

**MOBIL OIL PHILIPPINES, INC. AND MOBIL PHILIPPINES, INC.,
PETITIONERS, VS. THE HON. COURT OF APPEALS, PETROLEUM
DISTRIBUTORS AND SERVICES CORPORATION AND CONRADO
LIMCACO, RESPOND...**

G.R. No. 103072. August 20, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Private respondent Conrado Limcaco and Petroleum Distributors and Services Corporation ("Distributors") operated a gasoline and service station under a dealership agreement with petitioner Mobil Oil Philippines, Inc. ("Mobil Oil"). Under their dealership agreement, private respondents were granted, and regularly availed of, credit accommodations for the purchase of petitioner Mobil Oil's petroleum products.

In the course of its transactions with Mobil Oil, Distributors noted various discrepancies of a substantial nature in the statements of account which Mobil Oil prepared. Distributors accordingly asked periodically for a reconciliation of its account from Mobil Oil. The business relationship between Mobil Oil and Limcaco and Distributors went back in time about seventeen (17) years.

Sometime in 1983, Mobil Oil and Caltex Philippines, Inc. ("Caltex Phils.") concluded negotiations for the purchase by the latter of the former's petroleum interests in the Philippines. On 5 August 1983, Mobil Oil informed Distributors that effective 1 September 1983, Caltex Phils. would take over Mobil Oil's Philippine business. Meanwhile, Mobil Philippines, Inc. ("Mobil Phil.") was organized and was designated as assignee of all trade account receivables of Mobil Oil.

As a result of Caltex Phils.' take-over, Distributors pressed Mobil Oil for an early reconciliation of its remaining outstanding accounts; Distributors wanted to start its relationship with Caltex Phils. with a clean slate. Despite a series of meetings and conferences, the parties were unable to reach a mutual acceptable settlement. They executed instead an agreement on 20 September 1983 containing the following stipulations, among others:

"The parties, Mr. CONRADO LIMCACO, for himself and/or Petroleum Distributors and Services Corporation and Mobil Oil Philippines, Inc. and Mobil Philippines, Inc., represented by DIETER FOCK, hereby agree as follows:

1. CONRADO LIMCACO accepts the amount of P310,738.30 as the tentative balance of his account with Mobil Oil Philippines, Inc.
2. MOBIL OIL PHILIPPINES, INC. undertakes, applying its best efforts, to present within a period of thirty (30) days, an updated statement of account showing Mr. Limcaco's balance as of closing of August 31, 1983 supported with appropriate documents. It is understood, however, that if such updated statement supported by appropriate documents is not presented to Mr. Limcaco or his duly authorized representative within said period of sixty (60) days (sic), the payment of P310,738.30 shall be considered final and full payment of all accounts of Petroleum Distributors & Services Corporation and/or Mr. Limcaco.

3. CONRADO LIMCACO hereby remits and Mobil Oil Philippines, Inc., hereby accepts the amount of P310,738.30 as payment on account in consideration of which Mobil returns to Mr. Limcaco the (following) checks of Petroleum Distributors & Services Corporation:

x x x x x x x x."[1]

(Underscoring supplied)

Mr. Limcaco paid the sum of P310,738.30 to Mobil Oil on the same date the agreement was executed.

On 7 December 1983, however, Mobil Oil and Mobil Phils. presented to Mr. Limcaco and Distributors what was said to be an updated reconciliation of accounts showing P363,859.63, due from private respondents, but without the corresponding supporting documents. In reply, private respondents stated that petitioners' failure to produce the appropriate supporting documents within the stipulated period operated as a contractual waiver of the latter's claim against the former. The payment of P310,738.30 on 20 September 1983 discharged in full all accounts due to petitioners. Thus, private respondents said, Mobil Oil and Mobil Phil. could no longer pursue any claim against Distributors or its president, Mr. Limcaco. Relations between the parties deteriorated rapidly.

Petitioners Mobil Oil and Mobil Phils. instituted a collection suit with prayer for preliminary attachment against private respondent Distributors and Conrado Limcaco, docketed as Civil Case No. 6023, on 29 December 1983, in the Regional Trial Court ("RTC") of Makati. Summons was, however, not served upon private respondents until after more than seven months or only on 27 June 1984.

In the meantime, another civil action between the same parties was pending before the RTC of Pasay. This civil suit was a petition for declaratory relief instituted by private respondent Distributors and Limcaco against petitioners on 15 December 1983. As early as 3 January 1984, petitioners moved to dismiss the petition for declaratory relief. The RTC of Pasay held in abeyance, however, the resolution of petitioners' motion to dismiss, holding that the grounds relied upon did not appear indubitable. Petitioners failed to file their answer to the petition for declaratory relief within the reglementary period. Thus, on 6 June 1984, private respondents moved to declare petitioners in default and the trial court granted the motion. On 10 July 1984, private respondents presented their oral and documentary evidence; thereafter, the case was submitted for decision. On 17 July 1984, the RTC of Pasay decided the Declaratory Relief petition and declared that:

"WHEREFORE, judgment is hereby rendered, declaring that, under the Agreement (Exhibit "E"), respondents [petitioners herein] have waived any and all further claims against petitioners [respondents herein] on the accounts in question in view of respondents' failure to comply with their undertaking to submit an updated statement of account accompanied by supporting documents within the stipulated period of sixty (60) days and that the petitioner's payment of P310,738.30 to respondents, under the circumstances, amounted to a full and final payment and settlement of all its and/or Conrado Limcaco's obligations with respondents." (Brackets supplied)

Meanwhile, in the Collection suit before the Makati RTC, petitioners pursued their prayer for a writ of preliminary attachment. On 11 July 1984, the RTC of Makati issued the writ and various properties of respondent Distributors were garnished or attached (e.g. bank accounts, heavy equipment and other personal property).

On 17 July 1984, however, the RTC of Makati dissolved the writ of attachment upon motion of private respondents. In dissolving that writ, the trial court stated cryptically that "it could have been insufficiently swayed (sic) in issuing the writ in question on July 11, 1984," and in effect held that the issuance of the attachment had been improvident:

"Without casting outright malice on the part of the plaintiff and counsel, a writ of preliminary attachment being

a harsh writ which creates substantial perturbation on one's property, must be viewed with outmost caution, more importantly so when vigorously controverted."[2]

Distributors and Limcaco filed in due course their "Answer with Counterclaim." The Answer raised affirmative defenses (principally, *litis pendentia* and extinguishment or waiver of petitioners' claims) to support relief from the claim of petitioners; their counterclaim was for damages arising by reason of allegedly wrongful issuance and enforcement of the writ of preliminary attachment and for attorney's fees.

Thereafter, on 4 September 1984, private respondents moved for a preliminary hearing on their affirmative defenses. After hearing in due course, the RTC of Makati, through Judge Gerochi, dismissed the complaint in an Order dated 20 February 1985, the dispositive portion of which read:

"WHEREFORE, in view of the foregoing, by reason of *litis pendentia*, the above entitled case is hereby DISMISSED, with costs against plaintiffs."

Shortly after the Order of dismissal was rendered, or on 7 March 1985, private respondent Distributors and Limcaco moved for a hearing on their counterclaim for damages arising from wrongful issuance of preliminary attachment.

Judge Gerochi, however, held in abeyance the hearing on respondents' counterclaim in an Order dated 17 March 1985 and declared that:

"It appearing that the above-entitled case has been appealed to the Honorable Intermediate Appellate Court (now the Court of Appeals), pending resolution thereof, let the hearing on the counterclaim of the defendants be held in abeyance."[3] (Underscoring supplied)

In the meantime, petitioners' appeal from the order of the RTC of Pasay in the Declaratory Relief case, as well as their appeal from the order of dismissal by RTC of Makati in the Collection suit, were consolidated and docketed as AC--G.R. CV Nos. 04324 and 06051. In due time, the orders appealed from were both affirmed in toto by the then Intermediate Appellate Court in a Decision dated 30 September 1985.

Petitioners thereafter came before this Court on Petitions for Review Certiorari docketed as G.R. Nos. 73099 and 73220. This Court, in a Resolution dated 18 March 1987, denied both Petitions for lack of merit, holding that the findings of the Intermediate Appellate Court were entirely in accord with the facts on record and applicable law and jurisprudence. This Resolution of the Supreme Court became final and executory on 13 August 1987.[4]

After the records of the case were returned to the RTC of Makati, private respondents moved on 21 September 1987 to set their counterclaims for pre-trial conference.

Acting on that motion without opposition from petitioners, Judge Nicolas A. Gerochi, Jr. of the RTC of Makati set the pre-trial conference on the counterclaims for 22 December 1987. Several postponements, however, delayed the pre-trial hearing on the respondents claims for damages for several months.

On 7 March 1988, petitioners Mobil Oil and Mobil Philippines filed an "Opposition to Defendants' Motion to Set Dated 21 September 1987." Petitioners there contended that the trial court no longer had authority to hear any application for damages at that point in time because the judgment dismissing Civil Case No. 6023 had become final and executory. Petitioners prayed that private respondents' motion to set their counterclaim for pre-trial dated 21 September 1987 be denied or that the order setting the motion for hearing be set aside.

Acting on petitioners' motion, the RTC of Makati, this time through another presiding judge, Honorable Jose C. de la Rama, granted petitioners' motion in an Order dated 4 July 1988 which reads:

"WHEREFORE, premises considered, this Court declares that it has lost jurisdiction to continue further

proceedings on defendants' (respondents herein) counterclaims. All previous orders and pre-trial settings are here SET ASIDE." (Underscoring supplied)

On appeal by private respondent Distributors and Limcaco, the Court of Appeals reversed Judge Dela Rama's Order. The Court of Appeals found that it was not the intention of the Makati RTC, through Presiding Judge Gerochi, to dismiss the entire Civil Case No. 6023 when it had acted upon the affirmative defenses set out in private respondents' Answer. The appellate court then remanded the case back to the RTC of Makati for further proceedings on private respondents' counterclaim.

Hence, this Petition for Review.

Petitioners maintain that the Court of Appeals committed the following errors:

1. x x x holding that the order of dismissal in Civil Case No. 6023 dated February 20, 1985 did not result in a dismissal of the case in its entirety.
2. x x x holding that the trial court did not lose its jurisdiction to hear and decide private respondents' compulsory counterclaim.

Petitioners insist that Judge De la Rama correctly set aside the pre-trial settings because (1) the case was, in its entirety, dismissed by the trial court on 20 February 1985 and there was, therefore, nothing to be acted upon by Judge De la Rama nor anything on which evidence could be received; (2) the 20 February 1985 Order dismissing the case had become final and executory and could no longer be amended or modified; and (3) private respondents' counterclaim is compulsory in nature and as such cannot remain pending for independent adjudication. These arguments are obviously inter-related and will be addressed together.

Under their first argument, petitioners direct this Court's attention to the phrase "above entitled case" found in the dispositive portion of the Order of the RTC of Makati dated 20 February 1985. According to petitioners, as phrased, this Order meant that all claims submitted to the trial court -- petitioners' claim as well as private respondents' counterclaim -- had been tried and adjudicated upon. Otherwise, petitioners continue, if Judge Gerochi had intended to adjudicate upon less than all the claims (i.e., only on petitioners' claim for a sum of money), he would have used the word "complaint" rather than the word "case."

The Court is not persuaded by this argument which appears to rest far too much upon a single word found in the Order dated 20 February 1985. We do not believe that private respondents' claims for damages can be evaded so simply and casually.

We consider that what must be examined is not so much the use of one word ("case") rather than another single word ("complaint"), but rather the events which preceded and the events which immediately followed issuance of the Order of the RTC Makati dated 20 February 1985. In other words, that Order must be viewed in the context of what had preceded it and what had followed its rendition.

Firstly, on 4 September 1984, private respondents filed their "Motion for Preliminary Hearing on Affirmative Defenses" (underscoring supplied). In this Motion, private respondents made very clear that they were talking about their affirmative defenses as distinguished from their counterclaim, both of which had been set out in their Answer. In this Motion, accordingly, private respondents prayed that:

"x x x After hearing, the instant complaint be dismissed.

Defendants [private respondents herein] likewise prayed for such other and further reliefs as may be deemed just and equitable in the premises."[5] (Underscoring and brackets supplied)

Private respondents also expressly pointed out that they were invoking the provisions of Section 5 of Rule 16 ("Motion to Dismiss") of the Rules of Court which provide as follows:

"Sec. 5. Pleading Grounds as Affirmative Defenses. -- Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed." (Underscoring supplied)

Secondly, private respondents moved, on 7 March 1985, to set the case for hearing on their counterclaim. On 13 March 1985, however, Judge Gerochi of the Makati RTC -- the same Judge who had issued the Order of dismissal of 20 February 1985 -- issued another order holding in abeyance the hearing on the counterclaim of private respondents, "[i]t appearing that the above entitled case has been appealed to the Honorable Intermediate Appellate Court, pending resolution thereof, x x x." [6]

Thirdly, after the records of the Collection case had been remanded to the Makati RTC, the court of origin, private respondents filed a motion asking the trial court to set the case for pre-trial conference with respect to the counterclaim. Without opposition from petitioners, the trial court set and reset the date for pre-trial several times -- 22 December 1987; then to an earlier date 10 December 1987; later to 28 January 1988; and finally to 10 March 1988. It was only on 7 March 1988 that petitioners filed an opposition to private respondents' motion to set for pre-trial and counterclaim for damages.

Contemplation of the above events led the Court of Appeals to the conclusion that Judge Gerochi, who was the Presiding Judge from the time the Collection case was instituted and until the pre-trial conference on private respondents' counterclaim was set, did not intend to pass upon and resolve all the claims (petitioners' claim as well as private respondents' counterclaim) submitted in Civil Case No. 6023 when he issued his Order of dismissal. The Court of Appeals said:

"After a careful study, we hold for appellants, whose present appeal is visited by merit. In the light of the antecedent circumstances leading to the issuance of said order of dismissal of February 20, 1985, let alone the order of March 13, 1985 delaying the hearing of subject counterclaim in view of the pendency, at the time, of plaintiffs' appeal from said order of dismissal, and the fact that the trial court reset several times for one reason or another, the scheduled hearing on such counterclaim, the ineluctable conclusion is -- that it was not the intention of the trial court to dismiss the entire case, when it acted upon appellants' 'Motion for Preliminary Hearing on Affirmative Defenses'; and in so moving, defendants did not contemplate to do away with and sacrifice their counterclaim. Obviously, the trial court inadvertently and improperly used the word 'case' instead of 'complaint' in its subject order of dismissal under scrutiny; otherwise, if it was really its purpose and disposition to dismiss the case, there would have been no necessity for it to issue the said order of March 13, 1985 holding in abeyance the hearing on defendants' counterclaim. As a matter of fact, even after appellees lost with finality their petition for review before the Supreme Court, involving the same order of dismissal of February 20, 1985, the lower court had set appellants' counterclaim for pre-trial, which assignment was reset several times for various reasons but never was it opined in any of the orders of postponement that subject counterclaim was already dismissed. Verily, we perceive a nagging indication that the trial court was decided on subjecting appellants' counterclaim to pre-trial and hearing, after dismissing the complaint. But unfortunately, the successor of Judge Nicolas Gerochi, Jr. failed to fathom and implement the intentment of subject order of dismissal dated February 20, 1985." [7] (Underscoring supplied)

We agree with the Court of Appeals. Private respondents had clearly separated out their counterclaim from their affirmative defenses and had asked for separate hearings on one and on the other. This private respondents were entitled to do so under Section 5, Rule 16 of the Rules of Court, quoted earlier, and as well as under Section 2 of Rule 31 which provides as follows:

"Sec. 2. Separate Trials. -- The court, in furtherance of convenience or to avoid prejudice, may order a separate

trial of any claim, cross-claim, counter-claim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third party claims or issues." (Underscoring supplied)

When Judge Gerochi issued his order holding in abeyance the hearing on private respondents' counterclaim for damages, he in effect made clear that his 20 February 1985 Order dismissing petitioners' claim for collection was an order or judgment rendered after a separate trial of petitioner's claim. We consider that the Order of 20 February 1985 was effectively a separate judgment which had as its subject matter only petitioners' claim for a sum of money asserted against private respondents. We believe also that Section 5 of Rule 36 of the Rules of Court is applicable, at least by way of analogy:

"Sec. 5. Judgment at various stages. -- When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered." (Underscoring supplied)

We say "by analogy" considering that Judge Gerochi had, as earlier noted, separated out petitioners' claim for collection from private respondents' counterclaim for damages.

From a slightly different view point, private respondents' motion of 7 March 1985 for a hearing on their counterclaim for damages for wrongful issuance of attachment, may be deemed to be in the nature of a reservation of their right to litigate their counterclaim for damages, a reservation which prevented the dismissal of their counterclaim along with the dismissal of petitioners' claim for a sum of money.[8] This motion was filed promptly upon rendition of Judge Gerochi's Order of dismissal of 20 February 1985, that is to say, long before that Order of dismissal became final and executory.

We do not believe that it is necessary to determine whether or not private respondents' counterclaim for damages arising from a wrongful issuance of attachment is a "compulsory counterclaim," or a counterclaim which "can remain pending for independent adjudication by the court," within the meaning of Section 2, Rule 17 of the Rules of Court. For there is a provision of the Rules of Court which addresses the specific kind of counterclaim here involved: Section 20 of Rule 57, which provides as follows:

"Sec. 20. Claim for damages on account of illegal attachment. -- If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court."

We agree, therefore, with petitioners' argument that Section 20 of Rule 57 is applicable, but we do not consider that Section 20 must be applied so strictly and literally as to obliterate the right of private respondents to prove

their counterclaim for damages. We believe, to the contrary, that under all the circumstances of this case, there was at least substantial compliance with the requirements of Section 20 of Rule 57. For neither Judge Gerochi of the Makati RTC nor Mr. Justice Caguioa of the then Intermediate Appellate Court had resolved the entire case but had dismissed simply petitioners' claim for collection of a sum of money, the only claim which Judge Gerochi had passed upon in his separate and partial 20 February 1985 Order and hence the only claim which Mr. Justice Caguioa could resolve (along, of course, with the claim[s] raised in the appeal in the Declaratory Relief case).

In reaching our above conclusion, we are moved by, among other things, the fact that private respondents' counterclaim for damages appears meritorious. Indeed, both the Makati RTC and the then Intermediate Appellate Court have already held that petitioners were not entitled to the writ of preliminary attachment that they had sought and obtained in the Collection case before the RTC of Makati. Private respondents are, therefore, entitled as a matter of fairness to prove the extent or amount of such damages. Private respondents complied with the requirements of our procedural law bearing upon this matter. Upon the other hand, petitioners' substantial rights have not been adversely affected at all. Petitioners or their counsel could not have been misled as to the meaning and effect of the partial Order of dismissal of 20 February 1985 and the Order of 13 March 1985 holding in abeyance the hearing on the counterclaim. It is hardly necessary to stress once more that procedural rules are designed, and must therefore be so interpreted as, to give effect to lawful and valid claims and not to frustrate them.

WHEREFORE, the Decision of the Court of Appeals dated 28 November 1991 in C.A.-G.R. CV No. 19440 is hereby AFFIRMED in toto. Costs against petitioners.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Records, p. 48.

[2] As quoted in the Decision in A.C.-G.R. CV No. 04324 and 06051; Rollo, p. 70.

[3] Rollo, p. 44.

[4] See Annex "F" of the Petition, Rollo, p. 74.

[5] Rollo, p. 39.

[6] Annex "D" of Petition for Review, Rollo, p. 44.

[7] Rollo, pp. 112-113.

[8] See, e.g., *International Container Terminal Services, Inc. v. Court of Appeals*, 214 SCRA 456, 462 (1992).

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