

CONVETS, INC., PLAINTIFF AND APPELLANT, VS. NATIONAL DEVELOPMENT COMPANY, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 10232. February 28, 1958*

Ponente: REYES, A., J.

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This is an appeal from an order of dismissal.

On September 13, 1955, the Confederation of Filipino Veterans (hereinafter referred to as the CONVETS), a domestic corporation, filed a complaint in the Court of First Instance of Manila against the National Development Company (hereinafter called the NDC), the Land Settlement and Development Corporation (hereinafter called the LASEDECO), and the Board of Liquidators created by Republic Act No. 1160 for the recovery of the sum of P36,000 as agent's commission on the sale of certain commodities.

For cause of action, the complaint, as later amended, alleges that on July 7, 1949 a committee of the NDC in a memorandum submitted to the latter's general manager (attached to the complaint as annex A) recommended that plaintiff be allowed a 10% straight commission on sales of items from the Caledonia Pile (a mass of surplus goods which the NDC had in its compound in Manila) where plaintiff had a direct hand in the sale; that in line with said recommendation, the NDC, as per resolution of its Board of Directors on July 13, 1949, accepted CONVETS' firm offer "to act as the exclusive sales agent for the sale of all items whether inventoried or uninventoried, classified or not, segregated or otherwise, of the Caledonia Pile," under the terms and conditions embodied in the minutes of the Board's meeting, an excerpt of which was attached to the complaint as annex B; that on September 28, 1949, plaintiff informed the NDC Board that it had found a buyer, the firm of Joseph Behr & Sons, Inc., of 1100 Seminary St., Rockford, Illinois, U.S.A., which had sent authorized representatives to Manila to deal with the NDC; that on November 25, 1949, through the direct intervention of plaintiff in its capacity as sole agent of the defendant NDC, a contract of sale of about 4,000 tons of spare parts in the Caledonia Pile at P90 per ton between the NDC and Joseph Behr & Sons, Inc., was approved by the NDC's Board of Directors in its resolution of that date attached to the complaint as annex C, the deeds pertaining thereto being also attached to the complaint as annexes D and E; that in confirmation of previous commitments, promises and past business dealings between plaintiff and the NDC, a written agency agreement was entered into between them on February 8, 1950, with retroactive effect from July 13, 1949, copy of the agreement being attached to the complaint as annex F; that the aforementioned sale of spare parts to Joseph Behr & Sons, Inc., has already been executed with the latter paying the NDC the sum of \$45 or P90 for every long ton of said spare parts taken from the Caledonia Pile by establishing, as stipulated in the contract, "an irrevocable Letter of Credit in the total amount of \$150,000" in a Manila bank; that upon the promulgation of Executive Order No. 355 on October 23, 1950, the management and disposition of the Caledonia Pile were transferred from the NDC to the LASEDECO and that upon the latter being dissolved by Republic Act No. 1160 its assets were turned over to the Board of Liquidators created by said Act, plaintiff being, for that reason, uncertain from which one of the defendants it is entitled to get relief; and that notwithstanding repeated demands, the defendants have failed and refused to pay plaintiff its commission on the

sale mentioned.

Instead of answering the complaint, the defendants filed a motion to dismiss on the grounds that the complaint did not state a cause of action and that plaintiff's action, if it had any, had already prescribed.

Upholding both grounds, the lower court granted the motion to dismiss. Hence, this appeal.

We find the appeal meritorious.

In holding that plaintiff's complaint did not state a cause of action against the defendant NDC, the lower court took into account the documents attached to the complaint as annexes A to F, and inferred therefrom that the sale in question was neither initiated nor consummated by plaintiff but was a direct transaction between the management of the NDC and Joseph Behr & Sons, Inc., and that said sale was not according to the conditions set forth in the aforementioned annexes in that it was not a "lot sale," at "formula price," and "to the general public." But it is elementary that lack of cause of action as ground for dismissal must appear, on the face of the complaint and that to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no other, should be considered. (Moran's Rules of Court, Vol. I, 1957 ed., p. 140.) In the present case, the complaint, as amended, alleges in effect that plaintiff was appointed by the defendant NDC its exclusive agent to sell "all items * * * of the Caledonia Pile" on a 10% straight commission; that some time thereafter, plaintiff informed the said defendant that it had found a buyer in the United States with authorized representatives in Manila to deal with said defendant, the buyer being the firm of Joseph Behr & Sons, Inc. of 1100 Seminary St., Rockford, Illinois; that "thru the direct intervention of the plaintiff, acting in its capacity as (such) sole agent", a contract of sale of certain items from the Caledonia Pile at a specified price, was finally approved by said defendant's Board of Directors and thereafter the sale was executed with the buyer paying the seller the stipulated price by means of an irrevocable letter of credit; and that notwithstanding the consummation of the sale, the defendants have failed and refused to pay the stipulated commission notwithstanding repeated demands. These allegations, the truth of which is hypothetically admitted by defendants' motion to dismiss, do constitute a cause of action for the recovery of the stipulated commission; and while the annexes to the complaint do also mention certain terms under which the sales of merchandise from the Caledonia Pile should be made, there is really nothing in said annexes that contradicts or nullifies the ultimate facts alleged in the complaint or proves by itself alone that the terms prescribed were not complied with to the satisfaction of the principal. Any such non-compliance is a matter of defense, which should be alleged in the answer and proved at the trial. As was said by this Court in the case of World Wide Insurance & Surety Co., Inc. vs. Manuel et al. (51 Off. Gaz. 6214).

"* * * To determine whether a complaint states a cause of action one must accept its allegations as true. One may not go beyond and outside the complaint for data or facts, especially contrary to the allegations of the complaint, to determine whether there is cause of action. Of course, there are cases where there may be a conflict or contradiction between the allegations of a complaint and a document or exhibit attached to and made part of it. In that case, instead of dismissing the complaint, defendant should be made to answer the same so as to establish an issue and then the parties will be given an opportunity, the plaintiff to reconcile any apparent conflict between the allegations in his complaint and a document attached to support the same, and the defendant an equal opportunity to refute the allegations of the complaint and to show that the conflict between its allegation and the document attached to it is real, material and decisive."

The court below also ruled that the complaint states no cause of action against the defendants LASEDECO and Board of Liquidators on the theory that the articles sold to Joseph Behr & Sons, Inc., no longer formed part of the when its management and disposition were transferred from the NDC to the LASEDECO and that consequently they were also not among the assets of the LASEDECO that were turned over to the Board of Liquidators. The ruling is erroneous, for it is apparent that these two defendants have been made parties to the action for having

succeeded to the management of the Caledonia Pile and to the obligations incurred in connection with its disposal.

Finally, the lower court also erred in declaring that plaintiff's cause of action had already prescribed when the complaint was filed on September 13, 1955. Plaintiff's claim is founded upon a written contract of agency, which allows it a 10% commission on sales negotiated by it, the commission to be payable within the first five days of the month succeeding the sale. As the sale was consummated in December, 1949, plaintiff's right of action for the recovery of the commission accrued on January 5, 1950. From that date, plaintiff had ten years to bring his action in court since the action is based upon a written contract (art. 1144, new Civil Code). It is thus clear that when the complaint was filed in 1955, plaintiff's right of action had not yet prescribed. In any event, this Court has already held that where it is not clear from the allegations of the complaint just when plaintiff's cause of action accrued, and consequently it cannot be determined with certainty whether that action has already prescribed or not, the defense of prescription cannot be sustained on a mere motion to dismiss based on what appears on the face of the complaint. (*Sison. vs. McQuaid*, 94 Phil., 201, 50 Off. Gaz., 96.)

In view of the foregoing, the order complained of is set aside and the case remanded to the court below for further proceedings. No costs.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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