

REPUBLIC OF THE PHILIPPINES  
COURT OF APPEALS  
MANILA

SEVENTH DIVISION

PHILIP MORRIS PHILIPPINES  
MANUFACTURING, INC.,  
Petitioner,

CA-G.R. SP No. 93353

Members:

-versus-

CRUZ, E.P., Chairman  
LAMPAS PERALTA, F., and  
PIZARRO, N.B., JJ.

HON. WINLOVE DUMAYAS, in  
his capacity as Presiding Judge of  
the Regional Trial Court of Makati,  
Branch 59, and VINCENT P. REYES,  
Respondents.

Promulgated:

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DECISION

LAMPAS PERALTA, J:

Before the Court is a petition for certiorari filed under Rule 65, 1997 Rules of Civil Procedure assailing the (i) Order dated August 12, 2005<sup>1</sup> in Civil Case No. 04-625 of Branch 59, Regional Trial Court, Makati City which denied petitioner Philip Morris Philippines Manufacturing, Inc.’s motion to dismiss the complaint for damages filed by private respondent Vincent P. Reyes, and (ii) Order dated January 14, 2006<sup>2</sup> of the trial court which denied petitioner’s motion for reconsideration of the Order dated August 12, 2005.

<sup>1</sup> pp. 33-34, Rollo

<sup>2</sup> p. 49, *ibid.*

### **THE ANTECEDENTS**

On May 31, 2004, private respondent filed with the trial court a complaint for damages against petitioner, but the complaint was not served upon petitioner because it was no longer holding office at the address indicated in the complaint.<sup>3</sup> On October 28, 2004, after locating petitioner's new address, private respondent filed a motion to admit the amended complaint, with the amended complaint attached thereto.<sup>4</sup>

In the amended complaint, private respondent alleged that petitioner, through a barrage of television advertisements, enticed private respondent to smoke Philip Morris cigarettes since he was fourteen (14) years of age and due to the addictive component of the cigarettes, private respondent was diagnosed with lung cancer in 2000. Private respondent prayed for moral damages, actual damages, attorney's fees and costs of suit.<sup>5</sup>

On January 26, 2005, petitioner filed a motion to dismiss<sup>6</sup> the complaint on the grounds of prescription and lack of cause of action. Private respondent filed his opposition<sup>7</sup> to the motion to dismiss, to which petitioner filed its reply<sup>8</sup>.

After hearing on the motion to dismiss, the trial court issued an Order dated August 12, 2005<sup>9</sup> denying said motion. Petitioner filed a motion for reconsideration,<sup>10</sup> but the trial court denied the same in an Order dated January 14, 2006<sup>11</sup>.

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<sup>3</sup>p. 50, *ibid.*

<sup>4</sup>pp. 50-54, *ibid.*

<sup>5</sup>pp. 52-54, *ibid.*

<sup>6</sup>pp. 62-70, *ibid.*

<sup>7</sup>pp. 71-74, *ibid.*

<sup>8</sup>pp. 75-79, *ibid.*

<sup>9</sup>p. 34, *ibid.*

<sup>10</sup> pp. 35-48, *ibid.*

<sup>11</sup> p. 49, *ibid.*

Hence, petitioner filed the present petition for certiorari which is premised on this ground:

“THE PUBLIC RESPONDENT ACTED WITH THE GRAVEST POSSIBLE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN COMPLETELY IGNORING PMPMI’S UNCONTROVERTED EVIDENCE THAT THE PRIVATE RESPONDENT’S CLAIM HAS PRESCRIBED.”<sup>12</sup>

### **THE ISSUE**

Whether the trial court committed grave abuse of discretion in not dismissing the complaint on the ground of prescription.

### **THE COURT’S RULING**

At the outset, petitioner filed a motion to dismiss the complaint based on the grounds of failure to state a cause of action and prescription. The trial court denied the motion to dismiss on the basis of its finding that the allegations in the complaint showed the presence of the elements of a cause of action. It did not resolve anymore the issue on prescription. Since the present petition deals on the issue of prescription only, the Court shall confine itself to a determination of this issue.

Petitioner posits that it was grave abuse of discretion for the trial court to hold that there was a hypothetical admission of the material allegations in the amended complaint. Allegedly, this principle applies only to a determination of the ground of lack of cause of action, but not prescription.

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<sup>12</sup> p. 10, *ibid.*

Contrary to petitioner's claim, it is clear from the subject Order dated August 12, 2005 that the theory of hypothetical admission was applied by the trial court only when it resolved the question of whether the amended complaint stated a cause of action. The trial court did not resolve the issue on prescription after finding that the complaint sufficiently stated a cause of action. Said the trial court:

“Jurisprudence teaches us that a cause of action exist if the following elements are present xxx

A scrutiny of the averments of the complaint would readily reveal the existence of these elements.

Moreover, it is axiomatic that a defendant moving to dismiss a complaint on this ground is regarded as having admitted all the averments thereof, at least hypothetically and the test of the sufficiency of the facts found in a petition, as constituting a cause of action, being whether or not, admitting the facts alleged, the Court could render a valid judgment upon the same in accordance with the prayer thereof. xxx

On this point alone, the Court need not go further.<sup>13</sup>

No grave abuse of discretion can be ascribed to the trial court in not ruling on the issue of prescription, although it would have been a prudent act for the trial court had it done so for a complete determination of the issues raised. The failure of the trial court to resolve the issue of prescription cannot be corrected in this special civil action of certiorari, as the office of the Court does not include correcting errors in proceedings or erroneous conclusions of law. It is basic that “certiorari under Rule 65 is a remedy narrow in scope and inflexible in character. x x x It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It

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<sup>13</sup>pp. 33-34, *ibid.*

can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact.”<sup>14</sup>

In any event, the pleadings and evidence so far presented showed that the cause of action had not prescribed. Settled is the doctrine that a complaint may be dismissed on the basis of prescription when the parties' pleadings or other facts on record show that it is indeed time-barred. Prescription may be established during the hearing of the motion to dismiss. As held, “what is essential only xxx is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.”<sup>15</sup> This is in accordance with the provision of Section 2, Rule 16, 1997 Rules of Civil Procedure that “at the hearing of the motion (to dismiss), the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time.”

There is no question that the original complaint was filed on May 31, 2004, and the amended complaint on October 28, 2004. The amended complaint merely indicated the new address of petitioner. Since no new theory, cause of action, issues or demands were introduced in the amended complaint, the action is deemed to have commenced on the date the original complaint was filed, or on May 31, 2004. Thus:

“It follows that when the amended complaint does not introduce the new issues, causes of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed, not on the date of the filing of the amended complaint. In other words, for demands already included in the original complaint, the suit is deemed to have commenced upon the filing of such original

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<sup>14</sup>Eliseo and Rosenda Estares vs Court of Appeals, 459 SCRA 604, June 8, 2005

<sup>15</sup>Inocencio Yu Dino vs Court of Appeals, 359 SCRA 91, June 20, 2001

complaint. In short, for purposes of determining the commencement of a suit, the original complaint is deemed abandoned and superseded by the amended complaint only if the amended complaint introduces a new or different cause of action or demand.”<sup>16</sup>

For clarity, pertinent allegations of the amended complaint read:

“4. Plaintiff, enticed by a barrage of television advertisements showing the personal pleasure and satisfaction derived from smoking Philip Morris cigarettes, started smoking at an early and tender age of fourteen (14), and because of its addictive component, plaintiff has been using such product ever since until he was diagnosed to have a cancer in the lungs in 2000.

5. Defendant continues to sell its hazardous and dangerous tobacco product to the public consumers including the plaintiff, and even using minors to peddle the said product, inflicting upon said plaintiff irreparable damage to his health and physical well-being, more specifically, inducing the growth of cancerous and malignant cells in plaintiff.

6. As a direct and proximate consequence of plaintiff's continued use of and exposure to defendant's hazardous and dangerous tobacco product, Philip Morris cigarettes, plaintiff was diagnosed to have a terminal cancer of the lungs. Copies of the Medical Reports are attached as Annexes “A” - “A-4” to the original complaint.

7. As a direct consequence of his ailment due to the use of defendant's hazardous and dangerous tobacco product, plaintiff is unable to continue his normal and productive life, causing him to lose his earning capacity.

8. As a direct consequence of defendant's hazardous and dangerous product, causing deterioration and/or loss of plaintiff's good health and well-being, plaintiff has suffered and continues to experience physical suffering, mental anguish, fright, serious anxiety brought about by his being diagnosed to have a terminal cancer of the lungs, and for which, defendant should be held liable to the plaintiff for moral damages in the total amount of at least Five Hundred Thousand Pesos (P500,000.00).

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<sup>16</sup>Wilfredo Versoza vs. Court of Appeals, 299 SCRA 100, November 24,1998

9. To vindicate the violation of its property rights, plaintiff sought the services of counsel to file this complaint and agreed to pay the amount of One Hundred Pesos (P100.00) by way of attorney's fees."<sup>17</sup> (Underlining supplied)

Attached to the amended complaint were the Surgical Pathology/Cytology Report (undated),<sup>18</sup> Surgical Pathology/Cytology Report dated December 21, 2000,<sup>19</sup> Scintigraphic Report dated May 8, 2003,<sup>20</sup> Treatment Summary<sup>21</sup> showing treatment dates from May 19, 2003 to June 20, 2003, and a Magnetic Resonance Imaging dated March 4, 2004.<sup>22</sup>

Petitioner posits that the amended complaint is based on quasi-delict. Article 2176, New Civil Code on quasi-delict provides:

“Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.”

The three (3) elements of quasi-delict are (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, or some other person for whose acts he must respond, and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.<sup>23</sup>

Notably, in the amended complaint, private respondent claims that he suffered damages when he contracted lung cancer, the

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<sup>17</sup>pp. 53-54, Rollo

<sup>18</sup>p. 56, *ibid.*

<sup>19</sup>p. 57, *ibid.*

<sup>20</sup>p. 59, *ibid.*

<sup>21</sup>p. 60, *ibid.*

<sup>22</sup>p. 61, *ibid.*

<sup>23</sup>PNCC vs. Court of Appeals, 467 SCRA 569, August 22, 2005

cause of which was his smoking Philip Morris cigarettes which he was enticed to do due to the barrage of television advertisements of petitioner showing the personal pleasure and satisfaction derived from smoking the same. Apparently, the allegations in the complaint connecting the damages incurred by private respondent with the act of petitioner in enticing the public, through television advertisements, to smoke Philip Morris cigarettes, show that the cause of action is based on *quasi-delict*.

Petitioner thus claims that “private respondent, pursuant to Article 1146(2) of the Civil Code, should have filed his suit xxx within four (4) years from the date when the *quasi-delict* occurred or was committed.”<sup>24</sup> Article 1146 of the New Civil Code provides that an action based on *quasi-delict* “must be instituted within four (4) years.” As to when the four (4)-year period begins to run, Article 1150, New Civil Code provides that “the time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.”<sup>25</sup>

In the present case, the complaint for damages based on *quasi-delict* may be brought within four (4) years from the time that private respondent was diagnosed with lung cancer. The amended complaint alleged that private respondent “was diagnosed to have a cancer in his lungs in 2000”.<sup>26</sup> The attachments to the amended complaint showed that the earliest diagnosis of private respondent was in October 2000.<sup>27</sup> Hence, when the complaint was filed on May 31, 2004, the action had not yet prescribed.

However, petitioner argues that the trial court gravely abused its discretion in completely ignoring its evidence consisting of the video recording, the transcript of private respondent's interview on the

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<sup>24</sup>pp. 10-11, Rollo

<sup>25</sup>“Art. 1150. The time for prescription for all kinds of actions, where there is no special provision which ordains otherwise, shall be counted from the day they may be brought.”

<sup>26</sup>p. 53, Rollo

<sup>27</sup> Per treatment summary stating “final diagnosis and extent: Adeno CA Lung (Oct. 2000)”, p. 60, *ibid*.



television show, “Straight Talk” and the testimony of Patricia Morales, a representative of the television network.

Pertinent portions of the transcript of private respondent’s television interview which was aired on August 11, 2004 on the ABS-CBN News Channel read:

“CBeltran: Okay, so sinabi ni Father Robert, magpatingin ka lalo. Magpatreatment ka but at that time how are you feeling? Kasi marami sa atin, o wala yan, okay lang yan nasobrahan lang sa usok ang baga mo. Yun ang living with denial. But were you feeling down, physically weak?

VReyes: Wala naman. I didn't feel anything bad so...

CBeltran: When was this?

VReyes: November 1999.

CBeltran: November of 1999? Ok.

VReyes: That was when the result came out and then the next step was to seek a specialist. And I went to the doctor who said there is a growth and we have to take it out. I immediately, or, two week (sic) later, I was scheduled for an operation.

xxx      xxx      xxx<sup>28</sup>

“VReyes: More or less, but most of us stopped even before the findings came out for me. Because the findings came out just five (5) years ago and we already stopped around ten (10) years ago.

CBeltran: The findings came out only five (5) years ago? I am getting confused here. Let’s lay it out, ok? When did your cancer finding come out?

VReyes: November 1999.

CBeltran: 1999. OK, so five (5) years. Because you stopped when?

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<sup>28</sup> p. 85, *ibid.*

VReyes: Around 1994.

CBeltran: 94. Okay, so mali, mali. Nalito ako. I quit in 1991, you quit 1994, you found out in 1999 that you had cancer so quitting was no guarantee that the cancer was gonna come back and get you later?

VReyes: Yes.”<sup>29</sup>

The foregoing statements in the interview are not clear and convincing and cannot prevail over the explicit allegation in the complaint that private respondent was diagnosed to have lung cancer in 2000, and the treatment summary attached to the amended complaint showing “final diagnosis and extent: Adeno CA Lung (Oct. 2000)”.<sup>30</sup> The statement of private respondent in his interview is not as reliable as the written medical findings supporting the allegation in the complaint. *Apropos* is the basic rule that:

“Oral testimony, depending as it does exclusively on human memory, is not as reliable as written or documentary evidence, especially when said documentary evidence is not opposed. As Judge Limkin of Georgia once said, 'I would rather trust the smallest slip of paper for truth than the strongest and most retentive memory ever bestowed on mortal man.'”<sup>31</sup>

Nonetheless, if it subsequently becomes clear from the pleadings or the evidence on record that the action has prescribed, the trial court is not precluded from dismissing the case. The law is explicit that:

SECTION 1. *Defenses and objections not pleaded* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior

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<sup>29</sup> p. 90, *ibid*.

<sup>30</sup> p. 60, *ibid*.

<sup>31</sup> *Hernando Gener vs. Gregorio de Leon*, 367 SCRA 631, October 19, 2001

judgment or by statute of limitations, the court shall dismiss the claim.

Indeed, the remedy of petitioner from the trial court's denial of its motion to dismiss is not the present special civil action of certiorari, but to file answer and go to trial. As held:

“As a general rule, an order denying a motion to dismiss is merely interlocutory and cannot be subject of appeal until final judgment or order is rendered. (Sec. 2 of Rule 41). The ordinary procedure to be followed in such a case is to file an answer, go to trial and if the decision is adverse, reiterate the issue on appeal from the final judgment. xxx<sup>32</sup>

In sum, the present petition fails to show any grave abuse of discretion on the part of the trial court in denying petitioner's motion to dismiss.

**WHEREFORE**, the petition is denied for lack of merit.

**SO ORDERED.**

**FERNANDA LAMPAS PERALTA**  
Associate Justice

**WE CONCUR:**

**EDGARDO P. CRUZ**  
Associate Justice

**NORMANDIE B. PIZARRO**  
Associate Justice

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<sup>32</sup>Newsweek vs IAC, 142 SCRA 171, May 30, 1986

## **CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**EDGARDO P. CRUZ**  
Associate Justice  
Chairman, Seventh Division

