THE RIGHT TO PRESENT EVIDENCE IN SUPPORT OF A MOTION TO DISMISS ON THE GROUND OF LACK OF CAUSE OF ACTION

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Decisional law is firm that a defendant has the right to present evidence in support of a motion to dismiss.[1] However, there is a conflict on whether such right covers the ground of failure to state a cause of action, or lack of cause of action, as the case may be.[2] More particularly, there has been debate on whether, in the invocation of such a ground, facts not appearing on the face of the complaint may be taken note of, considering the general rule that in a motion to dismiss based on lack of

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[1] Ruperto v. Fernando and Tianco, 83 Phil. 943 (1949).

[2] RULES OF COURT, Rule 16, sec. 1 states:

Grounds. - Within the time for pleading a motion to dismiss the action may be made on any of the following grounds;

(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;

(b) That the court has no jurisdiction over the nature of the action or suit;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the complaint states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds;

(j) That the suit is between members of the same family and no earnest efforts towards a compromise have been made.

"Failure to state a cause of action" and "lack of cause of action" are often used interchangeably. In Guitierrez Lora, et al. v. Varela, 92 Phil. 373 (1952) the Supreme Court observed that:

> [t]he term 'cause of action' has been held to be synonymous with 'right of action' (37 Words and Phrases 642), but in the law of pleading one is distinguished from the other in that a right of action is a remedial right belonging to some person, while a cause of action is a formal statement of the operative facts that give rise to such remedial right. One is a matter of right and depends on the substantive law, while the other is a matter of statement and is governed by the law on procedure. *Id.* at 375.

For purposes of this article, the terms are also used interchangeably.

or failure to state a cause of action, sufficiency can only be determined by the facts alleged in the complaint and no other.[3]

It is this article's contention, through a tracing of jurisprudence, that in certain instances, such evidence may be so admitted.

I. Right to Present Evidence in Support of a Motion to Dismiss

The first case to explicitly uphold such a right is *Ruperto v. Fernando and Tianco*.[4] In this case, plaintiff filed suit to eject defendant from a store space to which the former claimed a better leasehold right. Defendant filed a motion to dismiss on two grounds: (a) that the court has no jurisdiction over the case because it was not capable of pecuniary estimation; and (b) that the complaint did not state a cause of action. The municipal court denied the motion to dismiss because the defendant based his contention of lack of jurisdiction on facts not alleged in the complaint.

In reversing the decision of the municipal court, the Supreme court laid down the doctrine that a party has the right to present evidence in support of his motion to dismiss. It is precisely for this reason, according to the Court, that there is a hearing on the motion to dismiss. As the Court explained:

> The respondent Judge is not correct in holding that in a motion to dismiss on the ground of lack of jurisdiction, the defendant cannot 'base his arguments on questions of fact not touched (upon) in the complaint and which partakes (of) the nature of special defenses to be proved by presentation of evidence.' A motion to dismiss under Rule 8 of the Rules of Court is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on the facts alleged in the complaint. Except where the ground is that the complaint does not state a cause of action which must be based only on the allegations in the complaint, *a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint and that is the reason why it is set for hearing for the presentation of evidence in support of and against the contention of the defendant*.[5]

In *Cabague v. Auxilio*,[6] an action to enforce an agreement in consideration of marriage, defendants moved to dismiss the complaint on

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[3]*See* Dimayuga v. Dimayuga, 96 Phil, 859 (1955); Reinares v. Arrastia, 5 SCRA 748 (1962); Uy Chao v. de la Rama, 6 SCRA 69 (1962); Remitere et al. vs. Court of Appeals, 16 SCRA 525 (1977); and Ruiz v. Court of Appeals, 79 SCRA 525 (1977).

[4]83 Phil. 943 (1949).

[5]83 Phil. at 945 (emphasis supplied).

[6]92 Phil. 294 (1952).

the ground that the contract was oral and therefore unenforceable under the statute of frauds. Plaintiff opposed the motion, pointing out that as there was no allegation in the complaint that the contract was verbal or in writing, no evidence to prove this particular point was admissible. The Supreme Court ruled otherwise, holding:

> It should be observed preliminarily that, under the former rules of procedure, *i.e.*, when the complaint did not state whether the contract sued on was in writing or not, the statute of frauds could be no ground for demurrer. Under the new Rules defendant may now present a motion to dismiss on the ground that the contract was not in writing, even if such fact is *not apparent* on the face of the complaint. *The fact may be proved by him.*
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> There is no question here that the transaction was not in writing. The only issue is whether it may be proved in court.[7]

In *Saguinsin v. Lindayag*,[8] the ground raised in the motion to dismiss was petitioner's legal incapacity to institute the proceedings. Petitioner, opposing the motion to dismiss, argued that only facts alleged in the petition should be considered in determining its sufficiency. The lower court allowed the introduction of evidence in support of the motion to dismiss and on the basis thereof ordered the dismissal of the petition. The Supreme Court sustained the action of the lower court and held that at the hearing of a motion to dismiss, the parties should be allowed to present evidence. Said the Court:

> Petitioner's view that when a motion to dismiss a complaint or a petition is filed, only the facts alleged in the complaint or petition may be taken into account is not entirely correct. To the contrary, the rule is that at said hearing said motion may be proved or disproved in accordance with the rules of evidence, and it has been held that, for that purpose, the hearing should be conducted as an ordinary hearing, and that the parties should be allowed to present evidence, except when the motion is based on the failure of the complaint or of the petition to state a cause of action (Asejo vs. Leonoso, 44 O.G. No. 10, 3822). In the present case, the motion to dismiss the petition was grounded on petitioner's lack of legal capacity to institute the proceedings which, as already stated heretofore, was fully substantiated by the evidence presented during the hearing.[9]

In *Solancho v. Ramos*,[10] the defendant moved to dismiss the complaint for recovery of ownership and possession of a parcel of land on the ground that there was a pending administrative case between the

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[7] 92 Phil. at 296 (citations omitted) (emphasis supplied).
[8] 6 SCRA 874 (1962).
[9] 6 SCRA at 877.
[10] 19 SCRA 848 (1967).

plaintiff and one of the defendants over the same parcel of land in the District Land Office. Attached to the motion to dismiss was a letter from the Bureau of Lands advising one of the defendants to file a protest to the free patent application of the plaintiff as well as defendant's written protest. The lower court dismissed the complaint. In branding as "unmeritorious" plaintiff's argument that a motion to dismiss cannot be based on facts not alleged in the complaint, the Supreme Court reiterated that:

> It is contended by appellant that the lower court erred in issuing the order of dismissal because the motion to dismiss is based upon facts not alleged in the complaint. This contention is unmeritorious. A motion to dismiss under Rule 16 (formerly Rule 8) of the Rules of Court is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on facts alleged in the complaint. Except where the ground is that the complaint states no cause of action which must be based only on the allegations in the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint.
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> It is also contended by appellant that the defendants-appellees *failed to adduce evidence in support of their allegation that there is a pending administrative case concerning the land in question.* Defendants-appellees have, however, attached a letter of the Bureau of Lands advising Josefa Ramos to file her protest and the written protest to their motion to dismiss, making it a part of their pleading and thereby rendering unnecessary the presentation thereof by the defendants.[11]

The case of *Asejo v. Leonoso*[12] presents a different factual situation in the sense that it was the plaintiff, not the defendant, who was not afforded an opportunity to present countervailing evidence on a motion to dismiss. One of the grounds asserted in the motion to dismiss the complaint to recover a parcel of land was that the plaintiff had waived her rights and claims over the property in question. The lower court dismissed the complaint on the basis of Exhibit B, a quitclaim deed executed by the plaintiff, which was introduced in evidence in a foreclosure suit between the same parties that was previously dismissed without prejudice. In reversing the dismissal, Mr. Justice Tuason, speaking for the Supreme Court, explained that:

> Sections 3 and 4 of Rule 8 outline the procedure in cases where one or more of the grounds of dismissal are asserted. Two courses are open: (a) to deny or grant the motion or allow amendment of pleading; (b) to 'defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable.' Any of the grounds to dismiss which has not been brought before the court by

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[11] 19 SCRA at 850-851 (citations omitted)(emphasis supplied).

[12] 78 Phil. 467 (1947).

> motion may be pleaded as an affirmative defense. *In either case there must be a hearing. And of necessity the hearing, although called preliminary, should be conducted as ordinary hearings; the parties should be allowed to present evidence and the evidence should be taken down. Otherwise, in the event of appeal from an order of dismissal, as in this case, the appellate court would have no means to judge the legality of the proceedings and the sufficiency of the proofs on which the order is predicated.* If after the hearing the court is of the opinion that the ground alleged in the motion to dismiss or in the answer is not indubitable, it shall defer the determination of the questions until the trial.[13]

After finding that Exhibit B is "not one to which no possible objection could be made, however trivial," and therefore "does not appear to be indubitable," the Supreme Court ruled that the proper course of action is:

> The plaintiff should at least have been accorded a hearing. This is the least she is entitled to. And this is true regardless of any strong opinion the court may have as to the truthfulness of the document. No such hearing was held. Without hearing, the plaintiff would be barred from pursuing her action and is to be deprived of what she claims to be her property without being given an opportunity to affirm or deny the validity of Exhibit B.[14]

The unusual situation of a plaintiff demanding the right to present evidence on a motion to dismiss based on the failure of the complaint to state a cause of action was again raised in the recent case of *Excel Agro-Industrial Corporation v. Gochanco and C. A.*[15] The case was an action to compel the defendant to accept a bank check for ₱100,000 as payment for a loan secured by a deed of assignment over nine parcels of land. The defendant filed an answer raising as an affirmative defense, among others, that the complaint states no cause of action because he is not bound to accept the check which is not legal tender. Thereafter, the defendant filed a motion to dismiss alleging as grounds the affirmative defenses pleaded in his answer. The lower court ordered the dismissal of the complaint. On appeal, the Court of Appeals ruled that there was no need to hold a hearing to receive evidence as defendants' allegation of lack of cause of action in the complaint was a hypothetical admission of all the material averments of the complaint. It further ruled that, since the tender of payment in check as alleged in the complaint does not constitute valid or legal tender of payment, the complaint does not state a cause of action and should be dismissed.

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[13] 78 Phil. at 469-470 (emphasis supplied).

[14] 78 Phil. at 471.

[15] 166 SCRA 191 (1988).

On review by ceriorari, the Supreme Court, through Mr. Justice Padilla, reaffirmed, by quoting, the doctrinal law of the *Asejo* case and ruled that the plaintiff should have been permitted to introduce evidence to controvert the assertion in the motion to dismiss that the complaint did not state a cause of action:

> However, petitioner should have been heard before dismissal of its complaint especially because there is a stipulation in the Deed of Assignment which it executed in favor of private respondent that the nine (9) parcels of land subject of the Deed were to be *forfeited* in favor of private respondent who could sell them to any interested party if the loan of ₱100,000.00 remained unpaid on 1 October 1983, the very day petitioner allegedly tendered payment by check. Such a precipitate deprivation of ownership should have been considered by the trial court, at the very least, in requiring a hearing on the motion to dismiss, and before actually dismissing the complaint, notwithstanding private respondents' attack on the validity of the tendered check and its character as legal tender.
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> Besides, the complaint also alleged that private respondent 'refuse and still refuses to accept the check with (sic) legal justification to the prejudice of herein plaintiff.' This allegation, we are told by petitioner in this appeal, is supported by proof (which it evidently is prepared to present) 'that the obligation of plaintiff-petitioner in the sum of ₱100,000.00 which fell due on October 1, 1963, fell on Friday and since defendant-respondent cannot be contacted earlier, plaintiff-petitioner called defendant-respondent if he will accept a check (Cashier's) for the sum of One Hundred Thousand (₱100,000.00) as petitioner did not want to carry so much cash from Bacolod to Silay City due to the rush of hold-ups during that time and to which defendant-respondent gave his assent. Defendant-respondent (however) intentionally refused to accept the payment of the check of ₱100,000.00 from the petitioner in order to make the petitioner default in his payment as the collateral of the loan is worth more than ₱100,000.00 and by not accepting the payment, respondent stands to profit by not less than ₱1,000,000.00 .[16]

II. Right to Present Evidence Even When the Ground of the Motion to Dismiss is that the Complaint Does Not State a Cause of Action

The *Excel Agro-Industrial* case, where the plaintiff, not the defendant, was given the right to present evidence to controvert a motion to dismiss based on the failure of the complaint to state a cause of action, is one of the several precedents which created exceptions to the rule that the determination of the sufficiency of a cause of action must be limited to the facts alleged in the complaint. Put differently, the rule is not cast in stone.

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[16]166 SCRA at 194-195.

1. *Facts Subject to Judicial Notice*

An obvious exception to the general rule that the determination of the sufficiency of a cause of action must be limited to the facts alleged in the complaint was that litigated in *U. Banez Electric Light Company v. Abra Electric Cooperative, Inc.*[17] The plaintiff in that case sought to enjoin the operation of an electric plant by the Abra Electric Cooperative, Inc. ("ABRECO"). The Supreme Court summarized the complaint to be:

> It appears that in June 1973, UBELCO filed a complaint in the court *a quo* alleging that it is the holder of a Congressional franchise for electric and power system in the Municipality of Bangued, Province of Abra, granted under Republic Act No. 4143; that under the said Act, when defendant NPC shall have established its lines in the areas adjacent to or over the territory covered by plaintiff's franchise, the NPC 'may make available its power and heat only after negotiations with and through U. Banez Electric Light Company, or with the authority and consent of the grantee;' that the defendant NPC is now in a position to service the several municipalities in the Province of Abra, including Bangued, but for one reason or another, and notwithstanding repeated requests made by the plaintiff, NPC has unlawfully failed and refused to enter into a power service contract with the plaintiff to its great damage and prejudice; that defendant ABRECO, with the encouragement of and in connivance with defendant NEA, has illegally attempted to establish, operate and maintain an electric system within the municipality of Bangued without a valid franchise and without authority from the Public Service Commission, as required by law, drawing power from defendant NPC without negotiating with or obtaining the consent of the plaintiff, in violation of Republic Act No. 4143; that the municipality of Bangued, Abra has no right to grant an electric franchise to defendant ABRECO because said act is *ultra vires* and because of the existence of plaintiff's franchise and also because there is no necessity to allow two electric systems to operate within the same municipality; that defendants ABRECO and NEA are attempting to construct, maintain and operate an electric system within the municipality of Bangued, in violation of the rights of plaintiff, and unless said defendants are enjoined, the plaintiff would suffer grave and irreparable damage and injury; and that plaintiff has no other plain, speedy and adequate remedy in the ordinary course of law. . . .[18]

Defendants ABRECO and NEA filed a joint answer. Thereafter, those defendants filed a joint motion to dismiss and defendant NPC followed suit. The common grounds relied upon were: (1) failure of the complaint to state a cause of action, and (2) lack of jurisdiction over the nature of the action. It seems that the assertion of the defendants that the complaint did not state a cause of action directly placed in issue the fact that subsequent to the enactment of Republic Act No. 4143,

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[17] 119 SCRA 90 (1982).

[18] 119 SCRA at 91-92.

plaintiff's "Congressional franchise," Republic Act Nos. 6038 and 6395 were likewise enacted into law which effectively permitted defendant ABRECO, as a rural electric cooperative, to operate within the franchised area of the plaintiff. The lower court dismissed the complaint as advocated by the defendants. On appeal, the Supreme Court sustained the lower court for the reason that:

> According to appellant, in resolving the motion to dismiss, the lower court disregarded some allegations deemed admitted by the motion while taking into account facts and circumstances not deemed admitted because they were not alleged in the complaint.
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> A motion to dismiss on the ground of failure to state a cause of action hypothetically admits the truth of the facts alleged in the complaint. When the facts alleged in the complaint show that the defendant has committed acts constituting a delict or wrong by which he violates the rights of the plaintiff, causing him loss or injury, there is sufficient allegation of a cause of action. Otherwise, there is none.
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> The hypothetical admission is however limited to the relevant and material facts well pleaded in the complaint and inferences fairly deducible 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.
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> *Nevertheless, in resolving a motion to dismiss, the court is not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. The court may consider other facts within the range of judicial notice, as well as relevant laws and jurisprudence which of course the courts are bound to take into account.* [19]

The cited case, *Mathay, et al. v. The Consolidated Bank and Trust Company, et al.*,[20] first ruled that:

> It has been likewise held that a motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations of fact made in the complaint. *It is to be noted that only the facts well pleaded in the complaint, and likewise, any inferences fairly deducible therefrom, are deemed admitted by a motion to dismiss. Neither allegations of conclusions nor allegations of facts the falsity of which the court may take judicial notice are deemed admitted.* The question, therefore, submitted to the Court in a motion to dismiss based on lack of cause of action is not whether the facts alleged in the complaint are true, for these are hypothetically admitted, but whether the facts alleged are sufficient to constitute a cause of action such that the court may render a valid judgment upon the facts alleged therein.[21]

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[19] 119 SCRA at 93 (citations omitted)(emphasis supplied).

[20] 58 SCRA 559 (1974).

[21] 58 SCRA at 577 (citations omitted) (emphasis supplied).

2. Evidence Introduced In a Separate Incident; For example Preliminary Injunction

The rigidity of the rule that the court should not consider facts other than those alleged in the complaint when confronted with the issue of the sufficiency of a cause of action must be the rationale of the repeated rulings of the Supreme Court that was directly addressed in *Tan v. Director of Forestry, et al.*[22] By a petition for certiorari, prohibition and mandamus with preliminary prohibitory injunction, the petitioner sought a nullification of the order of the governmental agency concerned revoking his timber license over the Olongapo Watershed Forest Reserve. Defendant Director of Forestry moved to dismiss on the ground, among others, that the petition did not state a cause of action. On the other hand, defendant Secretary of Agriculture and Natural Resources filed an answer invoking, as affirmative defenses, the grounds asserted by the Director of Forestry in his motion to dismiss. During the hearing held on the petition for the issuance of a preliminary injunction, all parties presented their respective evidence. From the evidence received, the lower court denied the petition for preliminary injunction and dismissed the petition for failure to state a cause of action.

On appeal, the petitioner asserted that the lower court erred in dismissing his petition based on facts proved during the hearing for his petition for a preliminary injunction, arguing that when the ground for dismissal is that the complaint states no cause of action, the court must decide the issue *only* on the facts alleged in the complaint "and from no other, and the court cannot consider others *aliunde*."

Meeting squarely the issue thus posed by the petitioner, the Supreme Court ruled that:

> A perusal of the records of the case shows that petitioner-appellant's contentions are untenable. As already observed, this case was presented to the trial court upon a motion to dismiss for failure of the petition to state a claim upon which relief could be granted (Rule 16 [g], Revised Rules of Court), on the ground that the timber license relied upon by the petitioner-appellant in his petition was issued by the Director of Forestry without authority and is therefore void *ab initio*. This motion supplanted the general demurrer in an action at law and as a rule admits, for the purpose of the motion, all facts which are well pleaded. However, while the court must accept as true all well pleaded facts, the motion does not admit allegations of which the court will take judicial notice as not true, nor does the rule apply to legally impossible facts, nor to facts inadmissible in evidence, nor to facts which appear, by record or document included in the pleadings, to be unfounded.

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[22] 125 SCRA 302 (1983).

> It must be noted that there was a hearing held in the instant case wherein answers were interposed and evidence introduced. In the course of the hearing, petitioner-appellant had the opportunity to introduce evidence in support of the allegations in his petition, which he readily availed of. Consequently, he is estopped from invoking the rule that to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint must be considered. If there were no hearing held, as in the case of Cohen vs. U. S. (C. C. A. Minn., 1942, 129 F. 2d 733), where the case was presented to the District Court upon a motion to dismiss because of alleged failure of the complaint to state a claim upon which relief could be granted, and no answer was interposed and no evidence introduced, the only facts which the court could properly consider in passing upon the motion were those facts appearing in the complaint, supplemented by such facts as the court judicially knew. . . .
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> Furthermore, 'even if the complaint stated a valid cause of action, a motion to dismiss for insufficiency of cause of action will be granted if documentary evidence admitted by stipulation disclosing facts sufficient to defeat the claim enabled the court to go beyond disclosure in the complaint.' Thus, although the evidence of the parties were presented on the question of granting or denying petitioner-appellant's application for a writ of preliminary injunction, the trial court correctly applied said evidence in the resolution of the motion to dismiss. Moreover, in applying said evidence in the resolution of the motion to dismiss, the trial court, in its order dismissing the petition, pointed out that 'there is no reason to believe that the parties will change their stand, arguments and evidence (p. 478, CFI rec.).' Petitioner-appellant did not interpose any objection thereto, nor presented new arguments in his motion for reconsideration (pp. 482-484, CFI rec.). This omission means conformity to said observation, and a waiver of his right to object, estopping him from raising this question for the first time on appeal. Issues not raised in the trial court cannot be raised for the first time on appeal.[23]

The doctrinal law prescribed by the *Tan* case was reaffirmed and rigorously applied by the Supreme Court in *Marcopper Mining Corporation v. Garcia, et al.*[24] where Mr. Justice Gutierrez Jr. stated that the *Tan* case "ruled on the implications of a motion to dismiss" and therefore must be adhered to.[25] Madame Justice Melencio-Herrera also described and upheld the *Tan* case as "doctrinal ruling" in *Santiago v. Pioneer Savings and Loan Bank,*[26] where disclosures beyond the complaint were considered by the Court.

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[23]125 SCRA at 315-317 (citations omitted).
[24]143 SCRA 178 (1986).
[25]143 SCRA at 186, 188-189.
[26]157 SCRA 100 (1988).

3. *Justice And Equity*

In the case of *Tan v. Director of Forestry, et. al.*,[27] the Supreme Court reminded everyone that substantial justice and equity prevail over formal rules:

> Moreover, petitioner-appellant cannot invoke the rule that, when the ground for asking dismissal is that the complaint states no cause of action, its sufficiency must be determined only from the allegations in the complaint. 'The rules of procedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. Where the rules are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party, said rigid application cannot be countenanced.'[28]

The *Marcopper* and *Santiago* cases stressed the primacy of substantial justice and equity by quoting, with approval, this admonition of the *Tan* case.

III. Conclusion

The general rule, then, that the right to present evidence in a motion to dismiss does not include the ground of lack of or failure to state a cause of action is not an inflexible one. Many exceptions to this rule have been recognized in a long line of cases by the Supreme Court. Thus, when the facts sought to be proven are subject of judicial notice, when evidence has been introduced in a separate incident related to the complaint, as in an application for a writ of preliminary injunction, and when the reasons of justice and equity so require, the Supreme Court, in accordance with the constitutional guaranty of due process of law, has not hesitated to recognize and grant this right.

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[27] 125 SCRA 302 (1983).

[28] 125 SCRA at 317 (citations omitted).