

FOUNTAINHEAD INTERNATIONAL PHILIPPINES, INC. AND HON. SANTIAGO RANADA, PETITIONERS, VS. HON. COURT OF APPEALS AND ROYAL INSURANCE (INT.) LTD., RESPONDENTS.

G.R. No. 86505. February 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks the reversal of the decision of the Court of Appeals in CA-G.R. No. SP-15570 entitled, "Royal Insurance (Int.) Ltd. v. Hon. Santiago Ranada, Jr., et al." reversing the order of the trial court, through Judge Santiago Ranada, Jr., dismissing the complaint in Civil Case No. 88-73, Regional Trial Court in Makati and the order denying the motion for reconsideration.

Private respondent Royal Insurance (Int.) Ltd. (Royal) filed a complaint for reimbursement as subrogee of Integral Chemical Corporation, for damages incurred arising from a breach of contract of carriage against herein petitioner Fountainhead International Philippines (Fountainhead) with the Regional Trial Court, Makati, Branch 137, presided by respondent Judge Santiago Ranada.

After the issues were joined, the case was set for pre-trial conference on May 23, 1988. On said date, Fountainhead exhibited a special power of attorney in favor of its counsel, executed by Michael Gourlay, authorizing said counsel "to negotiate for amicable settlement and to enter into compromise agreement." There was however, no showing that Royal empowered Gourlay to execute the deed. Fountainhead's counsel likewise exhibited a special power of attorney executed in his favor by Grace R. dela Rosa but without any showing that dela Rosa was empowered to execute it. The judge considered both special powers of attorney insufficient and dismissed the complaint and counterclaim on the same date. The order stated:

"When this case was called for pre-trial conference, Atty. Jacinto Fajardo, Jr. appeared for plaintiff, while Atty. Ruben V. Lopez appeared for defendant. Upon inquiry by the Court, it turned out that Atty. Fajardo has a Special Power of Attorney in his favor executed by Michael Gourlay in his capacity as Branch Manager for the Philippines. As Atty. Fajardo could not present a document indicating Mr. Gourlay has the power to execute a special power of attorney for and in behalf of plaintiff to compromise the case, it results that there is no appearance on the part of plaintiff for purposes of pre-trial conference as required by the rules of court and applicable jurisprudence. Atty. Lopez likewise presented a special power without any document indicating that the one who executed the power of attorney, Grace R. dela Rosa, is empowered to execute such power of attorney. In view thereof, there is likewise a failure to appear on the part of the defendant for this pre-trial conference and the Court resolves to dismiss the complaint as well as the counterclaim.

"SO ORDERED." (p. 75, Rollo)

Royal received the order on May 30, 1988 and on June 16, 1988, it filed a motion for reconsideration annexing thereto a document appointing Michael Gourlay as Royal's Branch Manager in the Philippines with authority to do all or any of the following in behalf of the company:

"4.

In the name or on behalf of the Company alone or jointly with others to institute and prosecute legal proceedings whether civil or criminal and to follow up such proceedings to final determination or to discontinue or suspend the same and (if need be) to defend any action or other legal proceedings which may be instituted against the Company.

"5.

To accept service of summons and process in all legal proceedings against the Company and/all notices affecting the Company.

"6.

To settle compromise adjust and discharge all claims for losses arising under any policies of insurance effected on behalf of the Company which shall be payable in the territories aforesaid.

"x x x x x x x.

"12.

Generally to do all such lawful and reasonable acts or things connected with the duties or business of Attorney and Agent of the Company in the specified territories as the said Attorney shall deem requisite the Company hereby undertaking to confirm whatsoever their said Attorney shall lawfully do or cause to be done by virtue of these presents.

"13.

Any one or more Attorney or Attorneys for all or any of the purposes aforesaid to substitute and appoint him or them at pleasure to discharge with power to confer upon such substituted Attorney or Attorneys the right to sub-delegate all or any of the powers conferred on him or them to one or more Attorney or Attorneys and to discharge such Attorney or Attorneys at pleasure.

"x x x." (pp. 19-20, Rollo)

The motion for reconsideration was denied on August 15, 1988 but this time, the dismissal was made without prejudice to the re-filing of the complaint.

On September 13, 1988, Royal filed a petition for certiorari with respondent Court of Appeals imputing grave abuse of discretion on the part of respondent judge for dismissing the complaint.

On November 10, 1988, the Court of Appeals found that respondent judge acted with grave abuse of discretion when it dismissed the complaint and reversed the order of the trial court and ordered the reinstatement of Civil Case No. 88-73 for pre-trial and trial. The appellate court concluded that:

"If respondent Judge had felt that the written special power of attorney presented by petitioner's counsel was insufficient for purposes of conducting the pre-trial hearing that day of May 23, 1988, respondent Judge, instead of instantly and precipitously dismissing the case, should have postponed the hearing and reset the same to another date to afford the parties' counsel sufficient time to secure the correct and necessary special power of attorney, there being no showing of prejudice to substantial rights and manifest delay." (p. 21, Rollo)

Fountainhead's motion for reconsideration was denied in an Order (pp. 23-24, Rollo) on January 4, 1989.

Hence, this petition.

On January 27, 1989, respondent Judge filed an ex-parte motion for leave to comment on the petition which was

granted on February 8, 1989 (p. 50, Rollo).

On March 14, 1989, private respondent filed its comment (p. 51, Rollo).

Respondent judge's comment was filed on March 21, 1989 (pp. 73-90, Rollo).

Petitioner Fountainhead raised the following assignment of errors in this petition:

"1.

The public respondent Court of Appeals erred in holding that the lower court acted with grave abuse of discretion in dismissing the complaint of the private respondent and the counterclaim of the petitioner.

"2.

The questioned decision and order of the public respondent Court of Appeals are contrary to existing jurisprudence, the Rules of Court and Circular of this Honorable Tribunal." (pp. 6-7, Rollo).

In order to warrant the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or so despotic or arbitrary or so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Rueda v. CAR, et al.*, L-13014, September 30, 1959, 106 Phil. 300).

We do not agree with respondent appellate court's findings that respondent judge committed grave abuse of discretion to warrant the issuance of a writ of certiorari when it dismissed private respondent's complaint for its failure to exhibit a sufficient special power of attorney to compromise during the scheduled pre-trial. The parties were duly notified by respondent judge of the schedule of the pre-trial conference and of their duties therein. The notice stated:

"This case is set for pre-trial conference on 23 May 1988 at 2:00 p.m. pursuant to Sec. 1, Rule 20. Each party (or attorney-in-fact) should be present and be accompanied by counsel who expects to conduct the actual trial. Each attorney-in-fact must have a written authority to compromise the case.

"x x x.

"A party who fails to appear at the pre-trial conference or to comply with the directives set out above may be non-suited or considered as in default, or be subjected to such other orders as may be appropriate. Counsels are directed to immediately notify their respective clients of this Notice.

"x x x. " (p. 74, Rollo)

During the pre-trial conference, Royal's counsel failed to show a sufficient special power of attorney to appear in behalf of its client. While the document purportedly authorized Royal's counsel, Atty. Fajardo, to appear in behalf of the client, the signatory of the document, Michael Gourlay, Royal's Branch Manager in the Philippines, does not appear to have any authority from the Company itself (or its Board) to appoint Atty. Fajardo, as such. The trial court, contrary to the appellate court's statement, did not immediately dismiss the complaint. It gave counsel sufficient time to get the proper document which it allegedly had in its office but, counsel failed to submit one. Under the circumstances, no grave abuse can be attributed to respondent judge for dismissing Royal's complaint. It is within the trial court's discretion to declare a defendant non-suited or to dismiss the complaint for counsel's failure to present the proper document empowering him to appear for and in behalf of a client in the pre-trial conference. Pre-trial in civil actions is mandatory. The Rules require not only the lawyers but also the parties to be

present, otherwise they may be non-suited or considered as in default. When a party cannot appear and another party or his lawyer appears not only as his counsel but also as his representative, it is imperative for that representative to have "special authority" to make such substantive agreements as only the client otherwise has capacity to make. The "special authority" should ordinarily be in writing or at the very least be duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative). Without the "special authority," the lawyer or representative cannot be deemed capacitated to appear in place of the parties; hence, it will be considered that the latter has failed to put in appearance at all, and he may therefore be non-suited or considered as in default (Section 2, Rule 20), notwithstanding his lawyers or delegates presence (see *DBP v. CA*, January 26, 1989, citing the case of *Home Insurance Co., v. U.S. Lines, Co.*, G.R. No. L-25593, November 15, 1967, 21 SCRA 863, 866; *Barrera v. Militante*, G.R. No. 54681, May 31, 1982, 114 SCRA 323).

Moreover, Royal received a copy of the order dismissing the complaint on May 30, 1988. The motion for reconsideration was filed only on June 16, 1988 attaching thereto a photocopy of a document appointing Michael Gourlay as true and lawful attorney and agent of Royal in the Philippines with power to compromise claims for losses arising under any policies of insurance. Compliance of the rules are not left to the whims of the parties or their counsel. They are provided for in the rules itself and it is the judge's duty to enforce them.

ACCORDINGLY, the petition is GRANTED. The questioned decision and order of the appellate court is SET ASIDE. The order of the trial court dismissing the complaint without prejudice is REINSTATED.

SO ORDERED.

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

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