

METALS ENGINEERING RESOURCES CORPORATION, PETITIONER, VS. COURT OF APPEALS AND PLARIDEL JOSE, RESPONDENTS.

G.R. No. 95631. October 28, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

Impugned in this petition for review on certiorari is the decision of respondent Court of Appeals, dated August 9, 1990,[1] dismissing the special civil action for certiorari and prohibition filed therein by petitioner corporation.

The appeal herein arose from Civil Case No. 55560 filed by petitioner corporation against private respondent Plaridel Jose, for the annulment of an agreement to buy and sell executed between the parties, before the Regional Trial Court of Pasig, Branch 160, the complaint[2] alleging, inter alia, that:

x x x

"2. On October 31, 1987, plaintiff and defend-ant executed a document which was denominated as an 'Agreement to Buy and Sell' in which plaintiff offered to sell to the defendant and the latter in turn agreed to buy several parcels of land with an aggregate area of 6,135 sq. m. x x x.

x x x

"4. The 'Agreement to Buy and Sell', on its face, is patently and plainly imperfect and incomplete as there was and could have been no meeting of the minds of the parties in regard to the manner, period and terms of payment of the purchase price or consideration which is undeniably an essential element of the contract. Consequently, the subject 'Agreement', not having been perfected and completed, did not contemplate nor did it result to a binding and enforceable contract to sell. In fact, as stipulated in paragraphs 3 and 4 of said 'agreement', the terms of sale, including the payment of the purchase price, are uncertain and imperfect as they are subject to the following:

- a) Defendant's obligation to pay one half (1/2) of the total consideration is conditioned and depends exclusively on the ability of the plaintiff to 'look for a place to transfer its offices and plants from the land subject hereof within One hundred twenty days' but should plaintiff 'fail to locate a place to transfer its offices and plants from the land subject hereof within the said one hundred and twenty days' the agreement is merely subject to an 'extension' upon terms and conditions to be determined and agreed upon separately and subsequently; and
- b) The payment of the remaining fifty percent (50%) thereof SHALL BE THE SUBJECT OF A (ANOTHER) SEPARATE AGREEMENT to be made between the parties together with the execution of a Deed of Absolute Sale.

"5. Despite the fact that the subject 'agreement' had not yet been perfected and completed, defendant prematurely caused the preparation of a subdivision plan of the lands into several sub-lots and offered the same for sale to the public through an advertisement published in the issue of the 'Manila Bulletin' on November 25, 1987 x x x.

"6. Thus, on December 24, 1987, plaintiff wrote a letter to the defendant rescinding and/or withdrawing from the uncompleted and imperfect 'Agreement' and tendered a check for the amount of P50,000.00 representing full refund of the earnest money previously delivered by defendant pursuant to paragraph 2 of said agreement but defendant refused to accept the same.

x x x

"8. The refusal of defendant to acknowledge the imperfection and non-completion of the 'Agreement' and to accept the refund of P50,000.00 as well as his acts of offering the land for sale to third person and his annotation of adverse claims in the title covering the lands are unjustifiable and without legal basis and caused irreparable and great damage and prejudice to plaintiff."

x x x

Private respondent filed his Answer with Counterclaim[3] alleging a compulsory counterclaim on the following operative facts:

"12. Defendant had already spent a considerable amount for the subdivision of the subject properties into smaller parcels of land for resale to a group of buyers, for the advertisements and promotions necessary thereto, and other related expenses;

"13. One of the pertinent provisions of the AGREEMENT (Annex 'A') is the schedule of payments to be paid by the defendant which provides as follows:

'3. Within one hundred and twenty (120) days from the execution of this agreement, the VENDOR shall look for a place to transfer its offices and plant from the land subject hereof. And once a place to transfer is found, the VENDOR shall inform the VENDEE of the same. Within fifteen (15) days from such notice of the VENDOR to the VENDEE, the latter shall immediately pay, without need of demand and further notice, to the former one-half (1/2) of the total purchase price of the land xxx xxx.'

Due to the adamant and unreasonable posture of the plaintiff, defendant's timetable to generate funds and profits was severely stalled and placed at a standstill to the damage and prejudice of his investment and financial projection, which can only be rectified or compensated by way of tacking into, and thus extending the agreed period to pay the said one-half (1/2) of the purchase price, the length of time from plaintiff's notice to rescind (Annex '1') until defendant complies with its part of the AGREEMENT (Annex 'A') whether voluntarily, by compromise, or by judicial compulsion;

"14. Defendant suffered further due to the fact that his reputation has been tarnished at the very least considering that he could not pursue his legal and business commitment with those who have already transacted with him over the subject parcels of land;

"15. By reason of the present unfounded and malicious action filed by the plaintiff, defendant suffered sleepless nights, serious anxieties, embarrassment and similar injuries due to the indefensible and destructive posture of the plaintiff for which he should be awarded P300,000.00 at least in moral damages;

"16. Due to the patent, wanton and gross bad faith displayed by the plaintiff in its dealings with the defendant, the latter should be awarded at least P100,000.00 in exemplary damages likewise to be assessed against the plaintiff;

"17. By reason of the present suit, defendant was furthermore forced to hire the services of counsel to protect his rights and interest under the premises, in the amount of P100,000.00 as and for attorney's fees aside from the expenses and cost of litigation which shall be proved at the trial hereof.

"WHEREFORE, it is respectfully prayed that judgment be rendered in favor of the defendant dismissing the

Complaint and declaring the AGREEMENT (Annex 'A-Complaint') with the defendant, valid for all legal intents and purposes and ordering the plaintiff to honor its provisions except the term or period of payment of the first one-half (1/2) of the purchase price, which should be extended by tacking into the 15-day period the length of time mentioned under paragraph 13 hereof; and for the damages, plaintiff be ordered to pay defendant the following:

- a) P300,000.00 in moral damages for the besmirched reputation, embarrassment, anguish, anxieties, sleepless nights, and similar injuries suffered by the defendant due to the gross and wanton bad faith of the plaintiff;
- b) P100,000.00 in exemplary damages so that others who are similarly inclined to do as what the plaintiff did against the defendant, should properly be forewarned and deterred therefrom;
- c) P100,000.00 as and for attorney's fees plus the expenses of litigation proved at the trial; and
- d) Costs."

Before the case could be heard on pre-trial, private respondent filed a Motion to Expunge the Complaint on the ground that the same did not specify the amount of damages sought either in the body or in the prayer of the complaint, citing in support thereof the then ruling case of Manchester Development Corporation, et al. vs. Court of Appeals, et al.[4] and Administrative Circular No. 7 issued by this Court on March 4, 1988.

In an Order dated December 15, 1988, the trial court required petitioner to amend its complaint by specifying the amount of damages prayed for, otherwise the original complaint shall be dismissed. In compliance therewith, petitioner filed its Amended Complaint specifying the amount of damages it seeks to recover from private respondent.

However, private respondent moved for the reconsideration of the trial court's aforesaid order with respect to the portion allowing petitioner to file an amended complaint, stating that the court did not acquire jurisdiction when the wrong docket fee was paid, hence the amendment of the complaint did not vest jurisdiction upon the court; and that for all legal intents and purposes, no original complaint was filed which could be the subject of an amendment.

Acting thereon, on April 12, 1989, the trial court issued an Order[5] granting the motion for reconsideration and ordering that the complaint be expunged from the record on the ground that it did not acquire jurisdiction over the case.

Private respondent then filed a Motion to Set Case for Presentation of Evidence in support of his counterclaim. In its Opposition, petitioner averred that since private respondent's counterclaim is compulsory in nature because it is necessarily connected with and arose out of the same transaction subject of the complaint, with the dismissal of petitioner's complaint the compulsory counterclaim can no longer remain pending for independent adjudication; and considering further that since petitioner had re-filed its complaint against private respondent on May 3, 1989 before the Regional Trial Court of Pasig, Branch 168, docketed therein as Civil Case No. 58126, then private respondent could easily set up the same compulsory counterclaim in said later case.

Thereafter, the court a quo issued an Order,[6] dated June 20, 1989, granting private respondent's motion to present evidence and holding that "(a) compulsory counter-claim is a complaint in itself; that it is a complaint against the plaintiff; that it is independent in character. It has to be set up in the answer otherwise it will be waived or barred and it cannot be invoked in another case, for it would be splitting a cause of action which is not allowed under the rules." It added that herein private respondent "correctly insisted that the compulsory counterclaim should be prosecuted now, otherwise he cannot invoke his claim in a separate proceeding because he will be 'barred by the dismissal' of the instant case."

Petitioner filed a Motion for Reconsideration of said order alleging that a compulsory counterclaim is essentially ancillary to the main controversy and that, assuming that private respondent's counterclaim can remain pending for independent trial, the same should nevertheless be dismissed for non-payment of any docket fees on the total amount of the counterclaim. Private respondent filed his Opposition at the same time attaching thereto a receipt for the payment of docket fees. In reply, petitioner contended that the belated payment of the docket fees for the counterclaim does not have the effect of vesting the trial court with jurisdiction over the counterclaim. The motion for reconsideration was denied by the trial court in its Order[7] dated September 29, 1989.

From said order, petitioner filed a special civil action for certiorari and prohibition with prayer for preliminary injunction and/or temporary restraining order with respondent Court of Appeals. Its contentions for the allowance thereof may be capsulized as follows:

1. Respondent court acted without or in excess of its jurisdiction and gravely abused his discretion in granting respondent Jose's motion to present evidence on his compulsory counterclaim:
 - a. The dismissal of the complaint carries with it the dismissal of the compulsory counterclaim.
 - b. Even assuming that respondent Jose's counterclaim may remain pending for adjudication independently of the principal complaint, it should still be dismissed for failure on the part of respondent to pay docket fees thereon.
2. Great or irreparable injury and injustice would result to petitioner if respondent Jose should be allowed to present evidence ex parte on his counterclaim pursuant to respondent court's order of September 29, 1989.[8]

Respondent court, in its questioned decision, dismissed the special civil action for certiorari, stating that since the order is merely interlocutory in nature and that at most it is merely an error of judgment, it cannot be corrected by certiorari, thus:

"It is obvious that no jurisdictional error is involved in this case. If to allow the respondent to present evidence in support of his counterclaim is a mistake, it is at most an error of judgment that is not correctible by certiorari or prohibition. Such an error can be corrected in an appeal which may be taken from the judgment to be rendered on the counterclaim (Fernando vs. Vasquez, 31 SCRA 288).

"Time and again, it has been said that the function of certiorari and prohibition is to keep an inferior court within the limits of its jurisdiction (Enriquez vs. Rivera, 90 SCRA 641). These two extraordinary writs are not intended to correct every error which may be committed in the course of a trial.

"Finally, the order sought to be annulled is interlocutory in nature which again cannot be corrected by certiorari (Perez vs. Monetary Board, 20 SCRA 592; Layag vs. Gerardo, 10 SCRA 837)." [9]

Its motion for reconsideration having been denied, petitioner filed the instant petition.

Petitioner avers that respondent Court of Appeals gravely erred (1) in finding that no jurisdictional defect was committed by the trial court in issuing the order dated June 20, 1989 allowing respondent Jose to present evidence in support of his compulsory counterclaim despite the dismissal of the complaint; and (2) in holding that the order of June 20, 1989 cannot be the basis of a petition for certiorari and prohibition.[10]

We find for petitioner.

Private respondent's asseveration that a compulsory counterclaim is not deemed dismissed just because the main complaint is dismissed by the court, and that the same has to be pursued otherwise it will forever be barred on the ground of res judicata, is at most specious and should be struck down for lack of merit.

There is no dispute that private respondent's counterclaim is compulsory in nature since 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) it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction; and 3) the court has jurisdiction to entertain the claim. And the rule is that a compulsory counterclaim not set up shall be barred[11] if not raised on time and the party in error is precluded from setting it up in a subsequent litigation on the ground of res judicata, the theory being that what are barred by prior judgment are not only the matters actually raised and litigated upon, but also such matters as could have been raised but were not.[12] In other words, a compulsory counterclaim cannot be made the subject of a separate action but should be asserted in the same suit involving the same transaction or occurrence giving rise to it. Where the counterclaim is made the subject of a separate suit, it may be abated upon a plea of auter action pendant or litis pendentia, and/or dismissed on the ground of res judicata.[13]

However, such is not the situation obtaining in the present action. In the petition before us, private respondent, in his responsive pleading which is aptly titled "Answer with Counterclaim," has properly raised a counterclaim against herein petitioner's claim that the agreement to buy and sell is imperfect and incomplete. Ironically, the insistence of private respondent in proceeding with the trial of the case is premised on the very existence of his counterclaim. Hence, there can be no res judicata to speak of because a counterclaim was correctly invoked against herein petitioner's complaint. In fine, what private respondent is in effect saying is that his counterclaim should be allowed to proceed independently of the main action.

For all intents and purposes, such proposition runs counter to the nature of a compulsory counterclaim in that it cannot remain pending for independent adjudication by the court.[14] This is because a compulsory counterclaim is auxiliary to the proceeding in the original suit[15] and derives its jurisdictional support therefrom,[16] inasmuch as it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the complaint. It follows that if the court does not have jurisdiction to entertain the main action of the case and dismisses the same, then the compulsory counterclaim, being ancillary to the principal controversy, must likewise be dismissed[17] since no jurisdiction remained for any grant of relief under the counterclaim.[18]

The aforementioned doctrine is in consonance with the primary objective of a counterclaim which is to avoid and prevent circuity of action by allowing the entire controversy between the parties to be litigated and finally determined in one action, wherever this can be done with entire justice to all parties before the court.[19] The philosophy of the rule is to discourage multiplicity of suits.[20] It will be observed that the order of the trial court allowing herein private respondent to proceed with the presentation of his evidence in support of the latter's counterclaim is repugnant to the very purpose and intent of the rule on counterclaims.

Furthermore, it has been held that a counterclaim presupposes the existence of a claim against the party filing the counterclaim. Where there is no claim against the counterclaimant, then the counterclaim is improper and should be dismissed.[21] The complaint filed by herein petitioner was dismissed on the ground of lack of jurisdiction for non-payment of docket fees. By reason of said dismissal, it is as if no claim was filed against herein private respondent, hence the counterclaim has no leg to stand on. In addition, it was at the instance of private respondent that the complaint was dismissed. In the words of Justice Abad Santos, "(private respondent) does not object to the dismissal of the civil case but nonetheless wants (his) counterclaim therein to subsist. Impossible. A person cannot eat his cake and have it at the same time. If the civil case is dismissed, so also is the counterclaim filed therein." [22]

American jurisprudence similarly rules that in an action where defendant's answer set up a counterclaim, the court was without authority to sever the causes of action by dismissing the complaint and submitting the counterclaim to the jury, although the order of dismissal purported to be without prejudice to the merits of plaintiff's cause of action upon another trial.[23] This is so because a severance for trial of a claim or counterclaim may increase the

possibility of inconsistent verdicts and decrease the ability of the court to resolve such inconsistencies without granting a re-trial in one or both causes.[24]

In the case before us, severing herein private respondent's counterclaim to compel petitioner to honor the purchase agreement executed between them, from petitioner's action to declare null and void the same contract, may result in the following outcomes:

- 1) If the same judgment would be rendered in Civil Case No. 55560 (on the counterclaim) and Civil Case No. 58126 (on the main action which was re-filed) either for the validity or nullification of the contract, then there would plausibly be no problem.
- 2) However, should different and conflicting decisions be handed down in the two cases, which is not an impossibility, then this will only serve to complicate the issues that will arise and the remedies that may be necessitated.

Verily, practical considerations of consistency and economy likewise command a trial of the counterclaim jointly and concurrently with the principal controversy. At any rate, considering that petitioner has re-filed its complaint involving the same cause of action which is now pending before another branch of the court, there is nothing to prevent private respondent from raising the same counterclaim for adjudication in the subsequent action.

It is the submission of herein petitioner that assuming *arguendo* that the counterclaim can proceed independently of the main action, the court did not acquire jurisdiction thereover for failure of private respondent to pay the corresponding docket fees. Petitioner maintains that the ruling in *Manchester* should likewise apply to compulsory counterclaims. The argument is incorrect. The rules regarding payment of docket fees have been summarized in a subsequent case[25] as follows:

"1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

"2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefore is paid. x x x"

The rule, therefore is made to apply specifically to permissive counterclaims only, thereby excluding compulsory counterclaims from its purview.[26] This is because there is no need to pay docketing fees for a compulsory counter-claim.[27]

Finally, we do not ascribe to respondent court's declaration that the order of dismissal issued by the trial court is merely interlocutory and, at most, an error of judgment which is not correctible by certiorari and prohibition. As earlier stated, the trial court acted without jurisdiction in proceeding with the hearing on the counterclaim after it had dismissed the complaint to which the counterclaim attached. It is precisely to correct the lower court when in the course of proceedings it acts without jurisdiction or in excess thereof or if the trial judge otherwise acted with grave abuse of discretion that the extraordinary writ of certiorari or prohibition is afforded to parties as a relief. Such a relief is available even in respect to interlocutory orders.[28]

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE, and judgment is hereby rendered DISMISSING the compulsory counterclaim of private respondent in Civil Case No. 55560, without prejudice to the setting up of the same in Civil Case No. 58126, both of the Regional Trial Court of Pasig, Metro Manila.

SO ORDERED.

Paras, and Padilla, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Penned by Associate Justice Ricardo L. Pronove, Jr., with Associate Justices Alfredo L. Benipayo and Salome A. Montoya, concurring; Annex A, Petition; Rollo, 24.

[2] Annex B, id.; ibid., 31.

[3] Annex C, id.; ibid., 42.

[4] 149 SCRA 562 (1987).

[5] Annex K, id.; ibid., 88.

[6] Annex O, id.; ibid., 98.

[7] Annex S, id.; ibid., 111.

[8] Rollo, CA-G.R. SP No. 19227, 9, 12.

[9] Ibid., id., 146-147.

[10] Rollo, 14.

[11] Section 4, Rule 9, Rules of Court.

[12] Cojuangco vs. Villegas, et al., 184 SCRA 374 (1990).

[13] The Visayan Packing Corporation vs. The Reparations Commission, et al., 155 SCRA 542 (1987).

[14] Lim Tanhu, et al., vs. Ramolete, et al., 66 SCRA 425 (1975).

[15] Hoffman vs. Maloratsky, et ux., 164 A. 260.

[16] 20 Am. Jur. 2d 234.

[17] I Moran, Comments on the Rules of Court, 1979 ed., 354.

[18] Isenberg vs. Biddle, et al., 125 F. 2d 741; Kelleam, et al. vs. Maryland Casualty Co. of Baltimore, et al., 312 U.S. 377.

[19] 80 CJS 22.

[20] Baclayon, et al. vs. Court of Appeals, et al., 182 SCRA 761 (1990).

[21] U.S. vs. Raefsky, et al., 19 F.R.D. 355.

[22] Dalman vs. City Court of Dipolog City, Br. II, et al., 134 SCRA 243 (1985).

[23] 1 CJS 1381.

[24] Travellers Express, Inc. vs. Acosta, 397 So. 2d 733.

[25] Sun Insurance Office, Ltd., (SIOL), et al. vs. Asuncion, et al., 170 SCRA 274 (1989).

[26] Sapugay, et al. vs. Court of Appeals, et al., 183 SCRA 464 (1990).

[27] Vda. de Carmen, et al. vs. Cartagena, et al., 178 SCRA 616 (1989). See also Section 5, Rule 141, Rules of Court (now Section 7 of said Rule as amended by resolution of the Court En Banc dated September 4, 1990).

[28] Gegare vs. Court of Appeals, et al., 177 SCRA 471 (1989).

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