

102 Phil. 661

[G. R. No. L-7452. December 23, 1957]

JOSE A. ARCHES, PLAINTIFF AND APPELLANT VS. WILLIAM VILLARRUZ AND VISAYAN SURETY & INSURANCE CORPORATION, DEFENDANTS AND APPELLEES.

ENDENCIA, J.:

This is an appeal from an order of the Court of First Instance of Capizj dated September 18, 1953, dismissing the complaint filed in the above-entitled case, and from another order, dated November 14, 1953, denying this motion for reconsideration of the order of dismissal as well as the admission of an amended complaint, but authorizing plaintiff Jose A. Arches to file a separate action against William Villarruz for the collection of the sums of money mentioned in the complaint.

Plaintiff filed his complaint under Act No. 3688. He alleged therein that William Villarruz entered into a contract with the Government of the Philippines for the construction of Ivisan Bridge and Approaches, Capiz- Iloilo Road, Project No. PR-48 (1); that as required by law, William Villarruz together with the Visayan Surety & Insurance Corporation executed a surety bond whereby they agreed jointly and severally to pay 1*16,871, Philippine currency, in favor of the government of the Philippines and to “any individual, firm, partnership, corporation, or association supplying the contractor and principal, William Villarruz, with labor and materials which may be used in the construction of said bridge”; that “defendant contractor William Villarruz, as principal, on various times and on various occasions prior thereto had obtained money from the plaintiff Jose A. Arches and paid for labor and materials to help finance the construction and completion of his specific contract work with the Government, Project No. PR-48 (1) Ivisan Bridge and Approaches, Capiz-Iloilo Road, as follows:

- a. To principal of promissory note, dated July 16, 1950, in the sum of P8,400.00
- To interest on the same from July 16, 1950, at the rate of 10% per annum, to this date, January 16, 1952, or 1,260.00

b. To principal of promissory note, dated December 4, 1950, in the sum of	1,397.00
To interest on the same from December 4, 1950, at the rate of 10% per annum, to this date, January 4, 1952, or	160.00
c. To principal of promissory note, dated January 16, 1951, in the sum of	1,092.00
To interest on the same from January 16, 1951, at the rate of 10% per annum to this date, January 16, 1952, or	109.00
d. To principal of promissory note, dated February 19, 1951, in the sum of	645.00
To interest on the same from February 19, 1951, at the rate of 10% per annum, to this date, January 19, 1952, or	55.00
e. To principal of promissory note dated April 19, 1951, in the sum of	1,300.00
To interest on the same from April 19, 1951, at the rate of 10% per annum, to this date, January 19, 1952, or	96.00
Total.	<u>P14,504.00</u>
f. To allowances of 10%, as attorneys' fees against the defendant-contractor agreed to on said promissory notes, or	P1,450.00
g. To allowances of 10%, as liquidated damages in favor of plaintiff agreed to on said promissory notes, or	1,450.00
Total amount duo as of January 19, 1952	<u>P17,404.00</u>

that William Villarruz failed to complete the construction of said project and on March, 1951, the Government had to take over and prosecute it until it "was terminated on June 19, 1951; that thereafter the Director of Public Works instructed the defendant William Villarruz, as principal, and the Visayan Surety & Insurance Corporation, as sureties, to settle the claims for materials and labor against them, on their surety bond; that on November 26, 1951, the Director of Public Works authorized the plaintiff Jose A. Arches to institute a special civil action against defendants Villarruz and his surety, the Visayan Surety & Insurance Corporation, for the collection of the aforementioned promissory notes which had become due and payable; and that despite repeated demands for payment made on defendants William Villarruz and the Visayan Surety & Insurance Corporation, they

failed and refused to pay said promissory notes. Accordingly, plaintiff prayed that “judgment be rendered in his favor and against the defendants, ordering them to jointly and severally pay him the full amount of the sureties’ liability under their penal surety bond of P16,871.00 plus costs and such other just and equitable relief that may be granted in favor of plaintiff.”

On March 18, 1952, defendant Villarruz filed his answer admitting having received the various sums of money mentioned in the complaint, but alleging that those were usurious loans as the interest charged thereon was 36% per annum or 3% per month.

On March 20, 1952, defendant Visayan Surety & Insurance Corporation, in turn, filed its answer pleading two affirmative defenses: (1) that plaintiff Jose A. Arches had no right to present the complaint in his own name in order to enforce the bond Annex “A”, and (2) that “the action should have been filed in the name of the Government of the Philippines as provided expressly in said Act No. 3688 and that, granting the allegations of the complaint to be true, they do not constitute a cause of action against defendant Visayan Surety & Insurance Corporation, because, under the bond, it is only liable for unpaid claims in favor of *any individual, firm, partnership, corporation, or association supplying the contractor with labor or materials for the prosecution of the work*, and as the plaintiff had advanced sums of money, and not labor or materials, as so appears in the complaint, plaintiff has no right to demand from this defendant the sums of money claimed in the complaint.”

When the case was called for hearing on March 2, 1953, defendant Visayan Surety & Insurance Corporation, without filing any formal motion to dismiss, invoked the provisions of section 5, Rule 8 of the Rules of Court and petitioned the court that the affirmative defenses averred in its answer be first considered and decided in a preliminary hearing. The court granted the petition and ordered the parties to file their respective memoranda. Thereafter, on September 18, 1953, the court upheld the affirmative defenses of the Visayan Surety & Insurance Corporation and dismissed the complaint.

On October 24, 1953, plaintiff filed a motion for reconsideration of the order of dismissal, praying” at the same time for the admission of an amended complaint, paragraphs 5, 6 and 7 of which are as follows:

“V—That prior to July 16, 1950, up to the date the Government took over the construction and completion of the said Project PR-48 (1) in 1951 from

defendant Villarruz, and in consideration of, and covered by, the said Surety Bond, Annex 'A', plaintiff Jose A. Arches supplied defendant William Villarruz, from time to time as per requisitions, with, materials which Villarruz needed for, and actually used in, his undertaking or construction of the said Ivisan Bridge and Approaches, and that the values of the said materials supplied by plaintiff Jose A. Arches to defendant William Villarruz are accounted and evidenced by the following promissory notes the latter executed:

(1) Promissory note with collateral security for payment in the amount of P8,400 dated July 16, 1950, at 10% interest per annum, and subject to 10% for attorneys' fees, 10% for liquidated damages, and for court costs.

(2) Promissory note in the amount of P1,397, dated December 4, 1950, at 10% interest per annum, and subject to 10% for attorney's fees, 10% for liquidated damages, and for costs. (3) Promissory note in the amount of P1,092, dated January 16, 1951, at 10% per annum, and subject to 10% for attorneys' fees, 10% for liquidated damages, and for costs. (4) Promissory note in the amount of P1,300, dated April 19, 1951, at 10% per annum, and subject to 10% for attorneys' fees, 10% for liquidated damages, and for costs.

"VI—That the foregoing promissory notes, Annexes 'C', 'D', 'E' and 'G' were executed and delivered by defendant "William Viilarruz to plaintiff Jose A. Arches long after the materials supplied were requisitioned for, delivered to, and used in the said Project PR-48 (1), because the accounting of each group of deliveries was not made immediately after the delivery of materials supplied but one or more months thereafter, and that each promissory note represents two or more requisitionists and deliveries to the said project;

"VII—That on February 10, 1951, for the purpose of collecting any amount due, at that time, to defendant Villarruz, plaintiff Jose A. Arches filed a claim, for materials supplied, with the Director of Public Works in the amount of P12,000 which was the rough estimate of what was then owing from defendant Villarruz to plaintiff Jose A. Arches pending a definite accounting of the same for the values of materials supplied. A true copy of said claim for P12,000, made and

attached as Annex 'B' of the complaint, is made an integral part of this Amended Complaint as Annex 'B'."

After hearing, the motion for reconsideration was denied, for not being well taken, and the amended complaint rejected on the ground that it changed completely the action averred by the plaintiff in the original complaint by adopting a completely new theory on the case. The lower court, however, modified the order of dismissal by authorizing the plaintiff to file a separate action against William Villarruz for the collection of the promissory notes mentioned in the complaint. Thereupon, plaintiff perfected his record on appeal and brought the case to this Court on the ground that the lower court erred—

1. In finding that it was money, and not labor and materials, that was supplied by the plaintiff-appellant to contractor William Villarruz in connection with, the supply of labor and materials used in the construction of the Ivisan Bridge and Approaches, Project Wo. 48 (1).
2. Assuming arguendo, without however admitting, that it was rather money that was supplied by the plaintiff-appellant to contractor William Villarruz, the court a quo erred in arriving at the conclusion that the present claims of the plaintiff-appellant for the payment of such sums so advanced are not covered and authorized by and under the provisions of Act 3688, and cannot therefore be assessed against the surety bond filed by the defendants-appellees pursuant to such construction Project and Act.
3. In arriving at the conclusion that the amended complaint changes the theory of the plaintiff and is made to avoid the effects of the order of this court wherein we stated that the claim is for certain amount of money and not for materials', and 'that the plaintiff is exerting efforts to change the nature of the averments of his original complaint but the evidence supporting the claims is the same as the original, that is, the collection of promissory notes representing amounts of money advanced to the defendant,
4. In dismissing the complaint, in disallowing the amended complaint, and in not holding a trial on the merits to give opportunity to the plaintiff-appellant to prove that he supplied materials, as he claims, to contractor

William Villarruz in the construction of the Ivisan Bridge and Approaches.

5. In arriving at the conclusion that the complaint should have been brought in the name of the Government of the Philippines as party plaintiff.”

Upon careful examination of the briefs filed by the parties, we find that the decisive question is reduced to whether or not the order of dismissal of the case and the denial of the motion for the admission of the amended complaint were erroneous.

With regard to defendant Villarruz, we find no justification for the dismissal of the case against him for, in his answer, he admitted having signed the promissory notes mentioned in the complaint though he claims that said promissory notes represent loans with usurious interest, and he failed to deny plaintiff's allegation that he did not pay for them. In view of this answer, the lower court could not legally dismiss the case without hearing and presentation of evidence by the parties; it should have proceeded on with its trial in accordance with law. And because of that answer, the lower court was not even justified in ordering the plaintiff to file a separate and new complaint for it will necessarily entail new expenses for docketing and service of summons as well as require the plaintiff to rewrite the complaint, all of which could have been avoided by proceeding with the trial of the case, the parties concerned having joined issues thereon. Evidently, the order of dismissal with regard to defendant Villarruz, runs counter to the spirit of the Rules of Court which should be liberally construed in its order to assist the parties in obtaining speedy and inexpensive determination of any action or proceeding filed in court.

With regard to the order denying the admission of the amended complaint, we find it also erroneous for, under Rule 17, “the court may, at any stage of an action, permit a party to amend any pleading, to the end that the real matter in dispute and all matters in the action in dispute between the parties may, as far as possible, be completely determined in a *single proceeding*”; and altho, under this rule, it was discretionary for the court to refuse or grant the leave for the amendments sought for, yet, in the present case, we find that such judicial discretion should have been exercised favorably, so that the true dispute between the parties may be completely terminated in a single proceeding. The lower court denied the admission of the amended complaint on the ground that the plaintiff therein has changed the action alleged in the original complaint, but upon comparing the two complaints, we find that, essentially, there was no change of action for,

in both the original and the amended complaints, the action was for the collection of the value of the same promissory notes and the only difference between the original and the amended complaints is with regard to the consideration of said promissory notes, for while in the original complaint it was alleged that these were executed by defendant Villarruz for money obtained from plaintiff Arches and with which the former paid for labor and materials for the construction and completion of the Ivisan Bridge, in the amended complaint it was alleged that said promissory notes were executed for materials supplied to William Villarruz and actually used in the construction of the Ivisan Bridge. While the rule allowing amendments to a pleading is subject to the general limitation that the cause of action should not be substantially changed or that the theory of the case should not be altered, in the furtherance of justice, amendments to a pleading should be favored and the rules thereon should be liberally construed. In the present case, we find justification for allowing the admission of the amended complaint in order that the real question between the parties may be properly and justly threshed out, in a single proceeding, and thus avoid multiplicity of actions.

Wherefore, the orders appealed from are hereby set aside and the case remanded to the lower court for further proceedings upon previous admission of the amended complaint and the filing of the corresponding answers thereof by the defendants, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B, L., and Felix, JJ., concur.