

100 Phil. 160

[G.R. No. L-9085. October 29, 1956]

DONATA R. DE CO AND ELISA CO, PETITIONERS, VS. HON. ANTONIO G. LUCERO, JUDGE PRESIDING BRAJICH XI OF THE COURT OF FIRST INSTANCE OF MANILA, AND B. MORALES CO., LTD., RESPONDENTS.

D E C I S I O N

PADILLA, J.:

On 1 February 1949, the petitioners and the respondent B. Morales Co., Ltd., entered into a contract whereby, for and in consideration of the sum of P25,000, the latter undertook to construct for the former a two story three door apartment building on a lot located on No. 255-A Mayhaligue Street, Tondo, Manila. On 17 February 1949, the petitioners notified the respondent contractor to stop the work because they intended to secure the services of another to finish the project. The respondent contractor did as it was told.

On 7 March 1949, the respondent contractor brought suit in the Court of First Instance of Manila to recover from the petitioners the sum of P8,500 with interest from 31 January 1949, representing the costs of materials used and labor performed on the construction of the building up to 17 February 1949, P1,000 as damages and costs (civil case No. 7524, Annex A). On 5 April 1949, the petitioner filed their answer with a counterclaim. On 24 May 1950, the parties submitted for approval and judgment of the Court a "stipulation" whereby they agreed to abide by all' conditions and specification set forth in contracts previously entered into by and between them; the plaintiff contractor to resume the construction of the building and to install six water closets therein; the defendants not to make any withdrawal from the amount of the loan granted to them by the Rehabilitation Finance Corporation without the knowledge and consent in writing of the plaintiff, or unless such withdrawal be made by the plaintiff as attorney-in-fact of the defendants; to sign all promissory notes and other papers in connection with the loan granted them by the Rehabilitation Finance Corporation so as to facilitate all instalment releases of the loan and to indorse immediately the checks covering such instalment releases to the plaintiff; and both parties to waive' their

right to appeal. On 6 June 1950, the Court rendered judgment in accordance with “the stipulation, ordering the parties to abide by it.” (Annex C.)

On 25 April 1951, the plaintiff filed a petition for a writ of execution of the judgment for the sums of P4,592.57 and P5,021.50 for the reason that it had already completed the construction of the defendant’s building. The latter objected to the petition on several grounds which may be boiled down to non-compliance by the plaintiff with the construction contract. On 5 May 1951, the Court granted the petition for execution. On 17 May 1951, the defendants filed a motion for reconsideration of the order granting the petition for execution, which was not acted upon until 13 January 1954 when the court denied the motion for reconsideration. (Annex D.)

On 9 February 1954 the plaintiff filed an ex-parte petition praying that the judgment rendered on 6 June 1950 be supplemented by specifying the amount of P13,476.86 as the amount for which the defendants jointly and severally are liable to the plaintiff; that the former be ordered to surrender to the latter the possession of the premises in question until the said amount shall have been fully paid, so as to lend effectivity to the decision; and that a writ of execution issue accordingly (Annex E). On 16 February 1954 the Court ordered that ‘a writ of execution be issued, the amount to be executed, as computed by the plaintiff under the terms of the decision rendered in the case being F13,476.86.’ (Annex F.)

On 19 February 1954 the defendants Unaware of the order just mentioned (16 February 1954), objected to the ex-parte petition of 9 February 1954, on the ground that the said petition cannot be heard ex-parte without violating the due process clause of the Constitution. On the same day, 19 February 1954, the Sheriff of Manila advertised the sale of public auction of the property in question to satisfy the judgment for P13,476.86 against the: defendants, the sale to take place on 4 June 1954.

On 18 May 1954, the defendants filed a petition dated 17 May 1954 to annul and set aside the order of 16 February 1954, and for a writ of preliminary injunction to enjoin the Sheriff from proceeding with the sale at public auction (Annex G). On 19 May 1954, the Court issued a writ enjoining the Sheriff from proceeding with the sale at public auction upon the filing of a bond for P1,000 which the defendants filed. The plaintiff filed motions to set aside or dissolve the writ of preliminary injunction, upon the filing of a counter bond. Both motions were denied by the Court on 29 May 1954, and 4 June 1954 respectively. On 20 October 1954 the Court presided over by His Honor, Antonio G. Lucero, set the hearing of the petition for annulment on 30 October 1954, at 8:00 a.m. (Annexes H & H-I). On 30

October 1954 the Court held “considering that the order of Judge Panlilio on February 16, 1954, is already definite and final, the court has no alternative but to deny, as it hereby denies, the petition for annulment filed by defendants, through counsel dated May 17, 1954, and hereby dissolve the writ of preliminary injunction issued by Judge Agustin P. Montesa by virtue of his order of May 19, 1954.” (Annex I.)

After publication of the notice of sale dated 29 November 1954 setting the sale at public auction for 29 December 1954, the Sheriff of Manila finally sold at public auction on 25 February 1955 the property in question to the plaintiff contractor for P13,476,86, which is the amount of its claim (Annex J.)

To annul and set aside the order of 16 February 1954 entered in civil case No. 7524, which directed the defendants to pay to the plaintiff the sum of P13,476.86, and the sale at public auction of the defendants’ property made on 25 February 1955 by the Sheriff of Manila in pursuance thereof, the petitioners, defendants in the court below, filed this petition/contending that the order referred to is null and void for lack of jurisdiction of the respondent court to enter it and that as necessary sequel the sale at public auction also referred to is likewise null and void.

The record does not supply sufficient data for this Court to arrive at a conclusion that the granting of the petition for execution complained of was justified. The respondent asserts that the amount for which the writ of execution was prayed was the result of a mere computation of the amount due it under the construction contract. This assertion is not borne out by the stipulations of the building contract. (Annex A to the complaint filed in the court below). If this claim were correct why did he file on 16 June 1954 a “Motion to fix the amount due the plaintiff under the decision of June 6 1950.” At any rate, the petition for execution of the judgment rendered on 6 June 1950, which included a prayer for the fixing of the sum of P13,476.86 to be paid by the petitioners to the respondent contractor, should not have been granted ex-parte. For that reason the respondent court exceeded its jurisdiction in granting it.

A stipulation which is not really a stipulation of facts upon which a judgment may be rendered, its but a new contract between the parties. The full and faithful performance thereof by both parties settles the controversy between them. But from a breach thereof by anyone of the contracting parties there arises a cause of action, which must be passed upon by the Court requiring a hearing to determine whether such breach had really taken place. There is nothing definitely settled or determined in a case which ends by a stipulation such

as the one submitted for approval of the trial court in the action brought by the respondent contractor against the petitioners. The breach of the stipulation must be pleaded and proved and the adverse party must be notified to afford him an opportunity to admit or deny the breach and to present evidence in support of his defense. The pleadings submitted by both parties in the case filed in the respondent court are replete with assertions by one and denials by the other which cannot be accepted or rejected without Holding a hearing at which the parties are afforded an opportunity to present their evidence in support of their respective contentions for the determination of the court..

The petitions for a writ of certiorari is granted. The order of 16 February 1954 and the sale at public auction made on 25 February 1955 in pursuance thereof are annulled and set aside, without pronouncement as to costs.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.
