

RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI), PETITIONER, VS. COURT OF APPEALS, DAITY SALVOSA, AND RAY DEAN SALVOSA, RESPONDENTS.

G.R. No. 121397. April 17, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Assailed in this petition for certiorari under Rule 65 is the decision of the Court of Appeals dated May 31, 1995 and its resolution of July 26, 1995 in CA-G. R. SP No. 33962, upholding private respondents' right to file an amended complaint for damages against herein petitioner.

As a result of its failure to transmit private respondent Daity E. Salvosa's telegram on time, petitioner, Radio Communications of the Philippines, Inc. (RCPI), was sued by private respondents Spouses Salvosa for damages before the Regional Trial Court of Baguio City. RCPI moved for the dismissal of the complaint on the ground of failure to state a cause of action, alleging that in the absence of any allegation of fraud or bad faith, petitioner cannot be held liable for moral and exemplary damages and attorney's fees.[1]

In its order dated August 5, 1992, the trial court dismissed the complaint for failure to state a cause of action.[2]

Before receipt of their copy of the order of dismissal, private respondents filed an amended complaint, this time alleging bad faith on petitioner's part.[3] Upon receipt of the order of dismissal on August 24, 1992, private respondents then filed a motion for reconsideration on September 4, 1992.[4] Petitioner opposed the motion for reconsideration on the ground that the same was filed out of time and argued that amendment of the complaint is improper because the purpose is to introduce a subsequently accrued action.[5]

On January 13, 1993, the trial court issued an order granting private respondents' motion for reconsideration and set aside its previous order of dismissal. The trial court ruled that notwithstanding the previous order of dismissal, private respondents are still entitled as a matter of right to amend their complaint since the order has not become final and there was yet no responsive pleading served upon them.[6]

Petitioner in turn moved for reconsideration but the trial court denied the same in its order dated March 18, 1994.[7]

Thereafter, petitioner proceeded to the Court of Appeals through a petition for certiorari imputing grave abuse of discretion on the trial court for setting aside its initial order dismissing private respondents' complaint and in admitting their amended complaint. Petitioner maintained that private respondents cannot amend their complaint by changing the theory of the case from one of negligence to a case of bad faith so as to confer jurisdiction to the trial court.[8]

On May 31, 1995, the Court of Appeals rendered the assailed decision dismissing petitioner's petition and upheld private respondents' right to file an amended complaint under Section 2 of Rule 10 of the Rules of Court. It also declared that the allegation of bad faith in the amended complaint did not in any way change private respondents'

theory of the case or their cause of action, that is, for breach of contract.[9] Petitioner sought reconsideration but respondent court denied the same in its resolution dated August 18, 1995.[10] Hence this petition.

Petitioner's objection to the admission of private respondents' amended complaint is anchored on the pronouncement laid out in the case of *Torres vs. Tomacruz*,[11] which imposed a limitation on the procedural right to amend a complaint, that is, the cause of action or defense shall not be substantially changed, or that the theory of the case shall not be altered.

On the other hand, private respondents denied that they changed their theory in their amended complaint which has consistently been an action for breach of contract. Nevertheless, even assuming that there was any switch in their theory of the case, private respondents argued that the same is allowed under Section 2 of Rule 10 of the Rules of Court because no responsive pleading has yet been filed by petitioner.

There is no merit in the petition. Section 2, Rule 10 of the Rules of Court is very explicit as to when amendments are allowed as a matter of right, to wit:

"Sec. 2. When amendments allowed as a matter of right. — A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served."

Undoubtedly, no responsive pleading has been filed prior to the submission by private respondents of an amended complaint. The motion to dismiss previously filed by petitioner is definitely not a responsive pleading,[12] hence the admission of the amended complaint was properly made. Before the filing of any responsive pleading, a party has the absolute right to amend his pleading whether a new cause of action or change in theory is introduced.[13] Contrary to petitioner's assertion, the limitation imposed in the *Torres* case (*supra*) does not apply herein because of the difference in the factual circumstances. In the *aforecited* case, the amended complaint which introduced a new cause of action was discarded because it was filed after an answer has already been adduced. However, in the instant case, the amended complaint was filed prior to the submission of any responsive pleading.

Furthermore, anent petitioner's apprehension that a party's right to amend a pleading will be subject to abuse if the same can be done without leave of court in cases like this one, the same is clearly baseless in view of the limitation imposed in Sec. 2 of Rule 10 which allows the amendment "only once as a matter of course."

WHEREFORE, for lack of merit, the petition is hereby DENIED.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Rollo, p. 21; Annex B.

[2] Rollo, p. 32; Annex D.

[3] Rollo, p. 33; Annex E.

[4] Rollo, p. 39; Annex F.

[5] Rollo, p. 42; Annex G.

[6] Rollo, p. 51; Annex I.

[7] Rollo, p. 62; Annex L.

[8] Rollo, p. 69.

[9] Decision, p. 6; Rollo, p. 90.

[10] Rollo, p. 98.

[11] 49 Phil. 913 (1927).

[12] Prudence Realty and Development Corp. vs. Court of Appeals, 231 SCRA 379 (1994); Soledad vs. Mamangun, 8 SCRA 110.

[13] Moran, Comments on the Rules of Court, Vol. 1, 1979 ed., p. 362.

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