

JOSEPHINE B. NG AND JESSE NG, PETITIONERS, VS. SPOUSES MARCELO AND MARIA FE SOCO, AND MARVIN J. SOCO, RESPONDENTS.*G.R. No. 149132. May 09, 2002*

Ponente: KAPUNAN, J.

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This is a petition for review on certiorari filed by Spouses Josephine and Jesse Ng assailing the Decision, dated December 13, 2000, of the Court of Appeals in CA-G.R. SP No. 45470 which affirmed the trial court's order denying the admission of petitioners' amended complaint. Also sought to be reversed and set aside is the appellate court's Resolution, dated July 3, 2001, which denied petitioners' motion for reconsideration.

The instant case stemmed from the complaint for accounting, injunction and damages with writ of preliminary injunction and temporary restraining order filed by petitioners against respondents Spouses Marcelo and Maria Fe Soco and Marvin Soco with the Regional Trial Court, Branch 37 of Negros Oriental. In their complaint, petitioners alleged that they are the owners of Jo's Chicken Barbecue (Chicken Inato) "secret recipe." The said recipe is used by petitioners' chain of restaurants in some cities in the Visayas and Mindanao.

Petitioners further alleged that they entered into a partnership agreement with respondents to operate a restaurant, the Soco's Manokan Nook Restaurant. The agreement provided that in the event of the dissolution of the partnership, respondents shall lose the right to use the "secret recipe" and ownership thereof shall revert back to petitioners.

Not long after, the aforesaid partnership was dissolved on account of disagreement among the parties. Believing that respondents continued to operate the same business, petitioners filed the complaint for accounting with the court a quo. During the hearing on the petition for the issuance of a writ of preliminary injunction, petitioners learned that a certain Magno Garcia, respondents' nephew, is operating the restaurant under the name Manokan sa Sugbu.

Upon the belief that Garcia was merely used as dummy by respondents in order to evade their contractual obligation, i.e., to cease using the "secret recipe," petitioners filed with the trial court a motion to admit amended complaint to implead Garcia as one of the defendants.

In its Order, dated January 28, 1997, the trial court denied said motion. The amendment cannot be allowed because, according to the trial court, "the amendment now, not only requires or compels the defendants (respondents herein) to change their defense but also subjects them to all the acts, knowledge, admission and even the omissions of Magno Garcia." [1]

On appeal, the Court of Appeals affirmed the order of the trial court. [2] The appellate court agreed with the court a quo that the amendment could not be allowed, as the same is substantial and has the effect of changing the theory of the case. The CA likewise held that Garcia is not an indispensable party, contrary to petitioners'

allegation. Petitioners moved for a reconsideration of the appellate court's decision but the same was denied. Hence, this appeal.

In their petition, petitioners allege that:

The Honorable Court of Appeals gravely erred in holding: that the amended complaint which merely seeks to include the dummy of the respondents could not be admitted because petitioners' theory of the case is thereby changed and because said dummy is not an indispensable party.[3]

The petition is bereft of merit.

Section 1, Rule 10 of the Rules of Court provides:

Sec. 1. Amendments in general. - Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

Further, Sections 2 and 3 of the same Rule provide:

Sec. 2. Amendments as a matter of right. - A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.

Sec. 3. Amendments by leave of court. - Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

Under the above provisions therefore, formal and substantial amendments to a pleading may be made at anytime before a responsive pleading has been filed. Such amendment is a matter of right. Thereafter, and during trial, amendments may only be done with the permission of the court.

The Court has invariably held that amendments are not proper and should be denied when delay would arise, or when amendments would result in a change of cause of action or theory of the case, or would be inconsistent with the allegations in the original complaint.[4]

In this case, the court a quo denied petitioners' amended complaint upon finding that it will substantially alter "the cause of action or defense or theory of the case." [5] The trial court found that respondents' defense will be altered by the amendment because they will be made liable "not only for their individual acts but also for the acts of their alleged co-conspirator Garcia." [6]

The Court agrees with the appellate court that the trial court did not commit any grave abuse of discretion in denying petitioners' amended complaint. The admission thereof was clearly not a matter of right on the part of petitioners as they sought the same only after a responsive pleading (in this case, an answer) had already been filed by respondents. The matter was thus within the discretion of the trial court. And, as consistently held by this Court, "the granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court and such discretion would not normally be disturbed on appeal except when evident abuse thereof is apparent." [7] None has been shown in this case.

ACCORDINGLY, the petition for review is DENIED for lack of merit.

Davide, Jr., C.J., (Chairman), Puno, Santiago, and Austria-Martinez, JJ., concur.

[1] Rollo, p. 16.

[2] CA Decision, p. 8; Rollo, p. 20.

[3] Rollo, p. 7.

[4] Ching vs. Court of Appeals, 331 SCRA 16 (2000).

[5] CA Decision, p. 7; Rollo, p. 19.

[6] Ibid.

[7] Ching vs. Court of appeals, supra.

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