

BARTOLOME PUZON, PETITIONER, VS. HON. MANUEL P. BARCELONA AND WILLIAM UY, RESPONDENTS.*G.R. No. 19624. April 30, 1964*

Ponente: LABRADOR, J.

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This is a petition for certiorari to reverse a special order of Judge Manuel P. Barcelona of the Court of First Instance of Manila in Civil Case No. 36310 of said court, authorizing the immediate execution of the judgment pending appeal, upon the amount of P145,385.00 in the custody of the Bureau of Public Highways previously garnished upon a bond of P150,000.00. The petition also contains a prayer for the issuance of a writ of preliminary injunction. Upon filing of the petition We granted the writ of preliminary injunction prayed for.

The facts necessary for the understanding of the petition may be briefly stated as follows: Petitioner Bartolome B. Puzon is a public works contractor, having contracts with the Bureau of Public Highways for the construction of roads and bridges. In the year 1956 Puzon and William Uy entered into a contract of partnership, the UP Construction Company, whereby they, as partners, were to subcontract the contracts for the construction of public highways and bridges that Puzon had obtained from the Bureau of Public Highways. The partnership was capitalized at P100,000.00, each partner contributing P50,000.00.

On March 18, 1959 Uy filed a second amended complaint against Puzon alleging that Puzon had not complied strictly with his obligations towards the partnership and that he tried to appropriate for himself the amounts received in payment of the sub-contracts performed by the partnership. Judge Barcelona rendered a decision on December 2, 1961 declaring the UPConstruction Company dissolved and ordering the defendant to pay Uy the amount of P115,102.13, P200,000.00 as unrealized profits, and P5,000.00 as attorney's fees. Upon the rendition of the judgment Uy presented a motion for immediate execution of the judgment; the execution was issued against the amount of P145,358.00 constituting the 10% retention fund of the Bureau of Public Highways. The amount was previously garnished upon plaintiff's bond.

The special reasons given in the order are that plaintiff has long been deprived of his investment, not to say his profits; that the execution against the 10% retention fund of the Bureau of Public Highways is the only means of obtaining reparation of his investment and advances to the defendant, and that the execution will not prejudice the Bureau because Puzon had filed an indemnity bond to the Bureau on the amount of P600,000.00, etc.

Upon the issuance of the order, the Solicitor General, representing the Bureau of Public Highways, filed a motion in intervention dated May 24, 1962, calling attention to the fact that on February 24, 1962 the Commissioner of Public Highways had sought to reconsider the execution order, on the ground that the amount sought to be executed represents the 10% retention fund authorized by law to be retained by the Bureau of Public Highways, which fund was to answer for claims of the Government against the contractor, such as taxes, repairs and materials furnished by third parties. But the court overruled the intervention and the objection to the execution ordered on the ground that the Bureau of Public Highways is not a party to the action and is sufficiently protected

by the performance bond given by the contractor, the defendant Puzon.

Objection was also made to the execution against the 10% retention fund because on February 5, 1962 the contractor, Bartolome Puzon, had already requested that the retention fund be applied for the payment of the various bills for spare parts, rentals and repair of returned equipment, etc., that had been used in the construction of the highways. The judge, notwithstanding the objection, held that the Bureau of Public Highways is sufficiently protected by the performance bond of Puzon and the additional P160,000.00 bond that Uy had given when he garnished the fund.

It is urged in the petition for certiorari filed before Us that the reasons given by the court in its special order granting the execution are not the special reasons required by the Rules of Court for the issuance of a writ of execution pending appeal.

For its part the Republic of the Philippines, thru the Solicitor General, has filed a motion for intervention, alleging that the retention fund in the Bureau of Public Highways was to be applied for payment for the use of various equipments borrowed by the contractor Puzon from the Bureau of Public Highways. Attached to the motion for intervention are the various contracts of lease of equipment entered into by Puzon to secure the equipment from the Bureau of Public Highways in the construction work. The motion for intervention also attaches a summary of unpaid obligations of Puzon consisting of P61,839.67 as unpaid rentals, P161,705.43 as spare parts, services, etc., P13,596.00 as costs of repairs, labor claims amounting to P36,212.86, etc., totalling P640,862.91. (See Annex "D" to Petition In Intervention).

The accounts between Uy and Puzon are numerous and voluminous and cannot be promptly settled. Assuming that Uy is entitled to a judgment, his right to said judgment is a mere contractual right, the existence of which depends upon the success of the subcontracts that the partnership had entered into. Uy is less than an ordinary creditor because his right to any amount depends upon the the result and success of the subcontracts that they had undertaken. His right depends upon the existence of profits in the subcontract, whereas the Bureau's right of retention is considered as a part of the expenses of the contractor. There cannot, therefore, be a special reason why he should be entitled to the immediate execution of the judgment.

But assuming that he has a right to immediate execution, still such right cannot be enforced against the 10% retention fund in the possession of the Bureau of Public Highways, the right of the Bureau for services rendered and materials furnished by third persons being a legal lien established in the original contract for the construction and is recognized by law.

For all the foregoing considerations We find that the reasons adduced by the court for granting execution pending appeal are not sufficient to justify the immediate execution of the judgment. Furthermore, the execution cannot prevail over the right of the intervenor, the Bureau of Public Highways, to the 10% retention fund because such right is guaranteed by the original contract with the contractor and is recognized by law as a valid lien.

WHEREFORE, the writ prayed for is hereby granted and the writ of preliminary injunction issued by Us is hereby made permanent. With costs against the respondent Uy.

SO ORDERED.

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

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