

FELIPE YULIENCO, PETITIONER, VS. COURT OF APPEALS(NINTH DIVISION) AND ADVANCE CAPITAL CORPORATION, RESPONDENTS.

G.R. No. 131692. June 10, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

In this petition for review on certiorari, petitioner Felipe Yulienco (hereafter YULIENCO) seeks to reverse the decision[1] of 4 December 1997 of the Court of Appeals in CA-G.R. SP No. 42835, which dismissed for lack of merit the petition therein which sought to set aside the orders of 3 May 1996[2] and 30 August 1996[3] of the Regional Trial Court (RTC) of Quezon City, Branch 93, in Civil Case No. Q-95-23691. In said orders, the RTC denied petitioner's motion to dismiss the complaint and his motion for reconsideration, respectively.

The relevant facts are summarized by the Court of Appeals as follows:

Civil Case No. Q-95-23691 was instituted by private respondent Advance Capital Corporation (ACC) against petitioner Felipe Yulienco to recover the amount of P30,631,162.19 plus interests and penalty, which was apparently extended as a loan to the petitioner, as evidenced by four promissory notes, namely:

P.N. Date Amount Date Due

P.N.#56 March 12, 1993 P7,447,656.93 June 11, 1993

P.N.#57 March 26, 1993 P8,453,404.63 July 24, 1993

P.N.#59 April 23, 1993 P8,341,662.42 July 23, 1993

P.N.#60 May 7, 1993 P6,408,438.21 Aug. 6, 1993

Each promissory note also provided for an interest rate of 30% per annum.

In its complaint, the ACC alleged that petitioner failed and refused to pay the amounts reflected in the promissory notes upon their maturity and despite several demands to pay made to the petitioner, the last one being sent on January 9, 1995.

Petitioner filed his answer on July 17, 1995, alleging in sum, that the trial court cannot acquire jurisdiction over ACC's complaint because there is another case pending between ACC and the petitioner involving the same subject matter, and that ACC's complaint should have been filed as a necessary and compulsory counterclaim in the said case. Also, ACC's complaint was allegedly in violation of the proscription against splitting of a cause of action. Alternatively, petitioner countered that the promissory notes upon which ACC based its claim are fake, and do not express the true intent of the contracting parties.

On April 19, 1996, petitioner filed a memorandum/motion to dismiss with the trial court, setting up the special and affirmative defenses in his answer as grounds for the dismissal of ACC's suit.

The trial court struck down the said motion in its Order dated May 3, 1996, stating that:

"The records show that the subject matters of the instant case at bar (Annex A PN No. 56 dated 12 March 1993, Annex B PN No. 57 dated March 19, 1983 (sic), Annex C PN No. 59 dated 23 April 1993 and Annex D PN No. 60 dated 7 May 1993) are not among the subject matters of SP Civil Case No. 93-251, RTC, Makati case. The records further show that defendant did not invoke in his petition filed in the RTC Makati case any cause of action against plaintiff regarding the promissory notes which are the subject matters of the instant case.

After a careful and judicious consideration of the grounds being relied upon in support of the motion under consideration as well as the opposition filed thereto, the Court is inclined to hold that the promissory notes which comprise the subject matters of the RTC, Makati case, involve separate and distinct causes of action. Moreover, the Makati case involves real action whereas the instant case is only for collection of sum of money."

Petitioner's subsequent motion for reconsideration was, likewise, denied in the trial court's August 30, 1996 order, for lack of merit.[4]

Thereafter, YULIENCO filed before the Court of Appeals a petition for certiorari, prohibition and/or injunction, docketed as CA-G.R. SP No. 42835, questioning the aforementioned orders of the RTC of Quezon City. YULIENCO challenged the jurisdiction of the RTC over Civil Case No. Q-95-23691 principally on the ground of *litis pendentia*, because another case, Special Case No. Q-93-2521, which, he claimed, involved the same parties (he and Advance Capital Corporation [hereafter ACC]) and subject matter, is pending before the RTC of Makati City.

The Court of Appeals rejected YULIENCO's argument and consequently dismissed the petition in its decision of 4 December 1997. It found that "bar of *litis pendencia* [sic] will not operate in the present suit, inasmuch as there appears to be no identity in the subject matter from which the reliefs prayed for in the actions pending were premised," and in support thereof, made the following observations:

There is no showing that the promissory notes involved in the present action are in any way connected with the indebtedness of the petitioner, the enforcement of which is sought to be restrained in SP Civil Case No. 93-2521, pending in the Makati RTC. The promissory notes themselves (PN # 56, 57, 59 and 60) which are the primary repositories of the true intent of the contracting parties, do not speak of any reasonable relevance of the promissory notes subject of SP Civil Case No. 93-2521 to the present issue.

It follows, therefore, that ACC's quest for relief is not barred by the other reasons furthered by the petitioner.

The theory that ACC's claim is now barred because it should have been filed as a compulsory counterclaim in the Makati case is untenable. A compulsory counterclaim is one, which being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. (Sec. 7, Rule 6, 1997 Rules of Civil Procedure). As we have observed, it was not shown that a reasonable connection was established between ACC's present claim with the petitioner's attempt to restrain the foreclosure of his properties. Neither can it be said, for the same reason, that ACC is guilty of splitting a cause of action, or of forum-shopping.[5]

The Court of Appeals then ordered the RTC to proceed with the pre-trial.

Unable to accept the decision, YULIENCO filed the instant petition. He insists that the decision of the Court of Appeals is not in accord with law and jurisprudence, because: (1) Civil Case No. Q-95-23691 violated the fundamental rules on splitting of causes of action and/or necessary joinder of causes of action in that the cause of action therein (complaint for collection of sums of money covered by Promissory Notes Nos. 56, 57, 59 and 60) should have been set up as compulsory counterclaim in Special Case No. Q-93-2521; and (2) in filing Civil Case

No. Q-95-23691, ACC was guilty of forum shopping.

On its part, ACC maintains that Civil Case No. Q-95-23691 of the RTC of Quezon City is separate and distinct from Special Civil Case No. 93-2521 of the RTC of Makati City. The first is an ordinary collection suit, while the second is for injunction, and while both cases involve promissory notes, they are not the same promissory notes. The dissimilarity arises from the disparate obligations and transactions entered into or incurred by YULIENCO in different years. Hence, there is no violation of the rule concerning splitting causes of action or the necessary joinder of causes of action.

We agree with ACC.

A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party.[6] A counterclaim is compulsory if (a) it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim; (b) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim.[7] In other words, a compulsory counterclaim cannot be made the subject of a separate action but should be asserted in the same suit involving the same transaction or occurrence giving rise to it.[8]

The criteria or tests by which the compulsory or permissive nature of specific counterclaims can be determined are as follows:

- (1) Are the issues of fact and law raised by the claim and counterclaim largely the same?
- (2) Would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?
- (3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- (4)

Is there any logical relation between the claim and the counterclaim?[9]

Stripped of its legalese and trivial details, Special Civil Case No. 93-2521 of the RTC of Makati City is basically an injunction suit, a petition for prohibition. On the other hand, Civil Case No. Q-95-23691 is an ordinary action for collection of sums of money. In the former, YULIENCO essentially seeks to prohibit or enjoin the disposition and/or sale of his property, the proceeds of which will answer for his unpaid obligations to ACC. Specifically, YULIENCO attempts to prevent (1) the foreclosure of the real estate mortgages which he executed to secure his monetary obligations, (2) the issuance of certificates of sale in cases of mortgages already foreclosed, and (3) the sale of his specific club membership certificates and shares of stocks in ACC. Promissory notes are also involved in that case but they are specifically identified as Promissory Notes Nos. 315, 317 and 318, and are intimately related to or secured by the real estate mortgages. In Civil Case No. Q-95-23691, ACC simply seeks to collect from YULIENCO his unpaid monetary obligations covered by specific but unsecured Promissory Notes Nos. 56, 57, 59 and 60. Needless to say, they are not the promissory notes subject of the first action. Neither are they substantially, intimately and reasonably relevant to nor even remotely connected with the promissory notes and the cause of action in the injunction suit. Simply put, the promissory notes in both cases differ from and are not related to each other.

There is, therefore, a dissimilarity in the subject matter of both cases arising from separate and distinct transactions and necessarily requiring different evidence to support the divergent claims. More importantly, the "one compelling test of compulsoriness" i.e., the logical relationship between the claim and counterclaim, does not apply here. To reiterate, there is no logical relationship between YULIENCO's petition for injunctive relief and ACC's collection suit, hence separate trials of the respective claims of the parties will not entail a substantial duplication of effort and time as the factual and/or legal issues involved, as already explained, are dissimilar and distinct.[10] A judgment in Special Civil Action No. 93-2521 will not therefore bar Civil Case No. Q-95-23691; "this, [additionally] on the theory that what is barred by prior judgment are not only the matters squarely raised and litigated, but all such matters as could have been raised but were not." [11] Obviously, each averment by ACC for the collection of a sum of money covered by Promissory Notes Nos. 56, 57 59 and 60 is not a "matter" that could have been raised as counterclaim in the injunction suit.

In light of the above showing, there was no violation of the rule against splitting causes of action or necessary joinder of causes of action.

As to YULIENCO'S contention that ACC should be found guilty of forum-shopping, suffice it is to say that for forum-shopping to exist, both actions must involve the same transactions, same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues.[12] Clearly, it does not exist where two different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought,[13] as in the abovementioned cases. In other words, ACC did not engage in forum-shopping.

All told, the Court of Appeals did not therefore commit any reversible error in rendering the assailed 4 December 1997 decision. The factual determinations of the Court of Appeals therein are binding and conclusive upon this Court as no compelling reasons exist necessitating a re-examination or reversal of the same.

WHEREFORE, the instant petition is hereby DENIED for lack of merit and the appealed decision in CA-G.R. SP No. 42835 dismissing the petition therein and ordering the RTC of Quezon City to proceed with the pre-trial of Civil Case No. Q-95-23691 is hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Melo, Kapunan, Pardo, and Santiago, JJ., concur.

[1] Annex "A" of Petition, Rollo, 38-42. Per Cosico, R., J., with Montoya, S. and Vidallon-Magtolis, D. JJ, concurring.

[2] Annex "P" of Petition, Id., 320-321.

[3] Annex "R" of Petition, Id., 356.

[4] Rollo, 38-40.

[5] Id., 41-42.

[6] Chan v. Court of Appeals, 230 SCRA 685, 696 [1994].

[7] Intestate Estate of Amado B. Dalisay v. Marasigan, 257 SCRA 509, 513 [1996].

[8] Visayan Packing Corporation v. Reparations Commission, 155 SCRA 542, 545 [1987].

[9] Valencia v. Court of Appeals, 263 SCRA 275, 288 [1996].

[10] See Meliton v. Court of Appeals, 216 SCRA 485, 492 [1992].

[11] Supra note 8.

[12] Supra note 6 at 286.

[13] Golangco v. Court of Appeals, 283 SCRA 493, 500 [1997].

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