

"PLAINTIFF, thru counsel, unto this Honorable Court, most respectfully states that:

"1. He is of legal age, Filipino and proprietor of Cebu Textar Auto Supply whose postal address is at 177 Leon Kilat St., Cebu City, while the defendant is an estate of Carlos Ngo as represented by surviving spouse Ms. Sulpicia Ventura with residence and postal address at-Back [sic] of Chong Hua Hospital, Cebu City where summons and other processes of the Court could be effected;

"2. During the lifetime of Carlos Ngo he was indebted with the plaintiff in the amount of P48,889.70 as evidenced by the hereto attached statement marked as Annexes A and A-1 which account was obtained by him for the benefit of his family;

"3. Said obligation is already due and demandable and the defendant thru Ms. Ventura who is ostensibly taking care of the properties/estate of deceased Carlos Ngo, refused, failed and neglected and still continues to refuse, fail and neglect to pay despite repeated demands;

"4. As a consequence of the refusal to pay the plaintiff was compelled to retain the services of counsel with whom he contracted to pay P10,000.00 as attorney's fees. Upon institution of this complaint, he has further incurred initial litigation expenditures in the sum of P4,000.00.

"WHEREFORE, this Honorable Court is most respectfully prayed to render judgment for the plaintiff by-

"1. Ordering the defendant to pay the plaintiff the sum of P48,889.70 plus interest until the obligation is fully paid;

"2. Ordering the defendant to pay the plaintiff the amount of P10,000.00 as attorney's fees plus P4,000.00 as reimbursement of the initial litigation expenditures.

"FURTHER plaintiff prays for such other relief or remedy in accordance with law, justice and equity.

"Cebu City, Philippines, March 29, 1982.

"x x x"^[3]

Petitioner moved to dismiss the foregoing complaint on the ground that "the estate of Carlos Ngo has no legal personality," the same being "neither a natural nor legal person in contemplation of law"^[4]

In his Opposition to Motion to Dismiss,^[5] petitioner insisted that since "the money claim subject of this case actually represents the costs of automotive spare parts/replacements contracted by deceased Carlos Ngo during his lifetime for the benefit/business of the family x x x the conjugal partnership x x x shall be accountable for the payment thereof."^[6] Subsequently, private respondent's counsel manifested that he is poised to "amend the complaint in order to state the correct party defendant that he intends to sue in this case"^[7]. The public respondent gave private respondent fifteen (15) days to make the amendment.

Petitioner filed a Motion for Reconsideration^[8] of the order of public respondent permitting private respondent to amend his complaint. First, she argued that the action instituted by the private respondent to recover P48,889.70, representing the unpaid price of the automotive spare parts purchased by her deceased husband during his lifetime, is a money claim which, under Section 21, Rule 3 of the Revised Rules of Court, does not survive, the same having been filed after Carlos Ngo had already died. Second, she claimed that the public respondent never acquired jurisdiction over the subject matter of the case which, being an action to recover a sum of money from a deceased person, may only be heard by a probate court.

Private respondent opposed the foregoing motion.^[9] He insisted that petitioner, being the wife of the deceased Carlos Ngo, is liable to pay the obligation which benefited their family.

Public respondent issued an Order giving private respondent twenty four (24) hours to file his amended complaint "so that the Court can determine for itself whether there is really a cause of action against the defendant who would be substituted to the Estate of Carlos Ngo," considering that "it would seem from the arguments of counsel for plaintiff x x x that the debt incurred by the deceased Carlong [sic] Ngo was in behalf of the conjugal partnership so that the wife of Carlos Ngo might be liable to pay the obligation".^[10]

Private respondent then filed his Amended Complaint^[11] with the new allegations underscored therein as follows:

"REPUBLIC OF THE PHILIPPINES

COURT OF FIRST INSTANCE OF CEBU

14th Judicial District

BRANCH XII

MR. JOHN UY, Proprietor of Cebu

Textar Auto Supply,

Plaintiff,

- versus -

CCIVIL CASE NO. R-21968

For: SUM OF MONEY AND

MS. SULPICIA VENTURA,

DAMAGES

Defendant.

Oo - - - - -x

"AMENDED COMPLAINT

"PLAINTIFF thru counsel, unto this Honorable Court most respectfully states that:

"1. x x x

"2. During the lifetime of Carlos Ngo he and his wife, the defendant herein are indebted with the plaintiff in the amount of P48,889.70 as evidenced by the hereto attached statement marked as Annexes A and A-1 which account was obtained for the benefit of their family and is being confirmed by their son Roy Ngo per his signature marked as Annex "A-2";

"3. x x x

"4. For several times, the defendant had concealed herself in her house when the plaintiff's representative went to her residence to collect payment of the said account;

"5. x x x

"x x x."^[12]

Petitioner filed a Comment to Plaintiff's Amended Complaint.^[13] She reiterated that whether the unsecured debt was contracted by her husband alone or as a charge against the conjugal partnership of gains, it cannot be denied that her husband was now deceased, the said debt does not survive him, the conjugal partnership of gains is terminated upon the death of one of the spouses, and the debts and charges against the conjugal partnership of gains may only be paid after an inventory is made in the appropriate testate or intestate proceeding.

Private respondent filed a Rejoinder to Defendant's Comment.^[14] He countered that the defendant in his amended complaint was now petitioner and that she was not deceased, hence the inapplicability of the legal rules on the abatement of money claims in case the defendant dies pending their prosecution.

Public respondent issued the herein assailed order which reads as follows:

"ORDER

"This case is called today to deal on the motion for reconsideration of the order of this Court dated November 16, 1982 denying the motion of the defendant to dismiss the complaint.

"In its order of November 16, 1982, the Court in the interest of justice advised the plaintiff to make the proper amendment so that the proper party defendant may be impleaded considering that the motion to dismiss then was anchored on the ground that the estate of Carlos Ngo was not a natural nor juridical person, hence it could not be sued. On December 23, 1982, the plaintiff amended its complaint and this time the defendant is already Sulpicia Ventura. The defendant now argues that even the amended complaint would show that this is really a collection of a debt of the conjugal partnership of deceased Carlong [sic] Ngo and his wife.

"Perusing the amended complaint, the Court finds that in Paragraph 2 the allegation states: "During the lifetime of Carlos Ngo, he and his wife, the defendant, are indebted with the plaintiff in the amount of P48,689.70, (sic) etc.," so that the indebtedness was incurred by Carlos Ngo and defendant Sulpicia Ventura and since Carlos Ngo is now dead that will not