

FRANCISCO P. MARTINEZ, PLAINTIFF-APPELLANT, VS. UNITED FINANCE CORPORATION AND/OR IFC SERVICE LEASING AND ACCEPTANCE CORPORATION, DEFENDANT-APPELLEE.

G.R. No. L-24017. August 31, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the order of August 1, 1964 of the Court of First Instance of Rizal dismissing the appellant's complaint[1] for malicious prosecution on the ground of failure to state a sufficient cause of action.

The complaint, filed on October 15, 1963, alleges the following facts: The plaintiff was a general merchant engaged in buying and selling textiles and ready made clothes and an operator of a number of department stores. In 1959 he sold postdated checks at a discount to the defendant. The plaintiff's unpaid balance, as of November 29, 1960, amounted to P58,381.13. To secure payment thereof he executed in the defendant's favor a chattel mortgage, copy of which was attached to the complaint, covering the merchandise inventory of a department store owned by him in Pasay. On or about May 17, 1961 the defendant extrajudicially foreclosed the mortgage and had the sheriff of Pasay City seize and sell the merchandise, which fetched only the sum of P6,140.81. In July 1961 the defendant lodged a criminal complaint with the office of the City Fiscal of Manila, charging the plaintiff with estafa under sub-section (a), paragraph 2, Article 315 of the Revised Penal Code. A preliminary investigation was conducted, after which, on November 15, 1962, the Fiscal filed the corresponding information in the Court of First Instance of Manila. The case went to trial, and the plaintiff was acquitted on September 9, 1963.

In the same complaint the plaintiff averred that the defendant "knew all the time that the plaintiff...ha(d) not committed the offense of estafa, but which malice and in gross evident bad faith defendant filed the said criminal case...merely for the purpose of embarrassing and harassing the plaintiff among his friends and relatives and destroying (his) good business standing and commercial credit among his business associates and creditors." By way of relief, the plaintiff claimed different items of damages aggregating over P140,000.00.

On October 25, 1963 the defendant moved to dismiss on the ground that the complaint failed to state a sufficient cause of action, to which motion the plaintiff filed an opposition on October 31, 1963.

On August 1, 1964, the lower court granted the motion and dismissed the case. The plaintiff moved to reconsider, but was turned down; hence the present appeal.

Appellant now submits that the dismissal was erroneous, since his complaint made out a cause of action in the light of Article 21 of the Civil Code,[2] taken in connection with Article 2219 (8), which mentions malicious prosecution as one of the instances in which moral damages may be recovered.

A motion to dismiss based on failure to state a cause of action presents to the court only the question of whether or not the complaint alleges facts which, if true, would justify the relief demanded. The veracity of such allegations is not in issue; they are deemed hypothetically admitted for purposes of the motion. Stated otherwise,

the test of sufficiency of the cause of action is whether, admitting the facts alleged to be true, the court could render a valid judgment in accordance with the prayer in the complaint.[3]

Malicious prosecution, to be the basis of a suit, requires the elements of malice and want of probable cause in the prosecution of an action against the plaintiff. A third element is that the defendant must himself be the prosecutor or the instigator of the prosecution, which ended in acquittal. These elements are discussed in the case of *Buchanan vs. Vda. de Esteban*,[4] thus:

"To support an action for malicious prosecution under American law the plaintiff must prove, in the first place, the fact of the prosecution and the fact that the defendant was himself the prosecutor, or that he instigated its commencement, and that it finally terminated in his acquittal, that, in bringing it, the prosecutor had acted without probable cause, and that he was actuated by legal malice, i.e., by improper or sinister motives. These three elements must concur; and there is no distinction between actions for criminal prosecution and civil suits. Both classes require substantially the same essentials. Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary. In other words, malice and want of probable cause must both exist in order to justify the action."[5]

The appellant's complaint fails to satisfy the test of sufficiency. It is true that it alleges that the appellee knew "that the plaintiff had not committed the crime (charged) "and that he acted "with malice and in gross and evident bad faith... for the purpose of embarrassing and harassing the plaintiff..." But the complaint also contains other allegations which, objectively considered, belie this conclusion with respect to both the elements of malice and want of probable cause. These allegations are: (1) that a preliminary investigation of the charge of estafa was conducted by the City Fiscal; (2) that after the said investigation the plaintiff filed a motion to quash, which the defendant opposed; (3) that more than a year thereafter, or on November 15, 1962, the Fiscal nevertheless filed an information in court, with his certification that he had conducted the requisite preliminary investigation and that "there is reasonable ground to believe that the offense charged has been committed; and that the accused is guilty thereof;"[6] and (4) "that after a protracted trial, the plaintiff was acquitted of the offense as charged...in a decision dated September 9, 1963... and promulgated on September 13, 1963." A copy of said decision, acquitting the plaintiff on the ground of reasonable doubt, was also attached to the complaint as Annex "D" and hence formed part of its allegations.

The findings of fact made by the Court in its decision of acquittal bear materially on the question of malice and want of probable cause. The evidence, said the court, showed that when the plaintiff executed the chattel mortgage on the stock inventory in his store on November 29, 1960 he was the owner thereof, and therefore made no false representation when he executed said mortgage to secure the loan of P58,381.13 he obtained from the defendant; but that "some weeks or months after November 29, 1960, with intent to defraud the complainant United Finance Corporation, the accused succeeded in disposing of the whole or a part of said store and, stock merchandise in favor of a third party, to the complainant's prejudice..." The basis of the acquittal, according to the court, was that "deceit, to constitute estafa, should be the efficient cause of the defraudation and as such should either be prior to, or simultaneous with the act of fraud," citing *People vs. Fortune*, 73 Phil. 407.

The foregoing facts, alleged in the complaint for malicious prosecution either directly or by reference to its annexes, show that in filing the criminal charge the defendant was not actuated by malice, nor was there want of probable cause. It had been the victim of deceit committed by the plaintiff, and whether or not such deceit constituted estafa was a legal question properly submitted first to the City Fiscal and then to the court after the necessary preliminary investigation was conducted. The very fact that the plaintiff's acquittal was based on reasonable doubt as to his guilt demonstrates that the defendant was justified in submitting its grievances to the

said authorities for ruling and possible redress.

Wherefore, the order appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Civil Case No. 7872 for Damages entitled "Francisco P. Martinez, plaintiff, versus United Finance Corporation and/or IFC Service Leasing and Acceptance Corporation, defendant."

[2] "ART. 21 Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

[3] Garcon vs. Redemptorist Fathers, L-23510, May 30, 1966, 17 SCRA 341, 345; Almendras vs. Rivero, L-19820, Sept. 20, 1965, 15 SCRA 62, 63.

[4] 32 Phil. 363.

[5] Quoted in Rehabilitation Finance Corporation vs. Koh, L-15512, February 28, 1962, 4 SCRA 535, 540.

[6] The information, together with the Fiscal's certification, was attached to the complaint as Annex "C" thereof.

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