

SAN MANUEL WOOD PRODUCTS, INC., COMPLAINANT, VS. JUDGE RAMON B. TUPAS AND CITY SHERIFF FIDEL CASUYON, BOTH OF 2ND MUNICIPAL TRIAL COURT IN CITIES, DAVAO CITY, RESPONDENTS.

A.M. No. MTJ-93-892. October 25, 1995

Ponente: PUNO, J.

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PUNO, J.:

In a sworn Complaint,[1] dated October 29, 1993, San Manuel Wood Products, Inc., charged Judge Ramon B. Tupas and City Sheriff Fidel Casuyon, both of the 2nd Municipal Trial Court in Cities (Branch II), Davao City, with grave partiality, serious misconduct, abuse of authority and/or ignorance of the law.

Complainant is the defendant in an unlawful detainer case, docketed as Civil Case No. 424-B-92.[2]

On June 3, 1993, respondent judge rendered a decision[3] in Civil Case No. 424-B-92, in favor of the plaintiffs therein and against herein complainant. The parties received their copies of the decision on June 14, 1993.[4]

Within the reglementary period to appeal, the plaintiffs filed a "Motion for Immediate Execution," dated June 21, 1993, of the MTCC decision. The motion was opposed by complainant.

On June 24, 1993, while the motion for immediate execution was pending in the MTCC, complainant filed a "Notice of Appeal and Approval of Cash/Supersedeas Bond"[5] to stay the execution of the June 3, 1993 Decision. The notice of appeal and the supersedeas bond were approved by respondent judge in an Order,[6] dated July 16, 1993, thus:

"O R D E R

"Notice of Appeal in the above-entitled case having been filed within due time, let the records of this case be forwarded to the Regional Trial Court of Davao City, in degree (sic) of appeal.

"The supersedeas bond in the sum of Forty-One Thousand Pesos (P41,000.00) in cash executed to the plaintiff is hereby APPROVED to enter action (sic) in the Regional Trial Court to pay the rents covering the period of thirteen (13) months from May 6, 1992, up to June 6, 1993, and the sum of Fifteen Thousand Pesos (P15,000.00) for attorney's fees, damages, and costs accruing down to the time of judgment appealed from. During the pendency of the appeal, defendant shall deposit with the Court the further amount of monthly rental due from time to time for the reasonable value of the use and occupation of the premises.

"The supersedeas bond is ordered transmitted with the records of this case to the Clerk of Court of the Regional Trial Court, Davao City, to which the action is appealed from (sic).

"SO ORDERED."

On September 3, 1993, complainant deposited with the clerk of court the sum of Eight Thousand Pesos (P8,000.00), the rentals due from June 6, 1993 to October 5, 1993.[7]

The records disclose that the plaintiffs filed a "Supplemental Motion for Execution Pending Appeal," dated June 30, 1993, in the MTCC. The supplemental motion was opposed by complainant in its "Comment or Opposition to Supplemental Motion for Execution Pending Appeal," dated July 14, 1993.

On August 11, 1993, respondent judge issued a special order,[8] granting plaintiffs' motion for a writ of execution pending appeal. The impugned special order reads:

"This has reference to the Motion for Immediate Execution and Supplemental Motion for Execution Pending Appeal filed by plaintiffs within the period to appeal, citing among others, the compelling reasons why immediate execution be granted. Copies of plaintiffs' motions were furnished to counsel for defendant and the latter filed its opposition thereto.

x x x x x x x x

"Plaintiffs alleged in their motion for immediate execution, supplemental motion for execution pending appeal and supplemental allegations on the motion for immediate execution the following reasons, to wit:

"That lessor is authorized by law, upon the expiration of the lease, to eject the tenant, to repossess his property for his own use, or for the use of any members of his families, under paragraph (c) of BP Blg. 877 (Rental Law). Similarly, a land-owner bonafide intention to cultivate the land personally thru employment of machineries, section 50 (a) RA 1149, as amended by RA 2268, and that defendant, which already owned more than ten hectares, is prohibited from acquiring the lot in question. That renders defendants' appeal dilatory.

x x x x x x x x

"To hold that, in the present case, the mere filing of the notice of appeal, and the filing or deposit of cash bond with the clerk of court has automatically deprived the trial court of its jurisdiction over this case, would be to practically nullify the discretionary power granted said court by section 2, Rule 39, to order, upon good reasons, the execution of its judgment before the expiration of the time to appeal; because in all cases, the judgment debtor may, on the very day the judgment is rendered or notified to him, file notice of appeal and deposit of P60.00 as cash bond with the clerk of court x x x.

'b) plaintiffs as shown in the complaint are badly in need of the land for legitimate needs as they are only renting lots and houses where they are presently residing, as per the affidavit of merit attached to plaintiffs' motion.'

"After a careful perusal of plaintiffs' motion for execution pending appeal and the opposition thereof (sic), the Court is of the view that, indeed, the special reasons alleged by plaintiffs are meritorious.

"The filing of the Notice of Appeal by the defendant has no other justifiable reasons than to frustrate the decision of the Court and that the defendant's continued stay in the premises renders the decision illusory.

"Premises considered, let, therefore, issue a writ of execution pending appeal under Section 2 of Rule 39, upon plaintiffs' filing of a bond which this Court fixed at One Hundred Thousand Pesos (P100,000.00) to answer for any lawful obligations that maybe (sic) adjudged against plaintiffs, if any, later on. (emphasis supplied)

"Resolution of plaintiffs' supplemental allegations on motion for immediate execution filed on August 11, 1993, on the ground that defendant has failed to pay or deposit the rentals for the periods from June 7, 1993 to July 6, 1993, and from July 7, 1993 to August 6, 1993, is hereby withheld as the matter can be appropriately addressed to the appellate court for its consideration and resolution.

"SO ORDERED."

The foregoing special order was received by complainant on September 7, 1993. The plaintiffs received their copies on September 7 and 8, 1993.

In compliance with the August 11, 1993 Special Order, the plaintiffs posted a bond of P100,000.00. The bond was approved by respondent judge in an Order, dated September 8, 1993.[9] On its part, complainant moved for a reconsideration of the August 11, 1993 Special Order and the September 8, 1993 Order and requested the clerk of court to hold in abeyance the implementation of the writ of execution. Respondent judge failed to act on the motion for reconsideration.

On September 10, 1993, respondent City Sheriff Fidel Casuyon served the writ to complainant. It was returned unsatisfied.[10]

Complainant now accuses respondent judge of grave partiality, serious misconduct, abuse of authority and/or ignorance of the law for issuing the August 11, 1993 Special Order and the September 8, 1993 Order.

Complainant contends that, upon perfection of its appeal on July 16, 1993, (sic) respondent judge lost its jurisdiction over the case. Thus, the Special Order, dated August 11, 1993, ordering the issuance of the writ of execution pending appeal, is null and void. Complainant argues, further, that the issuance of the July 16, 1993 Order should be considered as a denial of the motion for execution pending appeal filed by the plaintiffs.

Furthermore, complainant points out that the rule governing execution of judgment in ejectment cases is Section 8, Rule 70 of the Rules of Court, not Section 2 of Rule 39, the provision relied upon by respondent judge. Complainant also assails the immediate implementation of the writ of execution by respondent City Sheriff.

In their joint Comment,[11] dated March 10, 1994, respondents aver that the motion for execution pending appeal was filed on June 21, 1993, three (3) days before the filing of the Notice of Appeal and Approval of Cash/Supersedeas Bond. Hence, respondent judge insists he had not lost jurisdiction to act on the motion for execution. Allegedly, complainant deposited the supersedeas bond but not the accruing rentals as directed in the judgment. In view of complainant's failure to deposit the rentals due, respondent judge claims that the appeal had not been perfected.

Respondents aver, further, that complainant refused to sign the writ and even constructed three (3) houses on the subject lot despite the issuance of the writ of execution. They charge that the appeal is a dilatory tactic of the complainant. Finally, they claim that complainant is guilty of forum shopping when it filed an action before the Regional Trial Court of Davao City, assailing the validity of the respondent judge's August 11, 1993 Special Order and the September 8, 1993 Order.

Considering the allegations in the joint comment of the respondents, we required complainant to file its reply.[12] It did not file any reply. We referred the present administrative complaint at bar to the Court Administrator for evaluation, report and recommendation.[13] In a Memorandum, dated May 5, 1995, the Office of the Court Administrator found the complaint meritorious. The relevant portion of the memorandum reads:

x x x x x x x x

"It is well settled that to stay the immediate execution in an ejectment proceeding, it is required that the defendant must (a) perfect his appeal; (b) file the supersedeas bond and (c) periodically deposit the rentals falling due during the pendency of the appeal.

"As to the perfection of the appeal, with the advent of BP 129, it is now settled that the perfection of appeal is upon the expiration of the last day to appeal by ANY party contrary to Judge Tupas' thinking that he has to approve the Notice of Appeal.

"Since both plaintiffs and defendant (complainant in this case) received their respective copies of the decision on June 14, 1993, the last day to appeal was June 29, 1993 and, by operation of law, the appeal of complainant was perfected on June 30, 1993, it having filed its Notice of Appeal on June 24, 1993.

"The complainant deposited with the Clerk of Court, MTCC, Davao City the correct amount of P41,000 to cover the rentals for thirteen (13) months at P2,000.00 a month and (a)ttorney's fees of P15,000.00. x x x.

"It is clear that immediate execution was thus stayed.

"Complainant, however, did not deposit periodically — in this case, monthly — (the) P2,000.00 a month (rental) with the Clerk of Court. This is clear from complainant's own Annex "C" which shows that the amount of P8,000.00 was paid only on September 3, 1993 to the Clerk of Court, RTC, Davao City to cover the rental due from June 6, 1993 to October 5, 1993.

"The rule is:

'Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits.' (Italics supplied)

"Judge Tupas had, therefore, NO jurisdiction and authority to issue his Special Order of August 11, 1993. He should have dismissed all of the plaintiffs' motion for execution pending appeal because Section 8, Rule 70 and not Section 2, Rule 39 is what is applicable as this is an ejectment case.

"It is only the appellate court — the RTC for ejectment cases — which can order the issuance of the writ of execution pending appeal but only for the EXPLICIT reason that the periodic rentals as found in the inferior court decision were not paid, with notice and hearing mandated.

"It does not appear that Judge Tupas acted out of malice or a corrupt motive but rather a misapprehension of the law on ejectment.

"As for Sheriff Casuyon, it appears that the writ was returned unsatisfied. Complainant's general manager refused to sign the same. While he may have agreed to a formal delineation of the boundaries, this was because the complainant was buying time as it had planned to purchase the lot in question but failed.

"In view of all the foregoing, it is respectfully recommended that: (a) Retired Judge Ramon B. Tupas, MTCC, Branch 2, Davao City, be FINED the amount of P10,000.00, for Gross Ignorance of the Law; (b) the said amount be TAKEN from the P20,000.00 withheld from his terminal leave credits by virtue of Resolution of the Court, dated February 2, 1994, and (c) the charges against Sheriff Casuyon be dismissed the same being without merit."

We agree with the legal disquisition of the Office of the Court Administrator.

This is an ejectment case, hence, the applicable rule is Section 8, Rule 70 of the Rules of Court. It states:

"Sec. 8. Immediate execution of judgment. How to stay the same. — If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant, to stay execution, files a sufficient bond, approved by the municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance (now Regional Trial Court) and to pay the rents, damages and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the municipal or city court to exist.

"All money so paid to the appellate court shall be deposited in the provincial or city treasury, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the

pendency of the appeal, the appellate court, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal from taking its course until the final disposition thereof on its merits. ..." (Italics supplied)

Respondent judge missed the foregoing rule when it applied Section 2, Rule 39 of the Rules of Court. It reads:

"Sec. 2. Execution pending appeal. — On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

It ought to be mentioned that Section 2, Rule 39 of the Rules of Court, applies to execution pending appeal in ordinary civil actions. This rule requires good reasons before a writ of execution can be issued in favor of the prevailing party. Its issuance is subject to the sound discretion of the court and is usually not favored because it affects the rights of the parties which are yet to be ascertained on appeal.

In stark contrast, under Section 8 of Rule 70, it is not necessary to show good reasons for the immediate execution of the judgment against the defendant.[14] The judgment is executed immediately in favor of the plaintiff, as a matter of right, to prevent further damage arising from the loss of possession.[15]

It is settled that to stay the execution of judgment of an inferior court, the losing defendant in an ejectment case must: (a) perfect his appeal; (b) file a supersedeas bond; and (c) make a periodic deposit of the rentals due or the reasonable compensation for the use and occupation of the property during the pendency of the appeal. These requisites must concur.[16]

In the case at bar, complainant filed his appeal on time and deposited the required supersedeas bond in the inferior court, but it failed to comply with the third requisite as related above. As borne by the records, the rentals accruing for the months of June, July and August were deposited only on September 3, 1993. Upon its failure to meet the third requisite prescribed under the rules, the plaintiffs have the right to move for execution of the judgment appealed from. The order of execution, however, has to be issued by the appellate court, in this case the Regional Trial Court, since the respondent judge had lost his jurisdiction over the ejectment case after the appeal to the RTC had been perfected.[17] In disregarding the rules and settled jurisprudence, the respondent judge showed gross ignorance, albeit without any malice or corrupt motive.

We now come to the immediate implementation of the writ of execution in Civil Case No. 424-B-92 by respondent Sheriff Fidel Casuyon. The records show that the August 11, 1993 Special Order, granting the motion for immediate execution, was received by complainant on September 7, 1993. The writ of execution was issued on September 9, 1993.[18] The following day, the writ was served by respondent sheriff against the complainant.

We have ruled that "the immediate enforcement of a writ of ejectment execution is carried out by giving the defendant a notice of such writ and making a demand that defendant comply therewith within a reasonable period, normally from three (3) to five (5) days, and it is only after such period that the sheriff enforces the writ by the bodily removal of the defendant and his personal belongings." [19] This was disregarded by respondent sheriff. Thus, respondent sheriff should be sternly warned for his infraction to avoid a repetition of similar arbitrariness on his part.[20]

IN VIEW WHEREOF, judgment is hereby rendered:

1. Holding respondent Judge Ramon B. Tupas administratively liable for gross ignorance of the rules. Accordingly, he is ordered to pay a fine of Five Thousand Pesos (P5,000.00); and

2. Warning respondent Sheriff Fidel Casuyon against committing similar violations of the rules in implementing the writ of execution.

Let a copy of this decision be attached to the personal records of Sheriff Fidel Casuyon.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] Rollo, p. 1.

[2] Entitled, "Spouses Amador and Evangeline Bonsubre and Regalado Santos, both represented by Rodolfo J. Santos as Attorney-in-Fact, vs. San Manuel Wood Products, Inc."

[3] The dispositive portion of the MTCC decision states:

"From the facts borne out by the evidence and the law and jurisprudence on actions for unlawful detainer, judgment is hereby rendered in favor of the plaintiffs and against the defendant (complainant), with orders, to wit:

"1. Ordering the defendant corporation and its agents and privies to vacate and restore the possession of plaintiff over the 7,040 square meters which defendant's predecessor-in-interest and by (sic) defendant thereafter occupied since 1969;

"2. Ordering the defendant to pay plaintiffs the sum of:

"a. P2,000.00 monthly rental from May 6, 1992, until the portion occupied by it, in question, is restored to the possession of plaintiffs;

"b. P15,000.00 for and as attorney's fees;

"c. And to pay the costs.

"Defendant's counterclaim is hereby DISMISSED for lack of merit.

"SO ORDERED."

[4] Rollo, pp. 2, 50.

[5] Annex "A" of Complaint; Rollo, pp. 14-15.

[6] Annex "B" of Complaint; Rollo, p. 16.

[7] Evidenced by Official Receipt No. 2968492, marked as Annex "C" of Complaint; Rollo, p. 17.

[8] Annex "D" of Complaint; Rollo, pp. 18-21.

[9] Annex "K" of Complaint; Rollo, p. 32.

[10] Annex "6" of Comment; Rollo, p. 86.

[11] Rollo, pp. 68-79.

[12] Rollo, p. 88.

[13] Ibid., p. 89.

[14] The immediate execution of judgments in ejectment cases is one of the exceptions to the general rule that only final judgments or orders may be executed.

[15] *Felizardo vs. Court of Appeals*, G.R. No. 112050, June 15, 1994, 233 SCRA 220, 227, 229.

[16] *Felizardo vs. Court of Appeals*, *supra*; *Galan Realty Co., Inc. vs. Arranz*, A.M. No. MTJ-93-878, October 27, 1994, 237 SCRA 770.

[17] *Mocles vs. Maravilla*, Adm. Matter No. MTJ-93-873, December 14, 1994, 239 SCRA 188, 195.

[18] *Rollo*, p. 61.

[19] *City of Manila vs. Court of Appeals*, G.R. No. 100626, November 29, 1991, 204 SCRA 362, 368, citing *Reformina vs. Adriano*, 189 SCRA 723.

[20] *City of Manila vs. CA*, *supra*.

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