

**TIU PO, GERARDO LEDONIO III AND EUSEBIO S. MILLAR,
PETITIONERS, VS. HON. PEDRO JL. BAUTISTA, IN HIS CAPACITY AS
DISTRICT JUDGE PRESIDING BRANCH III, CFI OF RIZAL, PASAY CITY
AND...**

G.R. No. L-55514. March 17, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Poised for resolution in this Petition for Certiorari with Preliminary Injunction is the sole issue of whether or not petitioners' claim for moral, actual, compensatory and exemplary damages, together with attorney's fees and costs, constitutes a compulsory counterclaim.

Private respondent, Juan Pambuan, Jr., filed a Complaint for Reconveyance and Damages of approximately P400,000.00 against petitioners before the Court of First Instance of Rizal, Pasay City (Civil Case No. 5023-P) for an alleged wrongful sale at public auction of a certain real property. Petitioners presented their Answer with a counter-claim, on account of the "malicious and unfounded action," for moral damages in the amount of P600,000.00; actual and compensatory damages of P100,000.00; exemplary damages of P50,000.00; attorney's fees of P30,000.00, plus P200.00 per appearance of counsel as representation and travelling expenses.

On the same day that they filed their Answer, petitioners filed an ex-parte Motion for exemption from payment of legal fees on their counterclaim alleging that it was compulsory in nature and that under section 5(a), Rule 141, only a permissive counterclaim is subject to payment of legal fees.

Since the Branch Clerk of Court required petitioners to deposit the amount of P1,410.00 pending resolution by the Court, petitioners complied subject to refund. That was on March 15, 1976. Petitioners' Motion remained unresolved notwithstanding reiterations made on May 5, 1978, January 12, 1979 and on August 20, 1979. Eventually, on December 28, 1979, respondent Judge denied petitioners' Motion for refund on the ground that petitioners' counterclaim is permissive and not compulsory. The reconsideration prayed for by petitioners was denied by respondent Judge on August 26, 1980. It is these two Orders that are assailed in this Petition, to which we gave due course on February 2, 1981.

Under section 4, Rule 9, a counterclaim is compulsory in nature 1) if it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; 2) if it does not require for its adjudication the presence of third parties over whom the Court cannot acquire jurisdiction; and 3) if the Court has jurisdiction to entertain the claim. A compulsory counterclaim is barred if not set up. Conversely, a counterclaim is permissive where it has no necessary connection with the transaction or occurrence that is the subject matter of the opposing party's claim, or even where there is such connection, the Court has no jurisdiction to entertain the claim, or if it requires for its adjudication the presence of third persons over whom the Court cannot acquire jurisdiction.

Petitioners' counterclaim for damages fulfills the necessary requisites of a compulsory counterclaim. They are damages claimed to have been suffered by petitioners as a consequence of the action filed against them. They have to be pleaded in the same action, otherwise, petitioners would be precluded by the judgment from invoking the same in an independent action. The pronouncement in *Papa vs. Banaag*,^[1] is in point:

"Compensatory moral and exemplary damages, allegedly suffered by the creditor in consequence of the debtor's action, are also compulsory counterclaim barred by the dismissal of the debtor's action. They cannot be claimed in a subsequent action by the creditor against the debtor."

Aside from the fact that petitioners' counterclaim for damages cannot be the subject of an independent action, it is the same evidence that sustains petitioners' counterclaim that will refute private respondent's own claim for damages. This is an additional factor that characterizes petitioners' counterclaim as compulsory.

"Defendants' counterclaim is compulsory, not only because the same evidence to sustain it will also refute the cause or causes of action alleged in plaintiff's complaint, but also because from its very nature, it is obvious that the same cannot remain pending for independent adjudication by the court. (Section 2, Rule 17; *Lim Tanhu vs. Ramolete*, No. L-40098, August 29, 1975, 66 SCRA 426)."

In respect of attorney's fees, it should also be held that where a claim therefor arises out of the filing of the complaint they, too, should be considered as in the nature of a compulsory counterclaim. They should be pleaded or prayed for in the answer to the complaint in order to be recoverable, otherwise, they would be barred.

WHEREFORE, the challenged Orders of December 28, 1979 and August 26, 1980 are hereby set aside; the counterclaim contained in petitioners' Answer is hereby declared a compulsory counterclaim; and respondent Judge is hereby directed to order the refund to petitioners of the amount of P1,410.00, which they were compelled to pay on their compulsory counterclaim.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] 17 SCRA 1081 (1966).

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