

**MARIA BAETAMO, PETITIONER, VS. HON. AMADO P. AMADOR,
JUDGE OF THE COURT OF OFIRST INSTANCE OF MANILA, LEON M.
SAMSON, ET AL., RESPONDENTS.**

G.R. No. 49255. September 18, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

As special administratrix of the intestacy of the deceased Geronima Baetamo y Gonzales, petitioner instituted in the Court of First Instance of Manila three civil actions against the respondent Leon M. Samson and his individual corespondents herein. The first two actions (cases Nos. 2274 and 2275) were filed to annul the sales made by the said Leon M. Samson, surviving husband, of the deceased Geronima Baetamo y Gonzales, of certain parcels of land alleged to belong to the conjugal partnership between Samson and Baetamo, in favor of his individual corespondents herein, upon the ground that said sales were fictitious and were made solely to defraud the heirs of the deceased; and the third action (case No. 2291) has for its purpose to prevent the respondent Leon M. Samson from disposing of the rest of the properties allegedly belonging to the conjugal partnership with intent to defraud the heirs of the deceased.

In each of the said three, cases the answers separately filed by the respondent Leon M. Samson and his individual corespondents herein, as defendants, read textually as follows:

"That the defendant specifically denies each and every allegation contained in each and every paragraph of plaintiff's complaint;

"That the herein defendant reserves his right to file later on an amended answer containing such special affirmative defenses and counterclaims as he may deem necessary and proper in the premises."

Said answers were filed in May 1944. In June of the same year the three cases were consolidated for trial in the of the respondent judge upon motion of the plaintiff.

On July 4, 1944, after the three cases had been set for trial, the plaintiff filed a motion asking the court to render judgment on the pleadings in accordance with the prayers of the complaints, upon the ground that the answers filed by the defendants, being mere general denials, did not tender an issue and constituted an implied admission of the material allegations of the complaints, invoking the decision of this Court in *El Hogar Filipino vs. Santos Investments, Inc.*, G. R. No. 48244.

On July 19, 1944, the respondent judge entered the following order:

"Upon consideration of the 'motion for judgments on the pleadings' dated July 4, 1944, presented by the, plaintiff, through counsel, praying that judgments on the pleadings in these 3 cases be entered in favor of the plaintiff in accordance with the prayers contained in the complaints and amended complaint; it appearing that the prospective answers filed in the 3 cases for the various defendants named therein state that they specifically deny each and every allegation contained in each and every paragraph of the complaints, with a reservation by

the defendants to file later on amended answers containing such special affirmative defenses and counterclaims as may be deemed necessary; it appearing in defendants' written opposition dated July 8, 1944, that pursuant to said reservation their counsel in due time will amend the answers, in accordance with Section 2, Rule 17 of the Rules of Court; it appearing further that the doctrine laid down in *El Hogar Filipino vs. Santos Investments*, G. R. 48244, is not applicable to the instant cases because the answer in the *El Hogar* case states that defendant denies generally and specifically each and every allegation in each and every paragraph of the complaint and does not contain any reservations to file later on an amended answer; and considering further that all pleadings should be liberally construed to do substantial justice; and finding the motion, consequently, to be without merit, the same is hereby denied."

To set aside said order and require the respondent judge to render judgment on the pleadings in the three above-mentioned cases, the present petition for certiorari and mandamus has been instituted.

The only questions argued and submitted by the parties are (1) whether the answers hereinbefore quoted are, general or specific denials and (2) whether the reservation made by the defendants in their said answers of the right to file later an amended answer containing special affirmative defenses and counterclaims had any legal effect.

Upon the first question, respondents contend that their answers were not a general denial because, as counsel emphasized in his oral argument, he was careful not to use the word "generally" but used the word "specifically" in denying "each and every allegation contained in each and every paragraph of the complaint." That is naive if not puerile argument. A general denial does not become specific by merely calling it so, any more than stone can become bread by applying the latter nomenclature to it. Sections 6, 7, and 8 of Rule 9 of the Rules of Court, which govern here, read as follows:

"Sec. 6. Defenses.—The answer shall contain either a specific denial or a statement of matters in avoidance of the cause or causes of action asserted in the complaint.

"Sec. 7. Specific denial.—The defendant must deal specifically with each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial. Where a pleader desires to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

"Sec. 8: Allegations not specifically denied.—Material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied. Allegations of usury are deemed admitted if not denied specifically and under oath."

In *El Hogar Filipino vs. Santos Investments, Inc.*, *supra*, we said:

"Defendant's answer wherein it merely 'denies generally and specifically each and every allegation contained in each and every paragraph of the complaint' is but a general denial. It is not a specific denial under section 7 of Rule 9, because it does not deal specifically with each material allegation of fact, nor does it set forth the substance of the matters upon which the defendant relies to support his denial. It does not serve the purpose, of requiring the defendant to make a specific denial, which is to compel him to specify the matters which he intends to disprove and disclose the matters upon which he relies to support his denial, thereby limiting the issues and avoiding unnecessary delays and surprises. Under the Old procedure the plaintiff was compelled by defendant's mere general denial to prove facts alleged in the complaint which the defendant did not even attempt to dispute. The new procedure does away with that unnecessary burden. (*Moran on the Rules of Court*, volume 1, page 93.)"

That pronouncement is of exact application to the present case, unless the reservation to file an amended answer produced any legal effect.

There is no provision in the Rules of Court that permits such reservation. Indeed, to permit it would defeat the time limit fixed by section 1 of Rule 9 within which the defendant must answer the complaint. A litigant cannot create any right in his favor by merely claiming and reserving it. If the right exists, it can be exercised without the necessity of reserving it. If it does not exist, no amount of reservation can bring it to life. Does a defendant have the right to amend his answer as a matter of right and independently of the court's leave? Section 1 of Rule 17 reads as follows:

"Section 1. Amendment, how made. 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."

Thus, even assuming without deciding that an answer containing only a general denial may be amended as a matter of course (with or without previous reservation of the right to do so), such amendment must be made within ten days after the original answer is served, provided that the case has not in the meantime been placed upon the trial calendar. The defendants in the cases before the respondent judge did not do that. Therefore, petitioner's motion for judgment on the pleadings was in order and should have been granted.

The refusal of the respondent judge to enforce the Rules of Court which we had applied in an analogous case and which the petitioner duly invoked in the present case, without any valid or even plausible reason, constitutes a grave abuse of discretion; and the writ of mandate may be availed of under the circumstances. (Aguilar vs. Cabrera and Flamenio, G. R. No. 49129, promulgated June 30, 1944.)

The order complained of is set aside and the writ of mandate prayed for by the petitioner is hereby granted, with costs against the individual respondents.

Yulo, C.J., Moron, Horrilleno, Paras, and Bocobo, JJ., concur.

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