

REPUBLIC BANK, REPRESENTED IN THIS ACTION BY DAMASO P. PEREZ, ETC., PLAINTIFF-APPELLANT, VS. MIGUEL CUADERNO, BIENVENIDO DIZON, PABLO ROMAN, THE BOARD OF DIRECTORS OF THE REPUBL...

G.R. No. 22399. March 30, 1967

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Direct appeal from an order of the Court of First Instance of Manila, in its civil case No. 53936, dismissing the petitioner's complaint on the ground of failure to state a cause of action.

In the Court below, Damaso Perez, a stockholder of the Republic Bank, a Philippine banking corporation domiciled in Manila, instituted a deriv-ative suit for and in behalf of said Bank, against Miguel Cuaderno, Bien-venido Dizon, the Board of Directors of the Republic Bank, and the Monetary Board of the Central Bank of the Philippines. Paragraph 6 of the Complaint (Rec. on Appeal, p. 7) expressly pleaded the following:

"6. That the relator herein filed the present derivative suit without any further demand on the Board of Directors of the Republic Bank for the reason that such formal demand to institute the present complaint would be a futile formality since the members of the board are personally chosen by de-fendant Pablo Roman himself."

For a cause of action plaintiff alleged, inter alia, that Damaso Perez had complained to the Monetary Board of the Central Bank against certain frauds allegedly committed by defendant Pablo Roman, in that being chairman of the Board of Directors of the Republic Bank, and of its Executive Loan Committee, in 1957 to 1959, "in grave abuse of his fiduciary duty and tak-ing advantage of his said positions and in connivance with other officials of the Republic Bank", Roman had fraudulently granted or caused to be grant-ed loans to fictitious and non-existing persons and to their close friends, relatives and/or employees, who were in reality their dummies, on the ba-sis of fictitious and inflated appraised values of real estate properties; that said loans amounted to almost 4 million pesos; that acting upon the complaint, Miguel Cuaderno (then Governor of the Central Bank) and the Monetary Board ordered an investigation, which was carried out by Bank Examiners; that they and the Superintendent of Banks of the Central Bank reported that certain mortgage loans amounting to P2,303,400.00 were granted in violation of sections 77, 78 and 83 of the General Banking Act; that acting on said reports, the Monetary Board, of which defendant Cuaderno was a member, ordered a new Board of Directors of the Republic Bank to be elected, which was done, and subsequently approved by the Monetary Board; that on January 5, 1960, the latter accepted the offer of Pablo Roman to put up adequate security for the questioned loans made by the Republic Bank, and such security was made a condition for the resumption of the Bank's normal operations; that subsequently, the Central Bank through its Governor, Miguel Cuaderno, referred to special prosecutors of the Depart-ment of Justice on July 22, 1960, the banking frauds and violations of the Banking Act, reported by the Superintendent of Banks, for investigation and prosecution, but no information was filed up to the time of the

retirement of Cuaderno in 1961; that other similar frauds were subsequently discovered; that to neutralize the impending action against him, Pablo Roman engaged Miguel Cuaderno as technical consultant at a compensation of P12,500.00 per month, and selected Bienvenido Dizon as chairman of the Board of Directors of the Republic Bank; that the Board of Directors composed of individuals personally selected and chosen by Roman, connived and confederated in approving the appointment and selection of Cuaderno and Dizon; that such action was motivated by bad faith and without intention to protect the interest of the Republic Bank but were prompted to protect Pablo Roman from criminal prosecution; that the appointment of Cuaderno and his acceptance of the position of technical consultant are immoral, anomalous and illegal, and his compensation highly unconscionable, because court actions involving the acts of Cuaderno as Governor and Member or Chairman of the Monetary Board are still pending in court; that as member of the Monetary Board from 1961 to the end of 1962, Bienvenido Dizon exercised supervision over the Republic Bank; that the selection of Dizon as chairman of the Board of the Republic Bank after he was forced to resign from the presidency of the Philippine National Bank and from membership of the Monetary Board and within one year thereafter is in violation of section 3, sub-paragraph (d) of the Anti-Graft and Corrupt Practices Act; that both Cuaderno and Dizon were alter egos of Pablo Roman; that the Monetary Board was about to approve the appointment of Cuaderno and Dizon and would do so unless enjoined.

The complaint, therefore, prayed for a writ of preliminary injunction against the Monetary Board to prevent its confirmation of the appointments of Dizon and Cuaderno; against the Board of Directors of the Republic Bank from recognizing Cuaderno as technical consultant and Dizon as Chairman of the Board; and against Pablo Roman from appointing or selecting officers or directors of the Republic Bank, and against the recognition of any such appointees until final determination of the action. And concluded by praying that after due hearing, judgment be rendered, -?

- a) making the writ of injunction permanent;
- b) declaring the appointment of defendant Miguel Cuaderno as technical consultant with monthly compensation of P12,500.00 unconscionable, immoral, illegal and null and void;
- c) declaring the selection of defendant Bienvenido Dizon as chairman of the Board of Directors of the Republic Bank violative of Section 3, sub-paragraph (d) of Republic Act No. 5019, otherwise known as the Anti-Graft and Corrupt Practices Act, and therefore, illegal and null and void;
- d) declaring that defendant Pablo Roman, in view of his criminal liability for the fraudulent real estate mortgage loans in the Republic Bank amounting to P4 million, has no right to select or to be allowed to select person or persons who are his alter egos to manage the Republic Bank, and enjoining the defendant Board of Directors of the Republic Bank from recognizing any officers or directors appointed or selected by defendant Pablo Roman;
- e) ordering defendant Miguel Cuaderno and Bienvenido Dizon to return to the Republic Bank all amounts they may have received either in the form of compensation, remuneration or emolument, with an interest thereon at the rate of 6%; or to order defendant Pablo Roman to refund the amounts paid to said defendant Miguel Cuaderno and defendant Bienvenido Dizon, and to pay such reasonable damages to the plaintiff Republic Bank;
- f) ordering all the defendants to pay the sum of P25,00.00 as attorney's fees, including all expenses of litigation and costs of this suit.

The Monetary Board filed an answer with denials, admissions and affirmative defenses; but the other defendants filed separate motions to dismiss on practically the same grounds: no valid cause of action against the individual movants; lack of legal capacity of plaintiff-relator to sue; and non-exhaustion of intra-corporate remedies. These

motions were duly opposed by plaintiff Damaso Perez.

On October 24, 1963, the court, "taking into consideration the grounds alleged in the motions to dismiss and the opposition for the issuance of a writ of preliminary injunction and the affirmative defenses filed by the defendants and the arguments in support thereof", and "that there are already eight cases pending in the different branches of this court between practically the same parties", denied the petition for a writ of preliminary injunction and dismissed the case. The court in effect suggested that the matter at issue in the case may be presented in any of the pending eight cases by means of amended and supplemental pleadings.

Plaintiff Damaso Perez thereupon appealed to this Court.

The issue in this appeal, then, is whether or not the Court below erred in dismissing the complaint. In this connection, it should be remembered that the defenses of the Monetary Board of the Central Bank, being interposed in an answer and not in a motion to dismiss, are not here at issue. Our sole concern is with the motions to dismiss of the other defendants, Roman, Cuaderno, Dizon, and the Board of Directors of the Republic Bank.

They mainly controvert the right of plaintiff to question the appointment and selection of defendants Cuaderno and Dizon, which they contend to be the result of corporate acts with which plaintiff, as stockholder, cannot interfere. Normally, this is correct, but Philippine jurisprudence is settled that an individual stockholder is permitted to institute a derivative or representative suit on behalf of the corporation wherein he holds stock, in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is re-garded as a nominal party, with the corporation as the real party in interest (*Pascual v. Del Saz Orozco*, 19 Phil. 82, 85; *Everett v. Asia Bank-ing Corp.*, 45 Phil. 512; *Angeles v. Santos*, 64 Phil. 697; *Evangelista v. Santos*, 86 Phil. 388). Plaintiff-appellant's action here is precisely in conformity with these principles. He is neither alleging nor vindicating his own individual interest or prejudice, but the interest of the Republic Bank and the damage caused to it. The action he has brought is a derivative one, expressly manifested to be for and in behalf of the Republic Bank, because it was futile to demand action by the corporation, since its Directors were nominees and creatures of defendant Pablo Roman (Complaint, p. 6). The frauds charged by plaintiff are frauds against the Bank that redounded to its prejudice.

The complaint expressly pleads that the appointment of Cuaderno as technical consultant, and of Bienvenido Dizon to head the Board of Directors of the Republic Bank, were made only to shield Pablo Roman from criminal prosecution and not to further the interests of the Bank, and avers that both men are Roman's alter egos. There is no denying that the facts thus pleaded in the complaint constitute a cause of action for the bank: if the questioned appointments were made solely to protect Roman from criminal prosecution, by a Board composed by Roman's creatures and nominees, then the moneys disbursed in favor of Cuaderno and Dizon would be an unlawful wastage or diversion of corporate funds, since the Republic Bank would have no interest in shielding Roman, and the directors in approving the appointments would be committing a breach of trust; the Bank, therefore, could sue to nullify the appointments, enjoin disbursement of its funds to pay them, and recover those paid out for the purpose, as prayed for in the complaint in this case (*Angeles v. Santos*, *supra*).

Facts pleaded in the complaint are to be deemed accepted by the defendants who file a motion to dismiss the complaint for failure to state a cause of action. This is the cardinal principle in the matter. And, it has been ruled that the test of sufficiency of the facts alleged is whether or not the Court could render a valid judgment as prayed for, accepting as true the exclusive facts set forth in the complaint.[1] So rigid is the norm prescribed that if the Court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to trial on the merits.[2]

Defendants urge that the action is improper because the plaintiff was not authorized by the corporation to bring suit in its behalf. Any such authority could not be expected as the suit is aimed to nullify the action taken by the manager and the board of directors of the Republic Bank; and any demand for intra-corporate remedy would be futile, as expressly pleaded in the complaint. These circumstances permit a stockholder to bring a derivative suit (*Evangelista v. Santos*, 86 Phil. 394). That no other stockholder has chosen to make common cause with plaintiff Perez is irrelevant, since the smallness of plaintiff's holdings is no ground for denying him relief (*Ashwander v. TVA*, 80 L. Ed. 688). At any rate, it is yet too early in the proceedings for the absence of other stockholders to be of any significance, no issues having even been joined.

There remains the procedural question whether the corporation itself must be made party defendant. The English practice is to make the corporation a party plaintiff, while in the United States, the usage leans in favor of its being joined as party defendant (see Editorial Note, 51 LRA [NS] p. 123). Objections can be raised against either method. Absence of corporate authority would seem to militate against making the corporation a party plaintiff, while joining it as defendant places the entity in the awkward position of resisting an action instituted for its benefit. What is important is that the corporation should be made a party, in order to make the Court's judgment binding upon it, and thus bar future relitigation of the issues. On what side the corporation appears loses importance when it is considered that it lay within the power of the trial court to direct the making of such amendments of the pleadings, by adding or dropping parties, as may be required in the interest of justice (Revised Rule 3, sec. 11). Misjoinder of parties is not a ground to dismiss an action. (*Ibid.*)

We see no reason to support the contention of defendant *Bienvenido Dizon* that the action of plaintiff amounts to a quo warranto proceedings. Plaintiff Perez is not claiming title to Dizon's position as head of the Republic Bank's board of directors. The suit is aimed at preventing the waste or diversion of corporate funds in paying officers appointed solely to protect Pablo Roman from criminal prosecution, and not to carry on the corporation's banking business. Whether the complaint's allegations to such effect are true or not must be determined after due hearing.

Independently of the grounds advanced by the defendants in their motions to dismiss, the Court a quo gave as a further pretext for the dismissal of the action the pendency of eight other lawsuits between practically the same parties, reasoning that the question at issue in the present case could be incorporated in any one of the other actions by amended or supplemental pleading. We fail to see that this justifies the dismissal of the case under appeal. In the first place, there is no pretense that the cause of action here was already included in any of the other pending cases. As a matter of fact, dismissal of the present action was not sought on the ground of pendency of another action between the same parties. Secondly, the amendment of a complaint after a responsive pleading is filed, would rest upon the discretion of the party and the Court. Hence, this case cannot be dismissed simply because of the possibility that the cause of action here can be incorporated or introduced in any of those other pending cases.

In view of the foregoing, the order dismissing the complaint is reversed and set aside. The case is remanded to the court of origin with instructions to overrule the motions to dismiss and require the defendants to answer the complaint. Thereafter, the case shall be tried and decided on its merits. Costs against defendants-appellees.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] *Paminsan v. Costales*, 28 Phil. 487; *Blay v. Batangas Transportation Co.*, 80 Phil. 373; *De Jesus v. Belarmino*,

95 Phil. 366; Valencia & Co. v. Layug, G. R. No. L-11060, May 23, 1958.

[2] Piñero v. Enriquez, 84 Phil. 774; Dimayuga v. Dimayuga, 96 Phil. 860.

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