

THE DE LA RAMA STEAMSHIP COMPANY, INC., PLAINTIFF AND APPELLEE, VS. NATIONAL DEVELOPMENT COMPANY, DEFENDANT AND APPELLANT.*G.R. No. L-15659. November 30, 1962*

Ponente: LABRADOR, J.

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This case is a sequel to G. R. No. L-8784, promulgated on May 21, 1956. Both this case and the previous one are the outcome of an agreement entered into between the De la Rama Steamship Co., Inc. (hereafter known as De la Rama) and the National Development Company (hereafter referred to as NDC), dated October 26, 1949, whereby De la Rama undertook the management of four "Doña" vessels purchased by the Philippine Government from Japan, with and through the advice and help of De La Rama. De La Rama agreed to buy and the NDC agreed to sell, at the former's option, each and all of the vessels purchased on the fifth year following the date of purchase and delivery of each and every vessel, at a purchase price which is to consist of the cost price of each vessel, plus such expenses as De La Rama may have incurred in connection with the construction, outfitting, provisioning and operation thereof. Should De La Rama fail to exercise the right of option, paragraphs 3 and 4 grant De La Rama the right to reimbursement for its expenses in manning, equipping, fueling, overhauling, repairing the vessels and a loading commission, a discharging commission and an overriding commission, sub-agent's commission, etc.

In the previous case, G. R. No. L-3784, the principal question arose out of the right granted by the management agreement to NDC to cancel upon one year's notice, the general agreement agency granted De La Rama. NDC decided to cancel the contract but was opposed by De La Rama, which alleged that it had been granted the option to purchase the vessels and in 1952 exercised the said right of option to buy. In our decision We held that the NDC had the right to exercise the right to cancel the agreement. So the option of De La Rama to purchase the vessels was declared ineffective.

The right of De La Rama to exercise the option to purchase the vessels having been denied, De La Rama filed on August 21, 1956 a "Supplemental Pleading" which initiates this second case) (1) demanding that the NDC cease to use the names of "Doña Aurora", "Doña Nati" and "Doña Alicia" on the three vessels subject of the original action, (2) seeking to recover P1,505,603.82 as reimbursement for supposed advances made to the vessels while the same were under the management contract under De La Rama, as well as for earned commissions as agents of NDC, and (3) P1,100,000.00 as damages. The government corporate counsel, representing the NDC, opposed the admission of the "supplemental pleading" on the following grounds: that the De La Rama had been held to be without any right of action and a party may not file a supplemental amended pleading if it has no valid and subsisting cause; that the present causes of action are only remotely connected with and are not material to the first action. Over this opposition the court below admitted the supplement pleading in an order dated October 15, 1956; so NDC had to file an answer.

Against the first cause of action the NDC alleged in its answer and by way of defense, that the names of the

vessels in question cannot be appropriated by a private firm like plaintiff, because the names represent the names of wives of former presidents of the Philippines. NDC also denied the material allegations contained in the second cause of action of plaintiff's complaint and alleged that the alleged advance expenses and commissions claimed in the supplemental pleading, were never alleged or claimed in the previous suit and the same should be deemed dismissed together with the principal action. Answering the allegations of the third cause of action, NBC stated that the plaintiff's demands are unreasonable, plaintiff retaining the benefits from the operation of the vessels and shifting to the defendant the liabilities and obligations. By way of special defenses, NBC alleged that the plaintiff is estopped from denying to the defendant the use of the names of the vessels, etc., etc., that the additional claims should be deemed dismissed together with the principal action, etc., etc. By way of counterclaim the NDC alleged that the NDC had remitted the sum of P2,417,376.92 up to December 31, 1956 but the plaintiff has not remitted the amount due it from January 1, 1954 to the time that said vessels were returned; that De La Rama had been charging excessive commissions and it should render an accounting to NDC for the excess commission actually received.

The answer is dated March 5, 1957 and hearing on the supplemental complaint was begun on March 6, 1957.

On March 8, while the case was being heard, the court entered an order appointing a Board of Accountants to examine the claims of De La Rama. The said order was given in open court and reads as follows:

"In view of the fact that these are questions of accounting, the Court will appoint a committee, one member to be suggested by the plaintiff, another by the defendant, and the third member by the Court. All these questions of accounts will be indorsed to the Committee who is hereby ordered to make its report, giving details as to what amount is due to the plaintiff and as to what amount is due to the defendant, and to make, such recommendations as, in its opinion, is proper; and the parties are given three days within which to submit the names of their respective representatives. Immediately after their appointment, they shall hold office and submit their report within thirty days after they shall have examined these accounts. The expenses of the representative of the plaintiff shall be borne by the plaintiff; the expenses of the representative of the defendant shall be borne by the defendant; and the expenses of the third member to be appointed by this Court shall be considered as part of the costs."

The hearings were terminated on April 15, 1959. At that time the board of accountants appointed by the court had not yet submitted their report. The report of the chairman of the board was submitted to the court on April 16, 1959. The procedure adopted by the board is described in the said report of the board chairman as follows:

"1. In pursuance of agreement among the Chairman and Members of the Board of Accountants created by the Honorable Court in an Order promulgated in March 20, 1957, the NDC Auditor, representing the defendant NDC, made an exhaustive audit of the accounts of RAMA as General Agent, under the NDC-RAMA Management Contract of October 26, 1949, covering all transactions from October 26, 1950 to November 9, 1956. The NDC Auditor submitted his 'Audit Report dated March 31, 1958 on the Operations and Management of Doña vessels under title De la Rama Steamship Company, Inc. Re-Civil Case No. 25161'; original of which is enclosed as Annex 'A' ". (Page 76, Report)

The report states that the De La Rama representative to the board of accountants has submitted his comments and suggestions and so did the NDC representative. But the latter did not submit any comment because it asked for three weeks to wind up its work and another three weeks to consolidate them (comment) and to submit its report which would be the basis of the chairman's comment, but said final comment was never submitted. At the last part of the report the chairman stated that the draft of the report contains the report of the two members of the board of accountants as well as the chairman's comment on each item and issue, thus:

"8. Both the NDC representative and the RAMA representative have been furnished copies of this BA

Chairman's report so that if they have any further comments, and the Honorable Court will approve, they may submit their views direct to the Honorable Court." (Page 78, Report)

But as the report of the chairman of the board was submitted on April 16, 1959, and the judge rendered the decision on April 29, 1959, the NDC member of the board had no opportunity to submit his comments.

It is to be noted that contrary to the provisions of Rule 34 of the Rules, requiring that parties be notified of the submission of the commissioner's report (Sec. 10) and hearing thereon (Sec. 11), no such notice of the submission of the Board Chairman's report was given NDC and no hearing was had by the court on said report. Immediately after the submission of the report the court, without the notice and hearing required, rendered its decision, thus violating not only the above-mentioned provisions of the rules, but contrary to what was recommended by the chairman of the board of accountants.

Upon the rendition of the judgment the defendant NDC immediately perfected its appeal from the decision. No reasons were given why it did not present a motion for reconsideration for failure of the court to give it opportunity to submit its objections to the report.

In the appeal two important questions were raised, the first is the claim of the appellant NDC that the "supplemental pleading" was improperly admitted, and the second, that the judge rendered a decision on the matter contained in the report of the chairman of the board of accountants without opportunity on the part of the NDC to register its objections thereto.

The first claim of the appellant NDC appears to be well-founded. The nature of a supplemental pleading has been described in Phillips Code Pleading, thus:

"SEC. 479. Nature and Purpose of Supplemental Pleadings.—The pleadings, original and amended, are confined to facts existing at the commencement of the action. New facts relevant to the action, and material to the right or to the defense, may arise after the suit is begun. In order that the parties may have the benefit of such new facts, and that the court may render its judgment upon the facts as they exist at the time of rendition, it is provided that on such terms as to notice and costs as the court may prescribe, the parties may be allowed to file a supplemental complaint, answer, or reply alleging material facts which occur subsequent to the commencement of the action. * * *"

Instances where supplemental pleadings are allowed are given by said author in section 480, as follows:

"SEC. 480. Supplemental Pleadings—Illustrations. In replevin for sheep, a supplemental complaint may ask damages for increase in lambs, and for wool shorn, these being in the nature of special damages; a supplemental complaint may allege the further circulation of the libel complained of; and if, pending suit, a third person assume the liability of the defendant in respect to the matter in litigation, he may be made a party by supplemental complaint.

"In an action for divorce, a supplemental answer may allege the plaintiff's adultery pending suit; and settlement after action brought may be so, pleaded; and so may payment, or release pending suit, or any agreement affecting the action, as well as a judgment entered in another court between the parties to the present action. If, pending the action, the defendant acquires title to property in dispute, to avail himself of it, he must plead it by supplemental answer. Additional installments of an obligation, falling due pending the action, cannot be recovered therein without amendment or supplemental pleading. * * *" (Supra)

Referring to the present case, the causes of action mentioned in the "supplemental pleading" are not in any way relevant and material to the action of De La Rama to compel the NDC to sell three of the "Doña" vessels to it. They did not, in any way, help or aid its defense or right to its option to purchase the vessels. As a matter of fact the causes of action stated in the supplemental pleading are the consequences of the failure of De La Rama to

enforce its right of option to purchase the vessels. The cause of action set forth in the "supplemental pleading" could well have been alleged as an alternative cause of action in the first case, but De La Rama did not choose to include this cause as such alternative cause of action. The right to enforce the option to buy and the right to reimbursement for expenses could not be joined together in the previous suit, because the right to purchase excludes the right to demand reimbursement for the expenses; the demand for reimbursement of the expenses and commissions cannot be enforced if the De La Rama exercises the option to purchase the vessels or is allowed to do so.

We do not, however, believe that it would serve the ends of a speedy administration of justice or a prompt dispatch of cases to order the dismissal of the "supplemental pleading" and cause a new pleading to be filed. This would delay the termination of the suit. So, We have decided, in the interest of a prompt termination of the case, to order that the supplemental pleading and all the pleadings and papers subsequent thereto, be enrolled in the court below as a new action, but with the obligation on the part of De La Rama to pay the fees for the registration of the case taking into account the amount demanded in the amended complaint, of P1,505,603.82, and the amount in the second cause of action of P1,100,000.00, demanded as damages.

The second ground of appeal should also be sustained. The understanding was, as suggested by the chairman of the board of accountants, for the court to give opportunity to NDC to submit its objections to the amount stated in the report of the chairman of the board. But the court, ignoring the recommendation and in violation of sections 10 and 11 of Rule 34, and in disregard of the right of any party to be heard, promptly rendered the decision, naturally based mostly on the findings and recommendations of the chairman of the board. This action of the judge is clearly a violation of the right of a party to be heard and of the due process clause of the Constitution.

It is said, in defense of the action of the court, that because of the failure of the defendant NDC to present a motion for reconsideration, it has waived the right to be heard on this report of the chairman of the board of accountants. We cannot sustain this contention, as there was no conduct amounting to a waiver of the right because upon the rendition of the decision the appeal was promptly presented, and the denial of the right to be heard on the report of the board of accountants was raised as one of the errors assigned in the appeal. Such a valuable right as that to be heard, which is guaranteed by the Constitution, cannot be considered as having been waived under the circumstances of the case. The case should be remanded to the court below with instructions to give the defendant NDC the opportunity to submit its objections to the report of the board of accountants and to have a hearing on this report in accordance with the rules as above pointed out.

Wherefore, the decision appealed from is hereby set aside and the case remanded to the court below with instructions to enroll the pleadings and papers, starting with the "supplemental pleading," registering the complaint, collecting the corresponding fee based on the amounts demanded in the complaint and entering the complaint and all the papers in the dockets of the court. Thereafter the action shall proceed or continue in accordance with this decision. Costs against plaintiff-appellee.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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