

**INTESTATE ESTATE OF AMADO B. DALISAY, REPRESENTED BY
SPECIAL ADMINISTRATRIX PRECIOSA D. TIROL, PETITIONER, VS.
HON. ROMEO D. MARASIGAN AND LOURDES OPPUS, RESPONDENTS.**

G.R. No. 115088. June 20, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The petitioner Intestate Estate of Amado B. Dalisay, represented by Special Administratrix Preciosa D. Tirol filed a complaint for unlawful detainer, docketed as Civil Case No. 768-F-93, before Branch 3 of the Municipal Trial Court in Cities (MTCC), Davao City against private respondent Lourdes Oppus. The said complaint alleged, among others, the following:

Private respondent leased, on a monthly basis, a portion of lot located at C.M. Recto Avenue, Davao City belonging to petitioner.[1] On March 1, 1993, petitioner gave private respondent one (1) month advanced notice of the termination of the lease on April 1, 1993, and demanded that the latter vacate the leased premises on or before the said date.[2] Notwithstanding the said notice, private respondent continued in possession of the said premises, thereby prompting petitioner to institute the abovementioned case for unlawful detainer.[3]

In refuting petitioner's allegations, private respondent claimed, among others, that she had not received a single letter of demand to vacate from the petitioner, and that the latter had in fact continued to collect rentals from her up to March 10, 1993.[4] Thus, private respondent raised as one of her affirmative defenses, the lack of jurisdiction of the MTCC to take cognizance of the case for failure of the petitioner to comply with the condition precedent of furnishing the lessee with a prior demand to vacate.[5] By way of counterclaim, private respondent invoked her right as a builder in good faith with respect to the improvements that she had introduced on the said leased premises, and likewise claimed moral damages in the sum of P10,000.00 and attorney's fees also in the same amount.[6]

During pre-trial, both parties stipulated that the petitioner, through its counsel, notified private respondent of the termination of the contract of lease and demanded that the latter vacate the leased premises. The said notice was sent via registered mail on March 11, 1993 but was not effectively delivered to nor received by the private respondent. Hence, one of the legal issues delineated by the MTCC for resolution was:

"2. Whether or not the failure of the defendant to receive the notice to terminate the lease contract and the demand to vacate the leased premises contained in that letter sent through the mails under Registered Letter No. 027, dated March 11, 1993, is a jurisdictional defect in connection with the filing of this complaint in court thereby divesting this court (sic) the jurisdiction to try, hear and decide this case";[7]

Resolving the aforementioned issue in the affirmative, the MTCC dismissed the said case for lack of jurisdiction, and awarded in favor of the private respondent the amounts of P5,000.00 as moral damages and P5,000.00 as attorney's fees.[8] Aggrieved, the petitioner appealed to the Regional Trial Court (RTC) which affirmed the dismissal of the case below holding that in a lease on a "month to month" basis, a notice of termination of the

lease is a condition precedent for the filing of an unlawful detainer case and non-compliance therewith divests the trial court of jurisdiction over the said case. The RTC sustained the award of attorney's fees in favor of the private respondent but deleted the award of moral damages ruling that the same cannot be granted in the absence of bad faith in the filing of a case.[9]

Petitioner comes before us through the instant petition for certiorari raising a sole question of law, that is, whether or not the RTC had jurisdiction to award attorney's fees after affirming the dismissal of the case by the MTCC for lack of jurisdiction to try, hear and decide the case. Petitioner asseverates that as the MTCC and the RTC had no jurisdiction over the principal action for unlawful detainer, then it had no jurisdiction over the compulsory counterclaim of attorney's fees either.[10] The petition is meritorious.

A counterclaim is compulsory where: (1) it arises out of, or is necessarily connected with, the transaction or occurrence that is the subject matter of the opposing party's claim; (2) it does not require the presence of third parties of whom the court cannot acquire jurisdiction; and, (3) the trial court has jurisdiction to entertain the claim.[11] Tested by these requirements, private respondent's claim for attorney's fees is indubitably in the nature of a compulsory counterclaim.[12]

And We have consistently held that a compulsory counterclaim cannot remain pending for independent adjudication by the court.[13] In the case of *Metals Engineering Resources Corp. v. Court of Appeals*,[14] we elaborated in this wise:

"x x x a compulsory counterclaim is auxiliary to the proceeding in the original suit and derives its jurisdictional support therefrom, inasmuch as it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the complaint. It follows that if the court does not have jurisdiction to entertain the main action of the case and dismisses the same, then the compulsory counterclaim, being ancillary to the main action, must likewise be dismissed since no jurisdiction remained for any grant of relief under the counterclaim.[15]

"The aforementioned doctrine is in consonance with the primary objective of a counterclaim which is to avoid and prevent circuitry of action by allowing the entire controversy between the parties to be litigated and finally determined in one action, wherever this can be done with justice to all parties concerned."[16]

Furthermore, there is no denying the fact that it was private respondent herself who caused the dismissal of her counterclaim for not only did she fail to object to, but she actually moved for the dismissal of the complaint.[17] In the words of Justice Abad Santos,

"x x x The petitioner (private respondent in this case) 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."[18]

ACCORDINGLY, the instant petition for certiorari is granted and the assailed decision of the RTC dated March 8, 1994 is modified to exclude the award of attorney's fees in favor of private respondent.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] DECISION of the MTCC dated September 2, 1993, p. 1; Rollo, p. 10.

[2] *Id.*, p. 2; Rollo, p. 11.

[3] *Id.*

[4] Id., p. 4; Rollo, p. 13.

[5] Id., p. 5; Rollo, p. 14.

[6] Id., pp. 6-7; Rollo, pp. 15-16.

[7] Id., pp. 8-9; Rollo, pp. 17-18.

[8] Id., p. 13; Rollo, p. 22.

[9] Decision dated March 8, 1994, pp. 2-3; Rollo, pp. 24-25.

[10] Petition dated April 25, 1994, pp. 3-4; Rollo, pp. 6-7.

[11] BA Finance vs. Co, 224 SCRA 163; Javier vs. Intermediate Appellate Court, 171 SCRA 609.

[12] Tiu Po vs. Bautista, 103 SCRA 388.

[13] Metals Engineering Resources Corp. vs. Court of Appeals, 203 SCRA 273; Lim Tanhu, et. al., vs. Ramolete, et al., 66 SCRA 425; International Container Terminal Services, Inc. vs. Court of Appeals, 214 SCRA 456; BA Finance Corporation vs. Co, supra.

[14] Metals Engineering Resources Corp. vs. Court of Appeals, id.

[15] Id., p. 282.

[16] Id.

[17] International Container Terminal Services, Inc. vs. Court of Appeals, supra, 462.

[18] Dalman vs. City Court of Dipolog City, Br. II, 134 SCRA 243, 244.

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