



Republic of the Philippines
Supreme Court
 Manila

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 MISAEL DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division

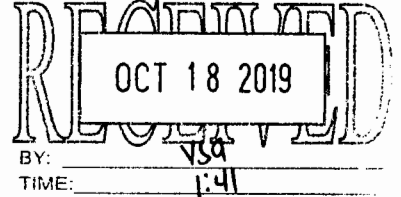
THIRD DIVISION

OCT 17 2019

PHILIPPINE NATIONAL BANK,
 Petitioner,

G.R. No. 242570

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



Present:

PERALTA, J.,
Chairperson,
 LEONEN,
 REYES, A., JR.,
 HERNANDO,* and
 INTING, JJ.

- versus -

ELENITA V. ABELLO, MA.
ELENA ELIZABETH A. FIDER,
JONATHAN V. ABELLO,
MANUEL V. ABELLO, JR. and
VINCENT EDWARD V. ABELLO,
 Respondents.

Promulgated:

September 18, 2019

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DECISION

REYES, A., JR., J.:

Before this Court is a petition for review on *certiorari*¹ filed by Philippine National Bank (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision² dated January 31, 2018 of the Court of Appeals (CA) Cebu City in CA-G.R. CV No. 05501 and its Resolution³ dated September 4, 2018, denying the Motion for Reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision⁴ dated August 26, 2014 of the Regional Trial Court (RTC) of Bacolod City, Branch 49, in Civil Case No. 08-13309, which ordered the cancellation of memorandum of encumbrances annotated on Transfer Certificates of Title (TCT) Nos. T-127632, T-82974 and T-58311.

* On leave.
¹ *Rollo*, pp. 51-33.
² Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring; *id.* at 14-27.
³ *Id.* at 30-31.
⁴ Rendered by Judge Manuel O. Cardinal, Jr.; *id.* at 256-267.

Reyes

The Antecedent Facts

On November 21, 2008, a Complaint for Cancellation/Discharge of Mortgage/Mortgage Liens was filed by Elenita V. Abello (Elenita), Ma. Elena Elizabeth A. Fider, Jonathan Abello, Manuel V. Abello (Manuel) and Vincent Edward B. Abello (collectively, the respondents) against the petitioner before the RTC of Bacolod City, Branch 49.⁵

The complaint involves parcels of land covered by TCT Nos. T-127632, T-82974, and T-58311, all located at Bacolod City, registered under the names of Manuel and Elenita (the Spouses Abello). Inscribed on the TCTs were various encumbrances. On TCT No. T-127632, the following mortgages, all in favor of the petitioner, were entered:

Date of Mortgage	Amount in Php	Date Inscribed
September 18, 1963	5,890.00	August 9, 1968
February 21, 1968	6,600.00	February 22, 1968
August 14, 1973	50,000.00	August 23, 1973
October 8, 1973 (amendment to August 14 1973)	Increasing 50,000.00 to 94,200.00	October 11, 1973
Deed of Agreement dated March 18, 1974 increasing Respondents credit limit accommodations of Manuel Abello	75,000	March 18, 1974

Over the two other lots covered by TCT Nos. T-82974 and T-58311, inscribed were the real estate mortgage (REM) obtained by the Spouses Abello from the petitioner on October 30, 1975 for the amount of ₱227,000.00, under Entry No. 80024, which was made on November 4, 1975.⁶

Manuel died on October 14, 1998, consequently, his heirs, herein respondents, executed a Declaration of Heirship⁷ on June 5, 2003 authorizing Elenita to act as administrator of the estate.

In their complaint, the respondents sought for the cancellation of the inscriptions claiming that since the petitioner made no action against them since 1975, the action has already prescribed. Accordingly, the respondents argued that they should be discharged as a matter of right and the encumbrances cancelled.⁸

⁵ Id. at 14-15.

⁶ Id. at 16.

⁷ Id. at 115-116.

⁸ Id. at 111-112.

Meyer

Ruling of the RTC

After trial, the RTC rendered its Decision⁹ on August 26, 2014, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against the Defendants:

- 1.) The Register of Deeds of the Province of Negros Occidental, is directed to cancel the memorandum of encumbrances (Real Estate Mortgage) appearing at the back of TCT No. T-127632, as Entry Nos. 91194, 131237, 181203, 182910 and 188486.
- 2.) The Register of Deeds of Bacolod City is directed to cancel the memorandum of encumbrance (Real Estate Mortgage) appearing at the back of TCT No. T-82974 and T-58311, as Entry No. 80024.
- 3.) The Counterclaim of the Defendant PNB is ordered dismissed.
- 4.) No costs.

SO ORDERED.¹⁰

In its decision, the RTC found merit in the respondents' complaint on the basis of prescription. In holding that prescription has already set in, the RTC reckoned the period of prescription from the date of inscription on the TCT. Thus, it explained that the right to foreclose the mortgage on TCT No. T-127632 accrued on March 19, 1984, while those in TCT Nos. T-82974 and T-58311 on November 5, 1985.¹¹

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.¹²

Ruling of the CA

On appeal to the CA, the latter dismissed the petition in its Decision¹³ dated January 31, 2018, *viz.*:

WHEREFORE, the instant appeal is DENIED. The Decision dated August 26, 2014 rendered by the [RTC], Branch 49 of Bacolod City is AFFIRMED *in toto*.

SO ORDERED.¹⁴

⁹ Id. at 256-267.

¹⁰ Id. at 266-267.

¹¹ Id. at 265.

¹² id. at 467-504; 505-525.

¹³ Id. at 14-27.

¹⁴ Id. at 26.

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In so ruling, the CA found the allegations of the complaint sufficient to establish a cause of action. The CA held that the type of credit, loan terms and condition, and the date of maturity of the principal loan are not material elements of the case, and as such need not be alleged.¹⁵

The CA also found, on the basis of the accounting notice sent by the petitioner, that the institution of a mortgage action has already prescribed. The CA explained that the period of prescription begin to run from the time Manuel stopped paying the mortgage debt on December 31, 1985, whereas the petitioner sent a demand only on January 8, 2002.¹⁶

The petitioner filed a Motion for Reconsideration of the said decision, but the same was denied by the CA in its Resolution¹⁷ dated September 4, 2018.

Thus, this petition for review for *certiorari* whereby, the petitioner submits that the CA and the RTC erred in ordering the cancellation of the subject encumbrances. The petitioner argues first, that the complaint filed by the respondents should have been dismissed for failure to state a cause of action. Then, even assuming the existence of such cause of action, the action cannot prosper as the respondents, by their admission of liability, in effect, waived the right to raise the defense of prescription.

For their part, the respondents aver in their Comment¹⁸ that there is no merit in the instant petition. The respondents argue that the petitioner's own admissions as to the particulars of the loan and REM could be relied upon in determining the period of prescription, and ultimately, cause of action.

Verily, the issue in this appeal is whether or not the CA erred in ordering the cancellation of the annotated encumbrances on the subject TCTs.

Ruling of the Court

The petition is *meritorious*.

A complaint that fails to state *or* lacks cause of action is dismissible. The Court, in *Dabuco v. CA*,¹⁹ discussed the difference between the dismissal of the complaint on the ground of "failure to state cause of action" and "lack of cause of action," to wit:

¹⁵ Id. at 22.

¹⁶ Id. at 24-25.

¹⁷ Id. at 30-31.

¹⁸ Id. at 343-348.

¹⁹ 379 Phil. 939 (2000).

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As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand. The former refers to the **insufficiency of allegation in the pleading**, the latter to the **insufficiency of factual basis for the action**. Failure to state a cause may be raised in a Motion to Dismiss under Rule 16, while lack of cause may be raised any time. Dismissal for failure to state a cause can be made at the earliest stages of an action. Dismissal for lack of cause is usually made after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented.²⁰ (Emphases Ours)

Thus, in “failure to state a cause of action,” the examination is limited to the complaint²¹ in that whether it contains an *avertment* of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery.²² The test is whether or not, admitting hypothetically the allegations of fact made in the complaint, a judge may validly grant the relief demanded.²³

In contrast, a complaint “lacks of cause of action” when it presents questions of fact that goes into *proving the existence* of the elements of the plaintiff’s cause of action. Thus, in dismissing the complaint on this ground, the court, in effect, declares that the plaintiff is not entitled to a favorable judgment for failure to substantiate his or her cause of action by preponderance of evidence. Considering that questions of fact are involved, the dismissal of the complaint due to “lack of cause of action” is usually made after trial, when the parties are given the opportunity to present all relevant evidence on such question of fact.²⁴

Succinctly, “failure to state cause of action” refers to insufficiency of allegation in the pleading; whereas, “lack of cause of action” deals with insufficiency of evidence²⁵ or insufficiency of factual basis for the action.²⁶

²⁰ Id. at 944-945.

²¹ *Aquino, et al. v. Quiazon, et al.*, 755 Phil. 793 (2015).

²² *Mercene v. Government Service Insurance System*, G.R. No. 192971, January 10, 2018, 850 SCRA 209, 218.

²³ *Aquino, et al. v. Quiazon, et al.*, supra note 21, at 810.

²⁴ *Dabuco v. CA*, supra note 19, at 944-945.

²⁵ *Zuniga-Santos v. Santos-Gran and Register of Deeds of Marikina City*, 745 Phil. 171, 353 (2014), citing *Macaslang v. Spouses Zamora*, 664 Phil. 337, 354 (2011).

²⁶ *Aquino, et al. v. Quiazon, et al.*, supra note 21, at 808.

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The Court ruled in the recent of case of *Mercene v. Government Service Insurance System*,²⁷ that the commencement of the prescriptive period for REMs is crucial in determining the existence of cause of action. Prescription, in turn, runs in a mortgage contract not from the time of its execution, but rather a) when the loan became due and demandable, for instances covered under the exceptions set forth under Article 1169²⁸ of the New Civil Code, or b) from the date of demand.²⁹

A REM is an accessory contract constituted to protect the creditor's interest to ensure the fulfillment of the principal contract of loan. By its nature, therefore, the enforcement of a mortgage contract is dependent on whether or not there has been a violation of the principal obligation.³⁰ Simply, it is the debtor's failure to pay that sets the mortgage contract into operation. Prior to that, the creditor-mortgagee has no right to speak of under the REM as it remains contingent upon the debtor's failure to pay his or her loan obligation.

Thus, contrary to the opinion of the CA, for an action to foreclose REM to prosper, it is crucial that the creditor-mortgagee establishes his right by alleging the terms and conditions of the mortgage contract, particularly the maturity of the loan which it secures. The respondents' failure to allege, much more prove these information, renders the action dismissible for failure to prove their cause of action.

In this controversy, the respondents pray for the cancellation of the encumbrances on the TCTs which refer to the REMs constituted on the property. Consequently, the cancellation of these annotations is dependent on whether the action for REM has already prescribed. Therefore, an allegation of the date of maturity of the loan is also vital in this case as it signifies the commencement of the running of the period of prescription for an action for foreclosure REM.

²⁷ G.R. No. 192971, January 10, 2018, 850 SCRA 209.

²⁸ **Art. 1169.** Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (Emphases Ours)

²⁹ *Mercene v. Government Service Insurance System*, supra, citing *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 425 (2016).

³⁰ *Dev't. Bank of the Phils. v. Guariña Agricultural and Realty Dev't. Corp.*, 724 Phil. 209, 221 (2014).

Reyes

Stated otherwise, the mortgagor would be unable to establish his or her right to pray for the cancellation of the encumbrances without first establishing that the debt has already become due, as it is only at that time that the debtor's right to foreclose the property arise and the prescriptive period begins to run.

Pertinent to the REM, the respondents put forth the following allegations in their Complaint:

COMPLAINT

x x x x

1. Spouses Manuel E. Abello, Sr. (in life) and Elenita V. Abello are the registered and lawful owners of a parcel of land located in the Municipality of Binalbagan, Negros Occidental, covered by [TCT] No. T-127632 of the Registry of Deeds, Province of Negros Occidental. (Copy of the title is marked as Annex "C" hereof). They are also the registered and lawful owners of parcels of land located at Bacolod City, Negros Occidental, covered by [TCT Nos]. T-82974 and T-58311 of the Registry of Deeds of Bacolod City (Copies of the titles are marked as Annexes "D" and "E", respectively).

2. To secure a loan of FIVE THOUSAND EIGHT HUNDRED NINETY PESOS (P5,890.00), spouses Manuel E. Abello and Elenita V. Abello, executed a Deed of Real Estate Mortgage in favor of [the petitioner] last September 18, 1963, over the property covered TCT No, T-127632. As a result of said Real Estate Mortgage, Entry No. 91194 was duly entered upon the Memorandum of Encumbrance, Annex "C" shows the annotation;

3. Thereafter, Entries No. 131237 (February 21, 1968), No. 181203 (August 14, 1973), No. 182910 (October 8, 1973 and No. 188486 (March 18, 1974) were likewise inscribed in the same Memorandum of Encumbrances to reflect amendments made to the original mortgage. No further entry in favor of defendant Bank appears after March 18, 1974;

4. On October 30, 1975, spouses Manuel and Elenita Abello executed a Deed of Real Estate Mortgage in favor of [the petitioner] over their properties covered by [TCT] Nos. T-82974 and T-58311 of the Registry of Deeds for the City of Bacolod, in order to secure a loan of P227, 000.00. As a consequence of said Real Estate Mortgage, Entry No. 80024 was entered upon the Memorandum of Encumbrances and appears at the back of TCT No. T-82974 and TCT No. T-58311. No further entry in favor of defendant Bank appears in these Certificates of Title.³¹

It is evident from a cursory reading of the foregoing allegations that the respondents made no mention of the particulars of the mortgage. In arguing prescription, the respondents instead anchor on the fact that the latest entry related to the loan from the petitioner was in 1975. But, the date of annotation is irrelevant on the issue of whether the institution of a

³¹ Rollo, pp. 110-111.

Meyer

mortgage action has already prescribed. Instead, as previously elucidated, what is crucial is the date of maturity of the loan in instances when demand is not necessary, or the date of demand. Without these crucial details, the information supplied is insufficient to enable the court to grant relief to the respondents. With this, the complaint could have been dismissed by the court *a quo* on the ground of the complaint's failure to state cause of action. However, the parties proceeded to trial, which, therefore, means that the period within which the dismissal for failure to state a cause of action would have already lapsed.

While it is true that the petitioner has timely and repeatedly raised the same as affirmative defense in their Answer, and a ground in their Motion to Dismiss, still, the court *a quo*'s power to dismiss on the ground of "failure to state a cause of action" had already passed when the parties went into trial. Dismissal on the ground of "failure to state a cause of action" is a procedural remedy to resolve a complaint saving the parties the costs of going into trial. However, when the parties have entered trial, Section 34, Rule 132 of the Rules of Court, requires the parties to formally offer their evidence for the court's consideration. Even then, evidence excluded by the court may still be attached to the records of the case by tendering it under Section 40,³² Rule 132 of the Rules of Court. This allows the possibility for presentation of evidence not admitted, thus, raising the possibility for the parties to deal with their genuine issues without refilling the case.

However, in this case, during trial, the respondents failed to adduce evidence to establish when the loan became due, and consequently, when the right to foreclose the mortgage accrued. Indubitably, the presentation of the contracts evidencing the loan and the mortgage is necessary as the respondents' cause of action is anchored on these documents.³³ As the respondents failed to allege more so, adduce sufficient evidence to establish that prescription has set in, it is clear that the action must be denied and the complaint dismissed for want of cause of action.

In light of the foregoing disposition, the Court sees no reason to delve into the other issue raised by the petitioner.

WHEREFORE, in view of the foregoing, the instant petition for review on *certiorari* is hereby **GRANTED**. Accordingly, the Decision dated January 31, 2018 and the Resolution dated September 4, 2018 of the

³² Section 40. Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

³³ Section 7, Rule 8 of the Rules of Court

Section 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.



Court of Appeals in CA-G.R. CV No. 05501 are hereby **REVERSED and SET ASIDE**. The respondents' Complaint dated October 18, 2007 is hereby ordered **DISMISSED**.

SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice
Chairperson

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

(On leave)
RAMON PAUL L. HERNANDO
Associate Justice

Henri Jean Paul B. Inting
HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

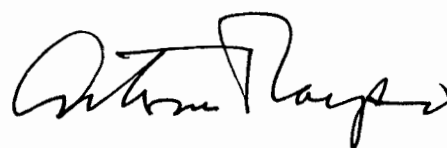
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

Reyes

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Acting Chief Justice

Per Special Order No. 2703 dated
September 10, 2019

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MISAELE DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

OCT 17 2019