



Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 86792 March 21, 1990

SPOUSES MARINO AND LINA JOEL SAPUGAY, petitioners,
vs.

HON. COURT OF APPEALS, MOBIL PHILIPPINES, INC. AND RICARDO CARDENAS, respondents.

Cuesta, Bermudez & Associates for petitioners.

Camacho & Associates for Mobil Phils., Inc.

REGALADO, J

For review in this petition is the decision ¹ of respondent Court of Appeals in CA-G.R. CV No. 07614 thereof, dated November 11, 1988, deleting the award made by the court *a quo* ² for rental, storage and guarding fees and unrealized profits, the reduction of the other damages granted, and the exclusion and exculpation from liability of respondent Ricardo P. Cardenas, as well as the resolution ³ of respondent court of January 30, 1989 denying petitioner's motion for reconsideration.

The following facts, culled from respondent court's decision and sustained by the evidence of record, are adopted by us in our adjudication:

1. On September 27, 1982, plaintiff Mobil Philippines, Inc. filed a complaint for replevin with damages against defendant Lina Joel Sapugay before the Court of First Instance of Rizal, Seventh Judicial District, Pasig, Metro Manila. The complaint, which was duly amended on October 11, 1982 alleges the following: that upon the termination of the Dealership Agreement between Mobil Oil Philippines, Inc. and Nemar Marketing Corporation, defendant applied to the plaintiff to become a dealer of the latter's products; that pending consideration of the dealership application, plaintiff loaned to the defendant the properties installed in the premises of Nemar at Sto. Tomas, Batangas, valued at P1,500,000.00; that for a period of three (3) months from the date of application, defendant failed to secure and file the required surety bond, compelling plaintiff to reject defendant's application and the return and redelivery of the aforementioned properties; that defendant refused to return said equipments, and demanded instead that defendant be paid first the sum of P15,000.00 daily as rental and guard's fees from June 8, 1982 up to the day of actual pull-out. Thus, plaintiff prays for the return of said properties or its value including damages, attorney's fees and costs of suit.

2. On October 12, 1982, the lower court issued an order for the issuance of a writ of replevin upon the filing of plaintiff's bond.

3. On November 29, 1982, defendant filed her answer alleging as affirmative defenses that upon presentation of defendant's application, plaintiff and its manager, R.P. Cardenas, imposed upon them as a condition for the approval of their application defendant's acquisition of the premises where the business will be conducted; that consequently applicant-defendant purchased the said land for seven hundred thousand (P700,000.00) pesos; that on June 21, 1982, a preliminary agreement was signed constituting defendant as plaintiff's authorized dealer, whereupon plaintiff turned over to the defendant the equipment to be used therefor; that plaintiff instructed defendant to commence operation whereupon the latter made the necessary preparations amounting to P38,000.00; that defendant commenced operation on June 26, 1982, pending execution of the formal dealership agreement; that on the last week of July, 1982, they signed the formal dealership agreement a copy of which was withheld from them by the plaintiff pending its notarization; that as the formal agreement had already been signed, defendant and her husband requested plaintiff that they be allowed to get gas even on a cash basis, but plaintiff denied the request claiming that they

still have to post a surety bond which was initially fixed at P200,000.00 then later increased to P700,000.00; that defendant and her husband exerted their best effort to secure a bond but the bonding companies required a copy of the dealership agreement which was continuously withheld from them by plaintiff, that defendant discovered that plaintiff and its manager intended all along, to award said dealership to Island Air Product Corporation; that in furtherance of said scheme plaintiff caused all the LP-Gas equipment to be publicly pulled out from defendant's premises. As counterclaim, defendant prayed that plaintiff and its manager be made liable for their pre-operation expenses rental, storage, and guarding fees, unrealized profit including damages and the return of the LP-Gas equipment to the premises.

4. On December 9, 1982, the writ of replevin dated October 22, 1982 issued by Honorable Eduardo C. Abaya of the Court of First Instance, Rizal, Branch XXIV was duly executed.

5. On September 8, 1983, the pre-trial conference in Branch 132, Makati, Metro Manila was terminated without any amicable settlement, and trial was set for November 3, 1983.

6. On November 3, 1983, the trial court granted plaintiff's Motion for Leave to Amend Complaint, alleging that plaintiff Mobil Oil Philippines, Inc. having been taken over by Caltex Philippines, Inc., and prior to dissolution, assigned and transferred all the rights, interest, claim and cause of action in favor of Mobil Philippines, Inc.

7. On August 8, 1985, the trial court, after finding that plaintiff and its manager, R.P. Cardenas, have reneged on its promise to award the dealership to defendant Sapugay, rendered judgment in favor of the latter, dismissing the complaint and ordering plaintiff and its manager to pay the pre-operation expenses, rental, storage, and guarding fees of plaintiff's LPG equipment; unrealized profits, moral damages including litigation expenses, attorney's fees and costs of the suit.

8. On August 26, 1985, defendant filed a motion for application to have plaintiffs bond posted by the Malayan Surety Company liable for the satisfaction of the judgment.

9. On August 29, 1985, the plaintiff-corporation filed a notice of appeal manifesting that it was appealing to the Court of Appeals from the decision promulgated on August 8, 1985.

10. On September 17, 1985, the trial court issued an order denying the defendant's motion considering that the lower court no longer had any jurisdiction to act on the matter with the perfection of plaintiffs appeal. ⁴

On November 11, 1988, respondent Court of Appeals rendered a decision, disposing as follows:

WHEREFORE, the decision appealed from is hereby MODIFIED in that the awards of rental, storage and guarding fees and the award of unrealized profits, are hereby DELETED, and the award of damages REDUCED. The decision is AFFIRMED in all other aspects with Mobil Philippines, Inc. being solely liable. ⁵

The motion for reconsideration filed by herein petitioners, praying that the bond posted by Malayan Insurance Co., Inc. in behalf of herein private respondents be made liable for damages suffered by petitioners, was denied by respondent court in its resolution dated January 30, 1989. Hence, this petition.

The issues raised by petitioners for resolution are whether respondent court committed serious errors of law amounting to grave abuse of discretion and/or excess of jurisdiction:

1. In excluding from the case and exculpating from liability respondent Ricardo P. Cardenas, an indispensable party;
2. In deleting from the decision of the court *a quo* the awards for guarding fee and unrealized profits; and
3. In holding that Malayan Insurance Co., Inc., is not liable on the bond.

In their comment, private respondents aver that since the counterclaim of petitioners against the former is permissive in nature and since no docket fee was paid, the trial court did not acquire jurisdiction over the case, hence the awards rendered on petitioners' counterclaim should be dismissed.

Under the first assigned error, petitioners assert that respondent Court of Appeals erred in exculpating Cardenas from liability and in holding that said Cardenas, who is not a party to the original action, may not be impleaded by petitioners in their counterclaim on the ground that a counterclaim cannot be filed against a person who is not an actual party to the litigation. In effect, what respondent court is saying is that the trial court did not acquire jurisdiction over the person of Cardenas, hence he cannot be held jointly liable with Mobil Philippines, Inc.

(hereafter, Mobil for short). On the contrary, petitioners submit that Cardenas is an indispensable party since he was the one who negotiated with them in transacting the dealership agreement.

A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party.⁶ However, the general rule that a defendant cannot by a counterclaim bring into the action any claim against persons other than the plaintiff admits of an exception under Section 14, Rule 6 which provides that "when the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained." The inclusion, therefore, of Cardenas in petitioners' counterclaim is sanctioned by the rules.

The next question to be resolved is whether the trial court acquired jurisdiction over the person of Cardenas. It has been held that a counterclaim stands on the same footing as, and is to be tested by the same rules as if it were, an independent action.⁷ Hence, the same rules on jurisdiction in an independent action ordinarily apply equally to a counterclaim.

In her answer, filed on November 29, 1982, to the amended complaint, petitioner Lina Sapugay impleaded Cardenas as a defendant in her counterclaim therein, and prayed that judgment be rendered holding specifically Mobil and Cardenas jointly and severally liable to herein petitioners.⁸ Thereafter, petitioner filed a "Motion to Declare Plaintiff and its Manager, Ricardo P. Cardenas, in Default on Defendant's Counterclaim" for failure of private respondents to answer the counterclaim.⁹ Cardenas was furnished copies of both the answer and the motion to declare herein private respondents in

default.¹⁰ Respondent Mobil filed an opposition to the motion to declare them in default, alleging that they, the private respondents herein, may not be so declared.¹¹ The court below agreed with private respondents' reasoning therein that a compulsory counterclaim being involved, the issues raised in the counterclaim are deemed automatically joined by the allegations of the complaint, hence the complaint itself stood as the answer to defendant's counterclaim. Consequently, the trial court denied the motion to declare the herein private respondents in default.¹²

It is noteworthy that Cardenas did not file a motion to dismiss the counterclaim against him on the ground of lack of jurisdiction. While it is a settled rule that the issue of jurisdiction may be raised even for the first time on appeal, this does not obtain in the instant case. Although it was only Mobil which filed an opposition to the motion to declare in default, the fact that the trial court denied said motion, both as to Mobil and Cardenas on the ground that Mobil's complaint should be considered as the answer to petitioners' compulsory counterclaim, leads us to the inescapable conclusion that the trial court treated the opposition as having been filed in behalf of both Mobil and Cardenas and that the latter had adopted as his answer the allegations raised in the complaint of Mobil. Obviously, it was this ratiocination which led the trial court to deny the motion to declare Mobil and Cardenas in default. Furthermore, Cardenas was not unaware of said incidents and the proceedings therein as he testified and was present during the trial, not to speak of the fact that as manager of Mobil he would necessarily be interested in the case and could readily have access to the records and pleadings filed therein.

By adopting as his answer the allegations in the complaint which seeks affirmative relief, Cardenas is deemed to have recognized the jurisdiction of the trial court over his person and submitted thereto. He may not now be heard to repudiate or question that jurisdiction.¹³

Mobil likewise questions the jurisdiction of the trial court in entertaining the counterclaim since no docket fee was paid. It avers that since it is a permissive counterclaim, petitioners should have paid the necessary docket fee. On the contrary, we find and so hold that the counterclaim of petitioners is compulsory in nature since both the complaint and counterclaim involve the same transaction and arose from the same occurrence. Besides, as earlier discussed, in Mobil's opposition to the motion for a default order, it categorically stated that petitioners' counterclaim is compulsory in nature,¹⁴ which was likewise the view of the trial court and the precise reason why it denied said motion. Private respondents are now estopped from claiming otherwise. In the recent case of *Sun Insurance Office, Ltd., et al. vs. Hon. Asuncion, et al.*¹⁵ involving the rule on payment of docket fees in ordinary actions, the rule was affirmed and made to apply specifically to permissive counterclaims only, thereby excluding compulsory counterclaims from its purview.

As to the second assigned error, the finding of the Court of Appeals that no sufficient and substantial evidence exists to warrant an award of guarding fees and unearned profits is conclusively binding on this Court, for failure of private respondents to show that the appellate court acted with grave abuse of discretion or erred in making such finding. Fundamental is the rule that findings of fact of the Court of Appeals will not be disturbed unless shown to have been rendered with arbitrariness, nor are any of the jurisprudentially accepted exceptions thereto present in this case.

Anent the issue on the surety's liability upon the replevin bond, we do not believe that Malayan Insurance Co., Inc. should be made liable thereon. As correctly observed by respondent court, "the damages awarded by the trial court were based on Articles 19 and 20 of the New Civil Code and not on the deprivation of personal properties subject of the replevin bond. Moreover, no judgment was entered for the return of the properties subject of the replevin bond to the defendant, the latter never having raised the issue of rightful possession to the said

properties." ¹⁶

A replevin bond is simply intended to indemnify the defendant against any loss that he may suffer by being compelled to surrender the possession of the disputed property pending the trial of the action. He cannot recover on the bond as for a reconversion when he has failed to have the judgment entered for the return of the property. Nor is the surety liable for payment of the judgment for damages rendered against the plaintiff on a counterclaim or punitive damages for fraudulent or wrongful acts committed by the plaintiffs and unconnected with the defendant's deprivation of possession by the plaintiff. Indeed, even where the judgment was that the defendant was entitled to the property, but no order was made requiring the plaintiff to return it or assessing damages in default of a return, it was declared that until judgment was entered that the property should be restored, there could be no liability on the part of the sureties. ¹⁷

There is no denying the active participation of Cardenas in the anomalous transactions had with petitioner Lina Sapugay as found by the Court of Appeals, to wit:

Indeed, a perusal of the letters referred to show that plaintiff corporation, particularly its manager, gave cause for defendant Sapugay to believe that she is the authorized supplier and refiller of Mobil Philippines, to wit, plaintiff's letter to defendant signed by its Manager R.P. Cardenas dated July 2, 1982 (Exhibit "2"), referred to defendant "as a major supplier of LPG and as the authorized refiller of Mobil Oil Philippines . . . committed to the government as well as to all Mobil LP-Gas customers to uphold the highest standard in respect to marketing as well as safety (Exhibit "2-b")." This belief is further bolstered by the Memorandum dated July 12, 1982 signed by Cardenas and sent to defendant by registered mail (Exhibit "5") attaching a copy of Ministry Order No. 82-06-08 (Exhibit "3-b") prohibiting LPG cylinder exchange and the refilling of other brands of cylinder without the brand owner's authority.

As to the existence of a Formal Dealership Agreement, this Court failed to find any other evidence other than defendant's testimony to substantiate the allegation that plaintiff and defendant had already signed a dealership agreement in July 1982 which the former withheld from the latter, causing defendant's failure to submit the requisite bond. Moreover, this Court notes that the blank standard dealership agreement form presented by plaintiff (Exhibit "L"), shows no requirement for the filing of a bond. Further, Manager Cardenas himself testified that this standard agreement contained all the terms and conditions of a dealership, . . .

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Thus, the lower court found that the requirement of posting a bond, initially fixed at P200,000.00 then raised to P700,000.00 was a *preplanned scheme of plaintiff and/or R.. Cardenas to put every hindrance before the defendant so that the latter could not get the dealership agreement . . .*

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As found by the trial court, *all these acts of plaintiff and its manager, R.. Cardenas, are contrary to Articles 19 and 20 of the New Civil Code*, to wit:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties act with justice, give everyone his due and observe honesty and good faith.

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

for which plaintiff must be made to recompense the damages the defendant suffered. (Emphasis supplied) ¹⁹

We, therefore, find and so hold that private respondent Ricardo P. Cardenas should be held jointly and severally liable with his co-respondent Mobil Philippines, Inc. for having acted in bad faith by impeding and preventing the award of the dealership to petitioners through fraudulent means.

ACCORDINGLY, the judgment appealed from is hereby AFFIRMED with the modification that respondents Mobil Philippines, Inc. and Ricardo P. Cardenas are held jointly and severally liable to herein petitioners Marino and Lina Joel Sapugay.

SO ORDERED.

Melencio-Herrera and Sarmiento, JJ., concur.

Paras, Padilla, JJ., took no part.

Footnotes

- 1 Justice Conrado T. Limcaoco, *ponente*, concurred in by Justices Vicente V. Mendoza and Gloria C. Paras; Petition, Annex A; *Rollo*, 29.
- 2 Civil Case No. 3103, Regional Trial Court, Branch 132, National Capital Judicial Region, Judge Roque A. Tamayo, presiding.
- 3 Petition, Annex C; *Rollo*, 53.
- 4 *Ibid.*, 30-32.
- 5 *Ibid.*, 38.
- 6 Sec. 6, Rule 6, Rules of Court.
- 7 De la Peña, et al. vs. Hidalgo, 20 Phil. 323 (1911).
- 8 *Rollo*, 65-72.
- 9 *Ibid.*, 85-86.
- 10 Original Records, 53, 92.
- 11 *Rollo*, 87-88.
- 12 *Ibid.*, 89.
- 13 Crisostomo, etc., et al. vs. Court of Appeals, et al., 32 SCRA 54 (1970); Royales, et al. vs. Intermediate Appellate Court, et al., 127 SCRA 470 (1984).
- 14 Footnote 12, *supra*.
- 15 G.R. Nos. 79937-38, February 13, 1989.
- 16 *Rollo*, 53.
- 17 Aguasin, etc. vs. Velasquez, et al., 88 Phil. 357 (1951).
- 18 *Rollo*, 34-35.