

BARFEL DEVELOPMENT CORPORATION AND SPOUSES VICTOR AND AIDA BARRIOS, PETITIONERS, VS. COURT OF APPEALS, REGINAS INDUSTRIES AND DEVELOPMENT CORPORATION AND TEODORICO E. ZARAGOZA, ...

G.R. No. 98177. June 08, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the decision* of the Court of Appeals, dated 31 January 1991, and its resolution of 2 April 1991, denying the petition for certiorari and prohibition, thereby upholding the order of the Regional Trial Court of Makati, Branch 134** dated 30 April 1990 (Civil Case No. 17875) admitting party-plaintiffs' amended complaint impleading an additional party-defendant (PISO Bank, a second mortgagee) after the former had concluded presenting their evidence and while the original defendants (herein petition-ers) were in the process of presenting their witnesses.

In the Makati RTC, the following relevant facts were established:

Private respondents filed a complaint for specific performance and damages against the petitioners, the material allegations of which are as follows:

“3. On June 19, 1987, the defendants, as sellers, and plaintiff corporation, as buyer, and represented by its President, plaintiff Zaragoza, concluded an Agreement To Buy/Sell two (2) parcels of land with two (2) houses erected thereon located at 209 Bulusan St., Ayala-Alabang, Muntinlupa, Metro Manila, covered by Transfer Certificates of Title (TCT) No. T-132671 and 132651, both of the Register of Deeds for Makati, Metro Manila. Said Agreement bears the expressed stipulation, among others, that “The seller will apply the payment of the cash portion of the purchase price to the removal of any and all liens on the properties. x x x;

4. Plaintiff paid the amount of P100,000.00 as down payment upon the signing of the aforesaid Agreement;

5. During the time the Agreement was under negotiation and even at the conclusion thereof, the defendants repeatedly warranted that except for a mortgage in favor of the Bank of the Philippine Islands (BPI) and the Deed of Restrictions annotated at the back of the titles mentioned above, the subject properties are “free from any liens and encumbrances”;

6. Sometime on June 24, 1987, plaintiffs found out that defendants made a blatant misrepresentation when it was discovered that the subject properties have a second mortgage with the PISO/Central Bank in the amount of P2,571,400.00;

7. Informed of this discovery, defendant Victor S. Barrios advised plaintiff that the second mortgage obligation is or has been reduced to only P54,000.00 and gave assurance that he will submit the necessary documents to support the same so that a legal valid and acceptable arrangement could be worked out with the Central Bank for the release of said second mortgage;

8. x x x under date of June 29, 1987, the Philippine Savings Bank (PSB), gave notice that it has approved plaintiff corporation's application for the loan with which to pay subject properties under the Agreement To Buy/Sell (Annex A), subject to certain terms and conditions, principal of which is a security of real estate mortgage upon the subject properties in favor of PSB. x x x;

9. In this connection, the PSB also sent separate letters of undertaking/commitment to the defendants and the BPI detailing a workable arrangement to consummate the transaction whereby new titles to the subject properties would first be transferred to the plaintiff corporation and the mortgage in favor of PSB are to be annotated thereon. Once done, the PSB, by virtue of authority already given by the plaintiff corporation, would directly pay BPI from the proceeds of the loan granted to plaintiff corporation the mortgage obligation due to it in the amount of P857,539.36, and also pay the defendants the balance of the purchase price in the amount of P3,642,460.64 net of what has been paid to BPI. x x x;

10. The defendants expressed their conformity to the aforementioned arrangement as shown in their letter to the BPI dated July 8, 1987, x x x;

11. In view of the assurances of defendants, plaintiffs, in a letter dated July 9, 1987 sent to defendants to further ensure the consummation of the transaction, manifested its willingness to pay the sum of P2,000,000.00 ahead of the PSB loan proceeds upon release of the second mortgage by the Central Bank which was to be worked out by the defendants. Defendants conformed to the arrangement by affirming their signatures to the said letter were (sic) they also agreed to the release of the certificates of title to PSB, free and clear of any liens, upon payment of P2,000,000.00. x x x;

12. Notwithstanding the contractual obligations, terms and conditions agreed upon by, between and among the parties and those involved in the transaction, plaintiffs consequently received information that defendants have been negotiating with other parties for the sale of the properties in question, although defendants denied such fact;

13. Be that as it may, the undisputed fact is that defendants, in gross and evident bad faith and in malicious breach of contract, deliberately failed and/or refused and to date continued to fail and refuse to comply with their contractual obligation of securing the release of the second mortgage on the subject properties thereby effectively preventing the consummation of the sale to the damage and prejudice of the plaintiffs;

14. The malice, fraud and the gross and evident bad faith on the part of defendants is further demonstrated by the fact that subsequently, BPI advised that it was disauthorized by defendants to consummate the transaction despite previous arrangements to the contrary as per BPI's letter to plaintiff's bank dated July 31, 1987[1] x x x;"

Petitioners (as defendants) filed an answer with the following affirmative allegations:

5. Before Reginas signed Annex A, it was aware of all liens and encumbrances on the Property, including the mortgage in favor of PISO Bank ("PISO Mortgage").

6. x x x

c. The parties agreed that if full payment could not be effected, or if the PISO Mortgage is not released, within 30 days from July 9, 1987, they will each have the option to terminate the agreement.

x x x

8. In the documentation, Barfel and Reginas did not make reference to the PISO Mortgage because: (i) Barfel and Reginas believed that since Barfel's balance to PISO was only about P54,000, release of the PISO Mortgage could be obtained within 30 days; and (ii) Reginas wanted to be able to present to PSB a "clean document" to expedite the approval of its loan.

9. Regarding the release of the PISO Mortgage, plaintiffs undertook to make direct and active representations with the proper officers of the Central Bank (because PISO is in the custody of a Central Bank officer as receiver/liquidator) and agreed that the responsibility of the defendants was solely to provide the documentation to support the position that Barfel's remaining balance under the PISO Mortgage was only about P54,000.

10. In accordance with that commitment, defendants gave and/or made available to Reginas all documents they had in their possession necessary to show that the balance of the PISO Mortgage was only P54,000. With these documents, plaintiffs made direct representations with the proper officers of the Central Bank.

11. The failure to obtain a release of the PISO Mortgage within the 30-day period was accepted by the parties as a possibility and therefore could not be imputed on the defendants.

12. Release of the BPI Mortgage could not be worked out because PSB, as a condition for the disbursement of the loan, wanted the title to the Property to be transferred first to Reginas and the mortgage to secure Reginas' loan to be annotated on the title. The mechanics for payment was unacceptable to BPI.

13. The refusal of BPI to agree to PSB's terms of payment was based solely on its own evaluation of the acceptability of the mechanics for payment suggested by PSB. And the failure to obtain a release on the BPI Mortgage is solely on account of PSB's, therefore plaintiffs', insistence on an unacceptable mechanics for payment.[2]

Pre-trial was concluded by the trial court. Plaintiffs therein (herein private respondents) presented evidence and rested their case.

During defendants' (herein petitioners') presentation of evidence, private respondents filed on 13 March 1990, a motion for leave to file an amended complaint and motion to admit the same. The amendment consisted of impleading PISO bank as additional party defendant and compel it to accept payment of the existing second mortgage from private respondent Reginas, since allegedly no complete relief can be had unless the second mortgage in favor of said PISO bank is released.

Despite petitioners' opposition, an order was issued by the trial court on 30 April 1990 admitting the amended complaint. After denial of their motion for reconsideration on 1 June 1990, petitioners proceeded to the Court of Appeals on a petition for certiorari and prohibition (CA-G.R. Sp. No. 23153) raising the issue of whether an amendment to the complaint pleading a cause of action against a new or additional party can be allowed after the private respondents (as plaintiffs) had rested their case and petitioners (as defendants) had commenced the presentation of their evidence.

Sustaining private respondents' contentions, the Court of Appeals' decision held in effect, as follows:

"The change in language from the former to the present rule (Section 3, Rule 10 of the Revised Rules of Court), does not stop the court from allowing substantial amendments, after the trial has begun, there being nothing in the rule as changed, which limits the court's authority to allow substantial amendments to the pleading just because trial has already begun.

The amendment of the complaint was made without intent to delay the action. The essence of the liberal interpretation accorded by the courts on the filing of an amended complaint is the avoidance of multiplicity of suits. And also, private respondents' cause of action has not been substantially altered.

PISO Bank is a proper party under Section 8 of Rule 3 of the Revised Rules of Court. For the defendants Barfel Development Corporation and the spouses Barrios to be able to comply with its obligation under the Agreement to Buy/Sell dated 19 June 1987 and the letter-agreement dated 9 July 1987 and the related Deed of Sale, there had to be a determination of the amount really due PISO Bank and corresponding order for said

Bank to accept the payment of plaintiff corporation to extinguish the obligation secured by the mortgage, before the consummation of said transaction can be effected.”[3]

With the denial by the appellate court of petitioners’ motion for reconsideration,[4] the same legal issue earlier brought before the Court of Appeals is now before us for resolution, with the following supportive arguments:[5]

“In resolving the issue in favor of allowance of the amended complaint, the Court of Appeals has decided it in a way not in accord with Rule 10, Section 3, which we quote for the convenience of the Court:

‘Section 3. Amendments by leave of court. - After the case is set for hearing, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered xxx.’ (emphasis supplied)

The amendment was made with intent to delay the action and substantially alters private respondents’ cause of action and petitioners’ defense.

x x x

The following circumstances, according to petitioners, show intent to delay:

A. The pretext given is that PISO has to be joined as a co-defendant so that it can be compelled to accept the payment of whatever would be determined as the correct balance of the PISO mortgage. The amendment will bring into the case the controversy or dispute between PISO and the petitioners as to how much is still due under the mortgage.

B. But why is the dispute brought out only now? It was not as if the private respondents learned of the dispute only at the time they sought the amendment. As earlier pointed out when they filed the Complaint, they already knew about it.”

We rule for the petitioners, and reverse the appellate court’s decision.

Petitioners’ assertion -- which is not refuted by private respondents -- is that the subject matter of the original complaint sought to be amended was well known to private respondents from the start. The reason for the amendment impleading PISO is to compel the latter to accept herein respondents’ payment and release the second mortgage thereby enabling petitioners to deliver to respondents the titles free from all liens and encumbrances. But PISO bank is not a party to the three (3) contracts which are the subject of the action for specific performance and damages between the private respondents and petitioners. The bank which is not a party to the transaction is not an indispensable party.[6] Neither is there an acceptable explanation from private respondents why PISO Bank was not impleaded in the original complaint filed before the RTC of Makati. PISO is a second mortgagee, whatever the outcome of the litigation between the petitioners and the private respondents would be. Its second mortgage lien attaches to the property. The action for specific performance by private respondents against petitioners is not the proper venue for releasing all liens and encumbrances on the subject property. Perhaps, herein private respondents have confused the possible liability of petitioner Barrios for allegedly withholding information on the said second mortgage as another cause of action against him arising from the executed contracts. But title to the disputed properties can still be delivered by petitioners to herein respondents, by way of specific performance with damages, encumbered of course by the second mortgage in favor of PISO but the release of such encumbrance can be obtained independently of this case. To include it as another cause of action in the case at bar against an additional defendant, would indeed change the theory of the case, let alone delay the proceedings on the original cause of action founded on specific performance with damages.

To compel PISO to accept payment cannot be allowed in an action for specific performance with damages

between other parties. These are two (2) different causes. A second mortgagee like PISO has several options. It may either:

1. foreclose the second mortgage for non-payment.
2. pay off the first mortgagee (BPI in this instance) and be subrogated to its rights thereby becoming the sole lien holder.
3. collect on the loan without foreclosing on the mortgage.

Under the facts alleged in the amended complaint, there is no statement that the mortgage debt in favor of PISO is due and demandable; neither is PISO foreclosing on the mortgage. And in an unexpected act of liberality, PISO can even write off the debt (of course an improbability). In any event private respondents (as plaintiffs below) cannot compel PISO to accept payment as it is not even a party to the mortgage contract (with PISO); the latter cannot be impleaded as a party defendant, and the former only has an inchoate right to the property. Besides, if the principal mortgagee, BPI, is not even impleaded why should the second mortgagee PISO be so impleaded, when it is a stranger to the transaction between petitioners and private respondents? Even the mortgage document purportedly sued upon is not attached to the amended complaint.

In *Marimperio Compania Naviera, S.A. v. CA*, G.R. 40234, December 14, 1987[7], the Court held:

“According to Article 1311 of the Civil Code, a contract takes effect between the parties who made it, and also their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. Since a contract may be violated only by the parties, thereto as against each other, in an action upon that contract, the real parties in interest, either as plaintiff or as defendant, must be parties to said contract. Therefore, a party who has not taken part in it cannot sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.”

A “real interest” has been defined as “a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest.” (Moreno, Federico B. *Philippine Law Dictionary*, Third Edition)

Complete relief by private respondents against petitioners may be had even if PISO/Central Bank were not impleaded as party defendant in the original case. PISO is not an indispensable or necessary party without whom no final determination can be had of the action for specific performance with damages. (Sec. 7, Rule 3, Rules of Court). Private respondents maintain that PISO is a proper party under sec. 8, Rule 3 of the Revised Rules of Court. The provision invoked reads:

“Section 8. Joinder of proper parties. - When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons.”

From the above, it is clear that joinder of admittedly proper parties is permissive, that judgment will be decreed even if all the parties are not present if the court will be able to proceed to a decree and do justice to the parties already before it, without injury to those who are absent but equally interested in the litigation and who cannot conveniently be made parties to the suit.[8] Wherever a case will be completely decided as between the party litigants, an interest existing in some other persons whom the process of the court cannot reach will not prevent a decree upon the merits.[9] In short, as far as the complaint for specific performance and damages is concerned, complete relief maybe accorded between private respondents and petitioners (as original parties) without the

presence of the second mortgagee (PISO bank). If complete relief to herein private respondents is the ultimate aim of the RTC ruling, why did it not include BPI as (proper) party defendant, since after all, there is an allegation in the original complaint that BPI refused to go along with the transaction because of petitioners' representations.

Moreover, the amendment sought by private respondents, which is to include a new party defendant at a late stage in the proceeding is not a formal but a substantial one. Private respondents will have to present additional evidence on the PISO second mortgage. The effect would be to start trial anew with the parties recasting their theories of the case. The correct amount of the second mortgage owed by petitioners to PISO bank (apparently a controverted point), would have to be litigated and this could be time consuming.

As a general policy, liberality in allowing amendments is greatest in the early stages of a law suit, decreases as it progresses and changes at times to a strictness amounting to a prohibition.[10] This is further restricted by the condition that the amendment should not prejudice the adverse party or place him at a disadvantage.[11]

WHEREFORE, the petition for review is GRANTED. The decision appealed from is REVERSED and SET ASIDE. Let this case be remanded to the court of origin for continuation of the presentation of evidence by herein petitioners (as defendants) in Civil Case No. 17875.

SO ORDERED.

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

* Justice Jorge S. Imperial writing for the court, Nathanael P. De Pano, Jr. and Jainal D. Rasul, JJ. concurring, former Tenth Division

** Judge Ignacio Capulong, presiding

[1] Rollo at pp. 38 to 41

[2] Rollo at pp. 46 to 48

[3] Summary of pp. 4 to 8 of the CA decision, Rollo, pp. 67 to 71

[4] Resolution dated April 2, 1991, Rollo, p. 74

[5] Petition, pp. 10-11, Rollo, pp. 25-26

[6] *Belleza v. Huntington*, G.R. No. L-3319, August 16, 1951, 89 Phil. 689

[7] 156 SCRA 368

[8] *Payne v. Hook*, 7 Wall, (U.S.) 425, 19 L. ed. 260

[9] *Elmendorf v. Taylor*, 19 Wheat, U.S. 152, 6 L. ed. 289

Both cases are cited in Martin, Ruperto, *Rules of Court in the Philippines with notes and comments*, Vol. 1, 1986 ed p. 209

[10] *Torres v. Tomacruz*, G.R. No. L-26251, February 7, 1927, 47 Phil. 913, cited in *Garcia, Jr. v. Ranada, Jr.*, G.R. No. 60935, 27 September 1988, 166 SCRA 9

[11] *Shaffer v. Palma*, G.R. No. L-24115, March 1, 1968, 22 SCRA 934; *Phil. Banking Corp. v. The Hon. Intermediate Appellate Court, et al.*, G.R. No. 66510, July 6, 1990 - 187 SCRA 257

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