

**ARTURO T. UBARRA AND ENRIQUE D. JUGOS,
PLAINTIFFS-APPELLANTS, VS. BISCOM EMPLOYEES COOPERATIVE
ASSOCIATION, INC., RICARDO M. DIARESCO, PIO PIOLA, JOSE
SANTOS, RUFING TEJARES, DA...**

G.R. No. L-25332. October 14, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal to this Court, from an order of the Court of First Instance of Negros Occidental, dismissing the complaint herein, with costs.

Plaintiffs Arturo T. Ubarra and Enrique D. Jugos, were the manager and rice section-in-charge, respectively, of the BISCOM Employees Cooperative Association, Inc. - hereinafter referred to as BECA - a consumer's cooperative enterprise organized, pursuant to the provisions of Republic Act No. 2023, as a non-profit organization, for the benefit of its members, who are employees of the Binalbagan-Isabela Sugar Co. On April 30, 1964, defendant Ricardo M. Diaresco, President of the BECA, convened a special meeting of its board of directors - hereinafter referred to as the Board - which passed resolution No. 273 expressing the Board's loss of trust and confidence in plaintiffs herein, for alleged anomalies committed by them, and suspending them indefinitely, until their case shall have been "determined and decided" by the Board. Excerpts from the minutes of said meeting, read:

"After a quorum was certified to by the Secretary, the President called the SPECIAL MEETING to order at 11:05 A.M.

"The President explained that the meeting was called for the purpose of requesting the Board to take the necessary steps against the Manager who has been repeatedly defying existing regulations and Board resolutions as well as the By-Laws of the Cooperative.

"He went on further to state that due to these open defiance and repeated violations, the President has completely lost trust and confidence in the Manager - as aggravated by the fact that in the recent acts of the Manager with a local bakery wherein he has showed propensities in giving protection to its owners, one of which is a relative, the Manager has made several manipulations in order to continue daily sales of bread of said bakery to the BECA, which is not only improper but immoral.

"Again, the President explained, this was lately shown when the Rice Section was reported on by Mr. Doronilla of the Audit & Inventory Committee to have a shortage in the amount of P1,257.09, when without the request of the Board, the Manager submitted his own version thru a report prepared by him showing an overage of P28.64.

"In order to strike a true and accurate picture of the rice situation in the BECA, it therefore appears that the Board is left with no other alternative but to ask for an indefinite suspension of Messrs. Arturo Ubarra and Enrique Jugos, BECA Manager and Rice-in-charge, who are also brothers-in-law to each other.

"It is therefore obviously clear that each will come to the defense of the other in case of fault, anomalies or irregularities committed by one or the other in order to cover up any wrongdoing. This will always happen whenever relatives are involved, the President explained.

"Directors Santos and Galanza then suggested that in the event that the board decides on the suspension of the two persons, it is but necessary that the records and books of the Cooperative be denied them, except upon proper permission from the Board, in order to avoid tampering and undue manipulation of our records.

"ON MOTION by Director Ludovico H. Bayotas, duly seconded by Director Jose Santos, the Board passed and approved the following:

"RESOLUTION NO. 273

"RESOLVED, That in view of the fact that the Board, has lost its trust and confidence in both the Manager and the Rice-in-charge, more particularly on the Manager who has repeatedly and openly defied the Board by the following acts:

"a. Failure to implement and comply with existing rules, regulations, resolutions and by the by-laws;

"b. Failure to submit the results of the general inventory ending March 31, 1964 as requested;

"c. Mismanagement and laxity in the supervision of employee under him;

"d. Past shortages in the Refreshment & Textiles sections and now a shortage in the Rice Section in the amount of P1,257.09.

"e. Connivance with brokers who thrive on the blood of our members to the detriment of the Cooperative; and other charges to be preferred by the Board.

"In view of the foregoing, the Board therefore finds that it has sufficient grounds to suspend both the Manager and the Rice-in-Charge, as it does hereby SUSPEND INDEFINITELY the said persons until their case shall have been determined and decided by the Board.

"UNANIMOUSLY CARRIED."

"There being no further business to be taken up the Special Meeting was adjourned at 11:50 A.M."

After conducting an investigation, at which plaintiffs' counsel was not allowed to be present, the Board found them guilty as charged and dismissed them from their aforementioned positions, effective April 30, 1964. Soon thereafter, or on July 9, 1964, plaintiffs complained to the Cooperatives Administration Office - hereinafter referred to as CAO - against the action thus taken against them. The CAO Administrator referred plaintiffs' complaint, for appropriate action, to the Commercial Cooperative Officer in Bacolod City, but, on August 21, 1964, the latter advised the former that his efforts to settle the matter amicably had failed and that the parties were "bent to make good their individual stand to have the case decided by the courts of justice."

On March 18, 1965, plaintiffs commenced the present civil action in the Court of First Instance of Negros Occidental, against the BECA and Diaresco, as well as his co-members in the Board, namely, Pio Piola, Jose Santos, Rufing Tejares, David Galanza, and Ludovico H. Bayotas. In their complaint, plaintiffs alleged, inter alia, that the charges preferred against them are "false and libelous", as well as "motivated by personal spite, criminal intent, malice x x political rivalry, and business considerations"; that plaintiffs had, accordingly, filed with the office of the Provincial Fiscal of Negros Occidental a criminal complaint for libel against defendants herein; that, in consequence of said acts of the latter, plaintiffs had suffered mental anguish, besmirched reputation, wounded feelings and anxiety, and had been "injured in their reputation and good names x x x causing them damages in the amount of P10,000.00"; that the aforementioned investigation by the Board was

irregular, summary and "inquisitorial"; that plaintiffs' counsel had not been allowed to be present at said investigation; that their aforementioned dismissal was illegal, unjustified and arbitrary and without due process; and, that, as a consequence, plaintiffs had suffered mental anguish, besmirched reputation, wounded feelings and anxiety, which "may be pecuniarily estimated at P10,000," apart from loss of income in the sum of P4,320, more or less.

Plaintiffs prayed, therefore, for judgment in the sums above mentioned, aside from P10,000, as exemplary damages, P5,000, as attorney's fees and P5,000, as expenses of litigation.

Upon being summoned, defendants filed a motion to dismiss said complaint, upon the ground that the court had no jurisdiction over the nature of the action and that plaintiffs have no cause of action, because resolution No. 273 is a privileged communication. After due hearing, the lower court granted the motion, on both grounds, and, consequently, dismissed plaintiffs' complaint. Hence, this appeal.

In holding that it had no jurisdiction over the subject-matter of the present case, the lower court accepted defendants' theory to the effect that, under the provisions of Republic Act No. 2023, governing consumer's cooperative enterprises, such as the BECA, plaintiffs should have appealed from the action of the Board to the general assembly of members or delegates of members of the association assembled in a general meeting, as provided in section 34 of said Act, and section 2 of Article III of the BECA By-Laws. Assuming that these sections imposed upon plaintiffs herein the obligation to appeal to said assembly, the failure to take such step could, at best, affect their cause of action against the defendants, but, not the jurisdiction of the lower court over the subject-matter of this case, which is determined by law, and does not depend upon the acts or omissions of the parties.

Moreover, said sections read:

"Sec. 34. Final authority of a co-operative. - Subject to the provisions of this Act and the regulations, the final authority in every co-operative shall be vested in the general assembly of the members or the delegates of such members elected in the prescribed manner and assembled in a general meeting." [1]

"Section 2. RIGHTS AND LIMITATIONS OF GENERAL ASSEMBLY. - The general assembly has both the right and responsibility to elect directors and members of committees and to remove them from office for cause, to hear and pass upon the reports of the directors, officers and committees which are responsible to the membership and subject to legal restrictions, to make the final decision regarding any drastic change in the financial policy, to act as the final arbiter in any dispute or disagreement which may arise between the Board and any committee or officer or individual member, to determine that amendments shall be made in the by-laws and to exercise its final authority in all other matters vitally affecting the cooperative." [2]

We find in these provisions nothing clearly relevant to the legality or illegality of plaintiffs' dismissal. Moreover, plaintiffs do not seek reinstatement. They merely demand payment of damages for the allegedly "false and libelous" charges preferred against them, motivated, according to the complaint, "by personal spite, criminal intent, malice x x political rivalry and business considerations", on the part of the defendants.

Invoking Article 354 of the Revised Penal Code, defendants maintain and the lower court held that, having been preferred in the course of the performance of their duties, the charges against plaintiffs partake of the nature of a privileged communication, which, as such, is not actionable. The argument overlooks the fact that the privilege conferred by said article is not absolute, but qualified; that the presumption of good faith, in effect, contained therein, is rebuttable; [3] that, in fact, plaintiffs explicitly allege that the charges against them are, not only false, but, also, malicious; and that the truth of this allegation is deemed hypothetically admitted in defendants' motion to dismiss. [4]

WHEREFORE, the order appealed from should be as it is hereby set aside, and the case remanded to the lower court for further proceedings, with the costs of this instance against the defendants.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] Underscoring ours.

[2] Underscoring ours.

[3] U.S. v. Cañete, 38 Phil. 253; U.S. v. Bustos, 37 Phil. 731; Lu Chu Sing v. Lu Tiong Gui, 76 Phil. 669.

[4] Valencia v. Deudor, L-21598, May 19, 1966; Republic v. Cuaderno, L-22399, March 30, 1967; Republic v. Patanao, L-22356, July 21, 1967; Joaquin v. Cujuangco, L-18060, July 25, 1967.

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