

[G.R. No. L-6060. September 30, 1954]

FERNANDO A. FROILAN, PLAINTIFF AND APPELLEE, VS. PAN ORIENTAL SHIPPING CO., DEFENDANT AND APPELLANT, REPUBLIC OF THE PHILIPPINES, INTERVENOR AND APPELLEE.

D E C I S I O N

PARAS, C.J.:

The factual antecedents of this case are sufficiently-recited in the brief filed by the intervenor-appellee as follows:

“1. On February 3, 1951, plaintiff-appellee, Fernando A. Froilan, filed a complaint against the defendant-appellant, Pan Oriental Shipping Co., alleging that he purchased from the Shipping Commission the vessel FS-197 for P200,000, paying P50,000 down and agreeing to pay the balance in installments; that to secure the payment of the balance of the purchase price, he executed a chattel mortgage of said vessel in favor of the Shipping Commission; that for various reasons, among them the non-payment of the installments, the Shipping Commission took possession of said vessel and considered the contract of sale cancelled; that the Shipping Commission chartered and delivered said vessel to the defendant-appellant Pan Oriental Shipping Co. subject to the approval of the President of the Philippines; that he appealed the action of the Shipping Commission to the President of the Philippines and, in its meeting on August 25, 1950, the Cabinet restored him to all his rights under his original contract with the Shipping Commission; that he had repeatedly demanded from the Pan Oriental Shipping Co. the possession of the vessel in question but the latter refused to do so. He, therefore, prayed that, upon the approval of the bond accompanying his complaint, a writ of replevin be issued

for the seizure of said vessel with all its equipment and appurtenances, and that after hearing, he be adjudged to have the rightful possession thereof (Rec. on App. pp. 2-8).

“2. On

February 3, 1951, the lower court issued the writ of replevin prayed for by Froilan and by virtue thereof the Pan Oriental Shipping Co. was divested of its possession of said vessel (Rec. on App. p. 47).

“3.

On March 1, 1951, Pan Oriental Shipping Co. filed its answer denying the right of Froilan to the possession of the said vessel; it alleged that the action of the Cabinet on August 25, 1950, restoring Froilan to his rights under his original contract with the Shipping Commission was null and void; that, in any event, Froilan had not complied with the conditions precedent imposed by the Cabinet for the restoration of his rights to the vessel under the original contract; that it suffered damages in the amount of P22,764.59 for wrongful replevin in the month of February, 1951, and the sum of P17,651.84 a month as damages suffered for wrongful replevin from March 1, 1951; it alleged that it had incurred necessary and useful expenses on the vessel amounting to P127,057.31 and claimed the right to retain said vessel until its useful and necessary expenses had been reimbursed (Rec. on App. pp. 8-53).

“4. On November 10, 1951, after the leave of the lower court had been obtained, the intervenor-appellee, Government of the Republic of the Philippines, filed a complaint in intervention alleging that Froilan had failed to pay to the Shipping Commission (which name was later changed to Shipping Administration) the balance due on the purchase price of the vessel in question, the interest thereon, and its advances on insurance premium totaling P162,142.95, excluding the dry-docking expenses incurred on said vessel by the Pan Oriental Shipping Co.; that intervenor was entitled to the possession of the said vessel either under the terms of the original contract as supplemented by Froilan’s letter dated January 28, 1949, or in order that it may cause the extrajudicial sale thereof under the Chattel

Mortgage Law. It, therefore, prayed that Froilan be ordered to deliver the vessel in question to its authorized representative, the Board of Liquidators; that Froilan be declared to be without any rights on said vessel and the amounts he paid thereon forfeited or alternately, that the said vessel be delivered to the Board of Liquidators in order that the intervenor may have its chattel mortgage extrajudicially foreclosed in accordance with the provisions of the Chattel Mortgage Law; and that pending the hearing on the merits, the said vessel be delivered to it (Rec on App. pp. 54-66).

“5. On November 29, 1951, the Pan Oriental Shipping Co. filed an answer to the complaint in intervention alleging that the Government of the Republic of the Philippines was obligated to deliver the vessel in question to it by virtue of a contract of bareboat charter with option to purchase executed on June 16, 1949, by the latter in favor of the former; it also alleged that it had made necessary and useful expenses on the vessel and claimed the right of retention of the vessel. It, therefore, prayed that, if the Republic of the Philippines succeeded in obtaining possession of the said vessel, to comply with its obligations of delivering to it (Pan Oriental Shipping Co.) or causing its delivery by recovering it from Froilan (Rec. on App. pp. 69-81).

“6. On November 29, 1951, Froilan tendered to the Board of Liquidators, which was liquidating the affairs of the Shipping Administration, a check in the amount of PI 62,576.96 in payment of his obligation to the Shipping Administration for the said vessel as claimed in the complaint in intervention of the Government of the Republic of the Philippines. The Board of Liquidators issued an official report therefor stating that it was a ‘deposit pending the issuance of an order of the Court of First Instance of Manila’ (Rec. on App. pp. 92-93).

“7. On December 7, 1951, the Government of the Republic of the Philippines brought the matter of said payment and the circumstances surrounding it to the attention of the lower court ‘in order that they may be taken into account by this

Honorable Court in connection with the questions that are now pending before it for determination' (Rec. on App. pp. 82-86).

"8. On

February 3, 1952, the lower court held that the payment by Froilan of the amount of P162,576.96 on November 29, 1951, to the Board of Liquidators constituted a payment and a discharge of Froilan's obligation to the Government of the Republic of the Philippines and ordered the dismissal of the latter's complaint in intervention. In the same order, the lower court made it very clear that said order did not pre-judge the question involved between Froilan and the Oriental Shipping Co. which was also pending determination in said court (Rec. on App. pp. 92-93). This order dismissing the complaint in intervention, but reserving for future adjudication the controversy between Froilan and the Pan Oriental Shipping Co. had already become final since neither the Government of the Republic of the Philippines nor the Pan Oriental Shipping Co. had appealed therefrom.

"9.

On May 10, 1952, the Government of the Republic of the Philippines filed a motion to dismiss the counterclaim of the Pan Oriental Shipping Co. against it on the ground that the purpose of said counterclaim was to compel the Government of the Republic of the Philippines to deliver the vessel to it (Pan Oriental Shipping Co.) in the event that the Government of the Republic of the Philippines recovers the vessel in question from Froilan. In view, however, of the order of the lower court dated February 3, 1952, holding that the payment made by Froilan to the Board of Liquidators constituted full payment of Froilan's obligation to the Shipping Administration, which order had already become final, the counterclaim of the Pan Oriental Shipping Co. against the Republic of the Philippines was no longer feasible, said counter-claim was barred by prior judgment and stated no cause of action. It was also alleged that movant was not subject to the jurisdiction of the court in connection with the counterclaim. (Rec. on App. pp. 94-97). This motion was opposed by the Pan Oriental Shipping Co. in its written opposition dated June 4, 1952 (Rec on App. pp. 19-104).

“10. In an order dated July 1, 1952, the lower court dismissed the counterclaim of the Pan Oriental Shipping Co. as prayed for by the Republic of the Philippines (Rec. on App. pp. 104r-106).

“11.

It is from this order of the lower court dismissing its counter-claim against the Government of the Republic of the Philippines that Pan Oriental Shipping Co. has perfected the present appeal (Rec. on App. p. 107).”

The order of the Court of First Instance of Manila, dismissing the counterclaim of the defendant Pan Oriental Shipping Co., from which the latter has appealed, reads as follows:

“This is a motion to dismiss the counterclaim interposed by the defendant in its answer to the complaint in intervention.

“The counterclaim states as follows:

‘COUNTERCLAIM

‘As counterclaim against the intervenor Republic of the Philippines, the defendant alleges:

‘1. That the defendant reproduces herein all the pertinent allegations of the foregoing answer to the complaint in intervention

‘2.

That, as shown by the allegations of the foregoing answer to the complaint in intervention, the defendant Pan Oriental Shipping Company

is entitled to the possession of the vessel and the intervenor Republic of the Philippines is bound under the contract of charter with option to purchase it entered into with the defendant to deliver that possession to the defendant—whether it actually has the said possession or it does not have that possession from the plaintiff Fernando A. Froilan and deliver the same to the defendant; 43. That, notwithstanding demand, the intervenor Republic of the Philippines has not to date complied with its obligation of delivering or causing the delivery of the vessel to the defendant Pan Oriental Shipping Company.

‘RELIEF

‘WHEREFORE, the defendant respectfully prays that judgment be rendered ordering the intervenor Republic of the Philippines alternatively to deliver to the defendants the possession of the said vessel, or to comply with its obligation to the defendant or causing the delivery to the latter of the said vessel by recovering the same from plaintiff, with costs.

‘The defendant prays for such other remedy as the Court may deem just and equitable in the premises.”

“The ground of the motion to dismiss are (a) That the cause of action is barred by prior judgment; (b) That the counterclaim states no cause of action; and (c) That this Honorable Court has no jurisdiction over the intervenor government of the Republic of the Philippines in connection with the counterclaim of the defendant Pan Oriental Shipping Co.

“The intervenor contends that the complaint in intervention having been dismissed and no appeal having been taken, the dismissal of said complaint is tantamount to a judgment.

“The complaint in intervention did not contain any claim whatsoever against the defendant Pan Oriental Shipping Co.; hence, the counterclaim has no foundation.

“The question as to whether the Court has jurisdiction over the intervenor with regard to the counterclaim, the Court is of the opinion that it has no jurisdiction over said intervenor.

“It appearing, therefore, that the grounds of the motion to dismiss are well taken, the counterclaim of the defendant is dismissed, without pronouncement as to costs.”

The defendant’s appeal is predicated upon the following assignments of error:

“I. The lower court erred in dismissing the counterclaim on the ground of prior judgment.

II.

The lower court erred in dismissing the counterclaim on the ground that the counterclaim had no foundation because made to a complaint in intervention that contained no claim against the defendant.

III.

The lower court erred in dismissing the counterclaim on the ground of alleged lack of jurisdiction over the intervenor Republic of the Philippines.”

We agree with appellant’s contention that its counter-claim is not barred by prior judgment (order of February 8, 1952, dismissing the

complaint in intervention), first, because said counterclaim was filed on November 29, 1951, before the issuance of the order invoked; and, secondly, because in said order of February 8, the court dismissed the complaint in intervention, “without, of course, precluding the determination of the right of the defendant in the instant case,” and subject to the condition that the “release and cancellation of the chattel mortgage does not, however, prejudge the question involved between the plaintiff and the defendant which is still the subject of determination in this case.” It is to be noted that the first condition referred to the right of the defendant, as distinguished from the second condition that expressly specified the controversy between the plaintiff and the defendant. That the first condition reserved the right of the defendant as against the intervenor, is clearly to be deduced from the fact that the order of February 8 mentioned the circumstance that “the question of the expenses of dry-docking incurred by the defendant has been included in its counterclaim against the plaintiff,” apparently as one of the grounds for granting the motion to dismiss the complaint in intervention.

The defendant’s failure to appeal from the order of February 8 cannot, therefore, be held as barring the defendant from proceeding with its counterclaim, since, as already stated, said order preserved its right as against the intervenor. Indeed, the maintenance of said right is in consonance with Rule 30, section 2, of the Rules of Court providing that “if a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff’s motion to dismiss, the action shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court,”

The lower court also erred in holding that, as the intervenor had not made any claim against the defendant, the latter’s counterclaim had no foundation. The complaint in intervention sought to recover possession of the vessel in question from the plaintiff, and this claim is logically adverse to the position assumed by the defendant that it has a better right to said possession than the plaintiff who alleges in his complaint that he is entitled to recover the vessel from the

defendant. At any rate a counter-claim should be judged by its own allegations¹, and not by the averments of the adverse party. It should be recalled that the defendant's theory is that the plaintiff had already lost his rights under the contract with the Shipping Administration and that, on the other hand, the defendant is relying on the charter contract executed in its favor by the intervenor which is bound to protect the defendant in its possession of the vessel. In other words, the counter-claim calls for specific performance on the part of the intervenor. As to whether this counterclaim is meritorious is another question which is not now before us.

The other ground for dismissing the defendant's counter-claim is that the State is immune from suit. This is untenable, because by filing its complaint in intervention the Government in effect waived its right of nonsuability.

"The immunity of the state from suits does not deprive it of the right to sue private parties in its own courts. The state as plaintiff may avail itself of the different forms of actions open to private litigants. In short, by taking the initiative in an action against a private party, the state surrenders its privileged position and comes down to the level of the defendant. The latter automatically acquires, within certain limits, the right to set up whatever claims and other defenses he might have against the state. The United States Supreme Court thus explains:

'No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice, and turn him around to an application to Congress.'" (Sinco, Philippine Political Law, Tenth Ed., pp. 36-37, citing U. S. vs. Ringgold, 8 Pet. 150, 8 L. ed. 899.)

It is however, contended for the intervenor that, if there was at all any waiver, it was in favor of the plaintiff against whom the complaint in intervention was directed. This contention is untenable. As already stated, the complaint in intervention was in a sense in derogation of the defendant's claim over the possession of the vessel in question.

Wherefore, the appealed order is hereby reversed and set aside and the case remanded to the lower court for further proceedings. So ordered, without costs.

Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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