

LITTON MILLS. INC., PLAINTIFF-APPELLEE. VS. GALLEON TRADER INC., SUPREME INVESTMENT CORPORATION AND OVERSEAS INSURANCE CORPORATION, DEFENDANTS-APPELLANTS.

G.R. No. L-40867. July 26, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the summary judgment[1] rendered on 25 March 1970 by the Court of First Instance of Manila, Branch XVII, in Civil Case No. 76529, declaring defendants-appellants liable to plaintiff-appellee, in an action for recovery of sum of money with damages and attorney's fees.

On 25 July 1967, a contract of dealership was entered into between Galleon Trader, Inc. (Galleon, hereafter) and Litton Mills, Inc., (Litton, hereafter) whereby the former was authorized to distribute a particular product manufactured by the latter. In connection with said contract, Galleon incurred an obligation, with Litton amounting to P84,368.24. As proof of said obligation, Galleon executed an Acknowledgment of Indebtedness and Promissory Note[2] dated 15 August 1968 (agreement, for short) in favor of Litton. In the same document, Supreme Investment Corporation (Supreme for short) bound itself solidarily with Galleon in the payment of the obligation to Litton, while a surety bond[3] was issued by Overseas Insurance Corporation (Overseas, for short) in favor of Litton in an amount not less than 150% of P64,368.24 or P96552.36, with a minimum maturity date of four (4) months from 15 August 1968.

Under the terms of the agreement, the first P20,000 was to be paid after the document was signed, and the balance of the account was to be payable in three (3) equal monthly installments, beginning 15 September 1968. It is further provided in the agreement that should the debtor (Galleon) fail to pay any one installment on or before due date or violate any of the terms agreed upon, the whole obligation would become due and demandable, and the debtor (Galleon), and the guarantor (Supreme) would be jointly and severally liable to the creditor (Litton).

After Galleon failed to pay the first installment on 15 September 1968, the whole obligation became due and demandable. However, on 10, 12, and 30 October 1968, the debtor made partial payments amounting to P21,456.08, leaving a balance of P42,912.16.

On 2 December 1968, separate demands[4] were made upon Galleon, Supreme and Overseas. Despite said demands, no payment was made to Litton; hence, the latter filed a complaint for recovery of sum of money against defendants-appellants before the Court of First Instance of Manila, Branch XVII.[5]

After the defendants had filed their respective answers to the complaint, plaintiff Litton moved for summary judgment, on the ground that defendants' answers failed to tender any valid defense or raise an issue of fact that could give rise to a valid, defense. In support of said motion, the affidavit[6] of Godofredo Nicdao, Assistant Credit and Collection Manager of Litton Mills, Inc., was attached thereto. Defendants filed an opposition to the motion for summary judgment but they failed to controvert the allegations therein by a counter-affidavit. In a decision[7] dated 25 March; 1970, the court a quo granted the motion and, as earlier stated, a summary judgment

was rendered in favor of the plaintiff Litton, the dispositive part of which reads as follows:

“WHEREFORE, the Court hereby grants the Motion for Summary Judgment of plaintiff dated February 24, 1970 and renders judgment, ordering defendants Galleon Trader, Inc., Supreme Investment Corporation, and Overseas Insurance Corporation to pay plaintiff Litton Mills, Inc., jointly and severally, the sum of P42,912.16 with interest thereon at the rate of 12% per annum from October 30, 1968 until fully paid, and the further sum of P5,000.00 as attorney's fees, and the costs of suit. Under Art. 2234 of the New Civil Code, plaintiff is not entitled to recover exemplary damages.”

Pursuant to the decision, plaintiff Litton filed a motion for execution pending appeal. Despite opposition from the defendants, the trial court resolved to grant the execution pending appeal for the special reason that the appeal would only delay the giving of prompt relief to the plaintiff, which has established a clear claim and that it is on such proposition that a summary judgment was promulgated.[9] Defendants then filed a motion for leave to file a supersedeas bond but the same was denied.

A petition for certiorari and prohibition with preliminary injunction was filed by the defendants with the Court of Appeals, docketed as CA G.R. No. 45428-R. In their petition, defendants contended that the respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in rendering a summary judgment and in denying their motion to file a supersedeas bond to stay execution of said summary judgment pending appeal.

The Court of Appeals, after an examination of the defenses and allegations raised by therein petitioners (now defendants-appellants), found them to be frivolous, as they did not tender a genuine issue. Consequently, the Court of Appeals dismissed the petition for certiorari, in a decision[9] dated 24 September 1970, holding that the respondent Judge acted with sound discretion in rendering the summary judgment, in ordering its execution pending appeal and in refusing to accept petitioners' supersedeas bond to stay the execution of said judgment.

A petition for review of the aforesaid Court of Appeals decision was filed by defendants before this Court, docketed as G.R. No. L-32758, but the same was denied in a resolution dated 12 November 1970. The motion to reconsider said resolution was likewise denied.[10]

After the finality of the aforesaid Court of Appeals decision (in CA G.R. No. 45428-R) defendants pursued the appeal at bar (having earlier filed a notice of appeal from the summary judgment and a joint record on appeal) again with the Court of Appeals, this time docketed as CA G.R. No. 46852-R. and raising the following issues:

- I. That the trial court erred in rendering summary judgment in favor of plaintiff-appellee and against defendants-appellants, jointly and severally.
- II. That the lower court committed an error in ordering premature execution and in refusing to stay the same notwithstanding offer of supersedeas bond.

On 27 January 1971. Litton moved for the dismissal of the appeal, on the ground that the issues raised therein had already been resolved by the Court of Appeals in its decision dated 24 September 1970, in CA G.R. No. 45428-R, which had already become final and unappealable.[11] Defendants-appellants filed an opposition to said motion, alleging that the aforementioned earlier decision of the Court of Appeals was not determinative of the issue as to the propriety or impropriety of the summary judgment.[12]

Finding that the appeal involves purely questions of law, the appeal was certified by the Court of Appeals to this Court for resolution.[13]

It is the contention of plaintiff-appellee that the present appeal is an attempt on the part of defendants-appellants to indirectly review and reconsider the decision of the Court of Appeals in CA G.R. No. 45428-R, which became final and unappealable, after the petition for review on certiorari of said Court of Appeals decision was denied by

this Court.[14]

On the other hand, defendants-appellants claim that their petition earlier filed before the Court of Appeals (CA G.R. No. 45428-R) was a special civil action for certiorari and the issue raised therein was purely on the question of jurisdiction (i.e., grave abuse of discretion and excess of jurisdiction). Hence, whatever findings the Court of Appeals had made in connection with said petition, touching on the merits of the case, were merely obiter dicta and not binding on the parties.

The main thrust of defendants-appellants arguments presented in this appeal is directed at the propriety of the summary judgment, the execution pending appeal and the denial of their motion to file a supersedeas bond to stay execution pending appeal. These issues have been fully threshed out, discussed and disposed of by the Court of Appeals in resolving the petition for certiorari earlier filed by defendants-appellants for alleged grave abuse of discretion and excess of jurisdiction committed by the respondent judge in issuing the aforesaid judgment and orders. It is significant to note that it was material and, in fact, necessary for the Court of Appeals to first ascertain whether the questioned acts of the respondent judge were in accordance with law and jurisprudence, before it could resolve the issue of alleged grave abuse of discretion and excess of jurisdiction.

An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[15] It was the finding of the Court of Appeals that the questioned summary judgment, the execution pending appeal and the rejection of a supersedeas bond to stay such execution, were in accordance with law, thereby warranting the conclusion that the respondent judge did not act in grave abuse of discretion or in excess of jurisdiction. This finding is now "the law of the case" and it cannot be raised anew in this appeal. Whatever has been irrevocably established as the controlling legal rule between the parties in a case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the Court.[16] Once a judgment has become final, the issues therein should be laid to rest.[17]

For this Court to grant defendants-appellants' prayer to reverse the judgment and orders appealed from and remand the case to the trial court for a trial on the merits, would amount to a reopening of the case which could result in never ending appeals. Their arguments raised in this appeal do not attack at all the merits of the judgment finding them liable under the terms of the agreement, but persistently impugn the procedural aspect of the act of the court a quo in rendering a summary judgment, allowing execution pending appeal and denial of their supersedeas bond to stay execution pending appeal.

It clearly appears then that the instant appeal is merely a ploy on the part of defendants-appellants to delay (as, in fact, they have delayed) the execution of a judgment validly rendered against them, and the Court will not tolerate such act. To rule otherwise would amount to a denial and failure of justice.

WHEREFORE, the appeal is DISMISSED. Costs against defendants-appellants. This decision is immediately executory.

SO ORDERED.

Paras, and Sarmiento, JJ., concur.

Melencio-Herrera, J., no part.

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- [1] Penned by Judge Ameurfina Melencio-Herrera.
- [2] Joint Record on Appeal, pp. 13-17.
- [3] OIC Bond No. G (16)-00141, Joint Record on Appeal, pp. 18-22.
- [4] Demand Letters addressed to Galleon Trader, Inc., Supreme Investment Corp. and Overseas Ins. Corp., Annex “C”, C-1” and “C-2”. Joint Record on Appeal, pp. 23-27.
- [5] Joint Record on Appeal, pp. 7-13.
- [6] Joint Record on Appeal, pp. 83-90.
- [7] Joint Record on Appeal, pp. 113-116.
- [8] Order dated 23 May 1970, Joint Record on Appeal, p. 164.
- [9] Penned by Justice Jesus Y. Perez, with the concurrence of Justices Juan P. Enriquez and Andres Reyes.
- [10] Rollo, p. 13.
- [11] Rollo, p. 9.
- [12] Rollo, pp. 18-31.
- [13] Resolution dated 15 May 1975, penned by Justice Mariano Serrano, with the concurrence of Justices Ramon S. Gaviola, Jr. and Emilio A. Gancayco, Rollo, pp. 60-71.
- [14] Galleon Trader, Inc., et al. vs. Court of Appeals, et al. G.R. No. L-32758.
- [15] Butuan Bay Export Corp. v. CA. G.R. No. L-45673. April 28, 1980, 97 SCRA 297.
- [16] Sim vs. Ofiana, 135 SCRA 124.
- [17] Zansibarian Residents Association vs. Municipal of Makati, 135 SCRA 235.

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