

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. HON. ANDRES REYES, ET AL., RESPONDENTS.

G. R. No. L-24574. December 29, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On December 3, 1964, V. V. Dionisio Construction Co., Inc. filed an action against the Government Service Insurance System before the Court of First Instance of Rizal for reformation of a contract entered into between them. After issues were joined, the case was set for pre-trial during which the parties agreed to submit a stipulation of facts, and on the basis of the facts agreed upon the court a quo rendered judgment the dispositive portion of which reads:

"In view of the foregoing, partial judgment is hereby rendered directing the correction and reformation of Article II, paragraph 2.1 of the Construction Agreement of June 9, 1965 (Exh. 'B') so as to provide therein that the construction cost of Phase A-General Construction of the GSIS 500-Bed Hospital is the actual or correct lump sum price of Twelve Million Eight Hundred Eighty Seven Thousand Pesos (P12,887,000.00), and said Article II, paragraph 2.1 of said Construction Agreement (Exh. "B") is consequently hereby declared corrected and reformed in this respect. The defendant is hereby ordered to follow the breakdown or itemized costs for Bid Items 1.1 to 1.29 as per Proposal Bid (Exh. 'C') in making payment to plaintiff for work accomplished, the total of which is the aforesaid actual or correct lump sum price."

Within the reglementary period defendant filed with the court its notice of appeal and record on appeal, and tendered payment of the required appeal bond in the form of GSIS PNB Check No. 2241291, dated May 19, 1965, in the sum of P120.00.

Alleging that the aforesaid check was stamped non-negotiable, the cashier in the office of the clerk of court refused to accept the same in payment of defendant's appeal bond. Thereupon, considering such refusal arbitrary and frivolous, defendant sent the check by registered mail to the clerk of court on the same date the reglementary period fell due, and at the same time it paid in cash the following day, April 27, 1965, the requisite appeal bond.

When the record on appeal was submitted to the court a quo for its approval it denied to approve it and instead issued an order dismissing the appeal on the ground that it was filed out of time. Its motion for reconsideration having been denied, defendant interposed the present petition seeking to compel respondent judge to give due course to its appeal.

Petitioner contends that respondent judge acted arbitrarily in denying its appeal considering that it complied with all the requirements imposed by Rule 41 of the Rules of Court to perfect an appeal within the reglementary period. Petitioner claims that the cashier of the office of the clerk of court acted arbitrarily in refusing to accept the check tendered by it in payment of the appeal bond simply because the same was stamped non-negotiable, his duty being to accept it and to submit it to respondent judge for his approval. In refusing to accept such check which was presented within the reglementary period the cashier of the clerk of court prevented petitioner from

perfecting its appeal much to its prejudice. Likewise, respondent judge committed a grave abuse of discretion in not giving due course to its appeal even if it was filed within the reglementary period.

We do not find merit in petitioner's contention. To begin with, we may say that an appeal can only be taken by filing within the reglementary period a notice of appeal, an appeal bond and a record on appeal, and an appeal bond shall be either in cash or in the form of a bond to be approved by the court. And here no such appeal bond was duly filed for petitioner did not put in either cash or a bond but a check which cannot take the place of either. Hence, the appeal was not duly perfected.

The claim that the cashier of the office of the clerk of court acted arbitrarily in rejecting the check tendered by petitioner simply because it was stamped non-negotiable is likewise devoid of merit, for the filing of such check is not in accordance with the rule. Nor can said check be considered as cash effective on the date tendered, which was the last day for the perfection of the appeal, for it was not only stamped non-negotiable but postdated (May 19, 1965), and it is elementary that a check shall only produce the effect of payment when it is actually cashed (Article 1249, new Civil Code). Being postdated that check could not have produced the effect of payment on the date it was tendered. Respondent judge, therefore, was justified in dismissing the appeal as filed out of time.

In reaching this conclusion, the Court has not overlooked the fact that the judgment from which petitioner desires to appeal is one which involves a substantial amount which may affect adversely the interest of petitioner, and that there may be some justification in pursuing the appeal in its behalf. Nevertheless, the Court finds, no course of action other than what it has pursued in view of the inexorable application of our rule, but, precisely because we are aware of the consequent prejudice its failure to obtain a review may cause to petitioner, we cannot close our eyes to what we consider as a flagrant irregularity that was given rise to such unfortunate result characterized by the failure to observe that ordinary prudence which the situation demands. This matter, therefore, warrants an investigation on the part of petitioner to determine the real reason why the appeal under consideration failed for failure to deposit the paltry sum of P120.00 as appeal bond, more so when the check tendered is one that is worthless for the purpose.

Wherefore, petition is denied. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar JJ., concur
Petition denied.

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