

SECOND DIVISION

[G.R. No. 124062, December 29, 1999]

**REYNALDO T. COMETA AND STATE INVESTMENT TRUST, INC.,
PETITIONERS, VS. COURT OF APPEALS, HON. GEORGE MACLI-
ING, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL
COURT, QUEZON CITY, BRANCH 100, REYNALDO S. GUEVARRA
AND HONEYCOMB BUILDERS, INC., RESPONDENTS.**

R E S O L U T I O N

MENDOZA, J.:

Petitioners move for a reconsideration of the decision in this case. They contend (1) that the complaint and its annexes show that petitioners acted with probable cause and without malice in charging private respondent Reynaldo Guevarra with falsification of public documents, and (2) that the non-inclusion in the civil case for malicious prosecution of the government prosecutors who directed the filing in court of the criminal case shows the existence of probable cause and the absence of malice.

Contending that the prosecution of private respondent Guevarra for falsification was grounded on probable cause, they cite our ruling in *Martinez vs. United Finance Corporation*,^[1] where a plaintiff's complaint for malicious prosecution was dismissed upon showing that the same complaint contained the following allegations: (1) a preliminary investigation was conducted by the fiscal; (2) despite plaintiff's opposition, an information was filed by the fiscal; (3) plaintiff was acquitted of the offense charged.

On the other hand, private respondents argue in their Opposition to petitioners' motion for reconsideration that the absence of probable cause is sufficiently alleged in their complaint that petitioners' criminal action against private respondent Guevarra had no basis in fact and in law as well as by virtue of the trial court's dismissal of the criminal case for falsification of public documents on private respondent Guevarra's demurrer to the evidence.

We have carefully considered the parties' arguments and now resolve to grant petitioners' motion for reconsideration.

The facts are set forth at pages 1 to 6 of the decision in this case and are hereby incorporated into this resolution by reference.

Since petitioners seek the dismissal of the complaint against them on the ground that it does not state a sufficient cause of action, the question for determination is whether, taking the facts alleged in the complaint and its annexes to be true, they constitute a cause of action, and not whether these allegations of facts are true.^[2] As stated in our decision in this case, a complaint for malicious prosecution states a

cause of action if it alleges the following: (1) that the defendant was himself the prosecutor or that at least the prosecution was instituted at his instance; (2) that the prosecution finally terminated in the acquittal of the plaintiff; (3) that in bringing the action the prosecutor acted without probable cause; and (4) that the prosecutor was actuated by malice, i.e. by improper and sinister motives.^[3]

Does the complaint in this case allege these as facts? The complaint alleges in relevant parts:

12. Sometime in 1989, while SIHI's appeal from the order of the lower court was still pending with the appellate courts, SIHI and Cometa filed a criminal case against Guevara for falsification of Public Documents which was docketed in the Office of the Provincial Fiscal of Makati, Metro Manila, entitled "*State Investment House, Inc. vs. Reynaldo S. Guevara*", I.S. No. 89-3747. The basis of the aforesaid case filed by the defendants against Guevara is a supposed Affidavit of Undertaking dated September 9, 1987 which had allegedly been submitted by the plaintiffs with the (HLURB) in connection with its application of a License to Sell its townhouse units in the RSG Condominium-Gueventville II. According to the defendants, the Affidavit of Undertaking is a forgery because the signature therein purporting to be that of Cometa is not Cometa's signature.

13. After the parties had submitted their respective Affidavits, the Office of the Makati Provincial Fiscal dismissed the case filed by the defendants against Guevara. Notwithstanding this, the defendants appealed to the Department of Justice and the latter reversed the dismissal of the case by the Makati Provincial Fiscal and ordered the filing of the corresponding information in court. Consequently, a criminal information was filed against Guevara in the Regional Trial Court of Makati, Metro Manila. The case was raffled to Branch 61 of the said court and docketed therein as Criminal Case No. 90-3018 entitled "*People of the Philippines, Plaintiff, vs. Reynaldo s. Guevara, Accused*".

14. Upon the filing of the information, a Warrant of Arrest was issued against Guevara. Guevara posted the necessary bail bond and the warrant for his arrest was lifted.

15. After Guevara had been arraigned and after he had entered a plea of not guilty, the prosecution represented by a private prosecutor hired by the defendants, presented its evidence against Guevara. The principal evidence submitted by the prosecution consists of the sworn testimony of Cometa to the effect that Guevara had submitted the forged document with the HLURB in connection with HBI's application for the issuance of a License to Sell the condominium units in the RSG Condominium-Gueventville II.

16. After the prosecution had rested its case, Guevara filed a Motion to Dismiss on a Demurrer to the Evidence, contending that all the evidence submitted by the prosecution do not suffice to show that he had committed the crime for which he has been accused.

17. On March 26, 1992, the Regional Trial Court of Makati issued an order, granting Guevara's Motion to Dismiss on a Demurrer to the Evidence and ordered the dismissal of the criminal case for falsification of public documents against him. A copy of the said order is herewith attached and made an integral part hereof as Annex "A"

18. Based on the evidence presented by the defendants against Guevara in the aforesaid criminal case and based on the order of the Regional Trial Court of Makati dismissing the case against Guevara, it is clear that the defendants had maliciously prosecuted Guevara, to his and HBI's embarrassment, damage and prejudice. The criminal case filed by the defendants against Guevara had absolutely no basis in fact and in law. Quite clearly, defendants had filed the aforesaid case with the sole intent of harassing and pressuring Guevara, in his capacity as Chairman of GIDC, to give in to their illicit and malicious desire to appropriate the remaining unsold properties of GIDC and/or to influence the appellate courts to decide in their favor, their appeal of the lower court's decision in the GIDC case.

The first two requisites are sufficiently alleged in the complaint. We may also take as sufficiently pleaded the fourth requisite, i.e., malice. As stated in the original decision in this case, a general averment of malice is sufficient in view of Rule 8, §5 of the Rules of Civil Procedure. Accordingly, the allegation in par. 18 that petitioners filed the criminal case for the purpose of harassing and pressuring Guevarra, in his capacity as chairman of Guevent Industrial Development Corporation (GIDC), to give in to their illicit and malicious desire to appropriate the remaining unsold properties of the corporation, may be considered sufficient.

The question, however, is whether the third requisite, i.e., that the prosecutor acted without probable cause, has been sufficiently alleged. To be sure, lack of probable cause is an element separate and distinct from that of malice. It follows, therefore, that one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause.

Obviously, a determination that there was no probable cause cannot be made to rest solely on the fact that the trial court, acting on private respondent Guevarra's demurrer to evidence, dismissed the criminal prosecution, just as it cannot be made to turn on the fact that the Department of Justice reversed the fiscal's findings and ordered the criminal case against private respondent Guevarra to be filed in court. The first would transform all acquittals into veritable countersuits for malicious prosecution. On the other hand, the second would result in the dismissal of all complaints for malicious prosecutions.^[4]

Accordingly, the inquiry should be whether sufficient facts are alleged showing that in bringing the criminal action, the defendant in the civil action for malicious prosecution acted without probable cause. This Court has ruled that for purposes of malicious prosecution, "probable cause" means "such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."^[5] In this case, even if we consider the allegations in the complaint as true, as well as the order of the trial court annexed thereto, we do not find the same sufficient to establish the absence of probable cause.