

PACIFIC BANKING CORPORATION, PETITIONER, VS. HON. RAFAEL T. MENDOZA AND J. ANTONIO C. LEVISTE, RESPONDENTS.

G.R. No. 69158. December 29, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

Two claims for damages were filed by the private respondent against the petitioner, one in a counterclaim before the city court of Manila and the second in his subsequent complaint before the regional trial court of Makati. The issue before us is whether the dismissal of the first, for reasons to be discussed presently, will bar the institution of the second.

This case stemmed from an original complaint for recovery of a sum of money filed by the petitioner on November 8, 1976, against one Jose M. Guevarra, together with J. Antonio Leviste, the private respondent herein, as the former's alleged guarantor.[1] Guevarra was never served with summons.[2] For his part, Leviste denied in his answer that he had ever signed a guaranty for Guevarra and, claiming injury to his prestige, filed a counterclaim for damages. He did not specify the amount of his claim but left it to the court to assess in its sound discretion.[3] He testified later that such damages "would not be less than a million pesos,"[4] and his counsel immediately thereafter reserved the right to file a separate action for such damages.[5] On the basis of Leviste's statement, the city court[6] on December 22, 1982, dismissed the counterclaim for lack of jurisdiction while at the same time absolving him from any liability under the complaint.[7]

On August 2, 1984, the private respondent filed a complaint for damages against the petitioner, which moved to dismiss the same on the ground of *res judicata*. [8] It contended that the dismissal of Leviste's counterclaim for damages in the city court was a decision on the merits that, not having been appealed, now legally barred the second action. The fact that the dismissal for lack of jurisdiction was erroneous because the city court actually had jurisdiction did not prevent the decision from becoming final and executory just the same for lack of such appeal.

The respondent judge disagreed and denied the motion, as well as the motion for reconsideration,[9] prompting the petitioner to come to this Court on certiorari. On its application, we granted a temporary restraining order on November 26, 1984, that have stayed the proceedings in this case in the court *a quo*.

For a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment or order; (2) the court rendering the same must have jurisdiction over the subject matter and over the parties; (3) it must be a judgment or order on the merits; and (4) there must be between the two cases identity of parties, subject matter, and causes of action.[10]

The petitioner argues that all these elements are present, including the second. The city court erred in holding itself without jurisdiction to act on the counterclaim because the private respondent, instead of specifying the damages he was claiming, had left it to the court to determine in its discretion. Under the Judiciary Act of 1948, which was the law in force then, the jurisdictional limit of the said court was P10,000.00. Hence, it could be assumed that the amount of the damages being claimed by Leviste was up to that limit only. In other words, that

city court had jurisdiction to act on the counterclaim as long as the damages awarded, conformably to the implied allegation, did not exceed the sum of P10,000.00. The petitioner reminds us that it is the allegation in the complaint and not the evidence later adduced to support it that determines the jurisdiction of the court.[11] Moreover, notwithstanding the error of the city court in dismissing the counterclaim, this Court has held that "the principle of *res judicata* attaches even if the decision might have been reversed had an appeal been taken therefrom." [12]

The petitioner probably had in mind the case of *Agustin v. Bacalan*, [13] where it was held:

"Thus, by presenting his claim voluntarily before the City Court of Cebu, the defendant-appellee submitted the same to the jurisdiction of the court. He became bound thereby. The amount of P10,000 being the jurisdictional amount assigned the City Court of Cebu, whose jurisdiction the defendant-appellee has invoked it is deemed to have waived the excess of his claim beyond P10,000. It is as though the defendant-appellee had set up a counterclaim in the amount of P10,000 only."

Standing by itself, this argument is indeed telling. However, it disregards an important consideration, to wit, the declaration later made by Leviste regarding the extent of his claimed injury.

Testifying on additional direct examination, the private respondent said that the amount of damages caused by the unlawful suit would, if he were to make the assessment, be "not less than a million pesos." [14] No timely objection was made to this testimony, which was thus deemed raised in the pleadings. This was the consequence dictated by Rule 10, Section 5, of the Rules of Court reading as follows:

"SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Commenting on this provision, Chief Justice Moran says in his authoritative work:

"The above provision provides that when evidence is presented by one party, with the express or implied consent of the adverse party, as to issue not alleged in the pleadings, judgment may be rendered validly as regards those issues, which shall be considered as if they have been raised in the pleadings. There is implied consent to the evidence thus presented when the adverse party fails to object thereto. The court may, upon motion which may be filed even after the rendition of the final judgment, order the amendment of the pleadings to cause them to conform with the evidence, but if no motion is filed, and no amendment is ordered, the court may just as well render a valid judgment on the issues thus proved." [15]

It is no less significant that immediately after Leviste's above-cited assessment, his counsel made the following statement:

"On the basis of the testimony of the herein witness as to the amount of damages he sustained as a result of the institution of this case which is clearly not within the jurisdiction of this court when according to the witness this unlawful suit has caused him a million bucks, we reserve our right to file an independent suit of damages against the plaintiff in this case, we request that the premise or legality of the decision of this Honorable court will not pass judgment on our counterclaim." [16]

As the Court sees it, the effect of these statements was a withdrawal of the counterclaim in the city court without objection on the part of the petitioner. By expressly assessing his injury at not less than a million pesos, Leviste was clearly reversing whatever implied submission he might have made to the limited jurisdiction of the city court as urged by the petitioner under the Agustin ruling. His assessment of the injuries sustained by him as a businessman and provincial governor had placed the counterclaim beyond the competence of the city court to decide. Furthermore, whatever doubt might have remained about this withdrawal was completely dispelled by counsel's reservation of Leviste's "right to file an independent suit for damages" and his request that the city court not pass judgment upon the counterclaim. It is repeated for emphasis that the petitioner interposed no opposition to either Leviste's declaration or his counsel's reservation.

We rule, finally, that the counterclaim could be validly withdrawn by the private respondent because it was merely permissive. A counterclaim is compulsory if: (1) it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; (2) if it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction; and (3) if the court has jurisdiction to entertain the claim.[17]

As the counterclaim of the private respondent was in excess of P10,000.00, jurisdiction thereover was vested then by the Judiciary Act of 1948 not in the city court but in the regional trial court. Hence, it could be validly re-asserted, despite its earlier dismissal by the city court, in the separate complaint now pending before the respondent judge.

WHEREFORE, the petition is DENIED, with costs against the petitioner. The temporary restraining order dated November 26, 1984, is LIFTED. It is so ordered.

Gancayco, Griño-Aquino, and Medialdea, JJ., concur.
Narvasa, J., on leave.

[1] Rollo, pp. 15-17.

[2] Ibid., p. 18.

[3] Id., p. 33.

[4] Id., pp. 61-62, citing TSN, February 3, 1981, pp. 3-4.

[5] Id., p. 62, citing TSN, February 3, 1981, p. 4

[6] Presided by Judge Simeon I. Garcia.

[7] Id., pp. 18-23.

[8] Id., pp. 12-14, 3.

[9] Rollo, pp. 39, 43.

[10] *Ibabao v. IAC*, 150 SCRA 76; *Sy v. Tuvera*, 152 SCRA 103; *Aguila v. CFI of Batangas, Branch I, et al.*, G.R. No. L-48335, April 15, 1988 and the cases cited therein.

[11] Rollo, p. 6, citing *Time, Inc. v. Reyes*, 39 SCRA 303, 304, and *Dionisio v. Sioson Puerto*, 60 SCRA 471.

[12] Ibid., p. 8, citing *Edwards, et al. v. Arce, et al.*, 98 Phil. 688, 693.

[13] 135 SCRA 340, 348.

[14] Supra.

[15] Moran, Comments on the Rules of Court, Vol. I, 1970 edition, p. 380, with cases cited; emphasis supplied.

[16] Rollo, p. 62, citing TSN, February 3, 1981, p. 4.

[17] Tiu Po v. Bautista, 103 SCRA 388.

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