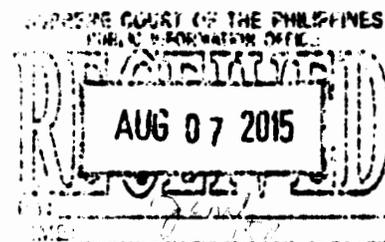




Republic of the Philippines  
**Supreme Court**  
 Manila

FIRST DIVISION



**BPI FAMILY SAVINGS BANK,  
 INC.,**

Petitioner,

**G.R. No. 175796**

Present:

- versus -

\*PERALTA,  
 \*\*BERSAMIN,  
 Acting Chairperson,  
 PEREZ,  
 PERLAS-BERNABE, and  
 \*\*\*LEONEN, JJ.

**SPOUSES BENEDICTO &  
 TERESITA YUJUICO,**  
 Respondents.

Promulgated:

**JUL 22 2015**

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**DECISION**

**BERSAMIN, J.:**

An action to recover the deficiency after extrajudicial foreclosure of a real property mortgage is a personal action because it does not affect title to or possession of real property, or any interest therein.

**The Case**

This appeal is taken by the petitioner to overturn the decision promulgated on March 31, 2006,<sup>1</sup> whereby the Court of Appeals (CA) set aside the orders issued by the Regional Trial Court, Branch 60, in Makati City (Makati RTC) on October 17, 2003<sup>2</sup> and February 1, 2005<sup>3</sup> dismissing

\* Acting member per Special Order No. 2103.

\*\* Acting Chairperson per Special Order No. 2102.

\*\*\* Acting member per Special Order No. 2108.

<sup>1</sup> *Rollo*, pp. 9-27; penned by Associate Justice Vicente S.E. Veloso (retired), with concurrence of Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Amelita G. Tolentino (retired).

<sup>2</sup> *Id.* at 87-88.

<sup>3</sup> *Id.* at 89-94.

their action against the respondents to recover the deficiency after the extrajudicial foreclosure of their mortgage (Civil Case No. 03-450) on the ground of improper venue.

### Antecedents

On August 22, 1996, the City of Manila filed a complaint against the respondents for the expropriation of five parcels of land located in Tondo, Manila and registered in the name of respondent Teresita Yujuico. Two of the parcels of land, covered by Transfer Certificate of Title (TCT) No. 261331 and TCT No. 261332, were previously mortgaged to Citytrust Banking Corporation, the petitioner's predecessor-in-interest, under a First Real Estate Mortgage Contract.<sup>4</sup> On June 30, 2000, the Regional Trial Court in Manila (Manila RTC) rendered its judgment declaring the five parcels of land expropriated for public use. The judgment became final and executory on January 28, 2001 and was entered in the book of entries of judgment on March 23, 2001.<sup>5</sup> The petitioner subsequently filed a *Motion to Intervene in Execution with Partial Opposition to Defendant's Request to Release*, but the RTC denied the motion for having been "filed out of time." Hence, the petitioner decided to extrajudicially foreclose the mortgage constituted on the two parcels of land subject of the respondents' loan. After holding the public auction, the sheriff awarded the two lots to the petitioner as the highest bidder at ₱10,000,000.00.<sup>6</sup>

Claiming a deficiency amounting to ₱18,522,155.42, the petitioner sued the respondents to recover such deficiency in the Makati RTC (Civil Case No. 03-450). The respondents moved to dismiss the complaint on several grounds, namely: that the suit was barred by *res judicata*; that the complaint stated no cause of action; and that the plaintiff's claim had been waived, abandoned, or extinguished.<sup>7</sup>

In its order issued on October 17, 2003, the Makati RTC denied the respondents' motion to dismiss, ruling that there was no *res judicata*; that the complaint stated a sufficient cause of action to recover the deficiency; and that there was nothing to support the claim that the obligation had been abandoned or extinguished apart from the respondents' contention that the properties had been subjected to expropriation by the City of Manila.<sup>8</sup>

On November 4, 2003, the respondents moved for reconsideration, reiterating their grounds earlier made in their motion to dismiss.<sup>9</sup>

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<sup>4</sup> Id. at 10-11.

<sup>5</sup> Id. at 11.

<sup>6</sup> Id. at 12.

<sup>7</sup> Id.

<sup>8</sup> Supra note 2.

<sup>9</sup> *Rollo*, pp. 132-136.

In turn, the petitioner adopted its comment/opposition to the motion to dismiss.<sup>10</sup>

The respondents then filed their reply,<sup>11</sup> in which they raised for the first time their objection on the ground of improper venue. They contended that the action for the recovery of the deficiency, being a supplementary action of the extrajudicial foreclosure proceedings, was a real action that should have been brought in the Manila RTC because Manila was the place where the properties were located.<sup>12</sup>

On February 1, 2005, the Makati RTC denied the respondents' motion for reconsideration for its lack of merit; and held on the issue of improper venue that:

It would be improper for this Court to dismiss the plaintiff's complaint on the ground of improper venue, assuming that the venue is indeed improperly laid, since the said ground was not raised in the defendant's Motion to Dismiss. On this point, it was held in the case of *Malig, et al. vs. Bush, L-22761, May 31, 1969* that "an action cannot be dismissed on a ground not alleged in the motion therefore even if said ground, e.g., prescription, is provided in Rule 16."<sup>13</sup>

### Decision of the CA

Not satisfied, the respondents assailed the orders dated October 17, 2003 and February 1, 2005 by petition for *certiorari*.<sup>14</sup> They submitted for consideration by the CA the following issues, namely:

x x x (WHETHER OR NOT) RESPONDENT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS ASSAILED ORDERS CONSIDERING THAT:

A. THE COMPLAINT A QUO IS BARRED BY RES JUDICATA.

B. THE COMPLAINT STATED NO CAUSE OF ACTION.

C. PRIVATE RESPONDENT'S CLAIM HAS BEEN WAIVED, ABANDONED OR OTHERWISE EXTINGUISHED.

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<sup>10</sup> Id. at 137-138.

<sup>11</sup> Id. at 139-143.

<sup>12</sup> Id. at 140-141.

<sup>13</sup> Id. at 94.

<sup>14</sup> Id. at 9.

D. VENUE WAS IMPROPERLY LAID.<sup>15</sup>

On March 31, 2006, the CA granted the petition for *certiorari* of the respondents on the basis of the fourth issue, opining:

x x x x

**Thus, a suit for recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract; it is upon a written contract and upon an obligation of the mortgage-debtor to pay the deficiency which is created by law.** As such, the venue of an action for recovery of deficiency must necessarily be the same venue as that of the extrajudicial foreclosure of mortgage.

x x x x

In this regard, We take note that the parcels of land subject of the mortgage contract are located in Tondo, Manila, under Transfer Certificates of Title Nos. 216331 and 216332. On the other hand, the extrajudicial foreclosure of the real estate mortgage took place at the RTC of Manila on January 28, 2003. **Thus, the suit for judgment on the deficiency filed by respondent BPI against petitioners Yujuico, being an action emanating from the foreclosure of the real estate mortgage contract between them, must necessarily be filed also at the RTC of Manila, not at the RTC of Makati.**

x x x x<sup>16</sup>

The CA denied the respondents' *Motion for Partial Reconsideration* and the petitioner's *Partial Motion for Reconsideration* on December 7, 2006.<sup>17</sup>

### Issues

Hence, this appeal by the petitioner, to assail the CA's dismissal of Civil Case No. 03-450 on the ground of improper venue upon the following grounds,<sup>18</sup> namely:

#### I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS' DENIAL OF THE PETITIONER'S PARTIAL MOTION FOR RECONSIDERATION ON THE GROUND OF IMPROPER VENUE AS A RESULT DISMISSED THE COMPLAINT FOR SUM OF MONEY IS CONTRARY TO LAW.

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<sup>15</sup> Id. at 17.

<sup>16</sup> Id. at 23-25.

<sup>17</sup> Id. at 30.

<sup>18</sup> Id. at 36-45.

## II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS['] ACT OF APPRECIATING THE ADDITIONAL GROUND OF IMPROPER VENUE, ONLY RAISED IN THE MOTION FOR RECONSIDERATION FILED IN THE LOWER COURT AFTER IT DENIED RESPONDENTS' MOTION TO DISMISS, IS CONTRARY TO LAW AND JURISPRUDENCE.<sup>19</sup>

### Ruling of the Court

We grant the petition for review on *certiorari*.

It is basic that the venue of an action depends on whether it is a real or a personal action. The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Thus, an action for partition or condemnation of, or foreclosure of mortgage on, real property is a real action.<sup>20</sup> The real action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions.<sup>21</sup> Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.<sup>22</sup> The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff,<sup>23</sup> for which reason the action is considered a transitory one.

Based on the distinctions between real and personal actions, an action to recover the deficiency after the extrajudicial foreclosure of the real property mortgage is a personal action, for it does not affect title to or possession of real property, or any interest therein.

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<sup>19</sup> *Id.* at 41.

<sup>20</sup> *Chua v. Total Office Products and Services (Topros), Inc.*, G.R. No. 152808, September 30, 2005, 471 SCRA 500, 507.

<sup>21</sup> Section 2, Rule 4 of the *Rules of Court*.

<sup>22</sup> *Hernandez v. Development Bank of the Phil.*, No. L-31095, June 18, 1976, 71 SCRA 290, 292-293.

<sup>23</sup> Section 2, Rule 4 of the *Rules of Court*; see also *Orbeta v. Orbeta*, G.R. No. 166837, November 27, 2006, 508 SCRA 265, 268.

It is true that the Court has said in *Caltex Philippines, Inc. v. Intermediate Appellate Court*<sup>24</sup> that “a suit for the recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract.” However, the CA erred in holding, upon the authority of *Caltex Philippines, Inc.*, that the venue of Civil Case No. 03-450 must necessarily be Manila, the same venue as that of the extrajudicial foreclosure of mortgage. An examination of *Caltex Philippines, Inc.* reveals that the Court was thereby only interpreting the prescriptive period within which to bring the suit for the recovery of the deficiency after the foreclosure of the mortgage, and was not at all ruling therein on the venue of such suit or on the nature of such suit being either a real or a personal action.

Given the foregoing, the petitioner correctly brought Civil Case No. 03-450 in the Makati RTC because Makati was the place where the main office of the petitioner was located.

Moreover, the Makati RTC observed, and the observation is correct in our view, that it would be improper to dismiss Civil Case No. 03-450 on the ground of improper venue, assuming that the venue had been improperly laid, considering that the respondents had not raised such ground in their *Motion to Dismiss*. As earlier indicated, they came to raise the objection of improper venue for the first time only in their reply to the petitioner’s comment on their *Motion for Reconsideration*. They did so belatedly.

We underscore that in civil proceedings, venue is procedural, not jurisdictional, and may be waived by the defendant if not seasonably raised either in a motion to dismiss or in the answer.<sup>25</sup> Section 1, Rule 9 of the *Rules of Court* thus expressly stipulates that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. As it relates to the place of trial, indeed, venue is meant to provide convenience to the parties, rather than to restrict their access to the courts.<sup>26</sup> In other words, unless the defendant seasonably objects, any action may be tried by a court despite its being the improper venue.

**WHEREFORE**, we **GRANT** the petition for review on *certiorari*; **REVERSE** and **SET ASIDE** the decision promulgated by the Court of Appeals on March 31, 2006; **REINSTATE** the orders dated October 17,

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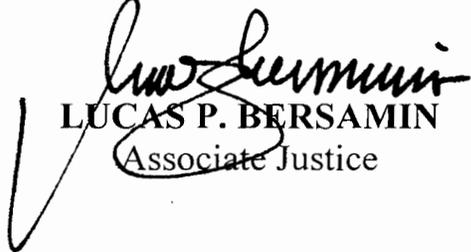
<sup>24</sup> G.R. No. 74730, August 25, 1989, 176 SCRA 741, 754.

<sup>25</sup> *Marcos-Araneta v. Court of Appeals*, G.R. No. 154096, August 22, 2008, 563 SCRA 41, 61-62.

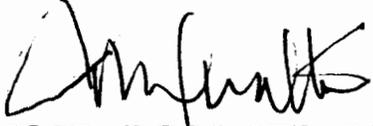
<sup>26</sup> *Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Parañaque City*, G.R. No. 133240, November 15, 2000, 344 SCRA 680, 685.

2003 and February 1, 2005 of the Regional Trial Court, Branch 60, in Makati City; and **ORDER** the respondents to pay the costs of suit.

**SO ORDERED.**

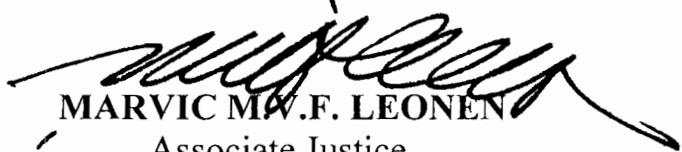
  
**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Associate Justice

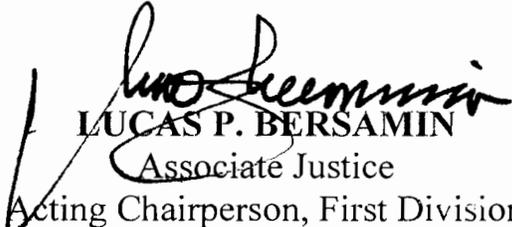
  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.W.F. LEONEN**  
Associate Justice

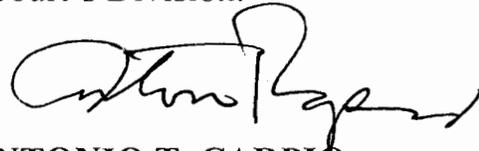
**ATTESTATION**

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.

  
**LUCAS P. BERSAMIN**  
Associate Justice  
Acting Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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