

E.G.V. REALTY DEVELOPMENT CORPORATION AND CRISTINA CONDOMINIUM CORPORATION, PETITIONERS, VS. COURT OF APPEALS AND UNISHPERE INTERNATIONAL, INC. RESPONDENTS.

G.R. No. 120236. July 20, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review on certiorari seeks to set aside the decision and resolution of the Court of Appeals rendered on February 17, 1995 and on May 15, 1995, respectively, in CA-G.R. SP No. 22735 reversing the order of the Securities and Exchange Commission (SEC) in SEC-AC No. 271 issued on August 21, 1990.

The following facts are not disputed:

Petitioner E.G.V. Realty Development Corporation (hereinafter referred to as E.G.V. Realty) is the owner/developer of a seven-storey condominium building known as Cristina Condominium. Cristina Condominium Corporation (hereinafter referred to as CCC) holds title to all common areas of Cristina Condominium and is in charge of managing, maintaining and administering the condominium's common areas and providing for the building's security.

Respondent Unisphere International, Inc. (hereinafter referred to as Unisphere) is the owner/occupant of Unit 301 of said condominium.

On November 28, 1981, respondent Unisphere's Unit 301 was allegedly robbed of various items valued at P6,165.00. The incident was reported to petitioner CCC.

On July 25, 1982, another robbery allegedly occurred at Unit 301 where the items carted away were valued at P6,130.00, bringing the total value of items lost to P12,295.00. This incident was likewise reported to petitioner CCC.

On October 5, 1982, respondent Unisphere demanded compensation and reimbursement from petitioner CCC for the losses incurred as a result of the robbery.

Petitioner CCC denied any liability for the losses claimed to have been incurred by respondent Unisphere, stating that the goods lost belonged to Amtrade, a third party.

As a consequence of the denial, respondent Unisphere withheld payment of its monthly dues starting November 1982.

On September 13, 1983, respondent Unisphere received a letter from petitioner CCC demanding payment of past dues.

On December 5, 1984, petitioner E.G.V. Realty executed a Deed of Absolute Sale over Unit 301 in favor of respondent Unisphere. Thereafter, Condominium Certificate of Title No. 7010 was issued in respondent

Unisphere's name bearing the annotation of a lien in favor of petitioner E.G.V. Realty for the unpaid condominium dues in the amount of P13,142.67.

On January 28, 1987, petitioners E.G.V. Realty and CCC jointly filed a petition with the Securities and Exchange Commission (SEC) for the collection of the unpaid monthly dues in the amount of P13,142.67 against respondent Unisphere.

In its answer, respondent Unisphere alleged that it could not be deemed in default in the payment of said unpaid dues because its tardiness was occasioned by the petitioners' failure to comply with what was incumbent upon them, that is, to provide security for the building premises in order to prevent, if not to stop, the robberies taking place therein. It asserted as counterclaim that the amount of P12,295.00 representing the total value of its loss due to the two robberies be awarded to it by way of damages for the latter's failure to secure the premises.

On January 11, 1989, SEC Hearing Officer Antero F.L. Villaflor, Jr. rendered a decision which dispositively read as follows:

WHEREFORE, respondent is hereby ordered to pay petitioner the sum of P13,142.67 within fifteen (15) days from receipt of this Decision. Further, petitioner is hereby ordered to pay respondent within fifteen (15) days from receipt of this Decision, the sum of P12,295.00.

Let copy of this Decision be furnished the Register of Deeds of Makati, Metro Manila for the purpose of cancellation of the lien in favor of Cristina Condominium found at the back of Title for unpaid monthly dues in the sum of P13,142.67, upon full payment of respondent of said amount unto petitioner.

SO ORDERED.[1]

Both parties filed their respective motions for reconsideration.

On July 17, 1989, the decision of Hearing Officer Villaflor was modified and amended by Hearing Officer Enrique L. Flores, Jr. to read as follows:

WHEREFORE, respondent's motion for reconsideration should be, as it is, hereby DENIED and the petitioners' motion for reconsideration is hereby GRANTED.

Accordingly, the decision dated January 11, 1989, is partially reconsidered to the effect that petitioners are not made liable for the value of the items/articles burglarized from respondent's condominium unit.

SO ORDERED.[2]

On July 18, 1989, respondent Unisphere filed a notice of appeal with the SEC en banc questioning the above-mentioned decision.

On August 15, 1989, it filed a motion for an extension of thirty (30) days to file its memorandum on appeal thirty (30) days from the stated deadline of August 18, 1989.

Said motion was granted on August 17, 1989.

On September 18, 1989, respondent Unisphere filed a second motion for extension of time to file its memorandum on appeal for another twenty (20) days.

The motion was likewise granted on September 26, 1989.

On October 9, 1989, respondent Unisphere filed its memorandum on appeal.

After the petitioners filed their reply thereto, the SEC en banc issued the Order dated February 23, 1990 which is

quoted hereunder:

Before this Commission en banc is an appeal from the Order dated July 17, 1989 of the Hearing Officer in SEC Case No. 3119 entitled 'E.G.V. Realty Development Corporation and Cristina Condominium Corporation vs. Unisphere International, Inc.'

The records of the case show that respondent-appellant received a copy of the above order on July 18, 1989 and filed its Notice of Appeal on July 21, 1989. On August 15, 1989, respondent asked for an extension of thirty (30) days to file its Memorandum on Appeal which was granted on August 17, 1989.

On September 18, 1989, respondent asked for an additional period of twenty (20) days until October 8, 1989 to file his Appeal which was also granted.

Respondent filed his Memorandum on October 13, 1989, five days after the due date.

The penultimate paragraph of Section 6 of Presidential Decree no. 902-A (as amended) clearly provides:

x x x The decision, ruling or order of any such Commissioner, bodies, boards, committees, and/or officer as may be appealed to the Commission sitting en banc within thirty (30) days after receipt by the appellant of notice of such decision, ruling or order. The Commission shall promulgate rules or procedure to govern the proceedings, hearings and appeals of cases falling within its jurisdiction.

Pursuant to the above provision, the Commission promulgated the Revised Rules of Procedure of the Securities and Exchange Commission, Section 3, Rule XVI of said Rules reiterates the thirty (30)-day period provided for under the above provision:

Appeal may be taken by filing with the Hearing Officer who promulgated the decision, order or ruling within thirty (30) days from notice thereof, and serving upon the adverse party, a notice of appeal and a memorandum on appeal and paying the corresponding docket fee therefor. The appeal shall be considered perfected upon the filing of the memorandum on appeal and payment of the docket fee within the period hereinabove fixed.

The Commission en banc notes that respondent had, extensions included, a total of eighty (80) days to file its Appeal memorandum but failed to do so.

WHEREFORE, premises considered, the instant appeal is hereby dismissed for having been filed out of time.

SO ORDERED.[3]

Respondent Unisphere moved for a reconsideration of the above-quoted order but the same was denied, and so was it its second motion for reconsideration.

On September 6, 1990, respondent Unisphere filed a notice of appeal to the SEC en banc in order to question the latter's ruling to the Court of Appeals pursuant to Rule 43 of the Rules of Court, as amended by Republic Act No. 5434.

On September 10, 1990, it filed a notice of appeal to the Court of Appeals.

The Court of Appeals reversed the SEC en banc's Order of August 21, 1990 in its Decision dated February 17, 1995 which dispositively reads as follows:

WHEREFORE, the instant petition is GRANTED and the assailed Order dated August 21, 1989 is hereby REVERSED and SET ASIDE. Another judgment is entered declaring that the appeal memorandum before the SEC (en banc) of appellant Unisphere was filed on time and that the amount of P13,142.67, the unpaid monthly dues of Unisphere to the Corporation should be offset by the losses suffered by the Unisphere in the amount of P12,295.00. Unisphere is hereby ordered to pay the Cristina Condominium Corporation the amount

of P847.67 representing the balance after offsetting the amount of P12,295.00 against the said P13,142.67, with 12% interest per annum from January 28, 1987 when the Joint Petition of the petitioners-appellees was filed before the SEC (for collection and damages) until fully paid.

No pronouncement as to costs.

SO ORDERED.[4]

Petitioners moved for reconsideration of the said decision but the same was denied by the appellate court on May 15, 1995.

Hence, the instant petition for review interposed by petitioners E.G.V. Realty and CCC challenging the decision of the Court of Appeals on the following grounds: (a) the Court of Appeals did not acquire jurisdiction over respondent Unisphere's appeal because the latter failed to comply with the prescribed mode of appeal; (b) even if the jurisdictional infirmity is brushed aside, the SEC en banc Order dated February 23, 1990 has already attained finality; and (c) the ruling of the Court of Appeals on the offsetting of the parties' claims is unfounded.

A perusal of the foregoing issues readily reveals that petitioners raise two (2) aspects of the case for consideration, that is, the procedural aspect and the substantive aspect.

We will discuss the procedural aspect first. Petitioners contend that (a) the Court of Appeals did not acquire jurisdiction over the appeal because respondent failed to comply with the prescribed mode of appeal; and (b) assuming that the Court of Appeals has jurisdiction, the assailed SEC en banc Order of February 23, 1990 had already become final and executory.

Anent the first contention, petitioners claim that respondent Unisphere erred in merely filing a notice of appeal as in ordinary civil cases from the regular courts instead of a petition for review with the Court of Appeals.

Contrary to petitioners' contention, respondent Unisphere complied with the prescribed mode of appeal. At the time the appeal was elevated to the Court of Appeals in 1990, the rule governing recourse to the Court of Appeals from the decision, resolution or final order of a quasi-judicial body was Rule 43 of the Revised Rules of Court, as amended by Republic Act No. 5434 as embodied in Batas Pambansa Blg. 129 and its Interim Rules and Guidelines.[5] The rule provided for a uniform procedure for appeals from the specified administrative tribunals, SEC included, to the Court of Appeals by filing a notice of appeal with the appellate court and with the court, officer, board, commission or agency that made or rendered the assailed ruling within fifteen (15) days from notice thereof. Records bear out that respondent Unisphere complied with the foregoing rules when it filed a notice of appeal with the SEC en banc on September 6, 1990 and with the Court of Appeals on September 10, 1990. Clearly therefore, respondent Unisphere complied with the proper mode of appeal as mandated by the rules.

With respect to the second contention, petitioners asseverate that the February 23, 1990 order of the SEC en banc has already become final and unappealable, therefore can no longer be reversed, amended or modified. They maintain that respondent Unisphere received a copy of said order on February 26, 1990 and that ten (10) days thereafter, it filed its motion for reconsideration. Said motion was denied by the SEC on May 14, 1990 which was received by respondent Unisphere on May 15, 1990. Consequently, they assert that respondent Unisphere had only the remaining five (5) days or on May 20, 1990 within which to file a notice of appeal. However, instead of appealing therefrom, respondent Unisphere filed a second motion for reconsideration on May 25, 1990 with the SEC en banc. Petitioners contend that no second motion for reconsideration is allowed by SEC Rules unless with express prior to leave of the hearing officer. Said second motion for reconsideration was likewise denied on August 21, 1990. Fifteen (15) days later or on September 5, 1990, respondent Unisphere filed its notice of appeal.

Section 8, Rule XII of the Revised Rules of Procedure of the SEC provides that:

SEC. 8. Reconsideration.-- Within thirty (30) days from receipt of the order or decision of the Hearing Officer, the aggrieved party may file a motion for reconsideration of such order or decision together with proof of service thereof upon the adverse party. No more than one motion for reconsideration shall be allowed unless with the express prior leave of the Hearing Officer.

Respondent Unisphere's non-observance of the foregoing rule rendered the February 23, 1990 and the May 14, 1990 orders of the SEC en banc final and unappealable. Its failure to perfect its appeal in the manner and within the period fixed by law rendered the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision.[6] Contrary to petitioners' view, the appeal to the Court of Appeals in this case should have been perfected within fifteen (15) days from receipt of the order denying the motion for reconsideration on May 15, 1990. But instead of appealing, respondent Unisphere filed a prohibited second motion for reconsideration without express prior leave of the hearing officer. Consequently, when it subsequently filed its notice of appeal on September 6, 1990, it was already eighty-two (82) days late. Therefore, the appeal before the Court of Appeals could have been dismissed outright for being time-barred. Rules of procedure are intended to ensure the proper administration of justice and the protection of substantive rights in judicial and quasi-judicial proceedings. Blatant violation of such rules smacks of a dilatory tactic which we simply cannot countenance.

Now, we go to the substantive aspect.

It is petitioners' assertion that the ruling of the Court of Appeals to offset the alleged losses as a result of the robberies in the amount of P12,295.00 from the unpaid monthly dues of P13,142.67 is unfounded because respondent Unisphere is not the owner of the goods lost but a third party, Amtrade. Respondent Unisphere, on its part, claims that this issue is factual, hence, not a proper issue to raise before this Court.

Actually, the issue for our consideration is whether or not set-off or compensation has taken place in the instant case. The Court of Appeals' dissertation on the matter is commendably instructive, but, lamentably, it reached a different conclusion. We quote pertinent portions of the assailed decision:

Compensation or offset under the New Civil Code takes place only when two persons or entities in their own rights, are creditors and debtors of each other. (Art. 1278). xxx

A distinction must be made between a debt and a mere claim. A debt is an amount actually ascertained. It is a claim which has been formally passed upon by the courts or quasi-judicial bodies to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt. (Vallarta vs. CA, 163 SCRA 587). Absent, however, any such categorical admission by an obligor or final adjudication, no compensation or off-set can take place. Unless admitted by a debtor himself, the conclusion that he is in truth indebted to another cannot be definitely and finally pronounced, no matter how convinced he may be from the examination of the pertinent records of the validity of that conclusion the indebtedness must be one that is admitted by the alleged debtor or pronounced by final judgment of a competent court or in this case by the Commission (Villanueva vs. Tantuico, 182 SCRA 263).

There can be no doubt that Unisphere is indebted to the Corporation for its unpaid monthly dues in the amount of P13,142.67. This is admitted. But whether the Corporation is indebted to Unisphere is vigorously disputed by the former.

It appears quite clear that the offsetting of debts does not extend to unliquidated, disputed claims arising from tort or breach of contract. (Compania General de Tabacos vs. French and Unson, 39 Phil. 34; Lorenzo and Martinez vs. herrero, 17 Phil. 29).

It must be noted that Unisphere just stopped paying its monthly dues to the Corporation on September 23, 1983

without notifying the latter. It was only on February 24, 1984, or five months after, that it informed the corporation of its suspension of payment of the condominium dues to offset the losses it suffered because of the robberies.

In resisting the finding which underscores their negligence, E.G.V. Realty and Cristina condominium corporation, would have this Court appreciate in their favor the admission of Mr. Alfonso Zamora of Unisphere that there was no such agreement among the unit owners that any member who incurred losses will be indemnified from the common contribution. (TSN, July 7, 1987, p. 60).

The herein appellees further argue that the cause of action for reimbursement of the value of the items lost because of the robberies should be against the security agency and not the Corporation.

On the other hand, Unisphere invokes ART. 1170 of the Civil Code which provides:

ART. 1170.- Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.

There is weight in the initial factual findings of the SEC Hearing Officer with respect to the losses suffered by Unisphere in the amount of P12,295.00:

Plaintiff likewise does not dispute the fact of robbery that occurred on November 28, 1981 and July 26, 1982 inside 301 Cristina Condominium.

Plaintiff admits that it had secured the services of Jimenez Protective and Security Agency to safeguard the Condominium premises under its instructions and supervision, but which failed to detect the robbery incidents that occurred twice at Unit 301 of respondent, canting (sic) away bulk items.

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From the undisputed facts, plaintiff was remissed (sic) within its obligation to provide safety to respondent inside its unit. This was demonstrated by the fact that two robbery incidents befell respondents under the negligent eye of plaintiff's hired security guards. It can be safely pronounced that plaintiff has not complied with what was incumbent upon it to do in a proper manner.

Since it has been determined and proven by the evidence presented before the hearing office of respondent SEC that Unisphere indeed suffered losses because of the robbery incidents and since it (Unisphere) did not refute its liability to the corporation for the unpaid monthly dues in the amount of P13,142. 67, this amount should be set-off against the aforestated losses of Unisphere.[7]

We fully agree with the appellate court's dissertation on the nature and character of a set-off or compensation. However, we cannot subscribe to its conclusion that a set-off or compensation took place in this case.

In Article 1278 of the Civil Code, compensation is said to take place when two persons, in their own right, are creditors and debtors of each other. Compensation is "a mode of extinguishing to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other" and "the offsetting of two obligations which are reciprocally extinguished if they are of equal value, or extinguished to the concurrent amount if of different values." [8] Article 1279 of the same Code provides:

Article 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Absent any showing that all of these requisites exist, compensation may not take place.

While respondent Unisphere does not deny its liability for its unpaid dues to petitioners, the latter do not admit any responsibility for the loss suffered by the former occasioned by the burglary. At best, what respondent Unisphere has against petitioners is just a claim, not a debt. Such being the case, it is not enforceable in court. It is only the debts that are enforceable in court, there being no apparent defenses inherent in them.[9] Respondent Unisphere's claim for its loss has not been passed upon by any legal authority so as to elevate it to the level of a debt. So we held in *Alfonso Vallarta v. Court of Appeals, et al.*, [10] that:

Compensation or offset takes place by operation of law when two (2) persons, in their own right, are creditor and debtor of each other. For compensation to take place, a distinction must be made between a debt and a mere claim. A debt is a claim which has been formally passed upon by the highest authority to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt.[11]

Tested by the foregoing yardstick, it has not been sufficiently established that compensation or set-off is proper here as there is lack of evidence to show that petitioners E.G.V. Realty and CCC and respondent Unisphere are mutually debtors and creditors to each other.

Considering the foregoing disquisition, therefore, we find that respondent Court of Appeals committed reversible error in ruling that compensation or set-off is proper in the instant case.

WHEREFORE, for all the foregoing, the instant petition is hereby GRANTED. The Decision of the Court of Appeals dated February 17, 1995 is REVERSED and SET ASIDE. The Order of the Securities and Exchange Commission dated August 21, 1990 reiterating the Hearing Officer's Decision dated January 11, 1989, as amended by the Order of July 17, 1989, is hereby REINSTATED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Pardo, and Ynares-Santiago, JJ., concur.

[1] I Records, pp. 83-84.

[2] *Id.*, at 129.

[3] II Records, pp. 36-37.

[4] Rollo, pp. 32-33.

[5] (a) Republic Act No. 5434 reads:

Section 1. Appeals from specified agencies.-- Any provision of existing law or Rules of Court to the contrary notwithstanding, parties aggrieved by a final ruling, award, order, decision, or judgment of the Court of Agrarian Relations; the Secretary of Labor under Section 7 of Republic Act Numbered six hundred and two, also known as the 'Minimum Wage Law'; the Department of Labor under Section 23 of Republic Act

Numbered eight hundred seventy-five, also known as the 'Industrial Peace Act'; the Land Registration Commission; the Securities and Exchange Commission; the Social Security Commission; the Civil Aeronautics Board; the Patent Office and the Agricultural Inventions Board, may appeal therefrom to the Court of Appeals, within the period and in the manner herein provided, whether the appeal involves questions of fact, mixed questions of fact and law, or questions of law. Or all three kinds of questions. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by certiorari to the Supreme Court as provided in Rule 45 of the Rules of Court.

Sec. 2. Appeals to Court of Appeals.-- Appeals to the Court of Appeals shall be filed within fifteen (15) days from notice of the ruling, award, order, decision or judgment or from the date of its last publication, if publication is required by law for its effectivity; or in case a motion for reconsideration is filed within that period of fifteen (15) days, then within ten (10) days from notice or publication, when required by law, of the resolution denying the motion for reconsideration. No more than one motion for reconsideration shall be allowed any party. If no appeal is filed within the periods herein fixed, the ruling, award, order, decision or judgment shall become final and may be executed as provided by existing law.

Sec. 3. How appeals taken.-- Appeals shall be taken by filing a notice of appeal with the Court of Appeals and with the court, officer, board, commission or agency that made or rendered the ruling, award, order, decision or judgment appealed from, serving a copy thereof on all other interested parties. The notice of appeal shall state, under oath, the material dates to show that it was filed within the period fixed in this Act.

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(b) Section 22© of the Interim Rules and Guidelines of Batas Pambansa Blg. 129 reads:

22. Appellate procedure in the Intermediate Appellate Court.-

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© Appeals from Quasi-Judicial Bodies.-- The appeals to the Intermediate Appellate Court from quasi-judicial bodies shall continue to be governed by the provisions of Republic Act No. 5434 insofar as the same is not inconsistent with the provisions of B.P. Blg. 129.

[6] *Azores v. Securities and Exchange Commission*, 252 SCRA 387 [1996].

[7] *Rollo*, pp. 30-32.

[8] *IV Tolentino*, Civil Code of the Philippines, citing 8 Manresa 401, 1986, p. 366.

[9] *IV Tolentino*, Civil Code of the Philippines, 1986, p. 371.

[10] 163 SCRA 587 (1988).

[11] *Id.*, at 594.

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