

**ATTY. SIMEON PAREDES AND ATTY. CLEMENTE PAREDES,
PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT AND
MARIA FE PEREZ, RESPONDENTS.**

G.R. No. 70717. May 08, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In December 1977, the Rural Bank of San Jose del Monte, Bulacan, as plaintiff, filed an action (Civil Case No. 79) in the Municipal Court of San Jose del Monte, Bulacan, against Francisco Casas, Estrellita C. Paredes, and Epitacio Gojo Cruz to collect a sum of money. Atty. Simeon Paredes and Atty. Clemente Paredes appeared as counsel for the defendants, Francisco Casas and Estrellita G. Paredes.

On December 12, 1977, the defendants' counsel filed in the case an "Urgent Ex-Parte Motion for Post-ponement and for Extension of Time to File Answer with Appearance." In due time, they also filed a "Motion for the Admission of Third Party Complaint Incorporated in the Answer" and "Answer with Third party Complaint, Special Defenses and Counterclaim." The latter pleading contained the following libelous and offensive allegations concerning Maria Fe Perez, manager of the rural bank, who was impleaded as a third-party defendant in the case.

"21. That sometime, on or about the middle of 1975, while the third-party defendant, Antonio Hermogenes, and the herein defendant/third-party complainant were having one of their usual drinking sessions, the former confided to the latter of his pressing need for money and pleaded with him to please accommodate him by consenting to the use of his name as applicant for a loan with the plaintiff bank to which herein third-party complainant answered that he does not know the mechanics or procedure of obtaining a loan nor that he is qualified to be a borrower since he has no piggery project to which third-party defendant, Antonio Hermogenes, countered that there is really nothing to worry about as he will see to it that the manager, third-party defendant, Maria Fe Perez, will approve it as the forms they will use for the application already bore the signatures of co-makers of good financial standing, and besides, the manager herself will have a share in the proceeds of the loan so procured;

"22. That despite the said third-party defendant's assurances that the herein third-party plaintiff was only made to appear as loan applicant in these plaintiff's blank forms to accommodate his compadre, third-party defendant Antonio Hermogenes, and without responsibilities whatsoever, the latter was shocked and surprised when he received a written demand sometime in November 1977, from the plaintiff-bank requiring him to pay a loan which in the first place he never applied for nor the proceeds of which he had not received and when he confronted herein third-party defendant, herein third-party defendant allayed his fears and pacified him, telling him not to worry as the said notice was just routinary standard operating procedure of the plaintiff and that he and the manager will see to it that the obligation will be settled;

"23. That, likewise, sometimes earlier and that is in 1976, despite the fact that the herein third-party plaintiff agreed only to accommodate his compadre, herein third-party defendant, Antonio Hermogenes, in obtaining a loan in accordance with the agreement set forth in paragraph 21 hereof, herein third party defendant was

shocked when he was charged in a criminal case for estafa for a loan he never applied for nor the proceeds [of] which he never received and when he confronted herein third-party defendant, Antonio Hermogenes, he was assured that he will talk with the manager about it and that eventually the case against him will be quashed;

"24. That the whole scheme narrated in the foregoing paragraphs 21 to 23 hereof is an unlawful and anomalous practice or transaction to which plaintiff's manager and technician pleaded herein as third-party defendants are engaged, utilizing and victimizing not a few unwary persons including herein third-party plaintiff in violation of plaintiff's charter and Central Bank rules and regulations and which anomalous and illegal practices may be the proper subject of an extensive investigation by the Central Bank of the Philippines;

"xxx xxx xxx

"26. That these abuses could not have been committed without the knowledge, tolerance and even connivance and collusion of plaintiff's manager, Maria Fe Perez." (Underlining ours; pp. 8-10, Petition.)

Reacting to the libelous imputations against her, Maria Fe Perez filed, in the CFI of Bulacan, an action for damages against Attys. Simeon Paredes and Clemente Paredes (Civil Case No. SM-872).

In their answer to Ms. Perez' damage complaint, the defendants interposed affirmative defenses, which are grounds to dismiss, among them, that the complaint states no cause of action because the libelous pleadings are absolutely privileged communication, hence, cannot be the basis of any criminal or civil action. They asked for a preliminary hearing of said affirmative defense, which the court granted.

After the preliminary hearing, the court, on October 13, 1980, dismissed Ms. Perez' complaint but it allowed the defendants (Paredeses) to present evidence on their counterclaim against her.

Perez promptly appealed to the Intermediate Appellate Court (AC-G.R. CV No. 00133). On February 11, 1985, the Appellate Court reversed the Court of First Instance and ordered it to try the merits of the damage suit. Hence, this petition for review on certiorari by the defendants attorneys.

The petition hinges on the issue of whether or not the offensive Answer with Third-Party Complaint prepared and filed by the petitioners, as counsel for the defendants-debtors in Civil Case No. 79 of the Municipal Trial Court, was absolutely privileged communication.

The finding of the Court of Appeals that the libelous allegations in defendant Casas' answer in Civil Case No. 79 were fabricated was anchored on the sworn statement (Exh. 1) of Casas that the libelous allegations were false and that he signed the pleading without being aware of its libelous contents (pp. 146--147, Rollo).

Civil Case No. 79 was an action for collection of a loan obtained by defendant Francisco Casas, with his co-defendants, Estrellita Paredes and Epitacio Gojo Cruz, as sureties. The issue, therefore, in said case was the validity or veracity of Casas' obligation. However, instead of merely denying the material allegations of the complaint regarding the loan, Casas, thru his lawyers, made impertinent allegations and slanderous charges against Ms. Perez who was not even a party in the case. The averments contained in the answer with third-party complaint to the effect (1) that plaintiff had been engaged in "unlawful and anomalous practice," utilizing and victimizing not a few unwary persons, in violation of plaintiffs' charter and Central Bank rules and regulations which may be the proper subject of an extensive investigation by the Central Bank (par. 24, pp. 9-10, Petition), and (2) that in connivance and collusion with the bank's technicians, she "misappropriated x x x for their own personal use proceeds of sales of piggery and/or poultry products of bona fide borrowers," were clearly unrelated to the issue in Civil Case No. 79 of whether or not Casas was indebted to the plaintiff bank.

While latitude is given to lawyers in pleading their client's cause, its limits should not transcend the bounds of propriety, materiality and relevance to the issues in litigation.

"x x x. It is the lawyer's duty as a member of the Bar 'to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.' " (Surigao Mineral Reservation Board vs. Cloribel, 31 SCRA 1.)

Moreover, a "pleading should contain only the plain and concise statements of the material facts and not the evidence by which they are to be proven. If the pleader goes beyond the requirements of the statute and alleges an irrelevant matter, which is libelous, he loses his privilege." (Tolentino vs. Baylosis, 1 SCRA 396.)

Could the lower court conduct a preliminary hearing on the affirmative defense of failure of the complaint to state a cause of action? The Appellate Court correctly ruled that as a defendant who moves to dismiss the complaint for failure to state a cause of action is deemed to hypothetically admit the truth of the matters alleged therein, the sufficiency of the cause of action should be determined from the allegations on the face of the complaint without need of presenting evidence on either side. Otherwise, the court would be deciding the merits of the case upon a mere motion to dismiss before the defendant has filed an answer.

"In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint."

"The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint." (Garcon vs. Redemptorist Fathers, 17 SCRA 341)

If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits. (Galeon vs. Galeon, 49 SCRA 516-521).

WHEREFORE, the petition for review is denied for lack of merit. Costs against the petitioners-appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Gancayco, J., on leave.

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