

MARIA BENITA A. DULAY, IN HER OWN BEHALF AND IN BEHALF OF THE MINOR CHILDREN KRIZTEEN ELIZABETH, BEVERLY MARIE AND NAPOLEON II, ALL SURNAMED DULAY, PETITIONERS, VS. THE COURT OF...

G.R. No. 108017. April 03, 1995

Ponente: BIDIN, J.

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BIDIN, J.:

This petition for certiorari prays for the reversal of the decision of the Court of Appeals dated October 29, 1991 in CA-G.R. CV No. 24646 which affirmed the order of the Regional Trial Court dismissing Civil Case No. Q-89-1751, and its resolution dated November 17, 1991 denying herein petitioner's motion for reconsideration.

The antecedent facts of the case are as follows:

On December 7, 1988, an altercation between Benigno Torzuela and Atty. Napoleon Dulay occurred at the "Big Bang Sa Alabang," Alabang Village, Muntinlupa as a result of which Benigno Torzuela, the security guard on duty at the said carnival, shot and killed Atty. Napoleon Dulay.

Herein petitioner Maria Benita A. Dulay, widow of the deceased Napoleon Dulay, in her own behalf and in behalf of her minor children, filed on February 8, 1989 an action for damages against Benigno Torzuela and herein private respondents Safeguard Investigation and Security Co., Inc., ("SAFEGUARD") and/or Superguard Security Corp. ("SUPERGUARD"), alleged employers of defendant Torzuela. The complaint, docketed as Civil Case No. Q-89-1751 among others alleges the following:

1. xxx xxx xxx xxx

"Defendants SAFEGUARD INVESTIGATION AND SECURITY CO., INC, (Defendant Safeguard) and SUPERGUARD SECURITY CORPORATION (Defendant Superguard) are corporations duly organized and existing in accordance with Philippine laws, with offices at 10th Floor, Manufacturers Building, Inc., Plaza Santa Cruz, Manila. They are impleaded as alternative defendants for, while the former appears to be the employer of defendant BENIGNO TORZUELA (defendant TORZUELA), the latter impliedly acknowledged, responsibility for the acts of defendant TORZUELA by extending its sympathies to plaintiffs.

"Defendant BENIGNO TORZUELA is of legal age, an employee of defendant SAFEGUARD and/or defendant SUPERGUARD and, at the time of the incident complained of, was under their control and supervision. xxx xxx xxx xxx

"3. On December 7, 1988 at around 8:00 a.m., defendant TORZUELA, while he was on duty as security guard at the 'Big Bang sa Alabang,' Alabang Village, Muntinlupa, Metro Manila shot and killed NAPOLEON V. DULAY with a .38 caliber revolver belonging to defendant SAFEGUARD, and/or SUPERGUARD (per Police Report dated January 7, 1989, copy attached as Annex A);

"4. The incident resulting in the death of NAPOLEON V. DULAY was due to the concurring negligence of the

defendants. Defendant TORZUELA'S wanton and reckless discharge of the firearm issued to him by defendant SAFEGUARD and/or SUPERGUARD was the immediate and proximate cause of the injury, while the negligence of defendant SAFEGUARD and/or SUPERGUARD consists in its having failed to exercise the diligence of a good father of a family in the supervision and control of its employee to avoid the injury.

xxx xxx xxx"

(Rollo, pp. 117-118)

Petitioners prayed for actual, compensatory, moral and exemplary damages, and attorney's fees. The said Civil Case No. Q-89-1751 was raffled to Branch 84 of the Regional Trial Court of Quezon City, presided by respondent Judge Teodoro Regino.

On March 2, 1989, private respondent SUPERGUARD filed a Motion to Dismiss on the ground that the complaint does not state a valid cause of action. SUPERGUARD claimed that Torzuela's act of shooting Dulay was beyond the scope of his duties, and that since the alleged act of shooting was committed with deliberate intent (dolo), the civil liability therefor is governed by Article 100 of the Revised Penal Code, which states:

"Article 100. Civil liability of a person guilty of a felony. - Every person criminally liable for a felony is also civilly liable."

Respondent SUPERGUARD further alleged that a complaint for damages based on negligence under Article 2176 of the New Civil Code, such as the one filed by petitioners, cannot lie, since the civil liability under Article 2176 applies only to quasi-offenses under Article 365 of the Revised Penal Code. In addition, the private respondent argued that petitioners' filing of the complaint is premature considering that the conviction of Torzuela in a criminal case is a condition sine qua non for the employer's subsidiary liability (Rollo, p. 55- 59).

Respondent SAFEGUARD also filed a motion praying that it be excluded as defendant on the ground that defendant Torzuela is not one of its employees (Rollo, p.96).

Petitioners opposed both motions, stating that their cause of action against the private respondents is based on their liability under Article 2180 of the New Civil Code, which provides:

"Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

xxx xxx xxx

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

xxx xxx xxx"

(Emphasis supplied)

Petitioners contended that a suit against alternative defendants is allowed under Rule 3, Section 13 of the Rules of Court. Therefore, the inclusion of private respondents as alternative defendants in the complaint is justified by the following: the Initial Investigation Report prepared by Pat. Mario Tubon showing that Torzuela is an employee of SAFEGUARD; and through overt acts, SUPERGUARD extended its sympathies to petitioners (Rollo, pp. 64 and 98).

Meanwhile, an Information dated March 21, 1989 charging Benigno Torzuela with homicide was filed before the Regional Trial Court of Makati and was docketed as Criminal Case No. 89-1896.

On April 13, 1989, respondent Judge Regino issued an order granting SUPERGUARD'S motion to dismiss and SAFEGUARD'S motion for exclusion as defendant. The respondent judge held that the complaint did not state facts necessary or sufficient to constitute a quasi-delict since it does not mention any negligence on the part of Torzuela in shooting Napoleon Dulay or that the same was done in the performance of his duties. Respondent judge ruled that mere allegations of the concurring negligence of the defendants (private respondents herein) without stating the facts showing such negligence are mere conclusions of law (Rollo, p. 106). Respondent judge also declared that the complaint was one for damages founded on crimes punishable under Articles 100 and 103 of the Revised Penal Code as distinguished from those arising from quasi-delict. The dispositive portion of the order dated April 13, 1989 states:

"WHEREFORE, this Court holds that in view of the material and ultimate facts alleged in the verified complaint and in accordance with the applicable law on the matter as well as precedents laid down by the Supreme Court, the complaint against the alternative defendants Superguard Security Corporation and Safeguard Investigation and Security Co., Inc., must be and (sic) it is hereby dismissed." (Rollo, p. 110)

The above order was affirmed by the respondent court and petitioners' motion for reconsideration thereof was denied.

Petitioners take exception to the assailed decision and insist that quasi-delicts are not limited to acts of negligence but also cover acts that are intentional and voluntary, citing *Andamo v. IAC* (191 SCRA 195 [1990]). Thus, petitioners insist that Torzuela's act of shooting Napoleon Dulay constitutes a quasi-delict actionable under Article 2176 of the New Civil Code.

Petitioners further contend that under Article 2180 of the New Civil Code, private respondents are primarily liable for their negligence either in the selection or supervision of their employees. This liability is independent of the employee's own liability for fault or negligence and is distinct from the subsidiary civil liability under Article 103 of the Revised Penal Code. The civil action against the employer may therefore proceed independently of the criminal action pursuant to Rule 111 Section 3 of the Rules of Court. Petitioners submit that the question of whether Torzuela is an employee of respondent SUPERGUARD or SAFEGUARD would be better resolved after trial.

Moreover, petitioners argue that Torzuela's act of shooting Dulay is also actionable under Article 33 of the New Civil Code, to wit:

"Article 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." (Emphasis supplied)

In the same vein, petitioners cite Section 3, Rule 111 of the Rules of Court which provides:

"Rule 111. xxx

Section 3. When civil action may proceed independently - In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action which has been reserved may be brought by the offended party, shall proceed independently of the criminal action, and shall require only a preponderance of evidence." (Emphasis supplied)

The term "physical injuries" under Article 33 has been held to include consummated, frustrated and attempted homicide. Thus, petitioners maintain that Torzuela's prior conviction is unnecessary since the civil action can proceed independently of the criminal action. On the other hand, it is the private respondents' argument that since

the act was not committed with negligence, the petitioners have no cause of action under Articles 2176 and 2177 of the New Civil Code. The civil action contemplated in Article 2177 is not applicable to acts committed with deliberate intent, but only applies to quasi-offenses under Article 365 of the Revised Penal Code. Torzuela's act of shooting Atty. Dulay to death, aside from being purely personal, was done with deliberate intent and could not have been part of his duties as security guard. And since Article 2180 of the New Civil Code covers only acts done within the scope of the employee's assigned tasks, the private respondents cannot be held liable for damages.

We find for petitioners.

It is undisputed that Benigno Torzuela is being prosecuted for homicide for the fatal shooting of Napoleon Dulay. Rule 111 of the Rules on Criminal Procedure provides:

"Sec. 1. Institution of criminal and civil actions. When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused."
(Emphasis supplied)

It is well-settled that the filing of an independent civil action before the prosecution in the criminal action presents evidence is even far better than a compliance with the requirement of an express reservation (*Yakult Philippines v. Court of Appeals* 190 SCRA 357 [1990]). This is precisely what the petitioners opted to do in this case. However, the private respondents opposed the civil action on the ground that the same is founded on a delict and not on a quasi-delict as the shooting was not attended by negligence. What is in dispute therefore is the nature of the petitioner's cause of action.

The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action (*Republic v. Estenzo*, 158 SCRA 282 [1988]). The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief. (*De Tavera v. Philippine Tuberculosis Society*, 112 SCRA 243 [1982]). An examination of the complaint in the present case would show that the plaintiffs, petitioners herein, are invoking their right to recover damages against the private respondents for their vicarious responsibility for the injury caused by Benigno Torzuela's act of shooting and killing Napoleon Dulay, as stated in paragraphs 1 and 2 of the complaint.

Article 2176 of the New Civil Code provides:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter."

Contrary to the theory of private respondents, there is no justification for limiting the scope of Article 2176 of the Civil Code to acts or omissions resulting from negligence. Well-entrenched is the doctrine that Article 2176 covers not only acts committed with negligence, but also acts which are voluntary and intentional. As far back as the definitive case of *Elcano v. Hill* (77 SCRA 98 [1977]), this Court already held that:

"xxx Article 2176, where it refers to 'fault or negligence,' covers not only acts 'not punishable by law' but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two,

assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused. Briefly stated, We here hold, in reiteration of Garcia, that culpa aquiliana includes voluntary and negligent acts which may be punishable by law." (Emphasis supplied)

The same doctrine was echoed in the case of *Andamo v. Intermediate Appellate Court* (191 SCRA 195 [1990]), wherein the Court held:

"Article 2176, whenever it refers to 'fault or negligence,' covers not only acts 'not punishable by law' but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a civil action lies against the offender in a criminal act, whether or not he is prosecuted or found guilty or acquitted, provided that the offended party is not allowed, (if the tortfeasor is actually also charged criminally), to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary." [citing *Virata v. Ochoa*, 81 SCRA 472] (Emphasis supplied)

Private respondents submit that the word "intentional" in the *Andamo* case is inaccurate obiter, and should be read as "voluntary" since intent cannot be coupled with negligence as defined by Article 365 of the Revised Penal Code. In the absence of more substantial reasons, this Court will not disturb the above doctrine on the coverage of Article 2176.

Private respondents further aver that Article 33 of the New Civil Code applies only to injuries intentionally committed pursuant to the ruling in *Marcia v. CA* (120 SCRA 193 [1983]), and that the actions for damages allowed thereunder are ex-delicto. However, the term "physical injuries" in Article 33 has already been construed to include bodily injuries causing death (*Capuno v. Pepsi-Cola Bottling Co. of the Philippines* 121 Phil 638 [1965]; *Carandang v. Santiago* 97 Phil. 94 [1955]). It is not the crime of physical injuries defined in the Revised Penal Code. It includes not only physical injuries but also consummated, frustrated, and attempted homicide (*Madeja v. Caro* 126 SCRA 293 [1983]). Although in the *Marcia* case (supra), it was held that no independent civil action may be filed under Article 33 where the crime is the result of criminal negligence, it must be noted however, that *Torzuela*, the accused in the case at bar, is charged with homicide, not with reckless imprudence, whereas the defendant in *Marcia* was charged with reckless imprudence. Therefore, in this case, a civil action based on Article 33 lies.

Private respondents also contend that their liability is subsidiary under the Revised Penal Code; and that they are not liable for *Torzuela's* act which is beyond the scope of his duties as a security guard. It having been established that the instant action is not ex-delicto, petitioners may proceed directly against *Torzuela* and the private respondents. Under Article 2180 of the New Civil Code as aforequoted, when an injury is caused by the negligence of the employee, there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after selection or both (*Layugan v. Intermediate Appellate Court* 167 SCRA 363 [1988]). The liability of the employer under Article 2180 is direct and immediate; it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee (*Kapalaran Bus Lines v. Coronado* 176 SCRA 792 [1989]). Therefore, it is incumbent upon the private respondents to prove that they exercised the diligence of a good father of a family in the selection and supervision of their employee.

Since Article 2176 covers not only acts of negligence but also acts which are intentional and voluntary, it was therefore erroneous on the part of the trial court to dismiss petitioner's complaint simply because it failed to make allegations of attendant negligence attributable to private respondents.

With respect to the issue of whether the complaint at hand states a sufficient cause of action, the general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendants if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages (*Del Bros Hotel Corporation v. CA*, 210 SCRA 33 [1992]); *Development Bank of the Philippines v. Pundogar* 218 SCRA 118 [1993]).

This Court finds, under the foregoing premises, that the complaint sufficiently alleged an actionable breach on the part of the defendant Torzuela and respondents SUPERGUARD and/or SAFEGUARD. It is enough that the complaint alleged that Benigno Torzuela shot Napoleon Dulay resulting in the latter's death; that the shooting occurred while Torzuela was on duty; and that either SUPERGUARD and/or SAFEGUARD was Torzuela's employer and responsible for his acts. This does not operate however, to establish that the defendants below are liable. Whether or not the shooting was actually reckless and wanton or attended by negligence and whether it was actually done within the scope of Torzuela's duties; whether the private respondents SUPERGUARD and/or SAFEGUARD failed to exercise the diligence of a good father of a family; and whether the defendants are actually liable, are questions which can be better resolved after trial on the merits where each party can present evidence to prove their respective allegations and defenses.

In determining whether the allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege the facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case (*Del Bros Hotel Corporation v. CA*, supra). If the allegations in a complaint can furnish a sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants (*Rava Dev't. Corp. v. CA* 211 SCRA 152 [1992] citing *Consolidated Bank & Trust Corporation v. Court of Appeals*, 197 SCRA 663 [1991]). To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite or uncertain (*Azur v. Provincial Board* 27 SCRA 50 [1969]). Since the petitioners clearly sustained an injury to their rights under the law, it would be more just to allow them to present evidence of such injury.

WHEREFORE, premises considered, the petition for review is hereby GRANTED. The decision of the Court of Appeals as well as the Order of the Regional Trial Court dated April 13, 1989 are hereby REVERSED and SET ASIDE. Civil Case No. Q-89-1751 is remanded to the Regional Trial Court for trial on the merits. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

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