

## SPECIAL FOURTH DIVISION

[ CA-G.R. CV. NO. 97637, November 26, 2014 ]

**SPS. MANUEL G. RED AND TERESITA RED, PLAINTIFFS-  
APPELLANTS, VS. SANTIAGO LENDING INVESTOR  
CORPORATION, ZENAIDA L. ARANZA, AND REGISTER OF DEEDS  
OF LIPA CITY, DEFENDANTS-APPELLEES,**

### DECISION

**SORONGON, J.:**

This is an appeal filed by plaintiffs-appellants spouses Manuel G. Red and Teresita A. Red under Rule 41 of the Rules of Court seeking the reversal of the *Decision*<sup>[1]</sup> dated May 2, 2011 of the Regional Trial Court (RTC) of Lipa City, Branch 12, the dispositive portion of which reads:

*"WHEREFORE, premises considered for failure of the plaintiffs to establish by preponderance of evidence their claims against the defendants and that they are entitled to the reliefs prayed for, the Complaint is hereby ordered **DISMISSED**."*

Plaintiffs-appellants, herein referred to as spouses Red, are the registered owners of two parcels of land covered by TCT No. 81856 and T-71602 situated in Barangay Tambo, Lipa City. On August 13, 1993, they obtained a loan of P204,000.00 from defendant-appellee Santiago Lending Corporation (SALICORP for brevity) and to secure payment thereof they executed a Deed of Real Estate Mortgage covering the two (2) parcels of land earlier described. Spouses Red agreed that the loan will be payable in twelve (12) monthly installments at Php17,000.00 per month commencing on September 3, 1993. However, at the very outset, spouses Red already failed in paying their amortization as it fell due every month. Hence, SALICORP instituted an extrajudicial foreclosure proceedings on the mortgaged properties where it emerged the lone bidder at the auction. Consequently, a Certificate of Sale was issued in favor of SALICORP which was duly registered in the Register of Deeds of Lipa City on December 13, 1994.

During the redemption period spouses Red was able to pay SALICORP the amount of Php256,000.00 covered by four (4) Producers Development Bank checks. They asked SALICORP to give them the statement of accounts and the corresponding official receipts representing their payments. SALICORP assured them that it will issue the corresponding certificate of redemption.

However, on November 15, 1996 defendant-appellee Zenaida Aranza executed an Affidavit of Consolidation resulting to the cancellation of TCT Nos. 81856 and T-71602 under the name of spouses Red and the issuance of new Certificate of Title Nos. 107446 and T-107447 in favor of SALICORP.

Spouses Red filed a complaint for cancellation of the new TCTs with Reconveyance and Damages. Defendants-appellees filed a motion to dismiss on October 27, 2003 which the trial court denied by *Order*<sup>[2]</sup> dated January 22, 2003.

For their failure to file answer following the denial of their motion to dismiss, defendants-appellees were declared in default per *Order*<sup>[3]</sup> dated April 1, 2009. Thus, spouses Red presented their evidence *ex parte* before the Branch Clerk of Court.

As mentioned earlier, the trial court dismissed the case for failure of spouses Red to establish their case by preponderance of evidence. Hence, this appeal ascribing the following errors:

**I. THE LOWER COURT COMMITTED A REVERSIBLE ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT "FOR FAILURE OF THE PLAINTIFFS TO ESTABLISH BY PREPONDERANCE OF EVIDENCE THEIR CLAIMS AGAINST THE DEFENDANTS."**

**II. THE LOWER COURT GRAVELY ERRED AND MISERABLY ERRED IN DISREGARDING THE UNREBUTTED TESTIMONY OF APPELLANT TERESITA RED THAT THE REAL ESTATE MORTGAGE WAS EXECUTED WITHOUT HER KNOWLEDGE AND CONSENT AND THAT HER SIGNATURE WAS FORGED.**

It is a basic principle in civil suits that "the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence of the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law<sup>[4]</sup>. Hence, plaintiff must rely on the strength of his own evidence, not upon the weakness of the defense offered by their opponent<sup>[5]</sup>. This principle holds true especially when the defendant is declared in default for failure to file its Answer.

Here, notwithstanding the fact that spouses Red presented their evidence *ex-parte*, they were, however, not discharged from their duty to establish their cause of action by the required *quantum* of proof in civil cases. True, they were allowed to present *ex-parte* evidence but still they have to diligently prosecute their case by presenting sufficient evidence to justify a judgment in their favor.

This is the import of the case of *Pascua vs. Florendo*<sup>[6]</sup>, where the Supreme Court expounded on the concept of judgment by default. Thus:

*"complainants are not automatically entitled to the relief prayed for, once the defendants are declared in default. Favorable relief can be granted only after the court has ascertained that the relief is warranted by the evidence offered and the facts proven by the presenting party. In Pascua, this Court ruled that ". . . it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision*

*would automatically be rendered in favor of the non-defaulting party and exactly according to the tenor of his prayer. This is not contemplated by the Rules nor is it sanctioned by the due process clause."*

Further, the following disquisition of the Supreme Court in the antiquated case of *Lim Tanhu v. Ramolete*<sup>[7]</sup> remains to be particularly instructive:

*"Unequivocal, in the literal sense, as these provisions [referring to the subject of default then under Rule 18 of the old Rules of Civil Procedure] are, they do not readily convey the full import of what they contemplate. To begin with, contrary to the immediate notion that can be drawn from their language, these provisions are not to be understood as meaning that default or the failure of the defendant to answer should 'be interpreted as an admission by the said defendant that the plaintiff's cause of action find support in the law or that plaintiff is entitled to the relief prayed for.' . . . .*

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*"Being declared in default does not constitute a waiver of rights except that of being heard and of presenting evidence in the trial court. . . .*

*"In other words, a defaulted defendant is not actually thrown out of court. While in a sense it may be said that by defaulting he leaves himself at the mercy of the court, the rules see to it that any judgment against him must be in accordance with law. The evidence to support the plaintiff's cause is, of course, presented in his absence, but the court is not supposed to admit that which is basically incompetent. Although the defendant would not be in a position to object, elementary justice requires that only legal evidence should be considered against him. If the evidence presented should not be sufficient to justify a judgment for the plaintiff, the complaint must be dismissed. And if an unfavorable judgment should be justifiable, it cannot exceed in amount or be different in kind from what is prayed for in the complaint."*

That being said, this leads us to the more decisive issue of whether or not spouses Red were able to discharge the *onus* of proving their case by the quantum of evidence required in civil suits.

In support of their plea for reversal of the trial court's finding, spouses Red insist that the photocopies of the checks and receipts proffered in the proceedings below are competent evidence to prove the extinguishment of their obligation which the trial court should have considered and given probative weight even if they are merely secondary evidence. These documents, they argued, fall under the exception of the best evidence rule as provided for in Section 5 of Rule 130 of the Rules of Court, thus:

*"SEC. 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court,*