

**SPS. CLARO PONCIANO AND GLORIA PONCIANO, PETITIONERS, VS.
HONORABLE JOSE J. PARENTELA, JR., PRESIDING JUDGE, REGIONAL
TRIAL COURT OF TRECE MARTIRES CITY, BR. 23 AND SPS. ILDEFON...**

G.R. No. 133284. May 09, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The instant case deals with Administrative Circular 04-94. More specifically, the primary issue is whether or not an answer which asserts a compulsory counterclaim must include a certificate of non-forum shopping, and if so, whether or not the dismissal of such compulsory counterclaim by the trial court due to the absence of such certification has the effect of a dismissal with prejudice so as to bar the party from re-filing such compulsory counterclaim.

The antecedents of this case are as follows:

On June 13, 1995, private respondents Ildefonso and Leonora Clamosa filed a complaint for a sum of money and damages with the Regional Trial Court of Trece Martires City, Branch 23, against petitioners Claro and Gloria Ponciano for unpaid cost of labor and materials incurred by them in repairing petitioner's house in San Roque, Cavite. The case was docketed as Civil Case No. TM-601. Petitioners filed a motion to dismiss the complaint for failure to state a cause of action, but the same was denied by the trial court in its Order dated September 21, 1995.

On October 18, 1995, petitioners filed their answer with compulsory counterclaim, claiming that they have paid the total contract price agreed upon; that despite this, the work of private respondents was defective; and that private respondents abandoned the renovation before it was completed. Petitioners asserted that they are entitled to be paid P250,000 to complete the renovation, and damages.

On August 23, 1996, upon motion of private respondents, the trial court ordered that petitioners counterclaim be stricken off from the record for failure to comply with Administrative Circular No. 04-94, which requires an affidavit of non-forum shopping for all initiatory pleadings in all courts. Petitioners filed a motion for reconsideration dated September 17, 1996, arguing, among others, that since their counterclaim is compulsory in nature, it is not an initiatory pleading and therefore, does not fall within the scope of Administrative Circular No. 04-94. However, on October 17, 1996, the trial court denied petitioners' motion for reconsideration.[1]

Petitioners questioned the trial court's orders before this Court by means of a special civil action for certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure, which case was docketed as G.R. No. 127701. On February 10, 1997, the Court's Second Division denied the petition for lack of merit, holding that-

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We find there is no reversible error in the trial court's questioned order. The administrative circular invoked provides clearly that strict compliance with its mandate is imposed upon all initiatory pleadings, and that "the complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint,

counterclaim, cross-claim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim or relief." It is notable that in issuing the said circular, the court did not distinguish between permissive and compulsory counterclaim, and we need not make a distinction in this regard as well. (underscoring supplied)[2]

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Thereafter, petitioners filed an "Answer with Amended Compulsory Counterclaim," wherein the amendment consisted of the addition of a certification under oath in compliance with the Administrative Circular No. 04-94. Initially, the trial court admitted the "Answer with Amended Compulsory Counterclaim" in its July 9, 1997 Order. However, after the filing of a motion for reconsideration by private respondents, the court reconsidered its action and expunged the amended compulsory counterclaim from the records.[3] Its ruling was explained in its Order dated December 9, 1997-

After a soul-searching evaluation of the arguments in the Motion for reconsideration filed by plaintiffs thru counsel dated October 6, 1997 and the Comment/Opposition thereto filed by counsel for defendants dated November 5, 1997 this Court finds the *raison d'être* of said Motion for Reconsideration to be impressed with merit. Surely, it would be logomachic and fallacious and what is worse, contemptible to admit defendants' Amended Compulsory counterclaim after the Honorable Supreme Court had dismissed the petition for certiorari questioning the Order of this Court striking-off from the record defendants' compulsory counterclaim for not complying with Administrative Circular No. 04-94. As it is, the Honorable Supreme Court is the highest court of the land and this court like any other Regional Trial Court belongs to the lower strata of the judicial [sic].

ACCORDINGLY, the Motion for reconsideration is hereby granted. Apropos, defendants' amended compulsory counterclaim is hereby expunged and/or stricken off from the record.

SO ORDERED.[4]

After its motion for reconsideration was denied by the trial court in an order dated March 17, 1998, petitioners filed the present special civil action for certiorari under Rule 65, assailing the trial court's orders denying admission of their amended compulsory counterclaim. They maintain that this Court did not rule in its decision in G.R. No. 127701 that the dismissal of petitioners' compulsory counterclaim in Civil Case No. TM-601 for non-compliance with Administrative Circular No. 04-94 was with prejudice. Consequently, petitioners assert that they should be permitted to re-file their compulsory counterclaim provided that they comply with such circular[5].

Administrative Circular No. 04-94[6] was issued by this Court in order to prevent the undesirable practice of forum-shopping, which exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the chance that one or the other court would make a favorable disposition.[7] The pertinent portion of the Circular provides-

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(1) The plaintiff, petitioner, applicant or principal party seeking relief in the complaint, petition, application or other initiatory pleading shall certify under oath in such original pleading, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (c) if there is any such action or proceeding which is either pending or may have been terminated, he must state the status thereof; and (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, he undertakes to report that

fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification contemplated herein have been filed.

The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, cross-claim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief.

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In resolving the issues presented in this case, it should first be asked whether, in the first place, a compulsory counterclaim pleaded in an answer must be accompanied with a certificate of non-forum shopping. This very same issue was confronted in the case of *Santo Tomas University Hospital v. Surla*,^[8] wherein we held that the above-quoted provisions of administrative Circular No. 04-94 do not apply to compulsory counterclaims. Speaking for the Court, Justice Vitug explained that-

It bears stressing, once again, that the real office of Administrative Circular No. 04-94, made effective on 01 April 1994, is to curb the malpractice commonly referred to also as forum-shopping. It is an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The language of the circular distinctly suggests that it is primarily intended to cover an initiatory pleading or an incipient application of a party asserting a claim for relief.

It should not be too difficult, the foregoing rationale of the circular aptly taken, to sustain the view that the circular in question has not, in fact, been contemplated to include a kind of claim which, by its very nature as being auxiliary to the proceedings in the suit and as deriving its substantive and jurisdictional support therefrom, can only be appropriately pleaded in the answer and not remain outstanding for independent resolution except by the court where the main case pends. Prescinding from the foregoing, the proviso in the second paragraph of Section 5, Rule 8, of the 1997 Rules of Civil Procedure, i.e., that the violation of the anti-forum shopping rule "shall not curable by mere amendment xxx but shall be cause for the dismissal of the case without prejudice," being predicated on the applicability of the need for a certification against forum-shopping, obviously does not include a claim which cannot be independently set up.

A compulsory counterclaim is any claim for money or other relief which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of plaintiff's complaint. It is compulsory in the sense that if it is within the jurisdiction of the court, and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, it must be set up therein, and will be barred in the future if not set up.^[9]

In the case at bar, there is no doubt that the counterclaims pleaded by petitioners in their answers are compulsory in nature. The filing of a separate action by petitioners would only result in the presentation of the same evidence as in Civil Case No. TM-601. Proceeding from our ruling in *Santo Tomas University Hospital*, petitioners need not file a certification of non-forum shopping since their claims are not initiatory in character, and therefore, are not covered by the provisions of Administrative Circular No. 04-94.

WHEREFORE, the December 9, 1997 and March 17, 1998 Orders of Branch 23 of the Regional Trial Court of Trece Martires City in Civil Case No. TM-601 are hereby SET ASIDE. The trial court is ORDERED to ADMIT petitioners' answer with compulsory counterclaim. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

Purisima, J., abroad-no part.

[1] Rollo, 21-23.

[2] Rollo, 23-24.

[3] Rollo, 64-65.

[4] Rollo, 54.

[5] Rollo, 5-18.

[6] Took effect on April 1, 1994.

[7] Benguet Electric Cooperative, Inc. v. Flores, 287 SCRA 449 (1998).

[8] 294 SCRA 382 (1998).

[9] Cabaero v. Cantos, 271 SCRA 391 (1997).

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