

FRANCISCO SOCORRO, PLAINTIFF-APPELLANT, VS. NORA VARGAS AND LEOCADIO VARGAS, DEFENDANTS-APPELLEES, PABLO DUMLAO, INTERVENOR-APPELLEE.*G.R. No. L-29648. October 26, 1968*

Ponente: SANCHEZ, J.

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The case before us[1] forces a choice: to dismiss the case on motion to dismiss as ordered by the lower court; or, to direct that the proceedings below proceed to its final conclusion. Our duty is to uphold the latter.

The case started with plaintiff's complaint below against defendant spouses for breach of contract, Annex A of the complaint.[2] Averment is there made that plaintiff is a timber concessionaire under License No. 556-63 and that defendant spouses are sawmill owners and operators. Four causes of action are sued upon. The first cause of action alleges that in violation of the contract, defendant spouses failed to pay the following: (a) P1,510.09 to the Bureau of Forestry as forest charges; (b) P9,253.98 as sales taxes; and (c) P18,342.17 as price of logs cut and removed under the contract from plaintiff's timber concession, "for the operation of their (defendants') sawmill". The second seeks recovery of P330.00 which plaintiff paid to Messrs. Gaviola and Moran, Jr., for expenses incurred, properly chargeable to defendants pursuant to the contract aforesaid. For his third cause of action, plaintiff prays for judgment for P200.00, payable on demand, the value of one male carabao obtained by defendants from plaintiff. And the fourth avers that between August, 1962 and April, 1963, defendants, in violation of the aforementioned contract, without the knowledge and consent of plaintiff, surreptitiously cut and removed from plaintiff's timber concession 300,000 board feet of export logs which said defendants sold to foreign buyers for P71,000.00, with auxiliary invoices made out in the name of plaintiff as licensee, thus entitling plaintiff to P71,000.00 as actual damages, and another sum of P50,000.00 by way of moral damages.

Of interest is defendants' answer to the foregoing complaint. They did not contest under oath the genuineness and due execution of the contract attached to the complaint. They met the first, second and third causes of action with a no-knowledge-or-information allegation. They traversed the fourth cause of action with the defense that the shipment of 300,000 board feet of lumber "was done with plaintiff's knowledge and consent", "in good faith and not fraudulently", and not in "violation of any contract". The answer set forth affirmative defenses, namely, lack of cause of action and estoppel to contest the shipment aforestated.

Then came a certain Pablo L. Dumlao who moved to intervene with an answer in intervention. Dumlao disclaims interest in the first, second and third causes of action. He, however, asserts that "part of the 300,000 bd. ft. mentioned therein [in the fourth cause of action] came from the intervenor's concession area under Ordinary Timber License No. 955-63 x x x cut by the intervenor for the defendants which he sold to them for which he has not yet been paid in full so that if plaintiff succeeds in his claims, the intervenor will suffer losses as a consequence". Intervenor Dumlao also alleges in his answer in intervention that on June 24, 1963, the Bureau of Forestry, Manila, instructed the District Forester of Surigao "to survey a straight line 920 meters from the mouth

of Tangao Creek to a point along Lake Mainit, connect this point to PBM No. 2 on the west", said straight line to be "the southern boundary of Licensee Dumlao" and plaintiff's concession.

Not long after the foregoing motion for intervention was registered, defendants filed a "motion to dismiss with supplemental arguments to petition to dissolve injunction". Their ground is that "the complaint fails to state a cause of action, it being premature, and that plaintiff failed to exhaust all administrative remedies available to him". The gist of their contention is that from the averments in the complaint as well as the answer and the answer in intervention, the issue involved funnels down to a boundary dispute between plaintiff Francisco Socorro and intervenor Pablo L. Dumlao.

The lower court shunted aside plaintiff's opposition to the motion to dismiss, came out with the order of February 24, 1964, *inter alia*, dismissing the complaint without prejudice and without costs. The court's order was predicated upon what it termed a "conflict in the boundaries" which must first be settled in the Bureau of Forestry.

Plaintiff now appeals from the dismissal order.

The lower court's order of dismissal suffers from infirmities.

First. The lower court overlooked the fact that plaintiff's complaint contains four causes of action. Defendants' motion to dismiss for failure to state a cause of action refers exclusively to the fourth cause of action. Indeed, the first three causes of action are not involved in the so-called boundary dispute between plaintiff and intervenor, the basis of the lower court's order to dismiss the complaint. Because, the first refers to the payment of logs, forest charges and sales taxes; the second, to money advanced by plaintiff for defendants; and, the third, the value of a carabao. Clearly, each of these three causes of action can stand on its own feet. The complaint, as far as these causes of action are concerned, was not the subject of the motion to dismiss. The lower court erred in dismissing plaintiff's complaint as to them.

Second. The so-called boundary dispute is of no consequence. For, the answer in intervention of Pablo L. Dumlao merely claims that "part of the 300,000 board feet" - set forth in plaintiff's fourth cause of action - came from his concession. Dumlao did not even state what "part" - in terms of board feet - was logged in his area, or the value thereof, or when logging was done. This averment is so indefinite, so unsubstantial as to merit any consideration at all - in a motion to dismiss.

Worse, plaintiff's case against defendants is for breach of contract. Defendants did not deny that contract. Neither did they deny that the timber involved in the fourth cause of action was taken out of plaintiff's forest area, the subject of that contract. Their only defense in their answer is that the shipment abroad of the 300,000 board feet of lumber, was made with plaintiff's knowledge and consent and in good faith and not fraudulently nor in violation of any contract.

Third. We do not pause to consider whether - had trial been held - the facts proven would yield a result contrary to plaintiff's claim in the fourth cause of action, namely, that his contract with defendants was infringed. For, there was no trial. The case was dismissed on a motion to dismiss. The lower court's error in accepting defendants' stand is brought into sharp focus when it took impermissible liberty to judge the validity of plaintiff's cause of action upon facts yet to be proven.

The issue thus raised in plaintiff's fourth cause of action, and defendants' answer and the answer in intervention thereto, is purely factual. Such question cannot be determined in a motion to dismiss. It should be the subject of a full-dress trial.

And yet, the position adopted by the lower court on this fourth cause of action sweeps the ground out from under

the accepted rule that to determine whether or not a complaint states a cause of action, only the allegations of the complaint - taking them to be true - should be considered,[3] and that courts should not go beyond and outside of those averred facts.[4]

For the reasons given, the lower court's order of February 24, 1964, insofar as it directs the dismissal of the complaint in this case without prejudice and without costs, is hereby set aside and declared null and void. Let the record of Civil Case No. 1554 of the Court of First Instance of Surigao, entitled "Francisco Socorro, plaintiff, versus Nora Vargas and Leocadio Vargas, defendants", be remanded to said court for further proceedings not inconsistent with the opinion herein.

Costs against defendants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] Certified by the Court of Appeals.

[2] Civil Case 1554 of the Court of First Instance of Surigao.

[3] Republic Bank vs. Cuaderno, 1967A Phil. 521, 526-527, citing cases; La Suerte Cigar & Cigarette Factory vs. Central Azucarera del Danao, 23 Supreme Court Reports Anno. 686, 690.

[4] Worldwide Insurance Company vs. Manuel, 98 Phil. 46, 49-50.

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