

LAFARGE CEMENT PHILIPPINES, INC., (FORMERLY LAFARGE PHILIPPINES, INC.), LUZON CONTINENTAL LAND CORPORATION, CONTINENTAL OPERATING CORPORATION AND PHILIP ROSEBERG, PETITIONERS, V...

G.R. No. 155173. November 23, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May defendants in civil cases implead in their counterclaims persons who were not parties to the original complaints? This is the main question to be answered in this controversy.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the May 22, 2002[2] and the September 3, 2002 Orders[3] of the Regional Trial Court (RTC) of Quezon City (Branch 80) in Civil Case No. Q-00-41103. The decretal portion of the first assailed Order reads:

“WHEREFORE, in the light of the foregoing as earlier stated, the plaintiff’s motion to dismiss claims is granted. Accordingly, the defendants’ claims against Mr. Lim and Mr. Mariano captioned as their counterclaims are dismissed.”[4]

The second challenged Order denied petitioners’ Motion for Reconsideration.

The Facts

Briefly, the origins of the present controversy can be traced to the Letter of Intent (LOI) executed by both parties on August 11, 1998, whereby Petitioner Lafarge Cement Philippines, Inc. (Lafarge) -- on behalf of its affiliates and other qualified entities, including Petitioner Luzon Continental Land Corporation (LCLC) -- agreed to purchase the cement business of Respondent Continental Cement Corporation (CCC). On October 21, 1998, both parties entered into a Sale and Purchase Agreement (SPA). At the time of the foregoing transactions, petitioners were well aware that CCC had a case pending with the Supreme Court. The case was docketed as GR No. 119712, entitled Asset Privatization Trust (APT) v. Court of Appeals and Continental Cement Corporation.

In anticipation of the liability that the High Tribunal might adjudge against CCC, the parties, under Clause 2 (c) of the SPA, allegedly agreed to retain from the purchase price a portion of the contract price in the amount of P117,020,846.84 -- the equivalent of US\$2,799,140. This amount was to be deposited in an interest-bearing account in the First National City Bank of New York (Citibank) for payment to APT, the petitioner in GR No. 119712.

However, petitioners allegedly refused to apply the sum to the payment to APT, despite the subsequent finality of the Decision in GR No. 119712 in favor of the latter and the repeated instructions of Respondent CCC. Fearful that nonpayment to APT would result in the foreclosure, not just of its properties covered by the SPA with

Lafarge but of several other properties as well, CCC filed before the Regional Trial Court of Quezon City on June 20, 2000, a “Complaint with Application for Preliminary Attachment” against petitioners. Docketed as Civil Case No. Q-00-41103, the Complaint prayed, among others, that petitioners be directed to pay the “APT Retained Amount” referred to in Clause 2 (c) of the SPA.

Petitioners moved to dismiss the Complaint on the ground that it violated the prohibition on forum-shopping. Respondent CCC had allegedly made the same claim it was raising in Civil Case No. Q-00-41103 in another action, which involved the same parties and which was filed earlier before the International Chamber of Commerce. After the trial court denied the Motion to Dismiss in its November 14, 2000 Order, petitioners elevated the matter before the Court of Appeals in CA-GR SP No. 68688.

In the meantime, to avoid being in default and without prejudice to the outcome of their appeal, petitioners filed their Answer and Compulsory Counterclaims ad Cautelam before the trial court in Civil Case No. Q-00-41103. In their Answer, they denied the allegations in the Complaint. They prayed -- by way of compulsory counterclaims against Respondent CCC, its majority stockholder and president Gregory T. Lim, and its corporate secretary Anthony A. Mariano -- for the sums of (a) P2,700,000 each as actual damages, (b) P100,000,000 each as exemplary damages, (c) P100,000,000 each as moral damages, and (d) P5,000,000 each as attorney’s fees plus costs of suit.

Petitioners alleged that CCC, through Lim and Mariano, had filed the “baseless” Complaint in Civil Case No. Q-00-41103 and procured the Writ of Attachment in bad faith. Relying on this Court’s pronouncement in *Sapugay v. CA*,^[5] petitioners prayed that both Lim and Mariano be held “jointly and solidarily” liable with Respondent CCC.

On behalf of Lim and Mariano who had yet to file any responsive pleading, CCC moved to dismiss petitioners’ compulsory counterclaims on grounds that essentially constituted the very issues for resolution in the instant Petition.

Ruling of the Trial Court

On May 22, 2002, the Regional Trial Court of Quezon City (Branch 80) dismissed petitioners’ counterclaims for several reasons, among which were the following: a) the counterclaims against Respondents Lim and Mariano were not compulsory; b) the ruling in *Sapugay* was not applicable; and c) petitioners’ Answer with Counterclaims violated procedural rules on the proper joinder of causes of action.^[6]

Acting on the Motion for Reconsideration filed by petitioners, the trial court -- in an Amended Order dated September 3, 2002^[7] -- admitted some errors in its May 22, 2002 Order, particularly in its pronouncement that their counterclaim had been pleaded against Lim and Mariano only. However, the RTC clarified that it was dismissing the counterclaim insofar as it impleaded Respondents Lim and Mariano, even if it included CCC.

Hence this Petition.^[8]

Issues

In their Memorandum, petitioners raise the following issues for our consideration:

“[a]

Whether or not the RTC gravely erred in refusing to rule that Respondent CCC has no personality to move to dismiss petitioners’ compulsory counterclaims on Respondents Lim and Mariano’s behalf.

“[b]

Whether or not the RTC gravely erred in ruling that (i) petitioners' counterclaims against Respondents Lim and Mariano are not compulsory; (ii) Sapugay v. Court of Appeals is inapplicable here; and (iii) petitioners violated the rule on joinder of causes of action.”[9]

For clarity and coherence, the Court will resolve the foregoing in reverse order.

The Court's Ruling

The Petition is meritorious.

First Issue:

Counterclaims and

Joinder of Causes of Action.

Petitioners' Counterclaims

Compulsory

Counterclaims are defined in Section 6 of Rule 6 of the Rules of Civil Procedure as “any claim which a defending party may have against an opposing party.” They are generally allowed in order to avoid a multiplicity of suits and to facilitate the disposition of the whole controversy in a single action, such that the defendant's demand may be adjudged by a counterclaim rather than by an independent suit. The only limitations to this principle are (1) that the court should have jurisdiction over the subject matter of the counterclaim, and (2) that it could acquire jurisdiction over third parties whose presence is essential for its adjudication.[10]

A counterclaim may either be permissive or compulsory. It is permissive “if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim.”[11] A permissive counterclaim is essentially an independent claim that may be filed separately in another case.

A counterclaim is compulsory when its object “arises out of or is necessarily 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.”[12]

Unlike permissive counterclaims, compulsory counterclaims should be set up in the same action; otherwise, they would be barred forever. *NAMARCO v. Federation of United Namarco Distributors*[13] laid down the following criteria to determine whether a counterclaim is compulsory or permissive: 1) Are issues of fact and law raised by the claim and by 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 defendant's counterclaim? 4) Is there any logical relation between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory.

Adopted in *Quintanilla v. CA*[14] and reiterated in *Alday v. FGU Insurance Corporation*,[15] the “compelling test of compulsoriness” characterizes a counterclaim as compulsory if there should exist a “logical relationship” between the main claim and the counterclaim. There exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.

We shall now examine the nature of petitioners' counterclaims against respondents with the use of the foregoing parameters.

Petitioners base their counterclaim on the following allegations:

“Gregory T. Lim and Anthony A. Mariano were the persons responsible for making the bad faith decisions for, and causing plaintiff to file this baseless suit and to procure an unwarranted writ of attachment, notwithstanding their knowledge that plaintiff has no right to bring it or to secure the writ. In taking such bad faith actions, Gregory T. Lim was motivated by his personal interests as one of the owners of plaintiff while Anthony A. Mariano was motivated by his sense of personal loyalty to Gregory T. Lim, for which reason he disregarded the fact that plaintiff is without any valid cause.

“Consequently, both Gregory T. Lim and Anthony A. Mariano are the plaintiff’s co-joint tortfeasors in the commission of the acts complained of in this answer and in the compulsory counterclaims pleaded below. As such they should be held jointly and solidarily liable as plaintiff’s co-defendants to those compulsory counterclaims pursuant to the Supreme Court’s decision in *Sapugay v. Mobil*.

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“The plaintiff’s, Gregory T. Lim and Anthony A. Mariano’s bad faith filing of this baseless case has compelled the defendants to engage the services of counsel for a fee and to incur costs of litigation, in amounts to be proved at trial, but in no case less than P5 million for each of them and for which plaintiff Gregory T. Lim and Anthony A. Mariano should be held jointly and solidarily liable.

“The plaintiff’s, Gregory T. Lim’s and Anthony A. Mariano’s actions have damaged the reputations of the defendants and they should be held jointly and solidarily liable to them for moral damages of P100 million each.

“In order to serve as an example for the public good and to deter similar baseless, bad faith litigation, the plaintiff, Gregory T. Lim and Anthony A. Mariano should be held jointly and solidarily liable to the defendants for exemplary damages of P100 million each.” [16]

The above allegations show that petitioners’ counterclaims for damages were the result of respondents’ (Lim and Mariano) act of filing the Complaint and securing the Writ of Attachment in bad faith. *Tiu Po v. Bautista*[17] involved the issue of whether the counterclaim that sought moral, actual and exemplary damages and attorney’s fees against respondents on account of their “malicious and unfounded” complaint was compulsory. In that case, we held as follows:

“Petitioners’ counterclaim for damages fulfills the necessary requisites of a compulsory counterclaim. They are damages claimed to have been suffered by petitioners as a consequence of the action filed against them. They have to be pleaded in the same action; otherwise, petitioners would be precluded by the judgment from invoking the same in an independent action. The pronouncement in *Papa vs. Banaag* (17 SCRA 1081) (1966) is in point:

“Compensatory, moral and exemplary damages, allegedly suffered by the creditor in consequence of the debtor’s action, are also compulsory counterclaim barred by the dismissal of the debtor’s action. They cannot be claimed in a subsequent action by the creditor against the debtor.”

“Aside from the fact that petitioners’ counterclaim for damages cannot be the subject of an independent action, it is the same evidence that sustains petitioners’ counterclaim that will refute private respondent’s own claim for damages. This is an additional factor that characterizes petitioners’ counterclaim as compulsory.”[18]

Moreover, using the “compelling test of compulsoriness,” we find that, clearly, the recovery of petitioners’ counterclaims is contingent upon the case filed by respondents; thus, conducting separate trials thereon will result in a substantial duplication of the time and effort of the court and the parties.

Since the counterclaim for damages is compulsory, it must be set up in the same action; otherwise, it would be barred forever. If it is filed concurrently with the main action but in a different proceeding, it would be abated on the ground of *litis pendentia*; if filed subsequently, it would meet the same fate on the ground of *res judicata*. [19]

Sapugay v. Court of Appeals
Applicable to the Case at Bar

Sapugay v. Court of Appeals finds application in the present case. In Sapugay, Respondent Mobil Philippines filed before the trial court of Pasig an action for replevin against Spouses Marino and Lina Joel Sapugay. The Complaint arose from the supposed failure of the couple to keep their end of their Dealership Agreement. In their Answer with Counterclaim, petitioners alleged that after incurring expenses in anticipation of the Dealership Agreement, they requested the plaintiff to allow them to get gas, but that it had refused. It claimed that they still had to post a surety bond which, initially fixed at P200,000, was later raised to P700,000.

The spouses exerted all efforts to secure a bond, but the bonding companies required a copy of the Dealership Agreement, which respondent continued to withhold from them. Later, petitioners discovered that respondent and its manager, Ricardo P. Cardenas, had intended all along to award the dealership to Island Air Product Corporation.

In their Answer, petitioners impleaded in the counterclaim Mobil Philippines and its manager -- Ricardo P. Cardenas -- as defendants. They prayed that judgment be rendered, holding both jointly and severally liable for pre-operation expenses, rental, storage, guarding fees, and unrealized profit including damages. After both Mobil and Cardenas failed to respond to their Answer to the Counterclaim, petitioners filed a "Motion to Declare Plaintiff and its Manager Ricardo P. Cardenas in Default on Defendant's Counterclaim."

Among the issues raised in Sapugay was whether Cardenas, who was not a party to the original action, might nevertheless be impleaded in the counterclaim. We disposed of this issue as follows:

"A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party. However, the general rule that a defendant cannot by a counterclaim bring into the action any claim against persons other than the plaintiff admits of an exception under Section 14, Rule 6 which provides that 'when the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained.' The inclusion, therefore, of Cardenas in petitioners' counterclaim is sanctioned by the rules." [20]

The prerogative of bringing in new parties to the action at any stage before judgment is intended to accord complete relief to all of them in a single action and to avert a duplicity and even a multiplicity of suits thereby.

In insisting on the inapplicability of Sapugay, respondents argue that new parties cannot be included in a counterclaim, except when no complete relief can be had. They add that "[i]n the present case, Messrs. Lim and Mariano are not necessary for petitioners to obtain complete relief from Respondent CCC as plaintiff in the lower court. This is because Respondent CCC as a corporation with a separate [legal personality] has the juridical capacity to indemnify petitioners even without Messrs. Lim and Mariano." [21]

We disagree. The inclusion of a corporate officer or stockholder -- Cardenas in Sapugay or Lim and Mariano in the instant case -- is not premised on the assumption that the plaintiff corporation does not have the financial ability to answer for damages, such that it has to share its liability with individual defendants. Rather, such inclusion is based on the allegations of fraud and bad faith on the part of the corporate officer or stockholder. These allegations may warrant the piercing of the veil of corporate fiction, so that the said individual may not seek refuge therein, but may be held individually and personally liable for his or her actions.

In *Tramat Mercantile v. Court of Appeals*, [22] the Court held that generally, it should only be the corporation that could properly be held liable. However, circumstances may warrant the inclusion of the personal liability of a corporate director, trustee, or officer, if the said individual is found guilty of bad faith or gross negligence in

directing corporate affairs.

Remo Jr. v. IAC[23] has stressed that while a corporation is an entity separate and distinct from its stockholders, the corporate fiction may be disregarded if “used to defeat public convenience, justify a wrong, protect fraud, or defend crime.” In these instances, “the law will regard the corporation as an association of persons, or in case of two corporations, will merge them into one.” Thus, there is no debate on whether, in alleging bad faith on the part of Lim and Mariano the counterclaims had in effect made them “indispensable parties” thereto; based on the alleged facts, both are clearly parties in interest to the counterclaim.[24]

Respondents further assert that “Messrs. Lim and Mariano cannot be held personally liable [because their assailed acts] are within the powers granted to them by the proper board resolutions; therefore, it is not a personal decision but rather that of the corporation as represented by its board of directors.”[25] The foregoing assertion, however, is a matter of defense that should be threshed out during the trial; whether or not “fraud” is extant under the circumstances is an issue that must be established by convincing evidence.[26]

Suability and liability are two distinct matters. While the Court does rule that the counterclaims against Respondent CCC’s president and manager may be properly filed, the determination of whether both can in fact be held jointly and severally liable with respondent corporation is entirely another issue that should be ruled upon by the trial court.

However, while a compulsory counterclaim may implead persons not parties to the original complaint, the general rule -- a defendant in a compulsory counterclaim need not file any responsive pleading, as it is deemed to have adopted the allegations in the complaint as its answer -- does not apply. The filing of a responsive pleading is deemed a voluntary submission to the jurisdiction of the court; a new party impleaded by the plaintiff in a compulsory counterclaim cannot be considered to have automatically and unknowingly submitted to the jurisdiction of the court. A contrary ruling would result in mischievous consequences whereby a party may be indiscriminately impleaded as a defendant in a compulsory counterclaim; and judgment rendered against it without its knowledge, much less participation in the proceedings, in blatant disregard of rudimentary due process requirements.

The correct procedure in instances such as this is for the trial court, per Section 12 of Rule 6 of the Rules of Court, to “order [such impleaded parties] to be brought in as defendants, if jurisdiction over them can be obtained,” by directing that summons be served on them. In this manner, they can be properly appraised of and answer the charges against them. Only upon service of summons can the trial court obtain jurisdiction over them.

In Sapugay, Cardenas was furnished a copy of the Answer with Counterclaim, but he did not file any responsive pleading to the counterclaim leveled against him. Nevertheless, the Court gave due consideration to certain factual circumstances, particularly the trial court’s treatment of the Complaint as the Answer of Cardenas to the compulsory counterclaim and of his seeming acquiescence thereto, as evidenced by his failure to make any objection despite his active participation in the proceedings. It was held thus:

“It is noteworthy that Cardenas did not file a motion to dismiss the counterclaim against him on the ground of lack of jurisdiction. While it is a settled rule that the issue of jurisdiction may be raised even for the first time on appeal, this does not obtain in the instant case. Although it was only Mobil which filed an opposition to the motion to declare in default, the fact that the trial court denied said motion, both as to Mobil and Cardenas on the ground that Mobil’s complaint should be considered as the answer to petitioners’ compulsory counterclaim, leads us to the inescapable conclusion that the trial court treated the opposition as having been filed in behalf of both Mobil and Cardenas and that the latter had adopted as his answer the allegations raised in the complaint of Mobil. Obviously, it was this ratiocination which led the trial court to deny the motion to declare Mobil and Cardenas in default. Furthermore, Cardenas was not unaware of said incidents and the

proceedings therein as he testified and was present during trial, not to speak of the fact that as manager of Mobil he would necessarily be interested in the case and could readily have access to the records and the pleadings filed therein.

“By adopting as his answer the allegations in the complaint which seeks affirmative relief, Cardenas is deemed to have recognized the jurisdiction of the trial court over his person and submitted thereto. He may not now be heard to repudiate or question that jurisdiction.”[27]

Such factual circumstances are unavailing in the instant case. The records do not show that Respondents Lim and Mariano are either aware of the counterclaims filed against them, or that they have actively participated in the proceedings involving them. Further, in dismissing the counterclaims against the individual respondents, the court a quo -- unlike in Sapugay -- cannot be said to have treated Respondent CCC’s Motion to Dismiss as having been filed on their behalf.

Rules on Permissive Joinder of Causes of Action or Parties Not Applicable

Respondent CCC contends that petitioners’ counterclaims violated the rule on joinder of causes of action. It argues that while the original Complaint was a suit for specific performance based on a contract, the counterclaim for damages was based on the tortuous acts of respondents.[28] In its Motion to Dismiss, CCC cites Section 5 of Rule 2 and Section 6 of Rule 3 of the Rules of Civil Procedure, which we quote:

“Section 5. Joinder of causes of action. – A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties; x x x”

Section 6. Permissive joinder of parties. – All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest.”

The foregoing procedural rules are founded on practicality and convenience. They are meant to discourage duplicity and multiplicity of suits. This objective is negated by insisting -- as the court a quo has done --that the compulsory counterclaim for damages be dismissed, only to have it possibly re-filed in a separate proceeding. More important, as we have stated earlier, Respondents Lim and Mariano are real parties in interest to the compulsory counterclaim; it is imperative that they be joined therein. Section 7 of Rule 3 provides:

“Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.”

Moreover, in joining Lim and Mariano in the compulsory counterclaim, petitioners are being consistent with the solidary nature of the liability alleged therein.

Second Issue:

CCC’s Personality to Move to Dismiss the Compulsory Counterclaims

Characterizing their counterclaim for damages against Respondents CCC, Lim and Mariano as “joint and solidary,” petitioners prayed:

“WHEREFORE, it is respectfully prayed that after trial judgment be rendered:

“1.

Dismissing the complaint in its entirety;

“2.

Ordering the plaintiff, Gregory T. Lim and Anthony A. Mariano jointly and solidarily to pay defendant actual damages in the sum of at least P2,700,000.00;

“3.

Ordering the plaintiff, Gregory T. Lim and Anthony A. Mariano jointly and solidarily to pay the defendants LPI, LCLC, COC and Roseberg:

“a.

Exemplary damages of P100 million each;

“b.

Moral damages of P100 million each; and

“c.

Attorney’s fees and costs of suit of at least P5 million each.

Other reliefs just and equitable are likewise prayed for.”[29]

Obligations may be classified as either joint or solidary. “Joint” or “jointly” or “conjoint” means mancom or mancomunada or pro rata obligation; on the other hand, “solidary obligations” may be used interchangeably with “joint and several” or “several.” Thus, petitioners’ usage of the term “joint and solidary” is confusing and ambiguous.

The ambiguity in petitioners’ counterclaims notwithstanding, respondents’ liability, if proven, is solidary. This characterization finds basis in Article 1207 of the Civil Code, which provides that obligations are generally considered joint, except when otherwise expressly stated or when the law or the nature of the obligation requires solidarity. However, obligations arising from tort are, by their nature, always solidary. We have assiduously maintained this legal principle as early as 1912 in *Worcester v. Ocampo*,[30] in which we held:

“x x x The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action is tort. They fail to recognize the universal doctrine that each joint tortfeasor is not only individually liable for the tort in which he participates, but is also jointly liable with his tortfeasors. x x x

“It may be stated as a general rule that joint tortfeasors are all the persons who command, instigate, promote,

encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. x x x

“Joint tort feorsors are jointly and severally liable for the tort which they commit. The persons injured may sue all of them or any number less than all. Each is liable for the whole damages caused by all, and all together are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared to that of the others. x x x

“Joint tort feorsors are not liable pro rata. The damages can not be apportioned among them, except among themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount. x x x

“A payment in full for the damage done, by one of the joint tort feorsors, of course satisfies any claim which might exist against the others. There can be but satisfaction. The release of one of the joint tort feorsors by agreement generally operates to discharge all. x x x

“Of course the court during trial may find that some of the alleged tort feorsors are liable and that others are not liable. The courts may release some for lack of evidence while condemning others of the alleged tort feorsors. And this is true even though they are charged jointly and severally.”

In a “joint” obligation, each obligor answers only for a part of the whole liability; in a “solidary” or “joint and several” obligation, the relationship between the active and the passive subjects is so close that each of them must comply with or demand the fulfillment of the whole obligation.[31] The fact that the liability sought against the CCC is for specific performance and tort, while that sought against the individual respondents is based solely on tort does not negate the solidary nature of their liability for tortuous acts alleged in the counterclaims. Article 1211 of the Civil Code is explicit on this point:

“Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions.”

The solidary character of respondents’ alleged liability is precisely why credence cannot be given to petitioners’ assertion. According to such assertion, Respondent CCC cannot move to dismiss the counterclaims on grounds that pertain solely to its individual co-debtors.[32] In cases filed by the creditor, a solidary debtor may invoke defenses arising from the nature of the obligation, from circumstances personal to it, or even from those personal to its co-debtors. Article 1222 of the Civil Code provides:

“A solidary debtor may, in actions filed by the creditor, avail itself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible.” (Emphasis supplied).

The act of Respondent CCC as a solidary debtor -- that of filing a motion to dismiss the counterclaim on grounds that pertain only to its individual co-debtors -- is therefore allowed.

However, a perusal of its Motion to Dismiss the counterclaims shows that Respondent CCC filed it on behalf of Co-respondents Lim and Mariano; it did not pray that the counterclaim against it be dismissed. Be that as it may, Respondent CCC cannot be declared in default. Jurisprudence teaches that if the issues raised in the compulsory counterclaim are so intertwined with the allegations in the complaint, such issues are deemed automatically joined.[33] Counterclaims that are only for damages and attorney’s fees and that arise from the filing of the complaint shall be considered as special defenses and need not be answered.[34]

CCC's Motion to Dismiss the
Counterclaim on Behalf of
Respondents Lim and
Mariano Not Allowed

While Respondent CCC can move to dismiss the counterclaims against it by raising grounds that pertain to individual defendants Lim and Mariano, it cannot file the same Motion on their behalf for the simple reason that it lacks the requisite authority to do so. A corporation has a legal personality entirely separate and distinct from that of its officers and cannot act for and on their behalf, without being so authorized. Thus, unless expressly adopted by Lim and Mariano, the Motion to Dismiss the compulsory counterclaim filed by Respondent CCC has no force and effect as to them.

In summary, we make the following pronouncements:

- The counterclaims against Respondents CCC, Gregory T. Lim and Anthony A. Mariano are compulsory.
- The counterclaims may properly implead Respondents Gregory T. Lim and Anthony A. Mariano, even if both were not parties in the original Complaint.
- Respondent CCC or any of the three solidary debtors (CCC, Lim or Mariano) may include, in a Motion to Dismiss, defenses available to their co-defendants; nevertheless, the same Motion cannot be deemed to have been filed on behalf of the said co-defendants.
- Summons must be served on Respondents Lim and Mariano before the trial court can obtain jurisdiction over them.

WHEREFORE, the Petition is GRANTED and the assailed Orders REVERSED. The court of origin is hereby ORDERED to take cognizance of the counterclaims pleaded in petitioners' Answer with Compulsory Counterclaims and to cause the service of summons on Respondents Gregory T. Lim and Anthony A. Mariano. No costs.

SO ORDERED.

Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 18-53.

[2] Id., pp. 55-58. Penned by Judge Agustin S. Dizon.

[3] Id., pp. 59-61.

[4] RTC Order dated May 22, 2002, p. 4; rollo, p. 58.

[5] 183 SCRA 464, March 21, 1990.

[6] RTC Order dated May 22, 2002; rollo, pp. 9-12.

[7] Rollo, pp. 59-61.

[8] This case was deemed submitted for decision on November 13, 2003, upon receipt by this Court of Petitioners' Memorandum signed by Atty. Norma Margarita B. Patasil of the Sycip Salazar Hernandez & Gatmaitan Law Firm. Respondent CCC's Memorandum, signed by Attys. Rodolf C. Britanico and Melanie T.

Chua of the Pangilinan Britanico Sarmiento & Franco Law Offices, was received by the Court on October 10, 2003.

[9] Rollo, p. 383.

[10] See Section 7, Rule 6 of the 1997 Rules of Civil Procedure.

[11] *Lopez v. Gloria*, 40 Phil. 26, August 30, 1919, per Torres, J.

[12] See Section 7, Rule 6 of the 1997 Rules of Civil Procedure.

[13] 151 Phil. 338, January 31, 1973.

[14] 344 Phil. 811, September 24, 1997.

[15] 350 SCRA 113, January 23, 2001.

[16] Answer and Counterclaim ad Cautelam, pp. 7-9; rollo, (Annex-L) pp. 190-192.

[17] 191 Phil. 17, March 17, 1981.

[18] *Id.*, p. 20, per Melencio-Herrera, J.

[19] *Metals Engineering Resources v. Court of Appeals*, 203 SCRA 273, October 28, 1991.

[20] *Sapugay v. CA*, supra on pp. 469-470, per Regalado, J. Section 14, Rule 6 is now Section 12, Rule 6 under the 1997 Rules of Civil Procedure.

[21] Respondents' Memorandum, p. 11; rollo, p. 360.

[22] 238 SCRA 14, November 7, 1994.

[23] 172 SCRA 405, April 18, 1989, p. 408, per Gancayao, J.

[24] Section 2 of Rule 3 of the 1997 Rules of Civil Procedure:

“Real party-in-interest. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.”

Section 7 of Rule 3 of the 1997 Rules of Civil Procedure:

“Compulsory Joinder of indispensable parties. Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.”

[25] Respondent CCC's Memorandum, p. 12-13; rollo, pp. 361-362.

[26] *Remo Jr. v. IAC*, supra.

[27] *Sapugay v. Court of Appeals*; supra, pp. 470-471.

[28] See Respondent CCC's Memorandum, pp. 11-12; rollo, pp. 360-361.

[29] Answer and Compulsory Counterclaims ad Cautelan, p. 9; rollo, p. 192.

[30] 22 Phil. 42, February 27, 1912, per Johnson, J. The pronouncement in *Worcester* was later reiterated in *Perfecto v. Contreras*, 28 Phil. 538, December 2, 1914; *Versoza and Ruiz, Remetria y Cia v. Lim*, 45 Phil. 416, November 15, 1923.

[31] Paras, Civil Code of the Philippines, Annotated, Vol. IV, 10[th] ed., pp. 215-216 (citing 8 Manresa 194), 216. See Article 1207 of the Civil Code, which defines solidary obligations as follows:

“The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.”

[32] The grounds raised by Respondent CCC in its Motion to Dismiss the counterclaim solely pertain to Lim and Mariano:

a)

Lim and Mariano were not parties to the original Complaint and cannot therefore be impleaded in the counterclaim.

b)

Lim and Mariano were mere officials of CCC; their assailed acts, done by virtue of a Board Resolution, were corporate acts for which they cannot be made personally liable. (Motion to Dismiss dated December 29, 2001; rollo, pp. 220-225.

[33] Gojo v. Goyola, 35 SCRA 557, October 30, 1970.

[34] Worcester v. Lorenzana, July 31, 1953.

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