

## SECOND DIVISION

[ G.R. NO. 129928, August 25, 2005 ]

**MISAMIS OCCIDENTAL II COOPERATIVE, INC., PETITIONER, VS.  
VIRGILIO S. DAVID, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

In this *Petition for Review*<sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Misamis Occidental II Electric Cooperative, Inc. (hereinafter, MOELCI II) seeks the reversal of the *Decision*<sup>[2]</sup> of the Court of Appeals, Former Ninth Division in C.A. G.R. SP No. 41626 and its *Resolution*<sup>[3]</sup> denying MOELCI II's motion for reconsideration. The questioned *Decision* dismissed MOELCI II's petition for certiorari under Rule 65 and effectively affirmed the trial court's orders dated 16 November 1995<sup>[4]</sup> and 13 March 1996<sup>[5]</sup> which respectively denied petitioner's *Motion (For Preliminary Hearing of Affirmative Defenses and Deferment of Pre-Trial Conference)*<sup>[6]</sup> and *Motion for Reconsideration*.<sup>[7]</sup>

The antecedents are as follows:

Private respondent Virgilio S. David (hereinafter, David), a supplier of electrical hardware,<sup>[8]</sup> filed a case for specific performance and damages against MOELCI II, a rural electric cooperative in Misamis Occidental, docketed as Civil Case No. 94-69402 entitled "*Virgilio David v. Misamis Occidental II Electric Cooperative, Inc. (MOELCI II)*." The said case, which was essentially a collection suit, pending before Judge Felixberto Olalia (hereinafter, Judge Olalia) of the Regional Trial Court of Manila, Branch 8 (the trial court), was predicated on a document attached as Annex "A" to the *Amended Complaint*<sup>[9]</sup> that according to David is the contract pursuant to which he sold to MOELCI II one (1) unit of 10 MVA Transformer.<sup>[10]</sup>

MOELCI II filed its *Answer to Amended Complaint*<sup>[11]</sup> which pleaded, among others, affirmative defenses which also constitute grounds for dismissal of the complaint. These grounds were lack of cause of action, there being allegedly no enforceable contract between David and MOELCI II under the Statute of Frauds pursuant to Section 1 (g) and (i), Rule 16 of the Rules of Court, and improper venue.<sup>[12]</sup>

In accordance with Section 5, Rule 16 of the Rules of Court,<sup>[13]</sup> (now Section 6, Rule 16 of the 1997 Rules of Civil Procedure) MOELCI II filed with the trial court a *Motion (For Preliminary Hearing of Affirmative Defenses and Deferment of Pre-Trial Conference)*<sup>[14]</sup> (hereinafter referred to as *Motion*). In said *Motion*, MOELCI II in essence argued that the document attached as Annex "A" to the *Amended Complaint* was only a quotation letter and not a contract as alleged by David. Thus, it contends that David's *Amended Complaint* is dismissible for failure to state a

cause of action.<sup>[15]</sup>

In his opposition to MOELCI II's *Motion*, David contended in the main that because a motion to dismiss on the ground of failure to state a cause of action is required to be based only on the allegations of the complaint, the "quotation letter," being merely an attachment to the complaint and not part of its allegations, cannot be inquired into.<sup>[16]</sup>

MOELCI II filed a rejoinder to the opposition in which it asserted, citing extensively the ruling of the Court in *World Wide Insurance & Surety Co., Inc. v. Macrohon*,<sup>[17]</sup> that a complaint cannot be separated from its annexes; hence, the trial court in resolving a motion to dismiss on the ground of failure to state a cause of action must consider the complaint's annexes.<sup>[18]</sup>

After the parties filed their respective memoranda, Judge Olalia issued an order dated 16 November 1995 denying MOELCI II's motion for preliminary hearing of affirmative defenses. MOELCI II's motion for reconsideration of the said order was likewise denied in another order issued by Judge Olalia on 13 March 1996.<sup>[19]</sup>

MOELCI II elevated this incident to the Court of Appeals by way of a special civil action for certiorari, alleging grave abuse of discretion on the part of Judge Olalia in the issuance of the two aforesaid orders.

On 14 March 1997, the Court of Appeals dismissed MOELCI II's petition holding that the allegations in David's complaint constitute a cause of action. With regard to MOELCI II's contention that David's *Amended Complaint* is dismissible as the document, attached thereto as Annex "A," upon which David's claim is based is not a contract of sale but rather a quotation letter, the Court of Appeals ruled that the interpretation of the document requires evidence *aliunde* which is not allowed in determining whether or not the complaint states a cause of action. The appellate court further declared that when the trial court is confronted with a motion to dismiss on the ground of lack of cause of action, it is mandated to confine its examination for the resolution thereof to the allegations of the complaint and is specifically enjoined from receiving evidence for that purpose.<sup>[20]</sup>

With the denial of its *Motion for Reconsideration*, petitioner is now before this Court seeking a review of the appellate court's pronouncements. MOELCI II asserts that the Court of Appeals committed serious error in: (1) ruling that the resolution of its motion to dismiss on the ground of lack of cause of action necessitated hearings by the trial court with the end in view of determining whether or not the document attached as Annex "A" to the *Amended Complaint* is a contract as alleged in the body of said pleading; and (2) not ordering the trial court to dismiss the *Amended Complaint* on the ground of lack of cause of action.<sup>[21]</sup> Anent the first ground, MOELCI II further claims that with the denial of its *Petition*, the appellate court in effect exhorted the trial court to defer the resolution of its motion to dismiss until after the hearing of the case on the merits contrary to Rule 16<sup>[22]</sup> of the Rules of Court and well-settled jurisprudence.<sup>[23]</sup>

In his comment,<sup>[24]</sup> David counters that a sufficient cause of action exists. He also points out that he and MOELCI II differ in the interpretation of the construction of

the document attached as Annex "A" of the *Amended Complaint*; hence, there is a need to conduct hearings thereon. He likewise contends that the trial court did not defer the resolution of petitioner's motion to dismiss. On the contrary, the trial court denied squarely the motion "to abbreviate the proceedings and for the parties to proceed to trial and avoid piecemeal resolution of issues."<sup>[25]</sup>

In its *Reply*,<sup>[26]</sup> MOELCI II reiterates its position that the document attached as Annex "A" of the *Amended Complaint* clearly is a quotation letter and not a perfected contract of sale as alleged by David. The absence of doubt or ambiguity of the contents and import of the document leaves no room for its interpretation.

At issue is whether the Court of Appeals erred in dismissing the petition for certiorari and in holding that the trial court did not commit grave abuse of discretion in denying petitioner's *Motion*.

We find no error in the ruling of the Court of Appeals.

In *Municipality of Biñan, Laguna v. Court of Appeals*,<sup>[27]</sup> decided under the old Rules of Court, we held that a preliminary hearing permitted under Section 5, Rule 16, is not mandatory even when the same is prayed for. It rests largely on the sound discretion of the court, thus:

SEC. 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.

The use of the word "may" in the aforequoted provision shows that such a hearing is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.<sup>[28]</sup>

Such interpretation is now specifically expressed in the 1997 Rules of Civil Procedure. Section 6, Rule 16 provides that a grant of preliminary hearing rests on the sound discretion of the court, to wit-

SEC. 6. *Pleading grounds as affirmative defenses.*- If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

. . .

Based on the foregoing, a preliminary hearing undeniably is subject to the discretion of the trial court. Absent any showing that the trial court had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, the trial court's order granting or dispensing with the need for a preliminary hearing may not be corrected by certiorari.<sup>[29]</sup>

Moreover, consistent with our ruling in *The Heirs of Juliana Clavano v. Genato*,<sup>[30]</sup> as MOELCI II's *Motion* is anchored on the ground that the *Complaint* allegedly stated

no cause of action, a preliminary hearing thereon is more than unnecessary as it constitutes an erroneous and improvident move. No error therefore could be ascribed to the trial court in the denial of such *Motion*. The Court ruled in the cited case, thus:

. . . . 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 other 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.<sup>[31]</sup>

To determine the existence of a cause of action, only the statements in the complaint may be properly considered. It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. If the allegations in a complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be averred by the defendants.<sup>[32]</sup>

The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.<sup>[33]</sup>

In the case at bar, the *Amended Complaint* states in paragraphs 3, 4, 5, and 6, thus:

#### FIRST CAUSE OF ACTION

3. On June 8 1992 the parties entered into a contract for the sale by the plaintiff to the defendant of one (1) unit 10 MVA Power transformer with accessories for a total price of P5,200,000.00 plus 69 KV Line Accessories for a total price of P2,169,500.00 under the following relevant terms and conditions:

1. Fifty percent (50%) downpayment upon signing of contract.  
Fifty percent (50%) upon delivery