

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF RAFAEL FERNANDEZ. GUILLERMO A. CU UNJIENG, CLAIMANT AND APPELLANT, VS. HONGKONG & SHANGHAI BANKING CORPORATION, ASSIGNEE AND APPEL...

G.R. No. 46080. September 27, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

There are two orders of the lower court which are brought into question in this appeal, that of June 23, 1937, and another of December 13, 1937, with the ultimate result of dismissal of appellant's claim for P149,789.35, filed in the above-entitled insolvency case.

Under date of September 21, 1931, claimant-appellant herein filed his verified claims for the principal sum of P149,789.35 plus interests thereon against the insolvent estate of Rafael Fernandez, alleging that said amount was the liquidated balance in claimant's favor of a mutual current account between them. The Hongkong & Shanghai Banking Corporation, one of the insolvent's creditors, filed a verified opposition under date of September 22, 1931, to the claim, alleging, among other things, that the claimant should present a statement of account, showing the debit and credit items giving rise to the balance claimed. The lower court, in an order of September 22, 1931, sustained the opposition of the bank reserving expressly however to the claimant-appellant his right to amend his claim conformably with the statute.

On or about August 17, 1933, the assignee filed his report. And on May 13, 1937, he filed an ex-parte report in which he recommended that appellant's claim be definitely dismissed for failure to amend the same in due time, in accordance with the order of the court on the same day, the lower court issued its order the pertinent part of which reads as follows:

"Se desestima y desaprueba la reclamacion de G. A. Cu Unjieng presentada el 21 de septiembre de 1931, por no haber hecho ninguna enmienda a la misma a tenor de lo dispuesto en auto de 22 de septiembre de 1931, no obstante haber transcurrido cerca de seis anos desde entonces hasta ahora."

On May 25, 1937, claimant filed a motion for reconsideration praying that the order above-mentioned be set aside and that he be given time within which to present his amended claim and his proofs in support thereof. On June 5, 1937, the assignee opposed the motion for reconsideration, alleging that the claimant was guilty of laches, because there was no affidavit of merit attached thereto. The lower court, in its order of June 23, 1937, sustained the opposition of the assignee but at the same time allowed the claimant five (5) days within which to submit a satisfactory affidavit of merit, with admonition of definite dismissal of the claim. On June 30, 1937, the appellant filed his exception and motion, with an affidavit of merit and two other supporting exhibits (A and B) thereto attached, praying that he be permitted to file and prove his amended claim. On December 13, 1937, the lower court issued the following order:

"ORDER

"G. A. Cu Unjieng in his motion of June 30, 1937, prays that he be allowed to file and prove his amended claim against the insolvent estate of Rafael Fernandez. Another petition to the same effect was the subject matter of the order of this court dated June 23, 1937.

"That petition of June 30, does not state new facts which could alter the conclusions of the court in the order of June. 23. It is dear that the petitioner is guilty of neglect by laches for seven years. For the sake of brevity, the court will not repeat herein the reasons given in the order of June 23, but simply incorporate them herein by reference.

"If the claim of Cu Unjieng were really meritorious, the court could overlook and waive the seven years' laches; but on the contrary, it is clear that should the claim of the petitioner be allowed to take its course, it will require several years of the time of this court and of the superior courts, as the other Cu Unjieng cases, without Arriving at any substantial result for the reason that in the cases entitled *The National City Bank of New York vs. Guillermo A. Cu Unjieng*, *Mariano Cu Unjieng and Rafael Fernandez*, G. R. No. 41927; *The Malabon Sugar Company vs. Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez*, G. R. No. 41928; and *Smith, Bell & Co., Ltd. vs. Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez*, G. R. No. 41929, it was declared by the Supreme Court that there was an illegal and fraudulent conspiracy between Rafael Fernandez, G. A. Cu Unjieng and M. Cu Unjieng to defraud their creditors and that there was no; cause or consideration for the alleged transactions between said parties. In consequence of this, none of them can file any claim against the others (art. 1306 of the Civil Code; *Bough vs. Canteveros*, 40 Phil., 209).

"The courts will not be justified in employing an almost unlimited period of time in hearing and considering a claim which has been abandoned by laches for seven years and is not meritorious.

"In view of the foregoing, the motion of G. A. Cu Unjieng dated June 30, 1937 is hereby denied. It is so ordered.

"Manila, December 18, 1937."

Appellant assigns four errors. It is only necessary, however, to determine whether or not claimant-appellant was guilty of laches in the prosecution of his claim, because of his failure to act under the order of September 22, 1931, of the lower court. As stated, the appellant herein, on September 21, 1931, filed his claim for the sum of P149,789.35; the claim was opposed by the Hongkong & Shanghai Banking Corporation, on the ground that it did not conform to the requirements of section 68 of the Insolvency Law; the opposition was sustained by the lower court by its order under date of September 22, 1931, in which appellant's right is reserved to amend his claim to conform to the statute; instead of complying with the order of the lower court, appellant failed to take any step to amend his claim within a period of six years; and his claim was dismissed by the lower court on May 13, 1937, on the ground that, notwithstanding the lapse of six (6) years, the appellant had not made any amendment.

The reasons given by the appellant for his inability to amend his claim are the documents which he needed therefor had been filed in criminal case No. 42649, *People of the Philippine Islands vs. Mariano Cu Unjieng* and in civil cases against the same defendant, and they were not available to him and that said documents are very voluminous. The lower court declined to accept the explanation for the reason given in the foregoing transcribed order of May 13, 1937. We find no reason for disturbing the finding and conclusion of the lower court on this point. "In case there has been delay in presenting an amendment the court may require the party to offer an excuse for such delay, and upon his failure to do so may refuse permission to amend. Laches, it has been held, will not be excused where the facts on which the proposed amendment is based must have been known to the pleader at the time he filed his original pleading. And a party may properly be denied permission to amend, where the necessity of the amendment was pointed out by the appellate court after a former trial but no attempt was made to amend

until the cause again came to trial. A party cannot justify his laches on the ground that the proposed amendment is no surprise to the opposing party; for the latter is justified in believing, where no amendment is filed within a reasonable time, that his opponent means to stand on his original pleading. An amendment may properly be disallowed after a party has once had leave to amend and has failed to do so within the time prescribed in the court's order, or when, for any reason, the other party will be prejudiced by the delay." (49 C. J., 479; vide also 21 C. J., 215, 216 and *Stevenson vs. Stevenson*, 224 Ill., 482; 79 N. E., 608, 609.)

Although the right of reservation granted to the appellant to amend his claim so as to conform to the provisions of section 58 of the Insolvency Law was not limited as to time, the amendment, however, should have been submitted within a reasonable time. (21 C. J., 618.)

Upon the other hand, the granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. (*Torres vs. Tomacruz*, 49 Phil., 913, 915.) Withal, equity always refuses to interfere where there has been gross laches in the prosecution of rights. There is, it is said, no artificial rule upon the subject, but each case must be governed by its own circumstances. (2 Story Eq. Jur., sec. 1520; 2 Pom, Eq. Jur., sec. 965; *Badger vs. Badger*, 2 Wall, 87; *McQuiddy vs. Ware*, 20 Wall., 14. [*Orr vs. Pennington*, 93 Va., 268; 24 S. E., 928, 929.]

The appeal is hereby dismissed, with costs against the appellant So ordered.

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

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