CORA VERGARA, PETITIONER, VS. THE COURT OF APPEALS, HON. CAMILO O. MONTESA, JR., PRESIDING JUDGE, RTC-MALOLOS, BR. 19 AND SPS. NAZARIO AND ZENAIDA BARRETO, RESPONDENTS.

G.R. No. 117929. November 26, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Challenged in this petition for review on certiorari is the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 33889[1] which upheld the Orders of the Regional Trial Court, Malolos, Bulacan, Branch 19 in Civil Case No. 915-M-93[2], denying herein petitioner Cora Vergara's motion to dismiss filed on the ground that the complaint states no cause of action before the court a quo.

The following antecedent facts are uncontroverted:

A complaint for recovery of sum of money with damages was filed by herein private respondents Nazario and Zenaida Baretto against petitioner Cora Vergara before the said court. The complaint alleged that on May 28, 1993, petitioner's husband borrowed the amount of Fifty Thousand (P50,000.00) Pesos from the private respondents and executed a promissory note to pay at any time within the month of June of that year; that on June 25, 1993, petitioner's husband died without paying the amount loaned; and that on July 15, 1993, herein petitioner executed another promissory note undertaking to pay the loan. The promissory notes signed by the late husband and by herein petitioner were annexed to the complaint. Unable to collect from petitioner despite several demands, private respondents instituted the aforesaid complaint on November 12, 1993.

On January 14, 1994, petitioner filed a motion to dismiss the complaint on the ground that the complaint states no cause of action pursuant to Section 1(g), Rule 16 of the Rules of Court. Petitioner reasoned out in said motion that the complaint being a money claim against her deceased husband should be filed in accordance with the procedure laid down in Section 1, Rule 87 of the Rules of Court which provides that all money claims against deceased persons should be recovered in the estate proceedings. The motion was denied by the court a quo in an Order dated February 7, 1994, and required the petitioner Cora Vergara to file her answer within ten (10) days from receipt thereof. The Order reads:

> "The grounds relied upon by defendant in her motion to dismiss being not indubitable and apparently evidentiary in nature which requires trial thereof to substantiate her defense, the motion to dismiss is hereby denied due course.
>
> WHEREFORE, defendant is hereby directed to file her answer to the complaint within ten (10) days from receipt hereof."[3]

Subsequently, a motion for reconsideration was filed which was likewise denied in an Order dated March 7, 1994.

Aggrieved, petitioner filed a special civil action for certiorari before the Court of Appeals which as mentioned at the outset affirmed the above rulings of the RTC.

Hence, the instant petition on the following grounds:

> I
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> RESPONDENT CA ERRED IN SUSTAINING THE ORDERS OF RESPONDENT JUDGE DEFERRING RESOLUTION OF PETITIONER'S MOTION TO DISMISS GROUNDED ON FAILURE TO STATE A SUFFICIENT CAUSE OF ACTION UNTIL AFTER TRIAL ON THE MERITS.
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> II
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> RESPONDENT CA ERRED IN SUSTAINING RESPONDENT JUDGE'S ORDERS SHORTENING PETITIONER'S PERIOD TO ANSWER FROM FIFTEEN (15) DAYS TO TEN (10) DAYS FROM RECEIPT OF THE ORDER DENYING (DEFERRING) THE MOTION TO DISMISS.[4]

The petition is devoid of merit.

As regards the first issue raised by petitioner, the Court of Appeals did not err in upholding the court a quo's denial of petitioner's motion to dismiss for the reason that a motion to dismiss based on the fact that the complaint states no cause of action can only be determined by considering the facts alleged in the complaint and no other.[5]

In the case of Parañaque King Enterprises, Inc. vs. Court of Appeals[6], this Court stated thus:

> "A cause of action exists if the following elements are present: (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 defendant to the plaintiff for which the latter may maintain an action for recovery of damages.
>
> In determining whether 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 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. 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."[7]

Briefly stated, lack of cause of action, as a ground for a motion to dismiss, must appear on the face of the complaint itself, meaning that it must be determined from the allegations of the complaint and from none other.[8] A perusal of the complaint reveals that it sufficiently alleges an actionable breach of an obligation on the part of petitioner. The complaint against herein petitioner as defendant alleges that petitioner's husband loaned a specified sum of money from the private respondents; that a promissory note was executed by the husband in evidence thereof; that upon the death of petitioner's husband, petitioner herself executed a promissory note undertaking to pay the indebtedness. The reasons in support of the motion to dismiss that petitioner could not have assumed the obligation of her husband, and that novation could not have taken place, are defenses that could not be taken into consideration in ruling on the motion. It does not appear clearly from the face of the complaint that the private respondents are not entitled to any relief under any state of facts which could be proved within the facts alleged therein warranting the outright dismissal of the same. Hence, the denial of the motion to dismiss is not only justified but is necessary since the issue as to whether petitioner is liable to pay the loan is a question which can better be resolved after trial on the merits where each party can present evidence to prove their respective allegations and defenses.

We now come to the second part of the controverted Decision sustaining the court a quo's order giving petitioner only ten (10) days instead of fifteen (15) days to file her answer to the complaint reckoned from receipt of the order denying the motion to dismiss allegedly in violation of provisions of the Rules of Court, particularly,

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Section 1 of Rule 11[9] and Section 4 of Rule 16. The records bear out the following findings of fact by the Court of Appeals:

> "The summons was received by her on December 15, 1993, and she had been granted by the court another fifteen (15) days after the reglementary period of fifteen (15) days, or up to January 14, 1994. On said date of January 14, 1994, defendant/petitioner filed her motion to dismiss.
>
> When the respondent court denied petitioner's motion to dismiss and was ordered to file her answer within ten (10) days from receipt thereof on February 7, 1994, she was not deprived of her day in court. Petitioner received said order of denial of February 7, 1994 on February 14, 1994. She filed her motion for reconsideration to said denial on February 23, 1994 and the same was denied by the respondent court on March 7, 1994, which order was received by petitioner on March 17, 1994. She filed her answer (Ex Abundanti Cautelam) on March 28, 1994 or one (1) day late of the second ten-day period required by the court from date of her receipt of the questioned order on March 17, 1994. x x x."[10]

Consequently, petitioner was declared in default and trial proceeded ex-parte and a judgment in default rendered against her. Petitioner filed a Notice of Appeal (Ex Abundanti Cautelam) with the court a quo.

The provision in question, Section 4 of Rule 16 of the Rules of Court, cannot be any clearer:

> "Sec. 4. Time to plead. - If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period."[11]

This provision has received a categorical interpretation in Matute vs. Court of Appeals[12], wherein this pronouncement was made:

> "Rule 11, section 1 of the Revised Rules of Court gives the defendant a period of fifteen (15) days after service of summons within which to file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court. However, within the period of time for pleading, the defendant is entitled to move for dismissal of the action on any of the grounds enumerated in Rule 16. If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he receives notice of the denial or deferment, unless the court provides a different period (Rule 16, section 4). x x x."

Under this provision, where the motion to dismiss is denied, the defendant has the entire reglementary period all over again within which to file his answer reckoned from his receipt of the court's order, unless otherwise provided by said court.[13] In the instant case, the court a quo gave petitioner ten (10) days to file answer and this is reasonable as correctly pointed out by the Court of Appeals considering that "from the date respondent received the summons up to the time she filed her answer on March 29, 1994, she had a total of one hundred three (103) days."

We also note that petitioner's counsel did not bother to seek relief from the order of default in accordance with Section 3, Rule 18 of the Rules of Court.[14] Counsel did not even attempt to have the order of default set aside as provided for in said rule.

In fine, the Court of Appeals committed no reversible error in affirming the court a quo's orders denying the dismissal of the complaint.

WHEREFORE, the instant petition is hereby DENIED. The decision and resolution of the Court of Appeals dated July 27, 1994 and November 7, 1994, respectively, in CA G.R. SP No. 33889 are AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.
Purisima, J., no part, participated in the rendition of judgement below.

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[1] Penned by Justice Corona Ibay-Somera and concurred in by Justices Fidel P. Purisima and Asaali S. Isnani.

[2] Penned by Judge Camilo O. Montesa, Jr.

[3] Rollo, p. 31.

[4] Rollo, p. 14.

[5] Citing Atty. Paredes vs. IAC, 185 SCRA 134 (1990); Sumalinog vs. Doronio, 184 SCRA 187 (1990); Boncato vs. Siason, 138 SCRA 414 (1985).

[6] 268 SCRA 727 (1997).

[7] At pp. 739-740.

[8] Drilon vs. Court of Appeals, 270 SCRA 211 (1997).

[9] SECTION 1. Time to answer. - Within fifteen (15) days after service of summons the defendant shall file his answer and serve a copy thereof upon the plaintiff , unless a different period is fixed by the court.

[10] Rollo, p. 29.

[11] Emphasis supplied.

[12] 26 SCRA 768 (1969).

[13] BA Finance Corp. vs. Pineda, et al., 119 SCRA 493 (1982).

[14] SEC. 3. Relief from order of default. - A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

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