

SEVERINO MANOTOK, PLAINTIFF AND APPELLEE, vs. MILAGROS S. LEGASPI AND EMILIO S. LEGASPI, DEFENDANTS AND APPELLANTS.

G.R. No. L-708. October 24, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On September 27, 1946, appellee prayed for the excution of the lower court's judgment ordering the appellants to vacate the premises in litigation by reason of the letter's failure to pay or deposit the rent for August, 1946, on or before September 10, invoking to said effect section 9 of Rule 72.

Appellants opposed the petition, alleging that it is not under oath and not supported by any affidavit, that an agreement has been entered into between appellee's attorney and appellant Emilio S. Legaspi to the effect that, after appeal to the Supreme Court has been perfected, the rents will be paid directly to appellee's attorney or a collector shall be sent to said appellant's residence, and that in accordance with said agreement, payments were made as appear in the following receipts issued by appellee's attorney, Exhibit A, B, B-l, C, and C-l:

"Recibi de los esposos Milagros de Legaspi y Emilio Legaspi la cantidad de ciento cinco pesos (P105) correspondientes a los alquileres de los meses de enero, febrero y marzo de 1946 por la finca que ocupa de mi cliente el Sr. Severino Manotok en la calle Avenida Rizal No. 2134, esquina Cellejon Ongsiako, en lugar de depositarlo en el expediente No. 71397 del juzgado de primera instancia de Manila, habiendo dado seguridades dichos esposos de que los alquileres correspondientes desde el 1. de agosto de 1945 hasta diciembre de 1945 se han depositado por los mismos y autorizando dichos esposos al infrascrito a retirar dichos depositos; entendiendose que mientras tanto dure la apelacion de dichos esposos ante la Corte Suprema, los alquileres seran pagados directamente por dichos esposos al Sr. Manotok directamente si el juzgado deniega la mocion de ejecucion de la sentencia.

"Manila, Filipinas, 8 de abril de 1946." (Exhibit A.)

"Recibi de los esposos Sres. Milagros y Emilio Legaspi la cantidad de treinta y cinco pesos (P35) como alquileres que deberia depositar en el asunto civil No. 71397 del juzgado de primera instancia de Manila correspondientes al mes de abril de 1946 y que por convenio se paga directamente a los demandantes mientras dicho asunto este en tramites de apelacion ante la Corte Suprema, para evitar la ejecucion entretanto.

"Manila, Pilipinas, junio 4, 1946." (Exhibit B.)

"Resibi de los esposos Sres. Milagros y Emilio Legaspi la cantidad de treinta cinco pesos (P35) como alquileres que deberia depositar en el asunto civil No. 71397 del juzgado de primera instancia de Manila correspondiente al mes de mayo de 1946 y que por convenio se paga directamente a los demandantes mientras dicho asunto este en tramites de apelacion ante la Corte Supreme, para evitar la ejecucion entretanto.

"Manila, Filipinas, junio 29, 1946." (Exhibit B-l.)

"Recibi de los esposos Sres. Milagros y Emilio Legaspi la cantidad de treinta cinco pesos (P35) como alquileres que deberia depositar en el asunto civil No. 71397 del juzgado de primera instancia de Manila

correspondiente al mes de junio de 1946, y que por convenio se paga directamente a los demandantes mientras dicho asunto este en tramites de apelacion ante la Corte Suprema, para evitar la ejecucion entretanto.

"Manila, Filipinas, 14 de agosto de 1946." (Exhibit C.)

"Recibi de los esposos Milagros y Emilio Legaspi la cantidad treinta y cinco pesos (P35) como alquileres que deberian depositar en el asunto civil No. 71397 del juzgado de primera instancia de Manila correspondiente al mes de junio de 1946, y que por convenio se paga directamente al demandante Sr. Severino Manotok mientras dicho asunto este en tramites de apelacion ante la Corte Suprema, para evitar la ejecucion entretanto.

"Manila, Fillipinas, iigosto 19, 1946." (Exhibit C-1.)

The rent for August, 1946, was deposited with the clerk of this court on September 30, 1946, after appellee's petition had been filed.

From receipt Exhibit A, it appears that it was issued for rents in arrears for the months of January, February, and March, 1946, that it was agreed by the parties that the rents deposited by defendants for August to December, 1945, may be withdrawn by the appellee from the court where they were deposited, and that the several payments made for rents, as appear in Exhibit B, B-1, C, and C-1, were made, although out of the time fixed by sections 8 and 9 of Rule 72 with the express purpose of staying the execution of the lower court's judgment.

Although under Sections 8 and 9 of Rule 72, the landlord, in whose favor a decision for ejectment has been rendered by the lower court, is entitled to ask for the execution of the lower court's judgment if the tenant fails to pay or deposit, on or before the 10th day of each calendar month, the rent for the preceding month, there is nothing to preclude him from, waiving his right. In the present case it unmistakably appears that appellee had waived the right by allowing appellants to pay the rents out of time and by accepting the belated payments for the purpose of staying the execution of the judgment.

He is now estopped from asking the execution because appellants did not pay or deposit the rent for August, 1946, on or before September 10, but only on the 30th of said month. Appellee agreed to tolerate a reasonable delay in the payment of current rents and can not now repudiate the agreement by unilateral denouncement. What action will be taken should delay happen to be unjustifiable and unreasonable, quære. Petition denied.

Moran, C. J., Feria, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

Paras and Hilado, JJ., concur in the result.

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