

**MINDANAO REALTY CORPORATION, PLAINTIFF AND APPELLANT,  
VS. FILOMENO KINTANAR, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-17152. November 30, 1962*

Ponente: BARRERA, J.

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As a consequence of the decision rendered by this Court in case G. R. No. L-12028 (Mindanao Realty Corp., et al. vs. Republic of the Philippines, promulgated on November 25, 1958) upholding the right of the Republic of the Philippines to immediate possession of the properties described in TCT Nos. 6350, 6351 and 6352,[1] the Mindanao Realty Corporation on February 4, 1959, filed in the Court of First Instance of Davao an action to quiet its title to the same parcels of land, pursuant to the provisions of the Civil Code and/or the Philippine Property Act of 1946. Named defendants were the Republic of the Philippines (with claim ownership of the same properties), Filomeno Kintanar, Eladio Enriquez and Bartolome Fernandez, sued "personally and in their capacities as Chairman and members of the Board of Liquidators, respectively", the Register of Deeds and Provincial Sheriff of the province of Davao, for "their official actuations" in connection with the alleged illegal deprivation of plaintiff's properties. Essentially, the complaint was predicated on the alleged illegal and improper seizure and vesting, by the Alien Property Custodian pursuant to Vesting Order No. P-2, as amended, of the 3 parcels of land as part of the assets of the Furukawa Plantation Company, although the same were actually owned by Tadao Nambu, an American citizen, and under the Trading with the Enemy Act were not subject to seizure.

On February 28, 1959, the Solicitor General made a special entry of appearance "in behalf of the members of the Board of Liquidators and the Republic of the Philippines, without waiving the State's right of immunity from suit, and only to contest the issuance of a writ of preliminary injunction prayed for by plaintiff."

Thereafter, or on March 13, 1959, the Republic of the Philippines and the Chairman and members of the Board of Liquidators, represented by the Solicitor General, moved for the dismissal of the complaint on the grounds of (1) lack of jurisdiction over the person of defendants—the Republic of the Philippines not having waived its immunity from suit and the Board of Liquidators not having capacity to sue and be sued; (2) lack of jurisdiction over the subject-matter—the action, being one for recovery of seized property under the Philippine Property Act of 1946, should properly be filed in the United States; (3) prescription—an action under the Trading with the Enemy Act should be filed within 2 years from the date of seizure of the property; (4) pendency of another action—plaintiff filed an action for recovery of same properties in the District of Columbia, U.S.A., against the U.S. Attorney General, which was then still pending; (5) bar by former judgment—the order to place the Republic of the Philippines in possession of the lots in controversy, as a result of the annotation of the Vesting Order No. P-2, as amended, on TCT Nos. 6350, 6351 and 6352, having been affirmed by the Supreme Court in G. R. No. L-12028, and became final.

On March 14, 1959, defendants Kintanar, Enriquez and Fernandez filed a motion to dismiss the complaint against them in their private and personal capacities for lack of cause of action against them in such capacities.

By order of August 31, 1959, the court, overruling plaintiff's opposition that said motion was filed out of time, sustained their contention and dismissed the complaint against defendants Kintanar, Enriquez and Fernandez in their private and personal capacities, for the reason that under the allegations of the complaint, no judgment could be rendered to hold any or all of them liable. From said order, plaintiff interposed the present appeal.

Insofar as pertinent to the herein incident, the complaint alleges:

"2. Defendants Filomeno Kintanar, Eladio Enriquez, and Bartolome Fernandez are Filipinos, of legal age, and are being sued hereunder, personally and in their capacities as Chairman and members of the Board of Liquidators, as instrumentality created by Executive Order No. 372 for the purpose of assuming the duties, functions and obligations of, among others, the National Abaca and Other Fibers Corporation, a private corporation wholly owned and controlled by the Philippine Government, which had the capacity to sue and be sued. Said defendants may be served with summons at their offices at 220 Tanduay Street, Manila.

\* \* \* \* \*

"4. Defendant Republic of the Philippines is a political government entity, and has been included as defendant, by reason and as a result of the illegal, unwarranted and unjustified claim which it had filed as alleged owner of properties already duly registered in the name of and absolutely owned by plaintiff and acquired by the latter under the transactions more specifically described hereinbelow. Said defendant may be served with summons in care of the Solicitor General, Manila.

"5. Plaintiff's present action is based on its right, as the absolute registered owner and present possessor of real properties, to remove all clouds on and to quiet its title to said properties, and to otherwise prevent any interference with plaintiff's ownership and possession thereof; and is sanctioned by the new Civil Code and/or the Philippine Property Act of 1946, the latter as applied and interpreted by the Supreme Court in G. R. No. L-12028 entitled 'Mindanao Realty Corporation et al. vs. Republic of the Philippines et al.' in which said decision, said Court, expressly acknowledged plaintiff's right, as a registered owner, to commence the action or actions necessary to protect its right as such owner.

"6. On the basis of the claim that plaintiff's properties are subject to seizure as alleged former enemy-owned properties, which claim is false, unjustified and illegal for the reasons hereinafter set forth, the herein defendants have taken steps and threatened or are now taking steps and threatening to arbitrarily diposses plaintiff of its said properties, without affording to plaintiff the opportunity to establish its right, as absolute owner, to prove its ownership and its right to continue in possession of said properties, as hereunder more particularly alleged.

\* \* \* \* \*

"22. The said orders of July 19, 1956 and January 28, 1957 issued by this Honorable Court as a land registration court at the instance of defendants constitute the only basis for the possession and control which defendants Filomeno Kintanar, Eladio Enriquez and Bartolome Fernandez, as Chairman and members of the Board of Liquidators, may assume and threaten to assume, over the said properties of plaintiff; notwithstanding the fact that said defendants are empowered to administer, control and otherwise take possession of, only properties which are formerly enemy-owned.

"23. As a consequence of the said orders of this Honorable Court dated July 19, 1956, afore-cited, issued in G.L.R.O. No. 317, directing the re-annotation of Amended Vesting Order P-2, and its subsequent order of January 28, 1957, defendants have unlawfully caused to be placed a cloud on the titles of the plaintiff to the aforementioned three parcels of land by reason of a record, claim, encumbrance and/or proceeding all of which, in truth and in fact, are invalid, ineffective and void, and therefore prejudicial to the said titles and to the property rights of plaintiff therein, as here-under shown.

\* \* \* \* \*

Plaintiff, through this action, seeks the following relief:

"(a) That this Honorable Court immediately issue a Writ of Preliminary Injunction or restraining order enjoining the defendants from taking possession of or in anyway interfering with the rights of the plaintiff to their properties covered by Transfer Certificates of Title Nos. 6350, 6351 and 6352, of the Register of Deeds of Davao, and particularly plaintiff's right to continue in possession thereof, upon plaintiff's filing the requisite bond.

"(b) That after due hearing, the said writ or restraining order be made permanent.

"(c) That the amendment to Vesting Order P-2 dated July 30, 1953 be declared null and void, in so far as it purports to seize and vest the properties of the plaintiff.

"(d) That the Register of Deeds of Davao be ordered to cancel from plaintiff's titles to the above-mentioned properties, the annotation of the said amendment to Vesting Order P-2.

"(e) That the Register of Deeds of Davao be likewise ordered to cancel the adverse claim filed by the defendants based on the said Vesting Order.

"(f) That on the assumption that the above-mentioned properties were actually vested and seized, that the defendants be ordered to make a formal return of the same to the plaintiff pursuant to the provisions of the Trading with the Enemy Act.

"(g) That this Honorable Court declare plaintiff's titles purged and cleared of any adverse claim, lien, encumbrance, particularly of the said amendment to Vesting Order P-2."

The rule is well-settled that to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged on the complaint must be considered. Even admitting then the truthfulness of the averments of the complaint aforequoted, defendants could not thereunder be held personally liable for the above relief being sought by plaintiff. It may be observed therefrom that the specific act or acts of defendants allegedly in violation of plaintiff's right consists of the assumption or threat to assume possession and control of the properties being claimed by the latter (par. 22, of the complaint). In that same paragraph, however, defendants were referred to as "Chairman and members of the Board of Liquidators". This clearly conveys no other meaning than that the supposed wrongful act was committed or will be committed by defendants in their capacities as Chairman and members of the Board of Liquidators. As a matter of fact, nowhere in the complaint is there an allegation of the perpetration or threat of perpetration of any act by the defendants Kintanar, Enriquez and Fernandez in a capacity other than as such officials of the Board of Liquidators.

The authorities cited by appellant, upon which reliance is made, merely declare that a suit against the individual public officials is not a suit against the government, so as to require the latter's consent for the prosecution of the action. Note that the cases cited refer to the officials not only as individuals, but also in their official capacities. As such, it is clear that they are proper parties to the action, as the government can only act through individual persons. But their liability, if any, is only in their official capacity, such that no judgment can be rendered to make them personally liable in their private capacity, unless there is allegation in the complaint that such officials have maliciously and in bad faith acted outside the scope of their official authority. It is only in the latter case that public officials may be held responsible in their individual personal private capacities.

Such is not the case before us. The complaint herein has been ordered dismissed as against appellees Kintanar, Enriquez, and Fernandez, only in their private capacities because of lack of allegation to make them so liable in favor of appellant. This is supported by the lack of relief asked for in the prayer of the complaint as against these

appellees in their private capacities.

Note that the other motion to dismiss (p. 33, Record on Appeal) filed by the defendants Republic of the Philippines and these appellees in their official capacity as Chairman and Members of the Board of Liquidators, upon the alleged ground, among others, that the court has no jurisdiction over the said defendants who were acting in their official capacity and as such, the suit was against the Government which gave no consent therefor, was denied by the lower court in its order of the same date August 31, 1959 (p. 117, Record on Appeal). It is therefore clear that herein appellees Kintanar, Enriquez and Fernandez continue to be individual parties—defendant in this case but in their official capacity.

Wherefore, the order of the court dismissing the complaint against defendants Kintanar, Enriquez and Fernandez in their personal private capacities, is hereby affirmed, with costs against plaintiff-appellant. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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[1] By virtue of the amended Vesting Order P-2, dated July 30, 1953, these properties, originally registered in the name of one Tadao Nambu and later acquired by Mindanao Realty Corporation, were seized and vested by the Alien Property Custodian as part of the assets of the Furukawa Plantation Company, an enemy corporation.

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