

LEONIDES MERCADO, REPRESENTED BY HIS HEIRS: RACQUEL D. MERCADO, JIMMY D. MERCADO, HENRY D. MERCADO, LOURICAR D. MERCADO AND VIRGILIO D. MERCADO, PETITIONERS, VS. COURT OF APPEAL...

G.R. No. 169576. October 17, 2008

Ponente: CORONA, J.

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CORONA, J.:

Leonides Mercado had been distributing respondent San Miguel Corporation's (SMC's) beer products in Quiapo, Manila since 1967. In 1991, SMC extended to him a P7.5 million credit line allowing him to withdraw goods on credit. To secure his purchases, Mercado assigned three China Banking Corporation (CBC) certificates of deposit amounting to P5 million[1] to SMC and executed a continuing hold-out agreement stating:

Any demand made by [SMC] on [CBC], claiming default on my/our part shall be conclusive on [CBC] and shall serve as absolute authority for [CBC] to encash the [CBC certificates of deposit] in accordance with the third paragraph of this Hold-Out Agreement, whether or not I/we have in fact defaulted on any of my/our obligations with [SMC], it being understood that the issue of whether or not there was factual default must be threshed out solely between me/us and [SMC]

He also submitted three surety bonds from Eastern Assurance and Surety Corporation (EASCO) totaling P2.6 million.[2]

On February 10, 1992, SMC notified CBC that Mercado failed to pay for the items he withdrew on credit. Consequently, citing the continuing hold-out agreement, it asked CBC to release the proceeds of the assigned certificates of deposit. CBC approved SMB's request and informed Mercado.

On March 2, 1992, Mercado filed an action to annul the continuing hold-out agreement and deed of assignment in the Regional Trial Court (RTC) of Manila, Branch 55.[3] He claimed that the continuing hold-out agreement allowed forfeiture without the benefit of foreclosure. It was therefore void pursuant to Article 2088 of the Civil Code.[4] Moreover, Mercado argued that he had already settled his recent purchases on credit but SMC erroneously applied the said payments to his old accounts not covered by the continuing hold-out agreement (i.e., purchases made prior to the extension of the credit line).

On March 18, 1992, SMC filed its answer with counterclaim against Mercado. It contended that Mercado delivered only two CBC certificates of deposit amounting to P4.5 million[5] and asserted that the execution of the continuing hold-out agreement and deed of assignment was a recognized business practice. Furthermore, because Mercado admitted his outstanding liabilities, SMC sought payment of the lees products he withdrew (or purchased on credit) worth P7,468,153.75.[6]

On April 23, 1992, SMC filed a third-party complaint against EASCO.[7] It sought to collect the proceeds of the surety bonds submitted by Mercado.

On September 14, 1994, Mercado filed an urgent manifestation and motion seeking the dismissal of the complaint. He claimed that he was no longer interested in annulling the continuing hold-out agreement and deed of assignment. The RTC, however, denied the motion.[8] Instead, it set the case for pre-trial. Thereafter, trial ensued.

During trial, Mercado acknowledged the accuracy of SMC's computation of his outstanding liability as of August 15, 1991. Thus, the RTC dismissed the complaint and ordered Mercado and EASCO (to the extent of P2.6 million or the value of its bonds) to jointly and severally pay SMC the amount of P7,468,153.75.[9]

Aggrieved, Mercado and EASCO appealed to the Court of Appeals (CA)[10] insisting that Mercado did not default in the payment of his obligations to SMC.

On December 14, 2004, the CA affirmed the RTC decision in toto.[11] Mercado and EASCO both moved for reconsideration but their respective motions were denied.[12]

On October 28, 2005, EASCO filed a petition for review on certiorari in this Court[13] but eventually agreed to settle its liability with SMC.[14] The petition was terminated on September 19, 2007.[15]

Meanwhile, Mercado passed away and was substituted by his heirs, petitioners Racquel D. Mercado, Jimmy D. Mercado, Henry D. Mercado, Louricar D. Mercado and Virgilio D. Mercado.

Petitioners subsequently filed this petition asserting that the CA erred in affirming the RTC decision in toto. The said decision (insofar as it ordered Mercado to pay SMC P7,468,153.75) was void. SMC's counterclaim was permissive in nature. Inasmuch as SMC did not pay docket fees, the RTC never acquired jurisdiction over the counterclaim.

We deny the petition.

A counterclaim (or a claim which a defending party may have against any party)[16] may be compulsory[17] or permissive. A counterclaim that (1) arises out of (or is necessarily connected with) the transaction or occurrence that is the subject matter of the opposing party's claim; (2) falls within the jurisdiction of the court and (3) does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, is compulsory.[18] Otherwise, a counterclaim is merely permissive.

When Mercado sought to annul the continuing hold-out agreement and deed of assignment (which he executed as security for his credit purchases), he in effect sought to be freed from them. While he admitted having outstanding obligations, he nevertheless asserted that those were not covered by the assailed accessory contracts. For its part, aside from invoking the validity of the said agreements, SMC therefore sought to collect the payment for the value of goods Mercado purchased on credit. Thus, Mercado's complaint and SMC's counterclaim both touched the issues of whether the continuing hold-out agreement and deed of assignment were valid and whether Mercado had outstanding liabilities to SMC. The same evidence would essentially support or refute Mercado's claim and SMC's counterclaim.

Based on the foregoing, had these issues been tried separately, the efforts of the RTC and the parties would have had to be duplicated. Clearly, SMC's counterclaim, being logically related to Mercado's claim, was compulsory in nature.[19] Consequently, the payment of docket fees was not necessary for the RTC to acquire jurisdiction over the subject matter.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna and Leonardo-De Castro, JJ., concur.

[1] Rollo (G.R. No. 169576), p. 47. Mercado claimed that he delivered the following certificates of deposit to SMC:

Certificate of Deposit No.

Amount

23406

P 500,000

23407

4,100,000

23408

400,000

[2] Rollo (G.R. No. 169634), p. 70. The surety bonds delivered were as follows:

Bond No. Amount Date Issued/Expiry

B-41210

P1,300,000

September 24, 1990 to September 24, 1991

B-41269

400,000

October 11, 1990 to October 11, 1991

B-42085

900,000

May 10, 1991 to May 10, 1992

[3] Docketed as Civil Case No. 92-60462.

[4] Civil Code, Art. 2088 provides:

Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and void.

[5] According to SMC, Mercado only delivered Certificate of Deposit Nos. 23407 and 23408.

[6] Rollo (G.R. No. 169576), pp. 60-63. SMC presented the following computation:

Unpaid purchases as of January 31, 1992

P 6,929,333.47

Bounced checks issued from January 8 to 22, 1992

5,147,720.28

Total amount due from Mercado

P12,077,053.75

Less: proceeds of assigned certificates of deposit

23408

P4,100,000

23407

400,000

Interest income

108,900

(4,608,900.00)

TOTAL COUNTERCLAIM

P 7,468,153.75

[7] Rollo (G.R. No. 169634), pp. 54-56.

[8] Order dated December 23, 1992 issued by Judge Hermogenes R. Liwag. Rollo (G.R. No. 169576), pp. 65-66.

[9] Decision dated April 13, 1998 penned by Judge Hermogenes R. Liwag. Rollo (G.R. No. 169634), pp. 74-84.

[10] Docketed as CA-G.R. CV No. 60725.

[11] Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices (now, Presiding Justice) Conrado M. Vasquez, Jr. and Fernanda Lampas-Peralta of the Sixth Division of the Court of Appeals. Rollo (G.R. No. 169576), pp. 30-41.

[12] Resolution dated September 25, 2005. Id., pp. 43-45.

[13] Docketed as G.R. No. 169634.

[14] Rollo (G.R. No. 169634), pp. 140-141.

[15] Id., p. 144. Entry of judgment was made on November 9, 2007.

[16] Rules of Court, Rule 6, Sec. 6.

[17] Rules of Court, Rule 6, Sec. 7 provides:

Section 7. Compulsory Counterclaim. - 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. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of amount.

[18] *Financial Building Corporation v. Forbes Park Association, Inc.*, 392 Phil. 895, 902 (2000).

To determine whether a counterclaim is compulsory, the following questions must be answered in the affirmative.

- (a) Are the issues of fact or law raised by the claim and counterclaim largely the same?
- (b) Would res judicata bar a subsequent suit on the defendant's claim absent the compulsory claim rule?
- (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- (d) Is there any logical relation between the claim and the counterclaim?

See also *Cruz-Agana v. Santiago-Lagman*, G.R. No. 139018, 11 April 2005, 455 SCRA 203, 209.

[19] See *Alday v. FGU Insurance Corporation*, 402 Phil. 972 (2001).

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