

JOSE R. JACINTO, ET AL., PETITIONERS, VS. SEGUNDO FERNANDO, ET AL., RESPONDENTS.*G.R. No. L-4854. March 21, 1952*

Ponente: PARAS, C.J.

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In civil case No. 518 of the Court of First Instance of Nueva Ecija (which originated from the justice of the peace court of Gapan), a decision was rendered, upon a stipulation, ordering Segundo Fernando to pay to Jose R. Jacinto and Tomasa G. Jacinto the sum of P320.00, payable in three instalments, the first instalment of P100 within the month of February, 1951, the second instalment of f 100 within the month of February, 1952, and the balance of P120.00 in the month of February, 1953, without interest, with the understanding that failure to pay any of the instalments on time would cause the remaining unpaid instalments to be due and demandable by execution. Segundo Fernando failed to pay the first instalment of P100 within the month of February, 1951, as a result of which Jose R. Jacinto and Tomasa G. Jacinto filed in the Court of First Instance of Nueva Ecija on March 12, 1951, a motion for execution. On March 29, 1951, before the motion could be heard and acted upon, the attorney for Segundo Fernando sent a letter to Jose R. Jacinto inclosing a postal money order for P100. In said letter, it was admitted that the remittance was a belated payment of first instalment, with the request, however, that the same be considered a substantial compliance with the decision and that the motion for execution be withdrawn.

In reply, Jose R. Jacinto addressed to the attorney for Segundo Fernando the following communication:

"I acknowledge receipt of your letter of the 29th instant, inclosing money order in the amount or P100.00 with the request that it be considered as compliance of the decision rendered in my case against Mr. Fernando; and in veply thereto, I wish to inform Mr. Fernando thru you that I may withdraw my petition for execution of the decision only on the condition that your client pay me an additional sum of One-Hundred pesos (P100.00) now, and the balance of One-hundred and twenty (P120.00) to be paid in February, 1952.

"You well know how much I have lost in this case and how easy were the terms of payment I have granted to Mr. Fernando and I hope I shall be afforded some justice now.

"Trusting to hear from you soon and suspending in the meantime the execution of the decision,

"Yours sincerely,

"(Sgd.) JOSE R. JACINTO."

Failing to hear further from Segundo Fernando or his attorney, Jose R. Jacinto filed in the Court of First Instance a motion, reiterating the prayer that the decision in question be executed on the ground that, although Segundo Fernando had paid P100, the balance was not paid in accordance with the terms of said decision. This motion was denied by the court on May 3, 1951. Subsequent motions for reconsideration were denied, whereupon Jose R. Jacinto and Tomasa G. Jacinto filed the present petition for mandamus against Segundo Fernando and the Judge of the Court of First Instance of Nueva Ecija.

The theory of the respondents is that the petitioners, by receiving the sum of P100 from the attorney for respondent Segundo Fernando as delayed payment of the first instalment called for in the decision in civil case No. 518, impliedly waived their right to execution based on default on the part of respondent Fernando. This theory is untenable. It is plain from the reply sent by petitioner Jose R. Jacinto to the attorney for respondent Fernando, that the petitioners accepted the tendered amount of P100 subject to the express condition that respondent Fernando was to pay the additional amount of P100 immediately and the balance of P120 in February, 1952. As said condition was breached by respondent Fernando, petitioners' right to demand execution remained in force. That the petitioners accepted the late payment of the sum of P100 is of no moment, because the failure of respondent Fernando to pay the instalment due in February, 1951, caused the entire obligation to become demandable, and the conditional acceptance of the first instalment did not alter the situation that the other two instalments were already due and demandable, at least until respondent Fernando accepted and met the condition prescribed by the petitioners. Wherefore, the petition for mandamus is granted and the respondent Judge is hereby ordered to issue the writ of execution prayed for by the petitioners. So ordered with costs against respondent Segundo Fernando.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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