

**TRAVEL WIDE ASSOCIATED SALES (PHILS.), INC., AND TRANS  
WORLD AIRLINES, INC., PETITIONERS, VS. COURT OF APPEALS,  
DECISION SYSTEMS CORPORATION AND MANUEL A. ALCUAZ, JR.,  
RESPONDENTS.**

*G.R. No. 77356. July 15, 1991*

Ponente: CRUZ, J.

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**CRUZ, J.:**

What started out as an ordinary complaint for damages has developed into a controversy on procedure over which the Regional Trial Court and the Court of Appeals have not agreed. The petitioners are now before us and ask that the issue be resolved.

The material facts are briefly related.

Sometime in March 1975, Decision Systems Corporation and its President, Manuel A. Alcuaz, Jr., filed a complaint in the Regional Trial Court of Manila alleging that defendants Travel Wide Associated Sales (Phils.), Inc. and Trans World Airlines, Inc. had failed to comply with their obligations under Travel Pass '73 U.S.A., a package deal consisting of a TWA ticket to Los Angeles, New York and Boston, in the United States, and hotel accommodations, for which the plaintiffs had made the corresponding payment in Manila.

Acting on a motion to dismiss filed by TWA on May 16, 1975, on the ground that the complaint did not state a cause of action, the trial court ordered the plaintiffs to amend their complaint and particularize their averments. The plaintiffs complied on June 27, 1975. On July 7, 1975, and July 11, 1975, respectively, TWA and Travel Wide filed separate motions to dismiss on the ground that the amended complaint still did not state a cause of action. Both motions were denied on July 11, 1975, the trial court holding that the allegations were now "sufficiently particular."

On September 5, 1975, the defendants filed a joint answer in which they alleged the special defense that they were not the real parties-in-interest because they had acted only as agents of a disclosed principal. They reiterated this argument at the pre-trial held on October 27, 1975. Subsequently, they filed a Joint Motion for Preliminary Hearing of Special Defense, which was opposed by the plaintiffs on the ground that the special defense was barred, not having been raised in the two motions to dismiss the amended complaint. The joint motion was nevertheless granted.

After the preliminary hearing, Judge Bernardo P. Fernandez issued his order dated September 13, 1976, dismissing the complaint.[1] His finding was that Travel Wide was wily the general agent of TWA and that the latter was only an agent of a disclosed principal, namely, Tour Services, Inc. As neither of the defendants was a real party-in-interest, there could be no cause of action against them.

The motion for its reconsideration having been denied, the order was elevated to the then Intermediate Appellate Court, which, on June 30, 1983, reversed the trial court.[2] The record does not show why the separate motions

for reconsideration filed by the appellees were resolved only on January 27, 1987. At any rate, the petitioners have seasonably come to this Court to ask for the reversal instead of the respondent court and the reinstatement of the order of the trial court.

We find that the Court of Appeals did not err in setting aside the order of dismissal and remanding the case for further proceedings. We disagree, however, with the reason for its decision.

The respondent court held that the appellees should have pleaded the special defense that they were not real parties-in-interest in their motion to dismiss, conformably to the omnibus motion rule. Not having done so, they are deemed to have waived that ground, which therefore could not be used as the basis of the motion to dismiss.

The omnibus motion rule embodied in Rule 15, Section 8, of the Rules of Court reads as follows:

Sec. 8. Omnibus motion. - A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

This is reiterated in Rule 9, Section 2, which also provides for the exceptions thus:

Sec. 2. Defenses and objections not pleaded deemed waived. - Defenses and objections not pleaded either in a motion to dismiss or in an answer are deemed waived, except the failure to state a cause of action which may be alleged in a latter pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5, Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action.

The petitioners invoke Rules 16, Section 1, of the Rules of Court and argue that "the defense of not being a real party-in-interest" is not one of the grounds enumerated therein for a motion to dismiss. Consequently, they could not have pleaded it in their motion to dismiss but only in their answer as a special defense.

There seems to be a misconception here of the term "real party-in-interest."

As defined, a real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[3] Rule 3, Section 2, of the Rules of Court provides explicitly that "every action must be prosecuted and defended in the name of the real party-in-interest." The party-in-interest is one who prosecutes or defends and is benefited or injured. The term applies not only to the plaintiff but to the defendant, and the suit may be dismissed if neither of them is a real party-in-interest.[4] If the suit is not brought in the name of or against the real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action.[5]

Indeed, even if the special defense was not invoked in the motion to dismiss, it would still not be deemed waived because it is one of the two exceptions mentioned in Rules 9, Section 2, to the omnibus motion rule. The first is lack of jurisdiction, which can be invoked any time, even on appeal. The second is lack of a cause of action, which can be raised even during the trial on the merits.

It is understandable if in granting the motion for a preliminary hearing on the special defense, the trial judge relied on Rule 16, Section 5, of the Rules of Court, providing as follows:

Section 5. Pleading grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

However, the following doctrine laid down in *The Heirs of Juliana Clavano v. Genato*[6] should have guided him to the contrary, and correct, conclusion:

Besides, under this section a preliminary hearing may be had on the affirmative defenses as if a motion to dismiss had been filed. During such preliminary hearing evidence may be admitted. Nevertheless, We believe that the respondent Judge committed an error in conducting a preliminary hearing on the private respondent's affirmative defenses. It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint? Stated otherwise, the sufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground. No extraneous matter may be considered nor facts not alleged, which would require evidence and therefore must be raised as defenses and await the trial. In other words, to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no others should be considered.

The respondent Judge departed from this rule in conducting a hearing and in receiving evidence in support of the private respondent's affirmative defense, that is, lack of cause of action.

But despite all the foregoing observations, we feel that the trial court may also have erred in holding that the petitioners were mere agents of a disclosed principal and so could not be held liable on the complaint.

In disclaiming liability, the petitioners point to the stipulation on Responsibility in the Travel Pass '73 Plan brochure that "Tour Services, Inc. and/or their agents" are acting "as agents for the passengers." They stress further that the Miscellaneous Charge Order issued to Alcuaz indicated that the amount of \$218.00 was payable to Tour Services, Inc. and not to either of them. This would mean that, if at all, they were acting as agents of Tour Services, Inc. and not as principal obligors.

Without arriving at any factual conclusion, the Court believes it would be useful to make a more careful appraisal of the evidence, particularly the terms and conditions of the brochure distributed by the petitioners and the significance of the Miscellaneous Charges Order which was issued by TWA. We note that even the trial court observed the active participation of TWA in the promotion of the travel pass plan as an additional source of revenue for its airline business.

It is also worth noting that if the petitioners were indeed acting as agents of the passengers, as the brochure stipulates, they could still be held liable under Article 1909 of the Civil Code, which provides:

The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation.

The private respondent\* is entitled to prove that the petitioners did not provide adequately for the pre-paid hotel accommodations of Alcuaz, who had to incur additional expenses and was compelled to cut short his business trip because of his depleted dollar allocation. It was not established that the petitioners received any confirmation of the hotel reservations they sent and yet they did not follow up their request nor did they inform Alcuaz that they had not received confirmation. This procedure should have been followed by the petitioners as so provided in the Travel Pass '73 USA.

We sustain the respondent court in ruling that the trial court should not have dismissed the complaint, albeit nor for the reasons given in the challenged decision. Our finding is that, because the petitioners are real parties-in-interest as defendants in the suit below, the motion to dismiss for lack of a cause of action should not have been granted.

WHEREFORE, the petition is DENIED, with costs against the petitioners. It is so ordered.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

Gancayco, J., on leave.

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[1] Rollo, p. 61.

[2] Penned by Justice Quetulio-Losa, with Gaviola and Caguioa, JJ., concurring.

[3] Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125.

[4] Salmon & Pacific Commercial Co. v. Tan Cueco, 36 Phil. 556.

[5] Regalado, Remedial Law Compendium, Vol. 1, 1988 ed., p. 51.

**[6] 80 SCRA 217.**

\* Only Decision Systems Corp. now in view of the Manifestation and Motion of Manuel A. Alcuaz, Jr. dated August 3, 1989.

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