

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE INSURANCE COMMISSIONER, PETITIONER, VS. HONORABLE CLEMENTE M. SORIANO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH III, M...

G.R. No. 76944. December 20, 1988

Ponente: PARAS, J.

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PARAS, J.:

In this petition for certiorari, the petitioner seeks the annulment of the orders of public respondent Hon. Clemente M. Soriano dated July 16, August 27, and September 22, 1986. It likewise seeks the restraint of the respondent Judge from proceeding further in the Civil Case No. 88046 entitled "Republic of the Philippines represented by the Insurance Commissioner v. Wellington Insurance Co., Inc."

The following antecedent facts are undisputed:

"1) On August 29, 1972, petitioner through the Office of the Solicitor General (OSG for brevity) filed a Petition for Liquidation with Receivership and Preliminary Injunction against the respondent Wellington (Annex 'A', Petition) to which Complaint respondent Wellington filed its Answer (Annex 'B', Petition).

"2) On September 18, 1972, the lower court issued an Order the dispositive portion of which reads:

'WHEREFORE, the Court hereby Orders that:

'a) The Insurance Commissioner effect immediately a liquidation of the Wellington Insurance Company Inc. and at the same time appointing the Insurance Commissioner, as receiver, without bond, of the Wellington Insurance Company, Inc.:

'b) Pending liquidation, let a writ of preliminary injunction issue without the necessity for the petitioner to file a bond, restraining the respondent corporation, its officers, general agents, agents and all other persons transacting business with the said corporation from committing acts which may interfere with the liquidation proceedings or from performing acts which may result in the wastage or destruction of the corporate assets, or from prosecuting any action, or from obtaining any preference, judgment, attachment or other liens or from making any levy against the respondent or against its assets or any part thereof until further orders of the Court.

'SO ORDERED.'

"3) On June 19, 1984, the Insurance Commissioner filed a 'Motion for Approval of Final Liquidation Report with Project of Partition' (Annex 'D', Petition) which the lower court granted virtually in toto in its controversial Order of May 8, 1985, which reads:

'Considering the MOTION FOR APPROVAL OF FINAL LIQUIDATION REPORT WITH PROJECT OF PARTITION, dated June 15, 1984, filed by the Insurance Commissioner. Liquidator, and there being no objection thereto, the Liquidation Report and the proposed distribution of assets of respondent company contained in the said motion is hereby approved. However, although the mortgaged real estate properties are

assigned to the Republic of the Philippines, as full settlement of all claims of the Government agencies enumerated in the motion, including the settlement of unpaid real estate taxes due on the mortgaged real estate properties, the same are assigned not through the Ministry of Human Settlements."

'SO ORDERED.'

(Please see page 8, Petition)

"4) On November 12, 1985, Wellington filed a 'Motion for Reconsideration/Modification of Order' of the controversial Order of May 8, 1985, through Atty. Tito S. Fajardo, a new counsel engaged by Wellington. (pp. 231-232, Rollo)

On December 5, 1985, petitioner filed its Reply to Motion for Reconsideration. However, before acting on the respondent Wellington's Motion, the lower court, on February 19, 1986, issued an Order reading:

"Before acting on the respondent's Motion for Reconsideration of the Order of this Court dated May 8, 1985, the petitioner is hereby directed to furnish copy of the Motion For Approval of Final Liquidation Report with Project of Partition to the following: Bureau of Internal Revenue, Bureau of Customs, Social Security System and Supreme Court (re: Judgments/Writs forfeited Bailbonds) requiring them to comment thereon within 15 days from receipt, after which, all issues shall be ventilated in a hearing which is set on March 26, 1986, at 9:00 a.m.

"SO ORDERED." (p. 234, Rollo)

On July 16, 1986, after hearing and filing of the parties' Memoranda in support of their arguments the lower court issued the questioned order modifying the Order of May 8, 1985 reading as follows:

"ACCORDINGLY, the Order of this Court, dated May 8, 1985 is, as it is hereby reconsidered, and another one entered approving the payment of P745, 407.18, the preferred claims with proofs and the amount of P481.12 claimed as accrued expenses due the Insurance Commission, they being the only claims filed and supported by proofs as required by law, and that whatever assets that may be left after said payment, the same are ordered returned to the respondent company for its proper disposition.

"SO ORDERED." (Order of July 16, 1986, p. 236, Rollo)

There being no appeal interposed from the aforementioned Order the same became final and executory. A Motion for Execution and a Notice of Attorney's Lien were filed by Wellington's counsel on August 7, 1986.

On August 27, 1986, the lower court acting on this latest Motion, issued the following Order:

"Acting upon the respondent's counsel's 'Motion for Execution', as well as the 'Notice of Attorney's Lien', dated August 7, 1986, both of which were not opposed despite notice to all parties concerned, and considering that the order of this Court dated July 16, 1986 is now final and executory there being no appeal nor motion for reconsideration having been filed within the period provided for by law, as prayed for, the same is hereby GRANTED, and accordingly let a writ of execution of the order dated July 16, 1986 issue, directing the Insurance Commissioner, as follows:

"1. to pay all the preferred claims with proofs in the total amount of P745,407.18 and the accrued expenses due the Insurance Commission in the amount of P481.12;

"2. to pay respondent's counsel equivalent to forty per centum (40%) of whatever assets are left after payment of all the approved claims by way of attorney's fees;

"3. the return to the respondent Wellington Insurance Company sixty per centum (60%) of whatever assets are left after payment of the approved claims.

"The same to be implemented by the Deputy Sheriff of this Court, Mr. Jaime K. del Rosario.

"SO ORDERED."

(Order of August 27, 1986, p. 237, Rollo)

Subsequently, Wellington raised an issue with respect to the attorney's lien of Atty. Tito Fajardo amounting to 40% of the remaining assets of Wellington. Thus, upon agreement of counsel and client on September 22, 1986, the latter agreed that the former's attorney's fees be fixed at P250,000.00 for which the lower court issued the following Order:

"Accordingly, and on the basis of the manifestation dated September 19, 1986, the Order of this Court dated August 27, 1986, awarding Atty. Tito S. Fajardo 40% of whatever assets are left after payment of all the approved claims, by way of attorney's fees, is hereby set aside and another one entered awarding said counsel the amount of P250,000.00 as and for attorney's fees.

"SO ORDERED." (Order of September 22, 1986; Annex I, Petition; p. 208, Rollo)

Thereafter, petitioner through the OSG filed a Motion for Reconsideration of the following Orders dated November 6, 1986:

"a) Order of July 16, 1986 - which modified controversial Order of May 8, 1985;

"b) Order of August 27, 1986 - which granted the Motion for issuance of a Writ of Execution;

"c) Order of September 22, 1986 - which approves the reduction of the attorney's fees of Tito Fajardo with the conformity of respondent Wellington (represented for this purpose by Atty. Oscar T. Pagulayan.) (p. 238, Rollo)

Respondent Hon. Clemente M. Soriano, acting on the aforementioned Motion and the Opposition thereto filed by Wellington, issued an Order denying the OSG's Motion for Reconsideration. The Order likewise directed the Insurance Commissioner Armando Ansaldo, under pain of contempt, to comply with the writ of execution as amended.

Hence, this present recourse raising the following issues for resolution:

"1. Has Tito Fajardo any legal standing to make representations in behalf of Wellington Co., Inc.?

"2. Did respondent Judge act without or in excess of jurisdiction or with grave abuse of discretion in issuing subject orders adverse to herein petitioner?

"3. Was petitioner deprived of its day in court when the court a quo resolved subject Motion for Reconsideration?" (Memorandum, pp. 3-4; Rollo, pp. 214-215)

After a careful examination of the entire record of the case. We find the instant Petition devoid of merit.

The three (3) Orders in question were received by the OSG on October 14, 1986 having been referred to it by the insurance Commissioner on that same day. The receipt by the OSG is evidenced by the record of the OSG itself under Entry No. 8, Page 158, record Book, Docket Section (Rollo, p. 241). Applying the Interim Rules and Guidelines of the Rules of Court, the OSG had until October 29, 1986 to file its appeal from the questioned Orders. Consequently, the Motion for Reconsideration filed on November 10, 1986 was filed out of time.

Accordingly, the respondent Judge did not commit any error or abuse of discretion in denying the same and in subsequently issuing the Writ of Execution as his acts are legally maintainable and defensible.

Likewise, the allegation that due process was violated upon the denial of the Motion for Reconsideration is not meritorious. The denial is not absence of due process. The lower court heard the motion and losing the Motion is not to be equated with absence or lack of due process. For reasons aforesated, the motion could not just be entertained. In *Aguilar v. Tan* reported in 31 SCR 205, it was held:

"Where a party was given a chance to be heard with respect to his motion for reconsideration, there is sufficient compliance with the requirement of due process."

The petitioner's contention that service of the questioned Orders to a deputized special attorney of the OSG would not bind the OSG so that the Orders did not attain their finality when the Motion was filed, does not have a leg to stand on. It is a well-settled principle that the acts of the authorized Deputy bind the principal counsel. Thus service on the Deputy is service on the OSG.

Moreover, the records will disclose that Atty. Fidel Evangelista, who is a deputized attorney was the one who appeared for the petitioner in the lower court. It is not only lawful but also in accordance with the normal and standard practice that notices be sent to said special Attorney to avoid delays and complications. Precisely, the OSG has no time and manpower to handle all the cases of multifarious government entities such that deputization is authorized by law to cope with such contingencies.

The blame for the failure of the deputized attorney to take appropriate action with respect to the case assigned to him cannot be placed on the private respondents without violating the elementary rule of fair play. In this regard, the respondent Judge cannot be accused of depriving the petitioner of its day in court when he denied the latter's Motion for Reconsideration of the Orders which had long become final and executory.

In its desperate but futile attempt to defeat the claim of respondent Wellington, petitioner questions the authority of Tito Fajardo to make representations in behalf of Wellington. A lawyer is presumed to be properly authorized to represent any cause in which he appears and no written power of attorney is required to authorize him to appear in court for his client (Sec. 21, Rule 138). No evidence was presented against this presumption in favor of Atty. Fajardo. Thus, the presumption remains un rebutted. It is worthy to note that respondent Wellington never disowned or denied that Atty. Fajardo is its counsel. On the contrary, there is more than enough evidence that the services of Atty. Fajardo were properly engaged (Annexes N, N-1, and N-2).

Finally, the Order of May 8, 1985 had not become final and executory. Contrary to the petitioner's pretense, respondent Wellington had not received a copy of said Order as evidenced by the affidavit executed by Atty. Navarro reading:

"1. That I was the original counsel of Wellington Insurance Company, Inc. in Civil Case No. 88046, Regional Trial Court (formerly Court of First Instance) of Manila Branch III;

"2. That as such counsel, I have not received a copy of the order dated May 8, 1985 (granting the Motion for Approval of Final Liquidation Report, etc.) in Civil Case No. 88046 mentioned above. I became aware of the existence of the said order only in November, 1986, through Atty. Tito Fajardo who substituted for me as counsel in the case;

"3. That I am executing this affidavit in order to attest to the truth of the foregoing declaration.

"x x x ." (p. 169, Rollo)

Likewise, the Office of the Clerk of the Regional Trial Court of Manila has certified that:

"TO WHOM IT MAY CONCERN:

"This is to certify that the records of Civil Case No. 88046, Regional Trial Court (formerly Court of First Instance) of Manila, Branch III, do not show that a copy of the order dated May 8, 1985 in that case was received by Atty. Eusebio P. Navarro.

"Given on this 18th day of August, 1987, in the City of Manila, Philippines.

CESAR T. JAVIER

Clerk of Court

By: ARCELIE A. ALFARO

Branch Clerk of Court

By:

(SGD) JOSELYN P. REYALA

Staff Asst. III"

(p.170, Rollo)

In consequence, when respondent Wellington filed its Motion for Reconsideration, the court a quo modified the Order of May 8, 1985. The modification is just because it excluded the payment of "ghost claims."

PREMISES CONSIDERED, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Regalado, JJ., concur.

Sarmiento, J., on leave.

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