

ISMAEL MATHAY, JOSEFINA MATHAY, DIOGRACIAS T. REYES AND S. ADOR DIONISIO, PLAINTIFFS-APPELLANTS, VS. THE CONSOLIDATED BANK AND TRUST COMPANY, JOSE MARINO OLONDRIZ, WILFRIDO C. T...

G.R. No. L-23136. August 26, 1974

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

In this appeal, appellants-plaintiffs and movants-intervenors, seek the reversal of the order dated March 21, 1964 of the Court of First Instance of Manila dismissing the complaint together with all other pending incidents in Civil Case No. 55810.

The complaint in this case, filed on December 24, 1963 as a class suit, under Section 12, Rule 3, of the Rules of Court, contained six causes of action. Under the first cause of action, plaintiffs-appellants alleged that they were, on or before March 28, 1962, stockholders in the Consolidated Mines, Inc. (hereinafter referred to as CMI), a corporation duly organized and existing under Philippine laws; that the stockholders of the CMI, including the plaintiffs-appellants, passed, at a regular stockholders' meeting, a Resolution providing: (a) that the Consolidated Bank & Trust Co. (hereinafter referred to as Bank) be organized with an authorized capital of P20,000,000.00; (b) that the organization be undertaken by a Board of Organizers composed of the President and Members of the Board of Directors of the CMI; (c) that all stockholders of the CMI, who were legally qualified to become stockholders, would be entitled to subscribe to the capital stock of the proposed Bank "at par value to the same extent and in the same amount as said stockholders' respective shareholdings in the CMI," as shown in its stock books on a date to be fixed by the Board of Directors [which date was subsequently fixed as January 15, 1963], provided that the right to subscribe should be exercised within thirty days from the date so fixed, and "that if such right to subscription be not so exercised then the stockholders concerned shall be deemed to have thereby waived and released ipso-facto their right to such subscription in favor of the Interim Board of Organizers of the Defendant Bank or their assignees"; and (d) that the Board of Directors of the CMI be authorized to declare a "special dividend" in an amount it would fix, which the subscribing stockholders might authorize to be paid directly to the treasurer of the proposed Bank in payment of the subscriptions; that the President and members of the Board of Directors of the CMI, who are the individuals-defendants-appellees in the instant case, constituted themselves as the Interim Board of Organizers; that said Board sent out, on or about November 20, 1962, to the CMI stockholders, including the plaintiffs-appellants, circular letters with "Pre-Incorporation Agreement to Subscribe" forms that provided that the payment of the subscription should be made in cash from time to time or by the application of the special dividend declared by the CMI, and that the subscription must be made within the period from December 4, 1962 to January 15, 1963, "otherwise such subscription right shall be deemed to have been thereby ipso facto waived and released in favor of the Board of Organizers of the Defendant Bank and their assignees"; that the plaintiffs-appellants accomplished and filed their respective "Pre-Incorporation Agreement to Subscribe" and paid in full their subscriptions; that plaintiffs-appellants and the other CMI subscribing

stockholders in whose behalf the action was brought also subscribed to a very substantial amount of shares; that on June 25, 1963, the Board of Organizers caused the execution of the Articles of Incorporation of the proposed Bank indicating an original subscription of 50,000 shares worth P5,000,000 subscribed and paid only by six of the individuals-defendants-appellees, namely, Antonio P. Madrigal, Jose P. Madrigal Simon R. Paterno, Fermin Z. Caram, Jr., Claudio Teehankee, and Wilfredo C. Tecson, thereby excluding the plaintiffs-appellants and the other CMI subscribing stockholders who had already subscribed; that the execution of said Articles of Incorporation was "in violation of law and in breach of trust and contractual agreement as a means to gain control of Defendant Bank by Defendant Individuals and persons or entities chosen by them and for their personal profit or gain in disregard of the rights of Plaintiffs and other CMI Subscribing Stockholders"; that the paid-in capital stock was raised, as required by the Monetary Board, to P8,000,000.00, and individuals-defendants-appellees caused to be issued from the unissued shares 30,000 shares amounting to P3,000,000.00, all of which were again subscribed and paid for entirely by individuals-defendants-appellees or entities chosen by them "to the exclusion of Plaintiffs and other CMI subscribing stockholders" "in violation of law and breach of trust and of the contractual agreement embodied in the contractual agreement of March 28, 1962"; that the Articles were filed with the Securities and Exchange Commission which issued the Certificate of Incorporation on June 25, 1963; that as of the date of the Complaint, the plaintiffs-appellants and other CMI subscribing stockholders had been denied, through the unlawful acts and manipulation of the defendant Bank and Individuals-defendants-appellees, the right to subscribe at par value, in proportion to their equities established under their respective "Pre-Incorporation Agreements to Subscribe" to the capital stock, i.e., (a) to the original issue of 50,000 shares and/or (b) to the additional issue of 30,000 shares, and/or (c) in that portion of said original or additional issue which was unsubscribed; that the individuals-defendants-appellees and the persons chosen by them had unlawfully acquired stockholdings in the defendant-appellee Bank in excess of what they were lawfully entitled and held such shares "in trust" for the plaintiffs-appellants and the other CMI stockholders; that it would have been vain and futile to resort to intracorporate remedies under the facts and circumstances alleged above. As relief on the first cause of action, plaintiffs-appellants prayed that the subscriptions and shareholdings acquired by the individuals-defendants-appellees and the persons chosen by them, to the extent that plaintiffs-appellants and the other CMI stockholders had been deprived of their right to subscribe, be annulled and transferred to plaintiffs-appellants and other CMI subscribing stockholders.

Besides reproducing all the above allegations in the other causes of action, plaintiffs-appellants further alleged under the second cause of action that on or about August 28, 1963, defendants-appellees Antonio P. Madrigal, Jose P. Madrigal Fermin Z. Caram, Jr., and Wilfredo C. Tecson "falsely certified to the calling of a special stockholders' meeting allegedly pursuant to due notice and call of Defendant Bank" although plaintiffs-appellants and other CMI stockholders were not notified thereof, and amended the Articles of Incorporation B increasing the number of Directors from 6 to 7, and had the illegally created position of Director filled up by defendant-appellee Alfonso Juan Olondriz, who was not competent or qualified to hold such position. In the third cause of action, plaintiffs-appellants claimed actual damages in an amount equivalent to the difference between the par value of the shares they were entitled, but failed, to acquire and the higher market value of the same shares. In the fourth cause of action, plaintiffs-appellants claimed moral damages; in the fifth, exemplary damages; and in the sixth, attorney's fees.

In his manifestation to the court on January 4, 1964, Francisco Sevilla, who was one of the original plaintiffs, withdrew. On January 15, 1964 Cipriano Azada, Maria Cristina Olondriz Pertierra, Maria del Puy Olondriz de Stevens (who later withdrew as intervenors-appellants) and Carmen Sievert de Amoyo, filed a motion to intervene, and to join the plaintiffs-appellants on record, to which motion defendants-appellees, except Fermin Z. Caram, Jr., filed, on January 17, 1964 their opposition.

On February 7, 1964 defendants-appellees, except Fermin Z. Caram, Jr., filed a motion to dismiss on the grounds that (a) plaintiffs-appellants had no legal standing or capacity to institute the alleged class suit; (b) that the complaint did not state a sufficient and valid cause of action; and (c) that plaintiffs-appellants' complaint against the increase of the number of directors did not likewise state a cause of action. Plaintiffs-appellants filed their opposition thereto on February 21, 1964.

On March 4, 1964 appellants, plaintiffs and intervenors, filed a verified petition for a writ of preliminary injunction to enjoin defendants-appellees from considering or ratifying by resolution, at the meeting of the stockholders of defendant-appellee Bank to be held the following day, the unlawful apportionment of the shares of the defendant-appellee Bank and the illegal amendment to its Articles of Incorporation increasing the number of Directors. The Court, after hearing, granted the writ, but subsequently set it aside upon the appellees' filing a counterbond.

Some subscribers to the capital stock of the Bank like Concepcion Zuluaga, et al., and Carlos Moran Sison, et al., filed separate manifestations that they were opposing and disauthorizing the suit of plaintiffs-appellants.

On March 7, 1964 defendants-appellees, except Fermin Z. Caram, Jr., filed a supplemental ground for their motion to dismiss, to wit, that the stockholders, except Fermin Z. Caram, Jr., who abstained, had unanimously, at their regular annual meeting held on March 5, 1964, ratified and confirmed all the actuations of the organizers-directors in the incorporation, organization and establishment of the Bank.

In its order, dated March 21, 1964, the trial court granted the motion to dismiss, holding, among other things, that the class suit could not be maintained because of the absence of a showing in the complaint that the plaintiffs-appellants were sufficiently numerous and representative, and that the complaint failed to state a cause of action. From said order, appellants, plaintiffs and intervenors, interposed this appeal to this Court on questions of law and fact, contending that the lower court erred as follows:

- I. In holding that plaintiffs-appellants could not maintain the present class suit because of the absence of a showing in the complaint that they were sufficiently numerous and representative;
- II. In holding that the instant action could not be maintained as a class suit because plaintiffs-appellants did not have a common legal interest in the subject matter of the suit;
- III. In dismissing the present class suit on the ground that it did not meet the requirements of Rule 3, Section 12 of the Rules of Court;
- IV. In holding that the complaint was fatally defective in that it failed to state with particularity that plaintiffs-appellants had resorted to, and exhausted, intra-corporate remedies;
- V. In resolving defendants-appellees' motion on the basis of facts not alleged in the complaint;
- VI. In holding that plaintiffs-appellants' complaint stated no valid cause of action against defendants-appellees;
- VII. In not holding that a trust relationship existed between the Interim Board of Organizers of defendant-appellee Bank and the CMI subscribing stockholders and in not holding that the waiver was in favor of the Board of Trustees for the CMI subscribing stockholders;
- VIII. In holding that the failure of plaintiffs-appellants to allege that they had paid or had offered to pay for the shares allegedly pertaining to them constituted another ground for dismissal;
- IX. In holding that the allegations under the second cause of action stated no valid cause of action due to a fatal omission to allege that plaintiffs-appellants were stockholders of record at the time of the holding of the special

stockholders' meeting;

X. In holding that plaintiffs-appellants' complaint stated no cause of action against defendant-appellee Bank; and

XI. In considering the resolution of ratification and confirmation and in holding that the resolution rendered the issues in this case moot.

The assigned error revolve around two questions, namely: (1) whether the instant action could be maintained as a class suit, and (2) whether the complaint stated a cause of action. These issues alone will be discussed.

1. Appellants contended in the first three assigned errors that the trial court erred in holding that the present suit could not be maintained as a class suit, and in support thereof argued that the propriety of a class suit should be determined by the common interest in the subject matter of the controversy; that in the instant case there existed such common interest which consisted not only in the recovery of the shares of which the appellants were unlawfully deprived, but also in divesting the individuals-defendants-appellees and the persons or entities chosen by them of control of the appellee Bank;[1] that the complaint showed that besides the four plaintiffs-appellants of record, and the four movant-intervenors-appellants there were in the appellee Bank many other stockholders who, though in the appellee Bank many other stockholders who, though similarly situated as the appellants, did not formally include themselves as parties on record in view of the representative character of the suit; that the test, in order to determine the legal standing of a party to institute a class suit, was not one of number, but whether or not the interest of said party was representative of the persons in whose behalf the class suit was instituted; that granting arguendo, that the plaintiffs-appellants were not sufficiently numerous and representative, the court should not have dismissed the action, for insufficiency of number in a class suit was not a ground for a motion to dismiss, and the court should have treated the suit as an action under Rule 3, Section 6, of the Rules of Court which permits a joinder of parties.

Defendants-appellees, on the contrary, stressed that the instant suit was instituted as a class suit and the plaintiffs-appellants did not sue in their individual capacities for the protection of their individual interests; that the plaintiffs-appellants of record could not be considered numerous and representative, as said plaintiffs-appellants were only four out of 1,500 stockholders, and owned only 8 shares out of the 80,000 shares of stock of the appellee Bank; that even if to the four plaintiffs-appellants were added the four movants-intervenors-appellants the situation would be the same as two of the intervenors, to wit, Ma. Cristina Olondriz Pertierra and Ma. del Puy Olondriz de Stevens, could not sue as they did not have their husbands' consent; that it was necessary that in a class suit the complaint itself should allege facts showing that the plaintiffs were sufficiently numerous and representative, and this did not obtain in the instant case, as the complaint did not even allege how many other CMI stockholders were "similarly situated"; that the withdrawal of one plaintiff, Francisco Sevilla, the subsequent disclaimers of any interest in the suit made in two separate pleadings by other CMI stockholders and the disauthorization of their being represented by plaintiffs-appellants by the 986 (out of 1,663) stockholders who attended the annual meeting of bank stockholders on March 5, 1964, completely negated plaintiffs-appellants' pretension that they were sufficiently numerous and representative or that there were many other stockholders similarly situated whom the plaintiffs-appellants allegedly represented; that plaintiffs-appellants did not have that common or general interest required by the Rules of Court in the subject matter of the suit.[2]

In their Reply Brief, appellants insisted that non-compliance with Section 12, Rule 3, not being one enumerated in Rules 16 and 17, was not a ground for dismissal; that the requirements for a class had been complied with; that the required common interest existed even if the interests were several for there was a common question of law or fact and a common relief was sought; that the common or general interest could be in the object of the action, in

the result of the proceedings, or in the question involved in the action, as long as there was a common right based on the same essential facts; that plaintiffs-appellants adequately represented the aggrieved group of bank stockholders, inasmuch as appellants interests were not antagonistic to those of the latter, and appellants were in the same position as the group in whose behalf the complaint was filed.

The governing statutory provision for the maintenance of a class suit is Section 12 of Rule 3 of the Rules of Court, which reads as follows.

"Sec. 12. Class suit. —When the subject matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. But in such case the court shall make sure that the parties actually before it are sufficiently numerous and representative so that all interests concerned are fully protected. Any party in interest shall have a right to intervene in protection of his individual interest."

The necessary elements for the maintenance of a class suit are accordingly (1) that the subject matter of the controversy be one of common or general interest to many persons, and (2) that such persons be so numerous as to make it impracticable to bring them all to the court. An action does not become a class suit merely because it is designated as such in the pleadings.

Whether the suit is or is not a class suit depends upon the attending facts, and the complaint, or other pleading initiating the class action should allege the existence of the necessary facts, to wit, the existence of a subject matter of common interest, and the existence of a class and the number of persons in the alleged class,[3] in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest.[4]

The complaint in the instant case explicitly declared that the plaintiffs-appellants instituted the "present class suit under Section 12, Rule 3, of the Rules of Court in behalf of CMI subscribing stockholders"[5] but did not state the number of said CMI subscribing stockholders so that the trial court could not infer, much less make sure as explicitly required by the statutory provision, that the parties actually before it were sufficiently numerous and representative in order that all interests concerned might be fully protected, and that it was impracticable to bring such a large number of parties before the court.

The statute also requires, as a prerequisite to a class suit, that the subject-matter of the controversy be of common or general interest to numerous persons. Although it has been remarked that the "innocent 'common or general interest' requirement is not very helpful in determining whether or not the suit is proper,"[6] the decided cases in our jurisdiction have more incisively certified the matter when there is such common or general interest in the subject matter of the controversy. By the phrase "subject matter of the action" is meant "the physical facts, the things real or personal, the money, lands, chattels, and the like, in relation to which the suit is prosecuted, and not the delict or wrong committed by the defendant." [7]

This Court has ruled that a class suit did not lie in an action for recovery of real property where separate portions of the same parcel were occupied and claimed individually by different parties to the exclusion of each other, such that the different parties had determinable, though undivided interests, in the property in question.[8] It has likewise held that a class suit would not lie against 319 defendants individually occupying different portions of a big parcel of land, where each defendant had an interest only in the particular portion he was occupying, which portion was completely different from the other portions individually occupied by other defendants, for the applicable Section 118 of the Code of Civil Procedure relates to a common and general interest in single specific

things and not to distinct ones.[9] In an action for the recovery of amounts that represented surcharges allegedly collected by the city from some 30,000 customers of four movie houses, it was held that a class suit did not lie, as no one plaintiff had any right to, or any share in the amounts individually claimed by the others, as each of them was entitled, if at all, only to the return of what he had personally paid.[10]

The interest, subject matter of the class suits in the above-cited cases, is analogous to the interest claimed by appellants in the instant case. The interest that appellants, plaintiffs and intervenors, and the CMI stockholders had in the subject matter of this suit — the portion of stocks offering of the Bank left unsubscribed by CMI stockholders who failed to exercise their right to subscribe on or before January 15, 1963 — was several, not common or general in the sense required by the statute. Each one of the appellants and the CMI stockholders had determinate interest; each one had a right, if any, only to his respective portion of the stocks. No one of them had any right to, or any interest in, the stock to which another was entitled. Anent this point, the trial court correctly remarked:

"It appears to be the theory of the plaintiffs borne out by the prayer, that each subscribing CMI stockholder is entitled to further subscribe to a certain proportion, depending upon his stockholding in the CMI, of the P8 million capital stock of the defendant bank open to subscription (out of the P20 million authorized capital stock) as well as the unsubscribed portion of the P8 million stock offering which were left unsubscribed by those CMI stockholders who for one reason or another had failed to exercise their subscription rights on or before January 15, 1963. Under the plaintiffs' theory therefore, each subscribing CMI stockholder was entitled to subscribe to a definite number of shares both in the original offering of P8 million and in that part thereof not subscribed on or before the deadline mentioned, so that one subscribing CMI stockholder may be entitled to subscribe to one share, another to 3 shares and a third to 11 shares, and so on, depending upon the amount and extent of CMI stockholding. But except for the fact that a question of law — the proper interpretation of the waiver provisions of the CMI stockholders' resolution of March 28, 1962 — is common to all, each CMI subscribing stock holder has a legal interest in, and a claim to, only his respective proportion of shares in the defendant bank, and none with regard to any of the shares to which another stockholder is entitled. Thus, plaintiff Ismael Mathay has no legal interest in, or claim to, any share claimed by any or all of his co-plaintiffs from the defendant individuals. Hence, no CMI subscribing stockholder or, for that matter, not any number of CMI stockholders can maintain a class suit in behalf of others, x x x,"[11]

Even if it be assumed, for the sake of argument, that the appellants and the CMI stockholders suffered wrongs that had

been committed by similar means and even pursuant to a single plan of the Interim Board of Organizers of the Bank, the wrong suffered by each of them would constitute a wrong separate from those suffered by the other stockholders, and those wrongs alone would not create that common or general interest in the subject matter of the controversy as would entitle any one of them to bring a class suit on behalf of the others. Anent this point it has been said that:

"Separate wrongs to separate persons, although committed by similar means and even pursuant to a single plan, do not alone create a 'common' or 'general' interest in those who are wronged so as to entitle them to maintain a representative action."[12]

Appellants, however, insisted, citing American authorities,[13] that a class suit might be brought even if the interests of plaintiffs-appellants might be several as long as there was a common question of law or fact affecting them and a common relief was sought. We have no conflict with the authorities cited; those were rulings under the Federal Rules of Civil Procedure, pursuant to Rule 23 of which, there were three types of class suits, namely: the true, the hybrid, and the spurious, and these three had only one feature in common, that is, in each the persons constituting the class must be so numerous as to make it impracticable to bring them all before the court. The

authorities cited by plaintiffs-appellants refer to the spurious class action Rule 23 (a) (3) which involves a right sought to be enforced, which is several, and there is a common question of law or fact affecting the several rights and a common relief is sought.[14] The spurious class action is merely a permissive joinder device; between the members of the class there is no jural relationship, and the right or liability of each is distinct, the class being formed solely by the presence of a common question of law or fact.[15] This permissive joinder is provided in Section 6 of Rule 3, of our Rules of Court. Such joinder is not and cannot be regarded as a class suit, which this action purported and was intended to be as per averment of the complaint.

It may be granted that the claims of all the appellants involved the same question of law. But this alone, as said above, did not constitute the common interest over the subject matter indispensable in a class suit. The right to purchase or subscribe to the shares of the proposed Bank, claimed by appellants herein, is analogous to the right of preemption that stockholders have when their corporation increases its capital. The right of preemption, it has been said, is personal to each stockholder,[16] and while a stockholder may maintain a suit to compel the issuance of his proportionate share of stock, it has been ruled, nevertheless, that he may not maintain a representative action on behalf of other stockholders who are similarly situated.[17] By analogy, the right of each of the appellants to subscribe to the waived stocks was personal, and no one of them could maintain on behalf of others similarly situated a representative suit.

Straining to make it appear that appellants and the CMI subscribing stockholders had a common or general interest in the subject matter of the suit, appellants stressed in their brief that one of the reliefs sought in the instant action was "to divest defendant individuals and the persons or entities chosen by them of control of the defendant bank." [18] This relief allegedly sought by appellants did not, however, appear either in the text or in the prayer of the complaint.

Appellants, furthermore, insisted that insufficiency of number in a class suit was not a ground for dismissal of one action. This Court has, however, said that where it appeared that no sufficient representative parties had been joined, the dismissal by the trial court of the action, despite the contention by plaintiffs that it was a class suit, was correct.[19] Moreover, insofar as the instant case is concerned, even if it be granted for the sake of argument, that the suit could not be dismissed on that ground, it could have been dismissed, nevertheless, on the ground of lack of cause of action which will be presently discussed.

2. Appellants supported their assigned error that the court erred in holding that the complaint stated no valid cause of action, by claiming that paragraph 15 together with the other allegations of the complaint to the effect that defendants-appellees had unlawfully acquired stockholdings in the capital stock of defendant-appellee Bank in excess of what they were lawfully entitled to, in violation of law and in breach of trust and the contractual agreement, constituted a valid and sufficient cause of action; [20] and that only the allegations in the complaint should have been considered by the trial court in determining whether the complaint stated a cause of action or not.

Defendants-appellees, on the contrary, maintained that the allegations of the complaint should not be the only ones to be considered in determining whether there is a cause of action; that even if the ultimate facts alleged in the first cause of action of the complaint be the only ones considered, the complaint would still fail to state a valid cause of action on the following grounds: first, there was no allegation regarding appellants' qualification to subscribe to the capital stock of the appellee Bank, for under the CMI stockholders' resolution of March 28, 1962, only those qualified under the law were entitled to subscribe, and under the regulations of the Monetary Board, only natural-born Filipino citizens could be stockholders of a banking corporation organized under the laws of the Philippines, and nowhere did the complaint allege that plaintiffs-appellants were natural born Filipino citizens.[21] Second, appellants' averment in paragraph 8 that they "subscribed," and their averment in paragraph

15 that they were "denied the right to subscribe x x x to the capital stock of the defendant Bank," were inconsistent, and hence neutralized each other, thereby leaving in shambles the first cause of action. Third, there was no allegation that appellants had not yet received or had not been issued the corresponding certificates of stock covering the shares they had subscribed and paid for. Fourth, the allegations failed to show the existence of the supposed trust; and fifth, the complaint failed to allege that plaintiffs-appellants had paid or offered to pay for the shares allegedly pertaining to them.[22]

Let us premise the legal principles governing the motion to dismiss on the ground of lack of cause of action,

Section 1, Rule 16 of the Rules of Court, providing in part that:

"Within the time for pleading a motion to dismiss may be made on any of the following grounds:x x x

"(g) That the complaint states no cause of action, x x x"

explicitly requires that the sufficiency of the complaint must be tested exclusively on the basis of the complaint itself and no other should be considered when the ground for motion to dismiss is that the complaint states no cause of action. Pursuant thereto this Court has ruled that:

"As a rule the sufficiency of the complaint, when challenged in a motion to dismiss, must be determined exclusively on the basis of the facts alleged therein."[23]

It has been likewise held that a motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations of fact made in the complaint.[24] It is to be noted that only the facts well pleaded in the complaint, and likewise, any inferences fairly deducible therefrom, are deemed admitted by a motion to dismiss. Neither allegations of conclusions[25] nor allegations of facts the falsity of which the court may take judicial notice are deemed admitted.[26] The question, therefore, submitted to the Court in a motion to dismiss based on lack of cause of action is not whether the facts alleged in the complaint are true, for these are hypothetically admitted, but whether the facts alleged are sufficient to constitute a cause of action such that the court may render a valid judgment upon the facts alleged therein.

A cause of action is an act or omission of one party in violation of the legal right of the other. Its essential elements are, namely: (1) the existence of a legal right in the plaintiff, (2) a correlative legal duty in the defendant, and (3) an act or omission of the defendant in violation of plaintiff's right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or other appropriate relief.[27] On the other hand, Section 3 of Rule 6 of the Rules of Court provides that the complaint must state the ultimate facts constituting the plaintiffs cause of action. Hence, where the complaint states ultimate facts that constitute the three essential elements of a cause of action, the complaint states a cause of action;[28] otherwise, the complaint must succumb to a motion to dismiss on that ground.

The legal principles having been premised, let us now analyze and discuss appellant's various causes of action.

Appellants' first cause of action, pursuant to what has been premised above, should have consisted of: (1) the right of appellants as well as of the other CMI stockholders to subscribe, in proportion to their equities established under their respective "Pre-Incorporation Agreements to Subscribe," to that portion of the capital stock which was unsubscribed because of failure of the CMI stockholders to exercise their right to subscribe thereto; (2) the legal duty of the appellees to have said portion of the capital stock to be subscribed by appellants and other CMI stockholders; and (3) the violation or breach of said right of appellants and other CMI stockholders by the appellees.

Did the complaint state the important and substantial facts directly forming the basis of the primary right claimed by plaintiffs? Before proceeding to elucidate this question, it should be noted that a bare allegation that one is

entitled to something is an allegation of a conclusion. Such allegation adds nothing to the pleading, it being necessary to plead specifically the facts upon which such conclusion is founded.[29] The complaint alleged that appellants were stockholders of the CMI; that as such stockholders, they were entitled, by virtue of the resolution of March 28, 1962, to subscribe to the capital stock of the proposed Consolidated Bank and Trust Co., at par value to the same extent and in the same amount as said stockholders' respective shareholdings in the CMI as shown in the latter's stock book as of January 15, 1963, the right to subscribe to be exercised until January 15, 1963, provided said stockholders of the CMI were qualified under the law to become stockholders of the proposed Bank;[30] that appellants accomplished and filed their respective "Pre-Incorporation Agreements to Subscribe" and fully paid the subscription.[31]

These alleged specific facts did not even show that appellants were entitled to subscribe to the capital stock of the proposed Bank, for said right depended on a condition precedent, which was, that they were qualified under the law to become stockholders of the Bank, and there was no direct averment in the complaint of the facts that qualified them to become stockholders of the Bank. The allegation of the fact that they subscribed to the stock did not, by necessary implication, show that they were possessed of the necessary qualifications to become stockholders of the proposed Bank.

Assuming arguendo that appellants were qualified to become stockholders of the Bank, they could subscribe, pursuant to the explicit terms of the resolution of March 28, 1962, "to the same extent and in the same amount as said stockholders' respective shareholdings in the CMI" as of January 15, 1963.[32] This was the measure of the right they could claim to subscribe to waived stocks. Appellants did not even aver that the stocks waived to the subscription of which they claimed the right to subscribe, were comprised in "the extent and amount" of their respective shareholdings in the CMI. It is not surprising that they did not make such an averment for they did not even allege the amount of shares of stock to which they claimed they were entitled to subscribe. The failure of the complaint to plead specifically the above facts rendered it impossible for the court to conclude by natural reasoning that the appellants and other CMI stockholders had a right to subscribe to the waived shares of stock, and made any allegation to that effect a conclusion of the pleader, not an ultimate fact, in accordance with the test suggested by the California Supreme Court, to wit:

"If from the facts in evidence, the result can be reached by that process of natural reasoning adopted in the investigation of truth, it becomes an ultimate fact, to be found as such. If, on the other hand, resort must be had to the artificial processes of the law, in order to reach a final determination, the result is a conclusion of law." [33]

Let us now pass to the second and third elements that would have constituted the first cause of action. Did the complaint allege as ultimate facts the legal duty of defendants-appellees to have a portion of the capital stock subscribed to by appellants? Did the complaint allege as ultimate facts that defendants appellees had violated appellants' right?

Even if it be assumed arguendo that defendants-appellees had the duty to have the waived stocks subscribed to by the CMI stockholders, this duty was not owed to all the CMI stockholders, but only to such CMI stockholders as were qualified to become stockholders of the proposed Bank. Inasmuch as it has been shown that the complaint did not contain ultimate facts to show that plaintiffs-appellants were qualified to become stockholders of the Bank, it follows that the complaint did not show that defendants-appellees were under duty to have plaintiffs-appellants subscribe to the stocks of the proposed Bank. It inevitably follows also that the complaint did not contain ultimate facts to show that the right of the plaintiffs-appellants to subscribe to the shares of the proposed Bank had been violated by defendants-appellees. How could a non-existent right be violated?

Let us continue the discussion further. The complaint alleged that by virtue of the resolution of March 28, 1962,

the President and Members of the Board of Directors of the CMI would be constituted as a Board of Organizers to undertake and carry out the organization of the Bank;[34] that the Board of Organizers was constituted and proceeded with the establishment of the Bank;[35] that the persons composing the Board of Organizers were the individuals-defendants-appellees;[36] that the Board of Organizers sent out circular letters with "Pre-Incorporation Agreement to Subscribe" forms[37] which specified, among others, "that the subscription must be made until January 15, 1963,, otherwise such subscription right shall be deemed ipso facto waived and released in favor of the Board of Organizers of the defendant Bank and their assignees";[38] that in the Articles of Incorporation prepared by the Board of Organizers, the individuals-defendants-appellees alone appeared to have subscribed to the 50,000 shares;[39] and that individuals-defendants-appellees again subscribed to all the additional 30,000 shares.[40] From these facts, appellants concluded that they were denied their right to subscribe in proportion to their equities;[41] that the individuals-defendants-appellees unlawfully acquired stockholdings far in excess of what they were lawfully entitled in violation of law and in breach of trust and of contractual agreement;[42] and that, because of matters already alleged, the individuals-defendants-appellees "hold their shares in the defendant bank in trust for plaintiffs." [43]

The allegation in the complaint that the individuals-defendants-appellees held their shares "in trust" for plaintiffs-appellants without averment of the facts from which the court, could conclude the existence of the alleged trust, was not deemed admitted by the motion to dismiss for that was a conclusion of law. Express averments "that a party was the beneficial owner of certain property; x x x that property or money was received or held in trust, or for the use of another; that particular funds were trust funds; that a particular transaction created an irrevocable trust; that a person held property as constructive trustee; that on the transfer of certain property a trust resulted". have been considered as mere conclusions of law.[44] The facts alleged in the complaint did not, by logical reasoning, necessarily lead to the conclusion that defendants-appellees were trustees in favor of appellants of the shares of stock waived by the CMI stockholders who failed to exercise their right to subscribe. In this connection, it has been likewise said that:

"The general rule is that an allegation of duty in terms unaccompanied by a statement of the facts showing the existence of the duty, is a mere conclusion of law, unless there is a relation set forth from which the law raises the duty." [45]

In like manner, the allegation that individuals-defendants-appellees held said shares in trust was no more than an interpretation by appellants of the effect of the waiver clause of the Resolution and as such it was again a mere conclusion of law. It has been said that:

"The following are also conclusions of law: x x x an allegation characterizing an instrument or purporting to interpret it and state its effects, x x x" [46]

"Allegations in petition in the nature of conclusions about the meaning of contract, inconsistent with stated terms of the contract, cannot be considered." [47]

The allegation that the defendants-appellees acquired stockholdings far in excess of what they were lawfully entitled, in violation of law and in breach of trust and of contractual agreement, is also mere conclusion of law.

Of course, the allegation that there was a violation of trust duty was plainly a conclusion of law, for "a mere allegation that it was the duty of a party to do this or that, or that he was guilty of a breach of duty, is a statement of a conclusion, not of fact." [48]

"An averment x x x that an act was 'unlawful' or 'wrongful' is a mere legal conclusion or opinion of the pleader." [49]

Moreover, plaintiffs-appellants did not state in the complaint the amount of subscription the individual defendants-appellees were entitled to; hence there was no basis for the court to determine what amount subscribed to by them was excessive.

From what has been said, it is clear that the ultimate facts stated under the first cause of action are not sufficient to constitute a cause of action.

The further allegations in the second cause of action that the calling of a special meeting was "falsely certified," that the seventh position of Director was "illegally created" and that defendant Alfonso Juan Olondriz was "not competent or qualified" to be a director are mere conclusions of law, the same not being necessarily inferable from the ultimate facts stated in the first and second causes of action. It has been held in this connection that:

"An averment that x x x an act was 'unlawful' or 'wrongful' is a mere legal conclusion or opinion of the pleader. The same is true of allegations that an instrument was 'illegally' certified or x x x that an act was 'arbitrarily' done x x x"[50]

"A pleader states a mere conclusion when he makes any of the following allegations: that a party was incapacitated to enter into a contract or convey property x x x"[51]

The third, fourth, fifth and sixth causes of action depended on the first cause of action, which, as has been shown, did not state ultimate facts sufficient to constitute a cause of action. It stands to reason, therefore, that said causes of action would also be fatally defective.

It having been shown that the complaint failed to state ultimate facts to constitute a cause of action, it becomes unnecessary to discuss the other assignments of errors.

WHEREFORE, the instant appeal is dismissed, and the order dated March 21, 1964 of the Court of First Instance of Manila dismissing the complaint in Civil Case No. 55810 is affirmed, with costs in this instance against appellants. .

IT IS SO ORDERED.

Fernando, Barredo, Fernandez and Aquino, JJ., concur.

Antonio, J., took no part.

[1] Brief for Plaintiffs-Appellants and Movants-Intervenors-Appellants, page 25.

[2] Brief for Defendants-Appellees, pages 54-70

[3] The existence of persons similarly situated must be a reality, not a possibility. A likelihood that there are other persons similarly situated is not enough, Barron and Holtsoff, Federal Practice and Procedure, Vol. 2, page 156.

[4] Cf. Moore's Federal Practice 2d ed., Vol. Ill, pages 3423-3424; 4 Federal Rules Service, pages 454-455; Johnson, et al., vs. Ri vert and Levee Dist., et al., 117 F2d 711, 715.

[5] Record on Appeal, pages 2, 8-9.

[6] Moore's Federal Practice, 2 ed., Vol. Ill, page 3417.

[7] Moran, Comments on the Rules of Court, 1963 ed., Vol. 1, page 92, citing Pomeroy's Code Remedies, 492.

[8] Rallonza vs. Evangelista, 15 Phil. 531; Valencia vs. City of Dumaguete, L-17799, August 31, 1962, 5 SCRA 1096, 1101; Borlasa vs. Polistico, 47 Phil. 345, 349.

- [9] *Berses vs. Villanueva*, 25 Phil. 473. It is to be noted that Section 12 of Rule 3 is the same as Section 12 of former Rule 3, which was taken from Section 118 of Act. 190. Moran, Comments on the Rules of Court, 1963 ed., Vol. 1, page 167.
- [10] *Valencia vs. City of Dumaguete*, L-17799, August 31, 1962, 5 SCRA 1096, 1101.
- [11] Record on Appeal, pages 284-285.
- [12] *Society Milion Athena, Inc., et al. vs. National Bank of Greece, et al.*, 22 N.E. 2d 374.
- [13] Prof. Sutherland's address before the Cincinnati Bar Association regarding the new Federal Rules, December 10, 1938; 1 Cincinnati Law Review, page f; *Clark vs. Chase National Bank*, 6 Fed. Rule Service 256, cited in Francisco, The Revised Rules of Court, 1973, Vol. I, pages 294, 295.
- [14] See Barron and Ffolts, Federal Practice and Procedure, Vol. 2, page 139.
- [15] Moore's Federal Practice, Vol. 3. pages 3442-3443.
- [16] 11 Fletcher's Cyclopedia of the Law of Private Corporation, 1932, page 231.
- [17] *Dousman v. Wisconsin & L. S. Min. & Smelting Co.*, 40 Wis. 418 in 12 L.R.A., New Series, 1908, page 972.
- [18] Brief for the Plaintiffs-Appellants and Movants-Intervenors-Appellants, page 25.
- [19] *Niembra, et al. vs. Director of Lands*, L-20084, July 17, 1964, 11 SCRA 525, 528.
- [20] Brief for Plaintiffs-Appellants and Movants-Intervenors-Appellants, pages 32-34.
- [21] Brief for Defendants-Appellees, pages 94-96.
- [22] Brief for Defendants-Appellees, pages 94-99.
- [23] *Uy Chao vs. De la Rama Steamship Co., Inc.* L-14495, September 29, 1962, 6 SCRA 69, 72. See also *De Jesus, et al. vs. Belarmino, et al.*, 95 Phil. 365, 371; *Dalandan, et al. vs. Julio, et al.*, L-19101, February 29, 1964, 10 SCRA 400; *Remitere, et al. vs. Montinola Vda. de Yulo, et al.*, 19751, February 28, 1966, 16 SCRA 250, 254; *Acuna vs. Balac Producers Cooperative Marketing Association, Inc., et al.*, L-20338, June 30, 1967, 20 SCRA 526, 531.
- [24] *Alquigue v. De Leon*, L-15059, March 30, 1963, 7 SCRA 513, 516; *Salazar, et al. vs. Ortizano*, L-20480, 16 SCRA 662, 665; *Acuña vs. Batac Producers Cooperative Marketing Association, Inc., et al.*, L-20338, June 30, 1967, 20 SCRA 526, 531.
- [25] *Dalandan vs. Julio*, L-19101, February 29, 1964, 10 SCRA 400, 410.
- [26] 71 CJS pages 906-912.
- [27] *Ma-ao Sugar Central Co., Inc. vs. Barrios, et al.*, 79 Phil. 666, 667; *Ramitere, et al. vs. Montinola Vda. de Yulo, et al.*, L-19751, February 28, 1966, 16 SCRA 251, 255.
- [28] *Community Investment and Finance Corp. vs. Garcia*, 88 Phil. 215, 218.
- [29] 41 Am. Jur., page 303.
- [30] Paragraphs 7 and 7 of Complaint, Record on Appeal, pages 5, 7, 8.
- [31] Paragraph 8 of Complaint, Record on Appeal, page 8.

- [32] Paragraph 4 of Complaint, Record on Appeal, page 5.
- [33] *Levins vs. Rovegno*, 71 Cal. 273, 12 Pa. 161, 164.
- [34] Paragraph 4(a) of Complaint; Record on Appeal, pages 4-5.
- [35] Paragraph 5 of Complaint; Record on Appeal, pages 6-7.
- [36] Paragraph 5 of Complaint; Record on Appeal, page 7.
- [37] Paragraph 7 of Complaint; Record on Appeal, page 7.
- [38] Paragraph 7(b) of Complaint; Record on Appeal; page 8.
- [39] Paragraph 9 of Complaint; Record on Appeal, page 9.
- [40] Paragraphs 11 and 12 of Complaint; Record on Appeal, page 11.
- [41] Paragraph 15 of Complaint.
- [42] Paragraph 15 of Complaint.
- [43] Paragraph 16 of Complaint; Record on Appeal, page 13
- [44] 47 C.J.S., page 78.
- [45] 71 C.J.S., pages 49-50.
- [46] 41 Am. Jur., page 304.
- [47] 71 C.J.S., page 41, citing *D'Oench v. Gillioz*, 139 SW 2d:92l., 346
- [48] 41 Am. Jur., page 303.
- [49] 41 Am. Jur., page 303.
- [50] 41 Am. Jur., page 303.
- [51] 41 Am. Jur., page 304.

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