

SECOND DIVISION

[G.R. NO. 164398, March 30, 2007]

ALICIA C. MARANAN, PETITIONER, VS. MANILA BANKING CORPORATION, RESPONDENT.

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated March 29, 2004 and Resolution^[2] dated July 5, 2004 of the Court of Appeals in CA-G.R. SP No. 35398, which affirmed the Orders^[3] dated November 17, 1993 and July 27, 1994 of the Regional Trial Court of Makati City, Branch 150 in Civil Case No. 90-2918.

The facts, borne out by the records, are as follows:

On January 11, 1979, Mandarin Development Corporation (Mandarin) obtained from respondent Manila Banking Corporation a ten million peso loan as additional working capital. Petitioner Alicia C. Maranan, with Yu Kim Chuy, Sofio Mo Gianan, Nestor Ignacio, and Roberto Posadas, signed a surety agreement binding themselves solidarily liable with Mandarin for the said loan.^[4]

By June 30, 1990, Mandarin's outstanding loan obligation inclusive of interest reached P30,500,000 prompting respondent to file a complaint^[5] for a sum of money against Mandarin, as well as Pacific Enamel and Glass Manufacturing Corporation (Pacific Enamel), S. Antonio Roxas Chua, Jr., and the aforementioned guarantors including herein petitioner.

Chua and Pacific Enamel filed a motion to dismiss on the ground that the complaint states no cause of action against them.^[6] The trial court granted the motion to dismiss and accordingly dropped them from the case.^[7]

For her part, petitioner filed an Answer alleging that the surety agreement did not express the true intent of the parties. She claimed that Chua was the real borrower and actual recipient of the loan and that Mandarin was merely used as a conduit of Pacific Enamel. Mandarin and Pacific Enamel were allegedly owned and controlled by Chua.^[8] She stated in the Answer that as a mere employee of Chua, she was made to sign the surety agreement in compliance with the formalities required by the Central Bank.

Respondent subsequently filed a Motion for Judgment on the Pleadings.^[9] The trial court, however, denied the said motion.

About two years later, petitioner filed an Amended Answer^[10] impleading Chua and Pacific Enamel as defendants in her counterclaim.

In its first assailed Order, the trial court denied the admission of petitioner's Amended Answer and deemed the same expunged from the records, thus:

Wherefore, defendants (*sic*) Amended Answer is hereby DENIED and considered expunged from the record.

SO ORDERED.^[11]

The trial court explained that it had already dismissed the complaint against Chua and Pacific Enamel for lack of cause of action. It had also denied the motion for reconsideration of said dismissal. The trial court further pointed out that the Amended Answer was filed without prior leave of court.

Petitioner filed a motion for reconsideration, which the trial court denied in its second impugned Order.

Petitioner elevated the case to the Court of Appeals ascribing grave abuse of discretion to the court *a quo* in not admitting the Amended Answer.

The appellate court dismissed the petition for lack of merit. Petitioner's motion for reconsideration was likewise denied. Hence, the instant petition anchored on the following grounds:

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 35398.

- A. The filing of petitioner's *Amended Answer* was a matter of right and, therefore, did not require prior leave of court.
- B. As mandated by the Rules of Court, petitioner correctly resorted to filing a counterclaim, and not a third-party complaint, in impleading the intended defendants-on-counterclaim.
- C. Jurisprudence looks upon amendment of pleadings with favor and liberality in order to determine every case as far as possible on its merits and without regard to technicalities.^[12]

Petitioner contends that the filing of an Amended Answer before a responsive pleading is filed does not require prior leave of court. She alleges that respondent's Motion for Judgment on the Pleadings cannot be considered a responsive pleading as it does not set up any defense against the claims stated in the Answer. She maintains that resort to the filing of a counterclaim instead of a third-party complaint in impleading Chua and Pacific Enamel is sanctioned by the Rules. She insists that her counterclaim for annulment of the loan and the surety agreement arose out of the same occurrence as the obligation being enforced by respondent. She further alleges that payment of docket fees is not required for jurisdiction to be acquired.

Respondent, however, counters that prior leave of court is required before petitioner's Amended Answer may be admitted as the Motion for Judgment on the Pleadings set up the defense that petitioner's Answer did not tender any genuine issue and sought the affirmative relief of a judgment on the pleadings. Respondent

further alleges that the allegations in the Amended Answer altered the theory of the defense, and thus should have been properly pleaded in a third-party complaint.

Simply stated, the basic issues for resolution now are: (1) whether petitioner's Amended Answer, filed without prior leave of court, should have been admitted; and (2) whether petitioner's resort to a counterclaim instead of a third-party complaint in impleading Chua and Pacific Enamel was proper.

We find the petition without merit, and we hold that the Court of Appeals did not err in dismissing the petition below.

At the outset, we note that petitioner's Answer was confined to allegations that the surety agreement did not express the true intent of the parties. The Answer merely purported to show that Chua was the real borrower and actual recipient of the loan and that Mandarin was only used as a conduit of Pacific Enamel. Also, petitioner therein alleged that as a mere employee of Chua, she was made to sign the surety agreement in compliance with the formalities required by the Central Bank.

In her Amended Answer, however, petitioner alleged for the first time that the surety agreement dated December 28, 1978 is void as an accessory contract because the promissory notes it was supposed to secure were nonexistent at the time, having been executed only on May 11, 1979. She likewise hinted that the loan was obtained in circumvention of the DOSRI^[13] Rule prohibiting the lending of funds by corporations to their directors, officers, stockholders and other persons with related interests.

Obviously, petitioner's Amended Answer contained substantial amendments not found in her original Answer and involved a significant shift in the theory of the defense. Noteworthy too, said Amended Answer was filed after the case was already set for hearing.

In this connection, Sections 2 and 3 of Rule 10 of the Rules of Court^[14] state:

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. (Emphasis supplied.)

SEC. 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. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. (Emphasis supplied.)

It is clear from Sections 2 and 3 of Rule 10 that once a case has already been set for hearing, regardless of whether a responsive pleading has been served, substantial amendments such as those contained in petitioner's Amended Answer