

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL REGION
REGIONAL TRIAL COURT
BRANCH 216
Quezon City

IGLESIA NI CRISTO,
Represented by : ATTY.
RESTITUTO S. LAZARO,
Plaintiff,

-versus-

Civil Case No. 05-55420

ROSS TIPON and JC PALABAY
ENTERPRISES, INC., Represented
By Its President, JESSIE C.
PALABAY,
Defendants.

x- - - - - x

MOTION TO DISMISS

COMES NOW , the defendant Ross Tipon, by counsel who now formally enters his appearance, to this Honorable Court, respectfully moves to dismiss the case upon the following grounds

1. That the Complaint does not show that the plaintiff has the capacity to sue and be sued; The capacity to sue must not be presumed. Sec. 4, Rule 8 of the 1997 Rules of Civil Procedure states:

“Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. x x x .”

The complaint does not show on its face that plaintiff has the capacity to sue or be sued. The existence of the authority of Atty. Lazaro to file the complaint does not cure the defect.

2. That the Complaint was not properly verified hence it is considered as an unsigned pleading. Section 4 of the above-mentioned Rules requires that a pleading should be verified as follows:

“Sec. 4 Verification. - Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on “*information and belief*” or upon “*knowledge, information and belief,*” or lacks a proper verification, **shall be treated as an unsigned pleading.**”

The Verification of the complaint reads:

“x x x

1. I am the attorney-in-fact of the plaintiff in the above-entitled case and caused the preparation of the foregoing complaint; and that I have read and understood the contents thereof, which are true and correct of my own personal knowledge and belief;

x x x.”

Certainly the verification by the plaintiff is insufficient in form and substance.

3. Granting for the sake of argument that the plaintiff has the capacity to sue and be sued and the complaint was properly verified the complaint states no cause of action because no right of the plaintiff has been violated. The defendant in writing the book to be published is only exercising his right to freedom of speech guaranteed by the Constitution.

WHEREFORE, premises considered it is respectfully prayed of the Honorable Court, to Dismiss the complaint.

Such other reliefs just and equitable are prayed of.

Baguio City, Philippines, May 30, 2005.

GEORGE M. FLORENDO

Counsel for the Defendant Ross Tipon
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The Clerk of Court
RTC, Branch 216
Quezon City

Atty. Wilfredo M. Santos
Lazaro Tuazon Santos & Associates Law Offices
No. 1 Central Avenue, New Era
Diliman 1107 Quezon City

Greetings:

Please take notice that the undersigned will submit the foregoing motion for the consideration of the Honorable Court on June 10, 2005 at 2:00 o'clock in the afternoon or soon thereafter as counsel may be heard.

GEORGE M. FLORENDO

Copy furnished by registered mail with return card:

Atty. Wilfredo M. Santos
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No. 1 Central Avenue, New Era
Diliman 1107 Quezon City

EXPLANATION

FILED AND COPY FURNISHED by registered mail with return card because it is the most practicable means due to distance and lack of messenger to effect personal service. Baguio City where counsel holds office is more than 250 kms. away from Quezon City.

GEORGE M. FLORENDO