

ENRIQUE S. CASTRO, PLAINTIFF AND APPELLANT, VS. ESPERANZA B. MONTES, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 12956. March 30, 1960*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Manila, Hon. Froilan Bayona, presiding, dismissing the complaint filed by the plaintiff in this case.

The record shows that on November 4, 1955, Esperanza Montes executed a deed of chattel mortgage in favor of Enrique S. Castro, conveying by way of mortgage all her rights and interests in a motor boat named Sacred Heart, with Certificate of Philippine Register No. 1610 issued by the Collector of Customs on June 29, 1948. The mortgage was executed to secure a loan of P3,000.00, evidenced by a promissory note signed by the mortgagor on January 25, 1956. This note supersedes another promissory note signed by the mortgagor on November 4, 1965 in the same amount of P3,000.00. Plaintiff filed an action in the Court of First Instance of Manila against Montes, alleging the existence of the mortgage above-mentioned, and that notwithstanding demands for the payment of the loan and its interest defendant Montes refused and, failed to pay the same. Plaintiff prays that judgment be rendered for payment by defendant to him of the sum of P3,000.00, with interest at the rate of 1% per month, and attorney's fees in the amount of P1,500.00. On March 6, defendant filed a motion to dismiss, claiming that plaintiff's claim in this case is barred because of his failure to set it up as a counterclaim in Civil Case No. 31641.

It also appears that on January 23, 1957, Esperanza B. Montes filed a complaint, Civil Case No. 31641, in the Court of First Instance of Manila against Enrique S. Castro, plaintiff herein, and Rosendo M. Castro. In her complaint Montes alleges, among other things, that she obtained from defendant Enrique S. Castro a loan in the sum of P3,000, payable on or before February 4, 1956, which loan she renewed on January 25, 1956 and was payable on or before June 4, 1956; that both loans were secured by a chattel mortgage over her boat named Sacred Heart; that defendants bound themselves to renew the insurance policy on the boat and to pay the premiums thereon; that the boat sunk on November 26, 1956, but she was not able to collect on the insurance because the policy had lapsed due to failure of defendant to pay the premiums; that Montes was forced to pay and actually paid 25% interest on said loan, although the notes show an interest of only 1% Montes demands payment by defendants to her of actual and moral damages for the loss of the boat and the return of the alleged usurious interest on the loans and payment. On February 12, 1957, defendant Castro filed a motion to dismiss, on the ground that the complaint fails to state a cause of action against the defendants and that there is misjoinder of parties defendant. This motion to dismiss was granted by the court.

Referring now to the action instituted by Castro against Montes for the recovery of the loan and interest thereon, the court issued an order dismissing the complaint. The order of the court reads as follows:

(Caption and Title Omitted)

"A motion to dismiss dated March 6, 1957 was filed by Atty. Antonio Barredo on the ground that 'plaintiff's

claim in this case is barred as a consequence of plaintiff's failure to set up the same in Civil Case N6. 31G41 of this Court, because said claim is a compulsory counterclaim' as proven by Annex 'A'. The herein defendant on January 23, 1957 filed a complaint against the herein plaintiffs before the Court of First Instance of Manila docketed therein as Civil Case No. 31641 entitled 'Esperanza Montes vs. Rosendo Castro and Enrique Castro'. From this Annex "A" it shows that the claim in this case arises out of and/or is necessarily connected with the transaction or occurrence that is the same-subject matter of the herein defendant's complaint, Annex A. Under Section 6 of Rule 10 of the Rules of Court, a compulsory counterclaim which is not set up by a defendant in the same action shall be deemed barred. In the instant case, the present complaint was filed by the plaintiff only on January 31, 1957 after the said plaintiff was served with a summons and a copy of the complaint in Civil Case No. 31641. In other words, plaintiff filed the present complaint when he was already aware of the existence of Civil Case No. 31641 wherein he is one of the defendants.

In view thereof, the failure of the plaintiff in this case to set up his present claim in Civil Case No. 31641 as a counterclaim forever bars him from asserting the same against the herein defendant.

Consequently, this case is hereby dismissed for lack of merits.

SO ORDERED.

Manila, March 16, 1957.

FROILAN BAYONA

Judge

(pp: 42-44 ROA)

The lower court having denied a motion for reconsideration of the above order, Castro, the plaintiff herein, appealed directly to this Court on a question of law. It is claimed that the lower court erred in declaring that plaintiff's action arose out of and was necessarily connected with the subject matter of the complaint in Civil Case No. 31641, entitled "Esperanza B. Montes, plaintiff, vs. Enrique S. Castro and Rosendo M. Castro, defendants."

We have made a study of the allegations of the complaint which was previously filed by Esperanza B. Montes against Enrique S. Castro and Rosendo M. Castro. The first cause of action mentioned therein is for the recovery of P90,000 as damages, based on the supposed failure of Castro to renew the insurance policy on the motorboat and his failure to pay premiums on said policy. The motorboat had been mortgaged by Montes to the defendants Castro. The second cause of action is the recovery of alleged usurious interest on the loan. The third cause is moral damages for P20,000. In said complaint, the validity or existence of the promissory note for P3,000 is admitted. The demand for return of usurious interest does not put in issue the existence or validity of the mortgage loan of P8,000, which is covered by the promissory note and the chattel mortgage. The overpayment of interest does not put in issue the validity of the loan on which the interest is supposed to have been overpaid. Hence the

present claim of plaintiff is not necessarily raised in issue in said complaint.

We also note that the action filed by Montes against Enrique S. Castro and Rosendo M. Castro, presented on January 23, 1957, appears to have been dismissed by the court on the ground that the first cause of action alleges facts not constituting cause of action against the defendants therein, and that with respect to the second cause of action, there is a misjoinder of parties defendant. It does not even appear that defendant therein Enrique and Rosendo both surnamed Castro, had even presented an answer in said case, because their motion to dismiss was granted before their obligation to file an answer arose. One of the defendants in that case and plaintiff herein, Enrique S. Castro could not therefore be obliged to file his present claim as counterclaim in the first case, Civil Case No. 31641.

For the foregoing considerations, we find that the order of the court dismissing the complaint in this case should be, as it is hereby, reversed and set aside, and the case is hereby remanded to the court below for further proceedings. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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