

LORETO J. SOLINAP, PETITIONER, VS. HON. AMELIA K. DEL ROSARIO, AS PRESIDING JUDGE OF BRANCH IV, COURT OF FIRST INSTANCE OF ILOILO, SPOUSES JUANITO AND HARDEVI R. LUTERO, AND THE...

G.R. No. 50638. July 25, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Posed for resolution in this petition is the issue of whether or not the obligation of petitioners to private respondents may be compensated or set-off against the amount sought to be recovered in an action for a sum of money filed by the former against the latter.

The facts are not disputed. On June 2, 1970, the spouses Tiburcio Lutero and Asuncion Magalona, owners of the Hacienda Tambal, leased the said hacienda to petitioner Loreto Solinap for a period of ten [10] years for the stipulated rental of P50,000.00 a year. It was further agreed in the lease contract that out of the aforesaid annual rental, the sum of P25,000.00 should be paid by Solinap to the Philippine National Bank to amortize the indebtedness of the spouses Lutero with the said bank.

Tiburcio Lutero died on January 21, 1971. Soon after, his heirs instituted the testate estate proceedings of the deceased, docketed as Sp. Proc. No. 1870 of the Court of First Instance of Iloilo, presided by respondent Judge Amelia K. del Rosario. In the course of the proceedings, the respondent judge, upon being apprized of the mounting interest on the unpaid account of the estate, issued an order, stating, among others, "that in order to protect the estate, the administrator, Judge Nicolas Lutero, is hereby authorized to scout among the testamentary heirs who is financially in a position to pay all the unpaid obligations of the estate, including interest, with the right of subrogation in accordance with existing laws."

On the basis of this order, respondents Juanito Lutero [grandson and heir of the late Tiburcio] and his wife Hardivi R. Lutero paid the Philippine National Bank the sum of P25,000.00 as partial settlement of the deceased's obligations. Whereupon the respondents Lutero filed a motion in the testate court for reimbursement from the petitioner of the amount thus paid. They argued that the said amount should have been paid by petitioner to the PNB, as stipulated in the lease contract he had entered into with the deceased Tiburcio Lutero; and that such reimbursement to them was proper, they being subrogees of the PNB.

Before the motion could be resolved by the court, petitioner on April 28, 1978 filed in the Court of First Instance of Iloilo a separate action against the spouses Juanito Lutero and Hardivi R. Lutero for collection of the total amount of P71,000.00, docketed as Civil Case No. 12397. Petitioner alleged in the complaint that on April 25, 1974 the defendants Lutero borrowed from him the sum of P45,000.00 for which they executed a deed of real estate mortgage; that on July 2, 1974, defendants obtained an additional loan of P3,000.00, evidenced by a receipt issued by them; that defendants are further liable to him for the sum of P23,000.00, representing the value of certain dishonored checks issued by them to the plaintiff; and that defendants refused and failed to settle said

accounts despite demands.

In their answer, the respondents Lutero traversed the material averments of the complaint and set up legal and factual defenses. They further pleaded a counterclaim against petitioners for the total sum of P125,000.00 representing unpaid rentals on Hacienda Tambal. Basis of the counterclaim is the allegation that they had purchased one-half [1/2] of Hacienda Tambal, which their predecessors, the spouses Tiburcio Lutero and Asuncion Magalona, leased to the plaintiff for a rental of P50,000.00 a year; and that plaintiffs had failed to pay said rentals despite demands.

At the pre-trial, the parties defined the issues in that case as follows:

"(1) Whether or not the defendants [Luterros] are indebted to the plaintiff and, if so, the amount thereof;

"(2) Whether or not the defendants are the owners of one-half [1/2] of that parcel of land known as 'Hacienda Tambal' presently leased to the plaintiff and, therefore, entitled to collect from the latter one-half [1/2] of its lease rentals; and in the affirmative, the amount representing the unpaid rental by plaintiff in favor of the defendant." [1]

On June 14, 1978, the respondent judge issued an order in Sp. Proc. No. 1870, granting the respondent Luterros' motion for reimbursement from petitioner of the sum of P25,000.00, plus interest, as follows:

"WHEREFORE, Mr. Loreto Solinap is hereby directed to pay spouses Juanito Lutero and Hardivi R. Lutero the sum of P25,000.00 with interest at 12% per annum from June 17, 1975 until the same shall have been duly paid."

Petitioner filed a petition for certiorari before this Court, docketed as G.R. No. L-48776, assailing the above order. This Court, however, in a resolution dated January 4, 1979 dismissed the petition thus:

"L-48776 [Loreto Solinap vs. CFI etc., et al.]—Acting on the petition in this case as well as the comment thereon of respondents and the reply of petitioner to said comment, the Court Resolved to DISMISS the petition for lack of merit, anyway, the P25,000.00 to be paid by the petitioner to the private respondent Luterros may well be taken up in the final liquidation of the account between petitioner as lessee and the subject estate as lessor."

Thereafter the respondent Luterros filed with the respondent court a "Motion to Reiterate Motion for Execution of the Order dated June 14, 1978." Petitioner filed a rejoinder to said motion, raising for the first time the thesis that the amount payable to private respondents should be compensated against the latter's indebtedness to him amounting to P71,000.00. Petitioner attached to his rejoinder copies of the pleadings filed in Civil Case No. 12397, then pending before Branch V of the Court of First Instance of Iloilo. This motion was denied by respondent judge on the ground that "the claim of Loreto Solinap against Juanito Lutero in Civil Case No. 12397 is yet to be liquidated and determined in the said case, such that the requirement in Article 1279 of the New Civil Code that both debts are liquidated for compensation to take place has not been established by the oppositor Loreto Solinap."

Petitioner filed a motion for reconsideration of this order, but the same was denied.

Hence, this petition.

The petition is devoid of merit. Petitioner contends that respondent judge gravely abused her discretion in not declaring the mutual obligations of the parties extinguished to the extent of their respective amounts. He relies on Article 1278 of the Civil Code to the effect that compensation shall take place when two persons, in their own right, are creditors and debtors of each other. The argument fails to consider Article 1279 of the Civil Code which

provides that compensation can take place only if both obligations are liquidated. In the case at bar, the petitioner's claim against the respondent Luterios in Civil Case No. 12379 is still pending determination by the court. While it is not for Us to pass upon the merits of the plaintiffs' cause of action in that case, it appears that the claim asserted therein is disputed by the Luterios on both factual and legal grounds. More, the counterclaim interposed by them, if ultimately found to be meritorious, can defeat petitioner's demand. Upon this premise, his claim in that case cannot be categorized as liquidated credit which may properly be set-off against his obligation. As this Court ruled in *Mialhe vs. Halili*,^[2] "compensation cannot take place where one's claim against the other is still the subject of court litigation. It is a requirement, for compensation to take place, that the amount involved be certain and liquidated."

WHEREFORE, the petition is dismissed, with costs against petitioner.

SO ORDERED.

Makasiar (Chairman), Aquino and Concepcion Jr., JJ., concur.

Guerrero, J., on leave.

Abad Santos, J., the petition is not only devoid of merit but it is also frivolous and petitioner should be assessed treble costs.

De Castro, J., on sick leave.

[1] Pre-trial Order, Annex M, pp. 72-78, Rollo.

[2] 6 SCRA 453.

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