Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

ASIA BREWERY, INC. and CHARLIE S. GO,
Petitioners,

- versus -

EQUITABLE PCI BANK (now BANCO DE ORO-EPCI, INC.)
Respondent.

G. R. No. 190432

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DECASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:
APR 25 2017

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DECISION

SERENO, *CJ:*

This is a petition for review[1] under Rule 45 assailing the Orders[2] of the Regional Trial Court (RTC) of Makati City in Civil Case No. 04-336. The RTC ordered the dismissal of petitioners' Complaint for lack of cause of action and denied their motion for reconsideration.

Petitioner Asia Brewery, Inc. (ABI) is a corporation organized and existing under the laws of the Philippines, while petitioner Charlie S. Go (Go) was, at the time of the filing of this Petition, its assistant vice president for finance.[3] Respondent is a banking institution also organized and existing under the laws of the Philippines.[4]

On 23 March 2004, petitioners filed a Complaint[5] for payment, reimbursement, or restitution against respondent before the RTC. On 7 May 2004, the latter filed its Answer (with Counterclaims),[6] in which it also

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[1] Mistakenly labeled "Petition for Certiorari"; *rollo*, pp. 9-43

[2] Order dated 30 January 2008 issued by Judge Benjamin T. Pozon as presiding judge of Branch 139 of the RTC-Makati, id. at 168-171; and Order dated 23 November 2009 issued by Judge Winlove Dumayas as presiding judge of Branch 59 of the RTC-Makati, id. at 217.

[3] Id. at 10-11.

[4] Id. at 10.

[5] Id. at 44-51.

[6] Id. at 97-120.

raised the special and/or affirmative defense of lack of cause of action, among others.

Records show that after an exchange of pleadings between the parties,[7] the RTC issued the assailed Orders without proceeding to trial. It dismissed the Complaint for lack of cause of action, and also denied respondent's counterclaims. Respondent did not appeal from that ruling. Only petitioners moved for reconsideration, but their motion was likewise denied.

ANTECEDENT FACTS

The antecedent facts, as alleged by petitioners, are as follows:

Within the period of September 1996 to July 1998, 10 checks and 16 demand drafts (collectively, "instruments") were issued in the name of Charlie Go.[8] The instruments, with a total value of ₱3,785,257.38, bore the annotation "endorsed by PCI Bank, Ayala Branch, All Prior Endorsement And/Or Lack of Endorsement Guaranteed."[9] All the demand drafts, except those issued by the Lucena City and Ozamis branches of Allied Bank, were crossed.[10]

In their Complaint, petitioners narrate:

> 10. None of the above checks and demand drafts set out under the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action reached payee, co-plaintiff Charlie S. Go.
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> 11. All of the above checks and demand drafts fell into the hands of a certain Raymond U. Keh, then a Sales Accounting Manager of plaintiff Asia Brewery, Inc., who falsely, willfully, and maliciously pretending to be the payee, co-plaintiff Charlie S. Go, succeeded in opening accounts with defendant Equitable PCI Bank in the name of Charlie Go and thereafter deposited the said checks and demand drafts in said accounts and withdrew the proceeds thereof to the damage and prejudice of plaintiff Asia Brewery, Inc.[11]

Raymond Keh was allegedly charged with and convicted of theft and ordered to pay the value of the checks, but not a single centavo was

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[7] On 18 May 2004, petitioners filed their Answer to Counterclaims (*see* Records, pp. 103-105). On 25 May 2004, the RTC issued a Notice setting the affirmative defenses for hearing (*see* Records, p. 106). On the date of the scheduled hearing, counsel for petitioner was given 15 days to file a Comment/Opposition to the affirmative defenses, and counsel for respondent was likewise given the same period from receipt to file a Reply; thereafter the matter will be considered submitted for resolution (*see* Minutes of the session held on 25 June 2004, Records, p. 107; Order dated 25 June 2004, p. 108). Hence on 8 July 2004, petitioners filed their Comment/Opposition (*see* Records, pp. 109-118). Respondent then filed a Reply, to which petitioners filed a Rejoinder dated 4 August 2004 (*see* Records, pp. 119-129, 132-140).

[8] Id. at 11.

[9] Id.

[10] Id.

[11] Id. at 47.

collected, because he jumped bail and left the country while the cases were still being tried.[12]

In demanding payment from respondent, petitioners relied on *Associated Bank v. CA,*[13] in which this Court held "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received."[14]

In its Answer, respondent interpreted paragraphs 10 and 11 of the Complaint as an admission that the instruments had not been delivered to the payee, petitioner Go.[15] It argued that the Complaint failed to state a cause of action and that petitioners had no cause of action against it, because 1) the Complaint failed to indicate that ABI was a party to any of the instruments;[16] and 2) Go never became the holder or owner of the instruments due to nondelivery and, hence, did not acquire any right or interest.[17] Respondent also opined that the claims were only enforceable against the drawers of the checks and the purchasers of the demand drafts, and not against it as a mere "presentor bank," because the nondelivery to Go was analogous to payment to a wrong party.[18]

Respondent argued that *Development Bank of Rizal v. Sima Wei*[19] was squarely applicable to the case and cited these portions of the Decision therein:[20]

> Thus, the payee of a negotiable instrument acquires no interest with respect thereto until its delivery to him. Delivery of an instrument means transfer of possession, actual or constructive, from one person to another. Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.
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> The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action, *founded on said checks*, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.
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> x x x x
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> However, insofar as the other respondents are concerned, petitioner Bank has no privity with them. Since petitioner Bank never received the checks on which it based its action against said respondents, it never owned them (the checks) nor did it acquire any interest therein. Thus,

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[12] Id. at 47-48.
[13] 284 Phil. 615 (1992).
[14] *Rollo*, p. 48.
[15] Id. at 102.
[16] Id. at 100.
[17] Id. at 103.
[18] Id. at 104, 106-109.
[19] 219 SCRA 736, 9 March 1993.
[20] Id. at 740-742.

> anything which the respondents may have done with respect to said checks could not have prejudiced petitioner Bank. It had no right or interest in the checks which could have been violated by said respondents. Petitioner Bank has therefore no cause of action against said respondents, in the alternative or otherwise. If at all, it is Sima Wei, the drawer, who would have a cause of action against her co-respondents, if the allegations in the complaint are found to be true.

The RTC agreed with respondent that *Development Bank v. Sima Wei* was applicable.[21] It ruled that petitioners could not have any cause of action against respondent, because the instruments had never been delivered; and that the cause of action pertained to the drawers of the checks and the purchasers of the demand drafts.[22] As to the propriety of a direct suit against respondent, the trial court found that the former exercised diligence in ascertaining the true identity of Charlie Go, although he later turned out to be an impostor. This was unlike the finding in *Associated Bank v. CA*[23] where the collecting bank allowed a person who was clearly not the payee to deposit the checks and withdraw the amounts.[24]

ISSUES

Petitioners argue that the trial court seriously erred in dismissing their Complaint for lack of cause of action. They maintain that the allegations were sufficient to establish a cause of action in favor of Go.[25] They insist that the allegation that the instruments were payable to Go was sufficient to establish a cause of action.[26] According to them, the fact that the instruments never reached the payee did not mean that there was no delivery, because delivery can be either actual or constructive.[27] They point out that Section 16 of the Negotiable Instruments Law even provides for a presumption of delivery.[28] They further argue that the defense of lack of delivery is personal to the maker or drawer, and that respondent was neither.[29] Petitioners emphasize that all the instruments were crossed (except those issued by the Lucena and Ozamis branches of Allied Bank) and bore the annotation by respondent that: "[A]ll prior endorsement and/or lack of endorsement guaranteed." In this light, the bank was allegedly estopped from claiming nondelivery.[30]

Petitioners observe that there was no other reason given for the dismissal of the case aside from lack of cause of action. They stress that not a single witness or documentary evidence was presented in support of the affirmative defense.[31]

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[21] *Rollo*, p. 168.
[22] Id. at 170.
[23] Supra note 13.
[24] *Rollo*, pp. 170-171.
[25] Id. at 22.
[26] Id. at 23.
[27] Id. at 25.
[28] Id.
[29] Id. at 32.
[30] Id. at 33.
[31] Id. at 22.

COURT'S RULING

A reading of the Order dated 30 January 2008 reveals that the RTC dismissed the Complaint for lack of cause of action prior to trial. At that time, this Court, in the 2003 case *Bank of America NT&SA v. CA,*[32] had already emphasized that lack or absence of cause of action is not a ground for the dismissal of a complaint; and that the issue may only be raised after questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented.

In this case, the trial court proceeded to rule in favor of the dismissal simply because it believed that the facts of another case were "[o]n all fours [with] the instant controversy."[33] It was gravely erroneous, and deeply alarming, for the RTC to have reached such a conclusion without first establishing the facts of the case pending before it. It must be noted that the documents submitted to it were mere photocopies that had yet to be examined, proven, authenticated, and admitted.

We are compelled to correct this glaring and serious error committed by the trial court. Accordingly, we grant the petition.

Failure to state a cause of action is not the same as ***lack*** of cause of action; the terms are not interchangeable. It may be observed that lack of cause of action is not among the grounds that may be raised in a motion to dismiss under Rule 16 of the Rules of Court. The dismissal of a Complaint for lack of cause of action is based on Section 1 of Rule 33, which provides:

> Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Emphasis supplied)

If the Complaint ***fails to state*** a cause of action, a motion to dismiss must be made before a responsive pleading is filed; and the issue can be resolved only on the basis of the allegations in the initiatory pleading.[34] On the other hand, if the Complaint ***lacks*** a cause of action, the motion to dismiss must be filed after the plaintiff has rested its case.[35]

In the first situation, the veracity of the allegations is immaterial; however, in the second situation, the judge must determine the veracity of the allegations based on the evidence presented.[36]

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[32] 448 Phil. 181 (2003).
[33] *Rollo*, p. 168.
[34] See *Pamaran v. Bank of Commerce*, G.R. No. 205753, 4 July 2016.
[35] Id.
[36] Id., citing *The Manila Banking Corporation v. University of Baguio, Inc.*, 545 Phil. 268, 275 (2007).

In *PNB v. Spouses Rivera,*[37] this Court upheld the CA ruling that the trial court therein erred in dismissing the Complaint on the ground of lack of cause of action. We said that "dismissal due to lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented by the plaintiff."[38] In the case at bar, the action has not even reached the pretrial stage.

In *Pamaran v. Bank of Commerce,*[39] petitioners came directly to this Court and raised the issue of whether the trial court had erred in dismissing its Complaint only upon a motion to dismiss by way of affirmative defenses raised in the Answer of the defendant therein. The Court ruled then:

> Not only did the RTC Olongapo disregard the allegations in the Complaint, **it also failed to consider that the Bankcom's arguments necessitate the examination of the evidence that can be done through a full-blown trial**. The determination of whether Rosa has a right over the subject house and of whether Bankcom violated this right cannot be addressed in a mere motion to dismiss. Such determination requires the contravention of the allegations in the Complaint and the full adjudication of the merits of the case based on all the evidence adduced by the parties. (Emphasis supplied)

In the same manner, the arguments raised by both of the parties to this case require an examination of evidence. Even a determination of whether there was "delivery" in the legal sense necessitates a presentation of evidence. It was erroneous for the RTC to have concluded that there was no delivery, just because the checks did not reach the payee. It failed to consider Section 16 of the Negotiable Instruments Law, which envisions instances when instruments may have been delivered to a person other than the payee. The provision states:

> Sec. 16. *Delivery; when effectual; when presumed.* - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. **As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual**, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. **And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.** (Emphasis supplied)

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[37] G.R. No. 189577, 20 April 2016.
[38] Id., citing *Macaslang v. Spouses Zamora,* 664 Phil. 337 (2011).
[39] Supra note 34.

Hence, in order to resolve whether the Complaint ***lacked*** a cause of action, respondent must have presented evidence to dispute the presumption that the signatories validly and intentionally delivered the instrument.

Even assuming that the trial court merely used the wrong terminology, that it intended to dismiss the Complaint on the ground of ***failure to state*** a cause of action, the Complaint would still have to be reinstated.

The test to determine whether a complaint states a cause of action against the defendants is this: admitting hypothetically the truth of the allegations of fact made in the complaint, may a judge validly grant the relief demanded in the complaint?[40]

We believe that petitioner met this test.

A cause of action has three elements: 1) the legal right of the plaintiff; 2) the correlative obligation of the defendant not to violate the right; and 3) the act or omission of the defendant in violation of that legal right.[41] In the case at bar, petitioners alleged in their Complaint as follows:

1) They have a legal right to be paid for the value of the instruments.

> 18. In the said case of Associated Bank vs. Court of Appeals, it was held that the "weight of authority is to the effect that 'the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received.' The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check."[42]

2) Respondent has a correlative obligation to pay, having guaranteed all prior endorsements.

> 15. All of the commercial checks and demand drafts mentioned in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action were endorsed by PCI-Bank-Ayala Branch "All Prior Endorsement And/Or Lack of Endorsement Guaranteed.[43]

3) Respondent refused to pay despite demand.

> 17. In a letter dated 19 November 2003 which was duly received by defendant Equitable PCI Bank, Legal Services Division, on December 17, 2003, plaintiff Charlie S. Go, relying on the decision in Associated Bank

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[40] See *Aquino v. Quiazon*, G.R. No. 201248, 11 March 2015.
[41] See *Pamaran*, supra note 34; *PNB v. Spouses Rivera*, supra note 35; *Bank of America NT&SA v. CA*, supra note 32 citing *San Lorenzo Village Association, Inc. v. CA*, 351 Phil. 353 (1998).
[42] *Rollo*, p. 48.
[43] Id.

> v. Court of Appeals, 208 SCRA 465, demanded from defendant Equitable PCI Bank payment, reimbursement or restitution of the value of the commercial checks and demand drafts mentioned in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action. x x x
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> x x x x
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> 19. Instead of acceding to plaintiffs' valid and justifiable demand, defendant Equitable PCI Bank refused x x x.[44]

It is of no moment that respondent denies that it has any obligation to pay. In determining the presence of the elements, the inquiry is confined to the four corners of the complaint.[45] In fact, even if some of the allegations are in the form of conclusions of law, the elements of a cause of action may still be present.[46]

The Court believes that it need not delve into the issue of whether the instruments have been delivered, because it is a matter of *defense* that would have to be proven during trial on the merits. In *Aquino v. Quiazon,*[47] we held that if the allegations in a complaint furnish sufficient basis on which the suit may be maintained, the complaint should not be dismissed regardless of the defenses that may be raised by the defendants.[48] In other words, "[a]n affirmative defense, raising the ground that there is *no cause of action* as against the defendants poses a question of fact that should be resolved after the conduct of the trial on the merits."[49]

WHEREFORE, the petition is **GRANTED**. The Order dated 30 January 2008 issued by Judge Benjamin T. Pozon and the Order dated 23 November 2009 issued by Judge Winlove Dumayas in Civil Case No. 04-336 are **REVERSED** and **SET ASIDE**. The Complaint is **REINSTATED**, and the case is ordered **REMANDED** to the Regional Trial Court of Makati City for further proceedings. Let the records of the case be likewise remanded to the court *a quo.*

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[44] Id. at 48-49.
[45] See *Ilano v. Español,* 514 Phil. 553 (2005).
[46] Id.
[47] Supra note 39.
[48] Id. citing *Insular Investment and Trust Corp. v. Capital One Equities Corp.*, 686 Phil. 819 (2012).
[49] Id. citing *Heirs of Paez v. Torres*, 381 Phil. 393, 402 (2000).

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice