

CONCORDIA T. ARONG, PETITIONER, VS. CONRADA SENO, MOISES BINGHAY AND JOSE C. BORROMEO, JUDGE, FOURTH BRANCH, COURT OF FIRST INSTANCE OF CEBU, RESPONDENTS.*G.R. No. L-25295. August 14, 1968*

Ponente: CONCEPCION, C.J.

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Petition for a writ of certiorari to annul certain orders of Honorable Jose C. Borromeo, as Judge of the Court of First Instance of Cebu, denying a motion of petitioner Concordia T. Arong for the admission of an amended answer in Case No. R-6279 of said Court.

The facts are not disputed. On August 17, 1959, the es-pouses Conrada Seno and Moises Binghay - hereinafter referred to collectively as the Bingshays - commenced said Case No. R-6279, against the spouses Salome M. Ceniza and Nicasio Tuñacao - hereinafter referred to collectively as the Tuñacaos - for the foreclosure of a real estate mortgage constituted by the latter. Upon being summoned, the Tuñacaos filed, on September 1, 1959, their answer with a counterclaim. On November 17, 1963, sometime after the Bingshays had began presenting their evidence, Mrs. Tuñacao died. Notice thereof was, on December 2, 1963, filed with the lower court, which, accordingly, ordered her heirs to appear, within thirty (30) days, in substitution of the deceased, as one of the defendants in the case. Soon, thereafter, or on May 27, 1964, the daughters of Mrs. Tuñacao - namely, Macaria T. Agcang, Concordia T. Arong, Cornelia T. Rotea and Esperanza T. Rodriguez - and Mr. Tuñacao filed a motion praying that the Bingshays be ordered to amend their complaint by naming them as defendants, in lieu of the deceased, but no action appears to have been taken thereon.

On October 22, 1964, one of said movants, namely Concordia T. Arong - hereinafter referred to as the petitioner - filed an answer with a counterclaim. On motion of the Bingshays, this pleading was, on March 12, 1965, ordered stricken out. Presently, or on April 21, 1965, petitioner and her aforementioned sisters, filed a motion to admit the amended answer attached thereto. The Bingshays objected thereto, and this objection was sustained by the lower court, presided by respondent Judge Borromeo, in an order dated August 16, 1965. A reconsideration of this order having been denied, on October 21, 1965, petitioner instituted the present action for certiorari, against the Bingshays and Judge Borromeo, alleging that the latter had committed a palpable abuse of discretion and acted "without and/or in excess of jurisdiction" in issuing said order of August 16, 1965. On petitioner's motion, and upon the posting of a bond in the sum of P1,000, we issued a writ of preliminary injunction restraining respondent Judge from taking further proceedings and/or action in said case.

Petitioner maintains that, as one of the defendants in case No. R-6279, she has "a right to defend" herself in the lower court "for all purposes, until final judgment;" that she was the real debtor in the obligation guaranteed by the real estate mortgage, sought to be foreclosed by the Bingshays; that, as such debtor, she had made several payments to the Bingshays; and that, such payments gave her the right to file a counterclaim of a compulsory nature, which would be barred unless set up in said case.

It should be noted, however, that petitioner is merely one of the substitutes for her deceased mother, as a defendant in that case, who had filed her own answer therein. Inasmuch as the case had already been set for hearing, and, in fact, the same had actually begun, with the presentation of evidence for the Bingshays, said answer can be amended "only upon leave of court," which "may be refused" - pursuant to Section 3 of Rule 10 of the Rules of Court - "if it appears to the court x x that the x x defense is substantially altered." Such is the nature of the "amended answer" sought to be filed by petitioner herein, for, in said pleading, she set up the defense of "usury," which is not alleged in the answer of her deceased mother. Hence, respondent Judge did not err, much less commit an abuse of discretion or exceed his jurisdiction, in denying petitioner's motion for the admission of her amended answer.[1]

It is not true that, unless said "amended answer" be admitted, petitioner would be barred from deducting the payments allegedly made by her from the sum claimed by the Bingshays. The answer of Mrs. Tuñacao alleges that she was merely "an accommodation party" for petitioner herein. Upon the other hand, the Bingshays alleged in their complaint that the sum of P23,110 is still due to them under the loan guaranteed by said mortgage. Consequently, petitioner may, under the answer of Mrs. Tuñacao, endeavor to establish that the amount due to the Bingshays is less than said sum, by introducing evidence of the payments allegedly made by the former, as the accommodated party mentioned in said answer.

WHEREFORE, the petition herein is dismissed, the writ prayed for denied, and the writ of preliminary injunction issued by this Court on January 6, 1966 hereby dissolved, with costs against petitioner, Concordia T. Arong.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] *Lerma v. Reyes*, 103 Phil. 1027, 1031-1032; *Torres v. Toma-cruz*, 49 Phil. 913; *Alvarez v. Commonwealth*, 65 Phil. 302; *Uy Hoo & Co. v. Tan*, 56 O.G. 4093; *Avecilla v. Yatco*, 54 O.G. 6415.

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