

[G.R. No. 133119, August 17, 2000]

FINANCIAL BUILDING CORPORATION, PETITIONER, VS. FORBES PARK ASSOCIATION, INC., RESPONDENT.

D E C I S I O N

DE LEON, JR., J.:

Before us is petition for review on *certiorari* of the Decision^[1] dated March 20, 1998 of the Court of Appeals^[2] in CA-GR CV No. 48194 entitled "Forbes Park Association, Inc. vs. Financial Building Corporation", finding Financial Building Corporation (hereafter, Financial Building) liable for damages in favor of Forbes Park Association, Inc. (hereafter, Forbes Park), for violating the latter's deed of restrictions on the construction of buildings within the Forbes Park Village, Makati.

The pertinent facts are as follows:

The then Union of Soviet Socialist Republic (hereafter, USSR) was the owner of a 4,223 square meter residential lot located at No. 10, Narra Place, Forbes Park Village in Makati City. On December 2, 1985, the USSR engaged the services of Financial Building for the construction of a multi-level office and staff apartment building at the said lot, which would be used by the Trade Representative of the USSR.^[3] Due to the USSR's representation that it would be building a residence for its Trade Representative, Forbes Park authorized its construction and work began shortly thereafter.

On June 30, 1986, Forbes Park reminded the USSR of existing regulations^[4] authorizing only the construction of a single-family residential building in each lot within the village. It also elicited a reassurance from the USSR that such restriction has been complied with.^[5] Promptly, the USSR gave its assurance that it has been complying with all regulations of Forbes Park.^[6] Despite this, Financial Building submitted to the Makati City Government a second building plan for the construction of a multi-level apartment building, which was different from the first plan for the construction of a residential building submitted to Forbes Park.

Forbes Park discovered the second plan and subsequent ocular inspection of the USSR's subject lot confirmed the violation of the deed of restrictions. Thus, it enjoined further construction work. On March 27, 1987, Forbes Park suspended all permits of entry for the personnel and materials of Financial Building in the said construction site. The parties attempted to meet to settle their differences but it did not push through.

Instead, on April 9, 1987, Financial Building filed in the Regional Trial Court of Makati, Metro Manila, a Complaint^[7] for Injunction and Damages with a prayer for Preliminary Injunction against Forbes Park docketed as Civil Case No. 16540. The latter, in turn, filed a Motion to Dismiss on the ground that Financial Building had no cause of action because it was not the real party-in-interest.

On April 28, 1987, the trial court issued a writ of preliminary injunction against Forbes Park but the Court of Appeals nullified it and dismissed the complaint in Civil Case No. 16540 altogether. We affirmed the said dismissal in our Resolution,^[8] promulgated on April 6, 1988, in G.R. No. 79319 entitled "Financial Building Corporation, et al. vs. Forbes Park Association, et al."

After Financial Building's case, G.R. No. 79319, was terminated with finality, Forbes Park sought to vindicate its rights by filing on October 27, 1989 with the Regional Trial Court of Makati a Complaint^[9] for Damages, against Financial Building, docketed as Civil Case No. 89-5522, arising from the violation of its rules and regulations. The damages claimed are in the following amounts: (a) P3,000,000.00 as actual damages; (b) P1,000,000.00 as moral damages; (c) P1,000,000.00 as exemplary damages; and (d) P1,000,000.00 as attorney's fees.^[10] On September 26, 1994, the trial court rendered its Decision^[11] in Civil Case No. 89-5522 in favor of Forbes Park and against Financial Building, the dispositive portion of which reads, to wit:

"WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant:

(1) Ordering the defendant to remove/demolish the illegal structures within three (3) months from the time this judgment becomes final and executory, and in case of failure of the defendant to do so, the plaintiff is authorized to demolish/remove the structures at the expense of the defendant;

(2) Ordering the defendant to pay damages, to wit:

(a) P3,000,000.00 as actual damages by way of demolition expenses;

(b) P1,000,000.00 as exemplary damages;

(c) P500,000.00 as attorney's fees;

(d) the costs of suit.

SO ORDERED."

Financial Building appealed the said Decision of the trial court in Civil Case No. 89-5522 by way of a petition for review on *certiorari*^[12] entitled "Financial Building Corporation vs. Forbes Park Association, Inc." to the Court of Appeals and docketed therein as CA-GR CV No. 48194. However, the Court of Appeals affirmed it in its Decision^[13] dated March 20, 1998, the dispositive portion of which reads:

"WHEREFORE, the Decision dated September 26, 1994 of the Regional Trial Court of Makati is AFFIRMED with the modification that the award of exemplary damages, as well as attorney's fees, is reduced to fifty thousand pesos (P50,000.00) each."

Hence, this petition, wherein Financial Building assigns the following errors:

I. "THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE COMPLAINT FILED BY RESPONDENT FPA DESPITE THE FACT THAT ITS

ALLEGED CLAIMS AND CAUSES OF ACTION THEREIN ARE BARRED BY PRIOR JUDGMENT AND/OR ARE DEEMED WAIVED FOR ITS FAILURE TO INTERPOSE THE SAME AS COMPULSORY COUNTERCLAIMS IN CIVIL CASE NO. 16540;

II. THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE COMPLAINT FILED BY RESPONDENT FPA AGAINST PETITIONER FBC SINCE RESPONDENT FPA HAS NO CAUSE OF ACTION AGAINST PETITIONER FBC;

III. THE COURT OF APPEALS GRAVELY ERRED IN AWARDING DAMAGES IN FAVOR OF RESPONDENT FPA DESPITE THE FACT THAT ON THE BASIS OF THE EVIDENCE ON RECORD, RESPONDENT FPA IS NOT ENTITLED THERETO AND PETITIONER FBC IS NOT LIABLE THEREFOR;

IV. THE COURT OF APPEALS ERRED IN ORDERING THE DEMOLITION OF THE ILLEGAL STRUCTURES LOCATED AT NO. 10 NARRA PLACE, FORBES PARK, MAKATI CITY, CONSIDERING THAT THE SAME ARE LOCATED ON DIPLOMATIC PREMISES”^[14]

We grant the petition.

First. The instant case is barred due to Forbes Park’s failure to set it up as a compulsory counterclaim in Civil Case No. 16540, the prior injunction suit initiated by Financial Building against Forbes Park.

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.^[15] If it is within the jurisdiction of the court and it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, such compulsory counterclaim is barred if it is not set up in the action filed by the opposing party.^[16]

Thus, a compulsory counterclaim cannot be the subject of a separate action but it should instead be asserted in the same suit involving the same transaction or occurrence, which gave rise to it.^[17] To determine whether a counterclaim is compulsory or not, we have devised the following tests: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant’s claim absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff’s claim as well as the defendant’s counterclaim? and (4) Is there any logical relation between the claim and the counterclaim? Affirmative answers to the above queries indicate the existence of a compulsory counterclaim.^[18]

Undoubtedly, the prior Civil Case No. 16540 and the instant case arose from the same occurrence – the construction work done by Financial Building on the USSR’s lot in Forbes Park Village. The issues of fact and law in both cases are identical. The factual issue is whether the structures erected by Financial Building violate Forbes Park’s rules and regulations, whereas the legal issue is whether Financial Building, as an independent contractor working for the USSR, could be enjoined from continuing with the construction and be held liable for damages if it is found to have violated Forbes Park’s rules.