

CARLOS LOBRERA, PETITIONER, VS. THE COURT OF APPEALS AND BANK OF PHILIPPINE ISLANDS, RESPONDENTS.

G.R. No. 80001. February 27, 1989

Ponente: CORTES, J.

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CORTES, J.:

The crux of the present petition for review on certiorari is the propriety of the admission by the trial court of a supplemental complaint filed by petitioner.

The undisputed facts of the case are as follows:

Sometime in 1980, petitioner Carlos Leobrera (Leobrera for short) was granted an P8000.00 credit facility by private respondent Bank of the Philippine Islands (BPI for short) consisting of the following: (a) P200,000.00 revolving promissory note line at 103 interest p.a.; (b) P100,000.00 export advance line at 12% interest p.a.; and, (c) P500,000.00 Industrial Guarantee Loan Fund (IGLF) loan at 12% interest p.a. The facility was granted as part of amicable settlement between BPI and Leobrera wherein the latter agreed to drop his claim for damages against the former for its alleged failure to deliver on time three export letters of credit opened in Leobrera's favor (Record, pp. 79 and 92.) The credit facility granted was secured by two real estate mortgages dated 20 November 1976 and 8 February 1980; 1984, the facility was entirely converted into a revolving promissory note line at 26% interest p.a. and not on a floating rate basis the year after. The line was last renewed on 21 March 1986 evidenced by two 90-day promissory notes numbered 017-86/0233-0 and 017-86/0234-8 for P500,000.00 and P300,000.00 respectively [Rollo, pp. 67-68.]

Aside from the abovementioned credit facility, Leobrera also obtained from BPI a separate three-year term loan in the amount of P300,000.00 evidenced by Promissory Note No. 017-85/0224-0 dated 15 November 1985 [Rollo, p. 66.] This three-year term loan was secured by a third real estate mortgage dated 23 October 1985.

Upon maturity of the 90-day notes [Rollo, pp. 67-50] BPI and Leobrera negotiated, albeit unsuccessfully, on the terms of their renewal. No agreement having been reached by them, BPI demanded the full payment of the loan. Leobrera failed to settle his loan account thus BPI prepared to foreclose the real estate mortgages securing the same. Before BPI could institute foreclosure proceedings however, Leobrera filed on 6 January 1987 a complaint for damages with a prayer for the issuance of a writ of preliminary injunction seeking to enjoin BPI from foreclosing the mortgages, docketed as Civil Case No. 15644 of the Regional Trial Court of Makati, Metro Manila, Branch CXLV.

The trial court issued an order restraining BPI from foreclosing the real estate mortgages securing the 90-day loans and, after hearing, issued a writ of preliminary injunction.

Meanwhile, on 9 February 1987, the bank wrote Leobrera claiming that he failed to pay the amortization due on the three-year term loan, as a result of which, BPI opted to accelerate the maturity of the loan and called the entire loan due and demandable. Leobrera likewise failed to remit the amount due and BPI thus threatened to foreclose

the real estate mortgage securing the loan.

Before BPI could foreclose the mortgage, petitioner filed with the trial court on 11 March 1987 a "Motion to File Supplemental Complaint," attaching thereto the supplemental complaint which prayed for the issuance of an injunction to restrain BPI from foreclosing the third mortgage. The next day, 12 March 1987, the trial court granted Leobrera's motion to file the supplemental complaint and issued a restraining order enjoining BPI from proceeding with any "legal court or other action" arising from the promissory note evidencing the three-year term basis. That order was served on BPI on 13 March 1987 [Rollo, p. 58.]

Contesting the validity of the 12 March 1987 order, BPI filed a motion to set it aside but the motion was denied by the trial court on 31 March 1987.

BPI then filed a petition for certiorari and prohibition with a prayer for preliminary injunction with the Court of Appeals, seeking to annul the 12 March 1987 court order issued by the trial court and asking that the latter be prohibited from hearing the petition for injunction prayed for in the supplemental complaint.

Before the Court of Appeals could not on BPI's Petition however, the trial court granted the injunction prayed for.

On 23 June 1987, the Court of Appeals gave due course to BPI's petition and enjoined the trial judge from enforcing his order dated 12 March 1987. On 29 July 1987, the Court of Appeals issued a writ of preliminary injunction in favor of BPI.

On 21 September 1987, the Court of Appeals rendered a decision in favor of BPI, the dispositive portion of which reads as follows:

WHEREFORE, the petition is hereby granted. The order of the respondent Judge dated March 12, 1987 is declared null and void and set aside.

Let the records of this case be remanded to the Court for further proceedings on the original complaint in Civil Case No. 15644.

Costs against the private respondents.

SO ORDERED. [Rollo, p. 25.]

From the foregoing decision of the Court of Appeals, Leobrera filed the instant petition for review with prayer for the issuance of a writ of preliminary injunction.

On 26 October 1987, the Court issued a temporary restraining order enjoining BPI "from foreclosing the three (3) properties of the petitioner herein x x x" [Rollo, p. 41.] However, by this time, BPI had already foreclosed two of the properties [Rollo, p. 45.) On 24 February 1986 the Court gave due course to the petition and the parties submitted their respective memoranda. Petitioner filed two motions asking for the extension or suspension of the period to redeem the properties but the Court in a resolution dated 21 October 1988 denied said motions as well as petitioner's motion for reconsideration on 23 January 1989. The Court merely noted a subsequent manifestation and motion praying that the foreclosures be declared null and void, as it was in effect a second motion for reconsideration.

In assailing the decision of the Court of Appeals, petitioner assigns as errors the following:

I

THE HONORABLE COURT OF APPEALS ERRED IN STATING THAT THE MOTION TO ADMIT SUPPLEMENTAL COMPLAINT FILED BY HEREIN PETITIONER DID NOT CONTAIN A NOTICE OF HEARING OR THAT THE SAME IS DEPECTIVE.

II

THAT THE COURT OF APPEALS ERRED IN CONSIDERING THAT THE SUPPLEMENTAL COMPLAINT INVOLVES A NEW OR DISTINCT MATTER WHICH CANNOT BE JOINED WITH THE ORIGINAL COMPLAINT.

III

THAT THE COURT OF APPEALS ERRED IN ISSUING THE INJUNCTION PRAYED FOR BY RESPONDENTS AND CONSEQUENTLY, GRAVE AND IRREPARABLE INJURY RESULTED TO THE DAMAGE AND PREJUDICE OF HEREIN PETITIONER. [Rollo, p. 6]

The main issue here is whether or not the Court of Appeals erred in holding that the trial court abused its discretion in admitting the supplemental complaint.

Section 6 of Rule 10 of the Rules of Court governing the admission of supplemental pleadings states:

Section 6. Matters subject of supplemental pleadings. - Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrence or events which happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party should plead thereto, it shall so order, specifying the time therefor.

The above rule expressly provides that the Court may allow a party upon motion to serve a supplemental pleading after reasonable notice has been given the other party. The question here then is whether that requirement of a "reasonable notice" has been complied with.

The Court of Appeals found, undisputed by petitioner, that petitioner filed the "Motion to File the Supplemental Complaint" on 11 March 1987 attaching thereto a copy of the supplemental complaint. A copy of the motion was sent to BPI by registered mail on the same day but was received by the latter only on 13 March 1987 [Record, p. 271] A day earlier however, 13 March 1987, the trial court had already issued an order granting the motion and admitted the supplemental complaint "in the interest of sound administration of justice" [Rollo, p. 691. The trial judge likewise issued a temporary restraining order to enjoin BPI from proceeding with "Any legal, court or other action against plaintiff (Leobrera) arising from Promissory Note No. 017-224-0" [Ibid.]

It is difficult to ascribe, as "reasonable" the above described manner in which BPI was apprised of the proceedings relative to the supplemental complaint. The undue haste which characterized the trial court's admission of the supplemental complaint is at once apparent as no notice had as yet been received by BPI when the trial court issued the 12 March 1987 order granting the motion to file the supplemental complaint and restraining BPI from foreclosing the mortgage. BPI learned of the existence of the motion and the order granting it only on 13 March 1987. By then it was too late for it to contest the motion.

The arbitrariness of the trial court's admission of the supplemental complaint is brought to the fore when it is considered that the motion to file the supplemental complaint contained an invalid notice of hearing and lacked proof of its service as required by Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court. This is apparent from a cursory reading of said "Notice of Hearing" to wit:

NOTICE OF HEARING

The Clerk of Court

GREETINGS:

Please submit the foregoing motion to the Honorable Court immediately upon receipt thereof for its due consideration and approval.

(Sgd.) ISIDRO C. ZARRAGA

Copy furnished:

Atty. Alfonso B. Verzosa
Counsel for the Defendant
19th Floor. BPI Family Bank Center
0753 Paseo de Roxas
Makati, Metro Manila

[Rollo, p. 73.]

The notice of hearing is intended to prevent surprise and to afford the adverse party a chance to be heard before the motion is resolved by the trial court. While the court has said that a literal observance of the notice requirements in Sections 4, 5 and 6 of Rule 15 is not necessary, a seasonable service of a copy of the motion on adverse party or counsel with a notice of hearing indicating the time and place of hearing of the motion are mandatory requirements that cannot be dispensed with as these are the minimum requirements of procedural due process [*Ibasan v. Republic*, G.R. No. L-48528, April 29, 1980, 97 SCRA 101; *Estipona v. Navarro*, G.R. No. L-41825, January 30, 1976, 69 SCRA 285; *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Co.*, G.R. No. L-16636, June 24, 1965, 14 SCRA 435.]

It is evident from the notice that no time and place of hearing of the motion is indicated. Neither does the record reveal that there was proof of service attached to the motion. The minimum requirements of procedural due process not having been satisfied by the notice, the motion to which it was attached is thus a mere scrap of paper not entitled to any cognizance by the trial court. The Court of Appeals thus committed no reversible error in annulling the 12 March 1987 order of the trial court tainted as it was with clear grave abuse of discretion.

As to the supplemental complaint, what likewise militates against its admission is the fact that the matters involved therein are entirely different from the causes of action mentioned in the original complaint.

A supplemental complaint should, as the name implies, supply only deficiencies in aid of an original complaint [*British Traders Insurance Company v. Commissioner of Internal Revenue*, G.R. No. L-20501, April 30, 1965, 13 SCRA 728.] It should contain only causes of action relevant and material to the plaintiff's right and which help or aid the plaintiff's right or defense [*De la Rama Steamship Co., Inc. v. National Development Company*, G.R. No. L-15699, November 30, 1962, 6 SCRA 775] The supplemental complaint must be based on matters arising subsequent to the original complaint related to the claim or defense presented therein, and founded on the same cause of action. It cannot be used to try a new matter or a cause of action (See *Randolph v. Kissouri-Kansas-Texas Co.*, D.C. No. 1984, 78 F. Supp, 737. *Barssenbrugge v. Luco Mfg. Co.*, D.C. No. 1939, 20 F. Supp, 101.]

While petitioner would persuade this Court that the causes of action are interrelated, the record reveals otherwise. The record shows that petitioner's main cause of action in the original complaint filed in Civil Case No. 15644 concerned BPI's threat to foreclose the real estate mortgage securing the two 90-day promissory notes executed by petitioner in 1986. Petitioner alleges that this threatened foreclosure violated the terms of the 1980 amicable settlement between BPI and petitioner.

The supplemental complaint on the other hand alleged acts of harassment committed by BPI in unreasonably opting to declare petitioner in default and in demanding full liquidation of the 1985 three-year term loan. This three-year term loan, as previously mentioned, was entirely distinct and separate from the two promissory notes. It was independent of the 1980 amicable settlement between petitioner and BPI which gave rise to the credit facility

subject of the original complaint. Although there is identity in the remedies asked for in the original and supplemental complaints, i.e. injunction, petitioner's subsequent cause of action giving rise to the claim for damages in the supplemental complaint is unrelated to the amicable settlement which brought about the grant of the credit facilities, the breach of which settlement is alleged to be the basis of the original complaint. Petitioner himself in his supplemental complaint admits this. The supplemental complaint states inter alia:

xxx xxx xxx

2. That aside from the loan of P800,000.00 which is part and parcel of the amicable settlement entered into by defendant for its gross negligence and bad faith in failing to notify the plaintiff of at least three letters of credit which as a result expired without having been served by the plaintiff, the plaintiff obtained from the defendant another loan of P500,000.00 covered by PN 17-85/0224-0 which was executed on or about November 15, 1985 payable within a period of three years from the date of execution with a monthly amortization of P41,666.66.

xxx xxx xxx

4. That on or about February 12, 1987, the plaintiff received a letter from defendant advising the former that because of the plaintiff's alleged failure to meet the amortization due on February 9, 1987, of PN 017-0224-0 for P500,000.00 defendant had exercised its option to accelerate the maturity of the account and demanded the full liquidation of the balance of the account which was P333,333.32 plus interest and penalties on or before February 27, 1987.

xxx xxx xxx

6. That on November 12, 1986, Darlene Shells made a remittance to the defendant in the amount of \$8,350.94 with the plaintiff as beneficiary which said amount if credited to the plaintiff's bank account with the defendant would have meant an additional P160,000.00, more or less in said plaintiff's account with the defendant bank and would have been more than sufficient to pay off the P54,000.00 amortization due on February 9, 1987;

7. that the defendant, however, refused to accept the remittance on the flimsy excuse that the name of the beneficiary in the remittance was not Carfel Shell Export but Car Sales Shell Export and made an empty motion of trying to verify who was the supposed beneficiary when the defendant could very well have known and found out that the beneficiary was indeed Carfel Shell Export since plaintiff had export business transactions with defendant for ten or so years and plaintiff had been asking the defendant bank of remittance of Darlene Shells many times:

8. That had the defendant accepted said amount of P8,350.94 plaintiff's account would have increased by P190,000.00 as of November 13, 1985 which would have been more that enough to cover the P34,000.00 due on February 9, 1987;

9. That the defendant thru malicious acts and bad faith refused to accept the \$8,350.94 for the reason adverted to above;

xxx xxx xxx

[Rollo, pp. 74-76.]

As the allegations reveal, the P500,000.00 threes-year term loan is a transaction independent of the P800,000.00 credit facility and BPI's questioned act of threatening to foreclose the properties securing said loan was the result of an alleged default by petitioner in the payment of the amortization due for 9 February 1987 and not because of any circumstance related to the 1960 amicable settlement.

The two causes of action being entirely different, the latter one could not be successfully pleaded by supplemental complaint.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED. The temporary restraining order issued on 26 October 1987 is hereby LIFTED.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

Fernan, C.J., no part, formerly counsel for bank of P.I., Cebu Branch.

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