

BA FINANCE CORPORATION, PETITIONER, VS. RUFINO CO, HIGHLINE MERCANTILE, INC., LUCITA VELOSO YAP, CLOVERLEAF SUPERMARKET, INC., SAN ANDRES COMMERCIAL AND COURT OF APPEALS, RESPON...

G.R. No. 105751. June 30, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Does the dismissal of the complaint for nonappearance of plaintiff at the pre-trial, upon motion of defendants, carry with it the dismissal of their compulsory counterclaim?

Petitioner BA Finance Corporation brought this action as plaintiff in the court below to recover a sum of money arising from a credit accommodation in the form of a discounting line which it granted to defendant Rufino Co, and from certain suretyship agreements executed in its favor by his co-defendants Highline Mercantile, Inc., Lucita Veloso Yap, Cloverleaf Supermarket, Inc., and San Andres Commercial.

After defendants' Amended Answer to Complaint with Compulsory Counterclaim was admitted, the case was set for Pre-Trial Conference. For various reasons, however, the conference was repeatedly reset. On 19 December 1989, counsel for plaintiff, petitioner herein, failed to attend the Pre-Trial Conference. Consequently, defendants moved for dismissal of the case without prejudice. The motion was granted thus ?

“The plaintiff's representative and counsel having failed to appear for today's setting, Atty. Luis Vera Cruz, Jr., for the defendants moved that the above-entitled case be dismissed, without prejudice. Finding merit in said motion, the same is hereby granted.”

On 22 January 1990, private respondents moved to set the reception of their evidence in support of their counterclaim. Petitioner opposed the motion.

On 2 April 1990, the trial court denied the motion of private respondents, prompting them to elevate the order of denial to the Court of Appeals which, on 18 December 1991, reversed the questioned order and directed the trial court to set the reception of their evidence on their counterclaim. Its motion for reconsideration having on 2 June 1992 been denied, petitioner instituted the instant petition.

Petitioner contends that the dismissal of the complaint carries with it the dismissal of the counterclaim. Private respondents, on the other hand, claim that their compulsory counterclaim should not have been included in the dismissal.

There is merit in the petition.

The counterclaim of private respondents is not merely permissive but compulsory in nature: it arises out of, or is necessarily connected with, the transaction or occurrence that is the subject matter of the opposing party's claim; it does not require the presence of third parties of whom the court cannot acquire jurisdiction; and, the trial court has

jurisdiction to entertain the claim.[1] The counterclaim of private respondents is denominated "compulsory" and consists of claims for alleged overpayments and damages. They assert that they are no longer indebted to petitioner and are in fact entitled to reimbursement for overpayments. They ask for damages for expenses incurred and inconveniences suffered by them as a result of the filing of the present action.[2]

Clearly, the same evidence needed to sustain the counterclaim of private respondents would also refute the cause of action in petitioner's complaint. For, if private respondents could successfully show that they actually made overpayments on the credit accommodations extended by petitioner, then the complaint must fail. The counterclaim is therefore compulsory.

The rule is that a compulsory counterclaim cannot "remain pending for independent adjudication by the court." [3] This is because a compulsory counterclaim is auxiliary to the proceeding in the original suit and merely derives its jurisdictional support therefrom.[4]

Thus, it necessarily follows that if the trial court no longer possesses jurisdiction to entertain the main action of the case, as when it dismisses the same, then the compulsory counterclaim being ancillary to the principal controversy, must likewise be similarly dismissed since no jurisdiction remains for the grant of any relief under the counterclaim.[5] Indeed, as Justice Vicente Abad Santos succinctly puts it -

"x x x The petitioner does not object to the dismissal of the civil case but nonetheless wants her counterclaim therein to subsist. Impossible. A person cannot eat his cake and have it at the same time. If the civil case is dismissed, so also is the counterclaim filed therein." [6]

More recently, this Court ruled that the dismissal of the complaint on defendant's own motion operated likewise to dismiss the counterclaim questioning the complaint.[7]

The Rules of Court provides a remedy to recover on defendant's counterclaim if plaintiff moves to dismiss the case. Under Sec. 2, Rule 17, defendant may raise objection to the dismissal of the complaint; in such case, the trial court may not dismiss the main action.

In the instant petition, private respondents themselves moved for the dismissal of the complaint. They could have simply asked the trial court to declare petitioners to be "non-suited" on their complaint, and "as in default" on their compulsory counterclaim, for their failure to appear at the pre-trial despite due notice. But private respondents did not. Neither did they reserve their right to maintain their counterclaim. Consequently, the dismissal of the complaint carried with it the dismissal of the compulsory counterclaim.

It may also be stressed that private respondents moved to set for hearing the reception of evidence to support their counterclaim more than a month after the case was dismissed, i.e., they filed their motion after the lapse of thirty-three (33) days. By then, the order of dismissal had already become final. Thereafter, it was error for the appellate court to set it aside, there being no ground to warrant it. Only error of judgment, not error of jurisdiction, was involved.

However, we are not unaware of the seeming unfairness, if not harshness, of the application of the Rule herein enunciated -- that dismissal of the complaint for failure to prosecute automatically carries with it dismissal of the compulsory counterclaim -- to a defendant who may be compelled to hire counsel to protect him in a frivolous complaint. Equity and justice dictate that he be accorded adequate relief under the circumstances.

Henceforth, for the guidance of Bench and Bar, if any of the grounds to dismiss under Sec. 3, Rule 17, of the Rules of Court arises,[8] the proper recourse for a defendant who desires to pursue his compulsory counterclaim in the same proceeding is not to move for the dismissal of the complaint; instead, he should only move to have plaintiff declared non-suited on the complaint so that the latter can no longer present his evidence thereon, and

simultaneously move that he be declared as in default on the compulsory counterclaim, and reserve the right to present evidence ex parte on his counterclaim. This will enable defendant who was unjustly haled to court to prove his compulsory counterclaim, which is intertwined with the complaint, because the trial court retains jurisdiction over the complaint and of the whole case. The non-dismissal of the complaint, the non-suit notwithstanding, provides the basis for the compulsory counterclaim to remain active and subsisting.

But the procedure above stated, unfortunately, was not adopted by private respondents herein in the court below, hence, we reverse the Court of Appeals and sustain the trial court.

WHEREFORE, the instant petition is GRANTED. The Decision of the Court of Appeals of 18 December 1991 in CA-G.R. No. CV-28420 is REVERSED and SET ASIDE.

The Order of the Regional Trial Court of Manila, Branch 40, of 19 December 1989 dismissing Civil Case No. 84-26040 is REINSTATED and REITERATED.

SO ORDERED.

Cruz, Bidin, Griño-Aquino, Romero, Nocon, and Melo, JJ., concur.

Narvasa, C.J., join J. Regalado in his separate opinion.

Feliciano and Davide, Jr., in the result.

Padilla, J., on official leave.

Quiason, J., no part.

[1] Javier v. Intermediate Appellate Court, G.R. No. 75379, 31 March 1989, 171 SCRA 605.

[2] Rollo, p. 27.

[3] Lim Tanbu v. Ramolete, No. L-40098, 29 August 1975, 66 SCRA 425, citing Sec. 2, Rule 17, Rules of Court.

[4] Metals Engineering Resources Corporation v. Court of Appeals, G.R. No. 95631, 28 October 1991, 203 SCRA 273.

[5] Ibid., citing I Moran, Comments on the Rules of Court, 1979 Ed., p. 354.

[6] Citing Dalman v. City Court of Dipolog City, Branch II, Nos. L-63194-96, 21 January 1985, 134 SCRA 242.

[7] International Container Terminal Services, Inc. v. Court of Appeals, G.R. No. 90530, 7 October 1992.

[8] Sec. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

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SEPARATE OPINION

REGALADO, J.:

I concur in the result, whereby the ponencia sustains the order of the trial court dismissing herein petitioner's complaint and consequently barring private respondents from introducing evidence on their compulsory counterclaim by reason of such dismissal, but only for this reason stated therein, to wit:

"It may also be stressed that private respondents moved to set for hearing the reception of evidence to support their counterclaim more than a month after the case was dismissed, i.e., they filed their motion after the lapse of thirty-three (33) days. By then the order of dismissal had already become final. Thereafter, it was error for the appellate court to set it aside, there being no ground to warrant it. Only error of judgment, not error of jurisdiction was involved."

I take exception, however, to so much of the ratio-cinations therein, although supportive of the same disposition, insofar as they are at variance with the observations in this separate opinion which I hope may yield some clarifications applicable to the present controversy.

Involved in this case are the issues on the propriety and effects of the application of Sections 2 and 3, Rule 17 of the Rules of Court to Section 2, Rule 20 which provides that "(a) party who fails to appear at a pre-trial conference may be non-suited or considered as in default." We have heretofore held that the provisions of Section 3 of Rule 17, whereby a plaintiff may be nonsuited and the dismissal of the complaint has the effect of an adjudication upon the merits unless otherwise provided by the trial court, shall have the same equivalent effect on a plaintiff who fails to appear at a pre-trial conference.[1] We have perforce to now resolve whether Section 2 of Rule 17 is likewise applicable to that plaintiff who is nonsuited for non-appearance at such pre-trial conference.

For referential facility, the aforesaid provisions of Rule 17 are hereunder reproduced, with pertinent emphases supplied:

"Sec. 2. Dismissal by order of the court. – Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice."

"Sec. 3. Failure to prosecute. – If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

Also, the concept of nonsuit which we have adopted from American procedural law[2] is that it is a term broadly applied to a variety of terminations of an action which do not adjudicate issues on the merits.[3] More specifically, it is the name of a judgment given against plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to trial and leaves the issue undetermined.[4] In our jurisdiction, a declaration of nonsuit necessarily involves the rendition of a final order or judgment which terminates plaintiff's cause of action or right of recovery under his complaint which is thereby dismissed.

Turning back to Rule 17, it is readily apparent that Sections 2 and 3 thereof envisage different factual and adjective situations. The dismissal of the complaint under Section 2 is at the instance of plaintiff, for whatever reason he is minded to move for such dismissal, and, as a matter of procedure, is without prejudice unless otherwise stated in the order of the court or, for that matter, in plaintiff's motion to dismiss his own complaint.[5] By reason thereof, to curb any dubious or frivolous strategy of plaintiff for his benefit or to obviate possible

prejudice to defendant, the former may not dismiss his complaint over the defendant's objection if the latter has a compulsory counterclaim since said counterclaim would necessarily be divested of juridical basis and defendant would be deprived of possible recovery thereon in that same judicial proceeding.

Section 3, on the other hand, contemplates a dismissal not procured by plaintiff, albeit justified by causes imputable to him and which, in the present case, was petitioner's failure to appear at the pre-trial. This situation is also covered by Section 3, as extended by judicial interpretation, and is ordered upon motion of defendant or *motu proprio* by the court. Here, the issue of whether defendant has a pending counterclaim, permissive or compulsory, is not of determinative significance. The dismissal of plaintiff's complaint is evidently a confirmation of the failure of evidence to prove his cause of action outlined therein, hence the dismissal is considered, as a matter of evidence, an adjudication on the merits. This does not, however, mean that there is likewise such absence of evidence to prove defendant's counterclaim although the same arises out of the subject matter of the complaint which was merely terminated for lack of proof. To hold otherwise would not only work injustice to defendant but would be reading a further provision into Section 3 and wresting a meaning therefrom although neither exists even by mere implication. Thus understood, the complaint can accordingly be dismissed, but relief can nevertheless be granted as a matter of course to defendant on his counterclaim as alleged and proved, with or without any reservation therefor on his part, unless from his conduct, express or implied, he has virtually consented to the concomitant dismissal of his counterclaim.

Thus, in *Sta. Maria, Jr., et al. vs. Court of Appeals, et al.*,^[6] plaintiff having been declared nonsuited for his failure to appear at the pre-trial, his complaint was dismissed without prejudice and the deputy clerk of court was commissioned to receive defendant's evidence on their compulsory counterclaim. This action of the trial court was later reconsidered and the case was reset for hearing but since neither plaintiffs nor their counsel appeared despite due notice, they were again nonsuited, the case was dismissed without prejudice, and plaintiffs were declared in default on the counterclaim. Defendants adopted the evidence they had earlier presented and the trial court rendered judgment on their counterclaim.

Plaintiffs therein raised virtually the same objections and arguments as those which herein petitioner now relies upon to impugn the order of the trial court. That case eventually reached this Court which, speaking through Justice J.B.L. Reyes, disposed of plaintiffs' contentions in this wise:

"Also pointed out as error is the hearing of the counterclaim after the plaintiffs were nonsuited, the argument being that the issues in the counterclaim are so inseparable with those in the complaint that the former may not be heard unless the latter is also heard. Petitioners misapply the doctrine; first, because in the instant case, the adjudication of the counterclaim does not depend upon the adjudication of the claims made in the complaint, since they were virtually abandoned by the non-appearance of the plaintiffs themselves; and, second, the doctrine invoked is not available to plaintiffs like the petitioners, who prevent or delay the hearing of their own claims and allegations.

"The doctrine that the complaint may not be dismissed if the counterclaim cannot be independently adjudicated is not available to, and was not intended for the benefit of, a plaintiff who prevents or delays the prosecution or hearing of his own complaint. Otherwise, the trial of counterclaims would be made to depend upon the maneuvers of the plaintiff, and the rule would offer a premium to vexing or delaying tactics to the prejudice of the counterclaimants. It is in the same spirit that we have ruled that a complaint may not be withdrawn over the opposition of the defendant where the counterclaim is one that arises from, or is necessarily connected with, the plaintiff's action and cannot remain pending for independent adjudication [*Ynotorio vs. Lira*, L-16677, 27 November 1964]." (Emphasis mine.)

The cases of *Dalman vs. The City Court of Dipolog, etc., et al.*^[7] and *International Container Terminal Services, Inc. vs. Court of Appeals, et al.*,^[8] relied upon in the main opinion, both involved the application of the rule in

Section 2, not Section 3, of Rule 17. In *Dalman*, the dismissal of the complaint was at the instance of therein plaintiff, which dismissal was ordered by the trial court despite defendant's compulsory counterclaim therein since, as noted by this Court on appeal, defendant did not object to such dismissal hence her counterclaim was also dismissed. In *International Container Terminal Services, Inc.*, the complaint of private respondent *Sharp, Inc.* in the court a quo was dismissed and petitioner itself, as defendant therein, joined in moving for such dismissal which likewise resulted in the dismissal of its compulsory counterclaim. In effect, petitioner consented to or, at least, did not object to the dismissal of its counterclaim for, as stated by the Court, "(i)f it wanted the counterclaim to subsist, it should have objected to the dismissal of the complaint or at least reserved its right to prosecute it, x x x" which it could have done by invoking the provisions of Section 2, Rule 17. As earlier explained, a different procedure obtains under Section 3 of said Rule which is the provision applicable to the case at bar.

All told, my concurrence in the dispositive portion of the judgment in this case is founded only upon the fact that the assailed order of the trial court was already final and executory, hence petitioner's present recourse is indisputably time-barred. However, it is my respectful submission that in determining whether or not the dismissal of a complaint ipso jure results in the dismissal likewise of a compulsory counterclaim thereto, the distinctions between the situations contemplated in and provided for by Sections 2 and 3 of Rule 17 should be observed, with the difference in effects as explained in the foregoing disquisition. Otherwise, we may be indulging in judicial legislation although, ironically, it is within the power of the Court itself to change or revise the aforesaid provisions should the same be considered inadequate to meet its normative perceptions of what the rules should be.

[1] *Arcuino, et al. vs. Aparis, et al.*, 22 SCRA 407 (1968); *Geralde, et al. vs. Sabido, etc., et al.*, 115 SCRA 839 (1982).

[2] See *Black's Law Dictionary*, 4th Edition (1951), 1208.

[3] *McColgan vs. Jones, Hubbard & Donnel*, 11 Cal. 2d 243, 78 P. 2d 1010, 1011.

[4] *Carolina Transportation & Distributing Co. vs. American Alliance Ins. Co.*, 214 N.C. 596, 200 S.E. 411, 413.

[5] See *Vergara, et al. vs. Ocumen, et al.*, 114 SCRA 446 (1982).

[6] 45 SCRA 596 (1972).

[7] 134 SCRA 243 (1985).

[8] G.R. No. 90530, October 7, 1992.

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