

MARIANO T. NASSER, MANUEL S. NASSER, ROSARIO S. MATUTE, AND FORTUNATA ZAMBRANO VDA. DE MATUTE, PETITIONERS, VS. HON. SERAFIN R. CUEVAS, JUDGE, COURT OF FIRST INSTANCE, MANILA, B...

G.R. No. L-41607. August 21, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

An attempt to give to the plain language of a written agreement a construction or signification clearly not warranted by its terms is all that this case is about.

In the proceedings for the settlement of the estate of the late Amadeo Matute Molave in the then Court of First Instance of Manila,[1] a document embodying a supplemental compromise agreement and project of partition was executed among the heirs and other interested parties.[2] It was approved by the Probate Court some eight months later.[3] It rendered moot related cases then pending in this Court,[4] which on that account were consequently dismissed.[5]

The agreement provided inter alia for the payment of the attorney's fees of respondent Atty. Paterno Canlas in the aggregate amount of P600,000.00, in property (Hacienda Cadiatan, valued at P128,000.00) and cash (P412,000.00). Relative to said fees, the agreement also contained a provision creating a charging lien in Canlas' favor reading as follows:[6]

" ** However, until after the full payment of the sum of P600,000.00 or P412,000.00, as the case may be, there shall be established on all the properties of the Estate, real and personal, herein adjudicated and other properties not yet adjudicated, a charging lien for attorney's fees to secure the payment of said attorney's fees and, by these present, all the signatories to this Compromise Agreement expressly agree to the establishment and creation of the aforesaid charging lien, provided that upon full payment of the corresponding liability of a party the lien on his/her share is extinguished."

The annotation on the new titles over property to be issued to the heirs, of their corresponding share in the obligation to pay Canlas' attorney's fees, in accordance with the compromise agreement and project of partition, was also directed in the order approving the same.[7]

Shortly after the approval of the agreement by the Court, Canlas moved for execution,[8] which the Court, then presided over by respondent Judge Serafin R. Cuevas,[9] granted by Order[10] which directed[11] -

" * * the heirs and transferees pendente lite to pay Atty. Paterno R. Canlas their corresponding shares of the attorney's fees pursuant to No. III paragraph c, pages 23 to 23-A of the Supplemental Compromise Agreement and Project of Partition, as follows:

'Mariano T. Nasser - P202,500.00, minus Hacienda Cadiatan, P128,000.00 or P74,500.00; Manuel S. Nasser - P40,500.00; and the seven (7) heirs, namely, Rosario S. Matute, Fortunata Zambrano Vda. de Matute, Trinidad

Matute de Bayani, Matias S. Matute, Carlos V. Matute, Cecilia Villanueva Matute, Conchita V. Matute, including transferee pendente lite Jeffre R. Canlas, the sum of P33,081.25 each,'

and finally directs Mariano T. Nasser to deliver or surrender possession of hacienda Cadiatan to the movant Paterno R. Canlas or his duly authorized representative within ten (10) days from receipt hereof."

This Order of Judge Cuevas was assailed in this Court by the heirs (the Nassers and Matutes), through the special civil action of certiorari and/or prohibition at bar, principally on the ground that execution was improper in the absence of a written agreement on the precise terms of payment of Canlas' attorney's fees. The Court issued a temporary restraining order.[12]

Not too long afterwards, Mariano T. Nasser, Manuel S. Nasser and Fortunata Zambrano Vda. de Matute reached an agreement with respondent Canlas over the payment of the latter's fees. This they made known to the Court,[13] as well as the fact that no similar agreement could be arrived at as regards the other heirs, despite negotiations and conferences towards this end.[14] It appears, however, that only the Nassers complied with their undertaking to pay Canlas' fees. Fortunata Zambrano Vda. de Matute has, to date, failed to do so.[15]

The recalcitrant heirs maintain that -

- 1) the clause in the provision relative to Canlas' attorney's fees: "upon full payment of the corresponding liability of a party the lien on his/her share is extinguished,"[16] connoted payment of the fees on installment; and
- 2) indeed, this had been orally agreed upon in the course of the conferences held in the chambers and in the presence of Mr. Justice Antonio Barredo with a view to reaching a mutually satisfactory settlement of the matter.

There is nothing in the cited proviso to justify the reading that the petitioners would give to it. The paragraph in which it is found does no more than establish "on all the properties of the Estate, real and personal, herein adjudicated and other properties not yet adjudicated, a charging lien ** to secure the payment of (Canlas') attorney's fees;" this, with the express agreement of all the signatories. The proviso that "upon full payment of the corresponding liability of a party the lien on his/her share is extinguished," evidently contemplates the probability that the heirs obliged to pay Canlas' fees would pay at different times, and denotes nothing more than that if one of the obligors separately pays his share in Canlas' fees, the lien on his share of the estate is thereby extinguished -- a quite obvious proposition, to be sure. The clause cannot be construed as granting to any of the obligors, by implication, the option to pay in installments, or as impliedly binding the obligee to accept payment by parts.

The legal principle, in any event, is that "the creditor cannot be compelled partially to receive the prestations in which the obligation consists" unless "there is an express stipulation to that effect," in much the same way that the debtor may not "be required to make partial payments." [17]

It is noteworthy that the agreement of compromise and of partition in question was signed by the obligors with the assistance of their respective counsel, and was not approved by the Probate Court until after eight months or so. At no time did they then draw attention to the absence in the agreement, or in the Court order approving it, of any option on their part to pay their share in the attorney's fees by parts or in installments. Equally noteworthy, as reflective of the heirs' intention, or lack of it, to comply with their obligation to pay Canlas' fees, is that from the time of the execution of the compromise agreement, up to date hereof, sixteen years altogether, they have not paid a single centavo to Mr. Canlas.

Neither does the Court find in the record any proof worthy of the name to substantiate the supposed agreement verbally made before Justice Barredo. The self-serving affidavits of the heirs[18] do not, all circumstances considered, qualify as such proof.

On nothing but what may be called semantic sophistry, the petitioners have succeeded in delaying payment of their valid debts for sixteen (16) years. Their stratagem having been exposed for what it is, they should not be allowed to delay fulfillment of their obligation any longer.

WHEREFORE, being manifestly without merit, the petition is DENIED. The restraining order against the enforcement of the challenged order of execution and writ of execution issued in Special Proceedings No. 25876 of the Court of First Instance of Manila is LIFTED AND DISSOLVED. Said order and writ are held to have been validly and lawfully issued, and alias execution may issue to the extent that the judgment credit of Atty. Paterno R. Canlas remains unsatisfied, with the proviso that the sums still due him shall bear interest at the legal rate of six percent (6%) per annum from September 2, 1974 until fully paid. Petitioners are charged treble costs. This Decision is immediately executory.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Sp. Proc. No. 25876

[2] This was on September 2, 1974.

[3] On July 7, 1975

[4] G.R. Nos. L-29808 and L-30327

[5] Resolution dated April 17, 1979

[6] Rollo, p. 43

[7] Id.

[8] Id., p. 68

[9] Later, associate justice of the Court of Appeals, and then of the Supreme Court

[10] Dated Sept. 16, 1975

[11] Rollo, p. 85

[12] Id., p. 90. The Court also subsequently allowed intervention of Matias S. Matute, who was found to be similarly situated as the petitioners (Rollo, p. 281-A). Much later, however, Matias Matute moved to withdraw his intervention, which the Court also permitted (Id., p. 443).

[13] By manifestation dated June 18, 1977

[14] Rollo, pp. 369-371

[15] Id., pp. 436, 446

[16] SEE footnote 6, p. 2, supra

[17] ART. 1248, Civil Code, which finds a counterpart principle in American Law, 70 C.J.S. 218

[18] Rollo, pp. 54-64

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