

EUFEMIA V. SHAFFER, PLAINTIFF-APPELLANT, VS. VIRGINIA G. PALMA AND BONIFACIO PALMA, DEFENDANTS-APPELLEES.*G.R. No. L-24115. March 01, 1968*

Ponente: ZALDIVAR, J.

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This is an appeal direct to this Court, on a question of law, from the order of the Court of First Instance of Manila, dated July 20, 1964, in its Civil Case No. 56876, granting defendants' motion to dismiss plaintiff's amended complaint, as well as from a subsequent order, dated September 17, 1964, denying plaintiff's motion for reconsideration.

On April 25, 1964, plaintiff Eufemia V. Shaffer filed a complaint against defendant spouses Virginia G. Palma and Bonifacio Palma to recover certain sums of money and shares of stock, alleging, among others: that plaintiff is the widow of the late Nicolas R. Lynevitche, the Managing Director of the British American Engineering Corporation, who had himself insured for P300,000.00 with the Great American Insurance Company against accidental death, designating the British American Corporation as beneficiary (Policy No. PA-0132); that while Lynevitche and plaintiff were living as husband and wife they received from defendants advances and loans totalling P32,000.00, and to secure payment thereof Lynevitche delivered to them his 175 shares of stock of the British American Engineering Corporation; that when Lynevitche was made to understand by defendants that the shares pledged by him were insufficient to secure the payment of the loans and advances given by defendants, Lynevitche, in his capacity as managing director of the British American Engineering Corporation, executed, on April 17, 1962, a deed of assignment^[1] transferring the right of said corporation as beneficiary in his insurance policy in favor of plaintiff and herein defendant Virginia G. Palma; that the deed of assignment was subsequently ratified and confirmed by the corporation's board of directors in a resolution dated May 10, 1962;^[2] that defendants knew that defendant Virginia Palma was included as one of the assignees of the insurance policy so that defendants would have additional security for the loans and advances given by them to the insured and plaintiff; that on May 26, 1962, Lynevitche died in an accident in Tokyo, Japan, and so the Great American Insurance Company paid P300,000.00 to the plaintiff and defendant Virginia Palma as assignees of the insurance policy; that the proceeds of the insurance policy was deposited in the name of the plaintiff with the Hongkong & Shanghai Banking Corporation on August 15, 1962; that immediately after depositing said proceeds, defendant Bonifacio Palma asked plaintiff to issue a check of P150,000.00 in favor of his wife, the defendant Virginia G. Palma, with the understanding that after proper accounting and adjustments of the loans and advances previously obtained by plaintiff and the late Lynevitche from defendants the excess would be returned to the plaintiff; that plaintiff later asked defendants to render an accounting of the loans and advances and to return to her the balance of the P150,000.00 after deducting the payment of said loans and advances, and the 175 shares that were given as security for the loans and advances, but the defendants refused to do so. Plaintiff prayed in her complaint that judgment be rendered ordering the defendants, in solidum, to pay plaintiff the sum of P118,000.00, with legal interest thereon from the filing of the complaint, to pay P10,000.00 as attorney's fees, to return to plaintiff the 175 shares given as security, and to pay the costs.

On May 7, 1964, defendants filed a motion to dismiss plaintiff's complaint upon the grounds that the complaint states no cause of action and that plaintiff has no capacity to sue. This motion was opposed by plaintiff, and after the filing by defendants of their reply, and plaintiff her replica, the lower court, on May 25, 1964, issued an order dismissing the complaint, the pertinent portions of which read as follows:

"Paragraphs 5 and 6 of plaintiff's complaint in effect allege that the Deed of Assignment (Annex A) and the corporate resolution (Annex B) do not express the true intention of the assignor British American Engineering Corporation. Assuming arguendo, that this is the truth, the British American Engineering Corporation and not the plaintiff is the party that may sue to enforce the true intention of the assignor and the assignees.

"Stated differently, plaintiff's complaint states no cause of action in favor of the plaintiff. Under the allegations of the complaint a judgment may, if at all, be rendered in favor of the British American Engineering Corporation, but not in favor of the herein plaintiff."

On June 27, 1964, plaintiff filed a motion to admit an amended complaint, which was attached to said motion. The amended complaint contained new allegations which were intended to specify or clarify certain points that were alleged in the original complaint - and precisely for the purpose of curing the defects of the original complaint as pointed out in the order of the court dismissing said original complaint. On July 1, 1964, plaintiff also filed a motion for reconsideration of the order of May 25, 1964 so as to give way to the admission of the amended complaint. The defendants filed an opposition to the motion for reconsideration and an alternative motion to dismiss the amended complaint. The motion to dismiss the amended complaint was based on the same grounds as those alleged in the motion to dismiss the original complaint - that the amended complaint states no cause of action, and that the plaintiff has no capacity to sue. On July 20, 1964, the lower court issued an order granting plaintiff's motion for reconsideration and admitting the amended complaint, but at the same time granting defendants' motion to dismiss the amended complaint. Pertinent portion of the order reads:

"This Court agrees with defendants' counsel that the amended complaint is substantially the same as the original one. Paragraphs 5 and 7 of the amended complaint, like the corresponding paragraphs 5 and 6 of the original complaint, in effect allege that the Deed of Assignment (Annex A), and the corporate resolution (Annex B), do not express the true intention of the assignor British American Engineering Corporation. However, the said assignment speaks for itself and may, if at all, be ordered reformed to express the true intention of the assignor by action of the assignor for reformation of said deed of assignment (Art. 1359, New Civil Code).

"As to the 175 shares of British American Engineering Corporation, the amended complaint fails to allege facts showing plaintiff's right to said shares."

On August 25, 1964, plaintiff filed her motion for reconsideration of the order of July 20, 1964. On September 17, 1964, the lower court issued an order denying plaintiff's motion for reconsideration, which order reads as follows:

"Paragraphs 7, 9, 10 and 12 of the Amended Complaint, which according to the plaintiff must be deemed admitted for the purpose of the motion to dismiss, cannot be allowed as amendments to the original complaint, as they substantially alter the causes of action alleged in the original complaint. Thus, par. 7 of the amended complaint alleges, among others that 'the defendants have acknowledged and agreed with the plaintiff that the defendant Virginia G. Palma's interest as co-assignee ... was up to the extent of the total amount of the loans and advances made by the defendants to N. R. Lynevitche', but par. 6 of the original complaint did not allege any acknowledgment or agreement of the defendants to this effect. Again par. 9 of the amended complaint alleges agreement in this regard, but par. 8 of the original complaint, its counterpart, does not so allege. Similarly, par. 12 of the amended complaint alleges that the 175 shares were indorsed to the plaintiff prior to

Lyne-vitche's death, but par. 10 of the original complaint mentioned no such prior indorse-ment. This Court, therefore, agrees with the defendants that these decisive amend-ments cannot legally be allowed as they radically change or alter the original causes of action or theory of the plain-tiff (see last 6 lines, page 3, defend-ants' rejoinder, found on page 48, Records).

"At any rate, the alleged agreement to this effect involves the amount of P118, 000.00 (pars. 13 and 14, Amended Answer), and, unless in writing is unenforcible (last paragraph, Art. 1358, New Civil Code). If the defendants were entitled to only P32,000.00, it is odd that instead of draw-ing a check in their favor for only P32, 000.00, the plaintiff issued to them a check for P150,000.00. This case must be dismissed on this additional ground (Sec. 1(i), Rule 16, Revised Rules of Court.)"

In the present appeal, plaintiff contends that the lower court erred: (1) in dismissing the amended complaint, by its order of July 20, 1964; and (2) in declaring, in its order of September 17, 1964 when it resolved plaintiff's motion for reconsideration, that the amendments in the amended complaint can not be admitted and, therefore, the amended complaint should be dismissed.

There is merit in this appeal.

In its order of July 20, 1964, the lower court re-considered its previous order of May 25, 1964 dismissing the original complaint and then admitted the amended com-plaint. The amended complaint had thereby superseded the original complaint. The defendants filed a motion to dismiss the amended complaint upon the grounds that it does not state a cause of action and that the plaintiff has no capacity to sue - the same grounds upon which the motion to dismiss the original complaint was based. In the very same order of July 20, 1964 which admitted the amended complaint, the lower court dismissed said amended com-plaint - for the same reasons that it dismissed the ori-ginal complaint, namely, that the plaintiff has no capa-city to sue and that the complaint states no cause of action.

We do not agree with the lower court. We have exam-ined the allegations of the amended complaint, and We find that the plaintiff has the legal capacity to sue and that the amended complaint states a cause of action. Substan-tially, it is alleged in the amended complaint: that the plaintiff and the late Nicolas Lynevitche lived as husband and wife; that on March 27, 1962, Nicolas Lynevitche had himself insured for P300,000.00 with the Great American Insurance Company of New York against accidental death, designating the British American Engineering Corporation, in which he was the managing director, as the beneficiary; that the plaintiff and Nicolas Lynevitche had obtained loans and advances from the defendants, totalling P32, 000.00; that to secure the payment of the loans and ad-vances obtained by plaintiff and Nicolas Lynevitche from the defendants, Nicolas Lynevitche delivered to the defendants 175 shares of stock of the British American En-gineering Corporation; that on April 17, 1962, Nicolas Ly-nevitche, as managing director of the British American Engineering Corporation, executed a deed of assignment of the corporation's right as beneficiary in his life in-surance policy in favor of plaintiff Eufemia V. Shaffer and the defendant Virginia G. Palma, which deed of assign-ment was ratified and confirmed by the board of directors of the British American Engineering Corporation on May 10, 1962; that the defendants acknowledged and agreed with the plaintiff that the interest of defendant Virginia G. Pal-ma as co-assignee of the proceeds of the insurance policy of Nicolas Lynevitche was to the extent of the total amount of the loans and advances made by the defendants to Nico-las Lynevitche and the plaintiff during the lifetime of said Nicolas Lynevitche; that on May 26, 1962, Nicolas Lynevitche died in Tokyo, Japan, in an accident, and by reason thereof the Great American Insurance Company, on August 15, 1962, issued a check for P300,000.00 in fa-vor of Eufemia V. Shaffer and Virginia G. Palma as as-signees of the proceeds of the insurance policy of Nicolas Lynevitche; that confirming the agreement that the interest of defendant Virginia Plama in the proceeds of the insurance policy was to the extent of the amount of the loans and advances which the defendants had given to Nico-las Lynevitche and the plaintiff, the defendant Virginia Palma endorsed along with

the plaintiff the check for P300,000.00 and the plaintiff deposited the whole amount with the Hongkong and Shanghai Banking Corporation in her name and credit, to await adjustment and determination of the exact amount of the loans and advances which were obtained from the defendants by Nicolas Lynevitche and the plaintiff which was payable out of the proceeds of the insurance; that defendants, availing of the plaintiff's feeling of gratitude towards them and manifesting their need for funds, prevailed upon plaintiff to issue a check for P150,000.00 in favor of defendant Virginia G. Palma, upon the condition that after the adjustment and accounting of the above-mentioned advances and loans the excess of the amount stated in the check over the amount of the loans and advances would be refunded to the plaintiff; that pursuant to said representation of the defendants, plaintiff issued a check in favor of defendant Virginia G. Palma, and the latter endorsed the check to her husband who in turn cashed the same; that thereafter plaintiff requested the defendants to make adjustment and full accounting of the loans and advances and to return to her the balance of the P150,000.00 and the 175 shares that were given as security, which Mares had been endorsed to plaintiff prior to the death of Nicolas Lynevitche; that the plaintiff made repeated demands on the defendants to return the sum of P118,000.00 which represented the excess over the loans and advances and also the 175 shares, but the defendants refused to do so. The plaintiff, in her amended complaint, therefore, prayed that the defendants be ordered to pay her, in solidum, the sum of P118,000.00 with legal interest from the date of filing of the complaint and to return to her the 175 shares that were pledged to secure the payment of the loans and advances, and also to pay P10,000.00 as attorney's fees, plus the costs of the suit.

It can thus be seen that in her amended complaint the plaintiff is suing the defendants in the capacity of one who has an interest to protect. She was suing for the return to her of the balance of the amount of P150,000.00 which was stated in a check that she had issued in favor of defendant Virginia G. Palma, pursuant to the understanding that out of that amount the loans and advances which the plaintiff and the late Nicolas Lynevitche had obtained from the defendants would be paid, it being alleged in the complaint that the plaintiff and defendant Virginia Palma were made assignees of the proceeds of the insurance policy of Nicolas Lynevitche under the agreement that the interest of defendant Virginia G. Palma as co-assignee of the proceeds of the insurance policy was only to the extent of the total amount of the loans and advances obtained by Nicolas Lynevitche and the plaintiff from the defendants. It can easily be understood from the allegations of the amended complaint that the plaintiff was claiming for herself the entire amount of the proceeds of the insurance policy of Nicolas Lynevitche after deducting therefrom the amount of P32,000.00 to pay for the loans and advances that had been obtained by plaintiff and Nicolas Lynevitche from the defendants, so much so that the entire proceeds of P300,000.00 was deposited in her name alone with the Hongkong & Shanghai Banking Corporation. The plaintiff alleges in the amended complaint that she issued her own check for P150,000.00 in favor of defendant Virginia G. Palma upon representation by the defendants that they needed funds, but that adjustment and accounting would be made of the loans and advances and they would return to her whatever would be the excess of that amount of P150,000.00 over the amount of the loans and advances. It can also be readily seen in the amended complaint that the plaintiff is suing for the return of the 175 shares, which were pledged to the defendants for the security of the loans and advances, in her capacity as the owner of those shares, it being alleged that those shares had been endorsed to her prior to the death of Nicolas Lynevitche.

It is the settled rule that in a motion to dismiss an action upon the ground that the complaint states no cause of action, the movant is deemed to admit, at least hypothetically, the facts alleged in the complaint or counterclaim, as the case may be.^[3] It is our considered view that based on the facts alleged in the amended complaint, now in question, the plaintiff has a cause of action against the defendants, and that the plaintiff has the legal capacity to sue.

In its order of September 17, 1964, denying plaintiff's motion for reconsideration of the order dismissing the

amended complaint, the lower court, however, added as further grounds in dismissing the amended complaint that the amendments embodied in the amended complaint are not admissible because said amendments have radically changed or altered the original causes of action or theory of the plaintiff; and that the agreement alleged in the amended complaint, involving as it does the amount of P118,000. 00, cannot be enforced because it is not in writing. We also do not agree with the lower court.

In determining whether a different cause of action is introduced by amendments to the complaint, what is to be ascertained is whether the defendant shall be required to answer for a liability or legal obligation wholly different from that which was stated in the original complaint. An amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in expressed terms, and the subject of the controversy or the liability sought to be enforced remains the same.[4] In the instant case, a comparison between the allegations appearing in the original complaint and in the amended complaint will readily show that the action of the plaintiff is the same -that is, for the return of the sum of P118,000.00, and the return of the 175 shares of stock which had been given to the defendants as security for the payment of the loans and advances obtained from them by the plaintiff and the late Nicolas Lynevitche. In other words, what is being enforced against the defendants, both in the original complaint and in the amended complaint, is the obligation to refund to the plaintiff the sum of P118,000.00 and to return to the plaintiff the 175 shares after the loans sought to be secured by those shares had been paid out of the proceeds of the insurance policy of the late Nicolas Lynevitche. We have examined carefully the allegations in both the original complaint and the amended complaint, and We find that the amended complaint simply made clearer the basis of the claim of the plaintiff against the defendants in the original complaint.

Thus, it is alleged in the original complaint that in making the defendant Virginia G. Palma a co-assignee of the proceeds of the insurance policy of Nicolas Lynevitche, the "defendants knew that Virginia G. Palma who was not a relative of the insured was included as one of the assignees in the deed of assignment because she was the wife and partner of defendant Bonifacio Palma to whom the insured and plaintiff were obligated, so that defendants may have additional security thereto and to collect out of the insurance money only the loans and advances they have made to the insured and his wife, plaintiff herein." [5] In other words, in the original complaint, plaintiff had made it understood that the only reason for including the defendant Virginia G. Palma as co-assignee of the proceeds of the insurance policy of Nicolas Lynevitche was to provide for an additional security for the payment of the loans and advances that the defendants had given to the plaintiff and the late Nicolas Lynevitche. In the amended complaint, the plaintiff made her claim clearer by alleging that "the defendants have acknowledged and agreed with the plaintiff that herein defendant Virginia G. Palma's interest as a co-assignee on the proceeds of the said insurance policy was up to the extent of the total amount of the loans and advances made by defendants herein to N. R. Lynevitche and plaintiff herein during the lifetime of N. R. Lynevitche." [6] In other words, both in the original and in the amended complaints, the plaintiff asserted that out of the proceeds of the insurance policy of Nicolas Lynevitche defendant Virginia G. Palma was not entitled to more than the amount that was necessary to pay for the loans and advances. Like-wise, in the original complaint the plaintiff was demanding from the defendants the return of the 175 shares of stock, and in the amended complaint she made her claim for the return of those shares of stock clearer by alleging that those shares of stock had been endorsed to her prior to the death of Nicolas Lynevitche. There is, therefore, no introduction of a new cause of action, contrary to the finding of the lower court. At most the amendments were introduced in order to have a more accurate statement, an amplification, or clarification of the averments in the original complaint, or to specifically express in the amended complaint what is implied in the original. What is clearly implied in the pleading is as much a part of the pleading

as what is expressed. Since the amendments introduced by plaintiff were not inconsistent with the allegations in her original complaint, and did not in any way change or alter plaintiff's cause of action, the amended complaint should not have been dis-missed.[7]

"There it no introduction of a new cause of action where the amendment is merely a more accurate statement, an amplification, or an enlargement of the cause of action originally alleged. The original statement of the cause of action may be narrowed, enlarged, or for-tified in varying forms to meet the different aspects in which the pleader may anticipate its disclosure by the evidence. x x x Allega-tions may be changed and others added, and averments which are implied may be made in express terms, provided the identity of the cause of action is preserved." (41 Am. Jur., 501)

The Rules of Court provide that pleadings may be amended by adding or striking out an allegation or by correcting a mistaken or inadequate allegation, so that the actual merits of the controversy may speedily be de-termined, without regard to technicalities, and in the most expeditious and inexpensive manner;[8] and that all pleadings shall be liberally construed so as to do sub-stantial justice.[9] The courts should be liberal in al-lowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay. Hence it is a reversible error on the part of the trial court to disallow an amendment to a pleading when said disallowance would result in injustice to the moving party, or where the amendment would not prejudice the adverse party or place him at disadvantage and he has all the time allowed by law to answer the amended pleading and to prepare for trial.[10]

With respect to the other additional ground given by the lower court in dismissing the amended complaint, that the action is based on an agreement which involves the amount of P118,000.00 and that unless the agreement is in writing it is unenforceable, suffice it to state that nowhere in the amended complaint is it alleged that the agreement is not in writing. Whether the agreement is in writing or not is a question of evidence. Never-theless, even granting that the agreement is not in writing, this circumstance does not militate against the validity or enforceability of said agreement, because con-tracts are binding upon the parties in whatever form they may have been entered into unless the law requires other-wise.[11] It is true that Article 1358 of the Civil Code provides that contracts involving more than P500.00 must appear in writing, but nothing is said therein that such requirement is necessary for their validity or enforce ability. It has been held that the writing required un-der Article 1358 is merely for convenience,[12] and so the agreement alleged in the amended complaint in the present case can be enforced even if it may not be in writing.

WHEREFORE, the orders appealed from are set aside, and the case is remanded to the lower court for further proceedings on the basis of plaintiff-appellant's amend-ed complaint dated June 26, 1964. Costs against defend-ants-appellees.

IT IS SO ORDERED.

Concepcion, C.J., on official leave.

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

[1] Annex A to the complaint.

[2] Annex B to the complaint.

[3] Salazar, et al. v. Ortizano, G.R. No. L-20480, April 29, 1966; Garcon v. Redemptorist Fathers, G.R. No. L-23510, May 30, 1966; Republic Bank v. Cuaderno, et al., G.R. No. L-22399, March 30, 1967.

[4] See "The Revised Rules of Court in the Philippines" by Vicente J. Francisco, Vol. 1, p. 452.

[5] Page 3, Amended Record on Appeal.

[6] Page 29, Amended Record on Appeal.

[7] *Guirao v. Ver*, G.R. No. L-18570, April 29, 1966.

[8] Rule 10, Section 1.

[9] Rule 6, Section 5.

[10] *Larracas v. Del Rio*, 37 O.G., 287.

[11] Article 1356, Civil Code; *Lopez v. The Auditor General, et al.*, G.R. No. L-25859, July 13, 1967; *Pilar Gil Vda. de Murciano v. The Auditor General, et al.*, 103 Phil., 907.

[12] *Thunga Chui v. Que Bentec*, 2 Phil., 561; *Ng Hoc v. Tong Ho*, 52 O.G., 4396.

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