

THIRD DIVISION

[G.R. No. 138822, January 23, 2001]

EVANGELINE ALDAY, PETITIONER, VS. FGU INSURANCE CORPORATION, RESPONDENT.

DECISION

GONZAGA-REYES, J.:

On 5 May 1989, respondent FGU Insurance Corporation filed a complaint with the Regional Trial Court of Makati^[1] alleging that petitioner Evangeline K. Alday owed it P114,650.76, representing unliquidated cash advances, unremitted costs of premiums and other charges incurred by petitioner in the course of her work as an insurance agent for respondent.^[2] Respondent also prayed for exemplary damages, attorney's fees, and costs of suit.^[3] Petitioner filed her answer and by way of counterclaim, asserted her right for the payment of P104,893.45, representing direct commissions, profit commissions and contingent bonuses earned from 1 July 1986 to 7 December 1986, and for accumulated premium reserves amounting to P500,000.00. In addition, petitioner prayed for attorney's fees, litigation expenses, moral damages and exemplary damages for the allegedly unfounded action filed by respondent.^[4] On 23 August 1989, respondent filed a "Motion to Strike Out Answer With Compulsory Counterclaim And To Declare Defendant In Default" because petitioner's answer was allegedly filed out of time.^[5] However, the trial court denied the motion on 25 August 1989 and similarly rejected respondent's motion for reconsideration on 12 March 1990.^[6] A few weeks later, on 11 April 1990, respondent filed a motion to dismiss petitioner's counterclaim, contending that the trial court never acquired jurisdiction over the same because of the non-payment of docket fees by petitioner.^[7] In response, petitioner asked the trial court to declare her counterclaim as exempt from payment of docket fees since it is compulsory and that respondent be declared in default for having failed to answer such counterclaim.^[8]

In its 18 September 1990 Order, the trial court^[9] granted respondent's motion to dismiss petitioner's counterclaim and consequently, denied petitioner's motion. The court found petitioner's counterclaim to be merely permissive in nature and held that petitioner's failure to pay docket fees prevented the court from acquiring jurisdiction over the same.^[10] The trial court similarly denied petitioner's motion for reconsideration on 28 February 1991.

On 23 December 1998, the Court of Appeals^[11] sustained the trial court, finding that petitioner's own admissions, as contained in her answer, show that her counterclaim is merely permissive. The relevant portion of the appellate court's decision^[12] is quoted herewith -

Contrary to the protestations of appellant, mere reading of the allegations in the answer a quo will readily show that her counterclaim can in no way be compulsory. Take note of the following numbered paragraphs in her answer:

"(14) That, indeed, FGU's cause of action which is not supported by any document other than the self-serving `Statement of Account' dated March 28, 1988 x x x

(15) That it should be noted that the cause of action of FGU is not the enforcement of the Special Agent's Contract but the alleged `cash accountabilities which are not based on written agreement x x x.

x x x x

(19) x x x A careful analysis of FGU's three-page complaint will show that its cause of action is not for specific performance or enforcement of the Special Agent's Contract rather, it is for the payment of the alleged cash accountabilities incurred by defendant during the period from [sic] 1975 to 1986 which claim is executory and has not been ratified. It is the established rule that unenforceable contracts, like this purported money claim of FGU, cannot be sued upon or enforced unless ratified, thus it is as if they have no effect. x x x."

To support the heading "Compulsory Counterclaim" in her answer and give the impression that the counterclaim is compulsory appellant alleged that "FGU has unjustifiably failed to remit to defendant despite repeated demands in gross violation of their Special Agent's Contract x x x." The reference to said contract was included purposely to mislead. While on one hand appellant alleged that appellee's cause of action had nothing to do with the Special Agent's Contract, on the other hand, she claim that FGU violated said contract which gives rise of [sic] her cause of action. Clearly, appellant's cash accountabilities cannot be the offshoot of appellee's alleged violation of the aforesaid contract.

On 19 May 1999, the appellate court denied petitioner's motion for reconsideration, [13] giving rise to the present petition.

Before going into the substantive issues, the Court shall first dispose of some procedural matters raised by the parties. Petitioner claims that respondent is estopped from questioning her non-payment of docket fees because it did not raise this particular issue when it filed its first motion - the "Motion to Strike out Answer With Compulsory Counterclaim And To Declare Defendant In Default" - with the trial court; rather, it was only nine months after receiving petitioner's answer that respondent assailed the trial court's lack of jurisdiction over petitioner's counterclaims based on the latter's failure to pay docket fees.[14] Petitioner's position is unmeritorious. Estoppel by laches arises from the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it.[15] In the case at

bar, respondent cannot be considered as estopped from assailing the trial court's jurisdiction over petitioner's counterclaim since this issue was raised by respondent with the trial court itself - the body where the action is pending - even before the presentation of any evidence by the parties and definitely, way before any judgment could be rendered by the trial court.

Meanwhile, respondent questions the jurisdiction of the Court of Appeals over the appeal filed by petitioner from the 18 September 1990 and 28 February 1991 orders of the trial court. It is significant to note that this objection to the appellate court's jurisdiction is raised for the first time before this Court; respondent never having raised this issue before the appellate court. Although the lack of jurisdiction of a court may be raised at any stage of the action, a party may be estopped from raising such questions if he has actively taken part in the very proceedings which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him.^[16] In this case, respondent actively took part in the proceedings before the Court of Appeals by filing its appellee's brief with the same.^[17] Its participation, when taken together with its failure to object to the appellate court's jurisdiction during the entire duration of the proceedings before such court, demonstrates a willingness to abide by the resolution of the case by such tribunal and accordingly, respondent is now most decidedly estopped from objecting to the Court of Appeals' assumption of jurisdiction over petitioner's appeal.^[18]

The basic issue for resolution in this case is whether or not the counterclaim of petitioner is compulsory or permissive in nature. 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.^[19]

In *Valencia v. Court of Appeals*,^[20] this Court capsulized the criteria or tests that may be used in determining whether a counterclaim is compulsory or permissive, summarized as follows:

1. Are the *issues of fact and law* raised by the claim and 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 defendant's counterclaim?
4. Is there any *logical relation* between the claim and the counterclaim?

Another test, applied in the more recent case of *Quintanilla v. Court of Appeals*,^[21] is the "compelling test of compulsoriness" which requires "a logical relationship between the claim and counterclaim, that is, where conducting separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court."

As contained in her answer, petitioner's counterclaims are as follows:

(20) That defendant incorporates and repleads by reference all the foregoing allegations as may be material to her Counterclaim against FGU.

(21) That FGU is liable to pay the following just, valid and legitimate claims of defendant:

(a) the sum of at least P104,893.45 plus maximum interest thereon representing, among others, direct commissions, profit commissions and contingent bonuses legally due to defendant; and

(b) the minimum amount of P500,000.00 plus the maximum allowable interest representing defendant's accumulated premium reserve for 1985 and previous years,

which FGU has unjustifiably failed to remit to defendant despite repeated demands in gross violation of their Special Agent's Contract and in contravention of the principle of law that "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."

(22) That as a result of the filing of this patently baseless, malicious and unjustified Complaint, and FGU's unlawful, illegal and vindictive termination of their Special Agent's Contract, defendant was unnecessarily dragged into this litigation and to defense [sic] her side and assert her rights and claims against FGU, she was compelled to hire the services of counsel with whom she agreed to pay the amount of P30,000.00 as and for attorney's fees and stands to incur litigation expenses in the amount estimated to at least P20,000.00 and for which FGU should be assessed and made liable to pay defendant.

(23) That considering further the malicious and unwarranted action of defendant in filing this grossly unfounded action, defendant has suffered and continues to suffer from serious anxiety, mental anguish, fright and humiliation. In addition to this, defendant's name, good reputation and business standing in the insurance business as well as in the community have been besmirched and for which FGU should be adjudged and made liable to pay moral damages to defendant in the amount of P300,000.00 as minimum.

(24) That in order to discourage the filing of groundless and malicious suits like FGU's Complaint, and by way of serving [as] an example for the public good, FGU should be penalized and assessed exemplary damages in the sum of P100,000.00 or such amount as the Honorable Court may deem warranted under the circumstances.^[22]

Tested against the abovementioned standards, petitioner's counterclaim for commissions, bonuses, and accumulated premium reserves is merely permissive. The evidence required to prove petitioner's claims differs from that needed to