CITY OF NAGA, PLAINTIFF AND APPELLEE, VS. BELEN R. TOLENTINO, DEFENDANT AND APPELLANT.

G.R. No. L-18975. November 26, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This appeal stems from an action brought by the plaintiff against defendant before the Court of First Instance of Camarines Sur to recover certain unpaid rentals allegedly owed by the latter to the former for the occupation of two doors for market purposes situated in the City of Naga.

Defendant set up the following defenses: (a) that plaintiff has no cause of action against her; and (2) plaintiff's claim, if any, is already barred by the statutes of limitations. After due hearing, the court a quo rendered judgment ordering defendant to pay to plaintiff the sum of P11,165.00 and the costs of action.

It appears that defendant had leased from plaintiff doors Nos. 5 and 6 of the public market belonging to the City of Naga agreeing to pay a monthly rental of P51.00. However, in 1949 the city council enacted an ordinance increasing the rental of the doors in the public market by P59.00, thereby increasing the rental to P120.00. Instead of paying the increase, defendant, together with other persons similarly situated, filed before the court a quo an action against the City of Naga asking to declare the ordinance null and void on the ground that it was approved in excess of the power granted to the city by its charter. Judgment was rendered sustaining the validity of the ordinance as a result of which the case was taken to the Court of Appeals. The decision having been affirmed, the case was again taken to the Supreme Court for review. Finally, this Court rendered judgment affirming the decision of the court a quo (G. R. No. L-6815).

During the pendency of that case, defendant deposited the monthly rental of P51.00 that was accruing in order that she may not be found delinquent under the original contract of lease. As an aftermath of the decision rendered in the annulment case, the City of Naga demanded from defendant the payment not only of the rentals that had accrued under the original contract of lease but also the increase under the ordinance during the period that that case had been pending, or from January, 1949 to October, 1958. And as defendant failed to meet the demand even if she agreed to pay the rentals under the original contract, the City of Naga commenced the present action for the collection of the unpaid rentals, plus the penalties due thereon, as already indicated in the early part of this decision.

Defendant contends that she cannot be held liable for the increased rental accruing from January, 1949 to January, 1955 during the pendency of G. R. No. L-6815 because in that case, which she brought along with others to annul the ordinance increasing the rent, plaintiff maintained not only that the ordinance is valid but also that it should be enforced to raise funds for the city, and that under such circumstance, it was obliged to file a counterclaim against her for the increase in the rent.

Plaintiff argues, on the other hand, that it was not required to set up such counterclaim for the reason that G. R. No. L-6815 was an action to declare the ordinance illegal and when it was commenced in January, 1949 the

rentals now sought to be recovered were not yet due and demandable so that a demand therefor would have been premature, and that defendant's liability to pay for the increased rental was not necessarily a question to be determined in that case where the legality of the ordinance was still in dispute.

We are of the opinion that under Section 6, Rule 10, of our Rules of Court, the failure of plaintiff to set up a counterclaim for the payment of the increased rent against defendant in case G. R. No. L-6815 does not bar the plaintiff from collecting the increased rent in the present case for the claim for such increased rent was not yet due at the time, nor is it necessarily connected with the subject matter of the claim of defendant which had a bearing on the validity of the ordinance that calls for such increased rent. In order that under the abovementioned rule a counterclaim may be compulsory or one that if not set up may constitute a bar to a future action, the subject matter thereof must arise out or be necessarily connected with the transaction or occurrence involved in the case, which is not the situation herein obtained, for it cannot be denied that the main issue therein involved was whether the ordinance in question was valid or not, or whether it was enacted beyond the power conferred by its charter upon the City of Naga. The determination of that issue is, therefore, prejudicial and being so, the claim for payment of the increased rent necessarily becomes premature. Of course, the City of Naga could have made an alternative demand by claiming payment in the event the ordinance is declared valid, but that would not make the demand the subject of a compulsory counterclaim.

On the other hand, the purpose of the instant action is to collect from defendant the rentals due for the two doors of the public market which she is occupying and so its claim arises from the contract of lease and not from the approval of the ordinance whose validity is in question. The fact that the rent was increased by it does not militate against this conclusion. It was not its enactment that gave to plaintiff the right it now asserts, but rather its enforcement, for surely defendant may decline to abide by it by leaving the premises if she is not agreeable to pay the increased rent. Verily, the cause of action of plaintiff is not the ordinance but the contract of lease between plaintiff and defendant.

Wherefore, the decision appealed from is affirmed. Costs against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

Judgment affirmed.

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