

PLANTERS PRODUCTS, INC., PETITIONERS, VS. HON. COURT OF APPEALS, INSULAR BANK OF ASIA AND AMERICA (NOW PHILIPPINE COMMERCIAL INTERNATIONAL BANK), NICEFORO S. AGATON AND HON. JUD...*G.R. No. 76591. February 06, 1991*

Ponente: MEDIALDEA, J.

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This is a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order seeking the nullification of the decision of the respondent Court of Appeals in CA-G.R. SP No. 8702, entitled "Planters, Inc. v. Judge Rafael T. Mendoza, et al.", dated September 10, 1986 dismissing the petition for certiorari thus affirming the decision and subsequent resolution of respondent Judge of the Regional Trial Court of Makati, Branch 135 awarding attorney's fees in the amount of two hundred thousand (P200,000.00) pesos in favor of claimant-lawyer Atty. Niceforo A. Agaton; and of the respondent Court of Appeals' resolution dated November 11, 1986, denying the motion for reconsideration.

The antecedent facts are as follows:

Petitioner Planters Products, Inc. (PPI) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Makati, Metro Manila. Private respondent Insular Bank of Asia and America (IBAA) now Philippine Commercial International Bank (PCIB) is a corporation with expanded commercial banking functions duly organized and existing under the laws of the Republic of the Philippines with principal office at Makati, Metro Manila. Private respondent Atty. Niceforo S. Agaton is principal in-house counsel for the former IBAA and the former private respondent's counsel of record.

On or about June 1, 1984, petitioner PPI signed an agreement with private respondent PCIB for an Omnibus Credit Line with a limit of Forty-Seven Million Pesos (P47,000,000.00). Through said Omnibus Credit Line PPI signed, on various dates from December, 1984 to January, 1985, nine (9) trust receipt agreements in favor of PCIB. Under the trust receipt agreements, PPI acknowledged its receipt by way of trust, of the chemical and fertilizer with the obligation to deliver the same to PCIB, as entruster, upon the maturity of said trust receipts and/or to pay the value thereof.

However, PPI defaulted on the payments of said trust receipt agreements. So, PCIB engaged the services of Atty. Niceforo A. Agaton to file a suit against PPI in order to enforce the latter's obligation under the trust receipt agreements. Through Atty. Agaton, PCIB filed Civil Case No. 10242 with the Regional Trial Court of Makati, Branch CXXXV (135) entitled "Insular Bank of Asia and America v. Planters Products, Inc.," for the collection of the value of the merchandise subject matter of the trust receipt agreements in the principal amount of Thirty Million Nine Hundred Ninety One Thousand One Hundred Ninety Six and 52/100 Pesos (P30,991,196.52) plus interest, and attorney's fees equivalent to fifteen percent (15%) of the total amount due, with prayer for the issuance of a writ of preliminary attachment/replevin.

As attorney's fees, PCIB assigned to Atty. Agaton the right to collect the attorney's fees due and collectible from PPI under said trust receipt agreements.

A writ of preliminary attachment was issued by the respondent trial judge, Hon. Judge Rafael T. Mendoza, and the writ and a copy of the summons together with a copy of the complaint were duly served to the petitioner on April 10, 1985. By virtue of the filing of the foregoing action, petitioner entered into agreements on May 3, 1985 and May 15, 1985 with respondent PCIB together with the other banks (City Trust Banking Corp. and Rizal Commercial Banking Corp.) which filed similar cases against petitioner.

Pending the implementation of the above-mentioned private agreements, petitioner and respondent PCIB filed a joint motion to suspend the proceedings in Civil Case No. 10242.

By virtue of the foregoing private agreements, respondent PCIB was able to realize from the sale of the merchandise covered by the trust receipt agreements the total amount of Thirty-Five Million Nine Hundred Twenty Nine thousand Six Hundred Seventy Six Pesos (P35,929,676.00), which amount was applied to the expenses already incurred at that time. After the implementation of the private agreements, petitioner paid attorney's fees to the law firm of Agcaoili and Associates which represented City Trust Banking Corporation and the law firm of Angara Concepcion Regal and Cruz (ACCRA) which represented Rizal Commercial Banking Corporation.

Both parties did not file a motion for a judgment based on the private agreements, consequently, respondent Trial Judge Mendoza did not render any judgment. In view of the fact that petitioner PPI has not yet paid the attorney's fees to respondent PCIB as provided for in the trust receipt agreements, and respondent PCIB has not yet paid respondent Atty. Agaton for his legal services, the latter filed on December 5, 1985 with the respondent PCIB the claim for attorney's fees in the amount of Five Million Three Hundred Eighty Nine Thousand Four Hundred Fifty One Pesos (P5,389,451.00) equivalent to fifteen percent (15%) of the amount realized from the sale of the attached merchandise.

On January 24, 1986, petitioner PPI opposed respondent Atty. Agaton's claim for attorney's fees. However, after presentation of evidence, in an order dated February 27, 1986, the trial court granted the claim for attorney's fees and ordered petitioner to pay attorney's fees in the reduced amount of Two Hundred Thousand Pesos (P200,000.00).

On March 19, 1986, petitioner PPI filed a Motion for Reconsideration of the trial court's decision. However, petitioner's motion was denied in open court. So, on April 10, 1986, petitioner filed a Petition for Certiorari with the respondent Court of Appeals. On September 10, 1986, respondent Court of Appeals issued a resolution dismissing the petition on the ground that certiorari was not the proper remedy. Petitioner filed a motion for reconsideration of the aforementioned Court of Appeals resolution. However, respondent Court of Appeals in a resolution dated November 11, 1986 denied petitioner's motion. Hence, this petition.

Petitioner raised two (2) issues, to wit:

- Whether or not the petition for certiorari filed by petitioner PPI before the Court of Appeals was the correct and proper remedy as warranted by the surrounding circumstances of the case and in compliance with the Rules of Court.
- Whether or not the claimant-lawyer (Respondent Atty. Nicefero S. Agaton) can rightfully claim from petitioner and is legally entitled to the payment of attorney's fees.

Petitioner contends that the questioned order of the lower court requiring them to pay attorney's fees was issued after all their entire obligation has been paid and settled. In sum, the petitioner contends that the trial court

committed grave abuse of discretion in rendering a decision in an arbitrary and despotic manner. Furthermore, the petitioner contends that the questioned orders by the lower court are considered interlocutory, thus the respondent Court of Appeals erred in treating the questioned orders as a judgment and in concluding that the remedy available was an ordinary appeal and not a petition for certiorari.

However, the private respondents rebut petitioner's contention by saying that the order of the respondent trial court awarding attorney's fees is a final order and not interlocutory, thus, the order is appealable and may not be the subject of certiorari. Furthermore, said private respondent maintained that the respondent trial court was not guilty of grave abuse of discretion when it issued the order granting the claim for attorney's fees.

In petitions for mandamus and certiorari, the appellate court when necessary may examine the factual merits of the case (*Seechung-Federis v. Judge Sunga*, G.R. L-34803, 17 January 1985, 134 SCRA 16). After a careful examination of the factual merits of the case, the court finds petitioner's contentions untenable.

Time and again, the court stresses that it "possesses no authority to rule upon non-jurisdictional issues in a certiorari proceeding. x x x the only question involved in certiorari is jurisdiction, either want of or excess thereof x x x." (*C & C Commercial Corporation & Philippine National Bank, et al.*, G.R. 42449, 5 July 1989, 175 SCRA 1).

As defined, certiorari is a special civil action:

(a)

directed against any tribunal, board or officer exercising judicial functions

(b)

which is alleged in a verified petition in the proper court

(c)

to have acted -

(1)

without jurisdiction

(2)

or in excess of jurisdiction

(3)

or with grave abuse of discretion

(d)

there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law

(e)

for the purpose of annulling or modifying the proceeding. (Paras, Rules of Court Annotated, Vol. II, First Edition, 1990, pp. 70-71)

The petitioner strongly holds that the trial court committed grave abuse of discretion in rendering a decision in an arbitrary and despotic manner.

"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) cited in Carson, et al. v. Judge Pantanosas, Jr., G.R. 75934, 15 December 1989, 180 SCRA 151.

The respondent trial court as well as the respondent Court of Appeals did not commit grave abuse of discretion in awarding attorney's fees to claimant-lawyer. At most, the trial court committed a mere error of judgment which is reviewable by appeal.

A mere error of judgment cannot be the proper subject of a special civil action for certiorari. (Zapata and National Labor Relations Commission, G.R. 77827, 5 July 1989, 175 SCRA 56). Erroneous findings and conclusions do not render the appellate court vulnerable to the corrective writ of certiorari for where the court has jurisdiction over the case, even if its findings are not correct, they would, at most, constitute errors of law and not an abuse of discretion correctible by certiorari. (Central Bank of the Philippines v. Court of Appeals, G.R. 41859, 8 March 1989, 171 SCRA 49). A trial judge's alleged error in the analysis of the evidence attempted to be introduced and his rejection thereof is an error of judgment, not such an error as may be branded a grave abuse of discretion, i.e., such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, against which the writ of certiorari will lie (Peza v. Alikpala, G.R. 39749, 15 April 1988, 160 SCRA 31). Where the court has jurisdiction over the subject matter, as respondent judge has in this case, the orders or decision upon all questions pertaining to the cause are orders or decision within its jurisdiction, and however, erroneous they may be, they cannot be corrected by certiorari. (Santos, Jr. v. Court of Appeals, G.R. 56614, 28 July 1987, 152 SCRA 378).

The petitioner claims that the questioned orders by the lower court are considered interlocutory. The case of Nepomuceno v. Salazar (G.R. 37165-66, 15 May 1989, 173 SCRA 366) discusses the nature of interlocutory order and provides as follows:

"An order is interlocutory when it does not terminate or finally dispose of the case, because it leaves something to be done by the court before the case is finally decided on the merits. But an order is final when it disposes of the case, decides the same on the merits and leaves nothing to be done therefor, except the execution of the terms of the order of judgment."

On the basis of the afore-mentioned distinction, this Court rules that the order of lower court is final and not interlocutory. Well-settled is the rule that "Interlocutory orders may not be the subject of a petition for certiorari unless issued in patent abuse of discretion." (Dela Paz, Jr. v. Intermediate Appellate Court, G.R. 71537, 17 September 1987, 154 SCRA 65).

The pertinent portion of the trust receipt agreements provides:

"19. If upon default by the Entrustee the Entruster shall engage the services of Legal counsel, the Entrustee agrees to pay attorney's fees equal to fifteen percent (15%) of the total amount due from the Entrustee to the Entruster but in no case less than P2,000.00 exclusive of all expenses of collection and all costs and fees allowed by law, and liquidated damages equal to fifteen percent (15%) of the total amount due but in no case less than P10,000.00." (Rollo, p. 35)

A careful perusal of the afore-quoted stipulation provided in the trust receipt agreements convinces this Court that indeed the claimant-lawyer is entitled to a reasonable attorney's fees.

Notwithstanding the fact that petitioner is not a party to the retainer contract between respondent and claimant-lawyer and alleges not to be a privy to the trust agreements, "the relation of attorney and client may exist even though a third person pays or is to pay for the attorney's services." (U.S. *Everett v. Alpha Portland Cement Co.*, 225 F. 931). Furthermore, the law recognizes the validity of stipulation included in negotiable instruments and mortgages with respect to attorney's fees in the form of penalty provided that they are not unreasonable or unconscionable. (*Philippine Engineering Co. v. Green*, G.R. No. 24486, December 16, 1925, 48 Phil. 466).

All premises considered, this Court is convinced that the lower court did not commit grave abuse of discretion in awarding attorney's fees to respondent Atty. Agaton since such an award is based on the evidence presented by the parties before the lower court and on law. And since the jurisdiction of the lower court is not in question, We hold that the respondent Court of Appeals did not err in dismissing the petition, thereby affirming the lower court's decision.

ACCORDINGLY, this petition is DISMISSED with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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