

RAFAEL CARREON, PLAINTIFF AND APPELLANT, VS. THE PROVINCE OF PAMPANGA, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-8136. August 30, 1956*

Ponente: CONCEPCION, J.

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This is an appeal taken by plaintiff Rafael Carreon from an order of the Court of First Instance of Pampanga, granting a motion to dismiss filed by the defendants herein.

Plaintiff instituted this case on October 21, 1953, against the Province of Pampanga, and Rafael Lazatin, Emilio Cortez and Librado D. Santos. In his complaint, plaintiff alleges, as first cause of action, that he owes a parcel of land situated in Duck Island, barrio Sto. Nino, municipality of Guagua, province of Pampanga, which was then and is being subdivided into small lots; that, in order to facilitate the sale thereof to the public, at a good price, in January, 1948, he applied, from the Municipal Council of Guagua, Pampanga, for authority to construct, at his expense, a bridge across the Guagua River, between said Duck Island and the market site of Guagua; that said council referred his application to the Provincial Fiscal, for opinion on the feasibility of granting the authority prayed for; that on June 17, 1949, said council passed Resolution No. 70, requesting the proper authorities to patronize the construction of the bridge aforementioned; that on April 12, 1950, the Provincial Board of Pampanga passed Resolution No. 303 appropriating P15,000 for said bridge and providing that the additional sum of P9,480, more or less, needed to complete its construction, be borne by the municipality of Guagua; that on April 18, 1950, the municipal mayor of Guagua wrote to plaintiff a letter suggesting that he donate P10,000 for the completion of said bridge; that on August 14, 1950, plaintiff wrote to Jose B. Lingad, the then Provincial Governor of Pampanga, offering to make said donation; that this officer signified the intention of the Province of Pampanga to accept the donation; that on April 25, 1951, plaintiff delivered to the provincial treasurer of Pampanga the sum of P5,000 on account of said donation, which the Provincial Board of Pampanga accepted by Resolution No. 930, dated June 30, 1951; that on August 3, 1951, the Office of the District Engineer of Pampanga advised Carreon in writing that the construction of the bridge had begun already and requested him to pay the balance of said donation; that on August 16, 1951, Carreon caused to be delivered to the provincial treasurer of Pampanga the sum of P3,000, with the understanding that the balance of P2,000 would be paid later, "to cover expenses for the finishing touches of the bridge in question"; that, while said bridge was being constructed, on June 30, 1952, the new Provincial Board of Pampanga, composed of defendants Rafael Lazatin, as Provincial Governor, and Emilio Cortez and Librado D. Santos, as members, passed Resolution No. 1687, whereby "without any valid reason", they "illegally and maliciously stopped the work" of construction of said bridge, and "illegally and maliciously" diverted the application of the balance of the funds appropriated therefor by the Province "to the construction of another bridge along the road between Angeles and Magalang"; and that, despite repeated demands, defendants had failed and refused, and still fail and refuse, to authorize the continuation of the construction of the bridge in question.

By way of second cause of action, it is alleged in the complaint that, by reason of said "illegal and malicious" acts

of defendants herein, "particularly, librado D. Santos ", who is said to "have a grudge against the plaintiff because the latter had work in the last elections for the candidacy of their opponents," plaintiff had sustained damages in the aggregate sum of P150,000, in view of which he prayed that judgment be rendered in his favor for said sum of P150,000, apart from "ordering the defendants to immediately cause the resumption of the construction of the bridge in question until the same is fully completed."

On December 19, 1953, the Provincial Fiscal of Pampanga, purporting to act on behalf of the defendants, filed an answer admitting some allegations of the complaint and denying other allegations thereof, as well as setting up several special defenses and a P50,000 counter-claim for actual and moral damages allegedly sustained by them. The court having later considered this answer as that of the Province of Pampanga only, defendant Cortes submitted his separate answer, whereas Atty. Eligio G. Lagman, filed on behalf of defendant Santos a motion to dismiss. Soon thereafter, Atty. Pablo D. Cabrera filed, on behalf of "the defendants", another motion to dismiss upon the ground "that the complaint states no cause of action." After due hearing the Court of First Instance of Pampanga issued an order dated March 29, 1954, granting said motion to dismiss and, accordingly, dismissing plaintiff's complaint, without pronouncement as to costs. This order was predicated upon the following reasons:

"The Provincial Board of Pampanga, in passing Resolution No. 303 dated April 12, 1953, no doubt had in its mind the welfare of the people of the Municipality of Guagua especially those people who were already living or would transfer their residences to the Duck Island of the said Municipality, and likewise had in mind that during the time when they passed the aforementioned resolution, they had only at their disposal the limited amount of P15, 000.00 so they made a proviso in the aforesaid resolution that for the completion of the construction of the aforementioned bridge, the Municipality of Guagua should have to defray the difference in the costs of construction. When the Provincial Board accepted the donation of the plaintiff herein, the members thereof might have or might not have known that the prime interest of the plaintiff in offering the donation to defray part of the expenses for the construction of the bridge was for a business purpose, that of realizing big profits from the lots that have been subdivided in the Duck Island. In the offer of the plaintiff to defray the expenses of P10,000, he did not make or given any condition to the Provincial Board that would bind the Provincial Board, happen what may, to complete the construction of the bridge now in question. Considering Mr. Carreon's purpose in giving the amount of P10,000, and in himself, he might have considered it a business transaction and was expecting big profit, therefore, he should have made clear his offer in such a way that the offer of P10,000 and the acceptance by the Provincial Board thereof would constitute a sort of a contract. Scanning very well Exhibits 'A' and '1' and '2', we could not see anything therein where a contract existed either express or implied. We can see only that the Provincial Board wanted to have a bridge across the Guagua River connecting the barrio of Sto. Nino, Guagua to the Duck Island, and Mr. Carreon, with a big heart wanted to have the said bridge constructed. We only can see from the letter of Mr. Carreon that he was being philanthropic without in the least suspecting that between the lines what he means was profit and gain. The Provincial Board in its Resolution No. 1687 dated July 30, 1952, in reverting the funds originally appropriated for the construction of the bridge to connect Duck Island to the poblacion of Guagua to the construction of a concrete bridge along the road between Angeles and Magalang, was in the exercise of its power and authority. It is not within the province of any officer but that of the members of the Provincial Board to judge the needs of the people of the province and the feasibility and reasonableness of its improvements. The Provincial Board, in passing the aforementioned last resolution may have in fact prejudiced the private interest of the plaintiff herein but we do not see therefrom that the real and true intention of the members of the board in passing the said resolution was for the sole purpose of prejudicing or damaging the interest of the plaintiff as he had alleged in his complaint. The Court, in the exercise of its jurisdiction, does not have to interfere with the soundness of the actions of the Provincial Board because it is only the said board that can decide whether what they have done is good or not for the province, as the members of the Provincial Board has done in Resolution No. 1687. The Provincial Board of Pampanga, in passing its Resolution No. 303 dated April 12, 1950 might have believed that the construction of the bridge over the barrio of Sto. Nino and the Duck Island was for the

best interest of the people concerned, and the Provincial Board, in passing Resolution No. 1687, might have also in mind the best interest of the province and it is not for the Court to question as we have aforestated, the reasonableness and soundness of their actuations. As we have aforestated, the Court cannot see that there was a contract either express or implied, between the Provincial Board of Pampanga, and the members composing it on the one hand and the plaintiff herein on the other hand for the completion of the construction of the aforementioned bridge. We only could see that the plaintiff wanted to have big gains in the guise of a philanthropic gesture which unluckily backfired. This being the case, we are of the opinion and so hold that the plaintiff cannot compel the Province of Pampanga and the members of its board to resume the construction of the bridge to connect the barrio of Sto. Nino, Guagua to the Duck Island if in the decision of the Provincial Board, they are not yet in a position to construct the same and if they believe that the resumption of the construction of the same is not yet timely. We likewise believe that the members of the Provincial Board of Pampanga, namely: Defendants, Hon. Rafael Lazatin, Hon. Emilio P. Cortez and Dr. Librado. D. Santos, should not be held liable for any damage that the plaintiff herein may have sustained in the former's passing Resolution No. 1687, dated July 80, 1952, because in passing the same they have acted in their official capacities and within the scope of the authority and power vested in them as members of the aforementioned provincial board.

"In view of all the foregoing, the plaintiff's complaint filed against the defendants herein is ordered dismissed. without pronouncement as to costs."

It would appear, therefore, that this order of dismissal is premised, in effect, upon the theory that the Chairman and members of the Provincial Board had acted in good faith and within the scope of their authority and that the allegations of the complaint to the contrary are not true. This is clearly a reversible error. A motion to dismiss the complaint generally partakes of the nature of a demurrer, and, as such, it hypothetically admits the truth of the allegations of fact made in the complaint. If said motion assails directly or indirectly, the veracity of the aforementioned allegations, it is improper to grant the motion upon the assumption that the averments therein are true and that those of the complaint are not. The court should, either deny the motion, without prejudice to defendants' right to plead, as a special defense, in his answer, the very issue upon which said motion is predicated, or proceed to the reception of evidence on the issue of fact thus raised, before settling the same. In the case of *Palma vs. Garciano, et al.*, L-7240 (*supra*, p 72), we said:

"* * * The order of dismissal complained of is predicated upon the theory that the filing of the informations above referred to, is 'presumed' to have been made 'in good faith' and that, in fact, the proper court had found the existence of probable cause against plaintiff herein, contrary to the allegations in the complaint, which specifically charges 'bad faith', lack of 'any probable cause', desire to give vent to 'personal hatred and vengeance', and intent 'to harass and embarrass the plaintiff and to besmirch his honor and reputation. The only question for determination by the court, at the time of the issuance of said order, was whether or not the complaint states a cause of action. This implied that said issue was to be passed upon on the basis of the allegations of the complaint, assuming them to be true. Instead, His Honor, the trial Judge inquired, into the truth of said allegations and, in effect, found them to be false. And this it did without giving the plaintiff an opportunity to prove his aforesaid allegations. Thus, the lower court had, not only exceeded its jurisdiction, by going beyond the purview of the issue posed by defendants motions to dismiss, but, also, denied due process of law to plaintiff herein, by, in effect deciding the case on the merits, before it had been submitted for decision and before plaintiff had had a chance to introduce evidence in support of the allegations of his complaint."

Again, the very emphasis given in the order appealed from, to the possible good faith of the members of the provincial board indicates that, otherwise, a cause of action would exist against them. Indeed, as stated in the *Palma* case:

"* * * it is well settled that when a public officer goes outside scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office, but is liable for his acts like any private

individual (46 C. J. 1046; 22 R. C. L. - 478-479)."

Thus in *Mendoza vs. De Leon* (33 Phil., 508, 513) it was held:

"Not are officer or agent of the Government charged with performance of governmental duties which are in their nature legislative, or quasi judicial, liable for the consequences of their official acts, unless it be shown that they act willfully and maliciously, and with the express purpose of inflicting injury upon the plaintiff" (Italics supplied.)

"The liability becomes even clearer when the act performed involves the exercise of corporate or proprietary functions, rather than of duties which are strictly governmental or political in nature. Referring to the rescission, by a municipal council of a contract of lease for the operation of a ferry, this Court declared, in said case of *Mendoza vs. De Leon* (supra):

"* * * it should be clear that a municipality is not exempt from liability for the negligent performance of its corporate or proprietary or business functions. In the administration of its patrimonial property, it is to be regarded as a private corporation or individual so far as its liability to third persons on contract or in tort is concerned.' Its contracts, validly entered into, may be enforced and damages may be collected from it for the torts of its officers or agents within the scope of their employment in precisely the same manner and to the same extent as those of private corporations or individuals. As to such matters the principles of respondent superior applies. It is for these purposes that the municipality is made liable to suits in the courts."

* * * * *

"* * * in administering the patrimonial property of municipalities, the municipal council occupies, for most purposes, the position of a board of directors of a private corporation. In disposing of the local" public utilities, if the term be used, such as the fishing and ferry rights, etc., they must exercise considerable judgment. It requires some considerable amount of business acumen to compel performance on the part of lessees of these privileges in accordance with the terms of their leases and in a manner which will not cause the property to deteriorate. Questions must continually arise which are not expressly provided for in the contracts and which must be settled, if possible, in a manner that will preserve the just claims of the municipality. Indeed, it is not at all improbable that on occasion the councilors may have reason to believe that a particular contract has been rescinded by the other party or has never been legally entered into, in both of which cases, decisive steps must be taken to safeguard the interest of the municipality. Thus, in *Municipality of Moncada vs. Cajuigah* (21 Phil. 184), the lessee of a municipal fishery was evicted for failing to pay his quarterly rents. The municipal authorities rightly held that the contract was rescinded but forcibly evicted the lessee instead or resorting to the courts. Hence, in an action by the municipality against the lessee and his bondsmen to recover rent arrears, damages were allowed the lessee on his counterclaim for the loss caused by the forcible eviction. Nevertheless, we do not think the councilors could have been held personally liable for their error in resorting to forcible eviction of the lessee. There was an error of judgment, and honest mistake on their part as to the rights of the municipality in the premises. We think the rule of personal liability should be with municipal councilors in such matters as it is with the directors or managers of an ordinary private corporation.

"Under the rule that directors are not liable for mistakes of judgment, it follows naturally that they are not liable for the mismanagement of the corporate affairs where such mismanagement is a mistake of judgment. The wisdom of this rule is not only approved by common experience but by law writers and all courts. A rule so rigid as to hold directors personally liable for honest mistakes in corporate management would deter all prudent business men for accepting such positions. The remedy of stockholders in all such cases is by a change of the directory. * * * The rule is that courts will not interfere even in doubtful cases. But directors and managing officers may be liable for mismanagement to warrant the interposition of a court either as against the contemplated action of the directors, or a majority of the stockholders, or to give relief by way of damages after the action has been taken; a case must be made out which plainly shows that such action is so far opposed

to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the corporation, and in a manner inconsistent with its interest.' (Thompson on Corporations, section 1298.)

"In the case at bar, there is not a scintilla of evidence that there was any justifiable reason for forcibly evicting the plaintiff from the ferry which he had leased. On the contrary, the defendant councilors attempted to justify their action on the ground that the ferry which he was operating was not the one leased to him; this, inspite of the fact that the vice president had personally placed him in possession of it more than a year before, and the fact that he had operated his ferry for over a year, evidently with the knowledge of the N defendants. The evidence is so clear that the ferry of which the plaintiff was dispossessed was the one which he had. leased that no reasonable man would entertain any doubt whatever upon the question. Hence, we cannot say that in rescinding the contract with the plaintiff, thereby making the municipality. liable to an action for damages for no valid reason at all, the defendant councilors were honestly acting for the interests of the municipality. We are, therefore, of the opinion that the defendants are liable jointly and severally for the damages sustained by the plaintiff from the rescission of his contract of lease of the ferry privilege in question." (Italics supplied.).

It is not necessary for us, and we do not mean, to determine, at this stage of the proceedings, whether the function involved in the approval of Resolution No. 1687 of the Provincial Board of Pampanga, dated July 30, 1952, is governmental or corporate in character. The resolution of such question may be deferred until such time as the case may be ready for decision on the merits. We do hold, however, that the allegations of the complaint state prima fade a cause of action against the defendants and that, consequently, plaintiff is entitled to an opportunity to prove the allegations of his complaint, before the validity of his claim could be passed upon.

Wherefore, the order appealed from is hereby reversed and let the records of this case be remanded to the lower court for further proceedings, in conformity with this decision with the costs of this instance against the defendants. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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