

**EUSEBIO M. LOPEZ, EUSEBIO LOPEZ, JR., DEOGRACIAS P. LIRIO,
SOLEDAD LIRIO-DOLOR AND RENATO C. DOLOR, IN HIS CAPACITY
AS JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE
LATE...**

G.R. No. 20697. December 24, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Sometime in March, 1957, David and Adelaida Minsberg, private-parties respondents herein, bought a parcel of residential land from the petitioners. On March 25, 1957, the first payment in the amount of P900.00 was handed and on April 1, 1957, the amount of P1,100 was paid to complete the down payment. On the latter date, a written contract was executed, wherein it was covenanted that upon completion of the payment of P7,560.00, the certificate of title on the lot will be issued to private-parties respondents. In July, 1958, the Minsbergs received from petitioners a written notice, to the effect that if they (private-parties respondents) fail to pay the balance of P5,560.00 in two weeks time, the down payment of P2,000.00 will be forfeited and they would lose all their rights over the lot. On July 31, 1958, the Minsbergs paid the balance and, in turn, demanded for the title. The petitioners, however failed to deliver the title, in spite of the full payment of the purchase price, but told the respondents to wait for a few days, inasmuch as the necessary papers were in the process of preparation. In 1960, the Minsbergs began the construction of their house on the lot, and when their estimates failed to complete the house, they again sought the issuance of the title, in order to enable them to mortgage the same and obtain funds. Instead of giving the title, petitioners issued a mere certification, stating that they (Minsbergs) have paid in full the purchase price of the lot. The certification did not merit the acceptance by the banks of the application for loan, with the lot as security.

Claiming that they suffered damages due to the failure of the petitioners to issue to them the title of the lot, the Minsbergs instituted Civil Case No. 49628 with the CFI of Manila, presided by respondent, the Hon. Carmelino Alvendia, with the following petitoria:

"WHEREFORE, in view of all the foregoing, it is respectfully prayed that in the case judgment be rendered against defendants and in favor of the plaintiffs:

- Ordering the defendants to deliver to plaintiffs the certificate of title on Lot No. 5, Block 7, St. Ignacius Village Subdivision Plan SIVS;
- Ordering defendants to pay plaintiffs damages in the sum of P4,500.00 and attorney's fees in the sum of P4,500.00;
- Ordering defendants to pay the costs of suit;
- And granting to plaintiffs such other reliefs and remedies which may be warranted by the circumstances."

In the same complaint, it was alleged that the reason why petitioners herein were not able to deliver the title upon demand, was the fact that the title of the whole subdivision was with the GSIS, the land, part of which is the lot in question, having been mortgaged to secure a loan of P1,600,000.00, a fact not communicated to the Minsbergs.

Petitioners herein presented separate answers and various defenses, which we shall refrain from discussing, since they are not necessary for the resolution of the present proceedings. After the joining of the issues, an agreement was reached by the parties, thru the intervention of the Court, which was made the basis of a decision in the case. The dispositive part of the decision, dated August 24, 1962, states:

"While this case was being tried and after the plaintiffs have rested their case, the parties through the intervention of the Court, having arrived at the following agreement:

That the defendants shall deliver to the plaintiffs the torrens title to Lot No. 5, Block No. 7 of the consolidated subdivision plan (LRC) Pcs-359, containing 540 square meters, more or less and described as follows:

XXXXXXX

WHEREFORE, judgment is rendered, sentencing the defendants jointly and severally to deliver to the plaintiffs a torrens title issued in the name of Adelaida Saguban-Minsberg of legal age, Filipino, married to David Minsberg and with postal address at Room 408 Maria Dolores Building, Manila, covering Lot 5, Block 7 of the Consolidated subdivision plan (LRC) Pcs-359 and to jointly and severally pay the plaintiffs the sum of P3,500.00 as damages. Both said title and damages should be delivered to the plaintiffs not later than September 21, 1962- Should the defendants fail to deliver the title and/or the amount of P3,500.00, the amount of damages shall be automatically raised to P10,000.00 and a writ of execution of this decision with the damages raised to P10,000.00 shall immediately be issued."

Under date of September 28, 1962, the Minsbergs presented a "Motion for Execution," it appearing that although the title was delivered, one of the checks issued to cover the P3,500.00 damages was dishonored by the drawee bank with the notation "no arrangement", when presented on September 26, 1962. There was failure to live up to the conditions of the agreement as embodied in the decision and, therefore, a motion for execution, for P10,000.00 was presented. Petitioners herein filed on October 4, 1962, a Manifestation and/or Opposition, contending that they have substantially complied with the judgment; that the non-cashing of the check by the drawee bank, was due to a mere "oversight" on the part of the cashier of the bank. A statement dated October 4, 1962 showing that there was an oversight, was attached to the manifestation and/or opposition, the contents of which read:

This is to certify that Republic Bank Check No. 152597, drawn by Mr. Eusebio Lopez, Jr., in favor of Mr. David Minsberg on September 21, 1962 in the sum of P3,277.38, is a good and valid check and the dishonor of the said check is a pure case of oversight. The herein described check can, therefore, be presented to us for payment anytime and/or redeposited by the payee, Mr. David Minsberg.

"This certification is issued upon the request of Mr. Lopez.

(Sgd.) Simplicio Manalo

Cashier"

Simultaneously with the filing of the Manifestation and/or Opposition, the petitioners herein deposited with the trial Court the amount of P3,277.38, in cash, the value of the dishonored check, to show good faith, and prayed that the motion for execution be denied.

On December 4, 1962, the respondent Judge issued an Order, the pertinent portions of which states:

"In view of the foregoing considerations, the Court holds that the defendants failed to comply with the

requirements in the decision that they pay the plaintiff as damages the sum of P3,500.00 not later than September 21, 1962. Having failed in the said requirement, the second portion of the decision automatically comes into effect, namely, that the amount of the damages should be raised to P10,000.00.

WHEREFORE, let a writ of execution for the sum of P10,000.00 be issued against the defendants in the above-entitled case."

Against the above Order, petitioners presented on December 11, 1962, an Urgent Motion for Reconsideration and to Lift the Writ of Execution, stating that at the time of the issuance, delivery and presentment of the dishonored check, there was already an arrangement between the petitioners and the Republic Bank, thru Atty. Eusebio Lopez, Jr.; that the dishonor was due to an oversight and/or honest mistake; that upon learning of the dishonor, they informed private-parties respondents, thru counsel, to redeposit or present for payment the check with drawee bank; and that on October 5, 1962, before the issuance of the execution, they deposited with the Court the full amount of the dishonored check; that there was a substantial compliance, with the decision. In the same motion, petitioners prayed that they be allowed to present evidence to prove an honest mistake or oversight and/or excusable negligence. On December 12, 1962, an Urgent Ex-Parte Motion to Suspend Proceedings on Writ of Execution was filed by petitioners, claiming that, with the death of Faustino Dolor, his ownership over the Dolor's Pharmacy, which was being levied upon, had ceased, and, therefore, could not be reached by the Writ of Execution and the Writ should be lifted over the properties of said Pharmacy. On December 14, 1962, the respondent Judge issued an Order, denying the motion to suspend proceedings on the writ of execution. On December 15, 1962, the respondent Court issued the following Order:

"In using a check, the defendants have decided to effect a method of satisfying their obligation which is fraught with danger, to say the least This is because plaintiffs could have refused to accept the check. The check not being currency is not a legal tender and a creditor could not be compelled to accept it in payment of his credit.

"Finally, the Civil Code of the Philippines, provides:

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"The delivery of the promissory notes payable to order, or bills of exchange or other merchantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired." (Art. 1240, pars. 1 & 2, Civil Code of the Philippines.)

"The foregoing legal provision, applied to the undisputed facts in this case, will clearly indicate that it is immaterial whether or not the defendants had money with the drawee bank sufficient to cover the value of the check they have issued for P3,500.00 on September 21, 1962. Hence, the offer to introduce evidence to substantiate this alleged fact should be as it is hereby denied.

"In view of the foregoing considerations, the Court hereby denies the motion for reconsideration and to lift the writ of execution."

Petitioners came to this Court, on a Petition for Certiorari, Mandamus and/or Prohibition with Preliminary Injunction. They claim that the respondent Court in issuing the order of December 4, 1962, directing the issuance of a writ of execution; the Order of December 12, 1962, denying the motion for reconsideration and to lift the writ of execution; the Order denying the motion to suspend the proceedings and in not allowing them to introduce evidence to show the oversight by the cashier of the drawee bank, in not honoring the checks issued in payment of the damages, acted with grave abuse of discretion and/or committed an oppressive exercise of authority, for which they could not appeal, or have any other plain, speedy and adequate remedy in the ordinary course of law. They prayed that a Writ of Preliminary Injunction be issued, directed against the respondent Sheriff of Manila, to desist from further proceeding on the Writ of Execution dated December 8, 1962; and enjoining the respondent Judge to

refrain from issuing an alias Writ of Execution; and for the annulment of the orders complained of.

On January 17, 1963, this Court gave Due Course to the petition at bar and issued a preliminary writ, as prayed for. Thereafter, an Urgent Petition to Lift Garnishment was granted by this Court, upon the posting of an increased bond of P10,000.00

The respondents, answering the petition, after the usual admissions and denials, contended that there was no grave abuse of discretion practiced by the respondent Judge, in issuing the orders complained of, claiming that the decision was based on a compromise agreement entered into by the parties, after the respondents had rested their case. They also point out that they claimed P49,500.00 as damages and attorney's fees, and the sum of P10,000.00 was provided in the decision as damages upon the failure of the petitioners, to comply with the conditions of the compromise agreement and said decision.

Under the facts obtaining in the case, We find no abuse of discretion, much less a grave one, committed by respondent judge, in issuing the Orders complained of. The jurisdiction of the trial court to take cognizance of the case is conceded. Petitioners admit their failure to live up to the terms of the judgment, which was rendered, pursuant to a compromise agreement and where time was of the essence. They attribute, however, their failure, to an alleged "mere oversight" on the part of the cashier of the drawee bank, in not cashing the check when presented and contend, by such "mere oversight", that they have substantially complied with the judgment. We find the contention untenable. From the rendition of the decision, to the date they were to comply with the same, one (1) month transpired. Within the span of such time, petitioners could have ascertained that the arrangement they now claim to have made with the Bank, was known to its cashier who did not state at all in his certification that there was such a previous arrangement. The respondent Court did not simply believe that there was an arrangement; and this disbelief is strengthened by the facts and circumstances of record. Likewise, petitioners asked the respondent Court to allow them to submit evidence to show the supposed "oversight", but said court did not deem it necessary to do so. Granting for the purposes of argument, that the said acts were erroneous, still, they were merely mistakes of fact or errors of judgment and/or of law, not within the reach of a writ of certiorari, much less a writ of mandamus. Having failed to comply with the decision, petitioners have no cause to lament. If petitioners did not agree with the orders complained of, they could have appealed thereon. Certiorari is not a substitute for appeal. And, the bank, having accepted the alleged arrangement, had constituted itself as the agent of the petitioners. The principal is responsible for the acts of the agent, done within the scope of his authority, and should bear the damages caused upon third parties. If the fault (oversight) lies on the bank, petitioners are free to sue said bank for damages occasioned thereby.

Premises considered, the petition should be, as it is hereby Dismissed, for lack of merits. The Writ of Preliminary Injunction earlier issued, is dissolved. Costs against petitioners, in both instances.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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