

UY HOO & CO., INC., PETITIONER, VS. JUDGE BIENVENIDO A. TAN, ETC., ET AL., RESPONDENTS.*G.R. No. L-9873. May 20, 1959*

Ponente: BENGZON, J.

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The case—Joaquin C. Yuseco sued Uy Hoo & Co. Inc., to annul a mortgaged he had signed. He alleged a previous valid tender of payment which the creditor-defendant had wrongfully refused. The defendant denied validity of the tender. Later, it asked for leave to file an amended answer with counterclaim to collect the mortgaged debt. The court admitted the amended answer; but subsequently rejected it, and refused to reconsider such rejection.

Hence this petition for certiorari based on grave abuse of discretion.

The facts—1. On December 23, 1943, Yuseco obtained from Uy Hoo & Co., a loan of P70,000.00 Japanese currency, and executed on that date the corresponding deed of mortgage on his real property in Manila. The loan, such deed stipulated, "shall not be paid * * * within two years from the date hereof, but must be paid after the said period of two years but not later than December 24, 1946", this condition being unwaivable by either party.

2. Prior to September 25, 1944, Yuseco offered to pay the creditor P70,000.00 plus interest for the entire period; but Uy Hoo & Co., refused to accept payment, invoking the above two-year stipulation.

3. Wherefore, on September 25, 1944, Yuseco instituted Civil Case No. 2904 of Manila, wherein reciting the tender of payment, he demanded discharge of the mortgage, plus damages.

4. On November 29, 1944, Uy Hoo answered asserting that the proffered payment had not been accepted because it violated the above stipulation in the mortgage deed.

5. And when the two-year period fixed in the mortgage had lapsed, Uy Hoo filed on January 18, 1946 in Manila, a complaint to collect the debt and foreclose the mortgage (Civil Case No. 71980).

6. On June 28, 1949, citing the Moratorium Law, Yuseco moved for dismissal of this foreclosure complaint. The motion was granted, and on appeal, this Court affirmed.

7. After such dismissal, Civil Case No. 2904 was several times set for hearing. (It had been suspended pending decision on the foreclosure proceeding.)

8. Then on July 29, 1955, before the presentation of any evidence, Uy Hoo & Co., asked in Civil Case No. 2904, for permission to file an amended answer including for the first time, a counter-claim to collect and/or foreclose the mortgage; add the respondent Judge admitted such amended answer in his order of August 6, 1955.

9. However, on September 23, 1955, Yuseco moved for reconsideration of the last order arguing that through laches (ten years having elapsed from its first answer) defendant was estopped from making any substantial amendment to its defenses. He also argued that the amended answer eliminated from the original answer a certain

paragraph allegedly supporting his line of action, which paragraph read as follows:

"2. That after the above mentioned Exhibit "A" was duly delivered, the defendant had made an effort to consult the plaintiff by asking him, if at any time before the due date of the mortgage and the defendant was in need of money to buy other real property and were willing to pay back all the expenses and interest to tile plaintiff, whether the said defendant would be able to get the full amount back. The plaintiff answered that no parties, neither he nor the defendant would be able to violate the condition of the mortgage deed before the time provided in the said deed. If the plaintiff were of the above opinion, he should not be allowed to violate it first."

10. Declaring Yuseco's motion to be meritorious, the respondent Judge set aside his order admitting the amended answer, which he consequently ordered stricken off the record.

11. After failing to secure reversal of the set-aside order (of September 28, 1955), Uy Hoo filed this petition for certiorari alleging grave abuse of discretion, inasmuch as the Rules of Court allow the amendment of pleadings "at any stage of the action".

Discussion—Nobody doubts that in Yuseco's action to annul the mortgage deed (Civil Case No. 2904), Uy Hoo's demand for payment of the mortgage would be a proper counterclaim, which sec. 1 of Rule 10 defines as "any claim, whether for money or otherwise, which a party may have against the Opposing party". Indeed, it appears to be what is called compulsory counterclaim, one that will be barred if not set up (sec. 6, Rule 10) since it arises out of the transaction or occurrence which is the subject-matter of Yuseco's complaint. "In an action for declaratory judgment for cancellation of fire insurance for breach of policies, defendant's right, if any, to recover under the policies is a compulsory counterclaim, and unless pleaded in the answer, is waived".[1]

Uy Hoo & Co.'s failure to state his counter-claim in his original answer filed November 29, 1944, becomes understandable bearing in mind that the mortgage debt was not yet then payable. And having presented thereafter a complaint to recover the amount (Civil Case No. 71980) the corporation evidently found it unnecessary to reiterate the same claim in Civil Case No. 2904. However, after dismissal of its complaint (71980) due to the Moratorium Law, and after invalidation of such Law in May 1953,[2] Uy Hoo & Co. Inc., had no other recourse than to file the counter-claim; otherwise, it will forever lose its right to collect the debt.

The Court refused to admit such counter-claim because it was presented ten years after defendant had filed its original answer. The preceding paragraph, however, will explain the reason for part of the delay: it was the subject of an action which the Moratorium Law suspended.

Therefore, the only delay attributable to Uy Hoo is the time elapsing from May 1953 (when the Moratorium ceased to operate) to July 1955 when the counter-claim was asserted over two years. Yet on August 26, 1954, Yuseco filed a motion to dismiss Civil Case No. 2904, which motion Uy Hoo opposed. And such motion was denied only on December 3, 1954. Deducting the time when this motion of dismissal was pending—August to December—the result is that Uy Hoo's procrastination did not last two years. Counsel for Yuseco has brought to our attention no case wherein delay of less than two years was regarded as laches. Therefore, considering that the Rules of Court allow amendment "at any stage of an action" * * * "to the end that the real matter in dispute and all matters in the action in dispute between the parties may, so far as possible, be completely determined in a single proceeding",[3] we think the Court a quo had no valid reason to reject the amendment, and consequently, abused its discretion, which should have been liberally exercised—amendments to pleadings being favored. (Torres vs. Tonicacruz, 49 Phil., 913.) Of course, this liberality should not be extended so as to allow a substantial change of the cause of action or defense or an alteration of the theory of the case. (Torres vs. Tomacruz, supra.)

This leads to the other ground of rejection: elimination of a certain paragraph which plaintiff claims to favor his

theory of the case. Reading the paragraph herein-above quoted, we fail to see how it may confirm the allegation that after the execution of the deed of mortgage, the parties verbally agreed that payment could be made even before the expiration of the two-year period stipulated in the written mortgage. The whole paragraph—emphasize whole [(4)]—contradicts such verbal-agreement theory. Besides, the original answer remains in the record, and plaintiff may always refer to it, and for good measure, introduce it as evidence. And if every allegation in the pleading that favors the adverse party could never be withdrawn, amended pleadings may as well be abolished.

Conclusion—Wherefore, we must conclude that in rejecting the amendment the trial judge abused his discretion.

Furthermore, realizing that if the counter-claim is not allowed, the creditor may forever be barred from collecting its credit (sec. 6, Rule 10), we must hold such abuse to be so serious as to call for certiorari.

Judgment—Accordingly, granting the petition, we hereby annul respondent judge's order of September 28, 1955. No costs.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

[1] Moran, Rules of Court (1957 Ed.) Vol. I, p. 175 citing several cases.

[2] Ruther vs. Esteban, 93 Phil., 68; 49 Off. Gaz., 1807.

[3] Rule 17, sec. 2.

[4] The admission, if any, may not be cut into parts.

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