

SECOND DIVISION

[G.R. No. 107824, July 05, 1996]

**SUPERCLEAN SERVICES CORPORATION, PETITIONER, VS. COURT
OF APPEALS AND HOME DEVELOPMENT MUTUAL FUND,
RESPONDENTS.**

DECISION

MENDOZA, J.:

The question in this case is the propriety of filing a Supplemental Complaint in order to seek a different relief in view of developments rendering the original relief impossible of attainment.

The facts are as follows:

On November 8, 1989, petitioner Superclean Services filed with the Regional Trial Court of Manila a complaint for Mandamus/Certiorari With Preliminary Injunction And/Or Restraining Order against private respondent Home Development and Mutual Fund. Petitioner alleged that at the public bidding for janitorial services for the year 1990 it was the "lowest or best bidder," but private respondent refused without just cause to award the contract to it and instead caused the publication on October 23, 1989 of a Notice of Rebidding to be held on November 9, 1989.

In its answer private respondent defended its action on the ground that not a single bid submitted complied with the terms and conditions agreed upon in the pre-bidding conference held on September 6, 1989.

The trial court thereafter set petitioner's application for preliminary injunction for hearing and in the meantime ordered private respondent to desist from conducting a rebidding. At the same time, the court granted leave to private respondent on January 4, 1990 to hire janitorial services on a month-to-month basis to insure the maintenance of its offices.

On July 24, 1991, petitioner moved for the admission of a "Supplemental Complaint."^[1] Petitioner alleged that because the contract of services was for the furnishing of janitorial service for the previous year 1990, the delay in the decision of the case had rendered the case moot and academic "without [petitioner] obtaining complete relief to redress the wrong committed against it by [private respondent], which relief consists in unrealized profits, exemplary damages and attorney's fees." Accordingly, instead of pursuing its prayer for a writ of mandamus, petitioner sought the payment of damages to it.

On August 23, 1991, the trial court denied petitioner's motion, finding "no merit in and no basis supporting it" and set the continuation of the trial on September 19, 1991.

Petitioner filed a motion for reconsideration, but its motion was likewise denied. In its order dated November 25, 1991, the trial court said that admission of the "Supplemental Complaint" would "not only radically but substantially [change] the issues" by "materially var[ying] the grounds of relief, and would operate unjustly to the prejudice of the rights of [private respondent]."

Petitioner filed a petition for certiorari in the Court of Appeals which, on August 5, 1992, rendered a decision, finding no grave abuse of discretion to have been committed by the trial court in not admitting petitioner's "Supplemental Complaint" and denying the motion for reconsideration of its order. Its ruling was based on the fact that the relief sought in the "Supplemental Complaint" was different from that contained in the original complaint which sought to compel private respondent to recognize petitioner as the lowest qualifying bidder. In addition, the appellate court held that the original complaint had been rendered moot and academic by supervening events and that a supplemental complaint was inappropriate since "supplemental pleadings are meant to supply the deficiency in aid of the original pleading, not to entirely substitute the latter."

Petitioner moved for a reconsideration, but its motion was denied in a resolution of the Court of Appeals dated October 30, 1992. Hence, this petition for review on certiorari.

First. The "Supplemental Complaint" appears to have been filed under Rule 10 of the Rules of Court which provides:

§6. Matters Subject of Supplemental Pleadings. " Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrence or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party should plead thereto, it shall so order, specifying the time therefor.

The transaction, occurrence or event happening since the filing of the pleading, which is sought to be supplemented, must be pleaded in aid of a party's right or defense as the case may be.^[2] But in the case at bar, the supervening event is not invoked for that purpose but to justify the new relief sought.

To begin with, what was alleged as a supervening event causing damage to petitioner was the fact that the year for which the contract should have been made had passed without the resolution of the case. Only incidentally was it claimed that because of the award of a contract for janitorial services, on a month-to-month basis to a third party, petitioner failed to realize profits. In its "Supplemental Complaint" petitioner alleged:

1. Supervening events not attributable to anybody which consist in the delay in the early disposition of the case within the one (1) year period

life span of the contract for janitorial services, have rendered the case moot and academic, without plaintiff obtaining complete relief to redress the wrong committed against it by defendant, which is the unjustified and/or unlawful refusal of defendant to recognize plaintiff as the lowest qualifying bidder for janitorial services for the year 1990;

2. By reason of the unjustified refusal of defendant to recognize the result of the public bidding held in September 1989 and to award to plaintiff the contract for janitorial services as the lowest qualifying bidder favorable and advantageous to the defendant for the year 1990, and by hiring another entity to perform janitorial services during the pendency of the suit, plaintiff suffered unrealized profits in the sum of P158,117.28;

The supervening event was therefore cited not to reinforce or aid the original demand, which was for the execution of a contract in petitioner's favor, but to say that, precisely because of it, petitioner's demand could no longer be enforced, thus justifying petitioner in changing the relief sought to one for recovery of damages. This being the case, petitioner's remedy was not to supplement, but rather to amend its complaint.

Indeed the new relief sought (payment of damages in lieu of an award of the contract for janitorial services) is actually an alternative remedy to which petitioner was entitled even before at the time of the filing of its original complaint. If petitioner was entitled to the award of the contract, as it claimed it was, it could have asked either for an award of the contract for janitorial services or for damages. The fact that it opted for the first does not preclude it from subsequently claiming damages because through no fault of its own, the year passed without an award in its favor, with the result that it could no longer demand the execution of a contract in its favor after that year.

Be that as it may, the so-called Supplemental Complaint filed by petitioner should simply be treated as embodying amendments to the original complaint or petitioner may be required to file an amended complaint.

Second. But, it is contended, such an amendment of the complaint would change the theory of the case. Three reasons were cited by the Court of Appeals why it thought the trial court correctly refused to admit the so-called Supplemental Complaint of petitioner: (1) change in the reliefs prayed for; (2) change in the issues of the case; and (3) prejudice to the rights of private respondent.

The contention has no merit. An amendment to change the relief sought does not change the theory of a case. What is prohibited is a change in the cause of action. Thus in *Arches v. Villarruz*,^[3] it was held:

The lower court denied the admission of the amended complaint on the ground that the plaintiff therein has changed the action alleged in the original complaint, but upon comparing the two complaints, we find that, essentially, there was no change of action for, in both the original and the amended complaints, the action was for the collection of the value of the