

**WILLY CARSON AND SPS. RANTE FABOL AND TERESITA CARSON,
PETITIONERS, VS. HONORABLE GREGORIO D. PANTANOSAS, JR.,
JUDGE OF THE MUNICIPAL TRIAL COURT IN CITIES, BRANCH II,
CAGAYAN D...**

G.R. No. 75934. December 15, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an original action for certiorari and prohibition with a prayer for preliminary injunction filed by the petitioners with this Court questioning the order of the Municipal Trial Court of Cagayan de Oro City. The petition asks for the review and the annulment of the order of the respondent judge issuing an alias writ of execution arising from a judgment based on a compromise agreement.

The antecedent facts are as follows:

On July 27, 1983 a complaint for unlawful detainer with preliminary injunction docketed as Special Civil Case No. 9240 was filed by the private respondent Elpidio Quirante against the petitioners with the Municipal Trial Court of Cagayan de Oro City, Branch II presided by respondent Judge Gregorio D. Pantanosas, Jr. The complaint prayed for the ejectment of the defendants due to unpaid daily rentals of three (3) barbecue stalls owned and operated by Elpidio Quirante, the payment of attorney's fees in the amount of P2,000, P500.00 for litigation expenses, P5,000 as unearned income and P10,000 as moral damages.

On August 23, 1983, the petitioners filed their answer.

On February 2, 1984, the parties agreed to enter into a compromise agreement which was duly submitted and approved by the court on February 10, 1984. The agreement reads as follows:

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"WHEREAS, the ground for the prayer for ejectment alleged in the above-captioned complaint is defendants' failure to pay the agreed rental in the latter's lease of three (3) units of barbeque stalls;"

"WHEREAS, defendants have admitted the allegations with respect to their obligation to pay, jointly and severally, unto the plaintiff the unpaid rental and the unpaid balance of stall equipments in the total amount of TWENTY FIVE THOUSAND (P25,135.00) (sic) PESOS, Philippine Currency, as of January 31, 1984;"

"WHEREAS, defendants are willing to pay the said unpaid rental but that they are not capable to pay the whole amount at one time to satisfy the claim of the plaintiff;"

"WHEREAS, plaintiff agrees to accept payments according to the following schedule-

First payment of TWO THOUSAND (P2,000.00) PESOS, Philippine Currency, payable upon the signing of this Agreement;

The balance of P23,135.00 shall be payable in installments of at least P50.00 per day, collectible daily, until the aforesaid balance is fully paid;

"WHEREAS, it is likewise agreed that in the event that the defendants fail to pay any of the above-stated daily installments, they will be given a grace period of five (5) days, after which plaintiff could eject the defendants and take possession of the barbeque stalls subject of this case;"

"WHEREAS, defendants had also agreed that beginning February 7, 1984, they will start to pay regularly unto the plaintiff, their daily rental for the lease of the stalls of the plaintiff in the amount of ONE HUNDRED FIVE (P105.00) PESOS, Philippine Currency, collectible daily without need of demand; that default in the payment of any of the daily rentals for a total period of ten (10) days will entitle the plaintiff to immediately take possession of the rented stalls and demand from the defendants to pay, jointly and severally, all unpaid daily rentals, as well as the unpaid monthly installments;"

"WHEREAS, in consideration of all the foregoing stipulations, plaintiff agrees to abandon all other claims for attorney's fees, damages and cost of this proceedings;"

"WHEREFORE, in view of the foregoing, the parties hereby jointly pray that the foregoing Compromise Agreement be approved and render judgment based on said agreement as follows:

1. Ordering the defendants to pay plaintiff the sum of P2,000.00 at the time this Agreement is signed by the parties and submitted to the Honorable Court for approval;
2. Ordering defendants to pay the balance of P23,135.00 in installments at P50.00 a day, payable/collectible daily;
3. Ordering defendants to pay plaintiff the daily rental of P105.00 for the lease of the barbeque stalls starting February 1, 1984;
4. Dismissing plaintiff's claims for attorney's fees, damages and other reimbursable expenses and deny plaintiff's prayer for defendants' ejection from the premises presently leased by them from the plaintiff, provided all the stipulations contained in the foregoing Compromise Agreement are complied with." (At pp. 53-54, Rollo)

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Meanwhile, China Banking Corporation filed an action for collection of a sum of money against Elpidio M. Quirante and Gary B. Wahing with the Regional Trial Court of Cagayan de Oro City, Branch XXIII docketed as Civil Case No. 9088. Since Elpidio M. Quirante did not file his answer, judgment was rendered against him on March 8, 1984. He was ordered to pay China Banking Corporation the amount of P21,949.11 as principal; P4,762.00 as interest from April 11, 1983 to March 6, 1984; the amount of P7,704.40 as penalty charges, the amount of P192.00 as litigation expenses and the amount of P3,441.50 as attorney's fees.

In view of the failure of private respondent, Elpidio M. Quirante to pay the foregoing judgment to China Bank, the Hon. Judge Samuel B. Suico of the RTC issued an order dated November 23, 1984 directing all stallholders of the Bar-B-Oue Plaza owned and operated by Quirante, among whom are the petitioners to pay their stall rentals directly to China Bank.

Pursuant to the Judgment on Compromise Agreement earlier executed by the parties, the private respondent filed a motion for the issuance of a writ of execution on December 28, 1984, against the petitioners on the ground of violation of the terms of said agreement.

Consequently, a writ of execution was issued on April 11, 1985 which was, however, not served or enforced within the reglementary period.

On September 20, 1985, at the instance of the private respondent, an alias writ of execution was issued by the respondent judge.

On October 2, 1985, the petitioners filed a motion to dissolve the alias writ of execution which was, however, denied.

The petitioners filed a motion for reconsideration which was likewise denied on August 4, 1986.

On the same date, the respondent judge issued another alias writ of execution.

The petitioners now come to this Court alleging grave abuse of discretion on the part of the respondent judge in executing the judgment against the petitioners.

The petition is devoid of merit.

In *Franklin Baker Company of the Phil. v. Trajano*, 157 SCRA 416 [1988], we held:

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"By 'grave abuse of discretion' is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law (G.R. No. 59880, *George Arguelles (Hda. Emma Arguelles v. Romeo Yang, etc.*), September 11, 1987)."

In the instant case there is no capricious, arbitrary and whimsical exercise of power. The alias writ of execution was issued by the respondent judge after a careful determination that a breach of the terms of the compromise agreement had been committed. The petitioners were cognizant of the fact that private respondents moved for the execution of the judgment. Copies of the motions were undoubtedly furnished to the petitioners and hearings were conducted on the motions. Thus, it can not be denied that the petitioners were given their day in court.

The petitioners allege that pursuant to the order issued by Judge Suico in Civil Case No. 9088, they were under legal compulsion to pay directly to China Bank and that by paying to China Bank, they are deemed to have paid the private respondents. In effect, the petitioners allege that they have technically complied with the terms of the compromise agreement.

Such contention is untenable. Even without a discussion of whether or not the petitioners were under legal compulsion to pay directly their rentals to China Bank or that subrogation (Article 1303, Civil Code), as contended by the petitioners took place by reason of the RTC order, these defenses would remain unavailing to the petitioners.

The records disclose that despite the order of Judge Suico directing the petitioners to pay directly to China Bank, there is no evidence on record that any rental payments were ever made to the bank. The respondent judge even summoned the bank manager who testified to such non-payment in a hearing on July 16, 1986. At the very least, it was incumbent upon the petitioners to present receipts that they have been paying their rents for the use of the barbecue stalls. Unfortunately, the petitioners failed in this respect. The RTC order by itself is not a valid excuse nor can it be considered as a valid defense for the petitioners to escape liability under the compromise agreement. Clearly therefore, there was a breach of the terms of the agreement considering that no payments were made after December 3, 1984.

The judgment rendered by the respondent judge was based on the compromise agreement duly executed and signed by both parties on February 2, 1984. As a matter of law, it became final and executory upon approval by

the court. (*Hagosojos v. Court of Appeals*, 155 SCRA 175 [1987]). It is exclusively a contract between the two parties and where there is a breach of the terms of the agreement, then execution is valid and justified.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. Double costs against the petitioners.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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