

LUCIDO GARCON, PLAINTIFF AND APPELLANT, VS. REDEMPTORIST FATHERS, DEFENDANT AND APPELLEE.*G.R. No. L-23510. May 30, 1966*

Ponente: REYES, J.B.L., J.

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This is a pauper's appeal interposed against an order sustaining defendant's motion to dismiss plaintiff's complaint, on the ground that it states no valid cause of action, issued in Civil Case No. 475-R of the Court of First Instance of Rizal, Branch VII (Pasay City), as well as against a subsequent order, denying plaintiff's motion to reconsider said order of dismissal. Originally brought to the Court of Appeals, and docketed as its G. R. No. 33124, the latter court forwarded the appeal to this Supreme Court for the reason that the only question involved is purely legal.

The records disclose that: On 3 February 1963, plaintiff Lucido Garcon commenced a suit against defendant Redemptorist Fathers, a religious corporation, in the Court of First Instance. The complaint alleges, inter alia, that sometime in April, 1958 plaintiff was employed as chief cook, without any fixed duration and at a monthly compensation of P200.00, by defendant which has been engaged in maintaining and running for profit a dormitory with more or less 43 students-boarders; that he had been actually paid only P186.00 as his monthly salary, leaving a balance of P14.00 as his unpaid salary every month; that since his employment he had been faithfully and religiously performing his duties as such cook for 10 hours daily, including Sundays and other legal holidays, without having been paid any overtime compensation; that on 14 January 1963 he was summarily dismissed by defendant without just cause and without being given any notice and termination pay; that on account of this illegal dismissal and unjustified refusal of defendant to pay his demands for unpaid salaries, overtime pay and termination, he suffered moral damages and was compelled to engage the services of counsel for a fee; and that the award of exemplary damages is also warranted. Whereupon, plaintiff seeks to recover from defendant the following: (a) unpaid salaries—P798.00; (b) overtime pay for services rendered on ordinary days, Sundays and other legal holidays—P2,288.00; (c) termination pay— P500.00; (d) moral damages—P5,000.00; (e) exemplary damages—P5,000.00; and (f) attorney's fee—P500.00; plus cost of the suit.

On 17 April 1963, defendant presented a motion to dismiss the complaint on the ground that it states no valid cause of action. In support thereof, defendant denied that it maintains a dormitory for profit or gain, but rather that, as a religious order, it established a minor seminary where students are admitted upon payment of nominal fees or without fees at all; hence, it is not a commercial, industrial or agricultural establishment which falls within the purview of the Termination Pay Law (Republic Act No. 1052, as amended), nor is it engaged in "industry or occupation," as these terms are understood under the Eight Hour Labor Law (Commonwealth Act No. 444, as amended). Not falling within the coverage of both laws, defendant maintained¹ that plaintiff has not established a right or cause of action against it. Defendant also maintained that plaintiff, as such cook, is a domestic and not entitled to overtime pay under the latter law (Com. Act No. 444, as amended).

On 24 April 1963, plaintiff opposed defendant's motion; to which opposition defendant submitted a rejoinder.

On 1 June 1963, the trial court sustained defendant's motion and ordered the dismissal of plaintiff's complaint, which is quoted below, to wit:

"Acting upon defendant's motion to dismiss dated April 16, 1963 as well as the opposition thereto and considering that the only issue in the instant case is whether or not defendant corporation is an employer within the purview of Section 2 'of Commonwealth Act No. 444 and Section 1 of Republic Act No. 1052; and it being¹ the sense of this Court that the defendant is not within the coverage of said laws since it is neither a commercial, industrial or agricultural establishment or enterprise nor is it engaged in any industry or occupation, the said motion should be granted (Y.M.C.A. vs. Collector of Internal Revenue, 33 Phil. 227; Boy Scouts of the Phil. vs. Araos, G.R. No. L-10091, January 29, 1958; San Beda College vs. Court of Industrial Relations, G.R. No. L-7649, Oct. 29, 1955).

Wherefore, the complaint is hereby dismissed."

Plaintiff moved to reconsider the above order, but without success; hence the present appeal.

It was unquestionably erroneous for the trial court to have decided the motion to dismiss on the basis of the allegations made therein being true, because it is plain on the face of the pleadings that the motion to dismiss improperly contradicted the factual allegations of the complaint.

The plaintiff had averred that defendant maintained and operated for profit a dormitory for students-boarders: while the motion to dismiss denied that fact and alleged that as a religious order it maintained a minor seminary with students paying nominal fees or no fees at all. Under the Rules of Court, these facts, pleaded by appellee, constitute a matter of defense to be set up in an answer, and not in a motion to dismiss.

It is already well-settled by now that, in a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations of fact made in the complaint to constitute a cause of action, and not on whether these allegations of fact are true,^[1] for said motion must hypothetically admit the truth of the facts alleged in the complaint^[2]; that the test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of said complaint.^[3] Stated otherwise, the insufficiency of the cause of action "must appear in the face of the complain^[4] in Order to sustain a dismissal on this ground, for in the determination of whether or not a complaint states a cause of action only the facts alleged therein and no other matter may be considered,^[5] and the court may not inquire into the truth of the allegations, and find them to be false before a hearing is had' on the merits of the case^[6]; and it is improper to inject in the allegations of the complaint facts not alleged or proved, and use these as basis for said motion.^[7]

Considering exclusively the allegations of the complaint, plaintiff has pleaded facts sufficient to make his case fall within the coverage of the Termination Pay Law (Rep. Act No. 1052, as amended) and the Eight Hour Labor Law (Com. Act No. 444, as amended). Defendant has been alleged to be engaged in dormitory business for profit or gain, and, as such, it can be classified as one engaged in commercial enterprise or in industry or occupation under both laws. Defendant has also been alleged to have committed violations of these laws. Both laws provide for remedies of said violations which are now being availed of by plaintiff in his complaint. This being the case, it is clear that plaintiff's complaint has stated a valid cause of action against defendant.

Defendant-appellee also urges, in the brief, that as a cook plaintiff is only a domestic, and hence not entitled to over--time pay under the Eight Hour Labor law. Granting, hypothetically, the correctness of this view, the complaint would still state a cause of action under the Civil Code, since, as a domestic engaged in household service, plaintiff would be entitled to four days' vacation with pay each month (Art. 1695) and not to be dismissed without advance notice (Art 1698, par. 3) ; and the complaint avers that plaintiff-appellant rendered services for

ten hours daily, including¹ Sundays and holidays, and that he was summarily dismissed without just cause and without notice.

Wherefore, the appealed order dismissing the complaint is hereby set aside. Let the case be remanded to the court of origin, with directions to overrule the motion to dismiss, and thereafter proceed in conformity with law and the Rules of Court.

So ordered. Costs against defendant-appellee.

Bengzon, C.J., Concepcion, Barrera, Dizon, Regala, Macalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Order set aside, case remanded.

[1] Pinero vs. Enriquez, 84 Phil. 774.

[2] Piñero vs. Enriquez, supra; Community Investment & Finance Corp. vs. Garcia, 88 Phil. 215; Palma vs. Graciano, 99 Phil. 72; Carreon vs. Province of Pampanga, 99 Phil. 808; Pangan vs. Evening News Publishing Co., Inc., L-13308, Dec. 29, 1960; Pascual vs. Secretary of Public Works & Communications, L-10405, Doc. 29, 1960; Republic vs. Ramos, L-15484, Jan. 31, 1963; Alquique vs. De Leon, L-15059, Mar. SO, 19GB; PNB vs. Hipolito, L-16463, Jan. 30, 1965.

[3] Paminsan vs. Costales, 28 Phil. 943; Blay vs. Batangas Trans. Co., 80 Phil. 817; De Jesus vs. Belarmino, 95 Phil. 365; Dimayuga vs. Dimayuga, 96 Phil. 859; Wise & Co. vs. City of Manila, L-9156, April 29, 1957, 54 Off. Gaz., 4245.

[4] Convets, Inc. vs. NDC, L-10232, February 29, 1958; 54 Off. Gaz., 5322.

[5] Ruperto vs. Fernando, 83 Phil. 943; Francisco vs. Robles, 94 Phil. 3095 (unpub.); De Jesus vs. Belarmino, supra; Dimayuga vs. Di-mayuga, supra; Zobol vs. Abieau, 98 Phil. 343; Con vets, Inc. vs. NDC, supra; Reinares vs. Arrastia, L-17083, July 21, 1962; Uy Chao vs. de la Rama Steamship Co., L-14495, Sept. 29, 1962; Mindanao Realty Corp. vs. Kintanar, L-17152, Nov. 30, 1962; Lim vs. delos Santos, L-18137, Aug. 31, 1963; Dalandan vs. Julio, L-19101, Feb. 29, 1964.

[6] Lim vs. de los Santos, supra.

[7] Zobol vs. Abrcau, supra.

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