

**CARLOS SANDICO, SR., AND TEOPISTO P. TIMBOL, PETITIONERS, VS.
THE HONORABLE MINERVA R. INOCENCIO FIGUING, JUDGE OF THE
COURT OF FIRST INSTANCE OF PAMPANGA, AND DESIDERIO PARAS,
...**

G.R. No. L-26115. November 29, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

On April 16, 1960 the spouses Carlos Sandico and Enrica Timbol, and Teopisto P. Timbol, administrator of the estate of the late Sixta Paras, obtained a judgment in their favor against Desiderio Paras (hereinafter referred to as the respondent) in civil case 1554, an action for easement and damages in the Court of First Instance of Pampanga. On appeal, the Court of Appeals affirmed and modified the judgment, as follows:

"IN VIEW WHEREOF, judgment affirmed and modified; as a consequence, defendant is condemned to recognize the easement which is held binding as to him; he is sentenced to pay plaintiffs the sums of P5,000.00 actual, and P500.00 exemplary damages, and P500.00 attorney's fees; plus costs in both instances." [1]

Thereafter, upon remand to the court a quo of civil case 1554, the Sandicos and Timbol (hereinafter referred to as the petitioners) moved for the issuance of a writ of execution to enforce the appellate court's judgment which had acquired finality. Acting upon the motion, the court a quo issued a writ of execution on July 22, 1964. This writ the provincial sheriff served upon the respondent on August 22, 1964.

Meanwhile the petitioners and the respondent reached a settlement, finally agreeing to the reduction of the money judgment from P6,000 to P4,000. Thus, the respondent, on August 5, 1964, paid the petitioners the sum of P3,000; on August 31, 1964, he made another payment in the amount of P1,000 as evidenced by a receipt issued by the petitioners' counsel. This receipt is hereunder reproduced in full:

"P1,000.00

"RECEIVED from Mr. Desiderio Paras the sum of ONE THOUSAND PESOS (P1,000.00), Philippine Currency, in full satisfaction of the money judgment rendered against him in Civil Case No. 1554 of the Court of First Instance of Pampanga, it being understood that the portion of the final judgment rendered in the said case ordering him to reconstruct the irrigation canal in question shall be complied with by him immediately.

"City of Angeles, August 31, 1964.

"(SGD.) DALMACIO P. TIMBOL

"Counsel for Plaintiffs

in Civil Case No. 1554

"I AGREE:

(SGD.) DESIDERIO PARAS"

Subsequently, the petitioners sent the respondent a letter dated November 5, 1964 demanding compliance by the latter with the portion of the judgment in civil case 1554 relative to the reconstruction and reopening of the irrigation canal.

On February 12, 1965 the provincial sheriff returned the writ of execution issued on July 22, 1964 unsatisfied.

Upon failure and refusal of the respondent to rebuild and reopen the irrigation canal, the petitioners, on March 3, 1965, filed with the court a quo, with Judge Minerva R. Inocencio Piguing (hereinafter re-ferred to as the respondent judge) presiding, a motion to declare the said private respondent in contempt of court, pursuant to the provisions of section 9, Rule 39 of the Rules of Court. Opposing the motion, the respondent alleged recognition by him of the existence of the easement and compliance with the appellate court's judgment, stating that he had dug a canal in its former place, measuring about one-and-a-half feet deep, for the petitioners' use.

On September 8, 1965 the respondent judge issued an order denying the petitioners' motion to declare the respondent in contempt of court, ruling that

"... it appears from the dispositive part of the decision that the defendant was only ordered to re-cognize the easement which is held binding as to him and to pay the plaintiffs the sums of P5,000.00 actual, and P500.00 exemplary damages.

"Apparently, it is clear from the dispositive part of the decision that there is nothing to show that the defendant was ordered to reconstruct the canal."

On September 16, 1965 the petitioners moved for the issuance of an alias writ of execution to enforce the judgment of the Court of Appeals. This motion the respondent judge granted in an order dated September 25, 1965. On November 3, 1965, the respondent moved to set aside the said alias writ, alleging full satisfaction of the money judgment per agreement of the parties when the petitioners received the sum of P4,000 in August, 1964 as evidenced by the receipt dated August 31, 1964.

The respondent judge then issued an order dated November 11, 1965 directing the provincial sheriff to suspend the execution of the alias writ until further orders. On February 3, 1966 the respondent judge issued an order recalling and directing the quashal of the alias writ of execution. The respondent judge stated in her order that the agreement of the parties "novated" the money judgment provided for in the decision of the Court of Appeals, ruling that the said decision

"... which is sought now to be executed by this Court, has already been fully satisfied as to the money judgment and nothing more is left to be executed from the aforesaid Decision as it does not allege (aside from money judgment) any other condition except for the de-fendants to recognize the easement therein."

With their subsequent motion for reconsideration denied by the respondent judge, the petitioners, on May 27, 1966, filed with this Court the present petition[2] for certiorari seeking to set aside (1) the order of the respondent judge dated September 8, 1965 denying their motion to declare the respondent in contempt of court in civil case 1554, and (2) the orders of the respondent judge dated February 3, 1966 and March 30, 1966 granting the respondent's motion to set aside the alias writ of execution issued in the same civil case, on the ground that the respondent judge acted in excess of jurisdiction or with grave abuse of discretion.

Here tendered for resolution are the following issues:

(1) Whether the respondent judge correctly construed the judgment of the Court of Appeals as not requiring he respondent to reconstruct and reopen the irrigation canal, and consequently, whether the said respondent judge

acted in excess of jurisdiction or with grave abuse of discretion in denying the petitioners' motion to declare the respondent in contempt of court for failing and refusing to comply with the appellate court's judgment; and

(2) Whether the payment by the respondent to the petitioners of the amount of P4,000 extinguished the money judgment, and, consequently, whether the respondent judge acted in excess of jurisdiction or with grave abuse of discretion in ordering the recall and quashal of the alias writ of execution.

1. Anent the first issue, the petitioners argue that although the dispositive portion of the appellate court's judgment omitted any directive to the respondent to reconstruct and reopen the irrigation canal, the Court of Appeals' order requiring recognition of the easement on the part of the said respondent suffices to make him aware of his obligation under the judgment. The only way of recognizing the easement, the petitioners continue, consists in performing positive act - the reconstruction and restoration of the irrigation canal to its former condition. Moreover, to understand the full intendment of the dispositive portion of the judgment directing the respondent "to recognize the easement" necessitates reference to a statement in the decision of the Court of Appeals that reads:

"... the result of this must be to justify the conclusion prayed for by the plaintiffs that the easement should be held to be existing and binding upon defendant and he should be held to have acted without authority in closing the canal which should be ordered reopened."

On the other hand, the respondent alleges that there is no ambiguity in the phraseology of the portion of the Court of Appeals' judgment condemning him to recognize the easement. Said decision requires him only to "recognize" the easement and in compliance therewith, he gives the petitioners permission to reconstruct and reopen the irrigation canal themselves. Neither the decision a quo nor that of the appellate court orders him to reconstruct and reopen the irrigation canal.

The agreement reached by the petitioners and the respondent in August, 1964 relative to the judgment of the appellate court which had acquired finality and the interpretation by the parties themselves of the said judgment, specifically its dispositive portion, as embodied in the receipt dated August 31, 1964, constitute the considerations of prime importance in the resolution of the first question. No doubt exists that the parties entered into the agreement, fully aware of the judgment of the appellate court ordering the respondent to comply with two obligations, to wit, payment of a sum of money and recognition of the easement. The receipt evidencing the agreement, aside from providing for the reduction of the money judgment, provides for the reconstruction of the irrigation canal. Such constitutes the interpretation accorded by the parties to that part of the dispositive portion of the appellate court's judgment condemning the respondent to recognize the easement. This stipulation - one wherein the respondent clearly recognizes his obligation "to reconstruct the irrigation canal" - embodied in precise and clear terms in the receipt binds the said respondent, a signatory to the said receipt, and requires from him full compliance. We thus fail to perceive any reason to sustain the contention of the respondent that he has no obligation at all to reconstruct and reopen the irrigation canal, a position utterly in-consistent with his agreement with the petitioners as embodied in the receipt dated August 31, 1964.

The record, however, shows that the respondent exerted efforts to reconstruct the portion of the irrigation canal running through his land by digging a canal about one meter wide and about one-and-a-half feet deep. This partial reconstruction of the irrigation canal the petitioners admit. Still, the petitioners demand the reconstruction of the irrigation canal to its former condition - measuring four meters wide, five feet deep, and one-hundred and twenty-eight meters long - contending that the rebuilt canal serves no useful purpose because the water passing through it overflows, which overflow ultimately causes the destruction of the canal itself. Nonetheless, we believe that need to give full force and effect to the existence of the easement demands that the respondent reconstruct the irrigation canal to its condition before he closed and destroyed the same. After all, the respondent himself in his

answer dated June 16, 1959 filed with the court a quo admitted the original dimensions of the irrigation canal as four meters wide and one-hundred and twenty-eight meters long. The respondent's attempt to rebuild the irrigation canal, partially and not in conformity with the dimensions of the original one, does not constitute satisfactory and substantial compliance with his obligation to recognize the easement per the appellate court's judgment and to reconstruct the irrigation canal pursuant to his agreement with the petitioners in August, 1964.

Due to the respondent's failure and refusal to reconstruct and reopen the irrigation canal, the petitioners sought to declare him in contempt of court, under the provisions of section 9 of Rule 39 of the Rules of Court. The respondent judge, however, believing that the appellate court's judgment required the respondent merely to recognize the easement without doing any positive act of reconstruction and reopening of the irrigation canal, dismissed the petitioners' motion to declare the respondent in contempt of court. In doing so, the petitioners allege, the respondent judge acted in excess of jurisdiction or with grave abuse of discretion. The petitioners thus ask us now to annul the order of the respondent judge denying their motion to declare the respondent in contempt of court or, by way of alternative, to declare the respondent in contempt of court and to punish him accordingly.

The petitioners predicate their stand mainly upon the provisions of section 9 of Rule 39 of the Rules of Court. Said section reads:

"Sec. 9. Writ of execution of special judgment. - When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment."

Section 9 applies to specific acts other than those covered by section 10 of the same rule. Section 10 pertinently provides:

"Sec. 10. Judgment for specific acts; vesting title. - If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party...."

Section 9 refers to a judgment directing the performance of a specific act which the said judgment requires the party or person to personally do because of his personal qualifications and circumstances. Section 10 refers to a judgment requiring the execution of a conveyance of land or the delivery of deeds or other documents or the performance of any other specific act susceptible of execution by some other person or in some other way provided by law with the same effect. Under section 10, the court may designate some other person to do the act ordained to be done by the judgment, the reasonable cost of its performance chargeable to the disobedient party. The act, when so done, shall have the same effect as if performed by the party himself. In such an instance, the disobedient party incurs no liability for contempt.^[3] Under section 9, the court may resort to proceedings for contempt in order to enforce obedience to a judgment which requires the personal performance of a specific act other than the payment of money, or the sale or delivery of real or personal property.

An examination of the case at bar makes it apparent that the same falls within the contemplation of section 10, and not of section 9 as the petitioners contend. The reconstruction and reopening of the irrigation canal may be done by some other person designated by the court, at the cost of the respondent. In fact, the respondent, in his attempt to rebuild the irrigation canal, contracted the services of one Gerardo Salenga. Accordingly, in conformity with the appellate court's judgment as further mutually interpreted by the parties themselves, the court a quo, because of the failure and refusal of the respondent to restore the irrigation canal to its former condition and to reopen it, should have appointed some other person to do the reconstruction, charging the expenses therefor to the

said respondent.

2. As to the second question, which relates to the money judgment, the petitioners vehemently insist on their right to recover an additional sum of P2,000 - the alleged unsatisfied portion of the appellate court's judgment requiring the respondent to pay to the petitioners the total amount of P6,000 corresponding to damages and attorney's fees. The petitioners allege that their agreement with the respondent in August, 1964, reducing the amount due from the respondent, constitutes neither waiver of their claim for the sum of P2,000 nor novation of the money judgment provided for in the Court of Appeals' decision. They state that their agreement with the respondent reduced the amount of the money judgment, subject to the condition that the latter reconstruct and reopen the irrigation canal immediately. This, they argue, does not constitute alteration of the appellate court's judgment.

For his part, the respondent contends that his payment of the sum of P4,000, received and acknowledged by the petitioners through their counsel as "in full satisfaction of the money judgment" in civil case 1554, extinguished his pecuniary liability. Thus, when the petitioners, notwithstanding the admitted payment of the judgment debt in the lesser amount of P4,000, still sought to enforce the money judgment for the full amount of P6,000 through an alias writ of execution, the court a quo in recalling and quashing the alias writ previously issued, acted correctly and within its authority.

Parenthetically, the petitioners' application for the issuance of the alias writ of execution dated September 16, 1965, the alias writ of execution dated September 29, 1965, and the levy on execution and the notice of sheriff's sale, both dated October 21, 1965, all refer to the amount of P6,000 and make no mention whatsoever of the true status of the judgment debt. On this point, the respondent charges the petitioners with concealing from the court a quo the true amount, if any, still due from him. And in effect, he alleges, the petitioners apparently seek the payment of the judgment debt twice. The petitioners, however, emphasize that they demand payment of only the balance of P2,000. To rebut the respondent's charge of concealment, they state that they informed the court a quo that the respondent already paid them the sum of P4,000. Furthermore, they allege that another lawyer, a former associate of their counsel, prepared their motion for the issuance of the alias writ of execution, received the alias writ and delivered the same to the sheriff. Impliedly, therefore, they attribute the inconsistency regarding the amount still allegedly due from the respondent to the former associate of their counsel.

Reverting to the second question, the appellate court's judgment obliges the respondent to do two things: (1) to recognize the easement, and (2) to pay the petitioners the sums of P5,000 actual and P500 exemplary damages and P500 attorney's fees, or a total of P6,000. The full satisfaction of the said judgment requires specific performance and payment of a sum of money by the respondent.

We adjudge the respondent's judgment debt as having been fully satisfied. We see no valid objection to the petitioners and the respondent entering into an agreement regarding the monetary obligation of the latter under the judgment of the Court of Appeals, reducing the same from P6,000 to P4,000. The payment by the respondent of the lesser amount of P4,000, accepted by the petitioners without any protest or objection and acknowledged by them as "in full satisfaction of the money judgment" in civil case 1554, completely extinguished the judgment debt and released the respondent from his pecuniary liability.

Both the petitioners and the respondent take exception to the respondent judge's ruling that their agreement of August, 1964 to reduce the judgment debt, as evidenced by the receipt hereinbefore adverted to, "novated" the money judgment rendered by the appellate court.

Novation results in two stipulations - one to extinguish an existing obligation, the other to substitute a new one in its place.[4] Fundamental it is that novation effects a substitution or modification of an obligation by another or an

extinguishment of one obligation by the creation of another. In the case at hand, we fail to see what new or modified obligation arose out of the payment by the respondent of the reduced amount of P4,000 and substituted the monetary liability for P6,000 of the said respondent under the appellate court's judgment. Additionally, to sustain novation necessitates that the same be so declared in unequivocal terms - clearly and unmistakably shown by the express agreement of the parties or by acts of equivalent import - or that there complete and substantial incompatibility between the two obligations.[5]

Neither do we appreciate the petitioners' stand that, according to their agreement with the respondent, their assent to the reduction of the money judgment was subject to the condition that the respondent reconstruct and reopen the portion of the irrigation canal passing through his land immediately. The petitioners even state that the receipt of August 31, 1964 embodies this condition.

The terms of the receipt dated August 31, 1964, we find clear and definite. The receipt neither expressly nor impliedly declares that the reduction of the money judgment was conditioned on the respondent's reconstruction and reopening of the irrigation canal. The receipt merely embodies the recognition by the respondent of his obligation to reconstruct the irrigation canal. And the receipt simply requires the respondent to comply with such obligation "immediately." The obligation of the respondent remains as a portion of the Court of Appeals' judgment. In fact, the petitioners themselves, in their letter dated November 5, 1964, sent to the respondent, demanding that the latter reconstruct the irrigation canal immediately, referred to the same not as a condition but as "the portion of the judgment" in civil case 1554.

Consequently, the respondent judge, when she granted the motion of the respondent to set aside the alias writ of execution and issued the order dated February 3, 1966 recalling and quashing the said alias writ, acted correctly. Courts have jurisdiction to entertain motions to quash previously issued writs of execution because courts have the inherent power, for the advancement of justice, to correct the errors of their ministerial officers and to control their own processes. However, this power, well circumscribed, to quash the writ, may be exercised only in certain situations, as when it appears that (a) the writ has been improvidently issued, or (b) the writ is defective in substance; or (c) the writ has been issued against the wrong party, or (d) the judgment debt has been paid or otherwise satisfied, or (e) the writ has been issued without authority, or (f) there has been a change in the situation of the parties which renders such execution inequitable, or (g) the controversy has never been submitted to the judgment of the court, and, therefore, no judgment at all has ever been rendered thereon.[6] In the instant case, the payment of the judgment debt by the respondent, although in a reduced amount but accepted by the petitioners as "in full satisfaction of the money judgment," warrants the quashal of the alias writ.

ACCORDINGLY, judgment is hereby rendered, (1) declaring that the respondent judge did not act in excess of jurisdiction or with grave abuse of discretion in issuing the order dated February 3, 1966 (granting the respondent's motion to set aside the alias writ of execution, and recalling and quashing the said alias writ) and the order dated March 30, 1966 (denying the petitioners' motion for reconsideration of the order dated February 3, 1966); and (2) remanding the case to the court a quo with instructions that the respondent court (a) conduct an ocular inspection of the irrigation canal passing through the respondent's land to determine whether or not the said canal has been rebuilt in accordance with its original dimensions; (b) in the event that the said canal fails to meet the measurements of the original one, order the respondent to reconstruct the same to its former condition; and (3) in the event of the respondent's further refusal or failure to do so, appoint some other person to reconstruct the canal in accordance with its original dimensions, at the cost of the said respondent, pursuant to section 10 of Rule 39 of the Rules of Court. Without pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Reyes, J.B.L., J., in the result.

Teehankee, J., concurs and adds brief remarks in a separate concurrence.

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- [1] CA -GR 28414-R, November 18, 1963.
[2] Amended on September 15, 1966.
[3] Caluag and Garcia vs. Pecson, et al., 82 Phil. 8.
[4] Tiu Siuco vs. Habina, 45 Phil. 707.
[5] Article 1292, Civil Code of the Philippines.
[6] Cobb-Perez and Perez vs. Lantin, et al., L-22320, May 22, 1968, 23 SCRA 637.
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SEPARATE OPINION

TEEHANKEE, J.:

I concur in the result. It seems to me that any ambiguity in the receipt of August 31, 1964 prepared by Atty. Dalmacio P. Timbol as counsel for petitioners as judgment creditors in Civil Case No. 1554 of the Court of First Instance of Pampanga, to which respondent as judgment debtor had signed his agreement, must be construed against petitioners as the parties responsible for the ambiguity.

The condition or clause provided in the said receipt viz, "that the portion of the final judgment rendered in the said case ordering him (respondent Paras) to reconstruct the irrigation canal in question shall be complied with by him immediately" (emphasis supplied) is ambiguous being premised on an erroneous statement of fact. Besides the money part of the judgment, all that the said judgment ordered respondent was "to recognize the easement which is held binding as to him."

Accordingly, I submit that in the proceedings below with the remand of the case, respondent should in fairness be permitted to pre-sent competent evidence to clarify his contention at bar "that he has no obligation at all to reconstruct and reopen the irrigation canal" (main opinion, at p. 5), which, as noted in the main opinion, is a "position utterly inconsistent" with his alleged agreement to do so, as stated in the receipt of August 31, 1964 - which alleged agreement was in turn based on the erroneous premise that the judgment in question ordered him to reconstruct the irrigation canal. If there were in fact an agreement or recognition on respondent's part to reconstruct the irrigation canal immediately, notwithstanding that he was not so sentenced under the final judgment, competent evidence should likewise be permitted in the proceedings below to determine the nature and extent of his agreement and undertaking.

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