



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 15, 2022 which reads as follows:

“G.R. No. 237059 (Ernesto S. Mercado, Petitioner v. Alphaland Corporation, Alphaland Makati Place, Inc.,¹ and Alphaland Southgate Tower, Inc. [formerly Alphaland Development, Inc.], Respondents).

This is an appeal by *certiorari* seeking to reverse and set aside the February 22, 2017 Decision² and January 23, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 146625. The CA dismissed the petition for *certiorari* filed by Ernesto S. Mercado (*petitioner*) imputing grave abuse of discretion on the part of the Regional Trial Court, Makati City, Branch 145, (RTC), in denying his Motion to Dismiss and Motion to Expunge the Amended Complaint. The petition before Us is accompanied by an Application for a Temporary Restraining Order (TRO), seeking to enjoin the RTC from conducting further proceedings in Civil Case No. 15-1172.

Antecedents

The case traces its roots from a complaint for damages (*original complaint*) filed by respondent Alphaland Corporation (*Alphaland*) against petitioner. Alphaland alleged that its goodwill and

- over – nine (9) pages ...

268-B

¹ Also referred to as “Makati Palace, Inc.” in some parts of the *rollo* (see *rollo*, pp. 3; 30; 184; 210; 212).

² *Rollo*, pp. 9-19 and 162-172; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring.

³ *Id.* at 21-23 and 181-183; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Stephen C. Cruz and Zenaida T. Galapate-Laguilles, concurring.

reputation suffered injury from petitioner's libelous statements that were reported in several newspapers in 2015.⁴ Petitioner reportedly stated that Alphaland entered into a "sweetheart" deal with the Boy Scouts of the Philippines (*BSP*), and that then Vice President Jejomar Binay received kickbacks from Alphaland in connection with a deal between Alphaland and *BSP*.⁵

Petitioner argued that the alleged news reports over which the claim for damages is based, referred to Alphaland Makati and Alphaland Southgate (previously Alphaland Development), and not to the original plaintiff—Alphaland. Contending that these three entities have separate corporate/juridical personalities, petitioner filed a motion to dismiss for failure to state a cause of action.⁶

Ruling of the RTC

After hearing on the motion, the RTC issued a Resolution⁷ on March 2, 2016, denying the motion to dismiss and ruling that the allegations in the original complaint were sufficient to state a cause of action. According to the RTC, petitioner's claim that he was not referring to Alphaland in his statements, was a matter of defense on his part and had no bearing on the sufficiency of the complaint.⁸

Aggrieved, petitioner filed a Motion for Reconsideration⁹ of the RTC's resolution. In the meantime, respondent Alphaland filed an Amended Complaint,¹⁰ impleading Alphaland Makati and Alphaland Southgate as additional party-plaintiffs to the case.¹¹ Consequently, petitioner filed a motion to expunge the amended complaint, arguing that the amended complaint was a vain attempt to cure the absence of Alphaland's personality to plead a cause of action.¹²

On May 11, 2016, the RTC denied petitioner's motion for reconsideration.¹³ Subsequently, in its June 21, 2016 Order,¹⁴ the RTC denied petitioner's motion to expunge and ordered him to file his

- over -

268-B

⁴ Id. at 32.

⁵ Id. at 58-59.

⁶ Id. at 32 and 44-50.

⁷ Id. at 76-79; issued by Presiding Judge Carlito B. Calpatura.

⁸ Id. at 79.

⁹ Id. at 80-89.

¹⁰ Id. at 90-101.

¹¹ Id. at 33.

¹² Id.

¹³ Id. at 109.

¹⁴ Id. at 110-113.

responsive pleading within fifteen (15) days from receipt. In compliance therewith, petitioner filed his Answer *Ad Cautelam*.¹⁵ Later, he filed a Petition for *Certiorari*¹⁶ under Rule 65 before the CA, ascribing grave abuse of discretion on the part of the RTC when it issued its March 2, 2016 Resolution, May 11, 2016 Order, and June 21, 2016 Order.

Ruling of the CA

The CA denied the petition for *certiorari* in its decision rendered on February 22, 2017. It ruled that while Alphaland, as the original lone plaintiff, had no cause of action, the RTC did not commit grave abuse of discretion when it denied petitioner's motions to dismiss and to expunge the amended complaint, because Alphaland amended its complaint before a responsive pleading was filed.¹⁷ Petitioner filed a motion for partial reconsideration, but the same was denied by the CA in its January 23, 2018 Resolution.

Hence, this petition¹⁸ is instituted.

Issue

The sole issue for our resolution is: Did the CA err in ruling that the RTC did not commit grave abuse of discretion amounting to excess of jurisdiction when it denied petitioner's motion to dismiss and motion to expunge the amended complaint?

Petitioner posits that an amendment as a matter of right, must cure the defect relating to the amending party. However, the amended complaint, even with the inclusion of the new party-plaintiffs, did not magically confer upon the original plaintiff, Alphaland, the personality to sue.¹⁹ Hence, the RTC had gravely abused its discretion when it denied petitioner's motion to expunge the amended complaint.

In its comment, Alphaland primarily argues that petitioner failed to show any special, important, and special reason to justify a reversal of the CA decision.²⁰

- over -

268-B

¹⁵ Id. at 114-127.

¹⁶ Id. at 128-148.

¹⁷ Id. at 16.

¹⁸ Id. at 30-52.

¹⁹ Id. at 43-48.

²⁰ Id. at 189.

The Court's Ruling

The petition must be denied.

It bears emphasis that an order denying a motion to dismiss is only interlocutory which is neither appealable until final judgment, nor could be generally assailed on *certiorari*.²¹ While the denial of the motion to dismiss may be raised in a petition for *certiorari*, the petition will only prosper where there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the trial court.²²

Thus, for the present petition to prosper, there must be proof that the RTC gravely abused its discretion amounting to excess of jurisdiction in denying petitioner's motion to dismiss and motion to expunge the amended complaint. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must be in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of the law.²³ Furthermore, grave abuse of discretion is a circumstance *beyond legal error* committed by a decision making agency or entity in the exercise of its jurisdiction.²⁴

An error in jurisdiction, one that is beyond legal error and is correctable by a special civil action for *certiorari*, is one where the officer or tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.²⁵ On the other hand, alleged misapplication of facts and evidence, and whatever flawed conclusions of the trial court, are considered merely errors in judgment. Erroneous conclusions based on evidence do not, by mere fact that errors were committed, rise to the level of grave abuse of discretion.²⁶

- over -

268-B

²¹ *Abacan, Jr. v. Northwestern University Inc.*, 495 Phil. 123, 135 (2005); *La Tondeña Distillers, Inc. v. Ponferrada*, 332 Phil. 593, 596 (1996).

²² *BDO Leasing and Finance, Inc. v. Presiding Judge of the Regional Trial Court of Aparri, Cagayan, Branch 7*, G.R. No. 228323, September 27, 2017.

²³ *Judge Angeles v. Ombudsman Gutierrez*, 685 Phil. 183, 197 (2012).

²⁴ *Inocentes v. People of the Philippines*, 789 Phil. 318, 326 (2016); *People of the Philippines v. Romualdez*, 581 Phil. 462, 479 (2008).

²⁵ *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 247 (2017).

²⁶ *People of the Philippines v. Sandiganbayan*, G.R. No. 228281, June 14, 2021, citing *Miranda v. Sandiganbayan*, 815 Phil. 123, 141-142 (2017).

In this case, no such abuse of discretion, much less grave, was established by petitioner. In denying petitioner's motion to dismiss, the RTC merely erred while acting within the confines of its jurisdiction. The error imputed by petitioner upon the RTC only relates to a mistake in the application of the law and jurisprudence regarding the sufficiency of the ground petitioner raised in his motion to dismiss, and does not affect the authority of the RTC to try the case. Settled is that rulings of the trial court on procedural questions and on admissibility of evidence during the course of a trial are interlocutory in nature and may not be the subject of a separate appeal or review on *certiorari*.²⁷ Such is the case here. A perusal of the March 2, 2016 Resolution of the RTC reveals no clear exercise of its power in an arbitrary or despotic matter that may be equated with grave abuse of discretion:

The claim of defendant that he was not referring to the plaintiff when he made the subject utterances is a mere matter of defense on his part and has no bearing on the issue of sufficiency of the complaint. This ground he relies upon is evidentiary in nature which he must prove during the trial. Besides, if his claim were true, then the remedy is not to dismiss the complaint but for plaintiff to amend the complaint by joining AMPI and ADI as co-plaintiffs.²⁸

Furthermore, the RTC's denial of petitioner's motion to expunge the amended complaint was likewise not tainted with grave abuse of discretion. Section 2, Rule 10 of the 1997 Rules of Civil Procedure explicitly states that a pleading may be amended *as a matter of right* before a responsive pleading is served. Otherwise, a party can only amend his pleading upon prior leave of court. 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.²⁹ In such case, the defendant still retains the unqualified opportunity to address the allegations against him by properly setting up his defense in the answer.³⁰ Such right

- over -

268-B

²⁷ *Triplex Enterprises, Inc. v. PNB-Republic Bank and Solid Builders, Inc.*, 527 Phil. 685, 690 (2006).

²⁸ *Rollo*, p. 79.

²⁹ *National Mines and Allied Workers Union (NAMAWU) v. Hon. Calderon-Bargas*, 564 Phil. 504, 511 (2007); *Remington Industrial Sales Corporation v. The Court of Appeals and British Steel (Asia), LTD.*, 432 Phil. 255, 261 (2002); *Radio Communications of the Philippines, Inc. (RCPI) v. Court of Appeals*, 337 Phil. 738, 742 (1997).

³⁰ *Bautista v. Maya-Maya Cottages, Inc.*, 512 Phil. 778, 781 (2005); *Remington Industrial Sales Corporation v. The Court of Appeals and British Steel (Asia), LTD.*, *supra*.

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 or any other proceeding contesting its sufficiency.³¹

The trial court's duty to admit an amended complaint prior to the filing of an answer is purely ministerial in nature. The Court has previously ruled that it is the correlative duty of the trial court to accept an amended complaint when such is filed as a matter of right; otherwise, *mandamus* would lie against it.³² In fact, in several cases, the Court has even allowed the filing of an amended complaint notwithstanding the dismissal of the original complaint, provided that such order of dismissal has not yet become final.³³

Based on records, petitioner had yet to file his answer to the original complaint when respondent filed its amended complaint. Petitioner had only filed a motion to dismiss which is clearly not the responsive pleading contemplated under Sec. 2, Rule 10.³⁴ As the RTC's denial of petitioner's motion to expunge the amended complaint finds basis in law and in jurisprudence, the same cannot be characterized as whimsical, arbitrary or capricious that may be construed as grave abuse of discretion.

We likewise cannot subscribe to petitioner's argument that an amendment as a matter of right must cure the defect relating to the amending party. As in this case, petitioner's position is that the amendment of the complaint was improper because it merely attempts to cure respondent's lack of personality.³⁵ Unfortunately for petitioner, his argument is not novel.

To begin with, petitioner's claims find no basis in law nor jurisprudence. A plain reading of Sec. 2, Rule 10 of the Rules of Civil Procedure reveals that amendments as a matter of right are neither conditional nor qualified. It merely provides that a pleading may be amended as a matter of right before the filing of a responsive pleading. In fact, there is even no need for the court to allow its admission, and the CA herein could not be faulted for not making any

- over -
268-B

³¹ *Alpine Lending Investors v. Corpuz*, 537 Phil. 854, 857-858 (2006); *Remington Industrial Sales Corporation v. The Court of Appeals and British Steel (Asia), LTD*, supra at 262.

³² *Alpine Lending Investors v. Corpuz*, supra at 858, citing *Breslin v. Luzon Stevedoring Co.*, 84 Phil. 618, 626-627 (1949).

³³ *Marcos-Araneta v. Court of Appeals*, 585 Phil. 38, 57 (2008); *Bautista v. Maya-Maya Cottages, Inc.*, supra note 30; *Salazar v. Bartolome*, 165 Phil. 235, 238 (1976);

³⁴ *Radio Communications of the Philippines, Inc. (RCPI) v. Court of Appeals*, supra note 29 at 741-742.

³⁵ *Rollo*, p. 43.

further statements regarding the admission of the amended complaint.³⁶ In *Bautista v. Maya-Maya Cottages, Inc.*,³⁷ the petitioner therein argued that the lower court committed grave abuse of discretion when it admitted the amended complaint despite its failure to cure the defect in the original complaint. Petitioner therein was of the position that both the original and amended complaints did not confer upon *Maya-Maya Cottages* a cause of action to initiate the case as it still cannot be considered as a real party in interest. Notwithstanding the same, the Court upheld the respondent's right to amend the complaint, as a matter of right, before any responsive pleading is filed.³⁸

Furthermore, the CA is correct that the doctrine enshrined in *Surigao Mine Exploration Co., Inc. v. Harris*³⁹ (*Surigao*) cannot apply in the present case. Verily, what the doctrine in *Surigao* seeks to avoid is the premature invocation of the court's intervention. This was further explained by the Court in *Turner v. Lorenzo Shipping Corporation*:⁴⁰

Neither did the subsequent existence of unretained earnings after the filing of the complaint cure the lack of cause of action in Civil Case No. 01-086. The petitioners' right of action could only spring from an *existing* cause of action. Thus, a complaint whose cause of action has not yet accrued cannot be cured by an amended or supplemental pleading alleging the existence or accrual of a cause of action during the pendency of the action. For, only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground.⁴¹

Assayed against the foregoing jurisprudence, the RTC herein did not err in admitting respondent's amended complaint. Verily, the CA correctly held that in issuing the assailed orders denying the motion for reconsideration and motion to expunge the amended complaint from the records, the trial court did not gravely abuse its discretion. Hence, neither *certiorari* nor prohibition would lie in this case.

- over -

268-B

³⁶ *Andaya v. Abadia*, 298-A Phil. 713, 724 (1993).

³⁷ *Supra* note 30.

³⁸ *Id.* at 780-781.

³⁹ 68 Phil. 113 (1939).

⁴⁰ 650 Phil. 372 (2010).

⁴¹ *Id.* at 389-390.

Time and time again, the Court has shown liberality 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.⁴² This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving petitioner all the time allowed by law to answer and to prepare for trial.⁴³ Our rules of procedure are mere tools designed to facilitate the attainment of justice. Their application should never be allowed to frustrate the truth and promotion of substantial justice.⁴⁴

All told, the Court does not find cause to overrule the assailed decision and resolution of the CA which acknowledged the amended complaint as one filed as a matter of right.

WHEREFORE, the petition is **DENIED**. The challenged February 22, 2017 Decision and January 23, 2018 Resolution of the Court of Appeals in CA-G.R. SP. No. 146625 are **AFFIRMED in toto**. Costs against petitioner.

The directive in the Resolution dated March 1, 2021 requiring the elevation of complete records of the case is **DISPENSED WITH**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *gsta*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
268-B

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⁴² *Yujuico v. United Resources Asset Management, Inc.*, 762 Phil. 198, 207 (2015); *Lisam Enterprises, Inc. v. Banco de Oro Unibank, Inc.*, 686 Phil. 293, 304 (2012); *Ching Tiu v. Philippine Bank of Communications*, 613 Phil. 56, 68 (2009); *Godinez v. Court of Appeals*, 544 Phil. 716, 719-720 (2007); *Contech Construction Technology & Development Corp. v. Court of Appeals*, 286 Phil. 852, 856 (1992).

⁴³ *Lisam Enterprises, Inc. v. Banco de Oro Unibank, Inc.*, supra; *Ching Tiu v. Philippine Bank of Communications*, supra.

⁴⁴ *Yujuico v. United Resources Asset Management, Inc.*, supra at 209.



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268-B

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