

**FLETCHER CHALLENGE PETROLEUM PHILIPPINES, LIMITED,
KIRKLAND RESOURCES (HOLDINGS) PLC, BALABAC OIL
EXPLORATION AND DRILLING CO., INC., ORIENTAL PETROLEUM
AND MINERALS CORPORATION...***G.R. No. 123292. April 20, 1998*

Ponente: MENDOZA, J.

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This is a petition for review of the resolution[1] of the Court of Appeals dismissing petitioners' appeal. Petitioners and private respondents were members of a consortium which had a service contract with the Philippine government for the drilling of oil wells in two areas (Block A and Block B) in the waters off the northwestern part of Palawan. To finance the drilling operations, petitioners declared cash calls for the members of the consortium to infuse funds. As private respondents could not comply with Cash Calls Nos. 13, 14, and 15, they assigned their shares in Block A to petitioners. Petitioners, however, objected to the partial transfer and declared private respondents to have forfeited their interest in both Block A and Block B.

This prompted private respondents to file a complaint in the Regional Trial Court to compel petitioners to restore private respondents to their membership in the consortium. Petitioners filed an answer with counterclaim, contending that private respondents' expulsion from the consortium was in accordance with the parties' joint operating agreement. As counterclaim, petitioners sought the collection of admitted cash call defaults, interests, exemplary damages, attorney's fees, and costs.

Private respondents filed their answer to the counterclaim, in which they moved for the dismissal of the counterclaim against them for lack of jurisdiction due to non-payment of docket fees and lack of cause of action.

On May 25, 1993, hearing was held on the affirmative defenses to the complaint and counterclaim, after which the parties were ordered to file their memoranda within ten (10) days and thereafter their replies or comments within five (5) days from receipt thereof.

Petitioners filed their memorandum on June 4, 1993. On June 11, 1993, private respondents filed a reply to the memorandum in which they asked for the dismissal of the complaint which they had filed and for the dismissal of the counterclaim filed against them on the ground that, being an ancillary remedy, a compulsory counterclaim cannot stand by itself.

On July 7, 1993, the trial court dismissed the complaint and the counterclaim. It later denied petitioners' motion for reconsideration.

On February 11, 1994, petitioners filed a petition for review, raising the following issues: (1) whether or not the respondent judge could grant a motion to dismiss embodied in a reply to a memorandum without the requisite notice and hearing; and (2) whether or not the dismissal of the counterclaim was valid. The petition was filed with this Court (G.R. No. 113104).

In its resolution of February 28, 1994, the Third Division of the Court referred the case to the Court of Appeals, “considering that under Section 9 of Batas Pambansa Blg. 129, the [Court of Appeals] now exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts.”

Upon receipt of the case, the Court of Appeals on April 22, 1994 treated the case as an ordinary appeal from the Regional Trial Court.

On November 2, 1995, the Court of Appeals, on motion of private respondents, dismissed the appeal. It held that the filing of the petition for review was inappropriate, considering that the question raised, i.e., whether there was compliance with the requirements of a valid motion to dismiss, was a factual question, and therefore petitioners should have gone directly to the Court of Appeals on ordinary appeal. Petitioners filed a motion for reconsideration, but their motion was denied. Hence, this petition.

Petitioners contend that their appeal raised a pure question of law, hence, they were right in taking their appeal to this Court via a petition for review, but since this Court later referred the appeal to the Court of Appeals, the latter should not have dismissed their appeal. They contend that the trial court erred in dismissing their counterclaim without prior notice and hearing.

Petitioners claim that there was no factual issue raised because the trial judge admitted that he had “overlooked” the requirements for dismissing a counterclaim, thus admitting that there was no compliance with Rule 17, §2.[2] Consequently, the only question to be resolved was whether the trial judge could disregard the requirements of this Rule and grant private respondents’ motion to dismiss petitioners’ counterclaim as embodied in their reply to the memorandum. Petitioners state that they were not even furnished a copy.

The contention is without merit. What the trial judge appears to have meant when he said he “overlooked” the requirements was that he no longer considered it necessary to follow the requirements of Rule 17, §2 because the positions of the parties were already clear and, in fact, the dismissal of the complaint and the counterclaim had been discussed at the hearing on the affirmative defenses. Even assuming that the trial court admitted having “overlooked” the requisites of Rule 17, §2, there would nevertheless be a factual finding justifying appeal to the Court of Appeals. Implicit in this Court’s referral was a finding that the petition for review involved factual issues which made resort to this Court inappropriate. Petitioners moved for a reconsideration of the referral and even sought to take the question of appropriateness of sending the case to the Court of Appeals to the Court en banc, but their efforts to this end failed. That finding — that factual issues underlay the appeal — is now final. On the assumption that the question involved was factual, the Court of Appeals correctly held that petitioners should have brought an ordinary appeal, instead of filing a petition for review. Since the procedural requirements for the two remedies are different, it is clear that dismissal is the only appropriate action to take.[3]

In any event, the trial court’s order should be sustained. It appears from the record that a motion to dismiss was incorporated in private respondents’ answer to the petitioners’ counterclaim, based on petitioners’ failure to pay the docket fees and lack of cause of action. This motion was duly considered at the hearing on the affirmative defenses of the parties.

After the hearing and the parties had filed their memoranda, private respondents filed a “Reply to Defendants’ Memorandum and Supplemental Memorandum In Support of Plaintiffs’ Motion to Dismiss Counterclaim” in which private respondents moved to dismiss their action on the ground that facts had in the meantime supervened which have rendered the case moot and academic. Private respondents further argued that as the counterclaim was a compulsory counterclaim, it should be dismissed pursuant to the ruling in *Metals Engineering Resources Corp. v. Court of Appeals*. [4]

Petitioners deny having received a copy of the reply. They also contend that the motion included in the reply lacks the requisite three-day notice of hearing. They claim that no hearing had been held before the trial court ruled on the new ground in the reply.

The reply with supplemental memorandum in support of the motion to dismiss, however, was a mere supplement to the main motion to dismiss which was then pending before the court. The trial judge must have felt that there was no need for another hearing because the positions of the parties had been made clear. While it is true that the reply with supplemental memorandum did not contain a notice of hearing, petitioners, at this point, could have filed a reply to the supplemental memorandum or moved for a hearing on the new ground alleged therein, or at least filed an opposition to the dismissal of the counterclaim. Petitioners did not do so, however, allegedly because they were not furnished a copy of the memorandum, and were thus not aware of it. The record, however, belies this claim. The copy of the reply which is attached to the petition,[5] bears the stamp of petitioners' counsel from which it appears that the reply, dated June 9, 1993, was received by petitioners' counsel on the same day. There was sufficient time between then and the date the order was issued on July 7, 1993 for them to have availed themselves of the above remedies. For their failure to do so, petitioners may be considered to have waived the right to a hearing on the new ground as well as to oppose the same.

Concededly, the application of the trial court of the ruling in *Metals Engineering Resources Corp. v. Court of Appeals*,[6] where we held that the dismissal of the complaint carries with it the dismissal of the counterclaim was erroneous since that principle applies to instances when the trial court has no jurisdiction to entertain the main action of the case. The rule is that the counterclaim may not be dismissed if defendant objects, unless it can be independently considered by the court.[7] Here, however, no objection was made by the petitioners and so the trial court validly dismissed the same. At any rate, petitioners are not without a remedy because under Rule 17, §2, the dismissal of the counterclaim is without prejudice to its filing as a separate action for the collection of the amounts owed by private respondents under their joint operating agreement and other agreements.

WHEREFORE, the petition for review is DENIED for failure of petitioners to show that the Court of Appeals committed a reversible error.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Per Justice Quirino D. Abad Santos, Jr., concurred in by Justices Nathanael P. De Pano, Jr. and Delilah Vidallon-Magtolis.

[2] This provision states:

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.

[3] Minute Resolution, *Anacleto Murillo v. Rodolfo Consul*, UDK-9748, 183 SCRA xi (1990).

[4] 203 SCRA 273 (1991).

[5] Petition, Annex N; Rollo, pp. 204-206.

[6] Supra note 4.

[7] Rules 17, §2.

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