

LIM PIN, PETITIONER, VS. SPS. CONCHITA LIAO TAN, AND TAN CHO HUA, AND HONORABLE CANCIO C. GARCIA, PRESIDING JUDGE OF BRANCH I, CITY COURT OF CALOOCAN CITY, RESPONDENTS.

G.R. No. L-47740. July 20, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for certiorari with prayer for the issuance of a writ of preliminary injunction, the petitioner prays:

"(1) that Judgment be rendered annulling or modifying the Judgment, dated. October 19, 1977, of the Respondent Judge rendered in Civil Case No. 11716, City Court of Caloocan City. (2) That a Writ of Preliminary Injunction be issued requiring Private Respondents, and all persons acting in their behalf, to refrain from the Execution of the Judgment, dated October 19, 1977, of the City Court of Caloocan City in Civil Case No. 11716 until further order."

The basis of the judgment, subject matter of the petition, is a compromise agreement entered into between the petitioner, represented by her son, George Hung and the private respondent Conchita Liao Tan both parties assisted by their respective counsel, during the October 19, 1977 hearing of Civil Case No. 11716 for unlawful detainer. The complaint for unlawful detainer was filed in the court a quo on August 12, 1977 by the private respondents against the petitioner. The judgment incorporating the compromise agreement reads as follows:

"When this case was called for hearing this afternoon, October 19, 1977, plaintiffs and defendant, the latter acting thru her son, George Hung, as her duly authorized representative, assisted by their respective counsels, personally appeared before this Court and mutually agreed as follows:

"1 . The parties admit that the stipulated rental for the leased premises is as follows:

(a) For the months of April and May, 1977, at P1,500.00 a month; there-after a monthly increase of P500.00 until the rental reaches to P5,000.00 by December, 1977/,

"2. That defendant admits having been in arrears in the payment of her rental obligation since April, 1977 and that as of October, 1977, her total accrued rentals already amounted to P18,000.00, broken down as follows:

April, 1977

P1,500.00

May, 1977

1,500.00

June, 1977

2,000.00

July, 1977

2,500.00

August, 1977

3,000.00

September, 1977

3,500.00

October, 1977

4 000.00

T O T A L

P18,000.00

"3 . That defendant binds herself to pay in full said accrued rentals of P18,000.00 and attorney's fee of P2,000.00, not later than October 31, 1977.

"4. That the rental for November, 1977, shall be P4,500.00 a month while the rentals for December, 1977 and for the succeeding months thereafter shall be P5,000.00, payable at the residence of plaintiff within five (5) days of the current month.

"5. That the Plaintiff hereby agrees to allow the defendant to remain in the leased premises at the rental herein agreed upon.

"6. That should defendant fails to pay her accrued rental of P18,000.00, plus attorney's fee of P2,000.00 by October 31, 1977, Plaintiff shall be entitled to an immediate writ of execution to enforce defendant's ejectment

from the leased premises and the collection of all rental in arrears;

"7 . Defendant's representative, George Hung, affirmed before this court and the same is confirmed by defendant's counsel, that he (George Hung) has the full authority of her mother, the herein defendant, to act for her and to sign for and in behalf this amicable settlement.

"WHEREFORE, this Court, as prayed for, hereby approves the foregoing compromise agreement and consequently renders Judgment in accordance with the precise terms and conditions hereof." (Annex "D")

Spouses Conchita Liao Tan and Tan Cho Hua alleged in their complaint for unlawful detainer that the plaintiff Conchita Liao Tan, as owner of a parcel of registered land with improvements located at Francisco Street, Caloocan City, had leased a portion of it, more particularly known as 91 Francisco Street, Caloocan City to defendant Lim Pin on a month to month basis but that the latter starting April, 1977 had not paid the agreed rental stipulated for such month and the succeeding months thereafter based on the following schedule of payments: a) For the month of April, 1977 - - P1,500.00; b) For the month of May, 1977 - - P1,500.00; c) Commencing on the month of June, 1977 and for each calendar month thereafter - - P6,000.00 per month; and that despite demand, the defendant refused to vacate the leased premises. In addition to the actual damages, the plaintiffs asked for an attorney's fee in the amount of P3 ,000.00.

On August 25, 1977, the defendant Lim Pin, filed her Answer denying the material allegations of the complaint and protesting the alleged highly "unconscionable and unreasonable" increase of rental demanded by plaintiffs. As a counterclaim, she asked for an attorney's fee in the amount of P5 ,000.00. The counter-claim was denied in the plaintiffs' Answer to Counterclaim, dated September 1, 1982.

The initial hearing set for September 1, 1977 was reset to September 14, 1977 upon the joint motion of the parties who were trying to work out a possible amicable settlement. Upon the failure of the parties to reach an amiable settlement, the September 14, 1977 hearing proceeded as scheduled during which plaintiff Conchita Liao Tan testified. For lack of material time, Conchita Liao Tan's cross-examination was set for September 27, 1977 but this hearing was again cancelled and reset to October 19, 1977.

On the scheduled October 19, 1977 hearing, defendant Lim Pin was absent. Her son George Hung who attended with his mother all the previous hearings was present together with the defendant's counsel. Plaintiff Conchita Liao Tan together with her counsel was also present. Through the initiative of the court a quo, the subject compromise agreement was formulated and executed and it finally became the basis of the October 19, 1977 judgment in Civil Case No. 11716.

The aforesaid judgment was the subject of a motion for reconsideration filed on October 28, 1977 by defendant Lim Pin on the following grounds: 1) that she never authorized her son nor her counsel on record (Atty. Pastor Mamaril) to enter into such compromise agreement and 2) that had she been present when said agreement was prepared, she would not have acceded thereto.

The motion prompted the plaintiffs to file an "Opposition To Motion for Reconsideration With Prayer that defendant's son George Hung and Atty. Pastor P. Mamaril be cited for contempt" in the event they should belatedly deny that George Hung was duly authorized by his mother to enter into the compromise agreement dated November 5, 1982.

In the meantime, the plaintiffs, on November 3, 1977 filed an "Urgent Motion For Immediate Execution of Judgment dated October 19, 1977."

All the foregoing motions were resolved by the respondent court in its Order dated January 26, 1978.

The dispositive portion of the Order reads:

"IN VIEW OF ALL THE FOREGOING, defendants' 'Motion For Reconsideration,' is hereby DENIED. For reason hereinbefore mentioned, defendant's son George Hung, is hereby declared in direct contempt of court and is hereby sentenced to pay a fine of TWO HUNDRED (P200.00) Pesos, with subsidiary imprisonment in case of insolvency. Finding the explanations given by Atty. Mamaril during the hearing of November 18, 1977, to be meritorious, this Court finds no basis to hold him in contempt. As prayed for by plaintiffs in their motion for execution, which this Court finds justified, let a writ of execution be issued in this case."

A writ of execution was issued by the respondent court on the same date. Pursuant to the writ of execution, the City Sheriff of Caloocan City, Metro Manila served a "Notice of Ejectment" and "Notice of Levy", both dated February 3, 1978, which were received by the plaintiff on February 31 1978.

Hence, this petition.

On February 8, 1978, We issued a temporary restraining order "enjoining respondent judge from enforcing the execution of the judgment dated October 19, 1977 issued in Civil Case No. 11714."

The petitioner raises two issues in this petition:

- 1) Whether the respondent Judge committed grave abuse of discretion in allowing the October 19, 1977 compromise agreement in the absence of the petitioner; and
- 2) Whether the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction in denying the petitioner's motion for reconsideration on the October 19, 1977 judgment and in granting the issuance of execution thereto upon motion of the private respondents.

Anent the first issue, the petitioner argues that the respondent Judge should not have allowed her son George Hung and her then counsel, Atty. Pastor Mamaril in her absence to enter into the October 19, 1977 compromise agreement with the private respondent Conchita Liao Tan assisted by her counsel. She further argues that "x x considering that such compromise agreement would impose onerous obligations upon Petitioner, such as a tremendous increase of rentals in the premises being leased from Private Respondents from P1,500.00 a month to P5,000.00 a month," and that said agreement contained admissions by petitioner, the respondent Judge should have required a written authority and power of attorney from her son and counsel. Her objections to the validity of the compromise agreement are premised on Article 1878 of the Civil Code and Rule 138, Section 23 of the Rules of Court.

The arguments are not well taken.

Article 1878 is found in Title X of the Civil Code on Agency. It states that a special power of attorney is necessary to compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired.

Section 23 of Rule 138 on Attorneys and Admission to the Bar governs the authority of attorneys to bind their clients and provides that "Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeal, and in all matters of ordinary Judicial Procedure, but they cannot, without special authority, compromise their clients litigation or receive anything in discharge of their clients' claims but the full amount in cash."

The requirements of a special power of attorney in Article 1878 of the Civil Code and of a special authority in Rule 138 of the Rules of Court refer to the nature of the authorization and not its form. The requirements are met if there is a clear mandate from the principal specifically authorizing the performance of the act. As early as 1906,

this Court in *Strong v. Gutierrez- Repide* (6 Phil. 680) stated that such a mandate may be either oral or written, the one vital thing being that it shall be express. And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence:

"x x x the Rules require, for attorneys to compromise the litigation of their clients, a special authority. And while the same does not state that the special authority be in writing the Court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him. (*Home Insurance Company vs. United States Lines Company, et al.*, 21 SCRA 863; 866; *Vicente vs. Giraldez* , 52 SCRA 210; 225)."

We are satisfied from the records of this case that Judge Cancio C. Garcia took the necessary precautionary measures and acted on the basis of satisfactory evidence when he allowed the compromise agreement to be executed by George Hung, petitioner's son.

The records show that prior to the October 19, 1977 hearing, the petitioner as defendant in Civil Case No. 11716 had repeatedly asked that the respondent Judge approve her proposals for a monthly increase of P500.00 starting April, 1977 and that the increases be pegged at that rate until the monthly rental reaches the sum of P5 ,000.00 on December, 1977. Such a proposal was not acceptable at the time to the private respondents. Only at the October 19, 1977 hearing did private respondent Conchita Liao Tan have a change of mind. She expressed a willingness to accommodate the proposals originating from the petitioner prompting the court to suspend proceedings and initiate the execution of the compromise agreement between the parties. Whereupon the following took place: (1) The court asked George Hung whether he was willing to enter into the compromise agreement and whether he had the authority of his mother to enter into such a compromise agreement; (2) The defendant's counsel confirmed in open court the assurance of George Hung that he had the full authority of his mother to enter into a compromise agreement; (3) After the formulation of the compromise agreement the Judge explained in Tagalog to both parties, including George Hung its terms and conditions after which the same was reduced into writing; (4) George Hung willingly signed the compromise agreement, the terms and conditions of which were those originally proposed by the petitioner herself. Hung was all the while assisted by their counsel.

There were other reasons which led the lower court to a finding that George Hung had the full authority to enter into the compromise. The court itself observed during the earlier hearings and it is not disputed that "x x x defendant Lim Pin could not decide on anything without first consulting her son." George Hung's later denial that he never manifested his authority to represent his mother was rejected by the court. As a matter of fact, this sudden turnabout of George Hung led the court to cite him for contempt. He was fined Two Hundred Pesos. The citation for contempt was never appealed.

And finally, even assuming that George Hung and the petitioner's counsel acted without authority, the compromise agreement itself was not null and void. It would be merely unenforceable, capable of being ratified. (*Dungo v. Lapena*, 6 SCRA 1007). The compromise agreement was ratified by the petitioner when, on October 24, 1977, a few days after the promulgation of the questioned judgment and before the filing of a motion for reconsideration, she filed an "Ex- Parte Motion To Withdraw Deposits" in Civil Case No. 11709, a consignment case pending before the same court between the same parties. The ex- parte motion in part reads:

xxx xxx xxx

"3. That there is another case with this court assigned in Branch I docketed as Civil Case No. 11716, for unlawful detainer, involving the same parties and subject property and in the said case, parties have entered into a compromise agreement whereby, among others, petitioner herein shall pay the accrued monthly rentals to respondent (plaintiff in the aforementioned case);

"4 . That in order to implement the aforementioned compromise agreement, it is necessary that the deposits made by petitioner be withdrawn, the same to be paid to respondent Conchita Liao Tan." (Annex "2" for the private respondents, p. 71, roll).

The second ground for this petition is consequently unmeritorious. The petitioner alleged that the respondent Judge acted with grave abuse of discretion amounting to lack of jurisdiction when he denied the motion for reconsideration of the October 19, 1977 judgment. The motion was based on the same alleged absence of authority of the petitioner's son and her counsel. A similar allegation regarding the writ of execution is likewise without merit. It is a well settled rule that a compromise judgment is final and executory and unappealable. We also note that on or before June 26, 1978 the petitioner abandoned the disputed property, notwithstanding our February 8, 1978 temporary restraining order enjoining enforcement of the writ of execution.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The temporary restraining order issued by this Court dated February 8, 1978 is LIFTED. The judgment appealed from is AFFIRMED with costs against the petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, and Relova, JJ., concur.
Melencio-Herrera, J., no part.

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