

CARLOS M. SISON, PLAINTIFF AND APPELLEE, VS. GONZALO D. DAVID, DEFENDANT AND APPELLANT.

G.R. No. 11268. March 24, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Plaintiff-appellee seeks a reconsideration of the decision of this Court, promulgated on January 28, 1961, upon several grounds.

The first is to the effect:

"That on page 18 of the Decision, it was erroneously stated that P1,000,000.00 was borrowed from the RFC to construct Priscila Building No. 3 when the undisputed fact was: only P100,000.00 was borrowed."

It is interesting to note that plaintiff has not cited any evidence of record in support of his claim. In fact the same is refuted by his own testimony. We quote from pages 128-129 of the transcript of the stenographic notes:

Direct Examination By Mr. Dominguez

Q—

Will you please state, Mr. Sison, why 'Building Priscila 3' located at the corner of Rizal Avenue and Ronquillo was your conjugal property with your wife, Mrs. Sison?

A.—

It was conjugal property because when we decided to construct that building, we borrowed from the RFC P1,000,000.00 and the condition of that loan was payment on installment plan of 120 installments. The RFC gave us the loan and we constructed the building and the loan is being paid from the rentals of the building, which, under the law, is conjugal."

The second decision refers to the following paragraph of our decision:

"What is more, plaintiff and his wife organized a corporation, entitled CMS Estate, Inc., to which some properties of Priscila Estate, Inc., (most of which had been originally inherited by Mrs. Sison from Margarita David) were transferred. The CMS Estate, Inc. had a capital stock of one million pesos (P1,000,000.00), divided into 1,000 shares of the par value of P1,000 each, of which 950 are non-voting preferred shares, 50 are common voting shares. All of these common voting shares, were subscribed by the plaintiff, whereas his wife had 96 non-voting preferred shares and no common shares. Four (4) other persons had each a nominal holding of one (1) non-voting preferred share. As the sole holder of all the voting common shares, plaintiff had absolute, exclusive and permanent control over the management of this new corporation. In fact the letters 'C M S', which are the initials of his name, Carlos Moran Sison, appear in the corporate name of C M. Estate, Inc. for the seeming purpose of representing to the public that plaintiff was, for all intents and purposes, the corporation itself."

Plaintiff admits the facts set forth in this paragraph, but he alleges that the last sentence therein places him "unjustly in bad light": (1) because, in using his initials in the corporate name "C M S Estate, Inc.," he was "just following the trend of the time", as illustrated by the examples set by "Andres Soriano and Company", "Puyat Steel Company", and "Soriente-Santos Company"; and (2) because his alleged purpose in organizing "C M S Estate, Inc." was noble, namely, to protect the interest of his, wife and their seven (7) children should she contract a subsequent marriage with an irresponsible man, in case plaintiff predeceased her.

It is obvious, however, that the corporate names, "Andres Soriano and Company", Puyat Steel Company," and "Soriente-Santos Company", indicate that the corporations concerned are owned and controlled by Soriano, Puyat and Soriente-Santos, respectively.

As regards petitioner's alleged purpose in creating the "C M S Estate, Inc.," suffice it to say that:

- (a) Said alleged purpose has no connection whatsoever with the choice of the corporate name.
- (b) Said purpose does not appear in the record before us, no evidence having been introduced or offered in connection therewith.
- (c) The paragraph above-quoted merely tends to indicate that it was only natural for a creditor or claimant, like defendant herein, to feel that, under the facts given, the properties of the estate of Margarita David were being placed beyond his reach and under the complete control of plaintiff herein, who, he believes, was not friendly to him.

Third ground of plaintiff's motion, for reconsideration refers to the following paragraphs of our decision:

"At any rate, the allegations in question in defendant's petition for bond were neither malicious nor unfounded. Thus, it is a fact that most, or at least, several of the most valuable properties transmitted by Margarita David to Mrs. Sison were mortgaged. Those subsequently assigned by Mrs. Sison to Priscila Estate, Inc. were encumbered altogether for P397,717.00. In order to construct the Priscila Building No. 3 on a paraphernal land of Mrs. Sison, it had been necessary to borrow ONE MILLION PESOS (P1,000,000.00) from the RFC. The Priscila Estate, Inc., of which plaintiff is the president, began its operations with an overdraft line of P236,517.00. Most of the paraphernal properties of Mrs. Sison were transferred to said corporation. In fact, the same asked that the annotation; on the certificate of title of one of those properties, of the adverse claims of the defendant and Jose Teodoro Sr., be cancelled, upon the ground that said property now belongs to the corporation, not to Mrs. Sison.

* * * * *

"Considering that plaintiff is, also, president of the Priscila Estate, Inc., most of the properties of which had come from Margarita David, and the antagonism that had arisen between him and the defendant, in the course of the proceedings for the settlement of estate of Margarita David—which antagonism was crystalized and sharpened in several litigations and many acrid, if not virulent incidents between the same parties—it is understandable, as well as natural and logical for defendant to be apprehensive about the fate of his aforementioned adverse claim and that of Jose Teodoro Sr., if the order directing the cancellation of the annotation thereof were not reconsidered and set aside, or plaintiff were not required to file a bond to guarantee the payment of said adverse claims.

The alleged gross disparity between the amount thereof and the value of said properties is immaterial to the case at bar. To begin with, the properties were heavily encumbered. Besides, the transfer thereof to Priscila Estate, Inc., the subsequent assignment of some to C M S Estate, Inc., and, then, the sales that had been made and the one sought to be made in favor of third persons, tended to place said properties beyond the reach of said claimants. Then too, bad faith should not, and cannot be imputed to creditors, much less 'presumed', merely because they

seek the maximum possible guaranties for the protection of their rights. At any rate, the alleged bad faith in the annotation of the adverse claims does not warrant an inference of bad faith in the allegations of the petition for bond." (Decision, pp. 18-21).

Plaintiff maintains that these paragraphs are irrelevant and inaccurate and should be deleted, because: (1) the amount borrowed from the RFC was P100,000.00, not P1,000,000.00; (2) the properties in question were not heavily encumbered; and (3) lack of malice on the part of the defendant was, according to our decision, unnecessary for the enjoyment of the absolute privilege accorded to the communication upon which plaintiff's action is based.

As pointed out above, the first premise is belied by the plaintiff's own testimony. With respect to the second premise, it should be noted that the immovables assigned to Priscila Estate, Inc., were originally subject to liabilities aggregating P397,770.00. According to said testimony of the plaintiff, a P1,000,000.00 loan was secured from the RFC, so that the aggregate encumbrance reached P1,397,770.00, which, by all standards, is a heavy one, even if we assume that the assessed value of said immovables in 1956 were P1,661,000.00, as estimated by plaintiff in his brief, without any evidence in support thereof. Besides, the communication complained of was filed five (5) years before, and it is a matter, of which we may take judicial cognizance, that there has been a sharp increase in the value of real estate in the City of Manila during the last decade. Again, although good faith on the part of the defendant was unnecessary for his absolute privilege, his justification in making the allegations complained of is certainly material to the determination of the question whether plaintiff had a reasonable ground to believe that he had a cause of action against said defendant.

Lastly, plaintiff maintains that the following paragraph of our decision is "obviously unfair" and should be set aside:

"As regards the fourth cause of action in said counterclaim, it should be noted that plaintiff is a member of the bar. As such, he must have known that the petition for bond in question is an absolutely privileged communication, and that the allegations therein made were pertinent and relevant to the remedy sought in said petition * * * In other words, aside from the fact that plaintiff's complaint is clearly unfounded, the record strongly indicates that it was filed with a harassing purpose. In view of the circumstances surrounding this case, plaintiff should pay the defendant a reasonable amount for attorney's fees and expenses of litigation (Article 2208 (4), Civil Code of the Philippines)." (Decision, pp. 21-22).

He says that the decision of the lower court in his favor proves that he was reasonably justified in believing that the allegations complained of were irrelevant to the issues before said court. The conclusion does not necessarily follow from the aforementioned premise. Otherwise, our statutes and Rules of Court would not have established the writ of certiorari to nullify or modify, inter alia, judicial decisions or orders rendered or issued with grave abuse of discretion. In the case at bar, the surrounding circumstances lead, to our mind, to the conclusion reached in the paragraph above quoted, the opinion of the lower court to the contrary notwithstanding.

Wherefore, the motion for reconsideration is hereby denied.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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