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Civil Procedure - Reconventional Demand - Amount in Dispute

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NOTES

CIVIL PROCEDURE—RECONVENTIONAL DEMAND—AMOUNT IN DISPUTE

Suit was filed in city court[1] for $795.60. Defendant admitted owing the $795.60 but reconvened alleging plaintiff had breached a contract for timely delivery of goods resulting in damages of $1,566.00. Defendant thus sought judgment for an adjusted balance of $770.40. The city court sustained plaintiff's exception of lack of jurisdiction over the subject matter because the amount in dispute exceeded the $1,000.00 jurisdictional limit of the city court. *Held*, the effective sum demanded in reconvention was $770.40, which is within the jurisdictional amount of the city court. *Clark Equipment Co. v. Southern Mechanical Contractors, Inc.*, 203 So.2d 387 (La. App. 2d Cir. 1967).

Reconventional demands in these courts are governed by Code of Civil Procedure article 1036:

> "A court shall have the jurisdiction over an incidental demand only if it would have had jurisdiction over the demand had it been instituted in a separate suit."[2]

To determine whether the demand is within the jurisdictional limit of the court, one must refer to Code of Civil Procedure article 4 to determine the amount in dispute:

> "Where the jurisdiction of a court over the subject matter of an action depends upon the amount in dispute, or value of the right asserted, it shall be determined by the amount demanded or value asserted in good faith by the plaintiff."

The sole issue on appeal was whether the amount in dispute was the full $1,566.00 defendant alleged plaintiff owed or only the $770.40 adjusted balance defendant sought.

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1. LA. CODE CIV. P. art. 4834 (1960) provides: "The civil jurisdiction of city courts where the population within their respective territorial jurisdiction is twenty thousand or more is concurrent with that of districts courts in cases where the amount in dispute, or the value of the movable property involved, does not exceed one thousand dollars, exclusive of interest and attorney's fees . . . ."

2. *Id.* art. 1036 continues: "The only exceptions to this rule are those provided in the state constitution.

"The mode of procedure employed in the incidental action shall be the same as that used in the principal action, except as otherwise provided by law."

The Comment following article 1036 states that "the exception referred to in the second sentence are those set forth in Const. Art. VII, §§ 91, 92, granting jurisdiction to the city courts of New Orleans over certain incidental demands."

This case appears to be one of first impression in Louisiana. Article 1036 was new with the 1960 Code of Civil Procedure[3] and there have been few cases interpreting it. Although most jurisprudence arising under article 4 has involved other aspects of jurisdictional amount,[4] some pre-1960 cases have dealt with problems similar to that in the instant case.

In 1944 the Second Circuit stated that "it is perfectly true that jurisdiction must be determined upon the basis of the real amount in dispute."[5] This tendency to look to the real amount in dispute between the parties was followed in *Harrison v. Crawford*.[6] There the plaintiff sued in a city court with a maximum jurisdictional limit of $300.00 to recover a deposit of $120.00 made on the $1,190.00 purchase price of realty. The court of appeal held that the amount in dispute was in excess of $300.00 since the court would have had to rule on the validity of the alleged contract in its entirety to determine plaintiff's right to the $120.00.[7]

Koerner v. Francingues,[8] a 1925 decision, presented a fact situation very close to that of the present case. Plaintiff there sued in a city court with a maximum jurisdictional amount of $300.00 to recover $283.25 allegedly due from a contract of sale. Defendant answered that plaintiff owed him $388.00 from another contract and sought to offset $283.25 of this amount against plaintiff's claim. The court ruled:

> "But the defendant argues that he is pleading in compensation only 'so much of which amount as may be necessary to offset plaintiff's claim.' That is immaterial as *this court would have to examine and pass upon a claim in excess of $300.00*. If this court decided this claim in compensation

3. Article 1036 merely codifies the established Louisiana jurisprudence. See Cross v. Parent, 26 La. Ann. 591 (1874); Heirs of Kempe v. Hunt, 4 La. 477 (1832); Standard Tile & Marble Co. v. Gray, 85 So.2d 356 (La. App. 2d Cir. 1956); Artic Pure Ice Co. v. Rathe, 3 La. App. 14 (Orl. Cir. 1925); Kaufman v. Mahen, 2 La. App. 354 (Orl. Cir. 1925); Feahney v. New Orleans Railways & Light Co., 4 Orl. App. 277 (La. App. 1907); Labarthe v. Mazzei, 2 Orl. App. 367 (La. App. 1905).

4 See the cases annotated following article 4 in 2 LA. CODE CIV. P. ANN. 25-29 (West 1960).

5. Richmond v. Newson, 17 So.2d 735, 736 (La. App. 2d Cir. 1944).

6. 29 So.2d 602 (La. App. Orl. Cir. 1947).

7. This case is to be distinguished from Tenaha Oil Co. v. Caraway, 171 So.2d 683 (La. App. 2d Cir. 1965), and similar cases where the court was able to settle a dispute within its jurisdictional limits without deciding the larger dispute and consideration of the larger dispute would have involved the rights of third parties.

8. 3 Orl. App. 220 (La. App. 1925).

> only up to $283.25 it might leave undecided the balance of the claim for another court to pass upon. *Claims cannot be divided up in this manner.*"[9] (Emphasis added.)

Although none of these pre-1960 cases directly involved the present issue, they indicate that Louisiana courts in the past have looked at the entire amount actually in dispute between the parties.

The effect of reconventional demands on jurisdictional amount has been examined in three other jurisdictions.[10] All three have held that in determining the amount in dispute on a cross-claim or reconventional demand, the plaintiff's claim cannot be credited to the reconventional demand to reduce that demand to an amount within the jurisdiction of the court.[11] Under a fact situation identical with the present case,[12] the Supreme Court of Texas reasoned in the 1896 case of *Gimbel v. Gomprecht*:[13]

> "The plea in reconvention filed by the defendant in this case was in effect a suit by them against the plaintiffs, and the amount in controversy was the damages claimed in that plea; that is, the actual damages, $797.21, and exemplary damages, $966—aggregating $1,763.21. The fact that the debt of the plaintiffs was admitted to be due, and agreed to be taken as a credit upon the claim set up by the defendants, did not lessen the amount that was put in controversy by that plea. Under the plea, the defendants must establish their damages before they are entitled to have the amount of the plaintiffs' debt satisfied by their damages so recovered."[14]

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9. *Id.* at 221.

10. Arkansas: Jones v. Blythe, 138 Ark. 81, 210 S.W. 348 (1919); Colorado: Dyett v. Harney, 53 Colo. 381, 127 P. 226 (1912); Texas: Gimbel v. Gomprecht, 89 Tex. 497, 35 S.W. 470 (1896).

11. 21 C.J.S. *Courts* § 66, at 85 (1940), states the rule: "By the weight of authority, however, in an action on a claim for an amount within its jurisdiction, a court does not have jurisdiction of a cross demand which exceeds its maximum jurisdiction; and such cross demand cannot be reduced to an amount within the jurisdiction of the court by crediting plaintiff's claim thereon . . . ."

12. Plaintiff had sued for $764.00 in a county court with a maximum jurisdictional limit of $1,000.00. Defendant admitted owing this amount but alleged that he was due $1,763.21 from the plaintiff and demanded the difference of $999.21.

13. 89 Tex. 497, 498, 35 S.W. 470 (1896).

14. This early decision has been consistently followed in the Texas courts. See Manly v. Citizens Nat. Bank in Abilene, 110 S.W.2d 993 (Tex. Civ. App. 1937); Turner v. Larson, 72 S.W.2d 397 (Tex. Civ. App. 1934); Brook Mays & Co. v. Osborne, 70 S.W.2d 755 (Tex. Civ. App. 1934); Commercial Inv. Trust, Inc. v. Smart, 69 S.W.2d 805 (Tex. Civ. App. 1932); Nichols v. Ellis, 246 S.W.

The majority in the present case, in ruling that the amount in dispute was only the adjusted balance of $770.40, emphasized the words in Code of Civil Procedure article 4, referring to jurisdictional amount, that "it shall be determined by the amount demanded" and "demanded by the plaintiff."[15] The majority opinion stated that "plaintiff in reconvention never 'demanded' $1,566.00" and that "[$770.40] is the only sum 'demanded' either in the allegations or prayer of the reconventional demand."[16] The court quoted from the reconventional demand of the defendant to show that the only judgment sought was one for $770.40.[17] As the dissenting opinion[18] pointed out, however, plaintiff's denial that it owed $1,566.00 put that amount in dispute and the city court would in fact be passing on the validity of a $1,566.00 claim. This was the amount of damages asserted by the defendant for an alleged breach of contract and this was the amount of the dispute that the court was called upon to settle.

The majority opinion also quoted[19] without further comment Code of Civil Procedure article 1062[20] dealing with compensation. The Louisiana Civil Code allows compensation only in cases of debts "equally liquidated and demandable."[21] Since

713, 714 (Tex. Civ. App. 1922) (where the error was referred to as "fundamental"); Billings v. Southern Supply Co., 194 S.W. 1170 (Tex. Civ. App. 1917); Pennybacker v. Hazlewood, 26 Tex. Civ. App. 183, 61 S.W. 153 (1901).

The Supreme Court of Colorado arrived at the same result on similar facts in Dyett v. Harney, 53 Colo. 381, 127 P. 226 (1912); and the Arkansas Supreme Court stated this to be the rule in Jones v. Blythe, 138 Ark. 81, 210 S.W. 348 (1919).

15. 203 So.2d 387, 388. The phrase "demanded by the plaintiff" is found in the second paragraph of LA. CODE CIV. P. art. 4 (1960): "Except as otherwise provided by law, the amount in dispute consists of the principal sum, and the attorney's fees and penalties provided by agreement or by law, demanded by the plaintiff. Interest and court costs are not a part of the amount in dispute."

16. *Id.* at 389.

17. *Id.* at 388-89.

18. *Id.* at 389. Judge Gladney dissented: "The proceedings, in my opinion, presented to the trial court a controversy and dispute over the sum of $1,566.00. . . . In view of the denial by the plaintiff in the main demand that it owes $1,566.00, that amount is in dispute and subject to the provisions of LSA-C.C.P. arts. 4 and 1036."

19. *Id.* at 388.

20. LA. CODE CIV. P. art. 1062 (1960): "Compensation may be asserted in the reconventional demand."

21. LA. CIV. CODE art. 2209 (1870): "Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. . . ." See also arts. 2207-2216.

these debts do not fit in this description,[22] it is submitted that article 1062 has no bearing on the principal case.

The majority holding in this case appears undesirable for three reasons. First, the plaintiff is forced to defend against a breach of contract action with alleged damages of over $1,000.00 in a court that ordinarily would lack jurisdiction. In addition, until this dispute is settled, the plaintiff is denied a judgment for the sum originally sued for and which defendant admits he owes. Second, the rule laid down by the majority in this case might apply to other situations with undesirable results. The drafters of the Code of Civil Procedure did not anticipate city courts hearing disputes in excess of $1,000.00. To allow them to do so might raise problems not anticipated nor provided for by the Code.[23]

Finally, the ruling in the principal case seems contrary to the purpose and policy behind city courts in Louisiana. These courts were established to decide relatively minor cases in a speedy and efficient manner. The limitations upon their power[24]

22. In the principal case the claim of the plaintiff was admitted while the claim of the defendant was denied and not yet proven. They were therefore not "equally liquidated and demandable." See Beyer Transp. Co. v. Whiteman Contracting Co., 187 So. 143 (La. App. Orl. Cir. 1939); Brock v. Natalbany Lumber Co., 179 So. 322 (La. App. 1st Cir. 1938); Reynaud v. His Creditors, 4 Rob. 514 (La. 1843). For a brief summary of compensation and its relation to reconvention, see Comment, 21 LA. L. REV. 220, 224 (1960).

23. *E.g.*, LA. CODE CIV. P. art. 4837 (1960) limits the power of city courts to issue injunctive orders. Perhaps the drafters would not have placed this limitation on the city courts if it had been foreseen they might be deciding disputes in excess of $1,000.00.

24. LA. CODE CIV. P. art. 4836 (1960): "A justice of the peace, or city court other than one in New Orleans, has no jurisdiction of any of the following cases or proceedings:

"(1) A case involving title to immovable property, the right to public office or position, or civil or political rights;

"(2) A case in which it is sought to obtain a judgment of annulment of marriage, separation from bed and board, divorce, separation of property, or for alimony;

"(3) A succession, tutorship, curatorship, emancipation, partition, receivership, liquidation, habeas corpus, or quo warranto proceeding;

"(4) A case in which the state, a parish, municipal, or other political corporation, or a succession, is a defendant:

"(5) Any other case or proceeding excepted from the jurisdiction of these courts by law.

"New Orleans city courts have no jurisdiction of any of the cases or proceedings enumerated in paragraphs (1), (2), (3), and (5) of this article." This article merely restates the provisions of LA. CONST. art. VII, §§ 35, 48, 91, 92. The second paragraph of LA. CODE CIV. P. art. 4837 (1960) states: "A justice of the peace or city court may not issue any injunctive order except to arrest the execution of its own writ."

It could be argued that since LA. CONST. art. VII, § 51, limits the jurisdiction of city courts in cities containing 20,000 population or more to cases where the amount in dispute does not exceed $1,000.00 *inclusive* of

indicate a strong desire on the part of the legislature that these courts should not decide large disputes. This desire was expressly recognized by at least one of our appellate courts in the previously mentioned case of *Koerner v. Francingues*.[25] The effect of the majority ruling in the instant case would be to expand the jurisdiction of these courts by allowing them to hear cases where the amount actually in dispute may greatly exceed their maximum jurisdictional limit. This could lead to crowding of city court calendars and the defeat of their primary purpose. For the reasons given above it is submitted that the dissenting opinion in the principal case is the correct one and should be followed.

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EXPROPRIATION—ACTIONS EX DELICTO FOR UNLAWFUL APPROPRIATION

The Highway Department expropriated a temporary servitude on defendant's land to obtain fill for an interstate highway. After the vesting of title and withdrawal of the $37,000 deposit, the Department filed an amended petition seeking to accommodate local industry by changing the location of the borrow pit to another part of defendant's land. The condemnee timely objected to the procedure and the condemnor's amended petition was set aside. The Highway Department, however, proceeded to remove dirt from the new location. After the earth had been removed, the landowners brought an action ex delicto seeking damages for trespass and conversion. The court of appeal held that the trial court erred in denying damages in the same amount as would be determined by ex delicto or article 507 standards, and increased the award to a net $111,000. The Louisiana Supreme Court reversed, holding that recovery would be restricted to just compensation as in an ordinary action to

interest and attorney's fees while the other sections of the constitution speak of amounts *exclusive* of such interest and fees, the drafters of the constitution intended this to be a further limitation on this class of city courts. The more likely explanation of this difference in terms, however, is that expressed by McMahon in the introduction to LA. R.S. ANN.—CODE CIV. P. bk. VIII, tit. 1 (West 1960): "The word 'inclusive' in the constitutional provision is actually due to a typographical error in an earlier amendment, retained by subsequent amendments . . . . [T]he Louisiana State Law Institute intended to recommend the amendment of this constitutional provision to correct the error; but through inadvertence such a recommendation was not submitted to the Legislature in 1960."

25. 3 Orl. App. 220 (La. App. 1925). See material and following discussion referred to by note 8 *supra*.