

LEY CONSTRUCTION AND DEVELOPMENT CORPORATION, SPOUSES MANUEL T. LEY AND JANET T. LEY, PETITIONERS, VS. UNION BANK OF THE PHILIPPINES, RESPONDENT.

G.R. No. 133801. June 27, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals setting aside two orders of the Regional Trial Court, Branch 134, Makati City, dated February 27, 1997 and June 6, 1997, which respectively denied respondent's motion for execution and its motion for reconsideration thereof.

The facts are as follows:

On October 7, 1991, respondent Union Bank of the Philippines filed a suit for collection of a sum of money against petitioners Ley Construction and Development Corporation and spouses Manuel T. Ley and Janet T. Ley. The case was filed in the Regional Trial Court, Makati City and was afterward assigned to Judge Ignacio Capulong of Branch 134. Petitioner Ley Construction, which is principally owned by the Ley spouses, had defaulted in the payment of three promissory notes with a total value of P18,833,674.86, computed together with the stipulated interest as of May 31, 1991. Respondent attached to its complaint the promissory notes, numbered 91-076, 91-476 and 91-477, which represent petitioners' withdrawals from its credit line with respondent.

In their Answer, petitioners admitted having incurred the amount claimed by respondent but averred that, after a series of meetings with the bank's officers, they were given additional time to pay their obligation. They added that the three promissory notes annexed to the complaint were in fact renewals of three previous promissory notes, numbered 90-671, 90-877 and 90-918, which Ley Construction had originally issued.[2] Petitioners did not, however, attach such promissory notes nor any affidavit of the bank officials who gave them the alleged extension.

In the meantime, respondent filed a separate case (Civil Case No. 91-2829) against the Ley spouses, James Co, Jr. and David Co for the rescission of the sale of real property. The case was initially assigned to Branch 52 of the Regional Trial Court, Makati City, but on motion of petitioners, was consolidated with the collection suit (Civil Case No. 91-2737) pending before Branch 134.

On June 24, 1992, respondent filed a Motion for Partial Summary Judgment with respect to the collection suit on the ground that the defense raised by petitioners in their Answer, i.e., that they were granted a grace period within which to settle their obligation, was a sham and unsupported by any corroborative evidence.[3] Petitioners opposed the motion, insisting that their Answer raised a genuine issue requiring a trial on the merits.[4]

On August 13, 1992, Judge Capulong issued an order denying respondent's motion.[5] A copy of the order was sent by registered mail to respondent's then counsel of record, Atty. Niceforo S. Agaton, and was received by the addressee on August 25, 1992, as shown in the registry return card.

In the meantime, a new presiding judge, Hon. Raul T. Arcangel, was appointed to Branch 134 to replace Judge Capulong who had been assigned to Caloocan City. On January 26, 1996, respondent, through its new counsel, Atty. Cynthia Prat, filed an ex-parte Motion to Resolve Motion For Partial Summary Judgment of June 24, 1992. On March 14, 1996, Judge Arcangel granted respondent's motion and ordered petitioners to pay, in solidum, the principal obligation of P18,833,674.86, computed as of May 31, 1991, plus the agreed interest and penalty charges that would accrue until the account was fully paid, and the amount equivalent to 10 percent (10%) of said sum as attorney's fees and the costs.[6] Petitioners twice moved for a reconsideration, but on both occasions, Judge Arcangel denied reconsideration.

On September 13, 1996, respondent moved for the execution of Judge Arcangel's order which had become final. By this time, Judge Capulong had been assigned back to Branch 134. On February 27, 1997, he issued an order denying respondent's motion, citing as basis thereof the earlier August 13, 1992 order he had issued denying the motion for summary judgment. On June 6, 1997, he denied respondent's motion for reconsideration.

Respondent filed a petition for certiorari in the Court of Appeals which, in its decision of February 11, 1998, set aside the trial court's orders denying respondent's motion for execution and respondent's motion for reconsideration. Hence this petition.

The sole question to be resolved is whether the Court of Appeals erred in ruling that Judge Capulong acted without or in excess of jurisdiction in denying respondents' motion for execution of the summary judgment rendered by Judge Arcangel. We hold that the appellate court did not err and that it correctly held that the trial court acted without jurisdiction in denying the execution of the order of Judge Arcangel directing petitioners to pay the claim of respondent.

First. Petitioner contends that since counsel for respondent received a copy of Judge Capulong's August 13, 1992 order denying respondent's motion for summary judgment but failed to take action against it, the same became final and should, therefore, govern the subsequent proceedings of the court.[7]

The contention is untenable. Judge Capulong's order of August 13, 1992 denying respondent's motion for summary judgment is an interlocutory order which did not finally dispose of the case.[8] An interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.[9] This prescinds from a court's inherent power to control its process and orders so as to make them conformable to law and justice.[10] It is immaterial that the judge who exercises such powers is different from the one who issued the rescinded or amended order since the former is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action.[11] The only limitation is that the judge can not act with grave abuse of discretion, or that no injustice results thereby.[12]

On this premise, there is no question that, as presiding judge of Branch 143 assigned to replace Judge Capulong, Judge Arcangel had authority to review prior interlocutory orders of the court as he did when, in response to a new motion by respondent, he granted its motion for summary judgment even though the motion had previously been denied by Judge Capulong. By granting respondent's motion for summary judgment, Judge Arcangel in effect reconsidered the earlier order of Judge Capulong denying such motion. Given the power of Judge Arcangel to reconsider the previous order of Judge Capulong upon sufficient grounds shown at anytime before final judgment, petitioners' lengthy discussion on whether respondent's counsel received a copy of Judge Capulong's earlier order becomes immaterial.

Petitioners do not contend that by granting respondent's motion for summary judgment, Judge Arcangel acted in excess or without jurisdiction or with grave abuse of discretion, or that they suffered injustice as a result thereof.

What they contend is that Judge Arcangel's resolution is nevertheless void because it was allegedly issued by mistake. In support of their contention, they point out that Judge Arcangel did not even mention and expressly set aside in his resolution the earlier August 13, 1992 order of Judge Capulong.[13]

This contention is likewise without merit. There is no question that as presiding judge of Branch 134, Judge Arcangel had jurisdiction over the parties and of the subject matter of the case. Thus, he did not only have authority to review prior interlocutory orders of the court, but he also had the power to entertain and resolve motions presented before said court, as he did with respect to respondent's motion to resolve its motion for summary judgment. Consequently, even assuming that Judge Arcangel was unaware of the earlier order issued by Judge Capulong, this fact does not render his subsequent resolution void.[14] In any case, if petitioners had seriously doubted the validity of Judge Arcangel's decision, they should have questioned this in a petition for certiorari. But this they failed to do. In none of their motions for reconsideration to Judge Arcangel's resolution did petitioners invoke the August 13, 1992 order of Judge Capulong denying respondent's motion for summary judgment. Neither did they appeal nor file a petition for certiorari to question said ruling. Instead, they allowed the decision to become final and executory. It is now too late for them to claim that the judgment is, after all, a nullity.

On the contrary, it was Judge Capulong, as found by the Court of Appeals, who acted without or in excess of jurisdiction when he refused to order the execution of Judge Arcangel's summary judgment on the merits. For indeed, a trial court cannot - apart from reconsidering its decision,[15] granting new trial[16] or allowing a relief from judgment[17] - review much less set aside a decision on the merits. Such power pertains exclusively to the appellate courts.[18] Judge Arcangel's resolution of March 14, 1996 granted all the reliefs prayed for by respondent in its collection suit, i.e., it ordered petitioners to pay their indebtedness to respondent together with penalties, interests and attorney's fees. It, thus, disposed of all the issues and constitutes a judgment on the merits which finally determined the rights of the parties upon the issues submitted by specifically granting the remedy sought by respondent.[19] Now, once a judgment attains finality, it becomes the ministerial duty of the trial court to order its execution.[20] The fact that this collection case is consolidated with Civil Case No. 91-2737 for rescission of sale of real property is not a ground for staying the execution of the judgment therein as the latter is an entirely different action which have no bearing on the other.

Second. The Court of Appeals correctly considered the case proper for summary judgment. The pertinent provisions of Rule 35 state:

SEC. 1. Summary judgment for claimant. -- A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

SEC. 3. Motion and proceedings thereon. -- The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admission on file show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Under these provisions, a summary judgment is proper where, upon a motion filed after the issues had been joined and on the basis of the pleadings and papers filed, the court finds that there is no genuine issue as to any material fact except as to the amount of damages. A genuine issue has been defined as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is sham, fictitious, contrived and patently

unsubstantial so as not to constitute a genuine issue for trial.[21] In this case, the Court of Appeals succinctly stated why there was no genuine issue raised:[22]

[Petitioners] admitted their indebtedness . . . to [respondent]. The only defense interposed by [them] was that [they], in a series of conferences made in the office of [respondent] Corporation, were granted extensions of time within which to pay and/or settle said accountabilities. However, [petitioners] failed to indicate and specify in their Answer to the complaint who the officers were [through] whom [respondent] granted extensions, when said extensions were granted and the periods of said extensions, if at all they were granted. [Petitioners] did not even bother to submit any affidavits of . . . [the] officers of [r]espondent Corporation alluded to by [them] in their Answer to enable the [trial court] to ascertain whether or not the defense of [petitioners] was, at least, plausible and not contrived or sham. It would have been facile for [petitioners] to . . . submit affidavits of said officers narrating particulars of the defense [raised] by [them], specifically indicating the names and/or identities of the officers whom [they] allegedly conferred. . . .

it is noteworthy that, in their present petition, petitioners are silent on the question of whether summary judgment is proper in this case.

Admittedly, there is nothing in the records which indicates that Judge Arcangel conducted a hearing before he resolved respondent's motion for summary judgment. Nevertheless, as explained in *Carcon Development Corporation v. Court of Appeals*,[23] in proceedings for summary judgment, the court is merely expected to act chiefly on the basis of what is in the records of the case and that the hearing contemplated in the Rules is not de rigueur as its purpose is merely to determine whether the issues are genuine or not, and not to receive evidence on the issues set up in the pleadings.[24]

In the case at bar, petitioners' Answer to respondent's Complaint was not verified and was not supported by any affidavit to support its allegation that petitioners were given an extension of time to effect payment of their obligation. In view of the fact that they admitted having incurred the obligation which is the basis of the complaint, a hearing would have served no pertinent purpose. The records already provide sufficient basis for the court to resolve respondent's motion. Thus, we find that even if the trial court did not conduct a hearing, this fact would not affect the validity of the summary judgment rendered by Judge Arcangel.

Neither does the fact that respondent's motion to resolve its motion for summary judgment was filed *ex parte* affect the validity of Judge Arcangel's resolution. The requirement in Rule 35, §3 that the opposing party be furnished a copy of the motion 10 days before the time specified for the hearing applies to the motion for summary judgment itself and not to the motion to resolve such motion. Notably, petitioners had, as far back as July 10, 1992, already filed its opposition to respondent's motion for summary judgment. They twice sought reconsideration of the resolution or summary judgment, albeit denied by the court on both occasions. Thus, it could not be said that they were deprived of the opportunity to question the motion.

Third. It is noteworthy that although petitioners admit their liability to respondent, this case has been pending in the courts for nine years (the complaint was filed on October 7, 1991). Even on the ground of justice and speedy disposition alone, any further delay in the disposition of the case, which would result were the judgment set aside, should be avoided.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

- [1] Per Justice Romeo J. Callejo, Sr. and concurred in by Justices Angelina Sandoval Gutierrez and Rodrigo V. Cosico.
- [2] CA Petition, Annex D, pp. 1-4; CA Rollo, pp. 41-44.
- [3] Id., Annex E, pp. 1-4; id., pp. 45-48.
- [4] Id., Annex N, pp. 1-3; id., pp. 89-91.
- [5] Petition, Annex C; Rollo, p. 52.
- [6] Id., Annex D, p. 2; id., p. 54.
- [7] Id., pp. 7-9; id., pp. 20-22.
- [8] See *Halili v. Court of Industrial Relations*, 22 SCRA 785 (1968)
- [9] See *Manila Electric Co. v. Artiaga and Green*, 50 Phil. 144 (1927)
- [10] Rules of Court, Rule 135, §5(g)
- [11] *Caluya v. Ramos*, 79 Phil. 640 (1947)
- [12] *Gonzales v. Gonzales*, 81 Phil. 38 (1948)
- [13] Petition, pp. 9-10; Rollo, pp. 22-23.
- [14] See *Araneta and Ley v. Commonwealth Ins.*, 103 Phil. 522 (1958); *Chereau v. Fuentebella*, 43 Phil. 216 (1922)
- [15] 1997 Rules Of Civil Procedure, Rule 37, §1.
- [16] Id.
- [17] Rule 38, §1.
- [18] *Miranda v. Court of Appeals*, 71 SCRA 295 (1976); *Buenaventura v. Garcia*, 78 Phil. 759 (1947)
- [19] See *Development Bank of the Philippines v. Tañada*, 56 SCRA 470 (1974)
- [20] *Buenaventura v. Garcia*, supra; *Service Specialists, Inc. v. Sheriff of Manila*, 145 SCRA 139 (1986)
- [21] *Excelsa Industries, Inc. v. Court of Appeals*, 247 SCRA 560 (1995)
- [22] CA Decision, pp. 12-13; Rollo, pp. 41-42.

[23] 180 SCRA 348 (1989)

- [24] Id. at 352.

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