



Republic of the Philippines  
 Supreme Court  
 Manila

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*Welf Lapitan*  
 WELF D.V. LAPITAN  
 Division Clerk of Court  
 Third Division

FEB 16 2016

**THIRD DIVISION**

**ARTURO C. ALBA, JR.,** duly  
 represented by his attorneys-in-fact,  
**ARNULFO B. ALBA** and  
**ALEXANDER C. ALBA,**  
 Petitioner,

**G.R. No. 198752**

**Present:**

VELASCO, JR., *J.*, Chairperson,  
 PERALTA,  
 VILLARAMA, JR.,  
 REYES, and  
 JARDELEZA, *JJ.*

- versus -

**RAYMUND D. MALAPAJO,**  
**RAMIL D. MALAPAJO** and the  
 Register of Deeds for the City of  
 Roxas,  
 Respondents.

**Promulgated:**

January 13, 2016

x-----  
*Welf Lapitan*

**DECISION**

**PERALTA, J.:**

Assailed in this petition for review on *certiorari* are the Resolution<sup>1</sup> dated February 28, 2011 and the Resolution<sup>2</sup> dated August 31, 2011 issued by the Court of Appeals (CA) Cebu City, in CA-G.R. SP No. 05594.

The antecedents are as follows:

On October 19, 2009, petitioner Arturo C. Alba, Jr., duly represented by his attorneys-in-fact, Arnulfo B. Alba and Alexander C. Alba, filed with the Regional Trial Court (RTC) of Roxas City, Branch 15, a Complaint<sup>3</sup>

<sup>1</sup> Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. delos Santos and Agnes Reyes-Carpio concurring; *rollo*, pp. 140-142.

<sup>2</sup> Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. delos Santos and Gabriel T. Ingles concurring; *id.* at 162-164.

<sup>3</sup> Docketed as Civil Case No. V-49-09; *id.* at 45-50.

against respondents Raymund D. Malapajo, Ramil D. Malapajo and the Register of Deeds of Roxas City for recovery of ownership and/or declaration of nullity or cancellation of title and damages alleging, among others, that he was the previous registered owner of a parcel of land consisting of 98,146 square meters situated in Bolo, Roxas City, covered by TCT No. T-22345; that his title was subsequently canceled by virtue of a deed of sale he allegedly executed in favor of respondents Malapajo for a consideration of Five Hundred Thousand Pesos (₱500,000.00); that new TCT No. T-56840 was issued in the name of respondents Malapajo; that the deed of sale was a forged document which respondents Malapajo were the co-authors of.

Respondents Malapajo filed their Answer with Counterclaim<sup>4</sup> contending that they were innocent purchasers for value and that the deed was a unilateral document which was presented to them already prepared and notarized; that before the sale, petitioner had, on separate occasions, obtained loans from them and their mother which were secured by separate real estate mortgages covering the subject property; that the two real estate mortgages had never been discharged. Respondents counterclaimed for damages and for reimbursement of petitioner's loan from them plus the agreed monthly interest in the event that the deed of sale is declared null and void on the ground of forgery.

Petitioner filed a Reply to Answer and Answer to (Permissive) Counterclaim<sup>5</sup> stating, among others, that the court had not acquired jurisdiction over the nature of respondents' permissive counterclaim; and, that assuming without admitting that the two real estate mortgages are valid, the rate of five percent (5%) per month uniformly stated therein is unconscionable and must be reduced. Respondents filed their Rejoinder<sup>6</sup> thereto.

Petitioner filed a Motion to Set the Case for Preliminary Hearing as if a Motion to Dismiss had been Filed<sup>7</sup> alleging that respondents' counterclaims are in the nature of a permissive counterclaim, thus, there must be payment of docket fees and filing of a certification against forum shopping; and, that the supposed loan extended by respondents' mother to petitioner, must also be dismissed as respondents are not the real parties-in-interest. Respondents filed their Opposition<sup>8</sup> thereto.

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<sup>4</sup> *Id.* at 55-A-62.

<sup>5</sup> *Id.* at 67-74.

<sup>6</sup> *Id.* at 76-85.

<sup>7</sup> *Id.* at 86-90.

<sup>8</sup> *Id.* at 91-93.

On June 4, 2010, the RTC issued an Order<sup>9</sup> denying petitioner's motion finding that respondents' counterclaims are compulsory. Petitioner's motion for reconsideration was denied in an Order<sup>10</sup> dated September 30, 2010.

Petitioner filed a petition for *certiorari* with the CA which sought the annulment of the RTC Orders dated June 4, 2010 and September 30, 2010.

In a Resolution dated February 28, 2011, the CA dismissed the petition for *certiorari* saying that there was no proper proof of service of the petition to the respondents, and that only the last page of the attached copy of the RTC Order was signed and certified as a true copy of the original while the rest of the pages were mere machine copies.

Petitioner filed a motion for reconsideration which the CA denied in a Resolution dated August 31, 2011 based on the following findings:

Nevertheless, while petitioner filed with the Petition his Affidavit of Service and incorporated the registry receipts, petitioner still failed to comply with the requirement on proper proof of service. Post office receipt is not the required proof of service by registered mail. Section 10, Rule 13 of the 1997 Rules of Civil Procedure specifically stated that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the delivery of said mail matter by the post office to the addressee. Moreover, Section 13, Rule 13 of the 1997 Rules of Civil Procedure specifically stated that the proof of personal service in the form of an affidavit of the party serving shall contain a full statement of the date, place and manner of service, which was not true in the instant petition.<sup>11</sup>

Petitioner filed the instant petition for review raising the following assignment of errors:

I. CONTRARY TO THE ERRONEOUS RULING OF THE COURT *A QUO*, THE COUNTERCLAIMS INTERPOSED BY RESPONDENTS MALAPAJÓ IN THEIR ANSWER WITH COUNTERCLAIM ARE, BASED ON APPLICABLE LAW AND JURISPRUDENCE, PERMISSIVE IN NATURE, NOT COMPULSORY, AND THEREFORE, SUCH ANSWER WITH RESPECT TO SUCH COUNTERCLAIMS IS IN REALITY AN INITIATORY PLEADING WHICH SHOULD HAVE BEEN ACCOMPANIED BY A CERTIFICATION AGAINST FORUM SHOPPING AND CORRESPONDING DOCKET FEES, THEREFORE,

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<sup>9</sup> *Id.* at 94-97; Per Judge Juliana C. Azarraga.

<sup>10</sup> *Id.* at 116.

<sup>11</sup> *Id.* at 163-164. (Italics omitted)

SHOULD HAVE BEEN PAID, FAILING IN WHICH THE COUNTERCLAIMS SHOULD HAVE BEEN ORDERED DISMISSED. MOREOVER, AS REGARDS THE LOAN ALLEGEDLY EXTENDED BY THEIR MOTHER TO PETITIONER, WHICH UP TO NOW IS SUPPOSEDLY STILL UNPAID, RESPONDENTS MALAPAJO ARE NOT THE REAL PARTIES-IN-INTEREST AND IS, THEREFORE, DISMISSIBLE ON THIS ADDITIONAL GROUND; and

II. THE HONORABLE COURT OF APPEALS COMMITTED A VERY SERIOUS ERROR WHEN IT DISMISSED THE PETITION FOR CERTIORARI BASED ON PURE TECHNICALITY, THEREBY GIVING MORE PREMIUM AND MORE WEIGHT ON TECHNICALITIES RATHER THAN SUBSTANCE AND DISREGARDING THE MERITS OF THE PETITION.<sup>12</sup>

We find that the CA erred in denying petitioner's petition for *certiorari* after the latter had clearly shown compliance with the proof of service of the petition as required under Section 13 of Rule 13 of the 1997 Rules of Civil Procedure, which provides:

*Sec.13. Proof of service.*

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Clearly, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the rule. In this case, Nerissa Apuyo, the secretary of petitioner's counsel, had executed an affidavit<sup>13</sup> of personal service and service by registered mail which she attached to the petition marked as original filed with the CA. She stated under oath that she personally served a copy of the petition to the RTC of Roxas City on December 6, 2010, as evidenced by a stamp mark of the RTC on the corresponding page of the petition; that she also served copies of the petition by registered mail to respondents' counsels on December 6, 2010 as evidenced by registry receipts numbers "PST 188" and "PST 189", both issued by the Roxas City Post Office. The registry receipts issued by the post office were attached to the petition filed with the CA. Petitioner had indeed complied with the rule on proof of service.

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<sup>12</sup> *Id* at 18.

<sup>13</sup> *Id* at 150.

Since the case was dismissed outright on technicality, the arguments raised in the petition for *certiorari* were not at all considered. However, we will now resolve the issue on the merits so as not to delay further the disposition of the case instead of remanding it to the CA.

The issue for resolution is whether respondents' counterclaim, *i.e.*, reimbursement of the loan obtained from them in case the deed of absolute sale is declared null and void on the ground of forgery, is permissive in nature which requires the payment of docket fees and a certification against forum shopping for the trial court to acquire jurisdiction over the same.

A counterclaim is any claim which a defending party may have against an opposing party.<sup>14</sup> 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. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of the opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction.<sup>15</sup> A compulsory counterclaim is barred if not set up in the same action.

A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim.<sup>16</sup> It is essentially an independent claim that may be filed separately in another case.

To determine whether a counterclaim is compulsory or permissive, we have devised the following tests: (a) Are the issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim? and (d) Is there any logical relation between the claim and the counterclaim?<sup>17</sup> A positive answer to all four questions would indicate that the counterclaim is compulsory.<sup>18</sup>

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<sup>14</sup> Rules of Court, Rule 6, Sec. 6.

<sup>15</sup> Rules of Court, Rule 6, Sec. 7.

<sup>16</sup> See *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, 486 Phil. 123, 134 (2004), citing *Lopez v. Gloria*, 40 Phil. 26 (1919), per Torres, J.

<sup>17</sup> *Valencia v. Court of Appeals*, 331 Phil. 590, 606 (1996).

<sup>18</sup> *Id.*

Based on the above-mentioned tests, we shall determine the nature of respondents' counterclaim. Respondents anchored their assailed counterclaim on the following allegations in their affirmative defenses in their Answer with Counterclaim, thus:

x x x x

10. The plaintiff's cause of action is based on his allegation that his signature on the Deed of Absolute Sale was forged.

The Deed of Absolute Sale is a unilateral instrument, *i.e.*, it was signed only by the vendor, who is the plaintiff in this case and his instrumental witnesses, who are his parents in this case. It was presented to defendants already completely prepared, accomplished and notarized. Defendants had no hand in its preparation, accomplishment and notarization.

While the plaintiff claims that his signature on the instrument is forged, he never questioned the genuineness of the signatures of his instrumental witnesses, his parents Arturo P. Alba, Sr. and Norma C. Alba, who signed the said instrument below the words "SIGNED IN THE PRESENCE OF" and above the words "Father" and "Mother," respectively.

Furthermore, plaintiff acknowledged in par. 7 of his Complaint that the stated consideration in the Deed of Absolute Sale is ₱500,000.00 and he never categorically denied having received the same.

11. Before the plaintiff sold the property to the defendants, he secured a loan from them in the sum of Six Hundred Thousand Pesos (₱600,000.00) payable on or before November 10, 2008. The loan is evidenced by a Promissory Note and secured by a Real Estate Mortgage dated September 11, 2008, both executed by him, covering the parcel of land subject of this case, Lot 2332-D, Psd 06-000738. Like the Deed of Absolute Sale, the Real Estate Mortgage is a unilateral instrument, was signed solely by the plaintiff, and furthermore, his parents affixed their signatures thereon under the heading "WITH MY PARENTAL CONSENT", and above the words, "Father" and "Mother," respectively.

Prior to this, or as early as July 25, 2008, the plaintiff also obtained a loan payable on or before September 6, 2008 from defendants' mother, Alma D. David, and already mortgaged to her Lot 2332-D, Psd 06-000738. The loan is evidenced by a Promissory Note and a Real Estate Mortgage, both of which were executed by plaintiff. Again, the Real Estate Mortgage is an unilateral instrument, was signed solely by the plaintiff and furthermore, his parents also affixed their signatures thereon under the heading, "WITH MY PARENTAL CONSENT" and above the words, "Father" and "Mother," respectively.

In both instances, the plaintiff was always represented by his parents, who always manifested their authority to transact in behalf of their son the plaintiff.

As in the case with the Deed of Absolute Sale, the defendants or their mother did not have any hand in the preparation, accomplishment or notarization of the two Promissory Notes with accompanying Real Estate Mortgages, x x x.

Neither of the two Real Estate Mortgages have been discharged or extinguished.

12. Considering the foregoing, the plaintiff's allegation that his signature on the Deed of Absolute Sale was forged, and that the defendants are the "co-authors" of the said forgery, are absolutely false and baseless.

13. If the Deed of Absolute Sale is declared null and void on the ground of forgery, then the plaintiff should reimburse the defendants the loan he obtained from them, which he did not deny having obtained, plus the agreed monthly interest.<sup>19</sup>

Petitioner seeks to recover the subject property by assailing the validity of the deed of sale on the subject property which he allegedly executed in favor of respondents Malapajo on the ground of forgery. Respondents counterclaimed that, in case the deed of sale is declared null and void, they be paid the loan petitioner obtained from them plus the agreed monthly interest which was covered by a real estate mortgage on the subject property executed by petitioner in favor of respondents. There is a logical relationship between the claim and the counterclaim, as the counterclaim is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim. Notably, the same evidence to sustain respondents' counterclaim would disprove petitioner's case. In the event that respondents could convincingly establish that petitioner actually executed the promissory note and the real estate mortgage over the subject property in their favor then petitioner's complaint might fail. Petitioner's claim is so related logically to respondents' counterclaim, such that conducting separate trials for the claim and the counterclaim would result in the substantial duplication of the time and effort of the court and the parties.<sup>20</sup>

Since respondents' counterclaim is compulsory, it must be set up in the same action; otherwise, it would be barred forever.<sup>21</sup> If it is filed concurrently with the main action but in a different proceeding, it would be abated on the ground of *litis pendentia*; if filed subsequently, it would meet the same fate on the ground of *res judicata*.<sup>22</sup> There is, therefore, no need for respondents to pay docket fees and to file a certification against forum shopping for the court to acquire jurisdiction over the said counterclaim.

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<sup>19</sup> *Rollo*, pp. 56-58.

<sup>20</sup> *Tan v. Kaakbay Finance Corporation*, 452 Phil. 637, 647 (2003).

<sup>21</sup> *See Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, *supra* note 16.

<sup>22</sup> *Id.* at 137.

We agree with the RTC's disquisition in finding that respondents' counterclaim is compulsory, to wit:

The arguments of the plaintiffs that this transaction is a permissive counterclaim do not convince.

By the manner in which the answer pertaining to this transaction was phrased, the real estate mortgage was the origin of the Deed of Absolute Sale after the loan of ₱600,000.00 using the same property as security for the payment thereof was not settled. In short, it is one of defendants' defenses and controverting evidence against plaintiffs' allegations of falsification of the Deed of Absolute Sale, the property subject of the Deed of Sale being one and the same property subject of the mortgage.<sup>23</sup>

X X X X

Can the Court adjudicate upon the issues [of whether or not the plaintiff could recover ownership and or whether or not the title to the property in question may be canceled or declared null and void, and damages] without the presence of the mother of defendants in whose favor the Real Estate Mortgage of the property subject of this action was executed?

Definitely, this Court can. That there was an allegation pertaining to the mortgage of the property in question to defendants' mother is only some sort of a backgrounder on why a deed of sale was executed by plaintiff in defendants' favor, the truth or falsity of which will have to be evidentiary on the part of the parties hereto. In short, the Court does not need the presence of defendants' mother before it can adjudicate on whether or not the deed of absolute sale was genuine or falsified and whether or not the title to the property may be cancelled.<sup>24</sup>

**WHEREFORE**, premises considered, the instant petition is **PARTIALLY GRANTED**. The Resolutions dated February 28, 2011 and August 31, 2011 issued by the Court of Appeals in CA-G.R. SP No. 05594 dismissing the petition for *certiorari* and denying reconsideration thereof, respectively, for failure to show proper proof of service of the petition to respondents, are **SET ASIDE**. Acting on the petition for *certiorari*, we resolve to **DENY** the same and **AFFIRM** the Order dated June 4, 2010 of the Regional Trial Court of Roxas City, Branch 15, denying petitioner's motion to set the case for hearing as if a motion to dismiss had been filed, and the Order dated September 30, 2010 denying reconsideration thereof.


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<sup>23</sup> *Rollo*, pp. 125-126.


<sup>24</sup> *Id.* at 126-127.




**SO ORDERED.**


  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

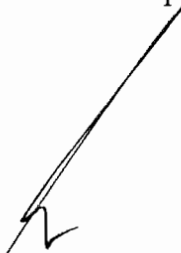
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**FRANCIS H.JARDELEZA**  
Associate Justice

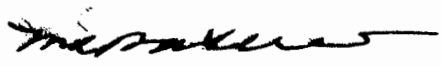
**ATTESTATION**

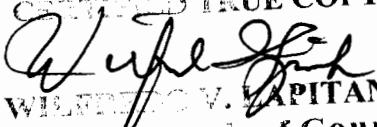
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

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Division Clerk of Court  
Third Division

**FEB 16 2016**