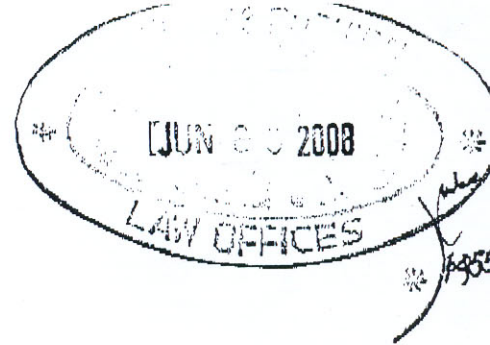


REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 56
MAKATI CITY



ELLEN T. TORDESILLAS, ET AL.,
Plaintiffs,

- VERSUS -

CIVIL CASE NO. 08-086

HON. RONALDO PUNO, SECRE-
TARY OF THE INTERIOR AND
LOCAL GOVERNMENT, ET AL.,
Defendants.

HLR	<i>[Signature]</i>
LRB	<i>[Signature]</i>
RR	<i>[Signature]</i>
TR	<i>[Signature]</i>
FR	<i>[Signature]</i>
FILED	
OTHERS	

O R D E R

This resolves the two Motions to Dismiss, separately filed by defendant Hon. Gilberto C. Teodoro, Jr., Secretary of National Defense, and defendants Hon. Ronaldo Puno, Secretary of the Interior and Local Government, Hon. Raul Gonzales, Secretary of Justice, Director General Avelino Razon, Jr., Chief of the Philippine National Police, Director Geary Barias, National Capital Region Police Office (NCRPO) Chief, Chief Superintendent Luizo Ticman, Chief Superintendent Leocadio Santiago, Jr., PNP Special Action Force (SAF) Director, Senior Superintendent Asher Dolina, Chief Criminal Investigation and Detection Group-National Capital Region Office (CIDG-NCRPO), Maj. Gen. Hermogenes Esperon, Chief of Staff, Armed Forces of the Philippines, together with the plaintiffs' separate Oppositions thereto, and defendant Secretary of National Defense's Reply to the plaintiffs' Opposition to his own Motion to Dismiss.

Both motions to dismiss are anchored on a similar ground that the complaint states no cause of action.

The pertinent rule on cause of action is as follows:

Sec. 2. Cause of Action, defined. – A cause of Action is the act or omission by which a party violates a right of another.

The cause of action must always consists of two elements (1) the plaintiff's primary right and the defendant's corresponding primary duty, whatever may be the subject to which they relate-person, character, property or contract; (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated. The cause of action is determined not by the prayer of the complaint but by the facts alleged. It is the fact or combination of facts which affords a party a rights to judicial interference in his behalf. (Nicanor G. de Guzman v. Court of Appeals, G.R. No. 92029, December 20, 1990), 192 SCRA 507.

Consistent with prevailing jurisprudence on the matter, when the motion to dismiss is based on the said ground, the Court, in tackling the same, will only consider the allegations of the complaint, and nothing else.

Specifically, the allegations of the complaint (paragraphs 12 to 29 thereof) in support of plaintiffs' claim for damages against the defendants are as follows:

“12. On November 29, 2007, at around 10:00 a.m. Sen. Antonio Trillanes IV, Brigadier General Danilo Lim and other members and/or sympathizers of what is known as the Magdalo Group walked out of the Makati City Regional Trial Court where their rebellion cases are being heard, marched toward the nearby Manila Peninsula hotel, took over it and called for the ouster of Mrs. Gloria Macapagal-Arroya as President of the Philippines.

13. Hundreds of journalists from various organizations both foreign and local, including many of the Plaintiffs in this case, rushed to the hotel to cover what has become known as the Manila Peninsula standoff.

14. At around 2 p.m. of the same day, police tried to serve an arrest warrant issued by Judge Oscar Pimentel of the Makati City Regional Trial Court to the Magdalos at the hotel but were rebuffed and the members of the press were ordered to leave the hotel. PNP-NCRPO Director Geary Barias subsequently announced that a police assault to arrest Sen. Trillanes, Gen. Lim and their supporters holed up at the hotel was forthcoming. He also issued an ultimatum for journalists to leave the hotel premises by three o'clock in the afternoon.

15. Many cleared the premises but scores of other chose to stay behind, including Plaintiffs Tordesillas, Deogracias, Hachero, Galvez.

16. The planned assault took place at 3:58 p.m. and ended at 5:30 p.m. when Senator Antonio Trillanes IV and Brigadier General Danilo Lim surrendered to the arresting authorities so as not to endanger the lives of the civilians and journalists inside the hotel.

17. But those who stayed behind were taken into custody by police, many of them in handcuffs, following the arrest of the Magdalos and their alleged supporters. Police also seized equipment and video footage taken by television crew taken into custody by the police. Police Officers – led by Director Geary Barias, Chief Supt. Leocadio Santiago Jr., Chief Supt. Luizo Ticman and Senior Supt. Asher Dolina – did not inform the members of the media of their Miranda rights, nor did they inform them of the offenses for which they were being arrested.

18. The official treatment of media in the police operation to retake the hotel is unprecedented since the dark days of martial rule. Officers ordered journalists to raise their arms in surrender, despite the fact that tear gas fumes SAF commandos had earlier deployed to flush out the Magdalos have yet to dissipate.

19. Later, officers would handcuff many of them, though a few of the journalists – including plaintiffs Tordesillas, Deogracias and Hachero – because of their vigorous resistance, escaped such a degrading treatment. Yet it was undeniable that the same officers treated the journalists as suspects in a crime, taking them into custody but without informing them what offense or crime they have committed and without providing them with a counsel of their own choice.

20. The arrest of members of the press and their subsequent detention were arbitrary and illegal having been made with grave abuse of discretion, on the part of PNP, the police officers being FULLY AWARE that there was no PROBABLE CAUSE to believe they were committing or had committed an offense.

21. In addition, the arrested members of the press were not formally charged at all. This is clear indication that they were detained in bad faith by police officers, who knew fully well that they had no reason to believe that the arrested members of the media had committed, were committing or were committing or were about to commit an offense, much less did they have personal knowledge of such. The official treatment of media in the wake of the Manila Peninsula standoff was clearly meant to intimidate, cow and muzzle the media. Official acts and pronouncements before, during and after the standoff indicate official policy that violates the most sacred rights of citizens in a democratic society such as ours.

22. As shown by their public conduct and pronouncements, Sec. Ermita, Sec. Puno, Sec. Teodoro and Sec. Gonzalez, as well as Director Gen. Razon and Maj. Gen. Esperon were all complicit in the issuance of the orders to arrest and detain the journalists including Plaintiffs Tordesillas, Deogracias and Hachero without formally charging them of any offense or crime, and in violation of their rights.

23. In a meeting with the media at the Peninsula Manila Hotel on December 5, 2007 Sec. Puno said that “journalists who ignore police orders to leave a crime scene will be arrested and charged with obstruction of justice and willful disobedience to authority.”

24. AFP Chief of Staff, Maj. Gen. Esperon also issued a veiled threat that the military would go along with the PNP in investigating journalists “who blocked the enforcement of law.” He was joined by Defense Sec. Teodoro, who likewise defended the arrest by police of journalist covering the police assault on the Manila Peninsula.

25. On January 11, 2008 the Sec. Gonzalez issued an advisory addressed to the Chief Executive Officers (CEOs) of media networks and press organizations, written in all capital letters, which reads:

PLEASE BE REMINDED THAT YOUR RESPECTIVE COMPANIES, NETWORKS OR ORGANIZATIONS MAY INCUR CRIMINAL LIABILITIES UNDER THE LAW, IF ANYONE OF YOUR FIELD REPORTERS, NEWS



GATHERERS, PHOTOGRAPHERS, CAMERAMEN AND OTHER MEDIA PRACTITIONERS WILL DISOBEY LAWFUL ORDERS FROM DULY AUTHORIZED GOVERNMENT OFFICERS AND PERSONNEL DURING EMERGENCIES WHICH MAY LEAD TO COLLATERAL DAMAGE TO PROPERTIES AND CIVILIAN CASUALTIES IN CASE OF AUTHORIZED POLICE OR MILITARY OPERATIONS.

26. Sec. Gonzales would go as far as telling international media organizations who, in support of their Philippine counterparts, raised a cry of protest over this pronouncement, to go jump in the lake instead of "meddling with us".

27. The PNP chief, Director Gen. Razon, expressed support for Gonzalez' statement, saying that members of the media could be charged with obstruction of justice for failing to heed police warnings. This is apparently part of an official policy being implemented by the PNP which another top official has menacingly called "the final option."

28. As if to affirm this policy of abuse, intimidation, repression and prior restraint directed at the media, Sec. Puno and Director Gen. Razon would subsequently cite for supposedly "exemplary acts" the police generals who implemented or carried out the police assault on the Manila Peninsula - Director Barias, Chief Supt. Tieman, and Chief Supt. Santiago.

29. For this reason, Plaintiffs Teodoro, Santos, Chua, Cruz, Alampay, Paraan, Fajardo, Pancio, Ayaza and Baculo, as well as the CMFR, PCIJ and NUJP all share with Plaintiffs Tordesillas, Deogracias and Hachero a common cause of concern about the official public warnings, direct and implied threats and "reminders" of arrest, re-arrest and criminal prosecution of media persons whom officialdom apparently now deems to be combatants or active criminal participants in any news event."

Upon a thorough examination of the afore-quoted allegations of the complaint, the Court finds that the same do not constitute sufficient cause of action for damages against the defendants that warrants further prosecution of the instant case.

To begin with, the right of the plaintiffs as members of the press as guaranteed under the Constitution was not violated or trampled upon by the respective acts of the defendants complained of.

There is no dispute, as in fact plaintiffs have readily admitted in their complaint that there was such specific order emanating from a higher PNP official, herein defendant PNP-NCRPO Dir. Geary Barias, who had a direct hand in the conduct of that massive police operation during the Manila Peninsula Hotel standoff for the members of the press to leave the hotel and an ultimatum issued by said defendant Police Officer to leave the

hotel premises by three o'clock in the afternoon, as a police assault to arrest Sen. Trillanes, General Lim and their supporters holed up at the hotel was forthcoming.


Under the given dangerous situation, that order issued by defendant PNP-NCRPO D. Geary Barias was but lawful and appeared to have been disobeyed by all those, including some of the plaintiffs, when they intentionally refused to leave the hotel premises for which an appropriate criminal charge under Article 151 of the Revised Penal Code, which is applicable to all, including the media personalities, could have been initiated against them but they were so lucky as none had been initiated against them. Thus, their (plaintiffs Tordesillas, Deogracias, Hachero, Galvez and Santos) having been handcuffed and brought to Camp Bagong Diwa, Bicutan, Taguig City for investigation, and released thereafter was justified, it being in accord with the police procedure.

Anent those pronouncements made by the other defendants and that advisory of defendant Secretary Gonzales following that Manila Peninsula Hotel standoff, the same have not and will not in any way curtail much less avert plaintiffs from exercising freely their right as such members of the press – covering or obtaining information on future events similar to what transpired at the Manila Peninsula Hotel.

~~WHEREFORE~~, for reasons afore-stated, the complaint is hereby DISMISSED.*

SO ORDERED.

Given this 20th day of June, 2008 at Makati City.


REYNALDO M. LAIGO
Judge