

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. THE
PRESIDING JUDGE, REGIONAL TRIAL COURT, MANILA, BRANCH 39,
RAYCOR AIRCONTROL SYSTEM, INC. AND COURT OF APPEALS,
RESPONDENT.**

G.R. No. 89909. September 21, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Before the Court for review on certiorari is the decision of respondent Court of Appeals in CA-G.R. SP No. 17341, dated July 19, 1989,[1] dismissing petitioner's original action for certiorari and mandamus which seeks to set aside the order of the trial court dated June 2, 1988, allowing the intervention suit therein to proceed, and its order of January 11, 1989, admitting the amended complaint in intervention.

The proceedings in the court below from which this appeal arose, as found by respondent Court of Appeals, are as follows:

"Petitioner Metropolitan Bank and Trust Co. (Metropolitan) in whose favor a deed of chattel mortgage was executed by Good Earth Emporium, Inc. (GEE) over certain air conditioning units installed in the GEE building, filed a complaint for replevin against Uniwide Sales, Inc. (Uniwide, for brevity) and the BPI Investment Corporation and several other banks collectively called BPI-Consortium, for the recovery of the possession of the air-conditioning units or in the event they may not be recovered, for the defendants which acquired the GEE building in an auction sale, (to) be required, jointly and severally, to pay the plaintiff the unpaid obligations on the units.

"Per paragraph 3.11.3 of its complaint, plaintiff Metrobank alleged that the air-conditioning units were installed on a loan of P 4,900,000.00 it extended to Good Earth Emporium & Supermarket, Inc. in its building located at Rizal Avenue, Sta. Cruz, Manila, after the land and building had been foreclosed and purchased on June 3, 1983 at public auction by the defendants, except Uniwide, and in order to secure repayment of the loan, a deed of chattel mortgage was constituted over the personal properties listed in the deed which included the airconditioning units.

"It also alleged in par. 3.11.2 of the complaint, that '(T)he loan proceeds were used by GEE to finance the acquisition of airconditioning equipment from Reycor (sic) Air Control System, Inc. (amounting to P4,250,000.00 and installation costs of P650,000.00) under an Agreement of Sale 'dated 29 June 1984' (Annex A, Petition, id., pp. 23--24).

"The defendants filed their Answer, Uniwide on July 25, 1986 (Annex B, Petition, id., pp. 32-48) and the defendants (presumably the rest of the defendants), on July 14, 1986 (Annex C, Petition, id., pp. 39-49).

"On July 17, 1986, Raycor Air Control Systems, Inc. filed a motion for leave to intervene alleging 'it has a direct and immediate interest on the subject matter of the litigation such that it will either gain or lose by the direct legal operation, and effect of the judgment' and attached the 'Intervention Complaint' (Annex D. Petition, id., pp. 49-52). There was no opposition to the motion and the intervention complaint was admitted by

the lower court per its order dated August 8, 1986. Metrobank on November 19, 1986, filed its Answer To The Intervention Complaint (Annex E, Petition, id., pp. 53-59).

"On August 3, 1987, the lower court set the case for trial on the merits on September 15, 1987 but before the date of the trial, on September 7, 1987, plaintiff Metrobank and the defendants Uniwide and BPI-Consortium, filed a motion for postponement of the scheduled hearing on September 15, 1987 and asked for thirty (30) days from September 15 within which to submit a compromise agreement. On March 15, 1988, plaintiff Metrobank and defendants BPI Consortium filed a joint motion to dismiss the complaint and on March 18, 1988, the lower court issued the order dismissing the complaint with prejudice (Annex D to Comment of Raycor Air Control System, Inc., Rollo, p. 108).

"On April 19, 1988, private respondent filed a motion for reconsideration of the order dismissing the complaint with prejudice, claiming it was not furnished with copy of the joint motion for dismissal and that it received the order of dismissal only on April 4, 1988. On June 2, 1988, the respondent court issued the order granting the motion for reconsideration filed by the intervenor (Annex I. Petition, id., p. 67) which order is now subject of present petition for certiorari.

"On August 2, 1988, private respondent filed a motion to admit amended complaint (Annex F. Intervenor's Comment, id., p. 110) and attached the Amended Intervention Complaint (Annex J. Petition, id., pp. 68-73) to the motion. To this motion, plaintiff Metrobank filed an opposition (Annex K, Petition, id., pp. 71-76) and after the intervenor had filed their Reply (Annex L, Petition, id., pp. 77-81) and the plaintiff a Rejoinder (Annex M, Petition, id., pp. 82--87), on January 11, 1989, the respondent court issued the order admitting the amended complaint in intervention (Annex N, Petition, id., p. 88). This is the other order which is subject of the petition for certiorari.

"On February 9, 1989, plaintiff Metrobank filed a motion for extension for 15 days or until February 24, 1988 within which to file its answer to the amended complaint in intervention and the intervenor on February 17, 1989 filed an opposition to Metrobank's motion and at the same time moved that Metrobank be declared in default on the amended complaint in intervention. The respondent court granted Metrobank's motion and on February 18, 1989, Metrobank filed its Answer to the Amended Complaint in Intervention with Counterclaim."[2]

On April 14, 1989, petitioner filed a petition for certiorari and mandamus with respondent Court of Appeals contending that the lower court committed a grave abuse of discretion amounting to lack of jurisdiction in allowing, per its order of June 2, 1988, the intervention suit to survive despite the dismissal of the main action and also in admitting, per its order of January 11, 1989, the amended complaint in intervention.[3]

As earlier stated, the Court of Appeals found no merit in the petition and dismissed the same on July 19, 1989. Petitioner is now before us raising the same issues and arguments. We agree with the Court of Appeals that the lower court was innocent of any grave abuse of discretion in issuing the orders complained of.

The contention of petitioner that the order of the lower court, dated June 2, 1988, has the effect of allowing the intervention suit to prosper despite the dismissal of the main action obviously cannot be upheld.

There is here no final dismissal of the main case. The aforementioned order of the lower court has the effect not only of allowing the intervention suit to proceed but also of vacating its previous order of dismissal. The reinstatement of the case in order to try and determine the claims and rights of the intervenor is proper. The joint motion of therein plaintiff and the original defendants to dismiss the case, without notice to and consent of the intervenor, has the effect of putting to rest only the respective claims of the said original parties inter se, but the same cannot in any way affect the claim of private respondent which was allowed by the court to intervene without opposition from the original parties. A resume of pertinent rulings on the matter would be in order.

Intervention is defined as "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings." [4]

Any person who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, may intervene in such action, and when he has become a party thereto it is error for the court to dismiss the action, including the intervention suit on the basis of an agreement between the original parties to the action. Any settlement made by the plaintiff and the defendant is necessarily ineffective unless the intervenor is a party to it. [5]

By the very definition of "intervention," the intervenor is a party to the action as the original parties and to make his right effectual he must necessarily have the same power as the original parties, subject to the authority of the court reasonably to control the proceedings in the case. [6]

Having been permitted to become a party in order to better protect his interests, an intervenor, is entitled to have the issues raised between him and the original parties tried and determined. [7] He had submitted himself and his cause of action to the jurisdiction of the court and was entitled to relief as though he were himself a party in the action. [8]

After the intervenor has appeared in the action, the plaintiff has no absolute right to put the intervenor out of court by the dismissal of the action. The parties to the original suit have no power to waive or otherwise annul the substantial rights of the intervenor. When an intervening petition has been filed, a plaintiff may not dismiss the action in any respect to the prejudice of the intervenor. [9]

It has even been held that the simple fact that the trial court properly dismissed plaintiff's action does not require dismissal of the action of the intervenor. [10] An intervenor has the right to claim the benefit of the original suit and to prosecute it to judgment. The right cannot be defeated by dismissal of the suit by the plaintiff after the filing of the petition and notice thereof to the other parties. A person who has an interest in the subject matter of the action has the right, on his own motion, to intervene and become a party to the suit, and even after the complaint has been dismissed, may proceed to have any actual controversy established by the pleadings determined in such action. The trial court's dismissal of plaintiff's action does not require dismissal of the action of the intervenor. [11]

The intervenor in a pending case is entitled to be heard like any other party. [12] A claim in intervention that seeks affirmative relief prevents a plaintiff from taking a voluntary dismissal of the main action. [13] Where a complaint in intervention was filed before plaintiff's action had been expressly dismissed, the intervenor's complaint was not subject to dismissal on the ground that no action was pending, since dismissal of plaintiff's action did not affect the rights of the intervenor or affect the dismissal of intervenor's complaint. [14] An intervenor's petition showing it to be entitled to affirmative relief will be preserved and heard regardless of the disposition of the principal action. [15]

As we ruled in *Camacho vs. Hon. Court of Appeals, et al.*, [16] the rationale whereof is clearly applicable to the present controversy -

"There is no question that intervention is only collateral or ancillary to the main action. Hence, it was previously ruled that the final dismissal of the principal action results in the dismissal of said ancillary action. The main action having ceased to exist, there is no pending proceeding whereon the intervention may be based.

In the case at bar, however, there was no such final or complete dismissal but rather an approval of a compromise agreement which was embodied in what was specifically designated as a 'Partial Decision' affecting only the interests of herein petitioner and the defendant in said case but not those of her co-plaintiff municipality and the intervenor. The clear intent of the court below in making the partial decision is to make a reservation to determine the rights of the intervenor and, presumably, the plaintiff municipality. There may be nothing much left to be done with respect to the main case but as far as the proceedings in the trial court are concerned, the controversy therein has not been fully settled and the disposition of the case is definitely incomplete."

Moreover, to require private respondent to refile another case for the settlement of its claim will result in unnecessary delay and expenses and will multiplicity of suits and, therefore, defeat the very purpose of intervention which is to hear and determine at the same time all conflicting claims which may be made on the subject matter in litigation, and to expedite litigation and settle in one action and by a single judgment the whole controversy among the persons involved.[17]

On the propriety of the order dated January 11, 1988, admitting private respondent's amended complaint in intervention, we sustain respondent Court of Appeals in upholding the same. Incidentally, it will be recalled that petitioner was granted the opportunity to file, as it did file, its answer to the amended complaint in intervention and it even interposed a counterclaim in the process.

Now, the granting of leave to file an amended pleading is a matter particularly addressed to the sound discretion of the trial court and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case or that it was made to delay the action.[18] Once exercised, that discretion will not be disturbed on appeal, except in case of abuse thereof.[19]

In the case at bar, a reading of the amended complaint in intervention shows that it merely supplements an incomplete allegation of the cause of action stated in the original complaint so as to submit the real matter in dispute. Contrary to petitioner's contention, it does not substantially change intervenor's cause of action or alter the theory of the case, hence its allowance is in order.

As aptly stated by the Court of Appeals:

"In both the Intervention Complaint and the Amended Complaint in Intervention, the private respondent seeks the payment to it of the amount of P150,000.00 which should have been paid to it from out of the P650,000.00 which the petitioner as plaintiff in CC 86-3618 had referred to in pars. 3.11.2 and 3.11.3 of its complaint as cost of installation of the airconditioning units under the agreement of sale (between plaintiff Metrobank and GEE Inc.) dated June 29, 1984 and so basically, the Amended Complaint In Intervention did not really detract or depart from that basic claim." [20]

In determining whether a different cause of action is introduced by amendments to the complaint, what is to be ascertained is whether the defendant shall be required to answer for a liability or legal obligation wholly different from that which was stated in the original complaint. An amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in expressed terms, and the subject of the controversy or the liability sought to be enforced remains the same.[21]

The courts should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay.[22] This liberality is greatest in the early stages of a lawsuit,[23] especially in this case where the amendment to the complaint in intervention was made before trial of the case thereby giving

petitioner all the time allowed by law to answer and to prepare for trial.

On the issue regarding the propriety of the intervention, suffice it to state that petitioner's failure to interpose a timely objection when the motion for leave to intervene was filed by private respondent bars the former from belatedly questioning the validity of the same on appeal. In any event, the trial court duly considered the circumstances and granted the motion, which order was not seasonably questioned by petitioner thus evincing its approval of the court's action.

WHEREFORE, finding no reversible error, the petition is DENIED and the judgment of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), and Sarmiento, JJ., concur.

Paras, J., on leave.

Padilla, J., no part.

* The Court of Appeals was impleaded as a party respondent pursuant to the resolution of the Court dated October 2, 1989.

[1] Penned by Justice Cezar D. Francisco, with the concurrence of Justices Reynato A. Puno and Jorge S. Imperial.

[2] Rollo, 51-53.

[3] Ibid., 31-49.

[4] 33 C. J. 477, cited in Garcia, etc., et al. vs. David, et al., 67 Phil. 279 (1939); Government Service Insurance System vs. Court of Appeals, et al., 169 SCRA 244 (1989).

[5] Progressive Design, Inc. vs. Olson Bros. Mfg. Co., 206 N.W. 2d 832.

[6] 59 Am. Jur. 2d 615.

[7] Poehlmann vs. Kennedy, 48 Cal. 201.

[8] Schoniger, et al. vs. Logan, et al., 166 N.W. 266.

[9] Patterson vs. Pollock, et al., 84 N.E. 2d 606; Elliot vs. Luers, 6 Nev. 287.

[10] Gage vs. Cameron, 212 Ill. 146; 72 N.E. 204.

[11] Seil and Seil vs. Board of Supervisors of Will County, 234 N.E. 2d 826.

[12] 67A C.J.S. 852.

[13] Steffens vs. Rowley, 10 Cal. App. 2d, 628; 52 P2d 493.

[14] Muirhead vs. Johnson, 232 Minn. 408, 46 N.W. 2d; In Scott vs. Van Sant, 193 Minn. 465, 258 N.W. 817.

[15] Progressive Design, Inc. vs. Olson Bros. Mfg. Co., ante.

[16] G.R. No. 79564. November 24, 1989.

[17] 67A C.J.S. 794.

[18] Uy vs. Uy, 2 SCRA 675 (1961).

[19] Torres Vda. de Nery vs. Tomacruz, 49 Phil. 913 (1927).

[20] Rollo, 53.

[21] Shaffer vs. Palma, et al., 22 SCRA 934 (1968).

[22] Shaffer vs. Palma, et al., supra; Demaronsing vs. Tandayag, etc., et al., 58 SCRA 484 (1974).

[23] Torres Vda. de Nery vs. Tomacruz, ante.

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