

PHILIPPINE OIL DEVELOPMENT CO., INC., PLAINTIFF AND APPELLANT, VS. ADELMO GO, DEFENDANT AND APPELLEE.*G.R. No. L-4007. January 23, 1952*

Ponente: MONTEMAYOR, J.

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The facts in this case pertinent to the appeal may be stated as follows. Plaintiff-appellant Philippine Oil Development Co., Inc. is a domestic corporation organized under the laws of the Philippines, granted by the Government a lease for oil drilling purposes on a parcel of land containing approximately 14,000 hectares lying in the municipalities of Medellin and Daanbantayan, Province of Cebu. Plaintiff-appellant in the course of its oil drilling operation had built a camp in the barrio of Dalingding, municipality of Medellin. Said camp is in the interior and is accessible from the provincial road between the towns of Bogo and Daanbantayan by means of a road over and across the property of the defendant Adelmo Go, and which road plaintiff-appellant had been using for some time prior to 1948. On November 1, 1948, plaintiff-appellant filed a complaint in the Court of First Instance of Cebu stating its right of condemnation, particularly of the road in question for the reason that the use of the right of way could not be acquired by agreement with the defendant, at the same time alleging that defendant Go was threatening to close said road to prevent the use thereof by the plaintiff-appellant, and asking that after estimating provisionally the value of the property in question and authorizing its deposit by the plaintiff with the provincial treasurer of Cebu, an order of condemnation be issued, and a writ of preliminary injunction issued, directed to the defendant, prohibiting him from closing the road.

The defendant Go instead of presenting in a motion to dismiss or for other appropriate relief all of his objections and defenses to the right of the plaintiff to take his property, filed an answer which, without denying or objecting to, the right of plaintiff to condemn the property occupied by the road, alleged as an affirmative defense that since November, 1946 and without his permission, plaintiff had been using said road; that on April 21, 1948 and September of the same year, he (the defendant) and his attorney had written letters of demand to the plaintiff for the collection of the rentals in arrears for the use of the right of way at the rate of P0.10 per sq. m. which the plaintiff refused to pay; and that during the enemy occupation he (the defendant) repaired the said road at the cost of P1,000.00, but that after liberation when the plaintiff resumed the use of said road, it damaged it because of the constant passage of plaintiff's heavy machineries and equipments. As a counterclaim defendant filed a claim of P3,519 for the use of the road by the plaintiff from November, 1946 to October, 1948 plus P1,000.00 as damages for the destruction of said road by plaintiff's use thereof.

Upon motion filed by plaintiff on November 25, 1948, because of defendant's failure to object to plaintiff's right to condemn the property in question, the trial court by order dated February 25, 1949, declared the plaintiff to have the right to expropriate the road in question upon payment of just compensation and ordered the parties to submit the names of three competent and disinterested persons to act as commissioners.

On February 25, 1949, the trial court on motion of the defendant declared the plaintiff-appellant in default because of his failure to answer the former's counterclaim, and ordered the defendant to present in due time

evidence in support of his counterclaim. Plaintiff then moved for the reconsideration of said order of default and on April 8, 1949, the trial court denied said motion for reconsideration. Plaintiff-appellant is now appealing from said order of default as well as the order denying its motion for reconsideration.

Plaintiff-appellant maintains that it was under no obligation to answer the counterclaim filed by the defendant for the reason that in condemnation proceedings, such counterclaim by a defendant-owner of property sought to be expropriated, is neither required nor contemplated by law. The only pleading on the part of a defendant-owner, authorized under Rule 69, Section 4, is a single motion to dismiss or for other appropriate relief. We quote said section:

"SEC. 4. Defenses and objections.—Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service."

On the other hand, the trial court applied the Rules of Court about pleadings in ordinary civil actions, particularly those to the effect that plaintiff must answer a counterclaim in the same way that a defendant must answer a complaint, otherwise he would be declared in default (Section 7, Rule 10 and Section 6, Rule 35).

Considering the importance and the effect of a ruling on the matter, especially since as far as we are aware, there are no Philippine cases deciding this particular legal point, we have given it much thought and made some research. As far as the just compensation which a plaintiff seeking to expropriate is required to pay, and which just compensation may include damages suffered by the owner of the property to be condemned since the initiation of the condemnation proceedings, the commissioners appointed by the court are authorized to ascertain by means of evidence presented before them as well as the result of their ocular inspection of the premises. For all this claim for just compensation and damages the defendant-owner need not file any answer or counterclaim. Even without an answer or counterclaim he is always free to prove them before the commissioners. That is what Rule 69, Section 4 provides.

But what about damages caused before the commencement of the suit for expropriation? If as some American authorities hold such past damages have to be claimed in a separate suit, distinct from the condemnation proceedings, then the counterclaim filed by defendant in the present case for said past damages was out of place and plaintiff may not be declared in default for not answering the same. However, we believe that the better view and wiser rule is that all claims for compensation based on damages caused before the commencement of the suit for condemnation may be included in the condemnation proceedings themselves, otherwise the filing of separate suits for said past damages, especially by numerous real property owners, would result in a great multiplicity of suits. Both parties, appellant and appellee herein, agree to this principle and in their briefs they both cite the following authority:

"Where without the owner's consent, the condemnor uses the land prior to the institution of the condemnation proceedings, damages for such use may be recovered in the condemnation proceeding's." (29 C. J. S. p. 1024).

It is not uncommon for an entity, specially an instrumentality of the Government seeking condemnation of lands and properties to enter the same to make the necessary surveys and enter into negotiations with the owners, hoping and confident that it could arrive at an agreement with them about just compensation for their properties. It may even proceed to actually occupy said properties and commence the improvements necessary and contemplated for the public use thereof. Later however, it turns out that agreement with the owners is difficult, if not impossible and so it is obliged to commence expropriation proceedings. There is no valid reason why the

damages caused by the prior use and occupation of the property should not be included in the condemnation proceedings just because they were caused a few weeks or months or even a year before the actual filing of the suit. There is no benefit or profit that we could see in compelling the property owners to file separate actions for said damages, independent of the main condemnation proceedings.

Holding as we do that the compensation and damages contained in defendant-appellee's counterclaim can be passed upon and awarded in the expropriation proceedings in question, we also find and hold that Rule 69, Section 4, of the Rules of Court, applies to the defendant-appellee in the sense that he is not expected to file an answer including a counterclaim in the Court of First Instance of Cebu. By the same token, plaintiff-appellant was not required or expected to answer defendant's counterclaim; a pleading not contemplated by the law. Consequently, he should not have been declared in default in connection therewith.

The order of the trial court declaring plaintiff-appellant in default and denying his motion for reconsideration are hereby set aside. The case is hereby ordered returned to the trial court for further proceedings. No pronouncement as to costs. So ordered.

Paras, C. J., Pablo, Bengzon, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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