

**BACOLOD-MURCIA MILLING CO., INC., PLAINTIFF-APPELLANT, VS.
FIRST FARMERS MILLING CO., INC., ETC.; RAMON NOLAN, IN HIS
CAPACITY AS ADMINISTRATOR OF THE SUGAR QUOTA
ADMINISTRATION...**

G.R. No. L-29041. March 24, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal taken by Bacolod-Murcia Milling Co, Inc, from the Order dated November 28, 1967 issued by the Court of First Instance of Rizal, Branch VI (Pasig), in Civil Case No. 9185, as well as the Order dated March 5, 1968 denying the Motion for its reconsideration. The Order had dismissed, after a preliminary hearing, on the ground of lack of cause of action, the Amended and Supplemental Complaint against the defendants Philippine National Bank (PNB) and National Investment and Development Corporation (NIDC).

Plaintiff-appellant had commenced, on March 18, 1966, an action for Injunction and Prohibition with Damages against defendants First Farmers Milling Co., Inc. (FFMC), various named planters including those similarly situated, and Ramon Nolan in his capacity as Administrator of the Sugar Quota Administration. It was alleged,

"9. That in the year 1964 the defendant First Farmers Milling Co., Inc., established and operated a sugar central known as the First Farmers Sugar Central and for the crop years 1964-65 and 1965-66, the defendants transferred their quota 'A' allotments to their co-defendant First Farmers Milling Co., Inc. and are actually milling their sugar with the said First Farmers Milling Co., Inc., which illegal transfer has been made over the vigorous protest and objections of the plaintiff, but with the unwarranted, unjustified and likewise illegal approval of their co-defendant the Sugar Quota Administration;"[1]

After the defendants FFMC, the adhering planters, and the Sugar Quota Administrator had filed their respective Answers, plaintiff-appellant filed, on May 2, 1967, a Motion to admit Amended and Supplemental Complaint. As amended, PNB and NIDC were included as new defendants in view of the FFMC allegation in its Answer that the non-inclusion of PNB and NIDC as party defendants, "who became creditors of defendant FFMC central prior to the institution of the instant case, and who therefore are necessary parties, is fatal to the complaint." It was alleged this time,

"20. That defendants NIDC and PNB have extended loans to defendant sugar mill in the amount of P12,210,000.00 on June 18, 1965, and P4,000,000.00 on Dec. 14, 1966, respectively, to assist in the illegal creation and operation of said mill, hence, a joint tortfeasor in the trespass of plaintiff's rights, aggravated by the fact that defendant mill has only a paid up capital stock of P500,000.00, hence, said loans are far beyond the limits fixed by law;"[2]

It was then prayed that defendants be ordered

"x x x jointly and severally to pay plaintiff actual and exemplary damages of not less than P1 million pesos and attorney's fees in the amount of 10% of said damages, plus legal interest from the filing of the original

complaint, plus costs."

The defendants, except the Sugar Quota Administrator, filed their respective Answers to the Amended and Supplemental Complaint. For their part, PNB and NIDC followed this with a Motion to Set for Preliminary Hearing their special and affirmative defenses, which were also grounds for dismissal. Opposition, reply memoranda rejoinder, and supplementary reply memoranda on the Motion were submitted by the contending parties.

In their Answer, the PNB and NIDC had contended:

"x x x

"5. That both the defendants PNB and NIDC have no participation whatsoever either directly or indirectly on the alleged illegal (transaction) transfer of the defendant from the plaintiff to the defendant mill, and therefore, the defendants PNB and NIDC could not be held liable for any damage that the plaintiffs alleged to have suffered from the said particular act complained of;

"6. That the granting of loans by the defendants PNB and NIDC in favor of the defendant mill to finance the construction of a sugar central did not violate any rights of the plaintiff in view of the fact that the said loans were extended in the ordinary and usual course of business, as specifically authorized under the respective Charter of the defendants PNB and NIDC, hence, the latter defendants did not commit any tortious action against the plaintiffs and, consequently, the plaintiffs have no cause of action against the defendants PNB and NIDC." [3]

As stated at the outset, the trial Court dismissed the Amended and Supplemental Complaint against the PNB and the NIDC after a preliminary hearing on the ground of lack of cause of action.

The only issue then is whether or not the allegations of the Amended and Supplemental Complaint constituted a sufficient cause of action against the PNB and NIDC.

A negative finding is called for.

It is basic that the Complaint must contain a concise statement of the ultimate facts constituting the plaintiff's cause of action. "Ultimate facts" are the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty, or directly make up the wrongful acts or omissions by the defendant. [4]

When the ground for dismissal is that the Complaint states no cause of action, the rule is that its sufficiency can only be determined by considering the facts alleged in the Complaint and no other. [5] The Court may not consider other matters outside of the Complaint. [6] Defenses averred by the defendant are not to be taken into consideration in ruling on the motion. [7] The allegations in the Complaint must be accepted as true and it is not permissible to go beyond and outside of them for date or facts. [8] And the test of sufficiency of the facts alleged is whether or not the Court could render a valid judgment as prayed for, accepting as true the exclusive fact set forth in the Complaint. [9]

The subject Amended and Supplemental Complaint fails to meet the test. It should be noted that it charges PNB and NIDC with having assisted in the illegal creation and operation of defendant sugar mill. Granting, for the sake of argument, that, indeed, assistance in the "illegal" act was rendered, the same, however, is not supported by well-pleaded averments of facts. Nowhere is it alleged that defendants-appellees had notice, information or knowledge of any flaw, much less any illegality, in their co-defendants' actuations assuming that there was such a flaw or illegality. This absence is fatal and buoys up instead the PNB-NIDC's position of lack of cause of action.

Although it is averred that the defendants' acts were done in bad faith, [10] the Complaint does not contain any

avermment of facts showing that the acts were done in the manner alleged. Such a bare statement nei-ther establishes any right or cause of action on the part of the plaintiff-appellant. It is a mere conclusion of law not sustained by declarations of facts, much less admitted by defendants-appellees. It does not, there-fore, aid in any wise the complaint in setting forth a cause of action.[11] Defendants-appellees are not fairly apprised of the act or acts complained of.

Besides, bad faith is never presumed (Civil Code, Art. 527). And, it has been held that "to support a judgment for damages, facts which justify the inference of a lack or absence of good faith must be alleged and proven".[12]

While it is a settled rule that a defective com-plaint may be cured by the introduction of sufficient evidence so as to constitute the cause of action which the plaintiff intended to set forth in the complaint, the same merits the Court's blessings only and unless there is no objection or opposition from the side of the defendant. It is obvious that the defendants-appellees, in the case at bar, were vigilant of their right and were on their guard from the very initiation of the com-plaint against them.

Plaintiff-appellant's allegation "that defendants NIDC and PNB have extended loans to defendant sugar mill x x x, to assist in the illegal creation and operation of said mill, hence, a joint tortfeasor in the trespass of plaintiff's rights. x x x" is, therefore, a mere conclusion not warranted by suf-ficient facts. What appears from the record is that PNB and NIDC came into the picture in the ordinary and usual course of its business after the borrowing entity had established itself as capable of being treated as a new milling district (FFMC is officially designated as Mill District No. 49) because it could already operate and had its array of adhering planters. "The doing of an act which is in itself perfectly law-ful will not render one liable as for a tort, simply because the unintended effect of such act is to enable or assist another person to do or accomplish a wrong",[13] assuming, of course, that there was such a wrong.

WHEREFORE, without resolving the issue in the main case regarding the alleged illegal creation and operation of First Farmers Milling Co., Inc., there having been no presentation of evidence as yet in the lower Court, the challenged Order dismissing the Amended and Supplemental Complaint against defendants-appellees as well as the Order denying reconsideration thereof, is hereby affirmed, and the appeal dismissed.

Costs against plaintiff-appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Record on Appeal, Complaint, p. 8.

[2] Supplement to Record on Appeal, Amended and Supplemental Complaint, pp. 12-13.

[3] Record on Appeal, Answer, pp. 46-47.

[4] Alzua and Arnalot vs. Johnson, 21 Phil. 308 (1912); Remitere, et al, vs. Vda. de Yulo, et al., 16 SCRA 251 (1966).

[5] Acuña vs. Batac Producers Cooperative, 20 SCRA 526 (1967); Mindanao Realty Corp. vs. Kintanar, et al, 6 SCRA 814 (1962).

[6] Reinales vs. Arrastria, 5 SCRA 748 (1962).

[7] De Jesus vs. Belarmino, 95 Phil. 365 (1954).

[8] see *Ventura vs. Bernabe*, 38 SCRA 587 (1971).

[9] *La Suerte Cigar and Cigarette Factory vs. Central Azucarera del Danao*, 23 SCRA 686 (1968).

[10] Supplement to Record on Appeal, Amended and Supplemental Complaint, p. 15.

[11] *Alzua and Arnalot vs. Johnson*, *supra*, p. 383.

[12] *Ibid.*, p. 380.

[13] *Konecny vs. Hohenschuh*, 173 N.W. 901, 188 Iowa 1075; *Noll v. Marian*, 32 A. 2d 18, 347 Pa. 213 cited in Vol. I, *Cooley on Torts*, p. 5; 86 CJS 933.

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