

**MANUEL PANGAN AND JULIA GARCIA-PANGAN, AS JUDICIAL
GUARDIAN OF ANITA GARCIA, PLAINTIFFS AND APPELLANTS, VS.
THE EVENING NEWS PUBLISHING CO., INC., THE PEPSI-COLA
BOTTLING CO. OF...**

G.R. No. L-13308. December 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

In the Court of First Instance of Manila, Manuel Pangan and Julia Garcia-Pangan, for themselves and the latter as judicial guardian, of minor Anita Garcia, filed a complaint against the Evening News Publishing Co., Inc., the Pepsi-Cola Bottling Co. of the Philippines, Inc. (henceforth referred to as Pepsi-Cola), and Calsam Printers, Inc. for damages totalling P90,000.00 allegedly resulting to them from defendants' deliberate or negligent failure to prevent frauds in the counting of votes in the "First Teenagers Personality Contest" in which Anita Garcia was the strongest candidate, and which she should have won if her closest rival, Teddy Reyes, had not used forged ballots printed by Calsam Printers, Inc. Pepsi-Cola, in its answer, alleged that the complaint did not state facts sufficient to constitute a cause of action, but did not ask the court for preliminary hearing pursuant to Section 5, Rule 8 of the Rules of Court. During the trial, after three of plaintiffs' witnesses had testified and a fourth was on the stand, Pepsi-Cola moved to dismiss the complaint, reiterating insufficiency of its allegations to constitute a valid cause of action against it; and in a subsequent memorandum to support its motion, it called attention to several issues of the Evening News (Annexes A, B and C) wherein the latter assumed full responsibility for the contest. Plaintiffs countered that anything extraneous to the complaint cannot be considered in determining its sufficiency. Acting on the motion, the court dismissed the complaint as against Pepsi-Cola. Reconsideration of the dismissal having been denied, plaintiffs appealed to this Court, raising the sole legal question of the propriety of the dismissal.

The sufficiency of the complaint as against Pepsi-Cola cannot be seriously questioned. The court could not have, as in fact it had not, based the dismissal on the insufficiency thereof. It does not merely, as alleged by Pepsi-Cola, make conclusions of law, but states ultimate facts constituting a cause of action. It clearly charges that Pepsi-Cola—a sponsor of the aforementioned contest conducted by the Evening News and in which plaintiffs allegedly spent approximately P20,000.00 to make Anita Garcia win—either deliberately or negligently failed to take precautions to prevent the use in the contest of fake ballots which it knew were maliciously printed by Calsam Printers, Inc.; and that fully aware that Teddy Reyes used the forged ballots, Pepsi-Cola, together with co-defendant Evening News, declared him winner instead of Anita Garcia, the rightful winner if the fake ballots had been nullified, thus depriving her of various prizes and causing her and plaintiffs damages. The court could well have granted the relief prayed for, based on these allegations.

Pepsi-Cola argues that in accordance with Section 10, Rule 9 of the Rules of Court, its motion to dismiss, filed during the trial, must be resolved in the light of evidence already received. Apparently with this in mind, the lower court grounded the dismissal on the evidence so far presented by plaintiffs, particularly the testimony of Ramon Tagle, circulation and promotions manager of the Evening News, to the effect that the newspaper assumed full

control and supervision over the contest; and the issues of the Evening News where it declared its assumption of responsibility for the contest; and found that "the lack of cause of action as against the Pepsi-Cola emerges with convincing reality." This is patent error. To determine the sufficiency of the complaint, only the facts alleged therein should be considered (*Dimayuga vs. Dimayuga*, 96 Phil., 859; 51 Off. Gaz. [5] 2397; *Marabiles vs. Quito*, 100 Phil., 64; 52 Off. Gaz., [15], 6507; *De Jesus vs. Belarmino*, 95 Phil., 365; 50 Off. Gaz., [7] 3064).

Though the allegations of the complaint are ambiguous, indefinite or uncertain, but a cause of action can, in any manner be made out therefrom, and plaintiff would be entitled to recover in any aspect on the facts or any combination of facts proven, then the motion to dismiss should be denied (71 C. J. S. 932). The motion to dismiss shall be resolved in the light of evidence already received only if it was presented during the trial, and the complaint turns out to be defective (Section 10, Rule 9 in conjunction with Section 4, Rule 17 of the Rules of Court). If the evidence cures the defect of the complaint, then it shall not be dismissed, but shall be amended to conform to the evidence, although non-amendment thereof does not affect the result of the trial of the issues raised by the evidence. On the other hand, the complaint being sufficient in itself, dismissal cannot be based on but part of the evidence so far presented by plaintiffs. If the complaint is to be dismissed for insufficiency of evidence, plaintiffs must first be allowed to finish presenting all their evidence. Before that time, the court cannot inquire into the truth of the allegations of the complaint and conclude they are false, since a motion to dismiss theoretically admits the truth of the allegations of fact of the complaint (*Palma vs. Garciano*, 99 Phil., 72; 52 Off. Gaz., [9] 4244; *Carreon vs. Province of Pampanga*, 99 Phil., 808; 52 Off. Gaz. [15] 6557). Just because the initial part of plaintiffs' evidence tends to prove that only one of three defendants shouldered full responsibility for the contest, the court cannot predict the kind, the nature and the probative value of the rest of their evidence which has not been presented. The plaintiffs are entitled to present their whole case, and should be allowed to submit all their competent and material evidence to substantiate their claims against each defendant (*Hamano vs. Zanduetta*, 62 Phil. 335; *Tagaruma vs. Guzman*, 60 Phil. 662).

Wherefore, the order of dismissal is set aside, and the case remanded to the lower court for further proceedings. No costs. So ordered.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

Order set aside.

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