

**SPOUSES MATIAS B. AZNAR III AND ELEONOR S. AZNAR,
PETITIONER, VS. HON. JUANITO A. BERNAD, IN HIS CAPACITY AS
PRESIDING JUDGE OF BRANCH XXI, RTC, CEBU, AND THE SPOUSES
NICOLAS L....**

G.R. No. 81190. May 09, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Squarely presented for our consideration in this case, certified to us by the Court of Appeals[1] as involving purely question of law. is whether or not the affirmative defense of proscription may be validly set up for the first time in an amended answer. We rule in the affirmative.

Briefly, it appears that on September 15, 1986, the private respondents, the spouses Nicolas and Redempta Kintanar, as plaintiffs, filed in the Regional Trial Court of Cebu, a civil action against the defendants-spouses, the herein petitioners, praying for the annulment of a Sheriffs Certificate of Sale, damages, and attorney's fees with preliminary injunction. The petitioners, on October 13, 1986, timely filed their answer specifically denying the allegations in the complaint. Seven days later, or on October 20, 1986, the petitioners submitted "Motion For Leave to Amend Answer Or To File Supplemental Pleading," alleging in the first five paragraphs thereof the following:

- That this case has not yet been placed in the trial calendar;
- That no responsive pleading has yet been filed with respect to the answer;
- That from the evidences already admitted it is now clear that plaintiffs are assailing the validity of the mortgage contract (Exh. "C") with respect to the P60,000.00 portion, as well as the validity of the handwritten certificate they signed (Exh. "3"). Although defendant Redempta C. Kintanar testified that said exhibit was dictated by defendants through counsel, she did not say that the statements therein are not true and correct.
- That in short, as the Court had observed in its order of October 13, 1986, "plaintiffs are assailing the documents relied upon by the defendants in the foreclosure as not being an expression of the true intent and agreement of the parties;"
- That in order that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner, defendants respectfully beg leave to amend their answer.[2]

Attached to the motion was a copy of the amended answer which contained an additional paragraph alleging, for the first time, the affirmative defense of prescription. Averred the petitioners:

7.A. That by way of affirmative defense, the cause or causes of action alleged in the complaint have already prescribed. The Real Estate Mortgage, Annex "B " of the complaint, alleged to be fraudulent, was executed on July 17, 1978, and was registered with the Cebu City Registry of Deeds on July 21, 1978. The complaint for

fraud, based on said Real Estate Mortgage, was filed only in September, 1986, or more than eight (8) years since the date of registration. Under Article 1391 of the Civil Code, the action for annulment shall be brought within four (4) years;[3]

The trial court, acting through the respondent Judge, issued on November 4, 1986, an order denying the petitioner's motion. The respondent Judge based his order on a strict or literal construction of Section 2, Rule 9, of the Revised Rules of Court which, in essence, provides that defenses or objections, except the failure to state a cause of action, if not pleaded in a motion to dismiss or in an answer, are deemed waived. The assailed order states:

ORDER

Pending consideration is a motion to amend the answer which seeks to incorporate prescription as a defense.

The applicable provision is Section 2, Rule 9 of the Rules of Court which provides that defenses and objections not pleaded either in a motion to dismiss or in an answer are deemed waived except the failure to state a cause of action.

This is the rule provided for in our Rules of Court and in the absence of sufficient reason why this rule should be relaxed, the same must be sustained if only to give meaning and effect to our procedural rules. Defendants have not given any reason at all why their defense of prescription assuming that the same is tenable was not invoked earlier when the basis thereof was already existing and evident even before the filing of the original answer. Consequently, a supplemental pleading cannot also be allowed.

WHEREFORE, the motion to amend or to allow defendants to file a supplemental pleading on the ground of prescription is hereby denied.

SO ORDERED.[4]

The petitioners moved for a reconsideration of the order but it proved to be of no avail as the same was denied on December 10, 1986. Said the trial court:

ORDER

Pending consideration is a motion for reconsideration of the order denying amendment of the answer.

The court reiterates its stand that the motion be denied. In the case of *Torreda vs. Boncaros*, the Supreme Court said:

"xxx Under the peculiar circumstances of this case, where the petitioner would be left without a remedy should respondents be excused for belatedly invoking prescription, equity and substantial justice make it preferable to apply Section 2 of Rule 9 which provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. While there may be instances and situations justifying a relaxation of this rule, our considered view is that in the circumstances of the instant case, the ends of justice would be better served by applying the general rule, considering further that respondents have not given any reason at all as to why their defense of prescription was not invoked earlier, instead of in a supplemental motion, when the basis thereof was already existing and evident even before the filing of the original motion." (*Torreda vs. Boncaros*, 69 SCRA 247).

In the case, plaintiffs are faced with a similar predicament and they would be left without adequate remedy if defendants be allowed to plead prescription at this stage.

WHEREFORE, the motion for reconsideration is hereby denied.

SO ORDERED.[5]

On appeal by certiorari to the Court of Appeals, the case, as stated at the outset, was certified to this Court for resolution "(S)ince the instant petition involves a pure question of law on the correct interpretation of Section 2, Rule 9 of the Rules of Court." [6]

The petition is meritorious.

The general rule, it is true, is that the affirmative defense of prescription when not seasonably raised in either a motion to dismiss or in the answer, is deemed waived. [7] This case, however, does not fall under the cited rule. It cannot be said that the petitioners failed to allege the defense of prescription in their answer. Precisely, the amended answer is being submitted to take the place of the original one. Once the amended answer is admitted, the original answer passes into oblivion and ceases to exist with its former place entirely taken over by the amended answer. It is clear, therefore, that the reliance of the trial court on the case of *Torreda vs. Boncaros* [8] is misplaced. That case involved a supplemental motion to dismiss alleging the defense of prescription and not an amended answer as in this instance. And there is a whole of a difference between the two. First, a supplemental motion to dismiss, strictly speaking, is not a pleading. [9] Further, as differentiated from an amended pleading which, as aforesaid, takes the place of the original pleading, a supplemental pleading does not extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements.

It must be stressed that our decision in *Torreda* is based on equitable reasons and the "peculiar circumstances" of that case — the herein petitioner, whose husband died as a result of the negligence of the therein private respondents' employee, would be left with no other remedy by which she could claim for damages if the belated defense of prescription was allowed — which we do not find obtaining here. The supplemental motion to dismiss in *Torreda* was submitted more than six months after the original motion to dismiss was filed, while here, the petitioners moved to have their amended answer admitted by the trial court with barely seven days having passed since the filing of their original answer.

Moreover, at the time the petitioners moved to have their original answer amended, they still had the right to do so. The records do not show that a responsive pleading, like a reply, to the original answer, has already been served to the petitioners by the private respondents. Neither is there any showing that the case has already been calendared for hearing. On this score, Section 2, Rule 10 of the Revised Rules of Court supports the petitioners' contention.

SEC. 2. When amendments allowed as a 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.

There is, therefore, no procedural impediment for the petitioners to amend their original answer. This being so, the affirmative defense of prescription has been validly pleaded for resolution in due course. For the amended answer, which would replace the original answer, certainly would cure the lapse or error committed by the petitioners in not alleging the defense of prescription in the first place — in a motion to dismiss or in the original answer.

We have repeatedly held that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. [10] Even the rules of court envision this

liberality.

SEC. 2. Construction. —These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.[11]

Lastly, even assuming that the petitioners had indeed failed to raise the affirmative defense of prescription in a motion to dismiss or in an appropriate pleading (answer, or amended or supplemental answer) and an amendment would no longer be feasible, still prescription, if apparent on the face of the complaint, may be favorably considered. In the case at bar, the private respondents admit in their complaint that the contract of real estate mortgage which they alleged to be fraudulent and which had been foreclosed, giving rise to this controversy with the petitioners, was executed on July 17, 1978,[12] or more than eight long years before the commencement of the suit in the court a quo, on September 15, 1986. And an action to declare a contract null and void on the ground of fraud must be instituted within four years,[13] Extinctive prescription is thus apparent on the face of the complaint itself as resolved by the Court.[14]

WHEREFORE, the petition is GRANTED: the Order of the Regional Trial Court dated November 4, 1986 and December 10, 1986 denying the petitioners' motion to amend their Answer are hereby ANNULLED and SET ASIDE: and the petitioners' Amended Answer is ADMITTED. No pronouncement as to costs.

SO ORDERED.

Yap, C.J., Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Decision June 30, 1987; Ejercito, Bienvenido, C.J., Ponente; Chua Segundino and Lapena Nicolas, Jr., JJ.

[2] Rollo. 30.

[3] Id., 34.

[4] Id., 36.

[5] Id., 39.

[6] Id., 68.

[7] Revised Rules of Court. Rule 9. See. 2.

[8] No. L-39832. January 30, 1976. 69 SCR A 247.

[9] Revised Rules of Court. Id., Rule 6. Sec. 6; 1 V.J. Francisco. The Revised Rules of Court In The Philippines 432 (2nd ed., 1973).

[10] Del Rosario vs. Hamny. et al.. No. 77154. June 30, 1987; De Mesa Abad vs. Court of Appeals. No. L-42225. July 9, 1985. 137 SCR A 416; Tejero vs. Rosele. No. L-55102. June 19, 1985." 137 SCRA 69; Maturan vs. Araula. No. L-57392. January 30, 1982. 111 SCRA 615; Rodriguez vs. Court of Appeals. No. L-37522. November 28, 1975. 68 SCRA 262.

[11] Revised Rules of Court, id.. Rule 1. See. 2.

[12] Rollo. 11-16.

[13] Article 1391, New Civil Code.

[14] Garcia vs. Mathis. No. L-48577. September 30, 1980. 100 SCRA 250. citing; Philippine National Bank vs.

Pacific Commission House. No. L-22675. March 28, 1969. 27 SCRA 766.

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