

GOLD STAR MINING CO., INC., PETITIONER, VS. MARTA LIM-JIMENA, CARLOS JIMENA, GLORIA JIMENA, AURORA JIMENA, JAIME JIMENA, DANTE JIMENA, JORGE JIMENA, JOYCE JIMENA, AS LEGAL HEIRS...*G.R. No. L-25301. October 26, 1968*

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

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From an affirmance in toto by the Court of Appeals[1] of a decision of the Court of First Instance of Manila,[2] specifically the portion thereof condemning Gold Star Mining Co., Inc., to pay to Marta Lim Vda. de Jimena, et al., the sum of P30,691.92 solidarily with Ananias Isaac Lincallo for violation of an injunction, this appeal is taken.

It is of record that in 1937, Ananias Isaac Lincallo bound himself in writing to turn over to Victor Jimena one-half (1/2) of the proceeds from all mining claims that he would purchase with the money to be advanced by the latter. This agreement was later on modified (in a 1939 notarial instrument duly registered with the Register of Deeds of Marinduque in his capacity as mining recorder) so as to include in the equal sharing arrangement not only the proceeds from several mining claims, which by that time had already been purchased by Lincallo with various sums totalling P5,800.00 supplied by Jimena, but also the lands constituting the same, and so as to bind thereby their "heirs, assigns, or legal representatives". Apparently, the mining rights over part of the claims were assigned by Lincallo to Gold Star Mining Co., Inc., sometime before World War II because in 1950 the corporation paid him P5,000 in consideration of, and as a quitclaim for, pre-war royalties.

On several occasions thereafter, the mining claims in question were made subject-matter of contracts entered into by Lincallo in his own name and for his benefit alone without the slightest intimation of Jimena's interests over the same. Thus, on 19 September 1951, Lincallo and one Alejandro Marquez, as separate owners of particular mining claims, entered into an agreement with Gold Star Mining Co., Inc., the assignee thereof, regarding allotment to Lincallo of 45% of the royalties due from the corporation. Four months later, Lincallo, Marquez and Congressman Panfilo Manguerra, again as owners, leased certain mining claims to Jacob Cabarrus, who, in turn, transferred to Marinduque Iron Mines Agents, Inc., his rights under the lease contract. By virtue of still another contract executed by these lessors on 29 February 1952, 43% of the royalties due from Marinduque Iron Mines Agents, Inc., were agreed upon to be paid to Lincallo.

As early as August, 1939 and down to September, 1952, Jimena repeatedly apprised Gold Star Mining Co., Inc., and Marinduque Iron Mines Agents, Inc., of his interests over the mining claims so assigned and/or leased by Lincallo and, accordingly, demanded recognition and payment of his one-half share in all the royalties allocated and paid and, thereafter, to be paid to the latter. Both corporations, however, ignored Jimena's demands.

Payment of the P5,800 advanced for the purchase of the mining claims, as well as the one-half share in the royalties paid by the two corporations, were also repeatedly demanded by Jimena from Lincallo. Acknowledging Jimena's contractual claim, Lincallo off and on promised to settle his obligations. And on 14 July 1952, Lincallo

promised, for the last time, to settle everything or before the 30th day of the same month.

Lincallo, however, did not only fail to settle his accounts with Jimena but transferred on 16 August 1952, a month after he promised to pay Jimena, 35 of his 45% share in the royalties due from Gold Star Mining Co., Inc., to one Gregorio Tolentino, a salaried employee, for an alleged consideration of P10,000.

On 2 September 1954, Jimena commenced a suit against Lincallo for recovery of his advances and his one-half share in the royalties. Gold Star Mining Co., Inc., and Marinduque Iron Mines Agents, Inc., together with Tolentino, were later joined as defendants.

On 17 September 1954, the trial court issued, upon petition of Jimena, a writ of preliminary injunction restraining Gold Star Mining Co., Inc., and Marinduque Iron Mines Agents, Inc., from paying royalties during the pendency of the case to Lincallo, his assigns or legal representatives. Despite the injunction, however, Gold Star Mining Co., Inc., was found out to have paid P30,691.92 to Lincallo and Tolentino. Said corporation claimed later on (on appeal) that the in-junction had been superseded and/or dissolved on 25 May 1955 by the trial court's grant of Jimena's petition for a writ of preliminary attachment "to supersede the writ of preliminary injunction previously issued". But as the grant was conditioned upon filing of a bond to be approved by the trial court, no writ of attachment was issued because the bond offered by Jimena was disapproved.[3]

Jimena and Tolentino died successively during the pendency of the case in the trial court and were, accordingly, substituted by their respective widows and children.

After a protracted trial, the lower court rendered a decision, the dispositive portion of which reads as follows:

"IN VIEW WHEREOF, judgment is rendered:

"1. Declaring the plaintiffs -

(a) as successors in interest of Victor Jimena to be entitled to 1/2 of the 45% share of the royalties of defendant Lincallo under the latter's contract with Gold Star, Exh. D or Exh. 'D-1,' dated September 19, 1951;

(b) to a 1/2 of the 43% shares of the rental of defendant Lincallo under his contract with Jesus (Jacob) Cabarrus assigned to Marinduque Iron Mines, and his contract with Alejandro Marquez, dated December 5, 1951, and February 29, 1952, Exhs. J and J-1;

(c) and condemning defendants Gold Star and Marinduque Iron Mines to pay direct to plaintiffs said 1/2 shares of the royalties until said contracts are terminated;

"2. Condemning defendant Lincallo to pay unto plaintiffs, as successors in interest of Victor Jimena -

(a) the sum of P5,800 with legal interest from the date of the filing of the complaint;

(b) the sum of P40,167.52 which is the 1/2 share of the royalties paid by Gold Star unto Lincallo as of September 14, 1957;

(c) the sum of P3,235.64 which is the 1/2 share of Jimena on the rentals amounting to P6,471.27 corresponding to Lincallo's share paid by Marinduque Iron Mines unto Lincallo from December, 1951 to August 25, 1954; under Exhibit 'N';

(d) P1,000.00 as attorney's fees;

"3. Declaring that the deed of sale, Exh. H, dated August 16, 1952, between defendant Lincallo and Gregorio Tolentino was effective and transferred only 1/2 of the 45% (43%) share of Lincallo, and ordering Gold Star Mining Company to make payment hereafter unto plaintiffs, pursuant to this decision on the royalties due unto

Lincallo, notwithstanding the cession unto Tolentino, so that of the royal-ties due unto Lincallo 1/2 should always be paid by Gold Star unto plaintiffs notwithstanding said cession, Exh. H, unto Tolentino by Lincallo;

"4. Judgment is also rendered condemning the estate of Gregorio Tolentino but not the heirs personally, to pay unto plaintiffs the sum of P24,386.51 with legal interest from the date of the filing of the complaint against Gregorio Tolentino;

"5. Judgment is rendered condemning defendant Gold Star Mining Company to pay to plaintiffs solidarily with Lincallo and to be imputed to Lincallo's liability under this judgment unto Jimena, the sum of P30,691.92;

"6. Judgment is rendered condemning defendant Marinduque Iron Mines to pay unto plaintiffs the sum of P7,330.36;

"7. The counterclaims of defendants are dismissed;

"8. Costs against defendant Lincallo.

"SO ORDERED." (Emphasis supplied.)

From this judgment, all four defendants, namely, Lincallo, the widow and children of Tolentino, and the two corporations, appealed to the Court of Appeals. The appeal interposed by Marinduque Iron Mines Agents, Inc., was, however, withdrawn, while that of Lincallo was dismissed for his failure to file brief. Pending outcome of the appeal, the royalties due from Gold Star Mining Co., Inc., were required to be deposited with the trial court, as per order of 17 June 1958 issued by the same court. In compliance therewith, Gold Star Mining Co., Inc., made a judicial deposit in the amount of P30,691.92.

On 8 October 1965, the Court of Appeals handed down a decision sustaining in its entirety that of the trial court. Gold Star Mining Co., Inc., moved for re-consideration of said decision insofar as its adjudged solidary liability with Lincallo to pay to the Jimenas the sum of P30,691.92 "for flagrant violation of the injunction" was concerned. The motion was denied. Hence, the present appeal.

Petitioner Gold Star Mining Co., Inc., argues that the Court of Appeals' decision finding that respondents Jimenas have a cause of action against it, and condemning it to pay the sum of P30,691.92 for violation of an allegedly non-existent injunction, are reversible errors. Reasons: As to respondents Jimenas' cause of action, the same does not allegedly appear in the complaint filed against petitioner corporation. And as to the P30,691.92 penalty for violation of the injunction, the same can not allegedly be imposed because (1) the sum of P30,691.92 was not prayed for; (2) the injunction in question had already been superseded and/or dissolved by the trial court's grant of Jimena's petition for writ of preliminary attachment; and (3) the corporation was never charged, heard, nor found guilty in accordance with, and pursuant to, the provisions of Rule 64 of the (Old) Rules of Court.

We are of the same opinion with the Court of Appeals that respondents Jimenas have a cause of action against petitioner corporation and that the latter's joinder as one of the defendants before the trial court is fitting and proper. Said the Court of Appeals, and we adopt the same:

"The first assigned error is the Trial Court erred in not dismissing this instant action as 'there is no privity of contract between Gold Star and Jimena.' This contention is without merit.

"The situation at bar is similar to the status of the first and second mortgagees of a duly registered real estate mortgage. While there exists no privity of contract between them, yet the common subject-matter supplies the juridical link.

"Here the evidence overwhelmingly established that Jimena made prewar and postwar demands upon Gold Star for the payment of his 1/2 share of the royalties but all in vain so he (Jimena) was constrained to implead

Gold Star because it refused to recognize his right.

"Jimena now seeks for accounting of the royalties paid by Gold Star to Lincallo and for direct payment to himself of his share of the royalties. This relief cannot be granted without joining the Gold Star specially in the face of the attitude it had displayed towards Jimena.

"Borrowing the Spanish maxim cited by Jimena's counsel, 'el deudor de mi deudor es deudor mfo,' this legal maxim finds sanction in Article 1177, new Civil Code which provides that 'creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter (debtor) for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them (1111)'.

"From another standpoint, equally valid and acceptable, it can be said that Lincallo, in transferring the mining claims to Gold Star (without disclosing that Jimena was a co-owner although Gold Star had knowledge of this fact as shown by the proofs heretofore mentioned) acted as Jimena's agent with respect to Jimena's share of the claims.

"Under such conditions, Jimena has an action against Gold Star, pursuant to Article 1883, New Civil Code, which provides that the principal may sue the person with whom the agent dealt with in his (agent's) own name, when the transaction 'involves things belonging to the principal.'

"As counsel for Jimena has correctly contended, 'the remedy of garnishment suggested by Gold Star is utterly inadequate for the enforcement of Jimena's right against Lincallo because Jimena wanted an accounting and wanted to receive directly his share of the royalties from Gold Star. That recourse is not open to Jimena unless Gold Star is made a party in this action'."

Coming now to the violation of the injunction, we observe that the facts speak for themselves. Considering that no writ of preliminary attachment was issued by the trial court, the condition for its issuance not having been met by Jimena, nothing can be said to have superseded the writ of preliminary injunction in question. The preliminary injunction was, therefore, subsisting and evidently violated by petitioner corporation when it paid the sum of P30,691.92 to Lincallo and Tolentino.

Gold Star Mining Co., Inc., insists that it may not be penalized for breach of the injunction, issued by the court of origin, without prior written charge for indirect contempt, and due hearing, citing section 3 of Rule 64 of the old Rules of Court, now Rule 71 of the Revised Rules. We fail to see any merit in this contention, as it misses the true nature and intent of the award of P30,691.92 to Jimena, payable solidarily by Gold Star and Lincallo's estate.

Said award is not so much a penalty against petitioner as a decree of restitution, in order to make the violated injunction effective, as it should be, by placing the parties in the same condition as if the injunction had been fully obeyed. If Gold Star Mining Co., Inc., had only heeded the injunction and had not paid to Lincallo the royalties of P30,691.92, such amount would now be available for the satisfaction of the claims of Jimena and his heirs against Lincallo. By sentencing Gold Star Mining Co., Inc., to pay, for the account of Lincallo, the sum aforesaid, the court merely endeavoured to prevent its award from being rendered pro tanto nugatory and ineffective, and thus make it conformable to law and justice.

That the questioned award was not intended to be a penalty against appellant Gold Star Mining Co., Inc., is shown by the provision in the judgment that the P30,691.92 to be paid by it to Jimena is "to be imputed to Lincallo's liability under this judgment". The court thus left the way open for Gold Star Mining Co., Inc., to recover later the whole amount from Lincallo, whether by direct action against him or by deducting it from the royalties that may fall due under his 1951 contract with appellant.

That the recovery of this particular amount was not specifically sought in the complaint is of no moment, since the

complaint prayed in general for "other equitable relief".

WHEREFORE, finding no reversible error in the decision appealed from, the same is affirmed, with costs against petitioner-appellant, Gold Star Mining Co., Inc.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles, Fernando, and Capistrano, JJ., concur. Zaldivar, J., on leave, did not take part.

[1] CA-G.R. No. 23598-R.

[2] Civil Case No. 23893.

[3] Jimena's "Ex-Parte Petition for Approval of Bond for Issuance of Attachment" was denied by the trial court as per the latter's order of 14 October 1955 (Records on Appeal, pages 116-117).

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