



Republic of the Philippines
COURT OF APPEALS
Manila

Eleventh (11th) Division

**ROCHE (PHILIPPINES)
INC.,**

Petitioner,

CA-G.R. SP No. 130275

-versus-

**HON. ROLANDO G.
HOW, Presiding Judge,
Branch 257, Regional
Trial Court, Parañaque
City, SAHAR
INTERNATIONAL
TRADING, INC. and
MUHAMMAD ATEEQUE,
*Respondents.***

Members:

DICDICAN, I. P., Chairperson,
ELBINIAS, M. P., and
PAREDES, V. I. A., JJ.

Promulgated:

September 17, 2014

X-----X

DECISION

PAREDES, J.:

THE CASE

BEFORE US is a Petition for Certiorari pursuant to Rule 65 of the Rules of Court filed by petitioner Roche Philippines, Inc. (Roche) assailing the Order¹ dated November 15, 2012 and the Order² dated

¹ Annex A, Petition; *rollo*, pp. 37-46.

² Annex B, Petition; *id.*, p. 47.

April 8, 2013 of Hon. Rolando How, Presiding Judge of the Regional Trial Court, Branch 257, Paranaque City (public respondent) denying the Motion to Dismiss filed by Roche in Civil Case No. 11-0405 entitled “*Sahar International Trading, Inc. and Muhammad Ateeque vs. Glaxo Smith Kline, Philippines, Inc., Pfizer Philippines, Roche Philippines and IP Manila, Inc.*”

THE ANTECEDENTS

On September 19, 2011, Sahar International Trading, Inc. and Muhammad Ateeque (individually, SITI and Ateeque, respectively; collectively, private respondents) filed a Complaint³ for *Malicious Prosecution and Damages* against Glaxo Smith Kline Philippines (GSK), Pfizer Philippines (Pfizer), Roche and IP Manila, Inc. (IP Manila) alleging that sometime in August 2001, GSK, Pfizer and Roche employed the services of IP Manila to investigate whether there are unauthorized persons or establishments engaged in the illegal importation, distribution or sale of unregistered imported pharmaceutical products or counterfeit medicines. Additionally, IP Manila was tasked and authorized to assist and represent them in coordinating with law enforcement agencies and in prosecuting claims before the appropriate executive and judicial bodies.

In coordination with the National Bureau of Investigation (NBI), a buy-bust operation was conducted in the premises of SITI. However, instead of a legitimate operation, the general manager of SITI, Khalid Mehmood Malik (Malik) was, in fact, framed up and arrested. Criminal charges for violation of Republic Act No. 3720⁴ and Republic Act No. 8203⁵ were instituted against Malik and Ateeque, but the charges were dismissed in the Resolution⁶ dated January 14, 2003, issued by the Department of Justice (DOJ). GSK, Pfizer and Roche moved for reconsideration, but the motion was denied in the Resolution⁷ dated February 18, 2003. GSK, Pfizer and Roche

³ Annex C, Petition; *id.*, pp. 48-86.

⁴ Food, Drugs and Cosmetic Act.

⁵ Special Law on Counterfeit Drugs.

⁶ *Rollo*, pp. 116-121.

⁷ *Id.*, p. 122-123.

separately and individually filed Petitions for Review before the Secretary of Justice, but these petitions were denied in the Resolutions dated June 17, 2003⁸ and June 25, 2003⁹; likewise, Motions for Reconsideration were denied in the Resolution¹⁰ dated December 12, 2003.

GSK filed a Petition for Certiorari before the Court of Appeals which was denied in a Decision¹¹ dated October 28, 2004 and its Motion for Reconsideration in a Resolution¹² dated January 24, 2005. Unsatisfied, GSK filed a Petition for Review on Certiorari but this was denied by the Supreme Court in a Decision¹³ dated August 17, 2006, as well as its Motion for Reconsideration, in a Resolution¹⁴ dated November 20, 2006. On October 30, 2006, Pfizer, alleging that it never received the Decision of the Secretary of Justice, filed a Petition for Certiorari before the Court of Appeals, nonetheless, this was dismissed by this Court in a Decision¹⁵ dated November 19, 2009, and the Motion for Reconsideration it subsequently filed, was denied in a Resolution¹⁶ dated June 23, 2010.

Meanwhile, Malik filed a Motion to Reiterate (his) Prayer for the Dismissal of Criminal Cases Nos. 02-0699 to 0701 which was granted by RTC, Branch 258, Parañaque City on March 19, 2007; only GSK and Pfizer opposed Malik's motion¹⁷. GSK moved for reconsideration; RTC-Branch 258 inhibited; and RTC-Branch 196 ordered¹⁸ the reinstatement of the criminal cases. Malik filed a Petition for Certiorari before this Court which was granted in the Decision¹⁹ dated June 28, 2010.

⁸ *Id.*, pp. 124-125.

⁹ *Id.*, pp. 126-127.

¹⁰ *Id.*, pp. 128-129.

¹¹ *Id.*, pp. 130-136.

¹² *Id.*, pp. 138-139.

¹³ *Id.*, pp. 141-147.

¹⁴ *Id.*, p. 148.

¹⁵ *Id.*, pp. 158-170.

¹⁶ *Id.*, pp. 172-173.

¹⁷ Order dated March 19, 2007; *id.*, pp. 149-152.

¹⁸ *Id.*, pp. 153-155.

¹⁹ *Id.*, pp. 175-190.

Instead of filing their respective Answers to the Complaint filed by private respondents, Roche, GSK and Pfizer filed separate motions to dismiss. In its Motion to Dismiss²⁰, Roche raised two (2) grounds: 1) that the Complaint is barred by the statute of limitations; and, 2) that the Complaint fails to state a cause of action.

On November 15, 2012, the RTC denied the motions to dismiss filed by Roche, GSK and Pfizer in the assailed Order²¹, ruling that the grounds raised in the separate motions are evidentiary matters, the resolution of which would, prior to trial on the merits, be premature.

The Motion for Reconsideration²² filed by Roche was, likewise, denied in the Order²³ dated April 8, 2013.

Roche comes before us, raising the following grounds in support of its Petition:

THE ISSUES

I.

The Public Respondent committed grave abuse of discretion in finding that Roche has to first establish by evidence that the Private Respondents' claim for malicious prosecution is already barred by statute of limitations despite this fact having already been indisputably established on the face of the Complaint itself.

II.

The Public Respondent committed grave abuse of discretion in finding that the Complaint sufficiently

²⁰ *Id.*, pp. 193-205.

²¹ *Supra*, note 1.

²² *Id.*, pp. 223-237.

²³ Annex B, Petition; *id.*, p. 47.

states a cause of action for malicious prosecution against Roche.

THE COURT'S RULING

The Petition is meritorious.

Section 1, Rule 16 of the Rules of Court enumerates the grounds upon which a motion to dismiss may be based; paragraphs (f) and (g) permitting the filing of a motion to dismiss when the cause of action is barred by the statute of limitations, and when the pleading asserting the claim asserts no cause of action. Roche relies on these two grounds in support of its prayer for the dismissal of the case filed against it.

Under Article 1146 of the New Civil Code, an action upon an injury to the rights of a plaintiff must be instituted within four years from the time the cause of action accrues. It is settled jurisprudence that a cause of action has three (3) elements, to wit: 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 plaintiff²⁴.

In raising prescription as a ground in its Motion to Dismiss, Roche avers²⁵ that it received the Resolution of the Secretary of Justice denying its Motion for Reconsideration on December 17, 2003. The said Resolution became final on February 15, 2004, when Roche allowed the 60-day-period to lapse, without taking any action on the said Resolution; hence, the four-year prescriptive period began to run on February 15, 2004, and ended on February 14, 2008.

²⁴ *Philippine Long Distance Telephone Company vs. Pingol*, GR No. 182622, September 8, 2010.

²⁵ *Rollo*, p. 12-13.

The Complaint was filed in 2011, three (3) years beyond the period for filing.

On the other hand, private respondents claim²⁶ that the cause of action only ripened and accrued on July 20, 2010²⁷, and on July 30, 2010²⁸, when the criminal cases were terminated with finality. Since the elements of final termination of action or proceedings and lack of probable cause remain absent, a case for malicious prosecution instituted prior the said dates would have been premature²⁹.

In denying Roche's Motion to Dismiss, the RTC found that it was too early to conclude that Roche's case is different and separable from that of GSK and Pfizer. According to the RTC, evidence must be presented to prove the same. Thus:

If Roche's case is to be separated entirely from the cases filed by Glaxo (here, GSK) and Pfizer, its conclusion could be correct that insofar as it is concerned, the counting of the period of 4 years prescription should be February 14, 2004 when its right to file a petition for certiorari had accrued. But the conclusion is based on a premise that has yet to be established by evidence. **At this stage of the proceeding, it is too early to conclude that the case of Roche is really different and could be separated from the cases of Pfizer and Glaxo (GSK). The evidence in this regard becomes truly significant for a judicious resolution of the controversy especially since the complaint has claimed otherwise.**³⁰
(Emphasis supplied)

²⁶ *Id.*, p. 355.

²⁷ Malik's Petition for Certiorari before us entitled *Malik vs. Judge Brigido Artemon Luna, GlaxoSmithKline Philippines, Inc.*, CA-GR SP No. 102922 was granted on June 28, 2010. Private respondents claim that it became final and executory on July 20, 2010.

²⁸ Pfizer's Petition for Certiorari before us entitled *Pfizer Inc. vs. Hon. Raul Gonzales, Khalid Mehmood Malik and Muhammad Ateeque*, CA-GR SP No. 96699 was dismissed on June 23, 2010. Private respondents claim that it became final and executory on July 30, 2010.

²⁹ *Rollo*, p. 358.

³⁰ *Id.*, p. 45.

There is no question that after the Secretary of Justice dismissed the cases against Ateeque and Malik, Roche no longer sought further remedy therefrom. Only GSK and Pfizer pursued the case before this Court and the Supreme Court. A scrutiny of the record shows that the Complaint failed to allege that Roche connived with GSK and Pfizer in harassing private respondents through the filing of various cases in different tribunals. In fact, private respondents, only claimed in their Complaint that Pfizer and GSK were acting in close coordination; Roche was not alleged to have been part of the said coordination. It was averred as part of the cause of action in the Complaint that:

46.4 **Herein defendants Pfizer and GSK, after working in close coordination** and then miserably failing to pin down plaintiff Ateeque and besmirch the business of plaintiff SITI at the proceedings before the Investigating Chief State Prosecutor and before the Secretary of Justice on account of their baseless claims, thereafter, **in a blatant case of forum shopping, purposely pursued separate legal remedies in the vain hope of obtaining a favorable decision in separate tribunals.** GSK, after the unfavorable resolution of the Secretary of Justice, went straight to the Court of Appeals on Certiorari while Pfizer and Roche opted to seek reconsideration with the Secretary of Justice.

However, when the Secretary of Justice denied the reconsideration, as aptly observed by the Regional Trial Court, Branch 258 in its Order dated 19 March 2007, **Pfizer simply whiled away time, sat down, relaxed and took a wait-and-see attitude as to what will be the outcome of GSK's appeal. Thus Pfizer could conveniently argue, as it did, that it was not bound by the rulings in the proceedings initiated by GSK and pursue its malicious claims anew in a different forum.**³¹ (Emphasis supplied)

³¹ *Id.*, p. 80.

It is apparent from the Complaint that after its Motion for Reconsideration was denied by the Secretary of Justice, Roche no longer sought further remedy from the appellate courts. Verily, when the period to assail the Decision of the Secretary of Justice via the filing a Petition for Certiorari before this Court expired, private respondents' cause of action accrued; therefore, the prescriptive period would have started to run. It will be highly prejudicial to Roche if it would be dragged into the case against GSK and Pfizer simply because of a **possibility** that it may have acted in cahoots with GSK and Pfizer, as intimated by the RTC, when the Complaint itself did not allege such a scenario.

It is but logical, just and fair that the period of prescription with respect to Roche, should be counted from February 15, 2004, after the lapse of the 60 day period counted from December 17, 2003, when Roche, by not taking any further action to appeal the dismissal, was barred and could no longer avail of any other remedy against private respondents.

We agree with Roche³² that the filing of the criminal complaints at the same time is immaterial and does not, in any way, affect the separate juridical identities and existence of Roche, GSK and Pfizer. The three companies had separate and distinct causes of action at the time of the initiation of the criminal prosecution, since each of them had their own concerns over their own brands of drugs that were confiscated. As discussed, the complaint alleged that GSK and Pfizer acted in close coordination with each other. It failed to allege facts showing connivance or conspiracy involving Roche after the denial of the Secretary of Justice of its motion for reconsideration.

Further, while Roche prosecuted the case against private respondents before the public prosecutor and the Secretary of Justice, his role as a prosecutor ended when it decided not to pursue the criminal case; thus, when the period to appeal the decision of the Secretary of Justice lapsed, Roche also ceased to be the prosecutor. It is established that Roche was never a party to the petitions for

³² *Id.*, pp. 17-18.

certiorari filed separately by GSK and Pfizer. It must be emphasized that a petition for certiorari is an original and independent action. In the absence of an allegation that Roche did, in fact, conspire and confederate with Pfizer and GSK to “harass” private respondents, the acts of Pfizer and GSK cannot affect Roche and, absent such fact or allegation in the Complaint, the RTC's contention that the trial may bring out the possibility of conspiracy among the three – GSK, Pfizer and Roche – remains to be speculative and imagined, and in this, the denial of Roche's motion to dismiss became a whimsical and capricious act of public respondent.

Moreover, it is settled that a party who did not appeal is not entitled to any affirmative relief³³. Consequently, said party must not also bear the negative outcome of the appeals and remedies instituted by the other parties.

In view of the foregoing, we find that the complaint for malicious prosecution against Roche is clearly barred by prescription. Despite this finding, we find it proper to discuss the second ground raised by Roche: failure to state a cause of action.

A motion to dismiss on the ground that the complaint fails to state a cause of action, hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to "relevant and material facts well pleaded in the complaint and inferences fairly deductible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice."³⁴

When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them to be true. For to do otherwise would be a procedural error and a denial of petitioner's right to due process³⁵. Basic is the legal principle that the nature of an

³³ See *Dio vs. Concepcion*, GR No. 129493, September 25, 1998.

³⁴ *Drilon vs. Court of Appeals*, GR No. 106922, April 20, 2001.

³⁵ *East Asia Traders, Inc. vs. Republic of the Philippines*, GR No. 152947, July 7, 2004.

action is determined by the material averments in the complaint and the character of the relief sought.³⁶

Thus, the complaint in the instant case, must sufficiently allege the existence of the elements of malicious prosecution, to wit: 1) the fact of prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal; 2) that in bringing the action, the prosecutor acted without probable cause; and 3) that the prosecutor was actuated or impelled by legal malice, that is, by improper or sinister motive³⁷.

Logic dictates that all the elements of a cause of action must exist for it to accrue. As previously discussed, one of the elements of a cause of action is “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”. Now, the question is, whether the Complaint of private respondents allege the existence of a cause of action for malicious prosecution. *We must rule in the negative.*

In *Dolores Adora Macaslang vs. Renato and Melba Zamora*³⁸, the Supreme Court explained the difference between a “failure to state a cause of action” and “lack of cause of action”, and the resultant effects thereof, thus:

Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:

xxxWhat is contemplated, therefore, is a failure to state a cause of action which is

³⁶ *Gregorio vs. Court of Appeals*, GR No. 179799, September 11, 2009.

³⁷ *Diaz vs. Davao Light and Power Co., Inc.*, GR No. 160959, April 4, 2007.

³⁸ G.R. No. 156375, May 30, 2011.

provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the pleading. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence does not prove a cause of action. This is, therefore, a matter of insufficiency of evidence. **Failure to state a cause of action** is different from failure to prove a cause of action. **The remedy in the first is to move for dismissal of the pleading**, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

- (a) The legal right of the plaintiff;
- (b) The correlative obligation of the defendant;
and
- (c) The act or omission of the defendant in violation of said legal right.

If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. Failure to state a cause of action may be raised at the earliest stages of an action through a motion to dismiss, but lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented. (*Emphasis supplied*).

The Complaint alleges, in paragraph 20³⁹, that Roche was one of the pharmaceutical companies that appeared as private complainant in the preliminary investigation against Malik and Ateeque. However, a plain reading of the Complaint also shows that Roche's participation in the prosecution was only until the level of the Secretary of Justice. Thereafter, no other act was imputed against Roche which may lead to the conclusion that an element of malicious prosecution existed – that is, that Roche had caused the prosecution until the action finally terminated with an acquittal – because Roche desisted from appealing the dismissal of the criminal complaint it filed and let the period to do so, lapse on February 15, 2004, when Roche no longer availed of the remedy of certiorari to question the ruling of the Secretary of Justice.

Private respondents insist that the reckoning dates when prescription should have commenced to run are July 20, 2010 and July 30, 2010. However, it is clear from the Complaint that on the aforementioned dates, the first element of malicious prosecution (that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal) was already absent as of February 15, 2004, sofar as concerns Roche.

Lastly, it is important to note that private respondent SITI was never a party to the criminal cases. It is apparent from the allegations in the complaint that no case was filed by GSK, Pfizer and Roche against SITI before any tribunal. Only Malik, who is not a party to the instant case, and Ateeque, were the respondents in the criminal cases. Verily, none of the elements of malicious prosecution was imputed against SITI.

We, thus, hold that public respondent committed grave abuse of discretion when he refused to dismiss the case against Roche, despite the clear showing on the face of the complaint that the action has prescribed and that the complaint failed to state a cause of action.

³⁹ *Rollo*, p. 60.

WHEREFORE, premises considered, the Petition for Certiorari is hereby **GRANTED**. The Complaint for malicious prosecution in Civil Case No. 11-0405, with respect to Roche Philippines, Inc. is **DISMISSED**.

SO ORDERED.

VICTORIA ISABEL A. PAREDES
Associate Justice

WE CONCUR:

ISAIAS P. DICDICAN
Associate Justice

MICHAEL P. ELBINIAS
Associate Justice

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.

ISAIAS P. DICDICAN
Associate Justice
Chairperson, Eleventh Division