

SPOUSES LYDIA AND VIRGILIO MELITON, PETITIONERS, VS. COURT OF APPEALS AND NELIA A. ZIGA, REPRESENTED BY HER ATTORNEY-IN-FACT RAMON A. AREJOLA, RESPONDENTS.*G.R. No. 101883. December 11, 1992*

Ponente: REGALADO, J.

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In its judgment in CA-G.R. No. 25091[1] promulgated on August 9, 1991, respondent Court of Appeals annulled and set aside the orders dated February 22, 1991 and March 18, 1991 of the Regional Trial Court of Naga City, Branch 27, in Civil Case No. RTC 89-1942 thereof and ordered the dismissal of petitioner's complaint filed therein, hence this appeal by certiorari.

On June 22, 1988, private respondent Nelia Ziga, in her own behalf and as attorney-in-fact of Alex A. Ziga and Emma A. Ziga-Siy, filed a complaint, docketed as Civil Case No. RTC 88-1480 of the Regional Trial Court, Branch 27, Naga City,[2] against herein petitioner Lydia Meliton for rescission of a contract of lease over a parcel of land situated at Elias Angeles Street, Naga City. Alleged as grounds therefor were said petitioner's failure, as lessee, to deposit the one month rental and to pay the monthly rentals due; her construction of a concrete wall and roof on the site of a demolished house on the leased premises without the lessor's written consent; and her unauthorized sublease of the leased property to a third party.

On July 29, 1988, petitioner Lydia Meliton filed an answer to the complaint denying the material averments thereof and setting up three counterclaims for recovery of the value of her kitchenette constructed on the leased parcel of land and which was demolished by private respondent, in the amount of P34,000.00; the value of the improvements introduced in the kitchenette to beautify it, in the amount of P10,000.00, plus the value of the furniture and fixtures purchased for use in the kitchenette in the amount of P23,000.00; and moral damages in the amount of P20,000.00 aside from attorney's fees of P5,000.00 and P250.00 per court appearance, with litigation expenses in the amount of P1,000.00.[3]

On May 29, 1989, the trial court, on motion of private respondent contending that her cause of action had already become moot and academic by the expiration of the lease contract on February 7, 1989, dismissed the complaint. The counterclaims of petitioner Lydia Meliton were also dismissed for non-payment of the docket fees, ergo the trial court's holding that thereby it had not acquired jurisdiction over the same.[4]

On December 6, 1989, petitioners Lydia Meliton and Virgilio Meliton filed a complaint against private respondent for recovery of the same amounts involved and alleged in their counterclaims in Civil Case No. RTC 88-1480, which complaint was docketed as Civil Case No. RTC 89-1942[5] and likewise assigned to Branch 27 of the same trial court.

On February 15, 1991, private respondent filed a motion to dismiss the complaint on the ground that the cause of action therein was barred by prior judgment in Civil Case No. RTC 88-1480, the order of dismissal wherein was rendered on May 29, 1989.[6]

On February 22, 1991, the court below denied private respondent's motion to dismiss the complaint in Civil Case No. RTC 89-1942 on the ground that the dismissal of the petitioner's counterclaims in Civil Case No. RTC 88-1480 is not an adjudication on the merits as the court did not acquire jurisdiction over the counterclaims for failure of petitioner Lydia Meliton to pay the docket fees, hence the said dismissal does not constitute a bar to the filing of the later complaint.[7]

Private respondent's motion for reconsideration of the foregoing order was denied by the lower court for lack of merit in its order of March 18, 1991.[8] Dissatisfied therewith, private respondent filed a petition for certiorari with this Court. In our resolution dated April 29, 1991, we referred this case to the Court of Appeals for proper determination and disposition pursuant to Section 9, paragraph 1, of B.P. Blg. 129,[9] where it was docketed as CA-G.R. SP No. 25093.

In a decision promulgated on August 9, 1991, the Court Appeals granted the petition, the pertinent part of which reads:

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"The respondents' counterclaim against the petitioner in Civil Case No. RTC 88-1480 (Annex E, petition) is a compulsory counterclaim; it having (arisen) out of or being necessarily connected with the transaction or occurrence subject matter of the petitioner's complaint. The failure of the respondents to seek a reconsideration of the dismissal of their counterclaim or to take an appeal therefrom rendered the dismissal final. Such dismissal barred the prosecution of their counterclaim by another action (Section 4, Rule 9, Revised Rules of Court; *Javier vs. IAC*, 171 SCRA 605).

"The respondent Court, therefore, in issuing the orders complained of (Annexes G and I, petition), gravely abused its discretion amounting to lack of jurisdiction.

"WHEREFORE, the petition for certiorari is GRANTED. Accordingly, the orders complained of (Annexes G and I, petition) are annulled and set aside and the respondents' complaint in Civil Case No. RTC 89-1942 before the respondent Court, DISMISSED. Costs against the respondents, except the respondent Court." [10]

Petitioners are now before us, assailing the said judgment of the Court of Appeals and praying for the annulment thereof.

The present petition requires the resolution of two principal issues, to wit: (1) whether or not the counterclaims of petitioners are compulsory in nature; and (2) whether or not petitioners, having failed to seek reconsideration of or to take an appeal from the order of dismissal of their counterclaims, are already barred from asserting the same in another action.

1. Considering Section 4 of Rule 9 of the Rules of Court, a counterclaim is compulsory if (a) it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim; (b) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim.

It has been postulated that while a number of criteria have been advanced for the determination of whether the counterclaim is compulsory or permissive, the "one compelling test of compulsoriness" is the logical relationship between the claim alleged in the complaint and that in the counterclaim, that is, where conducting separate trials of the respective claims of the parties would entail a substantial duplication of effort and time, as where they involve many of the same factual and/or legal issues.

The phrase "logical relationship" is given meaning by the purpose of the rule which it was designed to implement. Thus, a counterclaim is logically related to the opposing party's claim where, as already stated, separate trials of

each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts. Where multiple claims involve many of the same factual issues, or where they are offshoots of the same basic controversy between the parties, fairness and considerations of convenience and of economy require that the counterclaimant be permitted to maintain his cause of action.[11]

In the aforesaid Civil Case No. 88-1480, all the requisites of a compulsory counterclaim are present. The counterclaims, as this term is now broadly defined, are logically related to the complaint. Private respondent's complaint was for rescission of the contract of lease due to petitioner Lydia Meliton's breach of her obligations under the said contract. On the other hand, petitioner's counter-claims were for damages for unlawful demolition of the improvements she introduced pursuant to her leasehold occupancy of the premises, as well as for the filing of that civil suit which is contended to be clearly unfounded.

Both the claims therein of petitioners and private respondent arose from the same contract of lease. The rights and obligations of the parties, as well as their potential liability for damages, emanated from the same contractual relation. Petitioners' right to claim damages for the unlawful demolition of the improvements they introduced on the land was based on their right of possession under the contract of lease which is precisely the very same contract sought to be rescinded by private respondent in her complaint. The two actions are but the consequences of the reciprocal obligations imposed by law upon and assumed by the parties under their aforesaid lease contract. That contract of lease pleaded by private respondent constitutes the foundation and basis relied on by both parties for recovery of their respective claims.

The relationship between petitioners' counterclaims and private respondent's complaint is substantially the same as that which exists between a complaint for recovery of land by the owner and the claim for improvements introduced therein by the possessor. As we have ruled, in actions for ejectment or for recovery of possession of real property, it is well settled that the defendant's claims for the value of the improvements on the property or necessary expenses for its preservation are required to be interposed in the same action as compulsory counterclaims. In such cases, it is the refusal of the defendant to vacate or surrender possession of the premises that serves as the vital link in the chain of facts and events, and which constitutes the transaction upon which the plaintiff bases his cause of action. It is likewise an "important part of the transaction constituting the subject matter of the counterclaim" of defendant for the value of the improvements or the necessary expenses incurred for the preservation of the property. They are offshoots of the same basic controversy between the parties, that is, the right of either to the possession of the property.[12]

On the foregoing considerations, respondent Court of Appeals correctly held that the counterclaims of petitioners are compulsory in nature.

2. Petitioners having alleged compulsory counterclaims, the next point of inquiry is whether or not petitioners are already barred from asserting said claims in a separate suit, the same having been dismissed the preceding one. The answer is in the negative.

It is indeed the rule, embodied in Section 4, Rule 9 of the Rules of Court, that a counterclaim not set up shall be barred 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 and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. However, said rule is not applicable to the case at bar.

Contrary to the claim of private respondent, it cannot be said that herein petitioners failed to duly interpose their causes of action as counterclaims in the previous action. Petitioners' claims were duly set up as counterclaims in the prior case but the same were dismissed by reason of non-payment of docket fees. The ruling of respondent Court of Appeals to the effect that the failure of petitioners to appeal or to move for reconsideration of the said

order of dismissal bars them from asserting their claims in another action cannot be upheld.

Firstly, where a compulsory counterclaim is made the subject of a separate suit, it may be abated upon a plea of *auter action pendant* or *litis pendentia* and/or dismissed on the ground of *res judicata*,^[13] depending on the stage or status of the other suit.

Both defenses are unavailing to private respondents. The present action cannot be dismissed either on the ground of *litis pendentia* since there is no other pending action between the same parties and for the same cause, nor on the ground of *res judicata*.

In order that a prior judgment will constitute a bar to a subsequent case, the following requisites must concur: (1) the judgment must be final; (2) the judgment must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the judgment must be on the merits; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.^[14]

The first case, Civil Case No. RTC 88-1480, was dismissed upon motion of private respondent, plaintiff therein, under Section 2 of Rule 17. Dismissal thereunder is without prejudice, except when otherwise stated in the motion to dismiss or when stated to be with prejudice in the order of the court.^[15] The order of dismissal of the first case was unqualified, hence without prejudice and, therefore, does not have the effect of an adjudication on the merits. On a parity of rationale, the same rule should apply to a counterclaim duly interposed therein and which is likewise dismissed but not on the merits thereof.

Moreover, in the same order of dismissal of the complaint, the counterclaims of herein petitioners were dismissed by reason of the fact that the court *quo* had not acquired jurisdiction over the same for non-payment of the docket fees. On that score, the said dismissal was also without prejudice, since a dismissal on the ground of lack of jurisdiction does not constitute *res judicata*,^[16] there having been no consideration and adjudication of the case on the merits.

The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissal action had not been commenced.^[17] The discontinuance of a case not on the merits does not bar another action on the same subject matter.^[18] Evidently, therefore, the prior dismissal of herein petitioners' counterclaims is not *res judicata* and will not bar the filing of another action based on the same causes of action.

Secondly, a reading of the order of dismissal will show that the trial court, in dismissing the complaint of private respondent, did not intend to prejudice the claims of petitioners by barring the subsequent judicial enforcement thereof. As stated therein, "(t)he court in dismissing the counterclaim(s) has taken into account the fact that a counterclaim partakes of the nature of a complaint and/or a cause of action against the plaintiffs."^[19] This is a clear indication, deducible by necessary implication, that the lower court was aware of the fact that petitioners could avail of the causes of action in said counterclaims in a subsequent independent suit based thereon and that there was no legal obstacle thereto. That this was the import and intendment of that statement in its order dismissing petitioners' counterclaims in Civil Case No. RTC 88-1480 was categorically confirmed by the very same court, wherein Civil Case No. RTC 89-1942 was also subsequently filed in its assailed orders denying private respondent's motion to dismiss the latter case on the ground of *res judicata*.

This is also concordant with the rule governing dismissal of actions by the plaintiff after the answer has been served as laid down in Rule 17 of the Rules of Court, which is summarized as follows: An action shall not be dismissed at the request of the plaintiff after the service of the answer, except by order of the court and upon such terms and conditions as the court deems proper. The trial court has the judicial discretion in ruling on a motion to

dismiss at the instance of the plaintiff. It has to decide whether the dismissal of the case should be allowed and if so, on what terms and conditions.[20]

In dismissing private respondent's complaint, the trial court could not but have reserved to petitioners, as a condition for such dismissal, the right to maintain a separate action for damages. Petitioners' claims for damages in the three counterclaims interposed in said case, although in the nature of compulsory counterclaims but in light of the aforesaid reservation in the dismissal order, are consequently independent causes of action which can be the subject of a separate action against private respondent.

An action for damages specifically applicable in a lesser-lessee relationship is authorized in Article 1659 of the Civil Code which provides that:

"Art. 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force."

Paragraph 3 of Article 1654 of the same Code requires that the lessor must "maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." [21] The aggrieved party has the alternative remedies, in case of contractual breach, of rescission with damages, or for damages only, "allowing the contract to remain in force."

The act of private respondent in demolishing the structures introduced by petitioners on the property leased and the improvements therein during the existence of the lease contract is a clear violation by her, as lessor, of her obligation mandated by paragraph 3, Article 1654 of the Civil Code. The said violation gave rise to a cause of action for damages in favor of herein petitioners.

Lastly, even assuming *arguendo* that the bar under the rule on compulsory counterclaims may be invoked, the peculiar circumstances of this case irresistibly and justifiedly warrant the relaxation of such rule.

The court *a quo* dismissed petitioners' counterclaims for non-payment of docket fees pursuant to our then ruling in *Manchester Development Corporation, et al. vs. Court of Appeals, et. al.*, [22] before its modification. The failure of petitioners to seek reconsideration of or to take an appeal from the order of dismissal of the counterclaim should not prejudice their right to file their claims in a separate action because they were thereby made to understand and believe that their counterclaims were merely permissive and could be the subject of a separate and independent action. Under the Rules, there is no need to pay docket fee for a compulsory counterclaim. [23] The ruling in *Manchester* applies specifically to permissive counterclaims only, thereby excluding compulsory counterclaims from its purview, [24] and that was the ruling of the court below to which the litigants therein submitted. Had the trial court correctly specified that petitioners' counterclaims were compulsory, petitioners could have objected to the dismissal sought by private respondent on the ground that said counterclaims could not remain pending for independent adjudication. [25]

Furthermore, under the *Manchester* doctrine, the defect cannot be cured by an amendment of the complaint or similar pleadings, much less the payment of the docket fee. Hence, only remedy left for the petitioners was to file a separate action for their claims and to pay the prescribed docket fees therein within the applicable and reglementary period, which is what they did in the case at bar in obedience and deference to the judicial mandate laid down in their case. At any rate, the ambivalent positions adopted by the lower court can be considered cured by what we have construed as effectively a reservation in its order of dismissal for the filing of a complaint based on the causes of action in the dismissed counterclaims.

This, then, is one case where it is necessary to heed the injunction that the rules of procedure are not to be applied

in rigid and technical sense. After all, rules of procedure are used only to help secure substantial justice. They cannot be applied to prevent the achievement of that goal. Form cannot and should not prevail over substance.[26] Absent a specific requirement for stringent application, the Rules of Court are to be liberally construed to the end that no party shall be deprived of his day in court on technicalities. The courts in our jurisdiction are tribunals both of law and equity. Hence, under the antecedents of this case, we are persuaded that even if only to approximate that desirable measure of justice we are sworn to dispense, this controversy should be resolved on the merits.

WHEREFORE, the questioned judgment of respondent Court of Appeals is hereby REVERSED and SET ASIDE. Civil Case No. RTC 89-1942 is hereby REINSTATED and the Regional Trial Court of Naga City, Branch 27, or wherever the case has been assigned, is directed to proceed with deliberate dispatch in the adjudication thereof.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

* The petition erroneously impleaded the presiding judge of the court a quo, hence the deletion of his name in the title of this case.

** The names of the members of the Seventeenth Division of respondent court have likewise been deleted herefrom for having been improperly included.

[1] Penned by Justice Pedro A. Ramirez, with the concurrence of Justices Fernando A. Santiago and Fermin A. Martin, Jr.

[2] Rollo, 14-15.

[3] Ibid., 16-21.

[4] Rollo, 22.

[5] Ibid., 23-27.

[6] Ibid., 12-15.

[7] Ibid., 33; per Judge Antonio N. Gerona.

[8] Ibid., 30.

[9] Rollo, CA-G.R. SP No. 25093, 32.

[10] Ibid., id., 41.

[11] National Marketing Corporation vs. Federation of United Namarco Distributors, Inc., 49 SCRA 238, 264 (1973).

[12] Id., citing Berses vs. Villanueva, 25 Phil. 473 (1913); Carpena, et al. vs. Manalo, et al., 1 SCRA 1060 (1961); Castro vs. Montes, et al., 107 Phil. 533 (1960) and other cases.

[13] Visayan Packing Corporation vs. Reparations Commission, et al., 155 SCRA 542 (1987).

[14] Filipinas Investment and Finance Corporation vs. Intermediate Appellate Court, et al., 179 SCRA 728 (1989); Sta. Monica Industrial and Development Corporation vs. Court of Appeals, et al., 189 SCRA 792 (1990); Suarez vs. Court of Appeals, et al., 193 SCRA 183 (1991).

[15] Vergara, et al. vs. Ocumen, et al., 114 SCRA 446 (1982).

[16] Tuhalla vs. De la Cruz, et al., 1 SCRA 742 (1961); Montinola, et al. vs. Barrido, et al., 114 Phil. 561 (1962).

[17] 46 Am. Jur., Judgment 646; Alona vs. Wing Sing Wo Co., 45 Hawaii 427, 368 P2d 879.

[18] Hays vs. Sturgill, 302 Ky 31, 19 SWD 2d 648, 164 ALR 868.

[19] Rollo, 22.

[20] Suarez vs. Court of Appeals, et al., supra.

[21] See also CMS Investment and Management Corporation, et al. vs. Intermediate Appellate Court, et al., 139 SCRA 75 (1985).

[22] 149 SCRA 562 (1987).

[23] Sec. 5, Rule 141, Rules of Court.

[24] Metals Engineering Resources Corporation vs. Court of Appeals, et al., 203 SCRA 273 (1991).

[25] Sec. 2, Rule 17, Rules of Court; Lim Tanhu, et al., vs. Ramolete, et al., 66 SCRA 425 (1975).

[26] Alonso vs. Villamor, 16 Phil. 315; (1910); Gotico vs. Leyte Chinese Chamber of Commerce, 136 SCRA 218 (1985); Visayan Packing Corporation vs. Reparations Commission, supra.

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