

EMMA S. ACENAS AND ALBERTO E. ACENAS, SPOUSES, PLAINTIFFS AND APPELLEES, VS. ANGELA SISON AND TEOFILO SISON, SPOUSES, DEFENDANTS AND APPELLANTS.

G.R. No. L-17011. August 30, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the order dated March 7, 1960 of the Court of First Instance of Rizal, Quezon City Branch, holding husband and wife solidarily liable on a note made by the wife.

But although this appeal was brought on behalf of husband and wife, the decision of the trial court is being questioned only insofar as it holds the husband liable on the note of his wife. The wife's liability is admitted.

The records show that in September, 1956, Angela Sison executed a promissory note, promising to pay Emma S. Acenas the sum of P8,160 in 26 installments, the first falling due on November 30, 1956 and the last on November 30, 1960. The note provided that failure to pay two consecutive installments would make the balance due and demandable.

Mrs. Sison was able to pay up to August 31, 1957 only. Upon her failure to pay the balance of the note, alleged to be in the sum of P8,391.60, she was sued. Her husband, Teofilo Sison, was joined as a defendant pursuant to Article 113 of the Civil Code.

In their answer, Mr. Sison denied liability on the ground that he had not signed the promissory note.

The case was set for hearing on March 7, 1960. What happened on that day is set forth in the following decision of the Court of First Instance, dated March 7, 1960:

"When this case was called for hearing today, counsel for the defendants moved for the postponement of the hearing hereof in view of the absence of his clients and that he needs time within which to confer with them for the purpose of amicably settling this case. To this motion for postponement, however, counsel for the plaintiffs objected on the ground that the defendants have been given sufficient time within which to settle this case but failed to do so. On the other hand, when the court indicated to the defendant's counsel that there seems to be no defense on the part of the defendants in this case, and that it would be for the best interest of the latter if the case is terminated by way of judgment on the pleadings or confession of judgment, counsel for defendants offered no objection and asked that confession of judgment by the defendants may be entered in this case provided that the corresponding writ of execution thereof should not be issued until June 30, 1960, to which counsel for the plaintiffs agreed.

"In view thereof, and upon motion of counsel for defendants with the conformity of counsel for the plaintiffs, the motion for confession of judgment under the terms and conditions set forth above are hereby granted.

"WHEREFORE, judgment is rendered, one in favor of the plaintiffs and against the defendants, by ordering the defendants, jointly and severally, to pay to plaintiffs the sum of P8,391.60, with interest at the rate of 1%

per month from November 1, 1959 until fully paid for: by ordering the same defendants, jointly and severally, to pay to plaintiffs the additional sum of P500.00 by way of attorney's fees; and for the defendants to pay the costs. This decision, however, is subject to the condition that the corresponding writ of execution should not be issued until June 30, 1960, as agreed upon by the parties herein." (*Italic supplied.*)

Their motion for reconsideration and new trial having been denied, defendants appealed directly to this Court. Appellant Teofilo Sison contends that his lawyer agreed to a judgment on the pleadings but not to a confession of judgment; that he never authorized his lawyer to confess judgment for him and that at any rate he was not liable on the note of his wife.

For purposes of this appeal, We take it as a fact, as trial court found, that Atty. Nicanor S. Sison, counsel for Teofilo and Angela Sison, agreed to a judgment on confession against his clients, provided no writ of execution was issued until June 30, 1960. But, the records do not show that Atty. Sison had authority to confess judgment. On the contrary, the decision of March 7, 1960 states that Atty. Sison "moved for the postponement of the hearing hereof in view of the absence of his clients and that he needs time within which to confer with them for the purpose of amicably settling this case." This indicates that Atty. Sison lacked authority to confess judgment, otherwise, there would have been no need for him to confer with his clients. This circumstance should have put the trial court on an inquiry as to counsel's authority.

In *Natividad vs. Natividad*, 51 Phil. 613, and *Anduiza vs. Quirona*, G.R. No. L-5073, May 20, 1953, We held that the compromise of causes and confession of judgments appear to stand upon the same footing and that since the compromise may not be affected by counsel without special authority,[1] so may not an agreement to permit judgment to be entered against his client be authorized except with the knowledge and at the instance of the client. Such judgment may be set aside or reopened.

Appellees cite decisions of the courts of Georgia which hold that where a settlement of a suit is made by an attorney accepting less than the full amount of the claim in cash, the agreement binds the client if the settlement is carried out by a consent verdict and judgment and the settlement was made without fraud on the part of the attorney or any instruction of the client to the contrary. (*Coweta Fertilizer Co. vs. Johnson*, 26 Ga. App. 528, 106 S.E. 610; *Brannan vs. Mobley*, 169 Ga. 243, 150, S.E. 76)

As this Court noted in the *Natividad* case, these cases do not apply here because the Georgia statute is different from our law. Thus, in the *Coweta Fertilizer* case, *supra*, the Court of Appeals of Georgia held:

"We do not think that section 4956 of the Civil Code of 1910 is applicable to the facts of the present case. That section provides as follows:

'Without special authority, attorneys cannot receive anything in discharge of a client's claim but the full amount in cash.'

"In the present case the attorney of the defendant was not endeavoring to collect or enforce his client's claim, but was resisting a suit or claim against his client and consented to the credit in favor of his client. * **"

In contrast, Section 21 of Rule 127 expressly requires that attorneys have special authority not only to receive anything in discharge of a client's claim but the full amount in cash but also to compromise their client's litigation.

Appellees also rely on *Holker and others vs. Parker*, 7 Cranch 436, 6 Law Ed. 433. But that case does not support appellees' position, for it was held there that—

"Although an attorney at law, merely as such, has strictly speaking no right to make a compromise, yet a court would be disinclined to disturb one which was not so unreasonable in itself as to be exclaimed against by all, and to create an impression that the judgment of the attorney has been imposed on, or not fairly exercised in

the case. But where the sacrifice is such as to leave it scarcely possible that, with a full knowledge of every circumstance, such a compromise could be fairly made, there can be no hesitation in saying that the compromise, being unauthorized and being therefore itself void, ought not to bind the injured party. Though it may assume the form of an award or of a judgment at law, the injured party, if his own conduct has been perfectly blameless, ought to be relieved against it. * * *

We hold therefore that it was error for the trial court to accept the confession made by counsel without ascertaining his authority to do so, at least with respect to Teofilo Sison. With respect to Angela Sison, however, the judgment will be maintained, there being no claim in this appeal that the confession of judgment made in her behalf was unauthorized. In fact, her liability is admitted here.

This brings us to the next point. Does Article 113 of the Civil Code, which requires the joinder of the husband in actions against the wife, make the husband solidarily liable? Appellees maintain that it does, since the order is not assailed as far as Mrs. Sison is concerned "otherwise, his (the husband's) joinder would be an empty formality."

We do not share this view. The law requires the joinder of the husband not because he is thereby bound with his wife but because he is the administrator of the conjugal partnership which might be held liable in the action. To make the husband solidarily liable with his wife simply because his joinder is required would be to subvert the basic rule that the wife cannot bind the conjugal partnership without the husband's consent. (Art. 172, Civil Code) The only exceptions are when the husband consents; when the wife spends for the usual daily needs of the family (Art. 115); or when she is given the management of the partnership (Arts. 157, 168, 178 and 196). There is no allegation in the complaint that Mrs. Sison incurred her obligation to Mrs. Acenas under any of these exceptions so as to bind the conjugal partnership.

Wherefore, the decision dated March 7, 1960 of the lower court is modified in the sense that defendant Teofilo Sison is not liable and that defendant Angela Sison alone is liable to the plaintiffs for the amount adjudged in the decision. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Makalintal, JJ., concur.

[1] Section 21 of Rule 127 of the Rules of Court provides:

"Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."

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