EDGARDO PINGA, PETITIONER, VS. THE HEIRS OF GERMAN SANTIAGO REPRESENTED BY FERNANDO SANTIAGO, RESPONDENTS.

G.R. NO. 170354. June 30, 2006

Ponente: TINGA, J.

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TINGA, J.:

The constitutional faculty of the Court to promulgate rules of practice and procedure[1] necessarily carries the power to overturn judicial precedents on points of remedial law through the amendment of the Rules of Court. One of the notable changes introduced in the 1997 Rules of Civil Procedure is the explicit proviso that if a complaint is dismissed due to fault of the plaintiff, such dismissal is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action."[2] The innovation was instituted in spite of previous jurisprudence holding that the fact of the dismissal of the complaint was sufficient to justify the dismissal as well of the compulsory counterclaim.[3]

In granting this petition, the Court recognizes that the former jurisprudential rule can no longer stand in light of Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

The relevant facts are simple enough. Petitioner Eduardo Pinga was named as one of two defendants in a complaint for injunction[4] filed with Branch 29 of the Regional Trial Court (RTC)[5] of San Miguel, Zamboanga del Sur, by respondent Heirs of German Santiago, represented by Fernando Santiago. The Complaint[6] dated 28 May 1998 alleged in essence that petitioner and co-defendant Vicente Saavedra had been unlawfully entering the coco lands of the respondent, cutting wood and bamboos and harvesting the fruits of the coconut trees therein. Respondents prayed that petitioner and Saavedra be enjoined from committing "acts of depredation" on their properties, and ordered to pay damages.

In their Amended Answer with Counterclaim,[7] petitioner and his co-defendant disputed respondents' ownership of the properties in question, asserting that petitioner's father, Edmundo Pinga, from whom defendants derived their interest in the properties, had been in possession thereof since the 1930s.[8] They alleged that as far back as 1968, respondents had already been ordered ejected from the properties after a complaint for forcible entry was filed by the heirs of Edmundo Pinga. It was further claimed that respondents' application for free patent over the properties was rejected by the Office of the President in 1971. Defendants in turn prayed that owing to respondents' forcible re-entry in the properties and the irresponsible and reckless filing of the case, they be awarded various types of damages instead in amounts totaling P2,100,000 plus costs of suit.[9]

By July of 2005, the trial of the case had not yet been completed. Moreover, respondents, as plaintiffs, had failed to present their evidence. It appears that on 25 October 2004, the RTC already ordered the dismissal of the complaint after respondents' counsel had sought the postponement of the hearing scheduled then.[10] However, the order of dismissal was subsequently reconsidered by the RTC in an Order dated 9 June 2005, which took into account the assurance of respondents' counsel that he would give priority to that case.[11]

At the hearing of 27 July 2005, plaintiffs' counsel on record failed to appear, sending in his stead a representative

who sought the postponement of the hearing. Counsel for defendants (who include herein petitioner) opposed the move for postponement and moved instead for the dismissal of the case. The RTC noted that it was obvious that respondents had failed to prosecute the case for an unreasonable length of time, in fact not having presented their evidence yet. On that ground, the complaint was dismissed. At the same time, the RTC allowed defendants "to present their evidence ex-parte."[12]

Respondents filed a Motion for Reconsideration[13] of the order issued in open court on 27 July 2005, opting however not to seek that their complaint be reinstated, but praying instead that the entire action be dismissed and petitioner be disallowed from presenting evidence ex-parte. Respondents claimed that the order of the RTC allowing petitioner to present evidence ex-parte was not in accord with established jurisprudence. They cited cases, particularly City of Manila v. Ruymann[14] and Domingo v. Santos,[15] which noted those instances in which a counterclaim could not remain pending for independent adjudication.

On 9 August 2005, the RTC promulgated an order granting respondents' Motion for Reconsideration and dismissing the counterclaim, citing as the only ground therefor that "there is no opposition to the Motion for Reconsideration of the [respondents]."[16] Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC in an Order dated 10 October 2005.[17] Notably, respondents filed an Opposition to Defendants' Urgent Motion for Reconsideration, wherein they argued that the prevailing jurisprudential rule[18] is that "compulsory counterclaims cannot be adjudicated independently of plaintiff's cause of action," and "a conversu, the dismissal of the complaint carries with it the dismissal of the compulsory counterclaims."[19]

The matter was elevated to this Court directly by way of a Petition for Review under Rule 45 on a pure question of law, the most relevant being whether the dismissal of the complaint necessarily carries the dismissal of the compulsory counterclaim.

We hold that under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, the dismissal of the complaint due to the fault of plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim.

On a prefatory note, the RTC, in dismissing the counterclaim, did not expressly adopt respondents' argument that the dismissal of their complaint extended as well to the counterclaim. Instead, the RTC justified the dismissal of the counterclaim on the ground that "there is no opposition to [plaintiff's] Motion for Reconsideration [seeking the dismissal of the counterclaim]."[20] This explanation is hollow, considering that there is no mandatory rule requiring that an opposition be filed to a motion for reconsideration without need for a court order to that effect; and, as posited by petitioner, the "failure to file an opposition to the Plaintiff's Motion for Reconsideration is definitely not one among the established grounds for dismissal [of the counterclaim]."[21] Still, the dismissal of the counterclaim by the RTC betrays at very least a tacit recognition of respondents' argument that the counterclaim did not survive the dismissal of the complaint. At most, the dismissal of the counterclaim over the objection of the defendant (herein petitioner) on grounds other than the merits of the counterclaim, despite the provisions under Rule 17 of the 1997 Rules of Civil Procedure, constitutes a debatable question of law, presently meriting justiciability through the instant action. Indeed, in reviewing the assailed orders of the RTC, it is inevitable that the Court consider whether the dismissal of the complaint, upon motion of the defendant, on the ground of the failure to prosecute on plaintiff's part precipitates or carries with it the dismissal of the pending counterclaims.

Our core discussion begins with Section 3, Rule 17 of the 1997 Rules of Civil Procedure, which states:

> SEC. 3. Dismissal due to fault of plaintiff.— If, for no justifiable cause, the plaintiff fails to appear on the date

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> of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The express qualification in the provision that the dismissal of the complaint due to the plaintiff's fault, as in the case for failure to prosecute, is without prejudice to the right of the defendant to prosecute his counterclaim in the same or separate action. This stands in marked contrast to the provisions under Rule 17 of the 1964 Rules of Court which were superseded by the 1997 amendments. In the 1964 Rules, dismissals due to failure to prosecute were governed by Section 3, Rule 17, to wit:

> SEC. 3. Failure to prosecute. —If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

Evidently, the old rule was silent on the effect of such dismissal due to failure to prosecute on the pending counterclaims. As a result, there arose what one authority on remedial law characterized as "the nagging question of whether or not the dismissal of the complaint carries with it the dismissal of the counterclaim."[22] Jurisprudence construing the previous Rules was hardly silent on the matter.

In their arguments before the RTC on the dismissal of the counterclaim, respondents cited in support City of Manila v. Ruymann,[23] Domingo v. Santos,[24] Belleza v. Huntington,[25] and Froilan v. Pan Oriental Shipping Co.,[26]all of which were decided more than five decades ago. Notably though, none of the complaints in these four cases were dismissed either due to the fault of the plaintiff or upon the instance of the defendant.[27]

The distinction is relevant, for under the previous and current incarnations of the Rules of Civil Procedure, it is Section 3, Rule 17 that governs the dismissals due to the failure of the plaintiff to prosecute the complaint, as had happened in the case at bar. Otherwise, it is Section 2, Rule 17, which then, and still is now, covered dismissals ordered by the trial court upon the instance of the plaintiff.[28] Yet, as will be seen in the foregoing discussion, a discussion of Section 2 cannot be avoided as the postulate behind that provision was eventually extended as well in cases that should have properly been governed by Section 3.

Even though the cases cited by respondents involved different factual antecedents, there exists more appropriate precedents which they could have cited in support of their claim that the counterclaim should have been dismissed even if the dismissal of the complaint was upon the defendants' motion and was predicated on the plaintiff's fault. BA Finance Corp. v. Co[29] particularly stands out in that regard, although that ruling is itself grounded on other precedents as well. Elucidation of these cases is in order.

On the general effect of the dismissal of a complaint, regardless of cause, on the pending counterclaims, previous jurisprudence laid emphasis on whether the counterclaim was compulsory or permissive in character. The necessity of such distinction was provided in the 1964 Rules itself, particularly Section 2, Rule 17, which stated that in instances wherein the plaintiff seeks the dismissal of the complaint, "if a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court."[30] The vaunted commentaries of Chief Justice Moran, remarking on Section 2, Rule 17, noted that "[t]here are instances in which a counterclaim cannot remain pending for independent adjudication, as, where it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim."[31]

This view expressed in Moran's Commentaries was adopted by the Court in cases where the application of Section 2, Rule 17 of the 1964 Rules of Court was called for, such as in Lim Tanhu v. Ramolete,[32] and Dalman v. City Court of Dipolog City.[33] The latter case warrants brief elaboration. Therein, the plaintiff in a civil case for damages moved for the withdrawal of her own case on the ground that the dispute had not been referred to the barangay council as required by law. Over the objection of the defendant, who feared that her own counterclaim would be prejudiced by the dismissal, plaintiff's motion was granted, the complaint and the counterclaim accordingly dismissed by the trial court. The Court refused to reinstate the counterclaim, opining without elaboration, "[i]f the civil case is dismissed, so also is the counterclaim filed therein."[34] The broad nature of that statement gave rise to the notion that the mandatory dismissal of the counterclaim upon dismissal of the complaint applied regardless of the cause of the complaint's dismissal.[35]

Notably, the qualification concerning compulsory counterclaims was provided in Section 2, Rule 17 of the 1964 Rules, the provision governing dismissals by order of the court, and not Section 3, Rule 17. As stated earlier, Section 3, which covered dismissals for failure to prosecute upon motion of the defendant or upon motu proprio action of the trial court, was silent on the effect on the counterclaim of dismissals of such nature.

Spouses Sta. Maria, Jr. v. Court of Appeals,[36] decided in 1972, ostensibly supplied the gap on the effect on the counterclaim of complaints dismissed under Section 3. The defendants therein successfully moved before the trial court for the dismissal of the complaint without prejudice and their declaration in default on the counterclaim after plaintiffs therein failed to attend the pre-trial. After favorable judgment was rendered on the counterclaim, plaintiffs interposed an appeal, citing among other grounds, that the counterclaim could no longer have been heard after the dismissal of the complaint. While the Court noted that the adjudication of the counterclaim in question "does not depend upon the adjudication of the claims made in the complaint since they were virtually abandoned by the non-appearance of the plaintiffs themselves," it was also added that "[t]he doctrine invoked is not available to plaintiffs like the petitioners, who prevent or delay the hearing of their own claims and allegations."[37] The Court, through Justice JBL Reyes, noted:

> The doctrine that the complaint may not be dismissed if the counterclaim cannot be independently adjudicated is not available to, and was not intended for the benefit of, a plaintiff who prevents or delays the prosecution of his own complaint. Otherwise, the trial of counterclaims would be made to depend upon the maneuvers of the plaintiff, and the rule would offer a premium to vexing or delaying tactics to the prejudice of the counterclaimants. It is in the same spirit that we have ruled that a complaint may not be withdrawn over the opposition of the defendant where the counterclaim is one that arises from, or is necessarily connected with, the plaintiff's action and cannot remain pending for independent adjudication.[38]

There is no doubt that under the 1964 Rules, the dismissal of a complaint due to the failure of the plaintiff to appear during pre-trial, as what had happened in Sta. Maria, fell within the coverage of Section 3, Rule 17. On the other hand, Section 2 was clearly limited in scope to those dismissals sustained at the instance of the plaintiff.[39] Nonetheless, by the early 1990s, jurisprudence was settling on a rule that compulsory counterclaims were necessarily terminated upon the dismissal of the complaint not only if such dismissal was upon motion of the plaintiff, but at the instance of the defendant as well. Two decisions from that period stand out in this regard, Metals Engineering Resources Corp. v. Court of Appeals [40] and International Container Terminal Services v. Court of Appeals.[41]

In Metals, the complaint was expunged from the record after the defendant had filed a motion for reconsideration of a trial court order allowing the filing of an amended complaint that corrected a jurisdictional error in the original complaint pertaining to the specification of the amount of damages sought. When the defendant was nonetheless allowed to present evidence on the counterclaim, the plaintiff assailed such allowance on the ground

that the counterclaim was compulsory and could no longer remain pending for independent adjudication. The Court, in finding for the plaintiff, noted that the counterclaim was indeed compulsory in nature, and as such, was auxiliary to the proceeding in the original suit and derived its jurisdictional support therefrom.[42] It was further explained that the doctrine was in consonance with the primary objective of a counterclaim, which was to avoid and prevent circuitry of action by allowing the entire controversy between the parties to be litigated and finally determined in one action, and to discourage multiplicity of suits.[43] Also, the Court noted that since the complaint was dismissed for lack of jurisdiction, it was as if no claim was filed against the defendant, and there was thus no more leg for the complaint to stand on.[44]

In International Container, the defendant filed a motion to dismiss which was granted by the trial court. The defendant's counterclaim was dismissed as well. The Court summarized the key question as "what is the effect of the dismissal of a complaint ordered at the instance of the defendant upon a compulsory counterclaim duly raised in its answer."[45] Then it ruled that the counterclaim did not survive such dismissal. After classifying the counterclaim therein as compulsory, the Court noted that "[i]t is obvious from the very nature of the counterclaim that it could not remain pending for independent adjudication, that is, without adjudication by the court of the complaint itself on which the counterclaim was based."[46]

Then in 1993, a divided Court ruled in BA Finance that the dismissal of the complaint for nonappearance of plaintiff at the pre-trial, upon motion of the defendants, carried with it the dismissal of their compulsory counterclaim.[47] The Court reiterated the rule that "a compulsory counterclaim cannot remain pending for independent adjudication by the court... as it is auxiliary to the proceeding in the original suit and merely derives its jurisdictional support therefrom."[48] Express reliance was made on Metals, International Container, and even Dalman in support of the majority's thesis. BA Finance likewise advised that the proper remedy for defendants desirous that their counterclaims not be dismissed along with the main complaint was for them to move to declare the plaintiffs to be "non-suited" on their complaint and "as in default" on their compulsory counterclaim, instead of moving for the dismissal of the complaint.[49]

Justice Regalado, joined by Chief Justice Narvasa, registered a strong objection to the theory of the majority. They agreed that the trial court could no longer hear the counterclaim, but only on the ground that defendant's motion to be allowed to present evidence on the counterclaim was filed after the order dismissing the complaint had already become final. They disagreed however that the compulsory counterclaim was necessarily dismissed along with the main complaint, pointing out that a situation wherein the dismissal of the complaint was occasioned by plaintiff's failure to appear during pre-trial was governed under Section 3, Rule 17, and not Section 2 of the same rule. Justice Regalado, who ironically penned the decision in Metals cited by the majority, explained:

> Turning back to Rule 17, it is readily apparent that Sections 2 and 3 thereof envisage different factual and adjective situations. The dismissal of the complaint under Section 2 is at the instance of plaintiff, for whatever reason he is minded to move for such dismissal, and, as a matter of procedure, is without prejudice unless otherwise stated in the order of the court or, for that matter, in plaintiff's motion to dismiss his own complaint. By reason thereof, to curb any dubious or frivolous strategy of plaintiff for his benefit or to obviate possible prejudice to defendant, the former may not dismiss his complaint over the defendant's objection if the latter has a compulsory counterclaim since said counterclaim would necessarily be divested of juridical basis and defendant would be deprived of possible recovery thereon in that same judicial proceeding.
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> Section 3, on the other hand, contemplates a dismissal not procured by plaintiff, albeit justified by causes imputable to him and which, in the present case, was petitioner's failure to appear at the pre-trial. This situation is also covered by Section 3, as extended by judicial interpretation, and is ordered upon motion of defendant or motu proprio by the court. Here, the issue of whether defendant has a pending counterclaim, permissive or

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> compulsory, is not of determinative significance. The dismissal of plaintiff's complaint is evidently a confirmation of the failure of evidence to prove his cause of action outlined therein, hence the dismissal is considered, as a matter of evidence, an adjudication on the merits. This does not, however, mean that there is likewise such absence of evidence to prove defendant's counterclaim although the same arises out of the subject matter of the complaint which was merely terminated for lack of proof. To hold otherwise would not only work injustice to defendant but would be reading a further provision into Section 3 and wresting a meaning therefrom although neither exists even by mere implication. Thus understood, the complaint can accordingly be dismissed, but relief can nevertheless be granted as a matter of course to defendant on his counterclaim as alleged and proved, with or without any reservation therefor on his part, unless from his conduct, express or implied, he has virtually consented to the concomitant dismissal of his counterclaim.[50]

Justice Regalado also adverted to Sta. Maria and noted that the objections raised and rejected by the Court therein were the same as those now relied upon by the plaintiff. He pointed out that Dalman and International Container, both relied upon by the majority, involved the application of Section 2, Rule 17 and not Section 3, which he insisted as the applicable provision in the case at bar.[51]

The partial dissent of Justice Regalado in BA Finance proved opportune, as he happened then to be a member of the Rules of Court Revision Committee tasked with the revision of the 1964 Rules of Court. Just a few months after BA Finance was decided, Justice Regalado proposed before the Committee an amendment to Section 3, Rule 17 that would explicitly provide that the dismissal of the complaint due to the fault of the plaintiff shall be "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action." The amendment, which was approved by the Committee, is reflected in the minutes of the meeting of the Committee held on 12 October 1993:

> [Justice Regalado] then proposed that after the words "upon the court's own motion" in the 6[th] line of the draft in Sec. 3 of Rule 17, the following provision be inserted: "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action." The Committee agreed with the proposed amendment of Justice Regalado.
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> Justice Herrera observed that under Secs. 1 to 3 of Rule 17, it is not the action that is dismissed but the complaint. He asked whether there is any distinction between "complaint" and "action." Justice Regalado opined that the action of the plaintiff is initiated by his complaint.
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> Justice Feria then suggested that the dismissal be limited to the complaint[.] Thus, in the 1st line of Sec. 1, the words "An action" will be changed to "a complaint"; in the 2nd line of Sec. 2, the words "an action" will be changed to "a complaint" and in Sec. 3, the word "action" on the 5[th] line of the draft will be changed to "complaint." The Committee agreed with Justice Feria's suggested amendments.
>
> CA Paño believed that there is a need to clarify the counterclaim that the defendant will prosecute, whether it is permissive or compulsory or all kinds of counterclaims.Justice Regalado opined that there is no need of making a clarification because it is already understood that it covers both counterclaims.[52]

It is apparent from these minutes that the survival of the counterclaim despite the dismissal of the complaint under Section 3 stood irrespective of whether the counterclaim was permissive or compulsory. Moreover, when the Court itself approved the revisions now contained in the 1997 Rules of Civil Procedure, not only did Justice Regalado's amendment to Section 3, Rule 17 remain intact, but the final version likewise eliminated the qualification formerly offered under Section 2 on "counterclaims that can remain pending for independent adjudication by the court."[53] At present, even Section 2, concerning dismissals on motion of the plaintiff, now recognizes the right of the defendant to prosecute the counterclaim either in the same or separate action notwithstanding the dismissal of the complaint, and without regard as to the permissive or compulsory nature of the counterclaim.

In his commentaries on the 1997 Rules of Civil Procedure, Justice Regalado expounds on the effects of the amendments to Section 2 and 3 of Rule 17:

> - Under this revised section [2], where the plaintiff moves for the dismissal of his complaint to which a counterclaim has been interposed, the dismissal shall be limited to the complaint. Such dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same resolved in the same action. Should he opt for the first alternative, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. Should he choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest such preference to the trial court within 15 days from notice to him of plaintiff's motion to dismiss. These alternative remedies of the defendant are available to him regardless of whether his counterclaim is compulsory or permissive. A similar alternative procedure, with the same underlying reason therefor, is adopted in Sec. 6, Rule 16 and Sec. 3 of this Rule, wherein the complaint is dismissed on the motion of the defendant or, in the latter instance, also by the court motu proprio.
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> x x x x
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> - The second substantial amendment to [Section 3] is with respect to the disposition of the defendant's counterclaim in the event the plaintiff's complaint is dismissed. As already observed, he is here granted the choice to prosecute that counterclaim in either the same or a separate action. x x x x
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> - With the aforestated amendments in Secs. 2 and 3 laying down specific rules on the disposition of counterclaims involved in the dismissal actions, the controversial doctrine in BA Finance Corporation vs. Co, et al., (G.R. No. 105751, June 30, 1993) has been abandoned, together with the apparent confusion on the proper application of said Secs. 2 and 3. Said sections were distinguished and discussed in the author's separate opinion in that case, even before they were clarified by the present amendments x x x.[54]

Similarly, Justice Feria notes that "the present rule reaffirms the right of the defendant to move for the dismissal of the complaint and to prosecute his counterclaim, as stated in the separate opinion [of Justice Regalado in BA Finance.]"[55] Retired Court of Appeals Justice Herrera pronounces that the amendment to Section 3, Rule 17 settles that "nagging question" whether the dismissal of the complaint carries with it the dismissal of the counterclaim, and opines that by reason of the amendments, the rulings in Metals Engineering, International Container, and BA Finance "may be deemed abandoned."[56] On the effect of amendment to Section 3, Rule 17, the commentators are in general agreement,[57] although there is less unanimity of views insofar as Section 2, Rule 17 is concerned.[58]

To be certain, when the Court promulgated the 1997 Rules of Civil Procedure, including the amended Rule 17, those previous jural doctrines that were inconsistent with the new rules incorporated in the 1997 Rules of Civil Procedure were implicitly abandoned insofar as incidents arising after the effectivity of the new procedural rules on 1 July 1997. BA Finance, or even the doctrine that a counterclaim may be necessarily dismissed along with the complaint, clearly conflicts with the 1997 Rules of Civil Procedure. The abandonment of BA Finance as doctrine extends as far back as 1997, when the Court adopted the new Rules of Civil Procedure. If, since then, such abandonment has not been affirmed in jurisprudence, it is only because no proper case has arisen that would warrant express confirmation of the new rule. That opportunity is here and now, and we thus rule that the dismissal of a complaint due to fault of the plaintiff is without prejudice to the right of the defendant to prosecute any pending counterclaims of whatever nature in the same or separate action. We confirm that BA Finance and all previous rulings of the Court that are inconsistent with this present holding are now abandoned.

Accordingly, the RTC clearly erred when it ordered the dismissal of the counterclaim, since Section 3, Rule 17 mandates that the dismissal of the complaint is without prejudice to the right of the defendant to prosecute the

counterclaim in the same or separate action. If the RTC were to dismiss the counterclaim, it should be on the merits of such counterclaim. Reversal of the RTC is in order, and a remand is necessary for trial on the merits of the counterclaim.

It would be perfectly satisfactory for the Court to leave this matter at that. Still, an explanation of the reason behind the new rule is called for, considering that the rationale behind the previous rule was frequently elaborated upon.

Under Act No. 190, or the Code of Procedure in Civil Actions promulgated in 1901, it was recognized in Section 127(1) that the plaintiff had the right to seek the dismissal of the complaint at any time before trial, "provided a counterclaim has not been made, or affirmative relief sought by the cross-complaint or answer of the defendant."[59] Note that no qualification was made then as to the nature of the counterclaim, whether it be compulsory or permissive. The protection of the defendant's right to prosecute the counterclaim was indeed unqualified. In City of Manila, decided in 1918, the Court explained:

> By paragraph 1 [of Section 127], it will be seen that, where the defendant has interposed a counterclaim, or is seeking affirmative relief by a cross-complaint, that then, and in that case, the plaintiff cannot dismiss the action so as to affect the right of the defendant in his counterclaim or prayer for affirmative relief. The reason for that exception is clear. When the answer sets up an independent action against the plaintiff, it then becomes an action by the defendant against the plaintiff, and, of course, the plaintiff has no right to ask for a dismissal of the defendant's action.[60]

Nonetheless, a new rule was introduced when Act No. 190 was replaced by the 1940 Rules of Court. Section 2, Rule 30 of the 1940 Rules specified that if a counterclaim is pleaded by a defendant prior to the service of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. This qualification remained intact when the 1964 Rules of Court was introduced.[61] The rule referred only to compulsory counterclaims, or counterclaims which arise out of or are necessarily connected with the transaction or occurrence that is the subject matter of the plaintiff's claim, since the rights of the parties arising out of the same transaction should be settled at the same time.[62] As was evident in Metals, International Container and BA Finance, the rule was eventually extended to instances wherein it was the defendant with the pending counterclaim, and not the plaintiff, that moved for the dismissal of the complaint.

We should not ignore the theoretical bases of the rule distinguishing compulsory counterclaims from permissive counterclaims insofar as the dismissal of the action is concerned. There is a particular school of thought that informs the broad proposition in Dalman that "if the civil case is dismissed, so also is the counterclaim filed therein,"[63] or the more nuanced discussions offered in Metals, International Container, and BA Finance. The most potent statement of the theory may be found in Metals,[64] which proceeds from the following fundamental premises—a compulsory counterclaim must be set up in the same proceeding or would otherwise be abated or barred in a separate or subsequent litigation on the ground of auter action pendant, litis pendentia or res judicata; a compulsory counterclaim is auxiliary to the main suit and derives its jurisdictional support therefrom as it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the complaint;[65] and that if the court dismisses the complaint on the ground of lack of jurisdiction, the compulsory counterclaim must also be dismissed as it is merely ancilliary to the main action and no jurisdiction remained for any grant of relief under the counterclaim.

The first point is derived from Section 4, Rule 9, of the 1964 Rules of Court, while the two latter points are sourced from American jurisprudence. There is no disputing the theoretical viability of these three points. In fact, the requirement that the compulsory counterclaim must be set up in the same proceeding remains extant under the

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1997 Rules of Civil Procedure.[66] At the same time, other considerations rooted in actual practice provide a counterbalance to the above-cited rationales.

Whatever the nature of the counterclaim, it bears the same integral characteristics as a complaint; namely a cause (or causes) of action constituting an act or omission by which a party violates the right of another. The main difference lies in that the cause of action in the counterclaim is maintained by the defendant against the plaintiff, while the converse holds true with the complaint. Yet, as with a complaint, a counterclaim without a cause of action cannot survive.

It would then seemingly follow that if the dismissal of the complaint somehow eliminates the cause(s) of the counterclaim, then the counterclaim cannot survive. Yet that hardly is the case, especially as a general rule. More often than not, the allegations that form the counterclaim are rooted in an act or omission of the plaintiff other than the plaintiff's very act of filing the complaint. Moreover, such acts or omissions imputed to the plaintiff are often claimed to have occurred prior to the filing of the complaint itself. The only apparent exception to this circumstance is if it is alleged in the counterclaim that the very act of the plaintiff in filing the complaint precisely causes the violation of the defendant's rights. Yet even in such an instance, it remains debatable whether the dismissal or withdrawal of the complaint is sufficient to obviate the pending cause of action maintained by the defendant against the plaintiff.[67]

These considerations persist whether the counterclaim in question is permissive or compulsory. A compulsory counterclaim arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim, does not require for its adjudication the presence of third parties, and stands within the jurisdiction of the court both as to the amount involved and the nature of the claim.[68] The fact that the culpable acts on which the counterclaim is based are founded within the same transaction or occurrence as the complaint, is insufficient causation to negate the counterclaim together with the complaint. The dismissal or withdrawal of the complaint does not traverse the boundaries of time to undo the act or omission of the plaintiff against the defendant, or vice versa. While such dismissal or withdrawal precludes the pursuit of litigation by the plaintiff, either through his/her own initiative or fault, it would be iniquitous to similarly encumber the defendant who maintained no such initiative or fault. If the defendant similarly moves for the dismissal of the counterclaim or neglects to timely pursue such action, let the dismissal of the counterclaim be premised on those grounds imputable to the defendant, and not on the actuations of the plaintiff.

The other considerations supplied in Metals are anchored on the premise that the jurisdictional foundation of the counterclaim is the complaint itself. The theory is correct, but there are other facets to this subject that should be taken into account as well. On the established premise that a counterclaim involves separate causes of action than the complaint even if derived from the same transaction or series of transactions, the counterclaim could have very well been lodged as a complaint had the defendant filed the action ahead of the complainant.[69] The terms "ancillary" or "auxiliary" may mislead in signifying that a complaint innately possesses more credence than a counterclaim, yet there are many instances wherein the complaint is trivial but the counterclaim is meritorious. In truth, the notion that a counterclaim is, or better still, appears to be merely "ancillary" or "auxiliary" is chiefly the offshoot of an accident of chronology, more than anything else.

The formalistic distinction between a complaint and a counterclaim does not detract from the fact that both of them embody causes of action that have in their end the vindication of rights. While the distinction is necessary as a means to facilitate order and clarity in the rules of procedure, it should be remembered that the primordial purpose of procedural rules is to provide the means for the vindication of rights. A party with a valid cause of action against another party cannot be denied the right to relief simply because the opposing side had the good fortune of filing the case first. Yet this in effect was what had happened under the previous procedural rule and

correspondent doctrine, which under their final permutation, prescribed the automatic dismissal of the compulsory counterclaim upon the dismissal of the complaint, whether upon the initiative of the plaintiff or of the defendant.

Thus, the present rule embodied in Sections 2 and 3 of Rule 17 ordains a more equitable disposition of the counterclaims by ensuring that any judgment thereon is based on the merit of the counterclaim itself and not on the survival of the main complaint. Certainly, if the counterclaim is palpably without merit or suffers jurisdictional flaws which stand independent of the complaint, the trial court is not precluded from dismissing it under the amended rules, provided that the judgment or order dismissing the counterclaim is premised on those defects. At the same time, if the counterclaim is justified, the amended rules now unequivocally protect such counterclaim from peremptory dismissal by reason of the dismissal of the complaint.

WHEREFORE, the petition is GRANTED. The Orders dated 9 August 2005 and 10 October 2005 of Branch 29, Regional Trial Court of San Miguel, Zamboanga del Sur in Civil Case No. 98-012 are SET ASIDE. Petitioner's counterclaim as defendant in Civil Case. No. 98-012 is REINSTATED. The Regional Trial Court is ORDERED to hear and decide the counterclaim with deliberate dispatch.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1] See CONSTITUTION, Art. VIII, Sec. 5(5).

[2] See 1997 RULES OF CIVIL PROCEDURE, Rule 17, Sec. 3.

[3] See e.g., BA Finance v. Co, infra.

[4] Docketed as Civil Case. No. 98-012.

[5] Presided by Judge Edilberto Absin, who promulgated all the rulings in this case, including those now assailed in the present Petition.

[6] Rollo, pp. 34-36.

[7] Id. at 39-48.

[8] It was also alleged that Saavedra was not an heir of Edmundo Pinga but was in fact the caretaker of the properties. Id. at 41.

[9] Id. at 48.

[10] Id. at 60.

[11] Id. at 63.

[12] Id. at 21.

[13] Id. at 23-24.

[14] 37 Phil. 421 (1918).

[15] 55 Phil. 361 (1930).

[16] Rollo, p. 25.

[17] Id. at 33.

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[18] Citing in particular Belleza v. Huntington, 89 Phil. 689 (1951), and Froilan v. Pan Oriental Shipping Co., 95 Phil. 905 (1954).

[19] Rollo, p. 31.

[20] Id. at 25.

[21] Rollo, p. 27.

[22] O. HERRERA, I REMEDIAL LAW (2000 ed.), at 789.

[23] Supra note 14.

[24] Supra note 15.

[25] Supra note 18.

[26] Id.

[27] City of Manila and Belleza both involved a complaint dismissed upon the initiative of the plaintiffs. Domingo concerned a complaint which was dismissed after a trial on the merits wherein the plaintiff failed to introduce any evidence in his behalf. In Froilan, a complaint-in-intervention was dismissed motu proprio by the trial court after the court was notified of a supervening event that satisfied the obligations of the defendant to the plaintiff-in-intervention.

[28] Unless the plaintiff initiates the dismissal of the complaint by way of notice at any time before service of the answer or of a motion for summary judgment, in which case it is Section 1, Rule 17 that governs, whether under the 1964 or 1997 Rules.

[29] G.R. No. 105751, 30 June 1993, 224 SCRA 163.

[30] See RULES OF COURT, Rule 17, Sec. 2, which states in full:

Dismissal by order of the court. — Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice.

[31] M. MORAN, I COMMENTS ON THE RULES OF COURT WITH INTERIM RULES AND GUIDELINES AND RULE ON SUMMARY PROCEDURE (1979 ed.), at 515.

[32] G.R. No. L-40098, 29 August 1975, 66 SCRA 425, 447.

[33] 219 Phil. 214, 215-216 (1985).

[34] Id. at 216.

[35] Retired Court of Appeals Justice Oscar Herrera, for one, opines that the dispute as to whether the dismissal of the complaint carries with it the dismissal of the counterclaim was brought about by the quoted pronouncement in Dalman. See HERRERA, supra note 22 at 789.

[36] 150-A Phil. 988 (1972).

[37] Id. at 994 -995.

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[38] Id.

[39] See note 3.

[40] G.R. No. 95631, 28 October 1991, 203 SCRA 273.

[41] G.R. No. 90530, 7 October 1992, 214 SCRA 456.

[42] Metals Engineering Resources Corp. v. Court of Appeals, supra note 40 at 282.

[43] Id. at 282-283.

[44] Id. at 283.

[45] International Container Terminal Services v. Court of Appeals, supra note 41 at 458.

[46] Id. at 461.

[47] BA Finance Corporation v. Co, supra note 29. The decision was penned by Associate Justice Josue N. Bellosillo, and concurred in by Associate Justices Isagani Cruz, Abdulwahid Bidin, Carolina Griño-Aquino, Flerida Ruth Romero, Rodolfo Nocon and Jose Melo. Associate Justices Florentino Feliciano and Hilario G. Davide, Jr. joined in the result. Justice Florenz Regalado wrote a Separate Opinion concurring in the result, infra, in which he was joined by Chief Justice Andres Narvasa.

[48] BA Finance Corporation v. Co, supra note 29 at 167.

[49] Id. at 168.

[50] Id. at 171-172, J. Regalado, Separate Opinion. Emphasis supplied.

[51] Id. at 172-174.

[52] Minutes of the Meeting of the Rules of Court Revision Committee dated 12 October 1993, p. 7. Emphasis supplied.

[53] Section 2, Rule 17 of the 1997 Rules of Civil Procedure now reads: "Dismissal upon motion of plaintiff. — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon the approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court."

[54] F. REGALADO, I REMEDIAL LAW COMPENDIUM (7th ed., 1999), 270-272. Emphasis supplied.

[55] J. FERIA & M. C. NOCHE, I CIVIL PROCEDURE ANNOTATED (2001 ed.), at 465. Justice Feria also notes that under the present Section 2, Rule 17, "the dismissal is limited to the complaint and is without prejudice to the prosecution by the defendant of the counterclaim in a separate action unless he manifests his preference to prosecute it in a separate action."

[56] O. HERRERA, supra note 22 at 789.

[57] See also A. BAUTISTA, BASIC CIVIL PROCEDURE (2003 ed.), at 78; R. FRANCISCO, I CIVIL

PROCEDURE: RULES OF COURT IN THE PHILIPPINES (1st ed., 2001), at 584.

[58] Justice Francisco and Agpalo both opine that insofar as Section 2, Rule 17 is concerned, the distinction between permissive and compulsory counterclaims should still be maintained, insofar as it relates to the option of the defendant to pursue the counterclaim in either a separate or the same proceeding. Justice Francisco, citing pre-1997 jurisprudence, submits that Section 2, Rule 17 refers only to compulsory counterclaims. See Francisco, id. at 580. Agpalo , on the other hand, suggests that "what may be prosecuted in a separate action refers only to permissive counterclaim and not compulsory counterclaim, which must be prosecuted in the same action and proved before the order dismissing the action is issued." See R. AGPALO, HANDBOOK OF CIVIL PROCEDURE (2001 ed.), at 234. It should be noted though that neither view on the 1997 amendments, which run contrary to Justice Regalado's own views, supra note 54, have not been adopted by the Court.

[59] See Act No. 190 (1901), Section 127(1) at 1 Public Laws 308. See also City of Manila v. Ruymann, supra note 54 at 425.

[60] City of Manila v. Ruymann, supra note 14 at 426. Emphasis supplied, italics not ours.

[61] Supra note 30.

[62] V. FRANCISCO, I THE REVISED RULES OF COURT IN THE PHILIPPINES (2nd ed., 1973), p. 987.

[63] Supra note 34.

[64] Supra note 40 at 281-283.

[65] Hence giving rise to the rule, pronounced in Meliton v. Court of Appeals, G.R. No. 101883, 11 December 1992, 216 SCRA 485, that the jurisdictional requirement of the payment of filing fees by the defendant on the counterclaim is required only if the counterclaim is permissive, since jurisdiction over the compulsory counterclaim is anchored on the main complaint. Id. at 498.

[66] See 1997 RULES OF CIVIL PROCEDURE, Section 2, Rule 9 in relation to Section 7, Rule 6.

[67] For example, if the very filing of the complaint was sufficient to have caused injury to the defendant (as in the case wherein the filing of the complaint is enough to hamper a business transaction, consequently affecting the value of property or the profit derived therefrom), it then could be argued that the defendant had already sustained damage even if the complaint was subsequently withdrawn or dismissed. Of course, such damage or injury is not present in all counterclaims which pivot their respective causes of action on the act of the filing of the complaint. Therein precisely lies the difficulty in prescribing the mandatory dismissal of counterclaims upon the dismissal/withdrawal of the complaint, as such a step might negate the right of the defendant to vindicate the damage or injury sustained by reason of the filing of the complaint itself.

[68] See 1997 RULES OF CIVIL PROCEDURE, Rule 6, Section 7, which further qualifies that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.

[69] Except perhaps in the circumstance discussed in note 67.

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