

**LEONOR GUZMAN CASTILLO AND FEDERICO T. CASTILLO, JR.,
PETITIONERS, VS. THE COURT OF APPEALS AND THE
DEVELOPMENT BANK OF THE PHILIPPINES AND ANSELMO P.
SEVILLA, RESPONDENTS.**

G.R. No. 52008. March 25, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The sole issue raised in this petition is whether or not the summary dismissal of the petitioners' original complaint together with their amended complaint by the trial court *motu proprio* was improper and violative of the petitioners' right under the pertinent provisions of the Rules of Court.

The facts are not disputed. These are:

"Plaintiff spouses sometime in February, 1974, applied for an industrial loan with the Development Bank of the Philippines (DBP for short) which granted the same in the amount of P33,000.00. Payment was secured by a real estate mortgage over a parcel of land, including a factory building thereon, with an area of 513 square meters, more or less, and a chattel mortgage over chattels acquired with the proceeds of the loan. They accordingly executed, jointly and severally, a promissory note in the amount of P33,000.00 on January 13, 1965, in favor of the DBP, with the express understanding -

"x x x to make partial payments, the first payment to be made on April 13, 1965, and subsequent payments on the 13th day of every three (3) months thereafter, and each of all such payments shall be ONE THOUSAND ONE HUNDRED, FIFTY FOUR & 06/100 PESOS (P1,154.06) which shall cover amortizations on the principal and interest at the above-mentioned rate. All unpaid amortizations shall bear interest at the rate of seven (7%) per annum x x x."

"However, only P31,000.00, out of the approved loan of P33,000.00, was released to the plaintiffs. Thus, the DBP modified the promissory note in question by, according to the plaintiffs, erasing and changing -

"a)

the maturity date of the promissory note from January 13, 1975 to November 11, 1977;

b)

the total amount of the principal payable to DBP from P33,000.00 to P31,700.00;

c)

the amount of the quarterly amortizations or payments from ONE THOUSAND ONE HUNDRED FIFTY

FOUR & 06/100 PESOS (P1,154.06), as originally contained and stipulated by the parties in the promissory note of January 13, 1965, to ONE THOUSAND ONE HUNDRED EIGHT & 62/100 PESOS (P1,108.62); and

d)

the due date of the first partial payment from April 13, 1965 to February 11, 1967.

of which modification they were advised only in April, 1974.

"Upon the foregoing, plaintiff spouses went to court by filing Civil Case No. 18880 before the Court of First Instance of Quezon City, alleging that the aforesaid alterations of the promissory note rendered the same null and void insofar as their liability thereon to the DBP is concerned, citing Sections 124 and 125 of the Negotiable Instruments Law and also relieved them of any liability arising therefrom, thus praying -

"ON THE PRELIMINARY INJUNCTION:-

"WHEREFORE, in view of all the foregoing considerations, it is most respectfully prayed of this Honorable Court that an Order be issued restraining the defendant DBP and the Sheriff of Quezon City from proceeding with the scheduled foreclosure proceedings upon the plaintiffs filing a preliminary injunction bond in a reasonable amount fixed by this Court under Section 3 of Rule 58 of the Revised Rules of Court.

"That after hearing, an order be issued making permanent the restraining order and maintaining the plaintiffs in the peaceful occupation and possession of the properties in question.

FOR THE CANCELLATION OF THE MORTGAGES: -

"That after hearing, judgment be rendered in favor of the plaintiffs and against the defendant declaring the promissory note of January 13, 1965, and the real estate and chattel mortgages as null and void and ordering the DBP:

"1) To deliver back to plaintiffs TCT No. 26156 free from all liens and encumbrances;

"2) To pay plaintiffs moral and actual damages that may be proven at the hearing of this case; and

"3) To pay to plaintiffs attorney's fees and expenses of litigation in the amount of no less than P10,000.00."

"Instead of answering the complaint, as required by the lower court in its order of May 21, 1974, the defendants on May 22, 1974, moved to dismiss on the ground that the complaint states no cause of action, to which the plaintiffs filed an opposition.

"On May 28, 1974, and prior to the resolution of defendants' motion to dismiss, the lower court issued the following -

"O R D E R

"At the hearing today which was held in chamber, plaintiff appeared in person and the defendant was represented by Atty. Graciano V. Sebastian. The Court pointed out to the plaintiff that there is need for changing certain allegations in the complaint and he is hereby given one (1) week from today to amend the

complaint, if he so desires, to which the defendant has no objection. The court likewise informed the plaintiff that there is a standing policy initiated by Presidential Decree No. 385 that court should not issue restraining orders or injunction, permanent or temporary, against any agency of the government, without hearing. The Court, however, suggested to the plaintiff that, to avoid an extrajudicial foreclosure of the mortgage, he should make partial payment on the loan and ask management of the DBP for the restructuring of the loan in accordance with Presidential Decree No. 385."

"However, the lower court before June 5, 1974 and prior to the expiration of the one-week-period granted to the plaintiffs within which to amend their complaint, issued on June 3, 1974 the following -

O R D E R

"On May 16, 1974, plaintiff filed a complaint for cancellation of mortgage with preliminary injunction against the defendants alleging among others, that the mortgage was a nullity because the promissory note secured by it was void by reason of material alteration. In Answer to the complaint, defendant filed a Motion to Dismiss on the ground that complaint states no cause of action. Although Sec. 124 of the Negotiable Instruments Law provides that a material alteration of a negotiable instrument will avoid the instrument as against a party who did not authorize or assent to the alteration, yet the same statute does not extinguish the obligation to repay the loan, which is evidenced by the note. As between the parties, the lender and the borrower, the obligation arising from the contract of loan exists. And the lender may choose to sue on the loan, even if the note is null and void. The nullity of the promissory note as a negotiable instrument does not extinguish the obligation to pay the loan. In the present case, the DBP chose to enforce the loan obligation by an extra-judicial foreclosure of the mortgage. It chose not to enforce the promissory note. Sections 124 and 125 of the Negotiable Instrument's Law therefore are not applicable to set aside the extra-judicial foreclosure of the mortgage. It appearing that the plaintiff admits that he contracted the loan and has not paid the same, the motion to dismiss is well taken.

"WHEREFORE, for failure to allege a cause of action against the defendant, the complaint is dismissed. This order of dismissal disposes of the prayer for a writ of preliminary injunction, which is likewise dismissed.

"On the other hand, the plaintiffs filed on June 4, 1974, an 'Urgent Motion For Five Days Extension to File Amended Complaint; which they filed on June 10, 1974, on which date, according to them, they have not as yet received a copy of the aforequoted order of June 3, 1974.

"On June 11, 1974, the lower court issued the following -

O R D E R

"The case having been dismissed by order dated June 3, 1974, the 'Urgent Motion for Five Days Extension to File Amended Complaint' is denied.'

"Upon plaintiffs' 'Urgent Motion For Clarification of Order of June 3, 1974, the lower court issued on June 20, 1974, a clarificatory order, the pertinent and dispositive portions of which are as follows -

"Although it is true that at the chamber conference held on May 28, 1974 in lieu of a formal hearing, the court suggested that plaintiff amend their complaint, yet further study on the case in relation to the motion to dismiss filed by the defendant, the court is convinced that the plaintiff has no cause of action and to amend the complaint would constitute a radical change on the theory of the plaintiff which is not allowed by the Rules of Court.

"On June 10, 1974, plaintiff filed an urgent motion to admit amended complaint pursuant to the suggestion that the Court made on May 28. However, it appearing from the documents submitted by both parties that the plaintiff borrowed P31,000.00 from the defendant and the defendant failed to pay in installment after 10 years as a result of which the defendant extrajudicial foreclosed the mortgage, this court finds that the plaintiff has

no valid cause of action to oppose the foreclosure of the mortgage either (1) on the ground that the promissory note is materially altered or on any other ground. The truth of the matter is borned (sic) by the documentary evidence that plaintiff contracted a loan, failed to pay in installment on the loan plus interest, hence, the defendant foreclosed extrajudicially the real estate mortgage as per agreement of the parties.

"IN VIEW THEREOF, this order clarifies the order of June 3rd and at the same time denies the motion to file an amended complaint. The Court reiterates its order of June 3rd dismissing the complaint." (Rollo, pp. 16-21)

The Court of Appeals dismissed the appeal raised by the petitioners. The questioned order was affirmed. The court ordered the sale on foreclosure of plaintiffs-appellants' property with costs against the appellants. A motion for reconsideration of the decision was denied.

Hence, this petition.

The petitioners-spouses now contend that:

I

"Section 2, Rule 10 of the Rules of Court gives a party a right to amend his pleading once as a matter of right.

II

"The mere filing of a motion to dismiss does not deprive plaintiffs of their right to amend as a matter of course." (Rollo, p. 58)

Sections 1 and 2, Rule 10 of the Revised Rules of Court provide:

"Section 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.

"Section 2. When amendments allowed as 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."

Taking into consideration these two provisions, we have ruled that amendments of pleadings may be resorted to subject to the condition that the amendments sought do not alter the cause of action of the original complaint (Alger Electric v. Court of Appeals, 135 SCRA 37) or are not inconsistent with the allegations in the original complaint, but are obviously intended to clarify the intrinsic ambiguity in them with respect to the time of the accrual of the movant's cause of action (Guino v. Ver, 16 SCRA 638).

In the instant case, the original complaint was for the nullification and declaration as null and void of the promissory note and the real estate and chattel mortgage executed in favor of respondent DBP. It prayed for the delivery of the petitioners' Transfer Certificate of Title No. 20156 "free from all liens and encumbrances." On the other hand, the petitioners in the proposed amended complaint prayed for the reformation of the real and chattel mortgage.

"Nullification" and "reformation" are inconsistent with each other. We agree with the respondent's observation that while annulment involves a complete nullification of the contract, reformation gives life to it upon certain corrections.

Parenthetically, the amendments sought altered the cause of action of the original complaint. This cannot be done

(Alger Electric, Inc. v. Court of Appeals, supra; and Guino v. Ver, supra).

Thus, the lower court did not commit a mistake in not accepting the amended complaint. The petitioners lost their right to amend their complaint when they filed an amended complaint which clearly varied the allegations in the original complaint.

Moreover, the Court of Appeals did not commit a mistake in dismissing the appeal. We fully agree with the court's findings, to wit:

"In going over the record, We find that, indeed, there was no formal hearing on the motion to dismiss. There is no question, however, that the motion is grounded on lack of cause of action and the existence or lack of it is determined by a reference to the facts alleged in the challenged pleading. The issue raised in the motion was fully discussed therein and in the opposition thereto. Under such circumstance, oral argument on the motion are reduced to an unnecessary ceremony and should be overlooked (Ethel Case, et al. v. Jugo, 77 Phil. 517, 522). This is so because the other intendment of the law requiring hearing on a motion, that is, 'to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion' (J. M. Tuason & Co. v. Magdangal, G. R. No. 1-155, Jan. 30, 1962) has been sufficiently met." (Rollo, p. 25)

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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