

EMILIANO ACUÑA, PLAINTIFF-APPELLANT, VS. BATAK PRODUCERS COOPERATIVE MARKETING ASSOCIATION, INC., JUSTINO GALANO, TEODORO NARCISO, PABLO BACTIN, (DR.) EMMANUEL BUMANGLAG, VENANC...*G.R. No. L-20333. June 30, 1967*

Ponente: MAKALINTAL, J.

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Appeal taken from the order dated September 10, 1962 of the Court of First Instance of Rizal, Branch V (Quezon City) dismissing plaintiff's complaint on the ground that it states no cause of action, and discharging the writ of preliminary attachment issued therein.

On August 9, 1962, plaintiff Emiliano Acuña filed a complaint, which was later amended on August 13, against the defendant Batak Producers Cooperative Marketing Association, Inc., hereinafter called the Batak Procoma, Inc., or alternatively, against all the other defendants named in the caption. The complaint alleges, inter alia, that on or about May 5, 1962 it was tentatively agreed upon between plaintiff and defendant Leon Q. Verano, as Manager of the defendant Batak Procoma, Inc., that the former would seek and obtain the sum of not less than P20,000.00 to be advanced to the defendant Batak Procoma, Inc., to be utilized by it as additional funds for its Virginia tobacco buying operations during the current redrying season; that plaintiff would be constituted as the corporation's representative in Manila to assist in handling and facilitating its continuous shipments of tobacco and their delivery to there redrying plants and in speeding up the prompt payment and collection of all amounts due to the corporation for such shipments; that for his services plaintiff would be paid a remuneration at the rate of P0.50 per kilo of tobacco; that said tentative agreement was favorably received by the Board of Directors of the defendant Batak Procoma, Inc., and on May 6, 1962 all the defendants named above, who constituted the entire Board of Directors of said corporation (except Leon Q. Verano, who was its Manager), together with defendants Justino Galano and Teodoro Narciso, as President and Vice-President, respectively, unanimously authorized defendant Leon Q. Verano, by a formal resolutions "to execute any agreement with any person or entity, on be-half of the corporation, for the purpose of securing ad-ditional funds for the corporation, as well as to secure the services of such person or entity, in the collection of all payments due to the corporation from the PVTa for any tobacco sold and delivered to said administration; giving and conferring upon the Manager, full and complete authority to bind the corporation with such person or entity in any agreement, and under such considerations, which the said Manager may deem expedient and necessary for that purpose; that plaintiff was made to understand by all of said defendants that the original understanding between him and defendant Leon Q. Verano was acceptable to the corporation, except that the remuneration for the plaintiff's services would be P0.30 per kilo of tobacco; that on May 10, 1962, the formal "Agreement" was executed between plaintiff and defendant Leon Q. Verano, as Manager of the defendant corporation, duly authorized by its Board of Directors for such purpose, and signed by defendants Justino Galano and Dr. Emmanuel Bumanglag as instrumental witnesses and acknowledged by Atty. Fernando Alcantara, the Secretary and Legal Counsel of the defendant corporation; that

upon plaintiff's inquiry, he was assured by these defendants that a formal approval of said "Agreement" by the Board was no longer necessary, as it was a mere "formality" appended to its authorizing resolution and as all the members of the Board had already agreed to the same; that on the same date, May 10, 1962, plaintiff gave and turned over to the defendant corporation, thru its treasurer, Dominador T. Cocson, the sum of P20,000.00, in the presence of defendants Leon Q. Verano, Justino Galano, Dr. Emmanuel Bumanglag and Atty. Fernando Alcantara, for which said treasurer issued to plaintiff its corresponding Official Receipt No. 130852; that from then on, plaintiff diligently and religiously kept his part of the "Agreement"; that plaintiff even furnished the defendant corporation, upon request of its Manager Leon Q. Verano, three thousand (3,000) sacks which it utilized in the shipment of its tobacco costing P6,000.00 and that plaintiff had personally advanced out of his own personal funds the total sum of P5,000.00 with the full knowledge, acquiescence and consent of all the individual defendants; that after the defendant corporation was enabled to replenish its funds with continuous collections from the PVTA for tobacco delivered due to the help, assistance and intervention of plaintiff, for which the said corporation collected from the PVTA the total sum of P381,495.00, the "Agreement" was disapproved by its Board of Directors on June 6, 1962. Upon the foregoing allegations plaintiff prays: (a) that an order of attachment be issued against the properties of defendant corporation; (b) that after due trial; judgment be rendered condemning defendant corporation, or alternatively, all the other individual defendants, jointly and severally, to comply with their contractual obligations and to pay plaintiff the sum of P300,000.00 for his services, plus P31,000.00 for cash advances made by him and P25,000.00 for attorney's fees.

On August 14, 1962, the lower court ordered the issuance of a writ of preliminary attachment against the properties of the defendants and on the following day, after the plaintiff had posted the required bond, the writ was accordingly issued by the Clerk of Court.

On August 22, 1962, the defendants filed a motion to dismiss the complaint on the ground that it stated no cause of action and to discharge the preliminary attachment on the ground that it was improperly or irregularly issued. In support of the motion defendants alleged that the contract for services was never perfected because it was not approved or ratified but was instead disapproved by the Board of Directors of defendant Batac Procoma, Inc., and that on the basis of plaintiff's pleadings the contract is void and unenforceable. Defendants further denied the fact that plaintiff had performed his part of the contract, alleging that he had not in any manner intervened in the delivery and payment of tobacco pertaining to the defendant corporation.

On August 25, 1962, plaintiff filed a written opposition to the motion to dismiss and to discharge the preliminary attachment.

On September 10, 1962, the trial court sustained defendants' motion and issued the following order:

"In resume, the Court believes that the complaint states no cause of action and that the contract in question is void ab initio.

IN VIEW OF THE FOREGOING, the amended complaint filed in this case is hereby ordered DISMISSED, without special pronouncement as to costs. Consequently, the writ of preliminary attachment issued herein is ordered discharged. However, it is of record that the defendants has (sic) deposited the Court the amount of P20,400.00 representing the amount of money invested by the plaintiff plus the corresponding interest thereon. Plaintiff, by virtue of this order, may withdraw the same in due time, if he so desires, upon proper receipt therefor."

From the foregoing order plaintiff interposed the present appeal.

Appellant has assigned four errors, which we shall consider seriatim:

The first assignment reads. "As the defendants' motion to dismiss the complaint and discharge the preliminary

attachment was based on the specific ground that the complaint states no cause of action (Sec. 1 (f), Rule 8, Rules of Court), the lower court should not have gone beyond, and it should have limited itself, to the facts alleged in the complaint in considering and resolving said motion to dismiss."

It is a settled principle that when a motion to dismiss is based on the ground that the complaint does not state a cause of action (Rule 8, Section 1, par. 7 of the old Rules; Rule 16, Section 1, par (g) of the Revised Rules) the averments in the complaint are deemed hypothetically admitted and the inquiry is limited to whether or not they make out a case on which relief can be granted. If said motion assails directly or indirectly the veracity of the allegations, it is improper to grant the motion upon the assumption that the averments therein are true and those of the complaint are not. (*Carreon vs. Prov. Board of Pampanga* 52 O.G. 6557.) The sufficiency of the motion should be tested on the strength of the allegations of facts contained in the complaint, and no other. If these allegations show a cause of action, or furnish sufficient basis by which the complaint can be maintained, the complaint should not be dismissed regardless of the defenses that may be averred by the defendants. (*Josefa de Jesus, et al. vs. Santos Belarmino*, 50 O.G., 3004-3068; *Verzosa vs. Rigonan*, G. R. No. L-6459, April 23, 1954; *Dimayuga vs. Dimayuga*, 51 O. G. 2397-2400.)

The first ground upon which the order of dismissal issued by the lower court is predicated is that the Board of Directors of defendant corporation did not approve the agreement in question - in fact disapproved it by a resolution passed on June 6, 1962 - and that as a consequence the "suspensive condition" attached to the agreement was never fulfilled. The specific stipulation referred to by the Court as a suspensive condition states: "provided, however, that the contract entered into by said manager to carry out the purposes above-mentioned shall be subject to the approval of the Board."

A perusal of the complaint reveals that it contains sufficient allegations indicating such approval or at least subsequent ratification. On the first point we note the following averments: that on May 9th the plaintiff met with each and all of the individual defendants (who constituted the entire Board of Directors) and discussed with them extensively the tentative agreement and he was made to understand that it was acceptable to them, except as to plaintiff's remuneration; that it was finally agreed between plaintiff and all said Directors that his remuneration would be P0.30 per kilo (of tobacco); and that after the agreement was formally executed he was assured by said Directors that there would be no need of formal approval by the Board. It should be noted in this connection that although the contract required such approval it did not specify just in what manner the same should be given.

On the question of ratification the complaint alleges that plaintiff delivered to the defendant corporation the sum of P20,000.00 as called for in the contract; that he rendered the services he was required to do; that he furnished said defendant 3,000 sacks at a cost of P6,000.00 and advanced to it the further sum of P5,000.00; and that he did all of these things with the full knowledge, acquiescence and consent of each and all of the individual defendants who constitute the Board of Directors of the defendant corporation. There is abundant authority in support of the proposition that ratification may be ex-press or implied, and that implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.

Significantly the very resolution of the Board of Directors relied upon by defendants' aspects to militate against their contention. It refers to plaintiff's failure to comply with certain promises he had made, as well as to his interpretation of the contract with respect to his remuneration which, according to the Board, was contrary to the intention of the parties. The resolution then proceeds to "disapprove and/or rescind" the said contract. The idea of conflicting interpretation, or of rescission on the ground that one of the parties has failed to fulfill his obligations under the contract, is certainly in-compatible with defendants' theory here that no contract had yet been perfected for lack of approval by the Board of Directors.

Appellants' second assignment of error reads: "Assuming that in resolving the defendants' motion to dismiss the lower court could consider the new facts alleged therein and the documents annexed thereto it committed an error in extending such consideration beyond ascertaining only if an issue of fact has been presented and in actually deciding instead such fact in issue."

The assignment is well taken, and is the logical corollary of the rule that a motion to dismiss on the ground that the complaint fails to state a cause of action addresses itself to the averments in the complaint and, admitting their veracity, merely questions their sufficiency to make out a case on which the court can grant relief. Affidavits, such as those presented by defendants in support of the motion, can only be considered for the purpose of ascertaining whether an issue of fact is presented, but not as a basis for deciding the factual issue itself. This should await the trial on the merits.

The third assignment of error assails the lower court's ruling that even assuming that a contract had been perfected no action can be maintained thereon because its object was illegal and therefore void. Specific reference was made by said court to an affidavit executed by appellant on May 10, 1962 which reads:

"That I, EMILIANO ACUÑA, the party of the Second Part in the contract entered into with the Batac Procoma, Inc., the party of the First Part in same contract declares that the amount of P0.30 per kilo is referred to upgraded tobacco only as delivered. This supplements paragraph three of the contract referred to. Deliveries downgraded or maintained at the redrying plant are deemed not included."

The lower court, in its order of dismissal, held that "the upgrading of tobaccos is clearly prohibited under our laws, and hence the contract cannot be validly ratified. Evidently the court had in mind a fraudulent upgrading of tobacco by appellant as part of the services called for under the contract. This conclusion, however, is squarely traversed by appellant in another affidavit attached to his reply and opposition to the motion to dismiss, in which he explained the circumstances which led to the execution of the one relied upon by the court; and the real meaning of the word "upgraded" therein. It is therein stated:

"That after the execution of the agreement. (Annex "B" to the amended complaint in said Civil Case No, Q-6547), Messrs. Verano Galano and Dr. Bumanglag of the defendant Corporation indicated to me that if the price of P0.30 per kilo stipulated there to be paid to me were to be indiscriminately applied to all deliveries of tobaccos, the Corporation would be placed in a disadvantageous and losing position and they proceeded to explain to me the following, -

(a) that when the farmers sell their tobaccos to the Facoma, they do so in bunches of assorted qualities which may belong either to Class A,B,C,D and E, and upon such purchase they are initially given an arbitrary classification of any of such classes, as the case may be, the tendency generally being to give them a lower classification to equalize or average the assorted qualities as much as possible, and this is what is termed "downgrading;"

(b) that after the tobaccos have been purchased by the Facoma from the farmers, they are then reassorted and re-classified in accordance with their actual quality or grade as found by the officials of the Facoma, - thus in a bunch which are purchased as Class C, D or E, upon reclassification those found to belong to Class A are separated from Class B, those belonging to class B, are separated from Class C, and so on, and these bunches so reclassified necessarily have a higher grade than the original arbitrary classification given when purchased from the farmers, and this is what termed 'upgrading' upon delivery which was used in the addendum;

(c) the Facoma in turn, delivers these properly re-classified tobaccos to the redrying plant and there, a group of officials composed of a representative of the redrying plant, the Bureau of Internal Revenue the General Auditing Office the PVTA and the Facoma representative, then examines and grades the tobaccos, and if the classification give to the Facoma is found correct and not changed, then and only then would or should I be

entitled to collect the P0.30 kilo, and this they said is what termed "grade maintained" - on the other hand, if these officials found the classification incorrect and lowers the classification given by the Facoma, from class A to B, or from B to C, than the tobaccos are considered or said to be "downgraded" and in that event I should not receive any centavo for such deliveries, and it is in this sense that I was made to understand the term;

Believing implicitly in the foregoing explanations of the defendants and in the reasonableness of their proposal, I agreed readily and Atty. Fernando Alcantara, Legal Counsel and Secretary of the defendant Corporation forthwith prepared, drafted and typed the "addendum" in question in their own typewriter of the Corporation; and as I am not a lawyer and was not well versed with the usage, customs and phraseology usually used in tobacco trading, I relied in absolute good faith that, as explained by the defendants, there was nothing wrong nor illegal in the use of the words "upgrading" and "downgrading" used in said addendum, which Atty. Alcantara unfortunately used in the same;

Apart from the above, defendants knew the physical impossibility of "upgrading" the tobaccos at the redrying plant, because at the time of the transaction, only the PTFC & RC was allowed to accept tobacco for redrying and under the existing regulations and practices the delivery area for tobaccos at the redrying plant is enclosed by a high wire fence inaccessible to the general public and the only ones who actually make the grading of tobaccos delivered, are the (1) American representative of the redrying plant (PTFC & RC), (2) the PVTA, (3) the BIR and (4) the General Auditing Office in the presence of the representative of the FACOMA, and since the redrying plant is compelled to purchase 41% of all tobaccos delivered and redried under their negotiated management contract, it is highly improbable that the representative of the redrying plant (PHFC & RC) whose conformity to the actual grading done must appear in the corresponding "guia" or tally sheet, would allow the "upgrading" of tobaccos, aside from the fact that stringent measures had been devised under the present administration to prevent the "upgrading" of tobaccos by any party. Certainly, an impossible condition could not have been contemplated by me and the defendants;" (Record on appeal, pp. 171-175)

The foregoing explanation, on its face, is satisfactory and deprives the term "upgraded" of the sinister and illegal connotation attributed to it by the lower court. To be sure, whether the allegations in this subsequent affidavit are true or not is a question of fact; but it is precisely for this reason that they can neither be summarily admitted nor rejected for purposes of a motion to dismiss. Due process demands that they be the subject of proof and considered only after trial on the merits.

The other errors assigned by appellant are merely incidental to those already discussed, and require no separate treatment.

Wherefore, the order appealed from is set aside and the case is remanded to the court a quo for further proceedings, without prejudice to the right of plaintiff-appellant to ask for another writ of attachment in said court, as the circumstances may warrant. Costs against defendants-appellees.

Concepcion, C.J., Reyes, J.B.L., Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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