

SUPREME INVESTMENT CORPORATION, PLAINTIFF-APPELLANT, VS. ENGINEERING EQUIPMENT, INC., DEFENDANT-APPELLEE.

G.R. No. L-25755. April 11, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by plaintiff, Supreme Investment Corporation, from two (2) orders of the Court of First Instance of Manila, one dismissing the complaint in the case at bar, and the other denying plaintiff's motion for reconsideration of said order of dismissal.

It is not disputed that, on July 31, 1963, plaintiff, Supreme Investment Corporation, and defendant, Engineering Equipment, Inc. - hereinafter referred to as appellant and appellee, respectively - entered into a contract whereby appellee agreed to furnish the materials, equipment and labor necessary for the construction and installation of an airconditioning system from the ground floor to the sixth floor of appellant's building at 313 Buendia Avenue, Makati, Rizal, and appellant agreed, undertook and bound itself to pay to appellee the aggregate sum of P222,000.00, as follows:

"10% of the total contract price upon signing of contract P22,200.00

"30% of the total contract price upon delivery of the equipment at the job site 66,600.00

"30% of the total contract price upon completion of the project 66,600.00

"30% of the total contract price 30 days after starting the system 66,600.00

"Total contract price P222,000.00"

that, upon the perfection of the contract, appellant paid appellee the stipulated first installment of P22,200; and that, subsequently, appellee received from appellant the additional sum of P20,000,[1] in partial satisfaction of the second installment of P66,600.

Appellee maintains that, after it had fully complied with its obligations under the contract, or sometime in November 1964, appellant "suddenly stopped the construction of its said building at Buendia Avenue, Makati, Rizal and abandoned the same, resulting in the non-commencement of the test-running or starting of the completed and installed air-conditioning system," thereby causing damages to appellee, which, "in order to minimize further damages * * * due to possible losses or pilferages" of its "equipments already installed at the abandoned job site * * * was constrained to remove" therefrom some parts of said equipments, which "removed equipments are being kept" by the appellee "for safekeeping * * * but can easily be re-installed * * * at a moment's notice upon compliance" by appellant of its obligations under the contract.

Upon the other hand, appellant would have us believe that on November 12, 1965, it received from appellee a "letter dated November 10, 1965, asserting that the total value of work in the project allegedly completed" by said appellee, "as of October 30, 1965 amounted to P203,476.89, and demanding payment of said amount as a condition for" appellee's "agreeing to a rescission of the contract" - which, presumably, had been proposed by appellant, or, at least, considered by the parties or the "resumption of the work, but in case of continuance, demanding from" appellant "the execution of a new contract to be drafted and prepared by its lawyers"; that, accordingly, appellant "caused the appraisal of the finished work at the job site by an independent and competent technician and thus found that appellee had "failed to perform its side of the contract"; that, on December 7, 1965, counsel for appellant replied, therefore, to appellee's aforementioned letter, "taking * * * exception" to the averments therein made and stating that appellant's "willingness * * * to make payments is necessarily predicated upon" appellee's "reciprocal obligation and ability to perform" its "part of the contract," as well as advising appellee "to consider the contract rescinded if delivery of the undelivered items is not made within ten (10) days from your receipt hereof."

Before the expiration of this period, or on December 17, 1965, appellee filed, with the Court of First Instance of Manila, a complaint - docketed as Civil Case No. 63670 thereof - against appellant herein, for specific performance and damages. Herein appellee prayed in said complaint "that judgment be rendered condemning" appellant herein to pay to said appellee:

"1) P113,200.00, representing the second and third installments under the contract, plus interests thereon at the legal rate from November, 1964 until fully paid;

"2). P66,600.00, representing damages or unrealized income or profit in favor of plaintiff" - appellee herein "plus interests thereon at the legal rate from November, 1964 until fully paid;

"3) P45,000.00, or 25% of the total amounts due in favor of plaintiff," appellee herein - "as and by way of attorney's fees, plus the costs of suit and expenses of litigation; and

"4) Grant plaintiff" appellee herein "such other reliefs as may be deemed just and equitable in the premises."

About a week later, or on December 23, 1965, appellant herein filed its complaint in the case at bar - docketed as Civil Case No. 63718 of said Court of First Instance of Manila - against the appellee, for rescission of the contract and damages. Upon being summoned as defendant in this case, appellee moved to dismiss the complaint therein, upon the ground "that there is another action pending between the same parties for the same cause," referring to the above-mentioned complaint in Case No. 63670. This motion was granted in an order dated January 8, 1966. A reconsideration of such order having been denied on January 28, 1966, appellant gave notice of its "intention to elevate the matter to the Hon. Supreme Court on appeal, the issue involved being purely of law."

Appellant alleges that the lower court has erred: (1) "in proceeding with the consideration and resolution of appellee's "motion to dismiss on January 8, 1966"; (2) "in dismissing the complaint on the ground of pendency of another case between the same parties for the same cause"; and (3) "in refusing to reconsider the order of dismissal and in not ordering consolidation of this case with Civil Case No. 63670."

In support of the first assignment of error, appellant alleges that copy of appellee's motion to dismiss - dated December 31, 1965 and set for hearing on January 8, 1966 - was mailed on January 3, 1966, and received by appellant on January 7, 1966; that when the motion was called for hearing, on January 8, 1966, appellant's counsel moved to postpone the hearing to January 22, 1966, not only because he had not had the 3-day previous notice, prescribed in section 4, Rule 15, of the Revised Rules of Court, but, also, because he wanted to file a written opposition; and that, this notwithstanding, the lower court issued its order of January 8, 1966 dismissing this case without costs upon the ground stated in said motion. Appellant maintains that the trial court had thus violated

sections 4 and 6, Rule 15, of the Rules of Court, reading:

"Sec. 4. Notice. - Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

"Sec. 6. Proof of service, to be filed with motion. - No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

It should be noted, however, that, under said section 4 the court "for good cause may hear a motion on shorter notice,"[2] and that appellant had admittedly received previous notice of the motion and of the date of its hearing. In fact, counsel for appellant was, on said date, present in court. What is more, there was no question about the pendency of Case No. 63670 or about the contents of the complaint therein. It was clear, in the mind of His Honor the trial Judge, that Case No. 63670 was between the same parties and for the same cause. In considering, in effect, that this was "good cause" to hear and act on the motion to dismiss "on shorter notice," no reversible error has been committed by the lower court.

Under the second assignment of error, it is argued that, although the parties in the two cases are identical, the "cause" in each is different, because there is "lack of identity of rights asserted and reliefs prayed for" and that the judgment in Civil Case No. 63670 "would not necessarily constitute *res adjudicata* as to the cause of action and relief (rescission) prayed for in this case."

This pretense is manifestly devoid of merit. As plaintiff herein, appellant alleges in its complaint therein that appellee is guilty of breach of their contract, because of which the same should be rescinded. Identical averments were made, as affirmative defenses, in appellant's answer as defendant in Case No. 63670. Similarly, appellee herein, as plaintiff in that case, affirmed in its complaint therein that it had fully complied with its obligations under said contract and that it is appellant herein who had violated its provisions. Thus, the issue in both cases is one and the same, namely: who, among the parties, has violated the contract? Is it appellant herein or the appellee? If the court should hold, in Case No. 63670, that it is appellant herein, then the latter could not possibly get a judgment in its favor in the case at bar. Conversely, if the decision in said Case No. 63670 should find that herein appellee is the party guilty of breach of contract, a decision in its favor, as defendant in the present case, would be out of the question.

Contrary to appellant's pretense, the parties in the case at bar would be bound by the decision in Case No. 63670, which would bar any other adjudication in the present case. It is true that "non-performance" or "mal-performance" on the part of appellee herein would suffice to defeat its complaint, as plaintiff in Case No. 63670, and that rescission of the contract with appellant herein as prayed for in its complaint as plaintiff herein need not necessarily be decreed in said Case No. 63670. This is due to the fact that appellant herein, as defendant in that case, has chosen to allege said "non-performance" or "mal-performance" merely as affirmative defenses, and to refrain from incorporating the same in a cross-complaint, with a prayer for rescission of the contract, and a counterclaim for damages, the very same remedies prayed for in its complaint herein. Should a decision be rendered in Case No. 63670 merely dismissing the complaint therein, without granting appellant herein - as defendant therein - any affirmative relief, said decision would still foreclose the grant of such relief in the case at bar, for a judgment is "conclusive between the parties and their successors in interest," not only "with respect to the matter directly adjudged," but also "as to any other matter that could have been raised in relation thereto * * *".[3] Moreover, "a counterclaim or cross-claim not set up shall be barred if it arises out of or is necessarily connected with, the transaction or occurrence that is the subject-matter of the opposing party's or co-party's claim

* * * "[4] The right invoked by appellant herein - as plaintiff therein - to a rescission of its contract with appellee herein - as defendant therein - and damages for alleged breach of contract by the latter manifestly "arises out of or is necessarily connected with, the transaction or occurrence that is the subject-matter" of appellee's complaint, as plaintiff in Case No. 63670.

Teodoro vs. Mirasol,[5] cited in appellant's brief, is not in point. It involved a lessee who had filed, in a court of first instance, an action against his lessor, to extend the term of the lease and recover damages. The lessor moved to dismiss based upon the pendency of another case between the same parties for the same cause, in that he had filed with the municipal court an unlawful detainer case against the lessee, said term having already expired under the provisions of the contract between them. The court of first instance granted the motion, upon the ground that all matters alleged in the lessee's complaint therein could be decided in the unlawful detainer case. This was affirmed by the Supreme Court, for the reason that "the right of a lessee to occupy the land leased against the lessor should be decided under Rule 72 of the Rules of Court" - on forcibly entry and detainer - despite the fact that the detainer case had been filed after the institution of the action in the court of first instance.

Obviously, there is no legal parity, between such case and the one at bar. The former involved one ordinary action and a special civil action; the latter, two (2) ordinary actions. The ordinary action in the case cited was pending in a court of first instance; the special civil action, in a municipal court. The two (2) actions involved in the case at bar are pending in the same court of first instance. The special civil action - unlawful detainer case - alluded to in the case cited was beyond the jurisdiction of the court of first instance, which - in the exercise of its original jurisdiction - could not possibly hear and grant the relief prayed for in said action. Upon the other hand, the action of appellant herein and the relief it seeks in the case at bar are fully within the competence of the court in Case No. 63670.

Appellant insists, under its third assignment of error, that instead of dismissing the present case, the lower court should have ordered its consolidation with Case No. 63670 and that it would, in consequence of said dismissal be constrained to file in said case a cross-complaint for rescission of the contract and a counter-claim for damages, which would require therefor the payment, as docket fees, of the sum it has already paid in the case at bar.

Although, in the exercise of its discretion, the lower court could have ordered the consolidation of the two cases. We are not prepared to hold that said court had abused its discretion or committed a reversible error in ordering the dismissal of this case, since discretion is the authority to choose between several alternatives and be right whichever alternative is chosen. Besides, appellee cannot be blamed if appellant did not know on December 23, 1965 - when it commenced the present action - that appellee's complaint in Case No. 63670 had been filed on December 17, 1965. Again, appellee cannot be charged with bad faith for having filed such complaint before the expiration of the period granted in appellant's letter of demand of December 7, 1965, any more than bad faith may be imputed to appellant herein for having sent that letter after receipt of appellee's letter of demand of November 10, 1965.

WHEREFORE , the orders appealed from should be, as they are hereby affirmed, with the costs of this instance against herein plaintiff-appellant, Supreme Investment Corporation. It is so ordered.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] P15,000 on August 24, 1965 and P5,000 on October 26, 1965.

[2] Italics supplied.

[3] Section 49, Rule 39, Revised Rules of Court. Italics supplied. Gonzales vs. Gonzales, L-22717, Nov. 27, 1968;

Aguila vs. J.M. Tuason & Co., Inc., L-24223, Feb. 22, 1968; Urtula vs. Republic, L-22061, Jan. 31, 1968; Clemente vs. H.E. Heacock Co., L-23212, May 18, 1967; Juan vs. Go Cotay, 26 Phil. 328.

[4] Section 4, Rule 9, Revised Rules of Court. Italics supplied.

[5] 99 Phil. 150.

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