

SECOND DIVISION

[G.R. No. 130362, September 10, 2001]

**INTERNATIONAL FLAVORS AND FRAGRANCES (PHIL.), INC.,
PETITIONER, VS. MERLIN J. ARGOS AND JAJA C. PINEDA,
RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition assails the decision of the Court of Appeals dated February 7, 1997, dismissing the petition for *certiorari* and prohibition filed by herein petitioner as a consequence of the orders by the Regional Trial Court of Pasig, Branch 166, in Civil Case No. 65026 for damages.

Petitioner International Flavors and Fragrances (Phils.) Inc., hereafter IFFI, is a corporation organized and existing under Philippine laws. Respondents Merlin J. Argos and Jaja C. Pineda are the general manager and commercial director, respectively, of the Fragrances Division of IFFI.

In 1992, the office of managing director was created to head the corporation's operation in the Philippines. Hernan H. Costa, a Spaniard, was appointed managing director. Consequently the general managers reported directly to Costa.

Costa and respondents had serious differences. When the positions of the general managers became redundant, respondents agreed to the termination of their services. They signed a "Release, Waiver and Quitclaim" on December 10, 1993. On the same date, Costa issued a "Personnel Announcement" which described respondents as "*persona non grata*" and urged employees not to have further dealings with them.

On July 1, 1994, respondents filed a criminal complaint for libel resulting in the filing of two Informations against Costa docketed as Criminal Case Nos. 9917 and 9918 with the Metropolitan Trial Court of Taguig, Metro Manila.

On March 31, 1995, respondents filed a civil case for damages filed and docketed as Civil Case No. 65026 at the Regional Trial Court of Pasig, Branch 166, against Costa and IFFI, in its subsidiary capacity as employer. Herein petitioner IFFI moved to dismiss the complaint.

On October 23, 1995, the Regional Trial Court granted the motion to dismiss Civil Case No. 65026 for respondents' failure to reserve its right to institute a separate civil action.

Respondents filed a motion for reconsideration, which the trial court granted in an order dated January 9, 1996.

IFFI filed a motion to reconsider said order. This was denied. Hence, IFFI elevated the case to the Court of Appeals, reiterating the same grounds for the dismissal of the civil complaint which it invoked before the court *a quo*. The appellate court dismissed the petition. The dispositive portion of the Court of Appeals' decision reads:

All told, the allegations of petitioner that the lower court has gravely abused its discretion amounting to lack of jurisdiction in issuing the orders complained of has not been substantiated.

WHEREFORE, the petition is hereby **DISMISSED**, with costs against petitioner.

SO ORDERED.^[1]

IFFI's motion for reconsideration was denied. Hence, the present petition for review, with petitioner alleging that the Court of Appeals:

I

...GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI FILED BY HEREIN PETITIONER AND IN DENYING THE LATTER'S MOTION FOR RECONSIDERATION, THEREBY AFFIRMING THE DECISION OF THE COURT A *QUO* CONSIDERING THAT:

- A. THE COMPLAINT IS ONE TO ENFORCE THE SUBSIDIARY CIVIL LIABILITY OF PETITIONER UNDER THE REVISED PENAL CODE FOR THE ALLEGED "LIBELOUS" STATEMENTS OF ITS FORMER EMPLOYEE.
- B. AN EMPLOYER DOES NOT INCUR SUBSIDIARY CIVIL LIABILITY UNDER THE CIVIL CODE, BUT ONLY UNDER THE REVISED PENAL CODE. UNDER THE LATTER, AN EMPLOYER ONLY BECOMES SUBSIDIARILY LIABLE UPON CONVICTION OF THE ACCUSED EMPLOYEE AND PROOF OF HIS INSOLVENCY.
- C. WHILE A SEPARATE CIVIL ACTION FOR DAMAGES MAY PROCEED AGAINST HERNAN H. COSTA UNDER ARTICLE 33 OF THE CIVIL CODE, NO SUCH ACTION MAY PROCEED AGAINST PETITIONER TO ENFORCE ITS SUBSIDIARY LIABILITY AS EMPLOYER UNDER THE SAME ARTICLE.

II

...SERIOUSLY ERRED IN SUSTAINING RESPONDENTS' RIGHT TO FILE THE CIVIL CASE AGAINST PETITIONER NOTWITHSTANDING THEIR ADMITTED FAILURE TO MAKE A RESERVATION AND THEIR CONTINUED PARTICIPATION IN THE CRIMINAL CASE.

III

...FAILED TO APPRECIATE THAT RESPONDENTS' FAILURE TO RESERVE AND THEIR CONTINUED PARTICIPATION IN THE CRIMINAL CASE BAR THE FILING OF THE COMPLAINT FOR DAMAGES AGAINST MR. COSTA AND PETITIONER, CONSIDERING THAT:

- A. UNDER THE DOCTRINE OF LITIS PENDENTIA, THE CIVIL ACTION TO ENFORCE PETITIONER'S SUBSIDIARY CIVIL LIABILITY MUST BE DISMISSED.
- B. THE CIVIL ACTION TO ENFORCE PETITIONER'S SUBSIDIARY CIVIL LIABILITY MUST BE DISMISSED TO PREVENT FORUM-SHOPPING OR MULTIPLICITY OF SUITS.^[2]

Despite the foregoing formulation of alleged errors, we find that petitioner raises one principal issue for the Court's resolution: Could private respondents sue petitioner for damages based on subsidiary liability in an independent civil action under Article 33 of the Civil Code, during the pendency of the criminal libel cases against petitioner's employee?

In our view, respondents' suit based on subsidiary liability of petitioner is premature.

At the outset, we are constrained to delve into the nature of Civil Case No. 65026, respondents' complaint for damages against IFFI. Petitioner avers that the Court of Appeals erred when it treated said complaint as one to enforce petitioner's primary liability under Article 33^[3] of the Civil Code. It asserts that in so doing the appellate court introduced a new cause of action not alleged nor prayed for in respondents' complaint. Petitioner argues that a cause of action is determined by the allegations and prayer in a complaint. Respondents in their complaint did not allege that IFFI was primarily liable for damages. On the contrary, petitioner says the complaint was replete with references that IFFI was being sued in its subsidiary capacity. According to petitioner, the Court of Appeals could not, on its own, include allegations which were not in the complaint, nor could it contradict the cause of action nor change the theory of the case after petitioner had answered. While pleadings should be liberally construed, says the petitioner, liberal construction should not be abused. Misleading the adverse party should be avoided. Further, it avers that where allegations in the pleading are inconsistent, the pleader is bound by those most favorable to its opponent,^[4] and consequently, respondents' complaint should not be treated as one to enforce IFFI's primary liability as the appellate court erroneously did, considering that the complaint plainly adverts to the