

DEL BROS HOTEL CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, AND LEON M. TIAMSAY, RESPONDENTS.

G.R. No. 87678. June 16, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

By virtue of an Agreement concluded on or about May 9, 1984, herein petitioner Delgado Brothers Hotel Corp. (DBHC) engaged private respondent Leon H. Tiamsay as its Consultant to negotiate: (a) the sale of the DBC hotel building located at the corner of Maria Orosa and UN Ave., Ermita, Manila; (b) the management agreement between DHC and Hilton International; and (c) the sale of the DHC shares.[1]

The Agreement specifically provided:

1. DHC (Delbros Hotel Corporation, petitioner herein) hereby appoints Consultant as DHC's consultant. As consultant of DHC, the Consultant will (a) negotiate with the GSIS and/or other financial institutions or corporations for the sale to the GSIS and/or other financial institution or corporation of the entire building owned by DHC situated at the Corner of Maria Orosa and United Nations Avenue, Ermita, Manila, which is presently used as a five-star hotel managed and operated by Hilton International, under the parameters to be specified in writing by the Chairman of the Board of DHC; (b) negotiate with the said Hilton International the existing Management Agreement between DHC and Hilton International for the purpose of raising the ceiling of the share of DHC in the 'Gross Operating Profit' from P7 million to P10 million and in the event that Consultant is unsuccessful in this regard then Consultant will try to work out or negotiate for the termination of the DHC-Hilton International Management Agreement under the parameters specified in writing by the Chairman of the Board of DHC; and (c) negotiate with prospective buyers for the acquisition of DHC shares.

x x x

3. Consultant shall be paid by DHC the following compensation, fees or commission:

a) For the sale of DHC building, Consultant will be paid a compensation/commission by DHC equal to five percent (5%) of the purchase price for the said building. Documentation costs will be for the account of DHC.

b) For the amendment of the Management Agreement between DHC and Hilton International or termination of said agreement, Consultant will be paid by DHC a compensation/fee equivalent to the Central Bank Peso value of US\$125,000.00 at the time of payment. It is understood that this compensation/fee is exclusive of the costs of negotiations to be incurred by Consultant, such as first class transportation, hotel and other travelling expenses and documentation costs, which shall be for the account of DHC. The incurring of such costs shall be subject to the prior approval of the Chairman of the Board of DHC, which approval shall not be unreasonably withheld.

4. The fee or commission of Consultant shall be promptly paid by DHC to Consultant as follows:

a) Fifty percent (50%) of the amount agreed, upon completion and signing of the basic agreement covering any or all of the work assignments of Consultant; and

b) The balance of fifty percent (50%) of the amount agreed, upon completion and execution of all the documents required to be executed covering the transaction.

c) The fee or commission of Consultant shall be paid by DHC to the Consultant in cash.

5. DHC shall advance to Consultant Forty Thousand Pesos (P40,000.00) Philippine currency per month, payable within the first five (5) days of each month, during the effectivity of this agreement or any extension thereof. The total amount of such advances paid by DHC to Consultant shall be deducted from the fee or commission payable by DHC to Consultant. In the event of an unsuccessful implementation of all the undertakings of consultant after consistent and continuing efforts, the advances already paid to Consultant shall not be subject to reimbursement by the Consultant and will be treated as an expense of DHC.

On July 27, 1987, Tiamsay filed a complaint against DHC. This was amended on August 19, 1987. The plaintiff sought the recovery from the defendant of the sum of P1,549,118.65 as his commission for the sale of the DBC hotel building, in accordance with their Agreement. It was alleged that DHC had continuously refused to pay him the said amount despite demands and thereby incurred liability not only for the said amount but also for moral and exemplary damages, attorney's fees and costs.[2]

On September 18, 1987, DHC moved to dismiss the amended complaint for failure to state a cause of action. The motion averred that there was no allegation in the said complaint that the sale of the DBC hotel building, which was the condition sine qua non set forth in the Agreement for its obligation to pay the commission, had been consummated.[3]

On November 23, 1987, the Regional Trial Court of Makati, through Judge Consuelo Ynares Santiago, denied the motion thus:

x x x Plaintiff has sufficiently alleged the existence of a contract between him and the defendants, that the said contract calls for the performance of certain acts by the plaintiff which he allegedly was able to comply with, and that for such performance he is entitled to some compensation, that defendant has failed to compensate plaintiff for the performance of such acts despite demand for payment.

It is settled that for the purpose of determining the sufficiency of a cause of action, trial courts do not go beyond what is called in the pleadings. The truth of what is alleged in the complaint is hypothetically taken as established and on that basis the court determines whether it can render a valid judgment and this court believes it can.

On January 6, 1989, this order was affirmed by the Court of Appeals, which disagreed with the petitioner's argument that the amended complaint was deficient. In upholding the trial court, the Court of Appeals observed inter alia that there was reason "to presumptively conclude" that Tiamsay was entitled to the payment of 50% of the commission as provided for in Par. 4(a) even before the occurrence of the conditions contemplated in Par. 4(b), to wit, the completion and signing of all the documents covering the transaction that were required to be executed.[4]

DHC is now before this Court to seek relief from that decision.

In this petition, DHC contends that in finding that the complaint stated a cause of action, the respondent court misappreciated Secs. 4(a) and (b) of the Agreement.

DHC argues that it is not Sec. 4(a) that governs the case but Sec. 5 of the Agreement, which reads:

5. DHC shall advance to Consultant Forty Thousand Pesos (P40,000.00) Philippine currency per month, payable within the first five (5) days of each month, during the effectivity of this agreement or any extension thereof. The total amount of such advances paid by DHC to Consultant shall be deducted from the fee or

commission payable by DHC to Consultant. In the event of an unsuccessful implementation of all of the undertakings of Consultant after consistent and continuing efforts, the advances already paid to Consultant shall not be subject to reimbursement by the Consultant and will be treated as an expense of DHC. (Agreement of March 1984)

The petitioner maintains that, contrary to Tiamsay's claim, Secs. 4(a) and (b) apply only when there is a consummated sale of the subject property. If such sale is not effected, it is Sec. 5 that determines the obligations of the parties.

Sec. 5 provides that for the private respondent's effort to negotiate with the GSIS for the sale of the Hilton Hotel, he shall be paid an advance of P40,000.00 per month while the agreement is in force. If the purchase is effected, Sec. 4(a) and (b), providing for the payment of a sale commission, shall then apply. The commission (equal to 5% of whatever is the final price paid) shall become due in two 50% installments. The monthly advances already paid to the private respondent under Sec. 5 shall be considered part of the final commission due.

The petitioner stresses that it is impossible to implement Sec. 4(a) without an actual sale having been consummated because there would be no purchase price to use as basis for computing the stipulated 5% commission.

For his part, the private respondent maintains that as a consultant and not as a real estate broker, his duty was merely to "negotiate" with the GSIS and/or other financial institutions for the sale of the hotel building. There is nothing in the Agreement requiring consummation of the sale before he can be compensated for his efforts as consultant.

He points out that the basic service referred to in the Agreement has been accomplished, as evidenced by a GSIS Board approval of the sale. For him to be able to recover under Par. 4(a), it is not necessary that the final sale documents be executed since this requirement would fall under par. 4(b).

The Court has considered the arguments of the parties and finds that there is a necessity to define the real issue in contention and, as it were, put the parties on the right track.

The only issue to be resolved in this petition is whether or not the amended complaint as worded states a cause of action. We are not concerned at this time with the proof of that cause of action. Our only concern now is whether or not this cause of action has been sufficiently stated by the allegations in the amended complaint.

This Court has repeatedly emphasized that the test of the sufficiency of the facts alleged in a complaint is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of the plaintiff. Stated otherwise, the insufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground, for in the determination of whether or not a complaint states a cause of action, only the facts alleged therein and no other matter may be considered. The court may not inquire into the truth of the allegations and find them to be false before a hearing is had on the merits of the case; and it is improper to inject in the allegations of the complaint facts not alleged or proved, and use these as basis for said motion.[5]

In the case before us, it is necessary to read the allegations in the complaint as hypothetically admitted with the provisions of the Agreement concluded by the petitioner and the private respondent.

Under Par. 3 of the Agreement, the private respondent is to be paid the following "compensation, fee or commission:"

- a) For the sale of DHC building, Consultant will be paid a compensation/commission by DHC equal to five

percent (5%) of the purchase price for the said building. Documentation costs will be for the account of DHC.

b) For the amendment of the Management Agreement between DHC and Hilton International or termination of said agreement, Consultant will be paid by DHC a compensation/fee equivalent to the Central Bank Peso value of US\$125,000.00 at the time of payment. It is understood that this compensation/fee is exclusive of the costs of negotiations to be incurred by Consultant, such as first class transportation, hotel and other travelling expenses and documentation costs, which shall be for the account of DHC. The incurring of such costs shall be subject to the prior approval of the Chairman of the Board of DHC, which approval shall not be unreasonably withheld.

Under Par. 4, payment is to be made in the following manner:

- a) Fifty percent (50%) of the amount agreed, upon completion and signing of the basic agreement covering any or all of the work assignments of Consultant; and
- b) The balance of fifty percent (50%) of the amount agreed, upon completion and execution of all the documents required to be executed covering the transaction.
- c) The fee or commission of Consultant shall be paid by DHC to the Consultant in cash.

Par. 5 of the Agreement also provides for the monthly advances to be made to the private respondent, as follows:

5. DHC shall advance to Consultant Forty Thousand Pesos (P40,000.00) Philippine currency per month, payable within the first five (5) days of each month, during the effectivity of this agreement or any extension thereof. The total amount of such advances paid by DHC to Consultant shall be deducted from the fee or commission payable by DHC to Consultant. In the event of an unsuccessful implementation of all of the undertakings of Consultant after consistent and continuing efforts, the advances already paid to Consultant shall not be subject to reimbursement by the Consultant and will be treated as an expense of DHC.

In connection with these stipulations, the following allegations were made in the amended complaint:

5. Notwithstanding the arrival of the expiry date of the Agreement as extended by the Board Resolution of 27 March 1985, the parties continued to honor their contractual commitments under the Agreement with defendant delivering the advances due plaintiff and plaintiff performing his duties and/or services as provided for in the Agreement.

As a result, the following were accomplished:

a) By GSIS Board Resolution No. 143 dated 7 February 1985, GSIS approved the proposal of defendant made through plaintiff for the sale and/or lease-purchase of the Manila Hilton International Hotel Building and major equipment owned by defendant to the GSIS;

Copy of Board Resolution No. 143 is herewith attached as Annex "B."

b) By GSIS Board Resolution No. 446 dated 17 May 1985, the GSIS approved the request of the defendant made through the plaintiff for the amendment of Resolution No. 143 with respect to the yield from rentals.

Copy of Board Resolution No. 446 is herewith attached as Annex "C."

5.1. From May 1985 to December 1985 and without plaintiff's fault, defendant delayed the drafting and execution of the agreements with the GSIS. Without defendant's delay, the agreements with the GSIS could have been executed by the earlier part of the period from May to December of 1985 pursuant to the GSIS Board resolutions.

5.1.2. By December of 1985, however, the drafts of the agreements arising out of the negotiations with the GSIS were finalized (hereinafter referred to as the "December 1985" drafts).

Copies of the December 1985 drafts of the agreements are herewith attached as Annexes "D" and "E." (There is no Annex "F.") Both should properly refer to the date of January 1986, January 1985 of the other Agreement being mere typographical error.

5.2. Subsequently, the GSIS board of trustees was reorganized after February 1986 and a new set of top officers of the said corporation reviewed the position of their predecessors.

6. Plaintiff likewise performed his other commitments under the Agreement. He negotiated with HI to raise the ceiling of the share of defendant in the Gross Operating Profit. Subsequently, he negotiated for the amicable termination of the management agreement by and between defendant and HI. He continued to perform services for defendant in the court case for the termination of the said agreement pending between defendant and HI.

A cause of action has three elements, namely: 1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2) an obligation on the part of the named defendant to respect or not to violate such right; and 3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[6]

The Court has carefully examined the amended complaint and finds that it alleges all the above-stated elements. The plaintiff avers that he was engaged under the Agreement to perform certain tasks, among them the negotiation for the sale of the defendant's building, for which he was to be paid a specified commission if he succeeded. He claims he did succeed in these negotiations with the approval by the GSIS board of directors of the sale as proposed by him on behalf of the defendant. If the sale did not materialize, it was because of the defendant's delay, which prevented the signing of the basic agreements until the transaction fell through with the reorganization of the GSIS board of directors. The plaintiff adds that he made a request for the payment of his commission and the defendant initially manifested its willingness to submit the matter to arbitration. Nothing came out of it, however, prompting him to serve demands on the defendant, which ignored the same in bad faith. For all this, he seeks payment not only of the commission but also moral and exemplary damages, attorney's fees and the costs of the suit.

In the view of this Court, these allegations sufficiently state a cause of action. The complaint does not have to establish or allege the facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. In fact, the complaint is not supposed to contain evidentiary matters.[7] Rule 6, Section 3 of the Rules of Court provides that this petition must be limited to "a concise statement of the ultimate facts constituting the plaintiff's cause or causes of action." We find that the amended complaint complies with this requirement.

To repeat, the main contention of the petitioner in moving to dismiss the amended complaint for failure to state a cause of action is that no final documents of sale had been signed because the proposal approved by the GSIS board of directors was not in conformity to the conditions laid down by its own board of directors. And as no sale had been consummated, the private respondent is not entitled to any commission, which in fact cannot be ascertained as it is supposed to be 5% of a non-existent purchase price.

These are matters of defense not proper in a motion to dismiss for failure to state a cause of action. They should be pleaded in the answer, to be resolved after the trial on the basis of the arguments and evidence submitted by the parties. The only question presented by the motion to dismiss is the sufficiency of the allegations in the complaint which, for purposes of the motion, are deemed hypothetically admitted. It bears stressing that the test of the sufficiency is whether or not, assuming them to be true, a valid judgment can be rendered thereon by the trial court. In the affirmative case, the motion to dismiss must be denied. As this Court has held, "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 hear the case on the merits." [8]

This dictum is in line with the policy that motions to dismiss should not be lightly granted where the ground invoked is not indubitable, as in the case before us. In such situation, the objections to the complaint must be embodied in the answer as denials or special and affirmative defenses and threshed out in a full-blown trial on the merits. As the Court of Appeals correctly concluded:

The question of whether private respondent had in fact performed these and the other functions incumbent on him under the agreement is one that has no bearing on the sufficiency of the cause of action or the lack of it. Private respondent alleged he had and the question has therefore become a matter of proof, and one that cannot be determined in a motion to dismiss; it requires full-dress proceedings.

The parties have gone to great lengths in analyzing the provisions of the Agreement in support of their respective positions, but there was really no need to do so in the present petition. There will be time enough for that in the lower court after responsive pleadings are filed and issues are joined for eventual trial of the case.

We are convinced that the allegations in the amended complaint, assuming them to be true, are sufficient to state a cause of action against the petitioner. We therefore hold that the respondent court did not err in affirming the order of the lower court denying the motion to dismiss.

ACCORDINGLY, the petition is DENIED, with costs against the petitioner. It is so ordered.

Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Annex C, Rollo, p. 38.

[2] Annex D, Ibid., p. 49.

[3] Annex E, Id., pp. 52-57.

[4] Annex A, id., p. 35.

[5] Garcon vs. Redemptorist Fathers, 17 SCRA 341; Zobel vs. Abreu, 98 Phil. 343.

[6] Cole vs. Gregorio, 116 SCRA 670; Nabus vs. Court of Appeals, G.R. No. 91670, February 7, 1991.

[7] Rule 8, Section 1, Rules of Court.

[8] Republic Bank vs. Cuaderno, 19 SCRA 677; Boncato vs. Siason, 138 SCRA 414; Sumalinog vs. Doronio, 184 SCRA 187.

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