

VICENTE K. LAY, PETITIONER AND APPELLANT, VS. ROCES HERMANOS INC., AND THE MUNICIPAL COURT BRANCH II, OF THE CITY OF MANILA, RESPONDENTS AND APPELLEES.

G.R. No. L-8040. May 28, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case was referred to us by the Court of Appeals, on the ground that only questions of law are involved.

The facts are stated in the reference resolution as follows:

"The appellee Roces Hermanos, Inc., obtained in Civil Case No. 16085 of the Municipal Court of Manila a judgment against appellant Vicente K. Lay for rentals in arrears and damages. The judgment not having been fully satisfied, the judgment debtor, Vicente K. Lay (appellant herein), was examined under oath on motion of judgment creditor Roces Hermanos, Inc.

On December 21, 1951, the Municipal Court issued an order finding that the judgment debtor, Vicente K. Lay, 'is receiving salary and commission in the sum of P500 a month as Manager of the advertising Department of the Chinese Commercial News', and ordering said judgment debtor Vicente K. Lay to pay the remaining unpaid part of the judgment in fixed monthly installments of P200 a month until the same is fully satisfied.

Thereupon, Lay applied on January 29, 1952 to the Court of First Instance for a writ of certiorari, alleging that the order of the Municipal Court was issued in abuse of discretion because it failed to take into account that his income was not fixed, and that it was needed to support his family. At the same time, the said Vicente K. Lay applied for and obtained a writ of preliminary injunction to stop the enforcement of the order complained of, filing an indemnity bond for P1,500 with himself as principal and Traders' Insurance and Surety Co. as sureties.

After hearing and other incidents, the Court of First Instance of Manila, in its Case No. 15630, rendered judgment on March 14, 1953 dismissing the petition on the ground that it could not, on certiorari, review the evidence upon which the order of the Municipal Court is based, and sentencing the petitioner or his sureties to pay solidarity to Roces Insurance the sum of P1,500 as damages resulting from the illegal issuance of the writ of preliminary injunction.

Vicente K. Lay then appealed the decision to this Court; but while the appeal was pending, said appellant voluntarily applied for insolvency, and was declared insolvent by the Court of First Instance of Manila in Case No. 22086, and by order of February 27, 1954, all. payments to and by him, out of property belonging to him, were stayed.

It thus appears, in view of the order of insolvency, that the principal issue in this appeal has become moot or academic, for the order object of the certiorari proceedings has become unenforceable.

There remains only the question, raised in this appeal, whether or not, in view of the injunction bond, the sureties are liable to answer for the P200 monthly payments that could not be collected by Roces Hermanos,

Inc., because of the issuance of the writ of preliminary injunction, was contended by the appellees; or whether such sureties should only answer for the legal interest on the amounts that Roces Hermanos, Inc., were prevented from collecting, as contended by appellant. Decision of this issue hinges on the provision of the Rules of Court (secs. 4 and 9, Rule 60, in connection with sec. 20, Rule 59) that the respondent may recover upon the bond 'all damages which he may sustain by reason of the injunction'. Appellant contends that such damages are limited to the legal interest on the amounts that fell due, invoking Art. 2209 of the new Civil Code."

(Lay vs. Roces Hermanos, Inc., et al. C. A. G. R. No. 11436-R, May 8, 1954).

In view of the admitted insolvency of the principal debtor, the appeal must be rejected as unmeritorious. Article 2209 of the new Civil Code, invoked by appellants, provides that in obligations to pay money the indemnity for damages shall consist in the payment of interest where "the debtor incurs in delay" i.e. mora. This rule presupposes that the principal debt remains collectible after the period of delay, but is inapplicable to the case at bar, where the judgment enjoined has become uncollectible, and thereby lost its value. Justice and equity demand that in such event the loss should be borne by those responsible for the injunction, there being no question that the same was improperly applied for. While the insolvency of the debtor was not caused by the preliminary injunction, the restraint operated to prevent the creditor from enforcing the judgment and receiving the monthly installments of P200 adjudged by the Municipal Court, from December 21, 1951, up to the debtor's insolvency in 1954. Such installments amount to more than the injunction bond of P1,500 filed in the Court below and can not be adequately compensated by payment of interest thereon; hence, it was no error to declare that the injunction bond must be chargeable with their loss, there being no evidence that the judgment was not realizable before the debtor became insolvent. A different rule would encourage the reckless procuring of injunctions that should never be lightly sought nor prodigally granted.

The judgment appealed from is affirmed, with costs against appellants.

Pablo, Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador and Concepcion, JJ., concur.

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