SUPREME COURT
FIRST DIVISION

SANTO TOMAS UNIVERSITY HOSPITAL,
***Petitioner*,**

-versus-

G.R. No. 129718
August 17, 1998

CESAR ANTONIO Y. SURLA and EVANGELINE SURLA,
***Respondents*.**
x----------x

D E C I S I O N

VITUG, *J.*:

Can a compulsory counterclaim pleaded in an Answer be dismissed on the ground of a failure to accompany it with a certificate of non-forum shopping? This question is the core issue presented for resolution in the instant petition.

First, a factual background.

On 26 December 1995, respondent spouses filed a complaint for damages against petitioner Santo Tomas University Hospital with the Regional Trial Court of Quezon City predicated on an allegation by the spouses that their son, Emmanuel Cesar Surla, while confined at

the said hospital for having been born prematurely, had accidentally fallen from his incubator on 16 April 1995 possibly causing serious harm on the child. The case was raffled and assigned to Branch 226 of the Regional Trial Court of Quezon City, presided over by the Hon Leah S. Domingo-Regala, and there docketed Civil Case No, Q-95-25977.

On 28 February 1996, petitioner hospital filed its Answer with Compulsory Counterclaim asserting that respondents still owed to it the amount of P82,632.10 representing hospital bills for Emmanuel's confinement at the hospital and making a claim for moral and exemplary damages, plus attorney's fees, by reason of the supposed unfounded and malicious suit filed against it.

On 21 March 1996, petitioner received a copy of respondents Reply to Counterclaim, dated 12 March 1996, that sought, *inter alia*, the dismissal of petitioner's counterclaim for its non-compliance with Supreme Court Administrative Circular No. 04-94 requiring that a complaint and other initiatory pleadings, such as a counterclaim, cross- claim, third (fourth, etc.) party complaint, be accompanied with a certificate of non-forum shopping.

In its Rejoinder to respondents Reply to Counterclaim, petitioner contended that the subject circular should be held to refer only to a permissive counterclaim, an initiatory pleading not arising out of, nor necessarily connected with, the subject matter of the plaintiff's claim but not to a compulsory counterclaim spawned by the filing of a complaint and so intertwined therewith and logically related thereto that it verily could not stand for independent adjudication. Petitioner concluded that, since its counterclaim was compulsory in nature, the subject circular did not perforce apply to it.[1]

In its Order of 22 March 1996, the trial court dismissed petitioners counterclaim; it held:

> "Administrative Circular No. 04-94 provides; among others:
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> > "'The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, crossclaim, third (fourth, etc.)

party complaint, or complaint-in-intervention, petition or application wherein a party asserts his claim on (sic) relief.

It will be noted that the counterclaim does not distinguish whether the same should be permissive or compulsory, hence this Court finds that the counterclaim referred to in said Circular covers both kinds.

WHEREFORE, the counterclaim of defendant is hereby DISMISSED. Let the pre-trial of this case be set on May 14, 1996 at 2:00 o clock in the afternoon."[2]

On 16 April 1996, petitioner filed before the same court an Omnibus Motion seeking a clarification of the courts Order of 14 March 1996 denying respondents' Reply to Counterclaim and a reconsideration of the 22nd March 1996. Order dismissing the Compulsory Counterclaim.[3] On 22 April 1996, petitioner received a copy of the courts Order, dated 16 April 1996 which pertinently read:

"WHEREFORE, the Order dated Mar h 14, 1996 is hereby clarified as follows:

"x x x

'The Reply to counterclaim filed by counsel for plaintiffs is hereby NOTED.

SO ORDERED.'

"The Motion for Reconsideration of this Courts Order dated March 22, 1996 is hereby DENIED. The pre-trial conference set on May 14, 1996 will go on as scheduled."[4]

Petitioner forthwith elevated the matter to the Court of Appeals by way of a special civil action for certiorari under Rule 65, Revised Rules of Court, asseverating grave abuse of discretion by public respondent in dismissing the compulsory counterclaim and in espousing the view that Administrative Circular No. 04-94 should apply even to compulsory counterclaims.

The Court of Appeals, in its Decision promulgated on 12 March 1997, dismissed the petition for certiorari; it opined:

> "the Supreme Court circular aforequoted requires without equivocation that to the original civil complaint, counterclaim, crossclaim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief to be filed in all courts and agencies other than the Supreme Court and the Court of Appeals must be annexed and simultaneously filed therewith the required certification under oath to avoid forum shopping or multiple filing of petitions and complaints. Non-compliance therewith is a cause for the dismissal of the complaint, petition, application or other initiatory pleading. Included in such initiatory pleading is the defendant's counterclaim, permissive or compulsory.
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> "A counterclaim partakes of the nature of a complaint and/or a cause of action against the plaintiff in a case, only this time it is the original defendant who becomes the plaintiff. It stands on the same footing and is tested by the same rules as if it were an independent action."[5]

In its present recourse, petitioner contends that-

> "The Court of Appeals (has) committed serious, evident and palpable error in ruling that:
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> "5.1 THE SPECIAL CIVIL ACTION OF CERTIORARI UNDER RULE 65 OF THE REVISED RULES OF COURT IS UNAVAILING. THE DISMISSAL OF THE COMPULSORY, COUNTERCLAIM BEING A FINAL ORDER, THE PETITIONER SHOULD HAVE TAKEN AN APPEAL THEREFROM; AND
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> "5.2 ADMINISTRATIVE CIRCULAR NO. 04-94 OF THIS HONORABLE COURT LIKEWISE APPLIES TO BOTH KINDS OF COUNTERCLAIMS, PERMISSIVE AND COMPULSORY.[6]

The petition is partly meritorious.

The appellate court ruled that the dismissal of the counterclaim, being a final order, petitioner's remedy was to appeal therefrom and, such appeal being then available, the special civil action of certiorari had been improperly filed.

The concept of a final judgment or order, distinguished from an interlocutory issuance, is that the former decisively puts to a close, or disposes of, a case or a disputed issue leaving nothing else to be done by the court in respect thereto. Once that judgment or order is rendered, the adjudicative task of the court is likewise ended on the particular matter involved.[7] An order is interlocutory, upon the other hand, if its effects would only be provisional in character and would still leave substantial proceedings to be further had by the issuing court in order to put the controversy to rest.[8]

The order of the trial court dismissing petitioner's counterclaim was, a final order since the dismissal, although based on a technicality, would require nothing else to be done by the court with respect to that specific subject except only to await the possible filing during the reglementary period of a motion for reconsideration or the taking of an appeal therefrom.

As a rule, errors of judgment, as well as of procedure, neither relating to the jurisdiction of the court nor involving grave abuse of discretion, are not reviewable by the extraordinary remedy of certiorari.[9] As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of certiorari.[10] This rule, however, is not a rigid and inflexible technicality. This Court has not too infrequently given due course to a petition for certiorari, even when the proper remedy would have been an appeal, where valid and compelling considerations could warrant such a recourse.[11] Certiorari has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a

party from the injurious effects of the judgment complained of.[12]

In the case at bar, an appeal from the dismissal of the counterclaim, although not totally unavailable, could have well been ineffective, if not futile, as far as petitioner is concerned since no single piece of evidence has yet been presented by it, that opportunity having been foreclosed by the trial court, on the dismissed counterclaim which could form part of the records to be reviewed by the appellate court. The object of procedural law is not to cause an undue protraction of the litigation, but to facilitate the adjudication of conflicting claims and to serve, rather than to defeat, the ends of justice.[13]

The opinion of this Court on the next issue persuades it to accept, tested by the foregoing disquisition, the instant petition for its consideration.

The pertinent provisions of Administrative Circular No. 04-94 provide:

> "1. The plaintiff, petitioner, applicant or principal party seeking relief in the complaint, petition, application or other initiatory pleading shall certify under oath in such original pleading, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (c) if there is any such action or proceeding which is either pending or may have been terminated, he must state the status thereof; and (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, he undertakes to report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification contemplated here have been filed.

> "The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil, complaint, counterclaim, cross-claim third (fourth, etc.) party complaint or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief ." (Emphasis supplied).

It bears stressing, once again, that the real office Of Administrative Circular No. 04-94, made effective on 01 April 1994, is to curb the malpractice commonly referred to also as forum-shopping. It is an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion In another forum, other than by appeal or the special civil action of certiorari, or the institution Of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[14] The language of the circular distinctly suggests that it is primarily intended to cover an initiatory pleading or an incipient application of a party asserting a claim for relief.[15]

It should not be too difficult, the foregoing rationale of the circular aptly taken, to sustain the view that the circular in question has not, in fact, been contemplated to include a kind of claim which, by its very nature as being auxiliary to the proceeding in the suit and as deriving its substantive and jurisdictional support therefrom, can only be appropriately pleaded in the answer and not remain outstanding for independent resolution except by the court where the main case pends. Prescinding from the foregoing, the proviso in the second paragraph of Section 5, Rule 8, of the 1997 Rules of Civil Procedure, i.e., that the violation of the anti-forum shopping rule "shall not be curable by mere amendment but shall be cause for the dismissal of the case without prejudice," being predicated on the applicability of the need for a certification against forum shopping, obviously does not include a claim which cannot be independently set up.

Petitioner, nevertheless, is entitled to a mere partial relief. The so-called "counterclaim" of petitioner really consists of two segregative parts: (1) for unpaid hospital bills of respondents son, Emmanuel Surla, in the total amount of P82,632.10; and (2) for damages, moral

and exemplary, plus attorneys fees by reason of the alleged malicious and unfounded suit filed against it.[16] It is the second, not the first, claim that the Court here refers to as not being initiatory in character and thereby not covered by the provisions of Administrative Circular No. 04-94.

WHEREFORE, the appealed decision is hereby modified in that the claim for moral, exemplary damages and attorney's fees in Civil Case No. Q-95-25977 of petitioner is ordered reinstated. The temporary restraining order priorly issued by this Court is lifted. No costs.

SO ORDERED.

Davide, Jr., Bellosillo, Panganiban, and Quisumbing, *JJ.*, concur.

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[1] Rollo, pp. 77-78.
[2] Rollo, pp. 81-82.
[3] Rollo, pp. 84-92.
[4] Rollo, pp. 130-131.
[5] Rollo, pp. 47-48.
[6] Rollo, pp. 18-19.
[7] Investments, Inc. vs. Court of Appeals, 147 SCRA 334; Denso (Phils.,) Inc., vs. Intermediate Appellate Court, 148 SCRA 280.
[8] Balran vs. Tan Siu Lay, 18 SCRA 1235.
[9] Presco vs. Court d Appeals, 192 SCRA 232.
[10] Commissioner on Internal Revenue vs. Court of Appeals, 257 SCRA 200.
[11] Oriental Media, Inc. vs. Court of Appeals, 250 SCRA 847; Rosario vs. Court of Appeals 211 SCRA 384.
[12] See Presco vs. Court of Appeals, supra; Rodriguez vs. Court of Appeals, 245 SCRA 150; Vda. de Saludes vs. Pajarillo, 78 Phil. 754.
[13] See Continental Leaf Tobacco (Phil.) Inc. vs. Intermediate Appellate Court, 140 SCRA 269 citing Dimayacyac vs. Court of Appeals, 93 SCRA 265.
[14] See Chemphil Export Import Corporation vs. Court of Appeals, 251 SCRA 257.
[15] Adopting the requirement in initiatory pleadings of a certification against forum shopping, Section 5, Rule 7, of the 1997 Rules of Civil Procedure now provides:
SEC 5 Certification for non forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith (a) that he has not theretofore commenced

any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[16] Rollo, pp. 9-10.