

EXPEDITO REMONTE AND SECURITY CREDIT & ACCEPTANCE CORPORATION, PLAINTIFFS AND APPELLANTS, VS. AQUILINO P. BONTO, CITY FISCAL OF LEGASPI CITY, N.B.I. AGENT NO. 20, N.B.I. AGENT N...

G.R. No. 19900. February 28, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Following, in chronological order, are the events that spawned the present proceedings, etc:

January 19, 1962—Defendants NBI agents Nos. 20, 92, 104 and 112 entered the premises of plaintiff corporation's branch office in Legaspi City, and therein investigated the personnel thereof relative to its business operations, to ascertain whether or not there was a violation of the General Banking Act, Republic Act No. 337.

On the same day defendant Aquilino P. Bonto, City Fiscal of Legaspi City, subpoenaed plaintiff Expedito Remonte, manager of the branch office aforesaid, to appear at his office on January 22, 1962 at 8:30 a.m. to testify in a criminal investigation for violation of said Republic Act No 337

January 22, 1962—Remonte and his corporation lodged with the Court of First Instance of Albay the complaint herein (Civil Case No. 2461) for injunction, to restrain defendants "from further proceeding with their investigation and examination of plaintiffs' business operations relative to the application of the provisions of the General Banking Act". They prayed that a cease-and-desist order issue ex-parte, and that after trial the injunction be made permanent. And, upon the averment that the NBI agents conducted their investigation in an unauthorized, illegal and capricious manner, plaintiffs sought indemnification in damages "to their business" estimated "at no less than P50,000.00", and counsel's fees of P10,000.00.

January 26, 1962—Defendant NBI agents filed their opposition to the petition for a writ of preliminary injunction. They assert their legal right to investigate; they allege that the business activities they investigated referred to "the solicitation or acceptance of deposits from depositors", a prerogative of a banking institution which plaintiff Security Credit & Acceptance Corporation was not. Their stand is that injunction may not issue to restrain public officers from performing acts required of them by law. January 27, 1962—Sustaining his right to conduct the investigation, defendant City Fiscal Aquilino P. Bonto similarly opposed the petition for a writ of preliminary injunction.

February 2, 1962—Defendant NBI agents registered their answer traversing the averments of the complaint.

February 3, 1962—Defendant City Fiscal moved to dismiss the complaint. Ground: Lack of cause of action.

February 5, 1962—Plaintiffs filed their reply to the oppositions of the two defendants to the issuance of a writ of preliminary injunction.

February 12, 1962—Plaintiffs registered their objection to the Fiscal's motion to dismiss.

February 20, 1962—Plaintiffs were notified of the order of the Court dated February 8, 1962, which (1) denied plaintiffs' petition for a writ of preliminary injunction and (2) dismissed the case.

February 21, 1962—Plaintiffs appealed from the order of February 8, 1962.

1. Appellants challenge the legality of the order of February 8, 1962. Their battle-cry is that they were denied their day in court. Here are the facts: The Fiscal's motion to dismiss filed on February 3 was set for hearing on February 8. But plaintiffs received copy of that motion only on February 10. They were thus unable to register their opposition until February 12.

But the sequence of dates just recited is of no moment. Plaintiffs' complaint and their petition for a writ of preliminary injunction are predicated upon their averment that the investigations being conducted by defendants "constitute usurpation of the express powers exclusively vested with the Central Bank". Evidence need not be adduced at the hearing of the motion to dismiss—it was grounded on the lack of cause of action. The Court, it is true, issued the order of February 8 before plaintiffs had received notice of the motion to dismiss, the subject thereof. But the court has had the opportunity to weigh—and actually did weigh—the written arguments of counsel for both sides before the questioned order was issued. That order so demonstrates. Indeed, prior to the date of the disputed order of February 8, the question of law raised in the motion to dismiss, namely, the right of defendants to investigate vis-a-vis plaintiffs' pretended right that such investigation was solely incumbent upon the Superintendent of Banks (whose decision is appealable to the Monetary Board and subject to judicial review), was thoroughly threshed out in defendant NBI agents' opposition of January 26, 1962 to the issuance of a writ of preliminary injunction and that of defendant fiscal's of January 27, 1962, plaintiffs reply of February 5, 1962 to the oppositions and the agents answer of February 2 to the complaint. There was nothing new in the averments of the fiscal's motion to dismiss of February 3 and plaintiffs' February 12 opposition thereto. So thoroughly discussed was the matter at issue that appellants' and appellees' briefs on appeal advanced no fresh arguments.

The purpose of the law in requiring a three-day notice of hearing of a motion, to wit: "to avoid surprises upon the opposite party and to give to the latter time to study and meet the arguments of the motion" (*J. M. Tuason & Co. vs. Magdangal*, 114 Phil. 42, January 30, 1962), has been sufficiently complied with. For, plaintiffs have had the chance to present—and in fact virtually did present—therein objection to the motion to dismiss. *De Borja, et al., vs. Tan, et al.*, 93 Phil., 167, 171. Hearing on the motion to dismiss has thus become a superfluity, a surplusage. The ends of justice have been subserved. And the court's failure to note that, on the date of hearing of said motion plaintiffs had no notice thereof, descends to the level of error without prejudice and may well be overlooked. *Section 2, Rule 1; Case, et al., vs. Jugo*, 77 Phil. 517, 522.

And if the court was wrong in not having given plaintiffs opportunity to orally argue against the motion, they could have availed of a remedy: move for the reconsideration of the order. But they did not. This harmless error which does not affect the jurisdiction of the court—may not be raised for the first time on appeal. *II Moran*, 196.3 ed., p. 429, and cases cited; *Board of Assessment Appeals vs. Manila Electric Co.*, 119 Phil. 328, January 31, 1964; *Tan Tiong Tick vs. Philippine Manufacturing Corporation*, 119 Phil. 696, February 29, 1964.

2. Appellants are correct in their assertion that the lower court in its order of dismissal passed sub-silentio their claim for damages set forth in their complaint's second cause of action. Appellants therein allege that without any authority, defendant NBI agents entered plaintiff corporation's premises (their branch office in Legaspi City) and investigated publicly the personnel therein relative to its business operations. They also charge:

"2. That defendants N.B.I. Agent Nos. 20, 92, 104 and 112 conducted their illegal examination and investigation of the business operations of the branch office of plaintiff corporation in Legaspi City in a

flagrantly capricious and harassing manner, thereby creating gross embarrassment to the plaintiffs and their personnel, as well as a wrong and vicious impression in the public mind that plaintiffs are engaged in unlawful practices;

3. That said defendants did not consider but on the contrary totally disregarded the ill and adverse effects that their unauthorized and unlawful investigation would create, and is in fact creating, to the utter damage and injury of the plaintiffs;

4. That whereas investigations of this nature when conducted by investigators of the Central Bank are characterized by manifest regard for the interest of the business being investigated, the unlawful investigation conducted on the other hand by /defendants N.B.I. Agents palpably and completely disregarded all foreseeable complications that may ordinarily result to the business of the plaintiff corporation."

N. B. I. agents by law—Section 1, Republic Act No. 157— are charged with the duty to "undertake investigations of crimes and other offenses against the laws of the Philippines, upon its own initiative and as public interest may require." Defendant agents, to say the least, were with color of authority to make that investigation. Hardly may this investigation be called "public" because it was conducted precisely inside the premises of plaintiff corporation's branch office. There is no averment in the complaint—and the record does not suggest—that plaintiffs ever objected to the investigation or, for that matter, to the manner said investigation was conducted.

Good faith is always presumed. That official duty has been regularly performed is another legal assumption that weigh heavily against plaintiffs' cause of action for damages.

The charge that the investigation was conducted in a "flagrantly capricious and harassing manner", thereby causing "gross embarrassment", and "wrong and vicious impression in the public mind"—without more—is but a legal conclusion. *Rodriguez vs. Tan*, 91 Phil. 725, 726.

Besides, plaintiffs need not be gravely concerned with the alleged gross embarrassment incidental to such investigation or to the alleged wrongful and vicious impression in the public mind that plaintiffs are engaged in unlawful practices. If they did nothing wrong, nothing they should fear. If there was no case against them, surely enough they would emerge from scrutiny fully vindicated, the more prestigious and truly deserving of public trust and confidence. Clear conscience would be the balm to assuage their concern and anxiety. People who have business dealings with them would reaffirm their confidence, settled in the belief that the corporation passed the test, so to speak.

Upon the other hand, to shackle the hands of law agents with threat of a complaint for damages for no reason at all, would only induce timidity. Such threat could even effectively muzzle them. Such a situation would embolden the criminally inclined. It is in this context that we say that—facts constituting bad faith not having been averred—once again plaintiffs' cause of action is without a leg on which to stand.

3. Plaintiffs call upon this Court to decide whether or not before the corporation officials or employees may be charged with a violation of the General Banking Act and the Central Bank Act, the Monetary Board must first make a finding as to the nature of plaintiff corporation's activities in accordance with Republic Act No. 337. They pray for injunction against the NBI agents and the fiscal.

It may be well to state here that the investigation conducted by defendant NBI agents had long since been concluded. It resulted in the filing by defendant Fiscal of a criminal information charging plaintiff corporation's officials and its manager in Legaspi City with a violation of the Central Bank Act (Republic Act 265) in

connection with the General Banking Act (Republic Act No. 337) in that they solicited or received deposits from the public, without having been previously authorized by the Monetary Board. Docketed as Criminal Case No. 3250 of the Court of First Instance (People vs. Rosendo T. Resuello, et al.), this criminal case was subsequently dismissed—for reasons undisclosed.

The injunction suit seeks to restrain defendants from further proceeding with their investigation and examination of plaintiff's business operations relative to the application of the provisions of said Republic Act No. 337. But the injunction here involved necessarily operates upon unperformed and unexecuted acts. The acts complained of have already been consummated. They cannot be undone. Status quo ante cannot be restored. Injunction may no longer be availed of. III Moran, Comments on the Rules of Court, 1963 ed. pp. 56-57, and cases cited.

More, the criminal case filed by defendant Fiscal had already been dismissed. The case thus becomes moot and academic. It is not the function of this Court to furnish an answer to a purposeless question—that no longer exists. *Arsenio Luz vs. Hon. Court of Appeals, et al.*, G. R. L-20585, September 30, 1963; *Pan American World Airways vs. PAA Employees' Assn. and CIR*, 119 Phil. 279 January 30, 1964; *Besa vs. Castelvi, et al.*, G. R. L-18421, September 28, 1964; *Castillo, et al., vs. The Provincial Board of Canvassers, et al.*, 121 Phil. 175, January 30, 1965; *Roquilod vs. Lesme*, 121 Phil. 357, March 24, 1965; *Oca et al., vs. Maiquez, et al.*, 122 Phil. 111.

In consequence, we need not pass upon the question of defendant agents' authority to make the investigation heretofore mentioned and defendant Fiscal's power to prosecute the officials of the corporation.

Conformably to the foregoing, the order appealed from is hereby affirmed. Without costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Order affirmed.

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