

UNITED COCONUT PLANTERS BANK, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND MAKATI BEL-AIR CONDOMINIUM DEVELOPERS, INC., RESPONDENTS.

G.R. NOs. 72664-65. March 20, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner seeks review of the decision of the respondent appellate court dated 27 June 1985 which annulled and set aside certain orders of the then Court of First Instance (CFI) of Rizal, Branch 15, Makati so far as said orders dismissed private respondents' counter-claim.

On 23 July 1979, petitioner United Coconut Planters Bank (Bank) filed in the lower court a complaint-in-interpleader against private respondent Makati Bel-Air Condominium Developers, Inc. (Makati Bel-Air) and against Altiura Investors, Inc. (Altiura). The subject matter of the complaint was a manager's check in the amount of P494,000.00 issued by petitioner Bank payable to Makati Bel-Air, having been purchased by Altiura. Altiura delivered the check to Makati Bel-Air as part payment on an office condominium unit in the Cacho-Gonzales Building, on 16 July 1979.

On 17 July 1979, petitioner Bank received from Altiura instructions to hold payment on the manager's check, in view of a material discrepancy in the area of the office unit purchased by Altiura which unit actually measured 124.58 square meters, instead of 165 square meters as stipulated in the contract of sale. Petitioner Bank immediately requested private respondent Makati Bel-Air, by a letter dated 17 July 1979, to advise the Bank why it should not issue the stop payment order requested by Altiura.

The next day, 18 July 1975, petitioner Bank received a reply from Makati Bel-Air explaining the latter's side of the controversy and at the same proposing a possible reduction of the office unit's purchase price.

On 19 July 1979, petitioner Bank received a letter from Altiura of even date requesting the Bank to hold payment of its manager's check while Altiura was discussing Makati Bel-Air's proposal for reduction of the purchase price and requesting the Bank to give both parties fifteen (15) days within which to settle their differences. By a letter dated on the same date, petitioner Bank requested Makati Bel-Air to hold in abeyance or a period not exceeding fifteen (15) days the presentation of the manager's check, so that both parties could settle their differences amicably.

On 20 July 1979, petitioner Bank was advised in writing by Makati Bel-Air that the latter did not agree to the request of the Bank set out in the latter's letter of 19 July 1979.

Thereupon, petitioner Bank filed a complaint-in-interpleader against Altiura and Makati Bel-Air to require the latter to litigate with each other their respective claims over the funds represented by the manager's check involved, and at the same time asking the court for authority to deposit the funds in a special account until the conflicting claims shall have been adjudicated. The trial court ordered the deposit of the funds into a special

account with any reputable banking institution subject to further orders of the court.

On 18 August 1979, Makati Bel-Air filed its answer and incorporated therein a counter-claim against petitioner Bank and a cross-claim against Altiura. In turn, Altiura filed an answer to the complaint-in-interpleader, with motion to dismiss the cross-claim of Makati Bel-Air.

Meantime, on 23 July 1979, Altiura had filed a complaint for rescission of the contract of sale of the condominium unit, with damages, against Makati Bel-Air docketed as Civil Case No. 33967, which case was eventually consolidated with the interpleader case.

On 29 August 1979, petitioner Bank filed a "motion to withdraw complaint and motion to dismiss counter-claim", stating that there was no longer any conflict between Makati Bel-Air and Altiura as to who was entitled to the funds covered by the manager's check, since Makati Bel-Air in its answer had alleged that it had cancelled and rescinded the sale of the condominium unit and had relinquished any claim it had over the funds covered by the manager's check.

On 28 September 1979, Makati Bel-Air delivered to petitioner Bank the original of the manager's check. On 18 February 1980, the trial court in Civil Case No. 33961 issued an order directing the release of the funds covered by the manager's check to Altiura.

On 28 April 1983, the trial court issued an order resolving petitioner Bank's motion to withdraw complaint-in-interpleader and to dismiss counter-claim, declaring that motion to withdraw the complaint-in-interpleader had been rendered moot and academic by the court's earlier order of 18 February 1980 directing petitioner Bank to release to Altiura the P494,000.00 covered by the manager's check, which Makati Bel-Air had not opposed nor appealed from. In the same order, the trial court granted Makati Bel-Air's motion to consolidate Civil Case No. 33961 (the interpleader case) and Civil Case No. 33967 (the rescission plus damages case).

On 12 July 1983, upon motion of petitioner Bank, the trial court issued an order clarifying its 28 April 1983 order by stating that the counter-claim of Makati Bel-Air was dismissed when the funds covered by the manager's check were released to Altiura without objection of Makati Bel-Air. At the same time, the order denied Altiura's motion to dismiss Makati Bel-Air's cross-claim in Civil Case No. 33961.

Makati Bel-Air moved for reconsideration of the 12 July 1983 clarificatory order of the trial court, without success.

Makati Bel-Air then went to the respondent appellate court on petition for certiorari.

In its decision dated 27 June 1985, the appellate court granted certiorari and nullified the trial court's orders of 12 July and 30 August 1983 to the extent that these had dismissed Makati Bel-Air's counter-claim. The appellate court held that the withdrawal or the complaint-in-interpleader and its dismissal as moot and academic did not operate ipso facto to dismiss Makati Bel-Air's counter-claim for the reason that said counter-claim was based on "an entirely different cause of action from that in the complaint-[in]-interpleader".

In the instant Petition for Review on Certiorari, petitioner Bank argues that Makati Bel-Air's counter-claim was compulsory in nature and had therefore been dissolved when the complaint-in-interpleader was withdrawn and dismissed. Makati Bel-Air argues, upon the other hand, that its counterclaim was not a compulsory one.

Makati Bel-Air's counterclaim in the interpleader proceedings was for damages in the amount of P5,000,000.00, based upon the theory that petitioner Bank had violated its guarantee embodied in its manager's check when it in effect stopped payment of said check, allegedly causing damages to Makati Bel-Air the latter having allegedly

issued checks against said funds.

Under Section 4, Rule 9 of the Revised Rules of Court, a compulsory counterclaim is "one which arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim".[1] Interpleader is a proper remedy where a bank which had issued a manager's check is subjected to opposing claims by persons who respectively claim a right to the funds covered by the manager's check.[2] The Bank is entitled to take necessary precautions so that, as far possible, it does not make a mistake as to who is entitled to payment; the necessary precautions include, precisely, recourse to an interpleader suit.

In the instant case, petitioner Bank having been informed by both Altiura and Makati Bel-Air of their respective positions in their controversy, and Makati Bel-Air having refused the Bank's suggestion voluntarily to refrain for fifteen (15) days from presenting the check for payment, petitioner Bank felt compelled to resort to the remedy of interpleader. It will be seen that Makati Bel-Air's counter-claim arose out of or was necessarily connected with the recourse of petitioner to this remedy of interpleader. Makati Bel-Air was in effect claiming that petitioner Bank had in bad faith refused to honor its undertaking to pay represented by the manager's check it had issued. When the trial court granted petitioner's motion for withdrawal of its complaint-in-interpleader, as having become moot and academic by reason of Makati Bel-Air's having cancelled the sale of the office unit to Altiura and having returned the manager's check to the Bank and acquiesced in the release of the funds to Altiura, the trial court in effect held that petitioner Bank's recourse to interpleader was proper and not a frivolous or malicious maneuver to evade its obligation to pay to the party lawfully entitled the funds represented by the manager's check. Having done so, the trial court could not have logically allowed Makati Bel-Air to recover on its counter claim for damages against petitioner Bank.

There are other considerations supporting the conclusion reached by this Court that respondent appellate court had committed reversible error. Makati Bel-Air was a party to the contract of sale of an office condominium unit to Altiura, for the payment of which the manager's check was issued. Accordingly, Makati Bel-Air was fully aware, at the time it had received the manager's check, that there was, or had arisen, at least partial failure of consideration since it was unable to comply with its obligation to deliver office space amounting to 165 square meters to Altiura. Makati Bel-Air was also aware that petitioner Bank had been informed by Altiura of the claimed defect in Makati Bel-Air's title to the manager's check or its right to the proceeds thereof. Vis a vis both Altiura and petitioner Bank, Makati Bel-Air was not a holder in due course[3] of the manager's check.

ACCORDINGLY, the Court Resolved to GRANT the Petition for Review and to REVERSE and SET ASIDE the Decision of respondent appellate court dated 27 June 1985 in AC-G.R. SP Nos. 01669-70.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] See, e.g., *Javier v. Intermediate Appellate Court*, G.R. No. 75379, March 31, 1989; *Ty Tion v. Marsman and Co.*, 5 SCRA 761 (1962); *Berses v. Villanueva*, 25 Phil. 473 (1913).

[2] *Mesina v. Intermediate Appellate Court*, 145 SCRA 497 (1986).

[3] Sections 28 and 52 (c), Negotiable Instruments Law.

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