

**LEONARDO A. AURELIO AND YAO BUN SHIONG, PETITIONERS, VS.
THE HON. COURT OF APPEALS, NINTH DIVISION, HON. JUDGE
ALOYSIUS C. ALDAY, PRESIDING JUDGE OF BRANCH XCV OF THE
REGIONAL T...**

G.R. No. 90742. May 06, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

On September 30, 1987, the sisters Ma. Esperanza Ledonio-Aurelio and Ma. Victoria A. Ledonio-Yao, without joining their respective husbands, together with their mother, Emma Alo-Ledonio, brothers Gerardo Ledonio III, Ramon A. Ledonio and sister Rosario A. Ledonio, filed in the Regional Trial Court of Quezon City a complaint (Civil Case No. Q-51968) against the spouses Camilo D. Sabio and Ma. Marlene A. Ledonio-Sabio, Gerardo A. Ledonio, Jr., Edgar A. Ledonio and Salvador A. Ledonio, for annulment and rescission of contract, recovery of possession, reconveyance and damages.

The defendants filed a 66-page "Answer with Compulsory Counter-Complaint" demanding payment of P150 million in moral, nominal, and exemplary damages for the plaintiffs' defamatory and libelous allegations in their complaint, and impleading as "counter-defendants," Leonardo A. Aurelio, husband of plaintiff Ma. Esperanza Ledonio-Aurelio, and Yao Bun-Shiong, husband of plaintiff Ma. Victoria A. Ledonio Yao, because they allegedly have not only been advisers and consultants of their wives, but conspired and confederated with them and also actively participated in the acts and events leading to the case.

The Sabio spouses filed an Ex-Parte Motion to Serve Summons on Leonardo Aurelio and Yao Bun Shiong, which the trial court granted without requiring them to pay filing fees.

The counter-defendants filed a Motion to Dismiss and Expunge from the Records the counter-complaint. The motion was denied by Judge Alday on April 11, 1988. The counter-defendants' motion for reconsideration having been denied on September 29, 1988, they filed in the Court of Appeals a petition for certiorari with preliminary injunction praying for annulment of the lower court's orders.

The Court of Appeals dismissed the petition. It held that the counter-complaint was in fact a compulsory counterclaim, hence, no separate filing fee may be required for asserting it; that the designation of the pleading as a "Compulsory Counter-Complaint" instead of "Compulsory Counterclaim" was not a fatal deviation from the Rules and did not invalidate the pleading.

In this petition for certiorari and mandamus under Rule 65, the petitioners seek to annul both the Court of Appeals' decision and the Regional Trial Court's orders.

After deliberating on the petition for review, the Court resolved to dismiss it. First, because a special civil action of certiorari and mandamus under Rule 65 is not the proper remedy when no errors of jurisdiction are raised in the petition (*Philippine Rabbit Bus Lines, Inc. vs. Galauran Pilaes Construction Co.*, 118 SCRA 664; *M & M*

Management Aids, Inc. vs. The Hon. Court of Appeals, 130 SCRA 225; Ricardo C. Silverio vs. Hon. Court of Appeals, 141 SCRA 527; Captain Mateo P. Francisco vs. Hon. Pelagio S. Mandi, 152 SCRA 711; Robert Young vs. Hon. Julio A. Sulit, Jr., 162 SCRA 659; Eufracia Vda. de Crisologo vs. Court of Appeals, 137 SCRA 132; Mely Tangonan vs. Hon. Judge Ernani Cruz Paño, 137 SCRA 245; Teofilo I. Marcelo vs. Francisco S. Tantuico, Jr., 142 SCRA 439; National Investment and Development Corp. vs. Hon. Benjamin Aquino, 163 SCRA 153).

Secondly, the Court of Appeals correctly held that Sabio's "Counter-Complaint" is a compulsory counter-claim, not a third-party complaint, hence, no separate filing fee may be required for asserting it.

In Arturo Balbastro, et al. vs. Court of Appeals, 48 SCRA 231, we ruled that "The crucial characteristics of a third-party complaint under Section 12, Rule 6 of the Rules of Court, is that the original defendant is attempting to transfer to the third-party defendant, the liability asserted against him by the original plaintiff." There is no attempt here on the part of the private respondents to transfer to the petitioners the liability asserted by the plaintiffs against them. By joining the plaintiffs' husbands as co-defendants of their wives under the "counter-complaint," the private respondents merely complied with the general rule that married women may not sue or be sued alone without joining their husbands (Sec. 4, Rule 3, Rules of Court).

Attorney Camilo Sabio's counterclaims for moral, nominal, and exemplary damages arose from the supposedly defamatory allegations made by his sisters-in-law against him, allegedly upon the advice and instigation of their husbands, in their complaint against Attorney Sabio. Inasmuch as, if the counter-complaint should prosper, the award for damages to Attorney Sabio may have to be satisfied out of the assets of the conjugal partnerships of the original plaintiffs (Art. 163, Civil Code), then necessarily, their husbands (the "counter-defendants"), as administrators of their respective conjugal partnerships, should be brought into the suit as formal parties (Sec. 4, Rule 3, Rules of Court). By joining the husbands as additional counter-defendants in the counter-claim against their wives (the original plaintiffs), instead of filing a separate action against the husbands, multiplicity of suits is thereby avoided.

WHEREFORE, finding no reversible error in the orders of the trial courts denying the petitioners' motion to dismiss the counter-complaint nor in the decision dated October 23, 1989 of the Court of Appeals affirming them (CA-G.R. SP No. 16067), the petition for review is denied for lack of merit with costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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