

**MARIO SIASOCO, ANGELITA E. SIASOCO, MA. BELLA SIASOCO,
ESTER SIASOCO-LAMUG, MA. LOURDES SIASOCO LAMUG-BARRIOS,
MA. RAMONA SIASOCO LAMUG, MA. VICTORIA SIASOCO
LAMUG-DOMINGUEZ, BE...**

G.R. No. 132753. February 15, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Notwithstanding the filing of a responsive pleading by one defendant, the complaint may still be amended once, as a matter of right, by the plaintiff in respect to claims against the non-answering defendant(s). The Court also reiterates that certiorari is not the proper remedy to contest a lower court's final adjudication, since appeal is available as a recourse.

Statement of the Case

Petitioners assail the February 25, 1998 Decision[1] of the Court of Appeals[2] in CA-GR SP No. 45451, the dispositive portion of which reads:

"WHEREFORE, [the] foregoing considered, the present petition for certiorari is hereby DENIED for lack of merit. The Temporary Restraining Order issued by this Court on December 17, 1997 is hereby lifted. Petitioners are given six (6) days from receipt of this decision within which to file their answer. The motion for oral argument filed by respondent is rendered moot. Respondent court is ordered to proceed and resolve the case with deliberate speed."[3]

The foregoing disposition affirmed two Orders of the Regional Trial Court (RTC) of Quezon City, Branch 215, dated August 11, 1997 and September 11, 1997 in Civil Case No. Q-97-29960.[4] The first Order (1) admitted the Amended Complaint; (2) dropped Defendant Carissa Homes Development and Properties, Inc. (hereafter referred to as "Carissa") from the Complaint; and (3) denied the Motion to Declare Defendants Siasoco et al. (herein petitioners) in Default. The second Order denied the Motion for Suspension filed by defendants and directed them to file their answer to plaintiff's Amended Complaint.

Undaunted, petitioners seek recourse in this Court.[5]

The Facts

Petitioners were the registered owners of nine parcels of land located in Montalban, Rizal. In December 1994, they began to offer the subject properties for sale. Subsequently, Iglesia ni Cristo (INC) negotiated with the petitioners, but the parties failed to agree on the terms of the purchase. More than a year later, both parties revived their discussions. In a letter dated December 16, 1996, petitioners made a final offer to the INC. The latter's counsel sent a reply received by Petitioner Mario Siasoco on December 24, 1996, stating that the offer was accepted, but that the INC was "not amenable to your proposal to an undervaluation of the total consideration." In their letter dated January 8, 1997, petitioners claimed that the INC had not really accepted the offer, adding that, prior to their receipt of the aforementioned reply on December 24, 1996, they had already "contracted" with

Carissa for the sale of the said properties "due to the absence of any response to their offer from INC."

Maintaining that a sale had been consummated, INC demanded that the corresponding deed be executed in its favor. Petitioners refused. The ensuing events were narrated by the Court of Appeals, as follows:

"On January 14, 1997, private respondent filed a civil suit for [s]pecific [p]erformance and [d]amages against petitioners and Carissa Homes and Development & Properties, Inc. docketed as Civil Case No. Q-97-29960.

"Petitioners filed therein a Motion to Dismiss on the ground of improper venue and lack of capacity to sue.

"Carissa Homes filed its answer to the complaint on February 24, 1997.

"Pending resolution of petitioners' Motion to Dismiss, private respondent negotiated with Carissa Homes which culminated in the purchase of the subject properties of Carissa Homes by private respondent.

"On April 24, 1997, private respondent filed an [A]mended [C]omplaint, dropping Carissa Homes as one of the defendants and changing the nature of the case to a mere case for damages.

"Petitioners filed a Motion to Strike Out Amended Complaint, contending that the complaint cannot be amended without leave of court, since a responsive pleading has been filed.

"On August 11, 1997, the first assailed order denying petitioners' Motion to Strike Out Amended Complaint was rendered.

"On August 31, 1997, petitioners filed a Motion for Suspension of Proceeding pending the resolution [by] the respondent court of the Motion to Dismiss earlier filed.

"On September 11, 1997, the second assailed order denying petitioners' Motion to Suspend Proceeding was rendered[;] the Order reads:

`Filed also last September 1, 1997 [was] a Motion for Suspension by the defendant Siasoco thru their counsel Atty. Clara Dumandang-Singh. Although the court could not consider the motion filed because it violates the new rules on personal service, in the interest of justice, the court will resolve the motion. In the resolution of this court dated August 11, 1997, it state[d] that defendants [were being] given a period of five (5) days within which to file [an] answer to the Amended Complaint. The defendants here obviously refer to the defendants Mario Siasoco, et. al. In the Motion for Suspension filed by the defendants Siasoco, et al., the latter insist on the court resolving the motion to dismiss. As stated in the resolution, the motion to dismiss is now moot and academic because of the Amended Complaint from Specific Performance with Damages to just Damages. For this court to resolve the Motion to Dismiss xxx the first complaint, would be an exercise in futility. The main complaint now is damages and no longer Specific Performance with damages which [was] actually what the Resolution dated August 11, 1997 [was] all about. Be that as it may, the court gives defendants Siasoco, et al. fifteen (15) days from receipt of this Order to file their respective Answers to the Amended Complaint, not from the receipt of the resolution of the Motion to Dismiss which will not be forthcoming.'"

Ruling of the Court of Appeals

The Court of Appeals (CA) ruled that although private respondent could no longer amend its original Complaint as a matter of right, it was not precluded from doing so with leave of court. Thus, the CA concluded that the RTC had not acted with grave abuse of discretion in admitting private respondent's Amended Complaint.

Petitioners argued that the trial court where the original Complaint for specific performance had been filed was not the proper venue. Debunking petitioners' argument, the CA explained that the RTC nevertheless had jurisdiction over the said Complaint. The CA also held that the Amended Complaint did not substantially alter private respondent's cause of action, since petitioners were not being asked to answer a legal obligation different from that stated in the original Complaint.

Assignment of Errors

In their Memorandum, petitioners submit, for the consideration of this Court, the following issues:[6]

"A.

Whether or not the respondent Court of Appeals gravely erred in holding that the respondent Judge's admission of INC's Amended Complaint was proper.

"B.

Whether or not the respondent Court of Appeals gravely erred in affirming respondent Judge's denial of petitioners' Motion for Suspension.'

"C.

Whether or not the respondent Court of Appeals gravely erred in refusing to hear petitioners' application for a temporary restraining order and writ of preliminary injunction."

Simply stated, the question is: did the CA err in affirming the two Orders of the RTC which had allowed the Amended Complaint?

The Court's Ruling

The petition is devoid of merit. We sustain the Court of Appeals, but for reasons different from those given in the assailed Decision.

Preliminary Issue:

Propriety of Certiorari

In their Petition and Memorandum, Mario Siasoco et al. emphasize that "the instant suit was commenced pursuant to Rule 65 of the 1997 Rules of Procedure" and allege "that Respondent Court of Appeals committed grave abuse of discretion in issuing the challenged Decision dated February 25, 1998 xxx." This is a procedural error. For the writ of certiorari under Rule 65 to issue, the petitioner must show not only that the lower court acted with grave abuse of discretion, but also that "there is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law." [7] Since the questioned CA Decision was a disposition on the merits, and since said Court has no remaining issue to resolve, the proper remedy available to petitioners was a petition for review under Rule 45, not Rule 65. Furthermore, as a general rule, certiorari under Rule 65 cannot issue unless the lower court, through a motion for reconsideration, has been given an opportunity to correct the imputed error.[8] Although there are recognized exceptions to this rule, petitioners do not claim that this case is one of them. For this procedural lapse, the instant petition should be dismissed outright.

Nonetheless, inasmuch as the Petition was filed within the 15-day period provided under Rule 45, and considering the importance of the issue raised and the fact that private respondent did not question the propriety of the instant Petition, the Court treated the action as a petition for review (not certiorari) under Rule 45 in order to accord substantial justice to the parties. We will thus proceed to discuss the substantive issue.

Main Issue:

Admission of Amended Complaint

Petitioners argue that the lower courts erred in admitting the Amended Complaint. Under the Rules, a "party may amend his pleading once as a matter of right at any time before a responsive pleading is served xxx." [9] When private respondent filed its Amended Complaint, Carissa, the other party-defendant in the original Complaint, had already filed its Answer. Because a responsive pleading had been submitted, petitioners contend that private respondent should have first obtained leave of court before filing its Amended Complaint. This it failed to do. In any event, such leave could not have been granted, allegedly because the amendment had substantially altered the

cause of action.

This argument is not persuasive. It is clear that plaintiff (herein private respondent) can amend its complaint once, as a matter of right, before a responsive pleading is filed.[10] Contrary to the petitioners' contention, the fact that Carissa had already filed its Answer did not bar private respondent from amending its original Complaint once, as a matter of right, against herein petitioners. Indeed, where some but not all the defendants have answered, plaintiffs may amend their Complaint once, as a matter of right, in respect to claims asserted solely against the non-answering defendants, but not as to claims asserted against the other defendants.[11]

The rationale for the aforementioned rule is in Section 3, Rule 10 of the Rules of Court, which provides that after a responsive pleading has been filed, an amendment may be rejected when the defense is substantially altered.[12] Such amendment does not only prejudice the rights of the defendant; it also delays the action. In the first place, where a party has not yet filed a responsive pleading, there are no defenses that can be altered. Furthermore, the Court has held that "[a]mendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case may so far as possible be determined on its real facts and in order to speed the trial of cases or prevent the circuity of action and unnecessary expense, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend." [13]

In the present case, petitioners failed to prove that they were prejudiced by private respondent's Amended Complaint. True, Carissa had already filed its own Answer. Petitioners, however, have not yet filed any. Moreover, they do not allege that their defense is similar to that of Carissa. On the contrary, private respondent's claims against the latter and against petitioners are different. Against petitioners, whose offer to sell the subject parcels of land had allegedly been accepted by private respondent, the latter is suing for specific performance and damages for breach of contract. Although private respondent could no longer amend, as a matter of right, its Complaint against Carissa, it could do so against petitioners who, at the time, had not yet filed an answer.

The amendment did not prejudice the petitioners or delay the action. Au contraire, it simplified the case and tended to expedite its disposition. The Amended Complaint became simply an action for damages, since the claims for specific performance and declaration of nullity of the sale have been deleted.

RTC Had Jurisdiction

Petitioners also insist that the RTC of Quezon City did not have jurisdiction over the original Complaint; hence, it did not have any authority to allow the amendment. They maintain that the original action for specific performance involving parcels of land in Montalban, Rizal should have been filed in the RTC of that area. Thus, they chide the CA for allegedly misunderstanding the distinction between territorial jurisdiction and venue, thereby erroneously holding that the RTC had jurisdiction over the original Complaint, although the venue was improperly laid.

We disagree. True, an amendment cannot be allowed when the court has no jurisdiction over the original Complaint and the purpose of the amendment is to confer jurisdiction on the court.[14] In the present case, however, the RTC had jurisdiction because the original Complaint involved specific performance with damages. In *La Tondeña Distillers v. Ponferrada*, [15] this Court ruled that a complaint for "specific performance with damages" is a personal action and may be filed in the proper court where any of the parties reside, viz.:

"Finally, [w]e are not also persuaded by petitioner's argument that venue should be lodged in Bago City where the lot is situated. The complaint is one for "specific performance with damages." Private respondents do not claim ownership of the lot but in fact [recognize the] title of defendants by annotating a notice of lis pendens. In one case, a similar complaint for "specific performance with damages" involving real property, was held to

be a personal action, which may be filed in the proper court where the party resides. Not being an action involving title to or ownership of real property, venue, in this case, was not

improperly laid before the RTC of Bacolod City." [16]

WHEREFORE, the Petition is hereby DENIED. Costs against petitioners.

SO ORDERED.

Romero (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 25-34.

[2] Seventh Division, composed of J. Eugenio S. Labitoria, ponente; JJ. Jinal P. Rasul, Division chairman, and Marina L. Buzon, member; both concurring.

[3] Assailed Decision, p. 9; rollo, p. 33.

[4] Issued by Judge Marcelino F. Bautista Jr.

[5] The case was deemed submitted for resolution on November 19, 1998, upon receipt by this Court of petitioners' Memorandum.

[6] Memorandum for the Petitioners, p. 14.

[7] Section 1, Rule 65; *Gelindon v. De la Rama*, 228 SCRA 322, December 9, 1993; *Jose v. Zulueta*, 2 SCRA 574, May 31, 1961.

[8] *Liberty Insurance Corp. v. Court of Appeals*, 222 SCRA 37, May 13, 1993.

[9] Section 2, Rule 10.

[10] SEC. 2. When amendments are 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.

[11] *Francisco*, *The Revised Rules of Court*, Vol. 1, p. 646; citing *Pallant v. Sinatra*, D.C.N.Y. 1945, 7 F.R.D. 293.

[12] Section 3, Rule 10.

[13] *Philippine National Bank v. Court of Appeals*, 159 SCRA 433, 444, March 30, 1988, per Fernan, J.

[14] *Campos Rueda Corporation v. Bautista*, 6 SCRA 240, September 29, 1962; *Tamayo v. San Miguel Brewery*, 10 SCRA 115, January 31, 1974.

[15] 264 SCRA 540, November 21, 1996, per Francisco, J.; citing *Adamos v. J.M. Tuason*, 25 SCRA 530 (1968).

[16] At pp. 544-545.

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