



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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SEVENTH DIVISION

*MINUTES of the proceedings held on June 21, 2017.*

*Present:*

Hon. ALEXANDER G. GESMUNDO ----- Chairperson  
Hon. MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Associate Justice  
Hon. ZALDY V. TRESPESES ----- Associate Justice

The following resolution was adopted:

**Crim. Case No. SB-12-CRM-0173 – People vs. ELENO U. COLINARES, JR.**

This resolves the following:

1. Accused Eleno U. Colinares, Jr.'s "**MOTION WITH LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE**" dated March 16, 2017; and
2. The Prosecution's "**COMMENT/OPPOSITION TO THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE**" dated June 16, 2017.

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This resolves accused's *Motion with Leave of Court to File Demurrer to Evidence*<sup>1</sup> which, as a whole, is solely predicated on the following:

2. Perusal of the evidence presented by the Prosecution, accused humbly believed that the same were not substantial to overcome the presumption of innocence beyond reasonable doubt, thus, the filing of this motion.

The *Motion* barely quotes the codal provision of Section 23, Rule 119 of the Revised Rules of Criminal Procedure which allows a demurrer on the ground of *insufficiency of evidence*, as follows:

Section 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of **insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

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<sup>1</sup> Records, Volume 2, pp. 247-248

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**The motion for leave of court to file demurrer to evidence shall specifically state its grounds** and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. [Emphasis supplied]

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While the *Motion* alluded to evidence being “*not substantial to overcome the presumption of innocence beyond reasonable doubt,*” it likewise leaves this Court to speculate why such a deduction was made when accused failed to attribute a *specific ground* for his demurrer.

Despite the vacuum in accused’s *Motion*, the prosecution countered in its *Comment/Opposition*<sup>2</sup> that it was able to establish “*sufficient evidence, both documentary and testimonial, to support a verdict of guilt against the accused for violation of Section 3 (h)*” and went on to enumerate the instances on how it satisfied the elements of Section 3 (h).

We cannot, however, indulge the accused by examining in detail the evidence pointed by the prosecution when accused himself has not provided the roadmap on which his *Demurrer* is based. For this reason, the *Motion* fails.

The vintage case of *Hermanos v. Yap Tico, et al.*<sup>3</sup> is here quoted in detail as it clearly and succinctly ruminated the sentiment of the Court tasked to resolve a *Demurrer*, albeit in a civil case, looming in its own scarcity, *viz:*

To the complaint before us a demurrer was interposed, stating merely that the complaint did not allege facts sufficient to constitute a cause of action. **No particular ground was specified. No specific failure was asserted or named. No precise weakness was pointed out.** The order overruling the demurrer does not indicate that the court was informed as to the specific grounds upon which it was based. Certainly, so far as the records goes, the plaintiffs never knew until after the demurrer was decided precisely what the defendant was driving at when he presented it.

**Under such conditions, we do not feel that we should use our discretion to indulge presumptions in favor of the demurrant in determining whether or not the allegations of the complaint are sufficient. We do not feel like going out of the beaten path, even if we could, to search for defects in the complaint when neither the plaintiff nor the court was precisely informed of the alleged defects until it was too late to be use to either.** We do not feel like favoring a demurrer which is as full of defects as the court overruling the demurrer should be sustained if there is any legal ground upon which it can be, although such ground was not presented by the court below as one of the reasons for its decision.

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<sup>2</sup> Ibid., pp. 280-284

<sup>3</sup> G.R. No. 6791, March 27, 1913

The fact that the demurrer was worthless as a pleading is one of the strongest reasons for overruling.

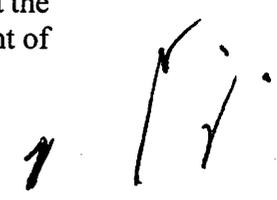
It has been urged that our decision requiring that in all demurrers the specific grounds of the particular objection should be set out distinctly, is against the weight of authority. We do not think so. But if it were, we should still be forced, in conscience, to stand upon the proposition as we have stated it, as it seems to us to be fundamentally right and to be fully supported by reason and logic.

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It is claimed, following the old theory, that the general demurrer searches the whole record; but if it searches, it does not discover or disclose. It may search, but if it finds anything, it puts it carefully away in a dark place, cautiously concealing it from the eyes of the court and the knowledge of the adversary. The reason for this is that, if the court or the party knew the precise defect that had been "searched," there would be an immediate amendment. If the party against whom a demurrer is interposed can be kept from discovering the real defect in his pleading until he is deeply in the meshes of demurrant's net, then the case many times is substantially won. He cannot escape except by loss of so much time and at so great expense that, many times, it is not worth while to recommence or continue his action.

It has been the policy of modern legislation to do away with these objectionable features, as well as others, and to that end the general demurrer has been, effect, abolished in a number of States. Our own statute requires that "the demurrer must distinctly specify the grounds upon which any of the objections to the complaint, or to any of the causes of action therein stated, are taken."

A pleading is not an instrument of deception. It is not something to get parties into trouble. It is not to be used to dig pitfalls or to lay traps or snares. It is not to be used to deceive but to inform; not to befog but to clarify; not to cause trouble but to obviate it; not to make expense but to save it. **A demurrer, for example, should not leave the court and the party against whose pleading it is aimed as ignorant of the defect in the offending pleading as before the demurrer is filed.** Many times the objection that the complaint does not state facts sufficient to constitute a cause of action means very little. There are occasions, of course, when it is sufficient. But is certain that no injury can ever result from naming the precise reason why the complaint does not state facts sufficient to constitute a cause of action; and, in the great majority of cases, great good will come of it. Take this very case. **Much of the real difficulty and uncertainty would have been avoided if the demurrer had pointed out the precise defect which it was claimed was found in the complaint.** If the demurrer had specified and stated that the complaint was defective, if it were really so defective, in that it alleged that the defendant had levied simply upon the interest of Mendezona in the premises known as the right to repurchase, something which he had a right to do and upon which no cause of action could be predicated, then the plaintiff would have been given a fair opportunity to meet the objection, either by amending his complaint and alleging a levy by the defendant upon the corpus of the property, or by standing upon the complaint and submitting to the court the question of law whether the defendant had a right to levy upon the right of



repurchase. If the plaintiff had amended by alleging a levy upon the corpus, then the demurrer and all the questions relating thereto, now vexing the parties, would have been out of the case. If the plaintiff really intended to allege just what the demurrant now claims that he did allege, then the question of law above referred to would have been clearly presented and the case entirely resolved by the decision of that question. Indeed, it is more than probable that the plaintiff, if his complaint was really defective, would have withdrawn it after full consideration of the objection urged against it. [Emphasis supplied]

Where the *Motion* gave this Court no specific ground on why leave should be granted, save for the allegation that the evidence was “*not substantial*” but which again fail to disclose particular facts why it was so, it is inevitable that it be struck at the outset.

WHEREFORE, the *Motion with Leave of Court to File Demurrer to Evidence* filed by accused Eleno U. Colinares, Jr. is **DENIED** for lack of merit.

Let the presentation of defense evidence commence on ***September 25 and 26, 2017, both at 8:30 in the morning*** at the Fourth Division Courtroom, as previously scheduled.

SO ORDERED.

GESMUNDO, J., *Chairperson*



GOMEZ-ESTOESTA, J.



TRESPESES, J.

