

**SURIGAO MINE EXPLORATION CO., INC., PLAINTIFF AND
APPELLANT, VS. C. HARRIS, SURIGAO-MAINIT MINING SYNDICATE,
SURIGAO CONSOLIDATED MINING CO., INC., OTTO WEBER ET AL.,
DEFENDANTS...**

G.R. No. 45543. May 17, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

On October 24, 1935, the original complaint in this case was filed in the Court of First Instance of Surigao in which the plaintiff, a domestic private corporation domiciled in Cebu, sought a judicial pronouncement (a) adjudging the plaintiff to be the owner and possessor of the fourteen placer mining claims mentioned in the complaint and located in the barrio of Tubod, municipality of Mainit, Province of Surigao; (b) annulling the forty-three lode mining claims of the defendants, C. Harris, Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., and Otto Weber, and cancelling the registration of said lode claims in the records of the mining recorder of Surigao and in all other official records; (c) prohibiting the defendants and their agents, employees and laborers from interfering with plaintiff's ownership and possession of its placer claims; (d) sentencing the defendants to pay jointly and severally to the plaintiff the sum of P47,000 by way of damages; (e) assessing the costs of the action against the defendants; and (f) awarding the plaintiff such other proper, just and equitable relief. The theory of the plaintiff, under the complaint, is that it is the owner by purchase of the aforesaid placer claims and that the lode claims complained of were staked and located by the defendants on plaintiff's placer claims after the latter had been validly and duly staked and located by the plaintiff or its grantors and predecessors in interest.

On November 23, 1935, the defendants C. Harris, Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., and Otto Weber demurred to the complaint on the grounds (1) that there was a misjoinder of parties in that Otto Weber had been included as defendant; (2) that the complaint did not state facts sufficient to constitute a cause of action, because it merely alleged that the plaintiff was the owner by purchase of the placer claims named therein; and (3) that the complaint was ambiguous and unintelligible. On January 9, 1936 the Court of First Instance of Surigao entered an order finding merit in the third ground of the demurrer and requiring the plaintiff to amend its complaint so as to contain a detailed description of its placer claims.

On January 13, 1936 an amended complaint was filed to which another demurrer was interposed on January 22, 1936. In the order of January 27, 1936 the Court of First Instance of Surigao overruled the demurrer and required the defendants to file their answer within the reglementary period. Pursuant to the order of the Court of First Instance of Surigao of June 5, 1936, the plaintiff filed, on June 11, 1936, a third amended complaint in which, additional to C. Harris, Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., and Otto Weber, the original defendants, thirty-two other individuals were included as parties defendant. In this third amended complaint the placer claims alleged to be owned by the plaintiff were reduced to eleven, and the relief prayed for was about the same as that asked in the original complaint, although the amount sought to be recovered

as damages was increased to P49,000.

On August 3, 1936 the defendants, other than Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., and Otto Weber, filed an answer, which was amended on September 10, 1936, containing a general denial, setting up five special defenses and praying that the location of the alleged placer claims described in paragraph 4 of the third amended complaint and of any placer claim which might be shown in the trial to have been located by the plaintiff or its predecessors in interest illegally and in fraud of the government, be declared null and void and that the registration of said claims in the office of the mining recorder of Surigao be ordered cancelled.

On August 24, 1936 the defendants Surigao-Mainit Mining Syndicate, Surigao Consolidated Mining Co., Inc., and Otto Weber filed an answer containing a general denial, five special defenses and a counterclaim in the sum of P40,000 and praying the Court of First Instance of Surigao (a) to declare the nullity of the registration in the office of the mining recorder of Surigao of the placer claims specified in paragraphs 3 and 4 of the third amended complaint and to order the cancellation of said registration; (b) to declare the defendants the lawful owners and possessors of the lode claims enumerated in paragraph 6 of the third amended complaint; (c) to restrain the plaintiff and its agents, employees and laborers from interfering with the ownership, possession and enjoyment of the defendants of their lode claims; and (d) to sentence the plaintiff to pay to the defendants the sum of P40,000 as damages.

In the course of the adduction of plaintiff's evidence in the Court of First Instance of Surigao, Exhibits O and O-1 to O-9 were presented. With the exception of Exhibit O-7, all of said exhibits are deeds of sale in favor of the plaintiff covering, among others, the placer claims here in question and bear dates posterior to October 24, 1935, the date of the filing of the original complaint. Exhibit O-7 is a deed of sale executed by Pablo S. Atillo in favor of Maximo Borrromeo on January 23, 1935. A perusal of this Exhibit O-7 in connection with Exhibit O-9 reveals the fact that the mining claims conveyed by Maximo Borrromeo to the plaintiff under said Exhibit O-9, dated December 21, 1935, were the same claims acquired by Maximo Borrromeo under Exhibit O-7.

Whereupon, before the plaintiff could close its evidence, the defendants moved for the dismissal of the complaint on the ground that, when the action was commenced, plaintiff's right of action had not yet accrued, since, under its own Exhibits O and O-1 to O-9, the plaintiff did not become the owner of the claims in dispute until after the original complaint was filed in the Court of First Instance of Surigao on October 24, 1935.

The present appeal is from the order of the Court of First Instance of Surigao entered on September 12, 1936 dismissing the complaint, with costs against the plaintiff, the latter alleging that the trial court erred and abused its discretion in so ordering the dismissal of the complaint.

No pretense is here made by the plaintiff-appellant that It became the owner and possessor of the claims in question by virtue of muniments of title other than Exhibits O and O-1 to O-9, and this appeal will be disposed of on the assumption that the alleged rights of the appellant to said claims had been conferred solely by said Exhibits O and O-1 to O-9. In other words, this case must be decided on the premise that the deeds of sale in favor of the appellant were executed after the filing of the original complaint. Exhibit O-7, executed on January 23, 1935, will not affect the situation, for the reason that said exhibit evidences a deed of sale in favor of Maximo Borrromeo, who conveyed the claims acquired by him thereunder to the plaintiff by virtue of Exhibit O-9, executed on December 21, 1935, or after the filing of the original complaint.

Subject to certain qualifications, and except as otherwise provided by law, an action commenced before the cause of action has accrued is prematurely brought and should be dismissed, provided an objection on this ground is properly and seasonably interposed. The fact that the cause of action accrues after the action is commenced and

while it is pending is of no moment. In the present case, timely objection was made by counsel for the appellees upon discovery of the immaturity of the action as a result of the presentation by plaintiff-appellant of certain exhibits hereinabove mentioned. The date when a civil action is deemed commenced is determined by section 389 of the Code of Civil Procedure. Without the need of commenting on this section in relation to allied sections of the same Code, it is sufficient to observe that here summons was issued by the Court of First Instance of Surigao on October 25, 1935 and was served on the defendants C. Harris, Surigao-Mainit Mining Syndicate and Surigao Consolidated Mining Co., Inc., on October 28, 1935, and on the defendant Otto Weber on November 11, 1935. Under section 389, which was taken from section 405 of the Code of Civil Procedure of California, the action is deemed commenced upon the "filing of a complaint in the office of the clerk of the court in which the action is to be instituted" (*Sotelo vs. Dizon*, G. R. No. 46492, promulgated April 26, 1939, and authorities therein cited). The original complaint was filed in the present case on October 24, 1935. But although it be assumed that, under said section 389, the date or dates of the issuance and service of the summons might affect the true date of the commencement of the action, the point is of no legal consequence because whether the date of the filing of the original complaint, or the date of the issuance of the summons, or the date of the service of said summons, is considered as the time of the commencement of the suit, it is clear that any of said dates is anterior to those of Exhibits O and O-1 to O-9.

Notwithstanding divergence of authorities and the apparent confusion that has arisen in the country of origin of our procedural system, we believe that certain principles are well settled. Primarily, the right to amend a pleading is not an absolute and unconditional right. It is to be allowed in furtherance of justice under a sound judicial discretion. This judicial discretion, upon the other hand, is of course not without any restriction. The cause of action must exist at the time the action was begun, and the plaintiff will not be allowed by an amendment to introduce a cause of action which had no existence when the action was commenced. As soon as an action is brought and the complaint is filed, the proceedings thus initiated are not subject to the arbitrary control of the parties or of the court, but must be dealt with in accordance with recognized rules of pleading and practice. Amendments "must be such, and only such, as are necessary to promote the completion of the action begun—all parties necessary for that purpose may come or be brought into it, and so also, any and all such amendments may be made as to the cause of action, as may be necessary to its completeness in all respects. But neither general principles of practice, nor the statute providing for amendments, authorize amendments that reach beyond these purposes. Especially, the court has no authority to allow such amendments as to parties, or as to the cause of action, as make a new, or substantially a new action, unless by the consent of the parties. Indeed, this would not be to amend, in any proper sense, but to substitute a new action by order, for and in place of a pending one, which the court cannot do. General principles of procedure, and, as well, the statutory regulations upon the subject, contemplate and intend that an action shall embrace but one litigation or matter, and only such parties, matters and things, as are necessary, germane, and incident to it, except that several causes of action may be united in the same action, as specially provided by statute. Any other rule or method would certainly be subversive of orderly and intelligent procedure, and lead to intolerable confusion, as well as injustice to litigants. (*Grant vs. Burgwyn*, 88 N. C. 95; *Merrill vs. Merrill*, 92 N. C., 657; *McNair vs. Commissioners*, 93 N. C. 364; *Ely vs. Early*, 94 N. C. 1.)" (*Clendenin vs. Turner* [1887], 96 N. C. 304, 306.)

It is a rule of law to which there is, perhaps, no exception, either at law or in equity, that to recover at all there must be some cause of action at the commencement of the suit. As observed by counsel for appellees, there are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is as yet no cause of action should not be summoned before the public tribunals to answer complaints which are groundless. We say groundless because if the action is immature, it should not be entertained, and an action prematurely brought is a groundless suit.

It is true, that an amended complaint and the answer thereto take the place of the originals which are thereby regarded as abandoned (*Reynes vs. Compania General de Tabacos* [1912], 21 Phil., 416; *Ruyman and Farris vs. Director of Lands* [1916], 34 Phil., 428) and that "the complaint and answer having been superseded by the amended complaint and the answer thereto, and the answer to the original complaint not having been presented in evidence as an exhibit, the trial court was not authorized to take it into account." (*Bastida vs. Menzi & Co.* [1933], 58 Phil, 188.) But in none of these cases or in any other case have we held that if a right of action did not exist when the original complaint was filed, one could be created by filing an amended complaint. In some jurisdictions in the United States what was termed an "imperfect cause of action" could be perfected by suitable amendment (*Brown vs. Galena Mining & Smelting Co.*, 32 Kan., 528; *Hooper vs. City of Atlanta*, 26 Ga. App., 221) and this is virtually what we also permitted in *Banzon and Rosauro vs. Sellner* ([1933], 58 Phil., 453); *Asiatic Petroleum Co. vs. Veloso* ([1935] 62 Phil., 683); and recently in *Ramos vs. Gibbon* (38 Off. Gaz., 241). That, however, which is no cause of action whatsoever cannot by amendment or supplemental pleading be converted into a cause of action: *Nihil de re accrescit ei qui nihil in re quando jus accresceret habet*.

We are therefore of the opinion, and so hold, that unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible (Cf. *Compania Gral de Tabacos vs. Araza* [1907], 7 Phil., 455; *Santos vs. Marquez* [1909], 13 Phil., 207; *Barretto vs. Lane* [1915], 29 Phil., 487; *National Bank vs. De la Vina* [1924], 46 Phil., 63; *Hodges vs. Locsin* [1933], 58 Phil., 607; *Limpangco vs. Mercado* [1908], 10 Phil, 508).

The order appealed from is affirmed, without prejudice, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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