

**CARLO A. TAN, PETITIONER, VS. KAAKBAY FINANCE CORPORATION,
DENNIS S. LAZARO AND ROLDAN M. NOYNAY, RESPONDENTS.***G.R. No. 146595. June 20, 2003*

Ponente: QUISUMBING, J.

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Petitioner seeks the review and reversal of the decision of the Court of Appeals, dated August 22, 2000 in CA-G.R. SP No. 58379,[1] which affirmed the orders of the Regional Trial Court (RTC), Branch 37, Calamba, Laguna, dated February 8, 2000 and March 29, 2000 in Civil Case No. 2881-2000-C entitled "Carlo A. Tan v. Kaakbay Finance Corporation, Dennis S. Lazaro and Roldan M. Noynay"[2] for declaration of nullity of the Promissory Note purportedly attached to the Real Estate Mortgage, the usurious and unlawful or exorbitant and unconscionable rates of interest and fees therein, and the Deed of Sale Under Pacto de Retro. Likewise, assailed is the appellate court's resolution[3] dated December 20, 2000, denying petitioner's motion for reconsideration.

The facts, as culled from the records, are as follows:

In the latter part of 1995, petitioner Carlo[4] A. Tan applied for and was granted a loan of four million pesos (P4,000,000.00) by private respondent Kaakbay Finance Corporation (Kaakbay), as represented by its president, private respondent Dennis S. Lazaro. As collateral, a real estate mortgage[5] on petitioner Tan's parcel of land with the improvements therein all covered by Transfer Certificate Title No. T-207125[6] located along Rizal St., Calamba, Laguna was executed. Petitioner alleged that the stipulated interest was 12% per annum until fully paid, which amount however, was not stated in the mortgage when he signed it on November 16, 1995. The amount loaned was released to him in two installments of P2,500,000.00 and P1,500,000.00 on November 23, 1995 and December 23, 1995, respectively.

As of November 22, 1996, petitioner failed to pay his obligation. He claimed that Kaakbay never furnished him a copy of the real estate mortgage; that, according to Kaakbay, his obligation had now reached P5,570,000.00 because the actual interest was 0.3925% for a period of less than one year instead of the agreed-upon interest of 12% per annum; and that he was made to issue two postdated checks to guarantee his obligation, namely: UCPB Check No. CBA 052985 in the amount of P5,570,000.00 postdated to November 5, 1996; and UCPB Check No. CBA 095215 in the amount of P6,175,000.00 postdated to January 31, 1997.[7]

Petitioner further alleged that he negotiated with Kaakbay for a further extension of time to pay his obligation, which the latter agreed to. It was agreed that petitioner and Kaakbay would sign, execute, and acknowledge a Deed of Sale Under Pacto de Retro upon the expiration of a two-year period starting January 8, 1998 to January 8, 2000. Petitioner was then given a blank Deed of Sale Under Pacto de Retro on January 8, 1998 which he signed.[8] His suspicions that Kaakbay was charging him usurious rates of interest were confirmed when he obtained a Statement of Account stating that his obligation had now reached P13,333,750.00.[9]

On October 21, 1999, petitioner learned of the existence of an accomplished Deed of Sale Under Pacto de Retro, which appeared that the same was signed by him and his wife Maria Rosario Delmo Tan, on one hand, and private

respondent Lazaro on the other, and was allegedly notarized by private respondent Atty. Roldan M. Noytay on February 5, 1998,[10] when in truth and in fact, he, his wife, and their witness Charito Morales did not sign it on said date, nor did they execute it before Atty. Noytay or any other notary public on said date.

On January 5, 2000, petitioner filed a complaint for Declaration of Nullity, Invalidity and Unenforceability or Annulment of the Promissory Notes purportedly attached to the Real Estate Mortgage dated November 16, 1995, the usurious and void rates of interest and other fees therein appearing, and the Deed of Sale Under Pacto De Retro purportedly dated February 5, 1998, and damages, with prayer for Preliminary Injunction and/or Temporary Restraining Order against respondents Kaakbay Finance Corporation, Dennis S. Lazaro and Roldan M. Noytay,[11] with the RTC Calamba, Laguna, and docketed as Civil Case No. 2881-2000-C. The complaint essentially prayed that herein petitioner's obligation to Kaakbay Finance Corporation in the amount of P4,000,000.00 be subject to interest of only 12% per annum from November 23, 1995; that the promissory notes attached to his Real Estate Mortgage dated November 16, 1995 be declared null and void; that the Deed of Sale Under Pacto de Retro dated February 5, 1998 be declared unenforceable; and that respondents pay moral and exemplary damages in the amount of P200,000.00 and P50,000.00, respectively, as well as attorney's fees.

On the same date, petitioner filed a Notice of Lis Pendens with the Registry of Deeds of Calamba, Laguna, which was annotated on TCT No. 207125.[12]

On January 17, 2000, respondents, through their counsel, Atty. Roldan M. Noytay, filed their `Consolidated Answer With Compulsory Counterclaim And Opposition To Temporary Restraining Order (TRO) and Preliminary Injunction.'[13]

During the hearing of petitioner's application for the issuance of a TRO, the parties agreed in open court that petitioner would withdraw his application for a TRO, while respondents in turn would hold in abeyance the registration of the Deed of Sale Under Pacto de Retro until the case was terminated. The trial court issued an order to that effect, dated January 17, 2000.[14]

Later, the law firm of Ortega, Del Castillo, Bacorro, Odulio, Calma, and Carbonell entered its appearance as counsel for respondents.[15] Said counsel requested for an extension of time to file an Answer, and also moved for the withdrawal of the `Consolidated Answer'[16] filed by Atty. Noytay insofar as respondents Kaakbay and Lazaro are concerned.[17] Respondents also filed a `Supplemental Opposition To The Prayer For Preliminary Injunction Or To Temporary Injunction.'[18]

On February 3, 2000, respondents, through the new counsel, filed their Answer with Counterclaim,[19] praying that petitioner pay them four million pesos (P4,000,000.00) representing the principal amount of the loan, nine million three hundred thirty three thousand seven hundred fifty pesos (P9,333,750.00) representing the `compounded monthly interest and annual penalty interest', two hundred fifty thousand pesos (P250,000.00) as litigation expenses, and five hundred thousand pesos (P500,000.00) as attorney's fees.

In addition, respondents filed a Motion for Admission of Counterclaim Without Payment of Fees, on the ground that their counterclaim is compulsory in nature, hence it may be admitted without payment of fees.[20]

On February 21, 2000, petitioner filed an Urgent Motion to Expunge Motions and Pleadings Filed by Defendants Kaakbay Finance Corporation and Dennis S. Lazaro, Particularly Their Answer with Counterclaim and Motion for Admission of Counterclaim both Dated February 3, 2000 and/or Comment/Opposition (To Said Defendants' Manifestation and Supplemental Opposition to their Prayer for Preliminary Injunction and to Temporary Injunction Dated January 24, 2000 and February 3, 2000 Respectively.)([21] In this motion, petitioner pointed out that the respondents were being represented by their counsel, the law firm of Ortega, Del Castillo, Bacorro,

Odulio, Calma, and Carbonell without stating if said law firm is in collaboration with or in substitution of their previous counsel, respondent Atty. Roldan M. Noynay. Petitioner argued that the procedure laid down in the rules concerning the change or substitution of counsel of a party litigant had not been properly complied with by the respondents, and thus the motions filed by the said law firm should be expunged. In addition, petitioner argued that respondents' Answer with Counterclaim should not be admitted, as it partook of the nature of a permissive counterclaim, which required the payment of the prescribed filing fees; and since the fees were not paid, the lower court did not acquire jurisdiction over said Answer.

In its order of February 8, 2000, the trial court granted respondents' motion for admission of counterclaim without payment of fees.[22]

Petitioner then filed a "Supplemental Motion by Way of Motion for Reconsideration" but this was denied.

Petitioner seasonably appealed to the Court of Appeals where he maintained that the trial court committed grave abuse of discretion in admitting the answer with counterclaim, which contains a permissive counterclaim the correct filing fees of which have not been paid by respondents Kaakbay and Lazaro to the trial court. Thus, petitioner insisted that the trial court had not acquired jurisdiction over the said answer with counterclaim. Alternatively, petitioner urged that said answer be expunged from the record of the case a quo.

On August 22, 2000, the appellate court promulgated its decision, decreeing as follows:

WHEREFORE, the instant petition is DENIED for lack of merit, and accordingly, DISMISSED.[23]

Petitioner then moved for reconsideration, but the appellate court denied it in the resolution dated December 20, 2000.

Hence, this instant petition, where petitioner now contends that the Court of Appeals committed the following errors, in:

(a) ITS HOLDING THAT "XXX THE LOWER COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DECLARING THE COUNTERCLAIM OF PRIVATE RESPONDENTS KAAKBAY FINANCE CORPORATION AND DENNIS S. LAZARO AS COMPULSORY, REQUIRING NO PAYMENT OF LEGAL FEES XXX" WHEN EVEN THE YULIENCO VS. COURT OF APPEALS CASE (G.R. NO. 131692, JUNE 10, 1999, 308 SCRA 206) IT CITED IN ITS DECISION FAVORABLY SUPPORTS THE ASSERTION OF PETITIONER THAT THE COUNTERCLAIM IN RESPONDENTS' ANSWER IN THE CASE A QUO IS A PERMISSIVE COUNTERCLAIM.

(b) ITS FAILURE TO RULE IN THE ASSAILED DECISION THAT HON. JUDGE JUANITA T. GUERRERO HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDERS OF FEBRUARY 8, 2000 AND MARCH 29, 2000 CONSIDERING THAT THE COLLECTION OF THE TOTAL AMOUNT OF P14,083,750.00 REPRESENTING UNPAID LOAN AND ACCRUED INTEREST THEREIN BY WAY OF COUNTERCLAIM IS COMPULSORY AND THAT THE ANSWER MAY BE ADMITTED WITHOUT NECESSITY OF PAYING THE DOCKET FEES.

(c) ITS FAILURE TO DECLARE IN THE ASSAILED DECISION THAT THE MOTION FOR ADMISSION OF COUNTERCLAIM WITHOUT PAYMENT OF FEES IS A MERE SCRAP OF PAPER AND VIOLATIVE OF SECTIONS 4, 5 AND 6, RULE 15 OF THE 1997 RULES OF CIVIL PROCEDURE.[24]

The basic issue for resolution in this case is whether the counterclaim of respondents is compulsory or permissive in nature.

Petitioner assails the Court of Appeals for affirming the trial court's order that the counterclaim of respondents is compulsory in nature, thus requiring no payment of legal fees. Petitioner contends that his complaint against the respondents is predicated on the unauthorized application of usurious, unconscionable and exorbitant rates of interest and other fees by respondents Kaakbay and Lazaro to petitioner's loan without the latter's knowledge, as well as the approval and the falsification of the promissory note supposed to be attached to the Real Estate Mortgage and the Deed of Sale Under Pacto de Retro.

According to petitioner, he did not attempt to prevent the foreclosure of the mortgage because what he questions is the validity of the promissory note and the void rates of interest. He insists that these were falsified. He likewise assails the genuineness of the deed of sale in dispute. Since the evidence to be presented by the respondents to support the genuineness and due execution of the questioned promissory note and the Deed of Sale Under Pacto de Retro as a ground for the specific performance thereof, is not the same as the evidence to be presented by the petitioner as plaintiff in the case below to support his claim of fraud employed by respondents, petitioner asserts the counterclaim cannot be deemed compulsory. He adds that since the respondents demand the payment of the loan and the interests pursuant to the contract of loan, completely inconsistent with his claim that subject documents were a nullity, what respondents had filed is not a compulsory counterclaim.

For their part, respondents contend that their counterclaims are for payment of the unpaid loan of the petitioner in the amount of P4,000,000.00, the compounded interest with annual penalty equivalent to P9,333,750.00, litigation expenses of P250,000 and attorney's fees of P500,000. The respondents say these are all compulsory and not permissive counterclaims. Petitioner admitted in his complaint his indebtedness to respondent Kaakbay Finance Corporation in the amount of P4,000,000.00 and his liability for interest at the rate of 12% per annum only. These admissions arise out of, or are necessarily connected with, or have a logical relation to the transaction or occurrence forming the subject matter of the petitioner's claim. Consequently, respondents conclude that the trial court did not err in ruling that payment of the docket fees is no longer necessary as their counterclaims are compulsory in nature.

In *Intestate Estate of Dalisay v. Hon. Marasigan*,^[25] we held that a counterclaim is compulsory where: (1) it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; (2) it does not require the presence of third parties of whom the court cannot acquire jurisdiction; and (3) the trial court has jurisdiction to entertain the claim. 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 claims 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?^[26]

In *Quintanilla v. Court of Appeals*, we said a "compelling test of compulsion" is whether there is "a logical relationship between the claim and counterclaim, that is, where conducting separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court."^[27]

Tested against the abovementioned standards, we agree with the appellate court's view that respondents' counterclaims are compulsory in nature. Petitioner's complaint was for declaration of nullity, invalidity or annulment of the promissory notes purportedly attached to the Real Estate Mortgage dated November 16, 1995 and the usurious and void interest rates appearing therein and the Deed of Sale Under Pacto De Retro. Respondents' counterclaim was for the payment of the principal amount of the loan, compounded monthly interest and annual penalty interest arising out of the non-payment of the principal loan, litigation expenses and attorney's fees. There is no dispute as to the principal obligation of P4,000,000, but there is a dispute as to the rate and amount of interest. Petitioner insists that the amount of interest is only 12% yearly until fully paid, while

respondents insist on 3.5% monthly. Also, respondents allege that petitioner owes them P9,333,750.00 representing the compounded monthly interest and annual penalty, which is disputed by petitioner. Petitioner further seeks the nullification of the Deed of Sale Under Pacto de Retro for being falsified, while respondents aver the deed is valid. It thus appears that the evidence required to prove petitioner's claims is similar or identical to that needed to establish respondents' demands for the payment of unpaid loan from petitioner such as amount of interest rates. In other words, petitioner's claim is so related logically to respondents' counterclaim, such that conducting separate trials for the claim and the counterclaim would result in the substantial duplication of the time and effort of the court and the parties. Clearly, this is the situation contemplated under the "compelling test of compulsoriness." The counterclaims of respondents herein are obviously compulsory, not permissive. As aptly held by the Court of Appeals, the issues of fact and law raised by both the claim and counterclaim are largely the same, with a logical relation, considering that the two claims arose out of the same circumstances requiring substantially the same evidence. Any decision the trial court will make in favor of petitioner will necessarily impinge on the claim of respondents, and vice versa. In this light, considering that the counterclaims of respondents are compulsory in nature, payment of docket fees is not required. The CA did not err in holding that the trial court had acquired jurisdiction on the matter.[28]

WHEREFORE, the petition is hereby DENIED for lack of merit, and the assailed decision of the Court of Appeals dated August 22, 2000 and its resolution dated December 20, 2000, in CA-G.R. SP No. 58379, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on official leave.

[1] Rollo, pp. 24-32.

[2] CA Rollo, pp. 32, 53.

[3] Supra, note 1 at 34.

[4] Also referred as "Carlos" in other parts of the record.

[5] Supra, note 2 at 75-77.

[6] Id. at 70-72.

[7] Id. at 78-79.

[8] Id. at 80-81.

[9] Id. at 82.

[10] Id. at 83-84.

[11] Id. at 54-66.

[12] Id. at 85-86.

[13] Id. at 88-95.

[14] Id. at 100.

[15] Id. at 101-102.

[16] Id. at 88-95.

[17] Id. at 107-108.

[18] Id. at 109-115.

[19] Id. at 116-129.

[20] Id. at 145.

[21] Id. at 33-46.

[22] Id. at 32.

[23] Rollo, p. 31.

[24] Id. at 8-9.

[25] 327 Phil. 298, 301 (1996).

[26] Financial Building Corporation v. Forbes Park Association, Inc., G.R. No. 133119, 17 August 2000, 338 SCRA 346, 352.

[27] 344 Phil. 811, 819 (1997).

[28] See Cabaero v. Cantos, 338 Phil. 105, 116-117 (1997).

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