

**CONSUELO V. CALO, DOING BUSINESS UNDER THE TRADE NAME
CVC LUMBER INDUSTRIES, ASSISTED BY MARCOS M. CALO,
PLAINTIFFS-APPELLANTS, VS. AJAX INTERNATIONAL
INCORPORATED, DEFENDANT-A...**

G.R. No. L-22485. March 13, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Sometime on May 7, 1959, plaintiff-appellant Calo ordered from defendant-appellee Ajax International, Inc., 1,200 ft. of John Shaw wire rope at P2.85 per foot. The transaction was evidenced by Charge Order No. 37071, for P3,420.00.

According to plaintiff Calo, when the wire rope was delivered to Butuan City, the same was found short of 300 ft. Plaintiff then wrote two letters to defendant asking for either completion of delivery or account adjustment of the alleged undelivered 300 ft. of wire rope.

On November 20, 1961, a complaint docketed as Civil Case No. IV-93062 was filed in the Municipal Court of Manila by one Adolfo Benavides who claimed to have acquired the outstanding credit account of Calo from defendant Ajax International, Inc. Charge Order No. 37071 was among those included in the assigned account. Subsequently, a judgment by default was entered, and a writ of execution issued, against plaintiff Calo. The latter resorted to this Court on a petition for certiorari, prohibition and mandamus.[1] We set aside the judgment of default and writ of execution issued against plaintiff Calo and remanded the case for further proceedings.

On January 23, 1962, plaintiff Calo, assisted by her husband, Marcos Calo, filed in the Court of First Instance of Agusan a complaint against defendant asking (1) that the latter effect complete delivery of Charge Order No. 37071 or that she be relieved from paying P855.00 and (2) that the latter indemnify her for P12,000 as attorney's fees, damages and expenses of litigation.[2] The case was docketed as Civil Case No. 860.

Instead of filing an answer, defendant moved for the dismissal of Civil Case 860 on the ground, inter alia, that the subject thereof was involved and intimately related to that in Civil Case No. IV-93062 of the Municipal Court of Manila. The court a quo sustained the motion and dismissed the case.

Plaintiff-appellant moved for reconsideration and new trial. When this failed, she instituted the present appeal.

The dismissal of Civil Case No. 860 by the court a quo because of the pendency of Civil Case No. IV-93062 in the municipal court of Manila is predicated on the supposition that plaintiff's claim is a compulsory counter-claim that should be filed in the latter case. There is no question that it arises out of the same transaction which is the basis of the complaint in Civil Case No. IV-93062 and does not require the presence of third parties over whom the municipal court of Manila could not acquire jurisdiction.

However, plaintiff's claim is not a compulsory counterclaim in Civil Case No. IV-93062 for the simple reason

that the amount thereof exceeds the jurisdiction of the municipal court. The rule that a compulsory counterclaim not set up is barred, when applied to the municipal court, presupposes that the amount involved is within the said court's jurisdiction. Otherwise, as this Court had already noted in *Yu Lay v. Galmes*,^[3] we would come to the absurd situation where a claim must be filed with the municipal court which it is prohibited from taking cognizance of, being beyond its jurisdiction.

Besides, the reason underlying the rule, which is to settle all related controversies in one sitting only, does not obtain. For, even if the counterclaim in excess of the amount cognizable by the inferior court is set up, the defendant cannot obtain positive relief. The Rules allow this only for the defendant to prevent plaintiff from re-covering from him.^[4] This means that should the court find both plaintiff's complaint and defendant's counterclaim (for an amount exceeding said court's jurisdiction) meritorious, it will simply dismiss the complaint on the ground that defendant has a bigger credit. Since defendant still has to institute a separate action for the remaining balance of his counterclaim, the previous litigation did not really settle all related controversies.

Plaintiff Calo's claim of P12,000.00 not being a compulsory counterclaim in Civil Case No. VI-93062, it need not be filed there. The pendency then of said civil case could not be pleaded in abatement of Civil Case No. 860. Consequently, the lower court erred in dismissing plaintiff's complaint.

WHEREFORE, the order of dismissal appealed from is hereby reversed and the case remanded for further proceedings. Costs against appellee Ajax International, Inc.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] *Calo v. Aragon*, G.R. No. L-19356, Nov. 30, 1962.

[2] Record on Appeal, p. 4.

[3] 40 Phil. 651, at 662. See also Rule 5, Sec. 19, in connection with Rule 6, Section 8, of the Rules of Court.

[4] Rule 5, Section 5, Rules of court.

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