

**NEVILLE Y. LAMIS ENTS. AND/OR NEVILLE Y. LAMIS, PETITIONERS,
VS. HON. ALFREDO J. LAGAMON, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF DAVAO, BRANCH III, AND SANTIAGO MANINGO, RES...**

G.R. No. L-57250. October 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal by certiorari to annul the order of the respondent judge, dated April 2, 1981, which denied a motion to dismiss Civil Case No. 1395 of the Court of First Instance of Davao at Tagum.

Santiago Maningo in a complaint dated November 3, 1981, sued Neville Y. Lamis Enterprises and Neville Lamis for sums of money in the above-mentioned civil case under the following causes of action:

"FIRST CAUSE OF ACTION

I

"That as First Cause of Action against the de-fendants, it is hereby averred, that sometimes on January 26, 1979, the defendants obtained a loan from the plaintiff in the sum of FIFTY FIVE THOUSAND (P55,000.00) PESOS payable on or before February 28, 1979 at 14% interest per annum;

II

"That said loan, now overdue, is evidenced by a Promissory Note signed by the defendant Neville Y. Lamis Enterprises through its proprietor and General Manager Neville Y. Lamis, copy of which is hereto attached as Annex "A" and form part of this complaint, the substance and/or content of said note are hereby quoted as follows:

'PROMISSORY NOTE

January 26, 1979

'For value received, on or before February 28, 1979, Neville Y. Lamis Enterprises of Hi-way, Villa Consuelo Subdivision, General Santos City, promise to pay the sum of Fifty Five Thousand Pesos (P55,000.00) Philippine Currency.

'Interest of 14% per annum will be charged on delayed payment and twenty five (25%) of the amount due as attorney's fees and expenses of collection in the event of judicial collection.

'In case of litigation, jurisdiction shall be vested in the Court of Davao City.

NEVILLE Y. LAMIS ENTS.

By: (Sgd.) NEVILLE Y. LAMIS

Proprietor/General Manager'

III

"That the defendants have not paid said loan nor any part thereof, despite plaintiff's demand for pay-ment;

IV

"That for having purposely failed to pay the said loan, the defendants are now liable to plaintiff for the payment of interest and attorney's fees which, as per computation, it is already P11,550.00 for and as interest and P20,625.00 for attorney's fees;

"SECOND CAUSE OF ACTION**I**

"That as second cause of action against the defen-dant, it is hereby averred, that sometimes on January 29, 1979, defendant Neville Y. Lamis Enterprises, re-presented by its proprietor and General Manager Neville Y. Lamis, had, by way of Chattel Mortgage acquired from the plaintiff a certain personal property worth P200,000.00 on installment basis hereinafter described as follows:

'One (1) unit:

'Komatsu Crawler Tractor D8CA-12 with Cummins Engine NH-220C10168N12521 Chassis No. D8OA-9659 complete with Hydraulic angle Dozer with Towing Winch Carco No. 21568. UNIT IN GOOD OPERAT-ING CONDITION;'

II

"That the above-described properties had already been delivered to the defendant, subject however to the terms and conditions as provided for under the Chattel Mortgage contract, the pertinent portion of which reads as follows:

'For value received, I/we jointly and se-verally promise to pay to the order of Santiago Maningo at its office, the principal sum of Two Hundred Thousand, Philippine Currency with interest at the rate stipulated hereinbelow, in installment basis as follows:

P120,000.00 - February 16, 1979

P 80,000.00 - March 16, 1979'

Hereto attached as Annex "B" and form part hereof is the xerox copy of the Chattel Mortgage Contract cover-ing said properties;

III

"That until recently, and despite the lapse of the period stated in the Chattel Mortgage contract consisting of two installments, no single payment and/or installment having been made by the defendants to the prejudice and great damage on the part of the plaintiff;

IV

"That for having purposely failed to pay a single payment and/or installments on the amount due that defendants are now liable to the penalty of P10.00 for every month or fraction thereof, that an installment remains overdue, in which case, as per computation under the penalty clause, of the Chattel Mortgage Contract, the penalty of P500.00 computed as of September 30, 1980, can now be charged and collected from the defendant;

V

"That for having purposely failed to pay a single installment and/or payment thereof, the defendants are now liable to the plaintiff for damages in the form of interest and attorney's fees equivalent to 14% and 25% respectively, in which case, as per computation under the Chattel Mortgage Contract, the interest of P45,661.00 computed as of September 30, 1980 can now be charged and collected from the defendant plus another amount of P50,000.00 for and as attorney's fees;

"THIRD CAUSE OF ACTION

"Plaintiff does hereby reproduces and incorporate as part hereof, all the allegations stated under the first and second cause of action in this complaint, and thus respectively aver:

I

"That as a legal consequence of the Promissory Note and the Chattel Mortgage Contract the defendants had made and entered into with the plaintiff as pro-misee and/or as mortgagee thereof, there a certain right is created in favor of the plaintiff, the breach thereof, either through the manipulation of legal ma-neuvers or through any other means by the defend-ants purposely to evade payments of a certain obli-gations, which incidentally, is exactly, what the defendants had done here, there entitles the plain-tiff for damages under the provision of Article 19 of the New Civil Code, which says:

'Every person must, in the exercise of his rights, and in the performance thereof, give everyone his due, and observe honesty and good faith.'

II

"That on August 16, 1979, that is several months after the defendants had failed to pay their obligation with the plaintiff, to the latter's surprise, the defend-ants after having received several demands from the plaintiff, through counsel, in clear abuse of their rights under the provisions of the Article above-mentioned and basically, for a certain purpose to evade the fulfillment of their obligations with the plaintiff, had maliciously filed a groundless suit in the Court of First Instance of Rizal, Branch XXV thereof, for specific performance against the plain-tiff;

III

"That actually, said action for Specific per-formance was filed in bad faith and basically to evade and/or delay the payments of their obligation with the plaintiff. It was made for no other purpose except to defeat the rights of the plaintiff under the law;

IV

"That with the filing of the defendant's most ma-licious complaint against the plaintiff, the latter had suffered mental anguish, fright, anxieties and cer-tainly such wounded feeling, where the amount of P200,000.00 had

been asked and prayed for to com-pensate the plaintiff for his moral damages;

V

"That with the filing of the defendant's most ma-licious complaint against the plaintiff, there an abuse of a right had been committed by the defendants, in which case, as a corrective measure against them, the amount of P30,000.00 should be imposed by way of example or correction for the public good;

"x x x."

The suit mentioned in par. II of Maningo's Third Cause of Action (supra) was filed by Neville Lamis Ents. against Santiago Maningo in the Court of First Instance of Rizal (Civil Case No. 35199) by means of a complaint dated November 16, 1979, alleging the following causes of action:

"FIRST CAUSE OF ACTION

"1. That plaintiff is a single proprietorship firm duly established and existing under the laws of the Philippines with principal office address at 8 Fairlane Street, Fairlane Subdivision, Marikina, Metro Manila; and defendant is of legal age, Filipino, married, and with residence address at 29 Palm Drive, Bajada, Da-vao City, where summons may be served;

"2. That on January 27, 1979 defendant and plain-tiff executed a memorandum of agreement whereby de-fendant shall specifically advance unto plaintiff for the latter's logging operations with ETCO TIMBER COR-PORATION at General Santos City which corporation, the proprietor of plaintiff's firm, NEVILLE Y. LAMIS is now President likewise thereof, the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) payable as follows:

'a) IMMEDIATE; UPON SIGNING OF THIS MEMO OF AGREEMENT. . . . P50,000.00;

and

'b) TO BE RELEASED ONE WEEK FROM DATE HEREOF. P50,000.00

/Par. A-1, (a) & (b)/.'

copy of which memorandum of agreement is herewith attached as Annex "A" hereof;

"3. That to the aforesaid conditions defendant only complied and released the sum of P50,000 upon the signing of the agreement and failed to release the balance of P50,000 unto plaintiff within one week from date of the memorandum of agreement in spite of the latter's repeated calls and demands for the release of the same (copy of one of which demands is herein at-tached as Annex "B" hereof; and defendant refused and still refuses to release the said amount up to the present to the prejudice of the plaintiff's logging ope-ration and productions;

"4. That the performance of aforesaid obligation is now long overdue and defendant just simply ignores the same;

"SECOND CAUSE OF ACTION

"1. Plaintiff reproduces herein the allegations in paragraph 1 of the First Cause of Action;

"2. That under the same memorandum of agree-ment in paragraph A No. 2 (a) thereof defendant have covenanted himself unto plaintiff to deliver one (1) unit of 'D8 OA-12 Komatsu Bulldozer with winch in good operating condition, for a value of P200,000.00;

"3. That the bulldozer delivered however to the defendant by the plaintiff was one outside of the

specifications covenanted by the parties as it was later found out by plaintiff after defendant's mechanic have dismantled the same for repairs before operation, that the unit was not D80A-12 but an outmoded model of Kumatsu Bulldozer D80A-8 which is much lower in power than the D80A-12 originally contracted hence, defendant evieted his warranty under the said memo agreement of 'GOOD OPERATING CONDITION' and 'D80-A' to the great prejudice of plaintiff;

"4. That the actual value of the tractor model delivered by defendant to plaintiff is currently tagged at only between P120,000 to P150,000 at well established outlets thereof and not to reach P200,000 or even P170,000 as valued by defendant.

"THIRD CAUSE OF ACTION

"1. That plaintiff reproduces the allegation of paragraph 1 of the First Cause of Action to form an integral part hereof;

"2. That under the same memorandum of agreement, aforesaid defendant further failed to deliver unto plaintiff the 'JH-65 Payloader with log-grapple, complete and in good operating condition one week after date of said contract,' in open defiance of paragraph A No. 2 (b) hereof, the pertinent provision of which is herewith reproduced to wit:

'2. To be released by SANTIAGO MANINGO to N. Y. LAMIS ENTS./ETCO TIMBER CORP. operations x x x

'b. JH-65 Payloader with log-grapple complete and in good operating condition, after one (1) week hereof x x x.'

"3. That the performance of aforesaid obligation by defendant has been long overdue and in spite of repeated calls and demands by plaintiff of its delivery defendant refused and still refuses to deliver the same in violation of the covenant and to the great prejudice and damage of the plaintiff;

"FOURTH CAUSE OF ACTION

"1. That plaintiff reproduces all the allegations contained in paragraph 1 of the First Cause of Action to form likewise an integral part hereof;

"2. That by reason of the non-performance of defendant, plaintiff suffered actual financial losses, aside from loss of business good will in its failure to ship and comply with the terms of the agreement between itself thru ETCO TIMBER CORP. and their Japanese buyer, MITSUI & CO., LTD. of Tokyo, Japan under which plaintiff having been assured of the compliance of defendant's covenant accepted to supply logs to MITSUI & CO., LTD. in the volume of about 2,000 cubic meters equivalent to U.S. \$200,000 or approximately equivalent to P1,460,000 under Mitsui Foreign Letter of Credit No. G/HK780014 as opened on 18th of November 1978 thru SUMITOMO BANK, LTD. 8 Queen's Road Central, Hongkong and coursed thru Equitable Banking Corporation under their Reference No. O.B. - L.C. 78/893 as amended to expire on February 28, 1979 copy of which L/C and extension are hereby attached as Annexes "C" and "C-1" hereof of which defendant has the full knowledge thereof;

"FIFTH CAUSE OF ACTION

"1. That plaintiff reproduces all the allegations contained in paragraph 1 of the First Cause of Action to form an integral part hereof;

"2. That by reason of the non-performance and breach of defendant's covenant plaintiff suffered further losses in the repairs of the unit maliciously misrepresented to by defendant which amount is no less than P6,000 for labor and parts, and further suffered a great period of time loss as caused by the non-operating condition of the unit at the time of delivery thereof and several months thereafter;

"SIXTH CAUSE OF ACTION

"1. That plaintiff reproduces the allegation contained in paragraph 1 of the First Cause of Action and made an integral part hereof;

"2. That by reason further defendant's non-performance in the contract, plaintiff suffered moral damages by the evident loss of its credit standing and commitments as well as mental anxiety and embarrassment to its creditors and suppliers in the equivalent amount of not less than P30,000.00;

"3. That the acts of defendant merits an imposition of exemplary damages which the plaintiff asks this Honorable Court to be fixed at P20,000.00;

"4. That to enforce its rights the plaintiff has availed of the legal consultations with special luminaries in Manila, to which in representation thereof, it has spent no less than P3,000.00;

"SEVENTH CAUSE OF ACTION

"1. That plaintiff reproduces the allegation contained in paragraph 1 of the First Cause of Action as integral part hereof;

"2. That by reason of the saturated misrepresentations made by defendant and with the hope in view that defendant may be able to comply with his obligations, should proper commercial documentation in good faith are executed, plaintiff herein unhesitatingly heeded to the requirement of defendant and executed a promissory note for P55,000.00 inclusive of P5,000 usurious interest thereon for a period of 30 days, issued on January 26, 1979 to become due on February 28, 1979, and delivered to defendant on January 27, 1979 to cover the release of the first obligation of cash advances of defendant; which promissory note is merely a guarantee of the payment unto defendant should he be able to comply with his contractual obligations, copy of the same is herewith attached as Annex "D" hereof;

"3. That aside from the aforesaid promissory note defendant still required plaintiff to further cover the said advance with post dated checks of the plaintiff which the latter issued originally with its Metro Bank Davao Account (Magsaysay Branch);

"4. That sometime in May 1979, defendant visited plaintiff at their office in General Santos City renewing its promise to deliver very soon the JH-65 Payloader and P50,000 balance of the memo agreement dated January 27, 1979, provided plaintiff in consideration thereof shall renew its checks covering the transaction to enable him to produce the cash needed, to which plaintiff was again deceived by defendant in issuing the following checks in guarantee of the P50,000 first advanced by him:

RCBC Main Office Account No. 9366-2

1. Check No. 6923588 - P60,000 - July 31, 1979;

2. Check No. 6923589 - P10,000 - July 31, 1979.

All of which checks are now in the possession of defendant;

"5. That defendant had the fullest of knowledge that the performance of payment of plaintiff's afore-said checks were all dependent upon his compliance of the original contract of January 27, 1979;

"6. That the collection of payment made by defendant unto plaintiff is obviously showing of his 'loan shark' mentality of charging a total sum of P20,000 interest charges for a total period of just over four months of maturity date on the P50,000 originally released by him pursuant to the contract in open defiance of usury laws;

"EIGHT CAUSE OF ACTION

"1. That plaintiff reproduces the allegation of paragraph 1 of the First Cause of Action as part here-of;

"2. That by reason further of the continued mis-representations of defendant for his further compliance of their original contract subject hereof, sometime in June 1979, defendant renewed his prior checks of guarantee in good faith and issued the following checks amounting to a total of P170,000 in favor of defendant to wit: a) RCBC Check No. 6923586 dated July 2, 1979 for P100,000 and b) RCBC Check No. 6923587 dated July 9, 1979 for P70,000; which checks are all in the possession of defendant;

"3. That the issuance of checks were all premised on the guarantee that defendant shall already comply very soon his promise to deliver the P50,000 cash ad-vance balance subject of the contract and the JH-65 Payloader likewise covered by the same in order for plaintiff to comply with its log commitments to its buyers including defendant himself;

"4. That defendant however continuously failed to comply with his contractual obligations pursuant to the subject memorandum of agreement for which reason the defendant has no right to enforce collection by virtue of aforesaid checks against plaintiff as by the default of defendant himself as well as misrepresentations and misdelivery of the required units the obligation of plaintiff did not expire under the same contract;

"FACTS COMMON TO ALL CAUSES OF ACTION ABOVE-MENTIONED

"1. Plaintiff reproduces the allegation in paragraph 1 of the complaint as integral part hereof;

"2. That plaintiff is willing to perform its part of the obligation contained in subject memorandum of agreement between plaintiff and defendant dated January 27, 1979 provided full compliance by defendant of his preceding obligations as raised is properly enforced by this Honorable Court and provided further that the prices of logs stipulated therein to be sold to defendant shall indispensably be adjusted to conform with the present local current market price;

x x x."

The memorandum of agreement in the Lamis complaint reads as follows:

"MEMORANDUM OF AGREEMENT

"A. TO BE PERFORMED BY SANTIAGO MANINGO:

"1. To be advanced by SANTIAGO MANINGO to N. Y. LAMIS ENTS./ETCO TIMBER operations:

a) Immediate, upon signing of this memo of agreement . . . P 50,000.00

b) To be released one (1) week from date hereof. 50,000.00

T O T A L P100,000.00

"2. To be released by SANTIAGO MANINGO to N. Y. LAMIS ENTS./ETCO TIMBER operations:

a) D80 A-12 Komatsu Bulldozer with winch,

good operating condition, immediate,

Value. P200,000.00

b) JH-65 Payloader with long grapple,

complete and in good operating

condition, after one (1) week hereof.

Value. P180,000.00

"B. TO BE PERFORMED BY NEVILLE Y. LAMIS ENTS. (SCHEDULE OF RE-PAYMENTS)

"1. AFTER MITSUI PARTIAL EXPORT ON OR ABOUT FIRST WEEK FEBRUARY, 1979 FOR 700 CU. M.:

a) Partial payment of cash advance. P 55,000.00

b) Down payment on D80A-12 tractor. 120,000.00

T o t a l. P175,000.00

"2. AFTER LOCAL LOG SHIPMENT WITH SARMIENTO ON OR ABOUT LAST WEEK FEBRUARY, 1979 for 1,000 CU. M.:

a) Full payment of cash advance. P 55,000.00

b) Full payment of D80A-12 tractor. 80,000.00

T o t a l. P135,000.00

"3. AFTER MITSUI FULL BALANCE REPORT SHIPMENT ON OR ABOUT END OF MARCH, 1979 FOR 1,200 CU. M.:

Full payment of JH 65 pay-loader/grapple. . . . P180,000.00

WE AGREE:

(Sgd.) SANTIAGO MANINGO

"ADDENDUM: SHOULD THE EXPECTED EXPORT SHIPMENT/S WITH MITSUI & CO., LTD. FAIL, SUBJECT LOGS OF N. Y. LAMIS ENTS./ETCO TIMBER CORP. SHALL BE PURCHASED BY L. S. SARMIENTO INDS. THRU SANTIAGO MANINGO AT THE CURRENT PRICE OF P350.00/CU. M. FOR EXPORTABLE, P270/CU. M. FOR LSQ GRADE & P170.00/CU. M. FOR SAWMILL GRADE, ALL PRICES F. O. B. VESSEL.

NEVILLE Y. LAMIS ENTS.

By:

(Sgd.) NEVILLE Y. LAMIS

Proprietor/Gen. Manager

Davao City, Philippines, January 27, 1979."

By motion dated February 18, 1981, which the defendant filed in Civil Case No. 1395, the dismissal of the complaint was sought on the following grounds:

"(1) THAT THE SUBJECT IS IN 'LIS PENDENS' AND/OR 'MULTIPLICITY OF SUIT' OF A PRIOR AND EXISTING CIVIL CASE NO. 35199 ENTITLED 'NEVILLE Y. LAMIS ENTS. PLAINTIFF VERSUS SANTIAGO MANINGO, DEFENDANT, BEFORE CFI PASIG, BRANCH XXV' FILED ON NOVEMBER 16, 1979.

"(2) THAT VENUE IN THE HEREIN CASE IS RESPECTFULLY SUBMITTED TO BE IMPROPERLY LAID."

On the question of venue it is alleged that the proper venue for Civil Case No. 1395 should be Davao City where the plaintiff resides and as stipulated in the promissory note dated February 26, 1979 and in the chattel mortgage dated February 27, 1979. However, the respondent judge found that Maningo has "not only legal residence but also physical and actual residence in Busaon, Tagum, Davao" and We are not inclined to disturb this finding. Anent the claim that Davao City had been stipulated as the venue, suffice it to say that a stipulation as to venue does not preclude the filing of suits in the residence of plaintiff or defendant under Section 2(b), Rule 4, Rules of Court, in the absence of qualifying or restrictive words in the agreement which would indicate that the place named is the only venue agreed upon by the parties. The stipulation did not deprive Maningo of his right to pursue remedy in the court specifically mentioned in Section 2 (b) of Rule 4, Rules of Court. *Renuntiatio non praesumitur.* (*Polytrade Corporation vs. Blanco*, No. L-27033, Oct. 31, 1969, 30 SCRA 187.)

However, We believe that the first ground invoked in the motion to dismiss is well-taken; the respondent judge should have dismissed Civil Case No. 1395 on that ground.

Rule 16, Sec. 1 of the Rules of Court provides that a motion to dismiss an action may be made, *inter alia*, on the ground that "there is another action pending between the same parties for the same cause."

It has been said that for this ground to be invoked "there must be, between the action under consideration and the other action, (1) identity of parties, or at least such as representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regard-less of which party is successful, amount to *res adjudicata* in the action under consideration." (1 Moran, Rules of Court, pp. 488--489 [1970].)

The petitioner contends that in so far as the complaint in Civil Case No. 1395 seeks to collect the P55,000 alleged loan, it should be dismissed on the ground of *litis pendencia* because there is another case on the same cause pending between them in the Court of First Instance of Rizal. And with respect to the claim for P200,000, the same can not be set up in the present action on the ground of multiplicity of suits since Santiago Maningo's claim under the deed of chattel mortgage (over the tractor) partook of a compulsory counterclaim which not having been set up in Civil Case No. 35199 was forever barred under Sec. 4, Rule 9 of the Rules of Court.

The private respondent, on the other hand, states that although the causes of action in Civil Case No. 1395 arose from the Memo-randum Agreement sued upon in Civil Case No. 35199, the respective causes of action in the two cases are distinct in nature. He claims that Civil Case No. 35199 is basically for the performance of certain supposedly valid obligations whereas Civil Case No. 1395 is prin-cipally for collection of over due accounts. He also argues that on the assumption that the petitioner succeeds in compelling the private respondent to perform under the Memorandum Agreement, the private respondent would not be barred from seeking judgment in a separate case for the loan and the purchase price of the tractor. Finally, he maintains that the evidence to support the claims in the two actions are not the same.

We find the position of the petitioner tenable. The claim of the private respondent for P55,000 admittedly arose from the same transaction i.e., the Memorandum of Agreement sued upon in Civil Case No. 35199, notwithstanding that no mention of the agreement is made in Civil Case No. 1395. Moreover, it appears that in the answer with a counterclaim filed by the private res-pondent as the defendant in Civil Case No. 35199, the same amount of P55,000 was demanded of the plaintiff therein. Indubitably, in the resolution of the issues of facts and law in Civil Case No. 35199, relative to the claimed amount, the right of the private respondent thereto will have to be passed upon.

Similarly, the private respondent's claim for the purchase price of the tractor is barred. This claim should have

been set up in Civil Case No. 35199, of which, in one of the causes of action it was alleged that there was a misdelivery of tractor for which reason the plaintiff therein asks for the delivery of the tractor specified in the Memorandum Agreement.

In *Yu Lay v. Galmes* (40 Phil. 651 [1920]), a counterclaim is compulsory if (a) it matured before answer; (b) it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; (c) it does not require for its adjudication the presence of third persons of whom the court cannot acquire jurisdiction; and (d) it is within the jurisdiction of the court. And in *Carpena v. Manalo*, (L-13143, April 26, 1961, 1 SCRA 1060), it was held that where the claim is necessarily connected with or arise out of the transaction involved in the first case, the same claim is barred if not set up as a counterclaim in the previous case.

It is clear that in the light of the jurisprudence cited, the private respondent's claim for the purchase price of the tractor is in the nature of a compulsory counterclaim and to allow it in the present action will violate the principle against multiplicity of suits.

WHEREFORE, the petition is granted; the order of the respondent judge dated April 2, 1981 in Civil Case No. 1395 is hereby set aside and another one entered ordering the dismissal of said case. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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