judgment rendered in the first case in favor of the defendants is *res adjudicata* in the second.

If all the elements of *res adjudicata* mentioned above are present, then the judgment rendered is conclusive between the parties and their successors in interest "with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto." In other words, the judgment is binding not only as to matters actually litigated and determined therein, but as to other matters necessarily involved.

Plaintiff admits that “the first case cited is already dismissed and abandoned having become moot and academic.” Thus, the court finds the defendant’s motion to dismiss tenable under Sec. 1 (f) and (h) of Rule 16, 1997 Rules of Civil Procedure as amended, in addition to her claim that the plaintiff is guilty of forum shopping.

ACCORDINGLY, the defendant’s motion to dismiss on the grounds: 1. that the plaintiff is guilty of forum shopping; and 2. that the plaintiff cause of action is barred by prior judgment is GRANTED. The instant case against the defendant is DISMISSED.^[10]

The Issues

With the denial of her motion for reconsideration^[11] by the court *a quo*’s subsequent Order^[12] dated 27 May 2005, plaintiff (now appellant) interposed the instant appeal ascribing the following errors to the trial court, to wit: (i) in finding that there is identity of causes of action between the first case for specific performance (Civil Case No. V-064-07-2002) and the second case for nullity of foreclosure (Civil Case No. V-064-04); and (ii) in dismissing second complaint (Civil Case No. V-064-04) on grounds of forum shopping and *res judicata*.

The Ruling of this Court

The appeal is bereft of merit.

It has been held that “[t]here is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another.”^[13] The test for determining whether a party is guilty of forum shopping is whether a final judgment in one case will amount to *res judicata* in the other.^[14]

Here, the principle of *res judicata* finds no application because not all of its concurring requisites are present, namely: (a) the former judgment must be final; (b) the court that rendered it had jurisdiction over the subject matter and the parties; (c) *it is a judgment on the merits*; and (d) there is—between the first and second actions—an identity of parties, subject matter and cause of action.

While it is clearly borne by the facts on records that the complaint for specific performance (Civil Case No. V-064-07-2002) and the complaint *a quo* (Civil Case No. V-064-04) substantially involve the same parties, subject matter and causes of action, the inquiry of whether the Order dated 01 June 2004 was a judgment on the merits is the more crucial issue that needs to be judiciously considered.

It cannot be disputed that the dismissal of the first complaint for specific performance was grounded on appellant’s own *Motion to Archive the Case* dated 23 October 2003, wherein she prayed that the case be dismissed if after three months no settlement or revival is made.

A plain reading of the pertinent text of the 01 June 2004 Order of dismissal in Civil Case No. V-064-07-2002 clearly reveals that “the defendant moved for the dismissal

of this case *pursuant to the condition attached by the plaintiff in her motion for the archival of this case to the effect that if no settlement or revival was made within three (3) months*, then the instant case be dismissed."

Pursuant to Rule 17, Section 2 of the Rules of Court, as amended by the 1997 Rules of Civil Procedure, such dismissal was not a result of an adjudication on the merits and is thus without prejudice, *viz.*:

...Dismissal upon motion of plaintiff. – Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. x x x **Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice.** x x x

In fine, although it is quite certain that the "specific performance" and the "nullity of foreclosure" involve the same parties, subject matter and causes of action, as was correctly found by the court *a quo*, the Order dated 01 June 2004 summarily disposing of the "specific performance" suit did not in any way amount to *res judicata* insofar as the case *a quo* is concerned.

However, the Court hastens to take due notice that appellant failed to state the fact of dismissal of the first complaint for specific performance in the certification of non-forum shopping in her second complaint for nullity of foreclosure.

Under this circumstance, there is no gainsaying that appellant's second complaint for nullity of foreclosure would have been susceptible to dismissal, although definitely not upon the ground of *res judicata* invoked by the trial court, but rather, and more accurately so, for violation of the provision of the rule on forum shopping.

Corollarily, Supreme Court Administrative Circular No. 04-94^[15] categorically requires a certification against forum shopping to be incorporated in the complaint, petition, application, or any other initiatory pleading, or at least contained in a sworn certification annexed and simultaneously filed with such complaint. Thus,

x x x, the following requirements, in addition to those in pertinent provisions of the Rules of Court and existing circulars, shall be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies other than the Supreme Court and the Court of Appeals, and shall be subject to the sanctions provided hereunder:

1. The plaintiff, petitioner, applicant or principal seeking relief in the complaint, petition, application or other initiatory pleading shall certify under oath in such original pleading, or in a sworn certification filed therewith, to the truth of the following facts and undertakings: (a) he has not theretofore commenced any other action or proceedings involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or any other tribunal or agency; (c) if there is such action or proceeding which is