

AMELIA G. TIBLE, PETITIONER AND ADMINISTRATRIX, VS. JOSE C. AQUINO, RESPONDENT AND CLAIMANT.*G.R. No. L-28967. July 22, 1975*

Ponente: ESGUERRA, J.

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Petition for review on certiorari of the decision of the Court of Appeals in its C.A.-G.R. No. 32383-R, entitled "Amelia G. Tible, petitioner-appellee vs. Jose C. Aquino, claimant-appellant", reversing the order of the Court of First Instance of Camarines Sur in Sp. Proc. No. 731 (In the Matter of Intestate Estate of Emilio M. Tible, Amelia G. Tible, petitioner), which dismissed the claim of Jose C. Aquino in the amount of P30,000.00 against the estate of the deceased, Emilio M. Tible, and instead, ordered said claimant to pay said estate the sum of P50,500.00 as his indebtedness to the deceased Emilio M. Tible. The decision of the appellate court sought to be reviewed reads as follows:

"WHEREFORE, the judgment appealed from is hereby reversed. Let another be entered, ordering the administratrix-appellee to pay claimant-appellant Jose C. Aquino the sum of P25,500.00 with legal interest from the date of filing of the complaint. The counter-claim set forth herein is hereby dismissed for lack of merit. With costs against the administratrix-appellee."

Petitioner was appointed administratrix of the Intestate Estate of the late Congressman Emilio M. Tible who died on August 14, 1957, by the Court of First Instance of Naga City in Special Proceedings No. 731. Notice to creditors as required by the Rules of Court having been published on March 8, 15, 22, 1958, private respondent-claimant Jose C. Aquino filed with the probate court a claim against the estate for P30,000.00 on February 6, 1959, or almost eleven months after the date of the first publication of the notice to creditors. A motion to dismiss was filed by the petitioner-administratrix on the ground that the claim was filed beyond the reglementary period, but the trial court gave due course to the claim. An answer with counterclaim for P54,500.00 was filed by petitioner-administratrix on May 8, 1959, followed by an amended answer with counterclaim filed on October 12, 1959. After trial the lower court rendered judgment in favor of the petitioner-administratrix as above mentioned.

The lower court, in dismissing Aquino's claim of P30,000.00 against the estate and ordering him to pay the estate the sum of P50,500.00 rationalized as follows:

"The evidence of the claimant shows that in 1954, he met Atty. Emilio Tible in the office of the Bureau of Forestry in Manila he being a timber licensee and thereafter Atty. Tible borrowed money from him in the total amount of P50,000.00. Thereafter, Congressman Tible bought from him a portion of his forest concession for the amount of P107,000.00 so that, Atty. Tible has still a balance of P30,000.00 of his indebtedness to him as shown by the promissory notes, Exhs. A, A-1, A-2 and A-3; that according to the claimant, he transferred to Atty. Tible a portion of his forest concession in the Municipality of Esperanza, Agusan, under the authority of the Director of Forestry; that while Atty. Tible was still living, he used to remind him about his indebtedness to him of P30,000.00 but the latter told him that he had no money yet. According to the claimant, Jose C. Aquino,

their agreement of the cession of the 2,000 hectares of forest land to Congressman Tible for the amount of P107,000.00, was not made in writing.

"The evidence of the administratrix, on the other hand, shows that the real agreement that took place between the claimant and Atty. Tible was for the cession of 2,000 hectares of timberland to Tible for the amount of P50,000.00 which was already paid by the latter as shown in the promissory note dated March 8, 1955, marked Exhibit "11"; that on April 9, 1955, the claimant was able to convince Atty. Tible to increase the amount of P50,000.00 to P80,000.00 alleging that Atty. Emilio Tible would profit much from the 2,000 hectares and so, promissory notes marked Exhs. A, A-1 to A-3, were executed by Atty. Emilio Tible on condition that the payment of which should depend upon the operation of the said 2,000 hectares to him; that after March 8, 1955, the claimant borrowed several amounts of money from Atty. Tible as shown in the receipts and checks marked Exhibits 3, 4, 4-B, 4-b, 4-C, 4-D, 4-E, 4-F, 4-G, 5, 6, 7, 8, 9, 10 and 11 in the total amount of P50,000.00 to be paid by the claimant to the said Atty. Tible but in the event that said claimant could not pay said amount, Atty. Tible would be made a partner of the claimant in the operation of the timberland which was left to him after the cession of the 2,000 hectares. This fact was established by the testimony of witness for the administratrix, Dr. Marcial Tena, who was a partner of Atty. Emilio Tible, in their logging business; that besides the amount mentioned above, Atty. Emilio Tible continued advancing money to the Aquinos' until the amount borrowed by the latter reached the total sum of P54,500.00 as shown by the receipts marked Exhibits "3", "4-F", "5", "6", "7", "8", "9", and "10". This amount was not yet paid by the claimant, Jose C. Aquino, up to the present.

"The Court after a careful study of the evidence presented both by the claimant and the administratrix, arrived at the conclusion that the amount of P30,000.00 claimed by the claimant, Jose C. Aquino, was not yet due and demandable at the time of the presentation of the claim on the ground that Atty. Tible was not able to operate the 2,000 hectares ceded to him by the claimant and that, the amount of P54,000.00 borrowed by the claimant from Atty. Tible has not been paid until at present; neither was Atty. Tible made a partner by the claimant in the operation of the remaining forest concession belonging to the said claimant. It was also found by the Court that the agreement entered into by and between Atty. Tible and the claimant in the cession of this 2,000 hectares of timberland was against the law because a big amount of money was paid by Atty. Tible as consideration for the cession of the 2,000 hectares of timberland which is speculative, considering that claimant, Jose C. Aquino, had no improvement made in the ceded forest concession."

From the appealed order of the trial court it can be gleaned that although both petitioner and the private respondent agree that there was a sale of the portion of Aquino's forest concession in Esperanza, Agusan, to Emilio Tible in 1955, two conflicting versions of the agreement are put forward by each party as regards the consideration and the conditions agreed upon.

Private respondent Aquino's evidence seeks to prove that Congressman Tible borrowed from him P50,000.00; thereafter bought from him a portion of his forest concession for an agreed amount of P107,00.00; that Atty. Tible owed him a balance of P30,000.00 as shown by promissory notes (Exhs. A, A-1, A-2, and A-3); that said forest concession was transferred to Atty. Tible by authority of the Director of Forestry after the oral agreement of sale; and the balance of P30,000.00 was never paid until the death of Atty. Tible.

Petitioner's version of the transaction was that the real agreement was for the cession of 2,000 hectares of timberland to Atty. Tible for the amount of P50,000.00 which was paid by Atty. Tible as shown by the promissory note dated March 8, 1955 (Exhibit "11"); that on April 9, 1955, Aquino was able to convince Atty. Tible to increase the sale price from P50,000.00 to P80,000.00, as the latter expected to profit much from the 2,000 hectares of timberland; that promissory notes (Exhs. "A", "A-1", to "A-3") were executed by Atty. Tible on condition that the payment of those promissory notes would depend upon the operation of said 2,000 hectares; that after March 8, 1955, Aquino borrowed several amounts of money from Atty. Tible (receipts and checks,

Exhs. 3, 4, 4-B, 4-b, 4-C, 4-D, 4-E, 4-F, 4-G, 5, 6, 7, 8, 9, 10 and 11) in the total amount of P50,000.00 to be paid by Aquino to Atty. Tible but in the event Aquino could not pay, Atty. Tible would be made a partner of Aquino in the operation of the remainder of the timberland area still owned by Aquino; that Atty. Tible continued lending money to Aquino until the amount of the latter's indebtedness reached P54,500.00 (Exhibits 3, 4-F, 5, 6, 7, 8, 9, 10); and that Atty. Aquino failed to pay that amount.

The two conflicting versions can be simplified thus — private respondent Aquino claims that Tible borrowed from him P50,000.00 and then bought from him 2,000 hectares of his timberland in Agusan for P107,000.00; that Tible still owed him a balance of P30,000.00 representing the unpaid balance of the consideration of the sale of the timberland at the time of Tible's death. On the other hand, petitioner claims that the consideration for the sale of the timberland of Aquino to Tible was only P50,000.00 which was already paid; that on April 9, 1955, Aquino and Tible - agreed on an increase of the sale price of the timberland from P50,000.00 to P80,000.00, so Tible executed promissory notes in favor of Aquino for the balance of P30,000.00 subject to the condition that payment of those promissory notes would depend upon the operation by Tible of the timberland; that after the foregoing transaction, Aquino borrowed several amounts from Tible (total P50,000.00) but payment of said loans was subject to the condition that if Aquino cannot pay the loans to Tible, the latter would be made a partner by Aquino in the operation of the remaining 2,000 hectares of timberland controlled by Aquino. It is very clear that Aquino's version speaks of two transactions — loan of P50,000.00 to Tible and sale of 2,000 hectares of timberland to Tible for P107,000.00. Petitioner's version speaks of three transactions — sale of 2,000 hectares of Aquino's timberland to Tible for P50,000.00; novation of the contract of sale by increasing the consideration from P50,000.00 to P80,000.00, payment of the balance of P30,000.00 subject to the condition that payment would depend upon Tible's operation of the timberland; and the supposed loans (total P50,000.00) given by Tible to Aquino, which if not paid by Aquino would render it obligatory upon the latter to make Tible a partner in the operation of his remaining timberland.

The trial court in its evaluation of the evidence believed in petitioner's version of the transaction; hence the order of October 31, 1961, which dismissed the claim of private respondent Aquino and ordered him to pay to the estate of Tible the amount of P50,500.00 as his indebtedness to the deceased. It is this order of October 31, 1961, of the trial court that was reversed by the respondent appellate court.

The respondent appellate court believed in claimant Aquino's version of the transaction in a well-discussed dissertation, thus —

"There is no dispute as to the sale of portion of Aquino's forest concession to Emilio Tible during the latter's lifetime. However, there apparently exist two different versions as adduced by claimant and the administratrix relating to the actual and real agreement as to the consideration of the sale and the conditions agreed upon. We have taken the pains of reviewing carefully the records of this case in order to arrive as to the real agreement of the parties when they entered into such contract of sale covering portion of Aquino's forest concession consisting of about 2,000 hectares and we are more persuaded to believe that the version as advanced by claimant Aquino relating to their real agreement about said sale is more plausible as it dovetailed with the material circumstances and facts of the case. To begin with, if the consideration of said transfer was only P50,000.00 as insisted by the administratrix which was already paid as evidenced by receipt duly signed by the claimant (Exh. 11), it would have been stated therein at least as full payment of the purchase price not as "payment of the debt", considering that as insisted by the appellee the agreed price for such purchase of Aquino's forest concession was only P50,000.00, which was already paid. The phrase "payment of debt" simply shows that the one tendering payment (Tible) had an outstanding obligation to settle and this tallies with Aquino's assertion that prior to the negotiation of said sale Tible had obtained various amounts from Aquino, which amounted all to P50,000.00 and which after consolidation was paid by Tible as evidenced by a receipt duly signed by Aquino (Exh. 11). True, that the claimant-appellant at the outset when asked to identify

the questioned receipt of P50,000.00 (Exh. 11), admitted that said sum "covers the amount I have taken from him which is part of the P77,000.00". Such admission, however, should be interpreted in the light of extant circumstances. In making such sweeping admission, Aquino, however, made a qualification that said amount was reached after consolidation and an accounting made of all the amounts received by him (t.s.n. pp. 38-39, hearing of July 3, 1955). And the consolidation referred to herein had reference to the various amounts secured by Aquino from Tible as advances and as loan which were duly covered by receipts amounting also to P50,000.00 (Exhs. 3, 5, 6, 7 and 4-C) under the agreement that should the former fail to pay the same the latter would be a partner in the logging operation of the Aquinos. (t.s.n., p. 7, Jan. 11, 1960). Thus, Aquino on rebuttal clarified his admission on this point —

Q

The same witness Mr. Tena also declared that he was present on an occasion wherein you received from Mr. Tible the sum of P50,000.00 as part payment of the portion of the area you ceded to Mr. Tible?

A

I have never received the sum of P50,000.00 from the late Tible but instead that amount is a payment of what he owed me.

Q

Mr. Tena also declared that P50,000.00 which you received from Mr. Tible as part payment of a portion of your area was made to appear as an indebtedness which is shown in this document, which is Exhibit "A", is that correct?

A

It is true that I have received the amount from him as advances of the amount he is supposed to pay me. Those are the advances he gave me and later on we made a liquidation of these advances and for the balance, because he has no money at that time, he gave me that promissory note.

Q

You are referring to the 4 promissory notes executed by Mr. Tible on April 9, 1955?

A

Yes, sir.' (pp. 6-8, t.s.n., Jan. 11, 1960, Aquino on Rebuttal, Italics ours.)

"Further, the foregoing asseverations of claimant-appellant coincide with the material facts of the case clearly indicating that the amount of P50,000.00 embodied in Exhibit 11, involved another transaction which was separate and distinct from the consideration of the purchase price of the portion of Aquino's forest concession. It is of significant importance to note that Exhibit 11, which appellee maintains as full payment of the purchase of the 2,000 hectares of Aquino's timber land concession ceded to the deceased was executed on March 8,

1955, that is ahead by almost one month of the four promissory notes in question upon which claimant's cause of action is predicated (Exhs. A, A-1 to A-3), which were executed by Tible on April 9, 1955. Such being the case, therefore, and if it were really true that Tible had already paid the purchase price as allegedly evidenced by Exhibit 11, we cannot conceive of any idea that would be within the realm of probabilities as to why Tible had to execute the 4 promissory notes in question representing the balance of the purchase price of said forest concession. It is advanced, however, as an excuse by the appellee that the agreed consideration thereof in the amount of P50,000.00 was increased to P80,000.00, for which reason Tible had to execute said promissory notes, whereby he then acknowledged to have an outstanding balance of P30,000.00 payable under the terms and conditions embodied therein. Be that as it may, this would not create a situation contrary to what is reflected in the questioned promissory notes (Exhs. A, A-1 to A-3). For it is undisputed that as of March 14, 1955 to April 5, 1955, Aquino evidently appeared to be indebted to Tible in the sum total of P54,000.00 (Exhs. 3, 5, 6, 7, 4-C to 4-F), which various amounts were obtained by the former from the latter as loan with an agreement that upon failure of Aquino to settle said amount, Tible would then be a partner in the operation of Aquino's forest concession. And there is no evidence that Tible ever became a partner in the operation of Aquino's forest concession when claimant failed to liquidate all the amounts he secured from Tible. Therefore, it would appear that there would be no necessity for Tible to execute the promissory notes on April 9, 1955, assuming arguendo that the purchase price as originally agreed upon was increased, for Aquino was then still indebted to Tible. Stated in short, as of March 14, 1955 to April 5, 1955, Tible appeared to be the creditor of Aquino. However, on April 9, 1955, when Tible executed the promissory notes, the situation was reversed, as Aquino by this time was the creditor of Tible. The reason for such shifting is clearly illustrated by Aquino when he testified —

Q

Mr. Tena also declared that you received from Mr. Tible P54,500.00 which was conditioned that if you could not pay the same you will make Mr. Tible a partner in your logging business at Esperanza, Agusan, is that correct?

A

I do not exactly remember the amount but that was our first agreement that we will be partners in the logging but later on he changed his mind because as a Congressman he cannot come to Butuan City. So, instead he asked me to cede part of my area, at least 2,000 hectares which was already finalized later on. (p. 7, t.s.n., January 11, 1960.)

"The four promissory notes in question executed on April 9, 1955, consisting of P12,500.00 which is payable within 240 days (Exh. A); the sum of P12,500.00 which is payable within 120 days (Exh. A-1); the sum of P2,500.00 which is payable within 240 days (Exh. A-2); and the sum of P2,500.00 which is payable within 120 days (Exh. A-3), were found by the trial court to be not yet due and demandable at the time of the presentation of the claim, which finding is now being capitalized by the appellee as Tible was not able to operate the 2,000 hectares ceded to him by the claimant. The conclusion reached by the trial court is obviously based on the subsequent receipt for P500.00 issued by Aquino in favor of Tible which provides as follows

‘P500.00

‘RECEIPT

‘RECEIVED from Congressman Emilio M. Tible an additional sum of Five Hundred (P500.00) Pesos, to be credited against the various amounts payable by him to the undersigned. The following are also agreed:

'(1) The various amounts totalling P4,000.00 taken by my brother, Rafael Aquino, will not be paid back to Emilio M. Tible as promised in the receipts signed by my brother but will be credited against the various amounts payable in the future by him to the undersigned.

'(2) It is also understood that these various amounts appearing in the receipts signed by Emilio M. Tible payable to the undersigned will not become due and payable until after the lapse of the respective periods therein specified, same to be counted from the date the said Emilio M. Tible commences his operation within the public forest he acquired from the undersigned. This present receipt, therefore, changes the dates of payment of the said various amounts just above specified.

'Manila, Philippines, June 15, 1955.

(Sgd.) JOSE AQUINO'

It is therefore, the theory of appellee that novation took place concerning the four promissory notes in question. Contrary to appellee's view on this point, it is to be noted in these promissory notes executed by Tible that said amounts would be payable within the period therein stated, provided "that in case of force majeure or any other cause beyond my control that may hinder sale of logs, the payment of the amount . . . in cash or in logs, will be deferred until normal times are restored". The period therein stated was reproduced in a subsequent receipt (Exh. 1) which appellee maintains novated the promissory notes stating that "these various amounts appearing in the receipts signed by Emilio M. Tible payable to the undersigned will not become due and payable until after the lapse of the respective periods therein specified" which obviously had reference to the period stated in the promissory notes in question. Such being the case, this can not be treated as a novation at all. Conversely, the subsequent receipt is but a mere reiteration of acknowledgment of a debt by Tible, although there was a qualified statement therein that "same to be counted from the date the said Emilio M. Tible commences his operation within the public forest he acquired from the undersigned", and that said receipt (Exh. 1) "changes the dates of payment of the said various amounts just above specified". Nonetheless, said qualification is but a provision for a method and more time to pay and does not extinguish the obligation (*Nat. Rice & Corn Corp. vs. Gatbonton*, CA-G.R. No. 27488-R, July 20, 1962). Thus, it has been held that —

'An obligation to pay a sum of money is not novated in a new instrument wherein the old is ratified by changing only the term of payment and adding other obligations not incompatible with the old one (*Ynchausti vs. Yulo*, 34 Phil. 978; *Pablo vs. Sapungan*, 71 Phil., 145., 145).'

We rule, therefore, that the subsequent agreement between Aquino and Tible as to another mode of payment by giving the latter more time to pay does not necessarily constitute novation as contemplated in Article 1291 of the New Civil Code based on the well settled principle on novation that a "mere extension of payment and the addition of another obligation not incompatible with the old one is not a novation thereof. Novation is never presumed; there must be a declaration to the effect in unequivocal terms or that the old and the new obligations must be incompatible" (*Santos vs. Acuna*, G.R. No. L-8831, October 21, 1956). In short, the facts of the case should plainly disclose that there was an unqualified intent to discard the original substantial agreement, and not merely a change as to the mode of payment of an existing obligation for novation is never presumed. The fact that Tible was not able to operate is beside the point, considering that the said 2,000 hectares of Aquino's timber concession was already ceded and transferred in the name of Emilio M. Tible of which he was already granted by the Department of Agriculture and Natural Resources "Ordinary Lumber License" (Exh. 22) and later on in the name of the "Heirs of Emilio M. Tible" (Exh. 20). This consummates the transaction relating to the sale of 2,000 hectares of Aquino's timber concession in favor of Tible and negates any idea that said sale of 2,000 hectares was speculative. Besides, the condition that payment of amounts embodied in the promissory notes shall be dependent upon Tible's operation of the forest concession he acquired from Aquino is undoubtedly a void conditional

obligation, since its fulfillment is made to depend upon the exclusive will of the debtor (Tible) (Art. 1115, Civil Code).

"It appearing that subsequent to the execution of the promissory notes, claimant Jose Aquino received the amount of P500.00 and he acknowledged the amounts of P4,000.00 which was secured by his brother (Exh. 4-D to Exh. 4-F), to be credited against the various sums payable by Tible in his favor, said amount in sum total of P4,500.00 should accordingly be deducted from the whole amount of P30,000.00 as reflected in the four promissory notes subject matter of claimant's cause of action, thereby leaving only the amount of P25,500.00 which claimant could lawfully recover from the estate of Emilio M. Tible."

We find it difficult to dispute private respondent's argument that the real solution of this case hinges on findings based on an evaluation of evidence as to the true nature of the transaction that transpired between Tible and Aquino. The crucial issue of whether or not Tible borrowed from Aquino P50,000.00 before the former bought from Aquino 2,000 hectares of timberland for P107,000.00 was resolved by the respondent Appellate Court in favor of respondent Aquino in its aforequoted discussion on the basis of the evidence presented by both the petitioner and private respondent. Petitioner's version of the supposed transactions that took place between Tible and Aquino was demolished by the findings of respondent Appellate Court. Even if We were to disregard the cardinal rule that only issues of law decided by the respondent Appellate Court may be reviewed by Us, and its findings of facts may likewise be subjected to a minute inquiry, still We see no reasonable grounds for altering or modifying the Appellate Court's well founded conclusions.

Here, evidence of a nature that approaches the approximation of moral certainty, and not merely preponderance of evidence, indicates the real transaction that took place between Aquino and Tible was that Tible borrowed P50,000.00 from Aquino before Tible bought 2,000 hectares of timberland from Aquino for an agreed consideration of P107,000.00. Respondent Appellate Court's ruling relative to the four promissory notes (Exhs. "A", "A-1", "A-2", "A-3") as executed by Tible in favor of Aquino to pay the balance of the agreed consideration of the sale, that "the subsequent agreement between Aquino and Tible as to another mode of payment by giving the latter more time to pay does not necessarily constitute novation as contemplated in Article 1291 of the New Civil Code on the well settled principle on novation that a 'mere extension of payment and the addition of another obligation not incompatible with the old one is not a novation thereof', is well-buttressed by the evidence and We find no compelling reason to overturn the same. Neither do We see any reason to disagree with respondent Appellate Court's ruling that "the condition that payment of amounts embodied in the promissory notes shall be dependent upon Tible's operation of the forest concession he acquired from Aquino is undoubtedly a void conditional obligation since its fulfillment is made to depend upon the exclusive will of the debtor, Tible (Art. 1115, Civil Code)". The payment of the remaining balance of the purchase price of the 2,000 hectares of timberland cannot be made to depend on the exclusive will of the debtor, Tible, whether or not he will operate the timber concession.

As to the petitioner's contention raised for the first time before Us that the sale of the timberland for P107,000.00 by Aquino to Tible is null and void for being contrary to law and public policy, suffice it to say that this new contention was not raised by petitioner in the respondent Appellate Court where she only asked that the order of the trial court recognizing the validity of the sale in accordance with petitioner's version and giving her a favorable judgment should be affirmed. When the respondent Appellate Court reversed the order of the trial court and rendered judgment in favor of private respondent Aquino by accepting his version of the transaction, petitioner now claims that the sale is void. In short, she wants to win the case at any cost even by a complete change of theory on the real issues involved.

Petitioner's argument that the trial court erred in giving due course to Aquino's claim for P30,000.00 since it was

filed about eleven months after the date of the first publication of the notice to creditors hardly deserves consideration at this time. When the trial court accepted the claim, what the petitioner did, instead of questioning the trial court's jurisdiction on the matter, was to file a counterclaim against claimant Aquino, wherein she was sustained by the trial court, and she urged the respondent Appellate Court to affirm it when claimant Aquino appealed the trial court's order. It is now late in the day to question the timeliness of the filing of the claim.

WHEREFORE, the decision of respondent Court of Appeals is affirmed, with costs against petitioner.

SO ORDERED.

Castro, (Chairman), Makasiar, Muñoz Palma and Martin, JJ., concur.

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