

ADRIANO PANLILIO, PLAINTIFF AND APPELLANT, VS. TEODORO DAVID, JORGE B. VARGAS, AS DIRECTOR OF LANDS AND SILVERIO APOSTOL, AS ACTING SECRETARY OF AGRICULTURE AND NATURAL RESOURCE...*G.R. No. 26201. March 14, 1927*

Ponente: OSTRAND, J.

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On April 9, 1924, the defendant Teodoro David filed an application in the Bureau of Lands for a lease of a tract of land, the property of the Government of the Philippine Islands, situated in the municipality of Hermosa, Province of Bataan, and embracing an area of 229 hectares. Invitation for bids for rent was duly published and the bids were opened on August 29, 1924, the date specified in the invitation. The applicant, Teodoro David, submitted a bid for a rent of P720 per annum and the only other bidder the plaintiff, Adriano Panlilio, offered to pay a rent of P2,600 per annum. The bid of David was accompanied by an uncertified check for P360, drawn on the Philippine National Bank to cover the rent for six months; Panlilio's bid was accompanied by a check on the same Bank for the sum of P1,300, bearing on its face the letters "O. K.—S. M." Taking advantage of the privilege accorded the applicants for leases to taking over the bid of the highest competitive bidder, David raised his bid to equal that of Panlilio and immediately tendered the sum of P940 in actual cash, which, with his check for P360, made a total of P1,300. Both the money and the check were accepted by the Bureau of Lands and the check was later on cashed and the proceeds deposited in the Insular Treasury. An abstract of the bids were made in which it was noted that the lease was awarded to David.

Two days after the opening of the bids and the award to David, Panlilio filed a written protest contesting the validity of the bid of David on the ground that the check enclosed with the bid was not certified or accepted by the bank against whom it was drawn. The matter was referred to the Attorney-General for an opinion and, under the mistaken impression that the check accompanying Panlilio's bid was certified, the Attorney-General ruled that his bid should have been accepted and that the bid of David was invalid, it being accompanied by an uncertified check. Following this ruling, the Director of Lands cancelled the award to David and awarded the lease to Panlilio.

A petition to set aside this award was filed by David on the ground that Panlilio's check was also uncertified. The Director of Lands thereupon set aside the award to Panlilio and held "that the land be again considered subject to lease or sale as if no bid or auction has therefor been held." Both of the bidders appealed from this ruling to the Secretary of Agriculture and Natural Resources, who affirmed the ruling.

David, thereupon appealed to the Governor-General, who referred the matter back to the Secretary of Agriculture and Natural Resources with the statement that the acceptance of David's check, the act of cashing it in the bank and the deposit of its amount in the Insular Treasury cured its defects. The secretary transmitted the papers to the Attorney-General, who, after having been apprised of new facts which were not submitted to him when his

previous opinion was rendered, concurred in the view entertained by the Governor-General. The Attorney-General further held that, with the actual adjudication or award of the lease to the applicant David, all the necessary steps had been taken to complete the concession and that there was nothing left to be done except the execution of the contract of lease. Following this opinion, the Director of Lands awarded the lease to the applicant David, but, before a formal document of lease was executed, Panlilio brought the present action, a suit for an injunction restraining the defendants, the Director of Lands and the Acting Secretary of Agriculture and Natural Resources from executing the contract of lease of the property to David, and for a writ of mandamus compelling said defendants to award the lease to the plaintiff and to execute the corresponding contract. In connection with his answer the defendant David set up a cross-complaint for damages for the delay caused by the plaintiff in preventing the immediate execution of the lease.

The court below rendered judgment holding that both of the bids in question were invalid inasmuch as none of the checks accompanying them was certified or accepted in accordance with law; that the requirements of the regulations of the Bureau of Lands that such checks must be accepted or certified, could not be waived by the Director of Lands, and that both bids being invalid, there could be no valid award to either of the parties. From this judgment both of the parties appealed.

The decision of the court below rests on the following provision of paragraph 10 of Administrative Order No. 3, series 1923, as follows:

"No bid for any land advertised for sale or lease shall be considered as duly submitted unless it is accompanied by cash, certified check or postal money order payable to the Director of Lands for the minimum amount stated in the advertisement. * * *"

The provision is in the nature of an office rule. Its purpose is evidently to prevent the presentation of frivolous bids and to avoid difficulties in the collection of the amount of an accepted bid. The administrative order in which it occurs is authorized by the Public Land Act and, within its scope, it is equivalent to a statutory provision to the same effect. The Director of Lands had, therefore, an undoubted right to reject both of the bids in question on the ground that they were not accompanied by cash or by post-office money orders or by certified checks. We may say in passing that the contention of Panlilio that the letters "O. K.," with the initials of the cashier of the bank written on the face of his check was a sufficient certification is without merit; certifications of checks are not made in that manner in modern banking practice.

But, while the Director of Lands had the right to reject the bids, it does not necessarily follow that, if he accepted one of them, a merely formal defect in the accepted bid would vitiate the award. Regulations as well as statutes must be given a reasonable construction and it seems clear that the provision here in question is merely directory and not mandatory. When David's bid was accepted and the amount of the bid was paid and covered into the Insular Treasury, the Government could hardly be heard to say that the award was invalid because the amount paid was originally represented in part by an uncertified check. There would be no substantial reason for so holding and it cannot have been the intention of the framers of said provision that it should be so interpreted. We, therefore, hold that though the original bid of David was not made in the manner and form prescribed by the regulations, the acceptance of it together with the payment of its amount cured the defect complained of and that, consequently, the award to David was valid.

David's claim for damages cannot be sustained. The delay in the execution of the lease is primarily due to his own negligence in failing to observe the regulations governing bids for leases of Government lands. It is further to be noted that the present action was apparently brought in good faith; that the principal question involved is debatable; and that the case is one of first impression. It is, therefore, not improbable that, even in the absence of a restraining order, the Director of Lands and the Secretary of Agriculture and Natural Resources would, as a matter

of courtesy to the courts, have refrained from executing the lease until the final judicial determination of the controversy; in the circumstances, they had a perfect right to do so.

The judgment appealed from is reversed, except as to the revocation of the preliminary injunction, and it is hereby declared that the award of the lease in question to the defendant Teodoro David is valid and that it takes priority over the award subsequently made to the plaintiff Adriano Panlilio. The cross-complaint for damages presented by the defendant Teodoro David is dismissed. The plaintiff will pay the costs of both instances. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

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