

EN BANC

[G.R. No. 102942, April 18, 1997]

**AMADO F. CABAERO AND CARMEN C. PEREZ, PETITIONERS, VS.
HON. ALFREDO C. CANTOS IN HIS CAPACITY AS PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BR. VII,
AND EPIFANIO CERALDE, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

May the accused-petitioners who were charged with estafa, file an answer with counterclaim for moral and exemplary damages plus attorney's fees and litigation expenses against the private complainant in the same criminal action?

This is the main issue raised in this petition^[1] filed under Rule 65 of the Rules of Court assailing the Orders dated July 1, 1991,^[2] and August 21, 1991,^[3] of respondent Judge "for being contrary to law and (for) having been issued by the respondent judge in excess of his jurisdiction and with grave abuse of discretion tantamount to lack of jurisdiction."^[4]

The Order of July 1, 1991, reads:

"THE Answer with Counterclaim filed by the accused through counsel, dated February 12, 1991, as well as the Opposition thereto; the Memorandum filed by the Private Prosecutor, in Support of Motion to Expunge from the Records And/Or to Dismiss Answer with Counterclaim; the Supplement; and Comment on Supplement, are all ordered expunged from the Records, considering that this is a criminal case wherein the civil liability of the accused (sic) is impliedly instituted therein."

Petitioners pleaded for reconsideration^[5] of said Order but respondent judge, in the Order of August 21, 1991, denied their motion, thus:

"ACTING on the Motion for Reconsideration dated July 17, 1991, of the accused through counsel, this Court finds no merit therein, such that said motion is hereby denied."

The Facts

This petition emanated from Crim. Case No. 90-18826 of the Regional Trial Court ("RTC") of Manila. Said case commenced on October 18, 1990, with the filing of an Information^[6] against petitioners charging them with estafa for allegedly defrauding private respondent Epifanio Ceralde of the sum of P1,550,000.00. The accusatory

portion of the Information reads as follows:

"That in or about and during the period comprised between September, 1987 and October 30, 1987, both dates inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously defraud one EPIFANIO CERALDE in the following manner, to wit: the said accused induced and succeeded in inducing the said EPIFANIO CERALDE to advance the total amount of P1,550,000.00 to be paid to M.C. Castro Construction, Co. representing the purchase price of six (6) parcels of land located in Pangasinan which the Aqualand Ventures & Management Corporation, a joint business venture organized by accused AMADO F. CABAERO and the said EPIFANIO CERALDE, purchased from the said company, with the understanding that the said amount would be returned to the said EPIFANIO CERALDE as soon as the loan for P1,500,000.00 applied for by the said Aqualand Ventures & Management Corporation with Solid Bank, of which said accused AMADO F. CABAERO is the Senior Vice-President, is released, but both accused, once the said loan has (sic) been approved by the bank, in furtherance of their conspiracy and falsely pretending that accused CARMEN C. PEREZ had been authorized by the said Aqualand Ventures & Management Corporation to receive the check for P1,500,000.00 for and in its own behalf, succeeded in inducing the cashier of said Solid Bank to release the same to accused CARMEN C. PEREZ, thereby enabling her to encash the aforesaid check, and instead of turning over the said amount to the said EPIFANIO CERALDE; accused failed and refused, and still fail and refuse, to do so despite repeated demands made to that effect, and with intent to defraud, misappropriated, misapplied and converted the said amount to their own personal use and benefit, to the damage and prejudice of the said EPIFANIO CERALDE in the aforesaid amount of P1,550,000.00, Philippine currency.

Contrary to law."

Arraigned on January 7, 1991, petitioners entered a plea of not guilty. On February 5, 1991, Atty. Ambrosio Blanco entered his appearance as private prosecutor.^[7]

The Presiding Judge of the RTC of Manila, Branch IV, Hon. Elisa R. Israel, in an Order^[8] dated February 11, 1991, inhibited herself "out of delicadeza" from further hearing the case pursuant to Section 1 of Rule 137 of the Rules of Court after "considering that the complainant is a relative by affinity of a nephew of her husband." Thereafter, the case was re-raffled to Branch VII presided over by respondent Judge Alfredo Cantos.

On April 2, 1991, petitioners filed an Answer with Counterclaim^[9] alleging that the money loaned from Solidbank mentioned in the Information was duly applied to the purchase of the six (6) parcels of land in Pangasinan, and that the filing of said Information was unjustified and malicious. Petitioners included the following prayer:
^[10]

"WHEREFORE, it is respectfully prayed that after trial judgment be rendered:

1. Dismissing, or quashing the information, and the civil action impliedly instituted in the criminal action;
2. Ordering the complaining witness Ceralde to pay to the accused the following amounts:
 - (a) P1,500,000.00 as moral damages;
 - (b) P500,000.00 as exemplary damages;
 - (c) P100,000.00 as attorney's fees; and
 - (d) P20,000.00, as litigation expenses.

Accused pray for such other reliefs, legal and equitable in the premises."

During the initial hearing on April 15, 1991, the prosecution verbally moved that the answer with counterclaim be expunged from the records and/or be dismissed. The respondent judge, after the exchange of arguments between the prosecution and the defense, gave the contending parties time to submit a Memorandum and Comment or Opposition, respectively.

The Memorandum of the private prosecutor justified his Motion to Expunge the answer with counterclaim for two reasons: (1) the trial court had no jurisdiction over the answer with counterclaim for non-payment of the prescribed docket fees and (2) the "compulsory counterclaim against complainant is barred for failure to file it before arraignment."^[11] In their Opposition, petitioners argued that this Court in *Javier vs. Intermediate Appellate Court*^[12] laid down, for "procedural soundness," the rule that a counterclaim should be permitted in a criminal action where the civil aspect is not reserved. Further, inasmuch as petitioners' counterclaim was compulsory in nature, they were not required to pay docket fees therefor. Additionally, the Rules do not specifically provide for the period for filing of counterclaims in criminal cases, whereas Section 3 of Rule 9 and Section 9 of Rule 6 allow the filing, with leave of court, of a counterclaim at any time before judgment. Thus, petitioners contended that their filing was within the proper period.^[13]

As previously indicated, respondent Judge Cantos granted the prosecution's motion to expunge in an Order dated July 1, 1991, and denied the petitioners' motion for reconsideration in an Order dated August 21, 1991.

On the theory that there is no plain, speedy and adequate remedy in the ordinary course of law, the petitioners, through counsel, filed this instant petition.

The Issue

The sole issue raised by petitioners is:^[14]

"Whether or not the respondent judge committed grave abuse of discretion, amounting to lack or excess of jurisdiction in ordering that the answer with counterclaim of the petitioners in Criminal Case No. 90-88126, together with all pleadings filed in relation thereto, be expunged from the records."

Petitioners invoke Section 1, Rule 111 of the Rules on Criminal Procedure, which provides that unless the offended party waived, reserved or instituted the civil action prior to the criminal action, the civil action for recovery of civil liability is impliedly instituted with the criminal action. They contend that it is not only a right but an "outright duty" of the accused to file an answer with counterclaim since failure to do so shall result in the counterclaim being forever barred.

Petitioners argue that under Rule 136 of the Rules of Court, particularly Section 8 thereof, clerks of court are instructed to "keep a general docket, each page of which shall be numbered and prepared for receiving all the entries in a single case, and shall enter therein all cases x x x." Thus, respondent Judge Cantos allegedly erred in expunging all records with respect to the Answer with Counterclaim for, on appeal, "if the records elevated x x x are incomplete and inaccurate, there arises a grave danger that the ends of justice and due process shall not be served and instead frustrated."^[15]

Petitioners further allege that the Order of July 1, 1991, failed to resolve the legal issues raised by the parties as it neglected to state the legal basis therefor, as required by Section 14, Article VIII of the Constitution, "thereby leaving the petitioners to speculate on why they were being deprived of their right to plead and prove their defenses and counter-claim as far as the civil aspect of the case was concerned."^[16]

This Court, realizing the significance of the present case, required on August 3, 1992, the appearance of the Solicitor General as counsel for respondent court. The Republic's counsel, in his Manifestation dated December 22, 1992, cited Javier and sided with petitioners in maintaining that the instant "petition is meritorious."

Preliminary Matters

Litis Pendentia as a Defense

In his Memorandum dated September 30, 1992, private respondent belatedly interposes *litis pendentia* to defeat the petition. He alleges that the present petition is barred by the cross-claim of the petitioners against Aqualand Ventures and Management Corporation, of which petitioners are stockholders and officers, in Civil Case No. 90-53035 (filed against both petitioners and the private respondent by Solidbank on May 14, 1990). Considerations of due process prevent us from taking up the merits of this argument in favor of private respondent.^[17] This cross-claim was never raised in the trial court -- certainly not in the Memorandum dated April 19, 1991, submitted to the court *a quo* in support of respondent Ceralde's motion to expunge the answer with counterclaim. The Rules^[18] require that "(a) motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived." Consequently and ineluctably, the ground of *litis pendentia* which was not argued in the court *a quo* is

deemed waived.^[19]

The Payment of Filing Fees

Anent filing fees, we agree with petitioners that inasmuch as the counterclaim is compulsory, there is no necessity to pay such fees, as the Rules do not require them. This Court already clarified in *Sun Insurance Office, Ltd. (SIOL), vs. Asuncion*^[20] the instances when docket fees are required to be paid to enable the court to acquire jurisdiction:

"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 therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period." (Underscoring supplied.)

Obviously, no docket fees are required to be paid in connection with the filing of a compulsory counterclaim.

The Main Issue: Propriety of

Answer with Counterclaim

In *Javier* upon which petitioners anchor their thesis, the Court held that a counterclaim for malicious prosecution is compulsory in nature; thus, it should be filed in the criminal case upon the implied institution of the civil action.

The facts in *Javier* may be summarized as follows:

Leon S. Gutierrez, Jr., private respondent therein, was charged with violation of BP Blg. 22 before the Regional Trial Court of Makati. The civil case had not been expressly reserved, hence it was impliedly instituted with the criminal action.

Later, Accused Gutierrez filed a complaint for damages against Private Complainants (Petitioners) Javiers before the Regional Trial Court of Catarman, Northern Samar, wherein he alleged that he had been merely inveigled by the Javiers into signing the very check that was the subject of the criminal case.

In resolving the question of whether he can raise that claim in a separate civil action for damages filed by him against petitioners therein, this Court, speaking through Mr. Justice Isagani A. Cruz (Ret.), ruled:^[21]