

## FIRST DIVISION

[ G.R. No. 131692, June 10, 1999 ]

**FELIPE YULIENCO, PETITIONER, VS. COURT OF APPEALS(NINTH DIVISION) AND ADVANCE CAPITAL CORPORATION, RESPONDENTS.**

### D E C I S I O N

**DAVIDE, JR., C.J.:**

In this petition for review on *certiorari*, petitioner Felipe Yulienco (hereafter YULIENCO) seeks to reverse the decision<sup>[1]</sup> of 4 December 1997 of the Court of Appeals in CA-G.R. SP No. 42835, which dismissed for lack of merit the petition therein which sought to set aside the orders of 3 May 1996<sup>[2]</sup> and 30 August 1996<sup>[3]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 93, in Civil Case No. Q-95-23691. In said orders, the RTC denied petitioner's motion to dismiss the complaint and his motion for reconsideration, respectively.

The relevant facts are summarized by the Court of Appeals as follows:

Civil Case No. Q-95-23691 was instituted by private respondent Advance Capital Corporation (ACC) against petitioner Felipe Yulienco to recover the amount of P30,631,162.19 plus interests and penalty, which was apparently extended as a loan to the petitioner, as evidenced by four promissory notes, namely:

P.N. Date Amount Date Due

P.N.#56 March 12, 1993 P7,447,656.93 June 11, 1993

P.N.#57 March 26,1993 P8,453,404.63 July 24, 1993

P.N.#59 April 23, 1993 P8,341,662.42 July 23, 1993

P.N.#60 May 7,1993 P6,408,438.21 Aug. 6, 1993

Each promissory note also provided for an interest rate of 30% per annum.

In its complaint, the ACC alleged that petitioner failed and refused to pay the amounts reflected in the promissory notes upon their maturity and despite several demands to pay made to the petitioner, the last one being sent on January 9, 1995.

Petitioner filed his answer on July 17, 1995, alleging in sum, that the trial court cannot acquire jurisdiction over ACC's complaint because there is

another case pending between ACC and the petitioner involving the same subject matter, and that ACC's complaint should have been filed as a necessary and compulsory counterclaim in the said case. Also, ACC's complaint was allegedly in violation of the proscription against splitting of a cause of action. Alternatively, petitioner countered that the promissory notes upon which ACC based its claim are fake, and do not express the true intent of the contracting parties.

On April 19, 1996, petitioner filed a memorandum/motion to dismiss with the trial court, setting up the special and affirmative defenses in his answer as grounds for the dismissal of ACC's suit.

The trial court struck down the said motion in its Order dated May 3, 1996, stating that:

"The records show that the subject matters of the instant case at bar (Annex A PN No. 56 dated 12 March 1993, Annex B PN No. 57 dated March 19, 1983 (sic), Annex C PN No. 59 dated 23 April 1993 and Annex D PN No. 60 dated 7 May 1993) are not among the subject matters of SP Civil Case No. 93-251, RTC, Makati case. The records further show that defendant did not invoke in his petition filed in the RTC Makati case any cause of action against plaintiff regarding the promissory notes which are the subject matters of the instant case.

After a careful and judicious consideration of the grounds being relied upon in support of the motion under consideration as well as the opposition filed thereto, the Court is inclined to hold that the promissory notes which comprise the subject matters of the RTC, Makati case, involve separate and distinct causes of action. Moreover, the Makati case involves real action whereas the instant case is only for collection of sum of money."

Petitioner's subsequent motion for reconsideration was, likewise, denied in the trial court's August 30, 1996 order, for lack of merit.<sup>[4]</sup>

Thereafter, YULIENCO filed before the Court of Appeals a petition for *certiorari*, prohibition and/or injunction, docketed as CA-G.R. SP No. 42835, questioning the aforementioned orders of the RTC of Quezon City. YULIENCO challenged the jurisdiction of the RTC over Civil Case No. Q-95-23691 principally on the ground of *litis pendentia*, because another case, Special Case No. Q-93-2521, which, he claimed, involved the same parties (he and Advance Capital Corporation [hereafter ACC]) and subject matter, is pending before the RTC of Makati City.

The Court of Appeals rejected YULIENCO's argument and consequently dismissed the petition in its decision of 4 December 1997. It found that "bar of *litis pendentia* [sic] will not operate in the present suit, inasmuch as there appears to be no identity in the subject matter from which the reliefs prayed for in the actions pending were premised," and in support thereof, made the following observations:

There is no showing that the promissory notes involved in the present action are in any way connected with the indebtedness of the petitioner, the enforcement of which is sought to be restrained in SP Civil Case No.

93-2521, pending in the Makati RTC. The promissory notes themselves (PN # 56, 57, 59 and 60) which are the primary repositories of the true intent of the contracting parties, do not speak of any reasonable relevance of the promissory notes subject of SP Civil Case No. 93-2521 to the present issue.

It follows, therefore, that ACC's quest for relief is not barred by the other reasons furthered by the petitioner.

The theory that ACC's claim is now barred because it should have been filed as a compulsory counterclaim in the Makati case is untenable. A compulsory counterclaim is one, which being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. (Sec. 7, Rule 6, 1997 Rules of Civil Procedure). As we have observed, it was not shown that a reasonable connection was established between ACC's present claim with the petitioner's attempt to restrain the foreclosure of his properties. Neither can it be said, for the same reason, that ACC is guilty of splitting a cause of action, or of forum-shopping.<sup>[5]</sup>

The Court of Appeals then ordered the RTC to proceed with the pre-trial.

Unable to accept the decision, YULIENCO filed the instant petition. He insists that the decision of the Court of Appeals is not in accord with law and jurisprudence, because: (1) Civil Case No. Q-95-23691 violated the fundamental rules on splitting of causes of action and/or necessary joinder of causes of action in that the cause of action therein (complaint for collection of sums of money covered by Promissory Notes Nos. 56, 57, 59 and 60) should have been set up as compulsory counterclaim in Special Case No. Q-93-2521; and (2) in filing Civil Case No. Q-95-23691, ACC was guilty of forum shopping.

On its part, ACC maintains that Civil Case No. Q-95-23691 of the RTC of Quezon City is separate and distinct from Special Civil Case No. 93-2521 of the RTC of Makati City. The first is an ordinary collection suit, while the second is for injunction, and while both cases involve promissory notes, they are not the same promissory notes. The dissimilarity arises from the disparate obligations and transactions entered into or incurred by YULIENCO in different years. Hence, there is no violation of the rule concerning splitting causes of action or the necessary joinder of causes of action.

We agree with ACC.

A counterclaim is defined as any claim for money or other relief which a defending party may have against an opposing party.<sup>[6]</sup> A counterclaim is compulsory if (a) it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim; (b) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim.<sup>[7]</sup> In other words, a compulsory counterclaim cannot be made the subject of a separate action