

CONTECH CONSTRUCTION TECHNOLOGY & DEVELOPMENT CORPORATION, JERRY A. KHO, WEIJEN A. KHO AND WILLEN A. KHO, PETITIONERS, VS. COURT OF APPEALS AND GREENBELT SQUARE, INC., RESPONDENTS.

G.R. No. 79903. July 23, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for certiorari and prohibition with preliminary injunction to annul and set aside the decision dated July 24, 1987 of the Court of Appeals[1] directing the Regional Trial Court of Pasig, Branch CLXIV in Civil Case No. 45321 to admit the amended complaint of respondent Greenbelt Square, Inc. and to proceed with the trial of said case.

It appears on record that on August 8, 1980, petitioner Contech Construction Technology & Development Corporation, as contractor, and private respondent Greenbelt Square, Inc., as owner, entered into an Agreement whereby the former undertook the construction, equipping, furnishing and supplying of materials for a theater and restaurant building for a consideration of P20,069,694.00.[2]

Pursuant to said Agreement, petitioners secured from the Philippine British Assurance Co., Inc. (Phil-British for brevity), a bond of P2,000,000.00 under Bond No. 0746 to guarantee the payment of the labor and materials used in connection with the construction project,[3] from the Metropolitan Insurance Co. (Metropolitan for brevity); P4,000,000.00 under Surety No. 80/G(13)00853 to secure the full and faithful performance of the petitioners[4] and Surety No. 80/G(10)00457 for P2,000,000.00 to guarantee the supply of Cement and steel bars needed for said project.[5]

On October 21, 1981, respondent Corporation terminated the Agreement upon petitioners' failure to comply with the terms and conditions of said Agreement.[6] Respondent Corporation, likewise, sent Phil-British and Metropolitan notices of claim for petitioners' failure to perform their part of the Agreement.

Petitioners, thereafter, withdrew their men and equipments from the construction site and respondent Corporation contracted the services of R.N. Construction Co., Inc. to finish the building project. However, upon petitioners' refusal to pay their obligation to respondent Corporation, the latter, on March 24, 1982, simultaneously filed with the Court of First Instance of Rizal two separate complaints against petitioners and their sureties for breach of contract.

In the first complaint which was docketed as Civil Case No. 45321, respondent Corporation had petitioners and Phil-British as party defendants for the collection of a sum of money, while the second complaint which was docketed as Civil Case No. 45322, petitioners and Metropolitan were also party defendants for the collection of a sum of money.

On June 3, 1982, petitioners filed a motion to dismiss the second complaint on the ground of the pendency of the

first complaint likewise between the same parties for the same cause, which motion was denied by the trial court. However, upon appeal to the Intermediate Appellate Court,[7] the appellate court on May 4, 1984 held that there was a splitting of a cause of action when the two complaints were filed simultaneously, hence, the orders of the trial court dated May 17, 1983 and July 25, 1983 denying the motion to dismiss and the motion for reconsideration were nullified. Said decision of the appellate court became final on August 2, 1984.

On August 8, 1984, respondent Corporation filed before the lower court where the first complaint was pending, a motion for leave to amend its complaint and to consolidate the two cases, which motion was denied on October 3, 1984. Accordingly, respondent Corporation filed a motion for reconsideration on October 29, 1984, which was also denied on January 13, 1987.

Thereafter, respondent corporation filed a petition for certiorari and mandamus with the appellate court alleging grave abuse of discretion on the part of the trial court in denying its motion to amend the complaint.

The appellate court, on July 24, 1987, rendered a decision giving due course to respondent Corporation's petition and directed the trial court to admit the amended complaint of the respondent corporation. Consequently, petitioner filed a motion for reconsideration on August 11, 1987 which was denied on August 27, 1987.

Hence, this petition.

Petitioners contend that the appellate court acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in admitting the amended complaint of the respondent Corporation, considering that the previous dismissal of the second complaint for violating the rule against splitting a cause of action barred its reinstitution by the amendment of the first complaint.

Section 2, Rule 10 of the Revised Rules of Court provides that:

"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."

Under this rule, a party is given a right to file an amended pleading within the time and upon the conditions specified in the rule and without the necessity of obtaining leave of court since a party may amend his pleading once as a matter of course at any time before a responsive pleading is served. This rule expressly authorizes the amendment of pleadings in order that all matters in the action in dispute between the parties may be completely determined in a single proceeding. The amended complaint, in the instant case, was filed not to delay nor alter the cause of action of the first complaint but rather to obviate the splitting of the cause of action and to obtain a speedy determination of the controversy in one proceeding without regard to technicality. The amended complaint merely impleaded Metropolitan as a party defendant in the first complaint and included in said complaint the cause of action alleged in the second complaint which was already dismissed. Furthermore, petitioners had not yet filed any responsive pleading to the first complaint when respondent corporation filed the motion to amend its complaint. As correctly held by the appellate court:

"It is a recognized rule of procedure that pleadings shall be construed liberally so as to render substantial justice to the parties and in order that actual merits of the controversy may speedily be determined without regard to technicalities and in the most expeditious and inexpensive manner. The judicial attitude has always been favorable and liberal in allowing amendments to a pleading. The rationale behind the rule is to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights are determined and the case decided on the merits without unnecessary delay. When the situation is such that if the proposed amendment is not allowed, another action would be instituted, thus making two actions, two trials, and two appeals possible and probable, the said amendment should be admitted. Hence, should the trial court

find the allegations in the pleadings to be inadequate, it should allow the party concerned to file proper amendments to pleadings in accordance with the mandate of the Rules of Court that amendments to pleadings are favored and should be liberally allowed.

Applying the foregoing principles to the instant case, there is no doubt that the respondent Court committed a grave and serious abuse of discretion in not admitting the amended complaint. The records of the case indicate that the motion for leave to admit the amended complaint was filed before a responsive pleading was filed. In fact, no responsive pleading has yet been filed by the private respondents. Their opposition filed on August 15, 1984 is not a responsive pleading within the contemplation of the rule. Consequently, the filing by the petitioner of an amended complaint was erroneously denied by the respondent Court, the same being a matter of right. Indeed, in such a situation, an error of the trial court in refusing such amendment is controllable by mandamus.

Moreover, the Court, after assiduously examining and comparing the original and amended complaint, is of the opinion that the amendment sought to be included did not in any manner change the cause of action nor was it intended for delay, which considerations appear to be the only ground for denying a motion for leave to amend under section 3 of Rule 10 of the Rules of Court."^[8]

Petitioners also contend that the rule of conclusiveness of judgment is applicable in this case in view of the finality of the judgment of the appellate court dismissing the second complaint which was being reintroduced by a mere amendment of the first complaint. In said judgment, it was held that there was a splitting of a cause of action in the first and second complaint, therefore the rule against splitting of a cause of action barred the second complaint as enunciated in the cases of *Jimenez vs. Camara*^[9] and *City of Bacolod vs. San Miguel Brewery*,^[10] resulting in an outright denial of the amended complaint.

We do not agree.

The rulings in the aforementioned cases are not applicable in the case at bar since both cases refer to a situation wherein the second complaint, which cause of action should be included in the first complaint, was filed after a final decision was rendered on the merits. In this case, the first and second complaint were not yet set for pre-trial or trial because petitioners had not yet filed any responsive pleading to both complaints, therefore the amendment should be allowed since said amendment will not delay the proceeding and there was no change in respondent Corporation's cause of action.

WHEREFORE, the petition for certiorari and prohibition with preliminary injunction is hereby DENIED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, J., concur.

Padilla, J., no part, in view of prior relationship with private respondent.

[1] In CA-G.R. SP No. 11226, penned by Justice Justo P. Torres, Jr. with the concurrence of Justice Josue N. Bellosillo and Justice Oscar M. Herrera.

[2] *Id.*, at p. 87.

[3] *Id.*, at pp. 91-92.

[4] *Id.*, at pp. 62-63.

[5] *Id.*, at pp. 64-65.

[6] Id., at p. 66.

[7] AC-G.R. SP No. 01578, penned by Justice Lino M. Patajo and concurred in by Justice Simeon M. Gopengco and Justice Jose F. Racela, Jr.

[8] CA's Decision, pp. 6-7; Rollo, pp. 30-31.

[9] 107 Phil. 590.

[10] 29 SCRA 819.

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