

**EXEQUIELA PEREZ, AND PLACIDO MIRANDA, PETITIONERS, VS.
PHILIPPINE READY-MIX CONCRETE CO., INC., OZAETA, LICHAUCO
& PICAZO, AND MAGNO GATMAITAN, AS PRESIDING JUDGE OF
THE COURT O...**

G.R. No. L-8370. May 28, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In Civil Case No. 15417 of the Court of First Instance of Manila, Branch XIV, entitled "Max Chamorro & Co. (later referred to as Chamorro) vs. Philippine Ready-Mix Concrete Co., Inc. (later referred to as Ready-Mix), respondent Judge Gatmaitan, presiding, plaintiff Chamorro by virtue of a petition of December 8, 1951, secured a writ of preliminary attachment of funds in the amount of P4,464.50 belonging to defendant Ready-Mix but in the possession of the Bureau of Public Works. But on motion of defendant Ready-Mix, the attachment was lifted by the court in an order dated January 8, 1953, and acting on another motion of the same Ready-Mix through its counsel who called attention to their attorney's lien filed on November 10, 1952, the same court in an order dated March 9, 1953, ordered the delivery of the said sum to the attorneys of record of Ready-Mix. Chamorro thru its counsel Atty. Calalang sought to annul the order discharging the attachment, by means of a petition for certiorari before the Supreme Court, G. R. No. L-6572, on May 13, 1953, and he secured a writ of preliminary injunction by virtue of a resolution of this Court dated May 29, 1953, suspending compliance with the order of the trial court of March 9, 1953, regarding the delivery of the funds in question to the attorneys of record of Ready-Mix. Later, the Supreme Court dismissed the petition for certiorari in a decision promulgated May 14, 1954.

Shortly after the decision of this Tribunal in the case of Chamorro vs. Ready-Mix, G. R. No. 1-6572 had become final, present petitioners Placido Miranda and Exequiela Perez, who in the meantime had secured judgments against the same Ready-Mix company in Civil Cases Nos. 14360 and 14362 of the Court of First Instance of Manila, Branch I, in the amounts of P2,216.01 and P15,387.71, respectively, although the latter case is on appeal to the Supreme Court under G.R. No. L-7979, thru their counsel Atty. Calalang (the same counsel for Chamorro in Civil Case 15417), sought to levy on the aforementioned funds of Ready-Mix in the hands of the Sheriff, not yet delivered to the attorneys of record of Ready-Mix because of the injunction issued by this Tribunal in the certiorari case, G.R. No. L-6572, but which injunction was automatically dissolved when said certiorari case was dismissed, by securing orders for the issuance of alias writs of execution from the Court of First Instance of Manila, Branch I, to enforce the judgments in their favor. Copies of these orders and the corresponding alias writs were served on the Sheriff of Manila with a letter of indication regarding the sum in the hands of the Sheriff already mentioned.

On July 20, 1954, Attys. Ozaeta, Lichauco & Picazo, the same attorneys who tried to enforce their attorney's lien in Civil Case No. 15417 and who were able to secure the order of March 9, 1953, directing the delivery of the said sum to them but which order was not yet then carried out, filed before Branch XIV, which was in charge of Civil Case No. 15417, an urgent ex-parte motion asking for an order directing the Sheriff of Manila to comply

immediately with that order of March 9, 1953, further asking that the sum be released from attachment and be delivered to them as attorneys lienors.

In an order dated September 25, 1954, Branch XIV, respondent Judge Gatmaitan presiding, issued an order with the following dispositive part:

"IN VIEW WHEREOF, the motion of July 30, 1954 appearing on page 207 of the record of Attys. Ozaeta, Lichauco & Picazo, is partly granted and partly denied; granted so far as it prays that the sum of P4,355.09 be ordered returned to the defendant Philippine Ready-Mix Concrete Co. Inc.; denied to the extent that it prays that the same be delivered to the attorneys-movants. (Annex 1 to Motion to Dismiss)"

On motion of Attys. Ozaeta, Lichauco and Picazo that the sum in question in the hands of the Sheriff be delivered to them instead of the Ready-Mix, incorporating in the said motion the conformity of Ready-Mix in an order dated October 4, 1954, Judge Gatmaitan granted the motion saying:

"As prayed for, the Sheriff is ordered to make delivery of the money attached amounting to P4,500, according to movant, to Attys. Ozaeta, Lichauco & Picazo."

Then on October 8, 1954, counsel for plaintiff Chamorro in Civil Case No. 15417 filed a motion for reconsideration of the above order of October 4, 1954, praying that his motion be set for hearing on Saturday, October 16, 1954. On October 11, 1954, Attys. Ozaeta, Lichauco & Picazo filed an "Urgent motion for resolution of plaintiff's motion for reconsideration of October 8, 1954 and opposition to said motion for reconsideration" waiving their right to the usual three days notice and served copy of said motion on Chamorro's counsel on the same day stating that Chamorro's motion for reconsideration was sham and frivolous and prayed that said motion for reconsideration be considered upon the hearing of said attorney's motion and opposition on October 12, 1954. Judge Gatmaitan set Chamorro's motion for reconsideration for hearing on October 12th, 1954 at 1:30 p.m. but Chamorro's counsel failed to appear and after waiting for said counsel until 3:00 p.m. the court heard the motion for reconsideration and denied it.

Chamorro's counsel then filed another motion for reconsideration of the order of denial of October 12, 1954 and set it for hearing on Saturday, October 16, 1954 but Attys. Ozaeta, Lichauco & Picazo on October 14, 1954 filed another "Urgent motion for resolution of plaintiff's urgent motion for reconsideration of the order of October 12, 1954 and opposition to said urgent motion for reconsideration", alleging that said attorneys had to appear on October 16, 1954 in Quezon City in connection with a criminal case and requesting that Chamorro's motion be heard and resolved on October 15th at 11:30 p.m. Copy of this urgent motion and opposition was served on Chamorro's counsel on October 14th. At the hearing, on October 15th, Atty. Pizarro, a member of the law firm of Chamorro's counsel appeared but sought to postpone the hearing on the ground that Atty. Calalang (Chamorro's counsel) was sick. The postponement was denied and the court equally denied the second motion for reconsideration in an order dated October 15, 1954, which was amended in an additional order on the same date, both of which are quoted below:

"Considering the insistent opposition of Atty. De la Fuente to further postpone the resolution of the motion for reconsideration of Atty. Calalang, which is set for tomorrow morning; and considering the arguments presented in the motion for reconsideration which was filed on October 14, 1954, the Court believes that the motion for reconsideration should be as it is hereby denied; but in order to give Atty. Calalang a chance to stop the execution of this present order, the Court orders that the Sheriff shall not make delivery to Attys. Ozaeta, Lichauco & Picazo until tomorrow morning, so that just in case Atty. Calalang should desire to secure relief from the Supreme Court by preliminary injunction, he may have sufficient time to do so. If by 11:30 tomorrow morning no injunction is issued, the Sheriff is ordered to deliver the money, the object of the motion for reconsideration unto Attys. Ozaeta, Lichauco & Picazo. The representative of the Sheriff, Atty. de la Fuente,

and Atty. Pizarro of the Calalang, Pizarro & Sebastian Law Offices, are notified in open court of this order."

ADDITIONAL ORDER

"The Court has just been informed by telephone, that the Supreme Court does not hold deliberations on Saturdays, and this being the case, the Court, *motu proprio*, amends its order dictated a few minutes ago, so that instead of 11:30 o'clock tomorrow, which is the deadline fixed by the Court for Atty. Calalang to get a preliminary injunction, the Court fixes it at 2:00 o'clock, Monday afternoon October 18, 1954; the order dictated a few minutes ago is therefore amended accordingly, and the court now orders the Sheriff who is present in Court to make the delivery by 2:00 o'clock Monday afternoon if no preliminary injunction is secured up to that time. Let notice issue to Atty. de la Fuente who has just left the courtroom,"

To annul the orders dated September 25, 1954, October 4, 1954, October 12, 1954 and October 14, 1954, Atty. Calalang filed the present petition for certiorari against Ready-Mix, Attys. Ozaeta, Lichauco & Picazo and Judge Gatmaitan, presiding, Branch XIV, Court of First Instance of Manila, not on behalf of Chamorro, his client in Case 15417, but in representation of Placido Miranda and Exequiela Perez, his clients and the plaintiffs in Civil Cases 14360 and 14362 in Branch I of the Manila Court, but because of the failure of Atty. Calalang to secure the preliminary injunction by 2:00 o'clock p.m. on October 18, 1954, as stated in the additional order above quoted, respondent attorneys were able to withdraw the sum in dispute from the Sheriff.

As observed by respondents in their memorandum, petitioners Miranda and Perez were strangers in Civil Case No. 15417 between Chamorro and Ready-Mix, for they were never parties therein. Neither were they intervenors. Their only connection if any, with it, and if it can be so called, was that Atty. Calalang, counsel of Chamorro was also their counsel in their cases Nos. 14360 and 14362, against the same defendant Ready-Mix. Logically, the party called upon to challenge the validity and propriety of the orders sought to be annulled in the present certiorari proceedings was Chamorro because it was the party prejudiced by said orders and which repeatedly petitioned the trial court for their reconsideration, but not Miranda and Perez who as already stated, were strangers to that case where the orders in question were issued.

The present case may be decided on the following question — whether or not at the time of the alias writs of execution secured by petitioners Miranda and Perez in Branch I of the Manila Court and placed in the hands of the Sheriff, the funds in question in the hands of the said Sheriff were subject to levy, or, whether they were in custodia legis in which case, they could not be reached by the writs or execution. That these funds originally belonged to the Ready-Mix is not disputed. As already stated, these funds were first attached by Chamorro in Case 15417, in Branch XIV, and under said attachment the Sheriff of Manila withdrew them from the Bureau of Public Works and held them subject to the orders of the court (Branch XIV). Later the attachment was lifted and thereafter Attys. Ozaeta, Lichauco & Picazo secured the order of March 9, 1953, directing the Sheriff to deliver said funds to the attorneys of record of Ready-Mix. This order could not be complied with by the Sheriff because in the meantime Chamorro had filed a petition for certiorari in the Supreme Court and had obtained a writ of injunction on the Sheriff. Consequently, said funds maybe said to have been frozen in the hands of the Sheriff. Still later, the Supreme Court denied the petition for certiorari filed by Chamorro which automatically dissolved the writ of injunction against the Sheriff and which served to release the funds in his hands.

Then came the alias writs of execution. If we bear in mind that all along, the order of March 9, 1953, issued by Branch XIV directing the delivery of the funds in the hands of the Sheriff to the attorneys of record of Ready-Mix still stood and was in effect, then it is clear that the Sheriff was holding said funds subject to the said order which covered them. The only thing lacking was compliance with the said order. Viewed from this angle, it is evident that they were in custodia legis because they were being held by an officer of the court subject to its orders and specifically covered by an express order. To reach those funds by means of alias writs of execution, specially

when as in this case, said writs were secured in a different branch (Branch I), it was necessary to secure the permission of the Judge of Branch XIV that held them under custody, namely, Judge Gatmaitan who at the time presided over said Branch XIV. As a matter of fact, the alias writs of execution secured by Miranda and Perez on June 24, 1954, were returned unsatisfied by the Sheriff, presumably on the ground that the funds in his hands were not subject to levy.

Finding the present petition for certiorari to be without merit, the same is hereby denied, with costs.

Pablo, Bengzon, Padilla, Reyes, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concurs.

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