INTERNATIONAL FLAVORS AND FRAGRANCES (PHIL.), INC., PETITIONER, VS. MERLIN J. ARGOS AND JAJA C. PINEDA, RESPONDENTS.

G.R. No. 130362. September 10, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition assails the decision of the Court of Appeals dated February 7, 1997, dismissing the petition for certiorari and prohibition filed by herein petitioner as a consequence of the orders by the Regional Trial Court of Pasig, Branch 166, in Civil Case No. 65026 for damages.

Petitioner International Flavors and Fragrances (Phils.) Inc., hereafter IFFI, is a corporation organized and existing under Philippine laws. Respondents Merlin J. Argos and Jaja C. Pineda are the general manager and commercial director, respectively, of the Fragrances Division of IFFI.

In 1992, the office of managing director was created to head the corporation's operation in the Philippines. Hernan H. Costa, a Spaniard, was appointed managing director. Consequently the general managers reported directly to Costa.

Costa and respondents had serious differences. When the positions of the general managers became redundant, respondents agreed to the termination of their services. They signed a "Release, Waiver and Quitclaim" on December 10, 1993. On the same date, Costa issued a "Personnel Announcement" which described respondents as "persona non grata" and urged employees not to have further dealings with them.

On July 1, 1994, respondents filed a criminal complaint for libel resulting in the filing of two Informations against Costa docketed as Criminal Case Nos. 9917 and 9918 with the Metropolitan Trial Court of Taguig, Metro Manila.

On March 31, 1995, respondents filed a civil case for damages filed and docketed as Civil Case No. 65026 at the Regional Trial Court of Pasig, Branch 166, against Costa and IFFI, in its subsidiary capacity as employer. Herein petitioner IFFI moved to dismiss the complaint.

On October 23, 1995, the Regional Trial Court granted the motion to dismiss Civil Case No. 65026 for respondents' failure to reserve its right to institute a separate civil action.

Respondents filed a motion for reconsideration, which the trial court granted in an order dated January 9, 1996.

IFFI filed a motion to reconsider said order. This was denied. Hence, IFFI elevated the case to the Court of Appeals, reiterating the same grounds for the dismissal of the civil complaint which it invoked before the court a quo. The appellate court dismissed the petition. The dispositive portion of the Court of Appeals' decision reads:

> All told, the allegations of petitioner that the lower court has gravely abused its discretion amounting to lack of jurisdiction in issuing the orders complained of has not been substantiated.

WHEREFORE, the petition is hereby DISMISSED, with costs against petitioner.

SO ORDERED.[1]

IFFI's motion for reconsideration was denied. Hence, the present petition for review, with petitioner alleging that the Court of Appeals:

I

...GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI FILED BY HEREIN PETITIONER AND IN DENYING THE LATTER'S MOTION FOR RECONSIDERATION, THEREBY AFFIRMING THE DECISION OF THE COURT A QUO CONSIDERING THAT:

- THE COMPLAINT IS ONE TO ENFORCE THE SUBSIDIARY CIVIL LIABILITY OF PETITIONER UNDER THE REVISED PENAL CODE FOR THE ALLEGED "LIBELOUS" STATEMENTS OF ITS FORMER EMPLOYEE.

- AN EMPLOYER DOES NOT INCUR SUBSIDIARY CIVIL LIABILITY UNDER THE CIVIL CODE, BUT ONLY UNDER THE REVISED PENAL CODE. UNDER THE LATTER, AN EMPLOYER ONLY BECOMES SUBSIDIARILY LIABLE UPON CONVICTION OF THE ACCUSED EMPLOYEE AND PROOF OF HIS INSOLVENCY.

- WHILE A SEPARATE CIVIL ACTION FOR DAMAGES MAY PROCEED AGAINST HERNAN H. COSTA UNDER ARTICLE 33 OF THE CIVIL CODE, NO SUCH ACTION MAY PROCEED AGAINST PETITIONER TO ENFORCE ITS SUBSIDIARY LIABILITY AS EMPLOYER UNDER THE SAME ARTICLE.

II

...SERIOUSLY ERRED IN SUSTAINING RESPONDENTS' RIGHT TO FILE THE CIVIL CASE AGAINST PETITIONER NOTWITHSTANDING THEIR ADMITTED FAILURE TO MAKE A RESERVATION AND THEIR CONTINUED PARTICIPATION IN THE CRIMINAL CASE.

III

...FAILED TO APPRECIATE THAT RESPONDENTS' FAILURE TO RESERVE AND THEIR CONTINUED PARTICIPATION IN THE CRIMINAL CASE BAR THE FILING OF THE COMPLAINT FOR DAMAGES AGAINST MR. COSTA AND PETITIONER, CONSIDERING THAT:

- UNDER THE DOCTRINE OF LITIS PENDENTIA, THE CIVIL ACTION TO ENFORCE PETITIONER'S SUBSIDIARY CIVIL LIABILITY MUST BE DISMISSED.

- THE CIVIL ACTION TO ENFORCE PETITIONER'S SUBSIDIARY CIVIL LIABILITY MUST BE DISMISSED TO PREVENT FORUM-SHOPPING OR MULTIPLICITY OF SUITS.[2]

Despite the foregoing formulation of alleged errors, we find that petitioner raises one principal issue for the Court's resolution: Could private respondents sue petitioner for damages based on subsidiary liability in an independent civil action under Article 33 of the Civil Code, during the pendency of the criminal libel cases against petitioner's employee?

In our view, respondents' suit based on subsidiary liability of petitioner is premature.

At the outset, we are constrained to delve into the nature of Civil Case No. 65026, respondents' complaint for damages against IFFI. Petitioner avers that the Court of Appeals erred when it treated said complaint as one to

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enforce petitioner's primary liability under Article 33[3] of the Civil Code. It asserts that in so doing the appellate court introduced a new cause of action not alleged nor prayed for in respondents' complaint. Petitioner argues that a cause of action is determined by the allegations and prayer in a complaint. Respondents in their complaint did not allege that IFFI was primarily liable for damages. On the contrary, petitioner says the complaint was replete with references that IFFI was being sued in its subsidiary capacity. According to petitioner, the Court of Appeals could not, on its own, include allegations which were not in the complaint, nor could it contradict the cause of action nor change the theory of the case after petitioner had answered. While pleadings should be liberally construed, says the petitioner, liberal construction should not be abused. Misleading the adverse party should be avoided. Further, it avers that where allegations in the pleading are inconsistent, the pleader is bound by those most favorable to its opponent,[4] and consequently, respondents' complaint should not be treated as one to enforce IFFI's primary liability as the appellate court erroneously did, considering that the complaint plainly adverts to the alleged subsidiary liability of IFFI as the employer of Costa.

Respondents, on the other hand, aver that the Court of Appeals was correct in treating the action as a civil action for damages entirely separate and distinct from the criminal action that can proceed independently in accordance with Art. 33 of the Civil Code.[5] It was also correct when it recognized respondents' right to move directly against IFFI as the employer of Costa, who had long fled the country, respondents added.

On this score, we find petitioner's contentions persuasive and respondents' position untenable. The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action.[6] A perusal of the respondents' civil complaint before the regional trial court plainly shows that respondents is suing IFFI in a subsidiary and not primary capacity insofar as the damages claimed are concerned.

First, respondents entitled the complaint, "MERLIN J. ARGOS AND JAJA C. PINEDA v. MR. HERNAN COSTA, as former Managing Director of IFF (Phil.), Inc., AND INTERNATIONAL FLAVORS AND FRAGRANCES (PHILS.), INC. ... in its subsidiary capacity, as employer of Hernan H. Costa." Although the title of the complaint is not necessarily determinative of the nature of the action, it nevertheless indicates respondents' intention.[7] The designation of the nature of the action, or its title is not meaningless or of no effect in the determination of its purpose and object.[8]

Second, paragraph 2 of the complaint expressed in categorical terms that respondents were suing IFFI in its subsidiary capacity. It stated, "defendant IFFI is being sued in its subsidiary capacity as employer of Hernan H. Costa, in accordance with the pertinent provisions under the Rules of Court, the Revised Penal Code and/or the Civil Code of the Philippines."[9]

Third, respondents described the nature of such liability in paragraph 22: "... in case of his (Costa's) default, defendant (IFFI) should be held subsidiarily liable as an employer of Hernan Costa. Defendant has the absolute and sole power and authority in matters of company policies and management (Arts. 100, 101, 102 and 104 of the Revised Penal Code)."[10]

Lastly, the prayer of the complaint reads:

> WHEREFORE, it is respectfully prayed that after hearing, this Honorable Court renders judgment against the defendant, Hernan H. Costa and/or against defendant International Flavors and Fragrances (Phil.), Inc., in its subsidiary capacity (subsidiary liability) as an employer...[11]

To reiterate, nothing could be clearer than that herein respondents are suing IFFI civilly in its subsidiary capacity for Costa's alleged defamatory acts. Moreover, the appellate court could not convert allegations of subsidiary liability to read as averments of primary liability without committing a fundamental unfairness to the adverse

party.

Essential averments lacking in a pleading may not be construed into it, nor facts not alleged by a plaintiff be taken as having no existence.[12] Justice requires that a man be apprised of the nature of the action against him so that he may prepare his defense. A pleading must be construed most strictly against the pleader. He is presumed to have stated all the facts involved, and to have done so as favorably to himself as his conscience will permit. So, if material allegations were omitted, it will be presumed in the absence of an application to amend that those matters do not exist.[13] This is a basic rule in pleadings.[14]

Given the circumstances herein, could petitioner be sued for damages because of its alleged subsidiary liability under Art. 33 of the Civil Code? In instituting the action for damages with the Regional Trial Court of Pasig, Branch 166, respondents seek to enforce a civil liability allegedly arising from a crime. Obligations arising from crimes are governed by Article 1161[15] of the Civil Code, which provides that said obligations are governed by penal laws, subject to the provision of Article 2177[16] and the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of Book IV of the Civil Code.

Article 100 of the Revised Penal Code is also pertinent. It provides that every person criminally liable for a felony is also civilly liable. In default of the persons criminally liable, employers engaged in any kind of industry shall be civilly liable for felonies committed by their employees in the discharge of their duties.[17]

Article 33 of the Civil Code provides specifically that in cases of defamation, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action proceeds independently of the criminal prosecution and requires only a preponderance of evidence. In Joaquin vs. Aniceto,12 SCRA 308 (1964), we held that Article 33 contemplates an action against the employee in his primary civil liability. It does not apply to an action against the employer to enforce its subsidiary civil liability, because such liability arises only after conviction of the employee in the criminal case or when the employee is adjudged guilty of the wrongful act in a criminal action and found to have committed the offense in the discharge of his duties.[18] Any action brought against the employer based on its subsidiary liability before the conviction of its employee is premature.[19]

However, we note that by invoking the principle of respondeat superior,[20] respondents tried to rely on Art. 33 to hold IFFI primarily liable for its employee's defamatory statements. But we also find that respondents did not raise the claim of primary liability as a cause of action in its complaint before the trial court. On the contrary, they sought to enforce the alleged subsidiary liability of petitioner as the employer of Costa, the accused in pending criminal cases for libel, prematurely.

Having established that respondents did not base their civil action on petitioner IFFI's primary liability under Art. 33 but claimed damages from IFFI based on its subsidiary liability as employer of Costa, prematurely, we need not delve further on the other errors raised by petitioner. Plainly both the trial and the appellate courts erred in failing to dismiss the complaint against herein petitioner by respondents claiming subsidiary liability while the criminal libel cases against IFFI's employee, Costa, were pending before the metropolitan trial court. Nothing herein said, however, ought to prejudice the reliefs that respondents might seek at the appropriate time.

WHEREFORE, the petition is GRANTED. The decision and resolution of the Court of Appeals dated February 7, 1997 and August 28, 1997, respectively, are hereby REVERSED AND SET ASIDE. The civil complaint for damages filed and docketed as Civil Case No. 65026 before the Regional Trial Court of Pasig, Branch 166, against herein petitioner is ORDERED DISMISSED. Costs against respondents.

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SO ORDERED.

Mendoza, Buena, and De Leon, Jr., JJ., concur.
Bellosillo, (Chairman), J., no part due to personal relation to one of parties.

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[1] Rollo, p. 60.

[2] Id. at 28-29.

[3] Art. 33. Civil Code: 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.

[4] Rollo, p. 34.

[5] Supra, note 3.

[6] See Morta, Sr. vs. Occidental, G.R. No. 123417, 308 SCRA 167, 172 (1999); Andamo vs. Intermediate Appellate Court, G.R. No. 74761, 191 SCRA 195, 199 (1990).

[7] See Bulao vs. CA, G.R. No. 101983, 218 SCRA 321, 325 (1993).

[8] Alilaya vs. Española, G.R. No. L-36208, 107 SCRA 564, 569 (1981).

[9] CA Rollo, p. 48.

[10] Id. at 53.

[11] Id. at 55. Emphasis supplied.

[12] 61A Am Jur 2d 67.

[13] Id. at 67-68.

[14] See PLEADING, 71 C.J.S. 123-134.

[15] Art. 1161, Civil Code. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provision of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages.

[16] Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

[17] See ART. 102, RPC - Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments.-- In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiary liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them

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with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

ART. 103, RPC - Subsidiary civil liability of other persons.--The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

[18] See Yonaha vs. CA, G.R. No. 112346, 255 SCRA 397, 402 (1996); Franco vs. Intermediate Appellate Court, G.R. No. 71137, 178 SCRA 331, 338 (1989).

[19] Joaquin, et al. vs. Aniceto, et al., 120 Phil. 1101, 1104 (1964).

[20] Libel and Slander, 50 Am Jur 2d 686.

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