

FIRST DIVISION

[G.R. No. 133657, May 29, 2002]

**REMINGTON INDUSTRIAL SALES CORPORATION, PETITIONER,
VS. THE COURT OF APPEALS AND BRITISH STEEL (ASIA), LTD.,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Before us is a petition for review under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals in CA-G.R. SP No. 44529 dated February 24, 1998^[1], which granted the petition for certiorari filed by respondent British Steel Asia Ltd. (British Steel) and ordered the dismissal of petitioner Remington Industrial Sales Corporation's (Remington) complaint for sum of money and damages. Also assailed in this petition is the resolution^[2] of the Court of Appeals denying petitioner's motion for reconsideration.

The facts of the case, as culled from the records, are as follows:

On August 21, 1996, petitioner filed a complaint^[3] for sum of money and damages arising from breach of contract, docketed as Civil Case No. 96-79674, before the sala of Judge Marino M. De la Cruz of the Regional Trial Court of Manila, Branch 22. Impleaded as principal defendant therein was Industrial Steels, Ltd. (ISL), with Ferro Trading GMBH (Ferro) and respondent British Steel as alternative defendants.

ISL and respondent British Steel separately moved for the dismissal of the complaint on the ground that it failed to state a cause of action against them. On April 7, 1997, the RTC denied the motions to dismiss,^[4] as well as the ensuing motion for reconsideration.^[5] ISL then filed its answer to the complaint.

On the other hand, respondent British Steel filed a petition for certiorari and prohibition before the Court of Appeals,^[6] docketed as CA-G.R. SP No. 44529. Respondent claimed therein that the complaint did not contain a single averment that respondent committed any act or is guilty of any omission in violation of petitioner's legal rights. Apart from the allegation in the complaint's "Jurisdictional Facts" that:

1.05. Defendants British Steel (Asia) Ltd. and Ferro Trading GmbH, while understood by the plaintiff as mere suppliers of goods for defendant ISL, are impleaded as party defendants pursuant to Section 13, Rule 3 of the Revised Rules of Court.^[7]

no other reference was made to respondent that would constitute a valid cause of action against it. Since petitioner failed to plead any cause of action against

respondent as alternative defendant under Section 13, Rule 3,^[8] the trial court should have ordered the dismissal of the complaint insofar as respondent was concerned.

Meanwhile, petitioner sought to amend its complaint by incorporating therein additional factual allegations constitutive of its cause of action against respondent. Pursuant to Section 2, Rule 10^[9] of the Rules of Court, petitioner maintained that it can amend the complaint as a matter of right because respondent has not yet filed a responsive pleading thereto.^[10]

Subsequently, petitioner filed a Manifestation and Motion^[11] in CA-G.R. SP No. 44529 stating that it had filed a Motion to Admit Amended Complaint together with said Amended Complaint before the trial court. Hence, petitioner prayed that the proceedings in the special civil action be suspended.

On January 29, 1998, the trial court ruled on petitioner's Motion to Admit Amended Complaint thus:

WHEREFORE, the Amended Complaint is NOTED and further proceedings thereon and action on the other incidents as aforementioned are hereby held in abeyance until final resolution by the Honorable Court of Appeals (Special 6th Division) of the petition for certiorari and prohibition of petitioner (defendant British) and/or Manifestations and Motions of therein private respondent, herein plaintiff.

SO ORDERED.^[12]

Thereafter, on February 24, 1998, the Court of Appeals rendered the assailed decision in CA-G.R. SP No. 44529 as follows:

WHEREFORE, this Court grants the writ of certiorari and orders the respondent judge to dismiss without prejudice the Complaint in Civil Case No. 96-79674 against petitioner British Steel (Asia) Ltd. Costs against private respondent.

SO ORDERED.^[13]

In the same decision, the Court of Appeals addressed petitioner's prayer for suspension of proceedings in this wise:

The incident which transpired after the filing of the instant petition for certiorari and prohibition are immaterial in the resolution of this petition. What this Court is called upon to resolve is whether the lower court committed grave abuse of discretion when it denied petitioner's motion to dismiss the complaint against it. The admission or rejection by the lower court of said amended complaint will not, insofar as this Court is concerned, impinge upon the issue of whether or not said court gravely abused its discretion in denying petitioner's motion to dismiss.^[14]

Petitioner filed a motion for reconsideration of the appellate court's decision, which was denied in a resolution dated April 28, 1998. Hence, this petition, anchored on the following grounds:

-I-

THE HON. COURT OF APPEALS ERRED IN ORDERING THE DISMISSAL OF THE COMPLAINT AGAINST THE PRIVATE RESPONDENT FOR LACK OF CAUSE OF ACTION UNDER THE ORIGINAL COMPLAINT EVEN AS SAID COMPLAINT WAS ALREADY AMENDED AS A MATTER OF RIGHT AND SUFFICIENT CAUSES OF ACTION ARE AVERRED IN THE AMENDED COMPLAINT, IN GROSS VIOLATION OF SEC. 2, RULE 10 OF THE 1997 RULES OF CIVIL PROCEDURE.

-II-

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT IF THE PETITIONER WANTS TO PURSUE ITS CASE AGAINST THE PRIVATE RESPONDENT, IT HAS TO REFILE THE COMPLAINT, THUS PRE-EMPTING THE RIGHT OF THE LOWER COURT TO RULE ON THE AMENDED COMPLAINT AND COMPELLING THE PETITIONER TO LITIGATE ITS CAUSES OF ACTION AGAINST THE PRIVATE RESPONDENT AS AN ALTERNATIVE DEFENDANT IN A SEPARATE ACTION, THEREBY ABETTING MULTIPLICITY OF SUITS.^[15]

The basic issue in this case is whether or not the Court of Appeals, by granting the extraordinary writ of certiorari, correctly ordered the dismissal of the complaint for failure to state a cause of action, despite the fact that petitioner exercised its right to amend the defective complaint under Section 2, Rule 10 of the Rules of Court. Stated differently, the query posed before us is: can a complaint still be amended as a matter of right before an answer has been filed, even if there was a pending proceeding for its dismissal before the higher court?

Section 2, Rule 10^[16] of the Revised Rules of Court explicitly states that a pleading may be amended as a matter of right before a responsive pleading is served. This only means that prior to the filing of an answer, the plaintiff has the absolute right to amend the complaint whether a new cause of action or change in theory is introduced.^[17] The reason for this rule is implied in the subsequent Section 3 of Rule 10^[18]. Under this provision, substantial amendment of the complaint is not allowed without leave of court after an answer has been served, because any material change in the allegations contained in the complaint could prejudice the rights of the defendant who has already set up his defense in the answer.

Conversely, it cannot be said that the defendant's rights have been violated by changes made in the complaint if he has yet to file an answer thereto. In such an event, the defendant has not presented any defense that can be altered^[19] or affected by the amendment of the complaint in accordance with Section 2 of Rule 10. The defendant still retains the unqualified opportunity to address the allegations against him by properly setting up his defense in the answer. Considerable leeway is thus given to the plaintiff to amend his complaint once, as a matter of right, prior to the filing of an answer by the defendant.

The right granted to the plaintiff under procedural law to amend the complaint before an answer has been served is not precluded by the filing of a motion to dismiss^[20] or any other proceeding contesting its sufficiency. Were we to conclude