

FINANCIAL BUILDING CORPORATION, PETITIONER, VS. FORBES PARK ASSOCIATION, INC., RESPONDENT.*G.R. No. 133119. August 17, 2000*

Ponente: DE LEON, JR., J.

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Before us is petition for review on certiorari of the Decision[1] dated March 20, 1998 of the Court of Appeals[2] in CA-GR CV No. 48194 entitled “Forbes Park Association, Inc. vs. Financial Building Corporation”, finding Financial Building Corporation (hereafter, Financial Building) liable for damages in favor of Forbes Park Association, Inc. (hereafter, Forbes Park), for violating the latter’s deed of restrictions on the construction of buildings within the Forbes Park Village, Makati.

The pertinent facts are as follows:

The then Union of Soviet Socialist Republic (hereafter, USSR) was the owner of a 4,223 square meter residential lot located at No. 10, Narra Place, Forbes Park Village in Makati City. On December 2, 1985, the USSR engaged the services of Financial Building for the construction of a multi-level office and staff apartment building at the said lot, which would be used by the Trade Representative of the USSR.[3] Due to the USSR’s representation that it would be building a residence for its Trade Representative, Forbes Park authorized its construction and work began shortly thereafter.

On June 30, 1986, Forbes Park reminded the USSR of existing regulations[4] authorizing only the construction of a single-family residential building in each lot within the village. It also elicited a reassurance from the USSR that such restriction has been complied with.[5] Promptly, the USSR gave its assurance that it has been complying with all regulations of Forbes Park.[6] Despite this, Financial Building submitted to the Makati City Government a second building plan for the construction of a multi-level apartment building, which was different from the first plan for the construction of a residential building submitted to Forbes Park.

Forbes Park discovered the second plan and subsequent ocular inspection of the USSR’s subject lot confirmed the violation of the deed of restrictions. Thus, it enjoined further construction work. On March 27, 1987, Forbes Park suspended all permits of entry for the personnel and materials of Financial Building in the said construction site. The parties attempted to meet to settle their differences but it did not push through.

Instead, on April 9, 1987, Financial Building filed in the Regional Trial Court of Makati, Metro Manila, a Complaint[7] for Injunction and Damages with a prayer for Preliminary Injunction against Forbes Park docketed as Civil Case No. 16540. The latter, in turn, filed a Motion to Dismiss on the ground that Financial Building had no cause of action because it was not the real party-in-interest.

On April 28, 1987, the trial court issued a writ of preliminary injunction against Forbes Park but the Court of Appeals nullified it and dismissed the complaint in Civil Case No. 16540 altogether. We affirmed the said dismissal in our Resolution,[8] promulgated on April 6, 1988, in G.R. No. 79319 entitled “Financial Building

Corporation, et al. vs. Forbes Park Association, et al.”

After Financial Building’s case, G.R. No. 79319, was terminated with finality, Forbes Park sought to vindicate its rights by filing on October 27, 1989 with the Regional Trial Court of Makati a Complaint[9] for Damages, against Financial Building, docketed as Civil Case No. 89-5522, arising from the violation of its rules and regulations. The damages claimed are in the following amounts: (a) P3,000,000.00 as actual damages; (b) P1,000,000.00 as moral damages; (c) P1,000,000.00 as exemplary damages; and (d) P1,000,000.00 as attorney’s fees.[10] On September 26, 1994, the trial court rendered its Decision[11] in Civil Case No. 89-5522 in favor of Forbes Park and against Financial Building, the dispositive portion of which reads, to wit:

“WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant:

(1) Ordering the defendant to remove/demolish the illegal structures within three (3) months from the time this judgment becomes final and executory, and in case of failure of the defendant to do so, the plaintiff is authorized to demolish/remove the structures at the expense of the defendant;

(2) Ordering the defendant to pay damages, to wit:

(a) P3,000,000.00 as actual damages by way of demolition expenses;

(b) P1,000,000.00 as exemplary damages;

(c) P500,000.00 as attorney’s fees;

(d) the costs of suit.

SO ORDERED.”

Financial Building appealed the said Decision of the trial court in Civil Case No. 89-5522 by way of a petition for review on certiorari[12] entitled “Financial Building Corporation vs. Forbes Park Association, Inc.” to the Court of Appeals and docketed therein as CA-GR CV No. 48194. However, the Court of Appeals affirmed it in its Decision[13] dated March 20, 1998, the dispositive portion of which reads:

“WHEREFORE, the Decision dated September 26, 1994 of the Regional Trial Court of Makati is AFFIRMED with the modification that the award of exemplary damages, as well as attorney’s fees, is reduced to fifty thousand pesos (P50,000.00) each.”

Hence, this petition, wherein Financial Building assigns the following errors:

I. “THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE COMPLAINT FILED BY RESPONDENT FPA DESPITE THE FACT THAT ITS ALLEGED CLAIMS AND CAUSES OF ACTION THEREIN ARE BARRED BY PRIOR JUDGMENT AND/OR ARE DEEMED WAIVED FOR ITS FAILURE TO INTERPOSE THE SAME AS COMPULSORY COUNTERCLAIMS IN CIVIL CASE NO. 16540;

II. THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE COMPLAINT FILED BY RESPONDENT FPA AGAINST PETITIONER FBC SINCE RESPONDENT FPA HAS NO CAUSE OF ACTION AGAINST PETITIONER FBC;

III. THE COURT OF APPEALS GRAVELY ERRED IN AWARDING DAMAGES IN FAVOR OF RESPONDENT FPA DESPITE THE FACT THAT ON THE BASIS OF THE EVIDENCE ON RECORD, RESPONDENT FPA IS NOT ENTITLED THERETO AND PETITIONER FBC IS NOT LIABLE THEREFOR;

IV. THE COURT OF APPEALS ERRED IN ORDERING THE DEMOLITION OF THE ILLEGAL STRUCTURES LOCATED AT NO. 10 NARRA PLACE, FORBES PARK, MAKATI CITY, CONSIDERING THAT THE SAME ARE LOCATED ON DIPLOMATIC PREMISES”[14]

We grant the petition.

First. The instant case is barred due to Forbes Park’s failure to set it up as a compulsory counterclaim in Civil Case No. 16540, the prior injunction suit initiated by Financial Building against Forbes Park.

A compulsory counterclaim is one which arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party’s claim.[15] If it is within the jurisdiction of the court and it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, such compulsory counterclaim is barred if it is not set up in the action filed by the opposing party.[16]

Thus, a compulsory counterclaim cannot be the subject of a separate action but it should instead be asserted in the same suit involving the same transaction or occurrence, which gave rise to it.[17] To determine whether a counterclaim is compulsory or not, we have devised the following tests: (1) Are the issues of fact or law raised by the claim and the 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 the defendant’s counterclaim? and (4) Is there any logical relation between the claim and the counterclaim? Affirmative answers to the above queries indicate the existence of a compulsory counterclaim.[18]

Undoubtedly, the prior Civil Case No. 16540 and the instant case arose from the same occurrence – the construction work done by Financial Building on the USSR’s lot in Forbes Park Village. The issues of fact and law in both cases are identical. The factual issue is whether the structures erected by Financial Building violate Forbes Park’s rules and regulations, whereas the legal issue is whether Financial Building, as an independent contractor working for the USSR, could be enjoined from continuing with the construction and be held liable for damages if it is found to have violated Forbes Park’s rules.

As a result of the controversy, Financial Building seized the initiative by filing the prior injunction case, which was anchored on the contention that Forbes Park’s prohibition on the construction work in the subject premises was improper. The instant case on the other hand was initiated by Forbes Park to compel Financial Building to remove the same structures it has erected in the same premises involved in the prior case and to claim damages for undertaking the said construction. Thus, the logical relation between the two cases is patent and it is obvious that substantially the same evidence is involved in the said cases.

Moreover, the two cases involve the same parties. The aggregate amount of the claims in the instant case is within the jurisdiction of the regional trial court, had it been set up as a counterclaim in Civil Case No. 16540. Therefore, Forbes Park’s claims in the instant case should have been filed as a counterclaim in Civil Case No. 16540.

Second. Since Forbes Park filed a motion to dismiss in Civil Case No. 16540, its existing compulsory counterclaim at that time is now barred.

A compulsory counterclaim is auxiliary to the proceeding in the original suit and derives its jurisdictional support therefrom.[19] A counterclaim presupposes the existence of a claim against the party filing the counterclaim. Hence, where there is no claim against the counterclaimant, the counterclaim is improper and it must be dismissed, more so where the complaint is dismissed at the instance of the counterclaimant.[20] In other words, if the dismissal of the main action results in the dismissal of the counterclaim already filed, it stands to reason that the

filing of a motion to dismiss the complaint is an implied waiver of the compulsory counterclaim because the grant of the motion ultimately results in the dismissal of the counterclaim.

Thus, the filing of a motion to dismiss and the setting up of a compulsory counterclaim are incompatible remedies. In the event that a defending party has a ground for dismissal and a compulsory counterclaim at the same time, he must choose only one remedy. If he decides to file a motion to dismiss, he will lose his compulsory counterclaim. But if he opts to set up his compulsory counterclaim, he may still plead his ground for dismissal as an affirmative defense in his answer.[21] The latter option is obviously more favorable to the defendant although such fact was lost on Forbes Park.

The ground for dismissal invoked by Forbes Park in Civil Case No. 16540 was lack of cause of action. There was no need to plead such ground in a motion to dismiss or in the answer since the same was not deemed waived if it was not pleaded.[22] Nonetheless, Forbes Park still filed a motion to dismiss and thus exercised bad judgment in its choice of remedies. Thus, it has no one to blame but itself for the consequent loss of its counterclaim as a result of such choice.

Inasmuch as the action for damages filed by Forbes Park should be as it is hereby dismissed for being barred by the prior judgment in G.R. No. 79319 (supra) and/or deemed waived by Forbes Park to interpose the same under the rule on compulsory counterclaims, there is no need to discuss the other issues raised by the herein petitioner.

WHEREFORE, the instant petition is hereby GRANTED and the Decision dated March 20, 1998 of the Court of Appeals in CA-G.R. CV No. 48194 is hereby REVERSED and SET ASIDE.

Costs against respondent Forbes Park Association, Inc. .

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing and Buena, JJ., concur.

[1] Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Artemio G. Tuquero, Rollo, pp. 75-89.

[2] Eleventh Division.

[3] Rollo, p. 876.

[4] Forbes Park Association, Inc. Rules and Regulations, 1984 edition, Rollo, pp. 299-320.

[5] Rollo, pp. 896-897.

[6] Rollo, p. 898.

[7] Rollo, pp. 90-106.

[8] Rollo, pp. 956-958.

[9] Rollo, pp. 959-974.

[10] Rollo, p. 973.

[11] Rollo, pp. 729-743.

[12] Rollo, pp. 9-74.

[13] Rollo, pp. 75-89.

[14] Petition, entitled “Financial Building Corporation vs. Forbes Park Association, Inc. and docketed as CA-G.R. CV No. 48194, Rollo, pp. 9-74.

[15] Sec. 3, Rule 6 of the 1964 Rules of Court, which were the rules in effect at the time of the pendency of Civil Case No. 16540.

[16] Sec. 4, Rule 9, *id.*

[17] *Yulienco v. Court of Appeals*, G.R. No. 131692, June 10, 1999. Citing *Valencia v. Court of Appeals*, 263 SCRA 275, 288 (1996).

[18] Sec. 4, Rule 9, *id.*

[19] *Metals Engineering Resources Corp. v. Court of Appeals* 203 SCRA 273, 282 (1991); *Santo Tomas University Hospital v. Surla* 294 SCRA 382, 392 (1998).

[20] *Ibid.*, p. 283; *Intestate Estate of Amado B. Dalisay v. Marasigan* 257 SCRA 509, 513-514 (1996); *International Container Terminal Services, Inc. v. Court of Appeals* 214 SCRA 456, 462 (1992).

[21] Sec. 5, Rule 16, 1964 Rules of Court, which was then in effect; under Sec. 6, Rule 16 of the 1997 Rules on Civil Procedure, if the action is dismissed as a result of the affirmative defense pleaded in the answer, the counterclaim pleaded in the answer may continue in the same action.

[22] *Caiña v. Court of Appeals* 239 SCRA 252, 265 (1994).

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