

ROSENDA A. DE NUQUI, ET AL., PLAINTIFFS-APPELLEES, VS. ILDEFONSO D. YAP, DEFENDANT-APPELLANT.

G.R. No. L-25676. March 27, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Appellant Ildefonso Yap was the defendant in Civil Case 1907 filed in the Court of First Instance of Misamis Occidental on July 17, 1956 by plaintiffs Rosenda Nuqui, Sotero Dionisio, Jr., and the spouses Antolin and Erlinda Diaz for the rescission of a contract. This case was tried below jointly with Civil Case No. 1774, which in-volved the same contract and wherein Yap was also one of the defendants. On March 31, 1960, a joint decision was promulgated. With particular reference to Civil Case 1907, the dispositive portion thereof reads:[1]

x x x

"In Civil Case No. 1907 only -

"(1) Defendant Ildefonso D. Yap is here-by ordered to restore to the plaintiffs in said case all the buildings and grounds des-cribed in the Mutual Agreement together with all the permanent improvements thereon;

"(2) To pay to the plaintiffs therein the amount of P300.00 monthly from July 31, 1956 up to the time he shall have surren-dered the properties in question to the plain-tiffs therein, plus P1,000.00 as attorney's fees to plaintiffs Antolin and Erlinda D. Diaz."

x x x

On May 10, 1960, plaintiffs in both Civil Cases moved for reconsideration requesting that legal interest be im-posed on the sums to be paid by defendant Yap. Sustaining partially this motion, the lower court on May 14, 1960 n issued an order, the pertinent portion of which recites:[2]

"The motion for reconsideration dated May 10, 1960 in the sense that the Court uses its discretion to dispense the paying of in-terests is partly granted, to the effect that the dispositive part of the decision of this Court is hereby amended with respect to Civil Case No. 1907 only, in the sense that defendant Yap should pay interests at the legal rate with regard to the payment of the monthly rental of P300.00 of July 31, 1986 the possession of the property in question therein shall have been fully surrendered to the plaintiffs, plus attorney's fee in the amount of P1,000.000 to plaintiffs Rosenda A.D. Nuqui, Sotero Dionisio, Jr., Erlinda Dionisio Diaz and Antolin Diaz." (Stressed for emphasis)

Subsequently, or on June 25, 1960 to be exact, defen-dant Yap perfected his intended appeal in both civil cases to the Supreme Court with the approval of the record on appeal.[3] The motion for reconsideration of plaintiffs dated May 10, 1960 and the court order of May 14, 1960 were included in said record on appeal.[4]

On February 26, 1965, this Court promulgated its decision[5] in said appeal taken by defendant Yap. The dispo-sitive portion provides:

"WHEREFORE, the judgment appealed from is modified by eliminating therefrom the award of attorney's fees of P1,000.00 in fa-vor of Erlinda D. Diaz and her husband, plaintiffs in Civil Case No. 1907, and the award of nominal and exemplary damages in Civil Case No. 1774; and making the award of attorney's fees in the sum of P2,000.00 payable to counsel for the account of the Mindanao Academy, Inc., instead of the plain-tiff stockholders. In all other respects the judgment appealed from is affirmed. No pro-nouncement as to costs." (Stressed for empha-sis)

Thereafter, plaintiffs in Civil Case 1907 only filed on July 25, 1965, a motion for the satisfaction of all mo-ney judgments against defendant Yap alleging that out of a total award of P42,460.75,[6] defendant had paid only the sum of P32,400.00 thus still leaving an unsatisfied balance of P10,060.75. Over appellant's opposition, the lower court on September 3, 1965, granted the motion but direc-ted that appellant should only deposit the sum of P1,935.00 as the legal interest on the total amount of rentals. The request for attorney's fees was denied pursuant to the Supreme Court decision.

Plaintiffs and defendant subsequently moved for re-consideration. The lower court, on October 1, 1965, de-nied both motions.

Plaintiffs pressed further with a second motion to reconsider praying that appellant be ordered to pay the sum of P8,748.00 representing the legal interests that had accrued since July 31,,1956 pursuant to the court order of May 14, 1960. Over appellant's opposition again, the lower court on October 21, 1965, granted plaintiff's mo-tion and ordered appellant to deposit the sum of P8,740.30 as legal interest within three days from notification.

Hence, this direct appeal by appellant Yap question-ing the court a quo's orders of September 3, 1965, October 1, 1965 and October 21, 1965. It is appellant's principal submission that the judgment in Civil Case 1907 which be-came final and executory did not provide for payment of legal interest.

The appeal is without merit. Appellant would have this Court overlook and disregard the lower court's or-der of May 14, 1960 which expressly amended and modified the judgment rendered on March 31, 1960 by directing the former to pay legal interest starting July 31, 1956. Said court's authority to modify its judgment is not chal-lenged and it cannot be challenged for the modification was made before the appeal was perfected. In fact, this order of May 14, 1960 was even included in the record on appeal submitted in G.R. No. L-17681-82 hut appellant failed to raise any question regarding the same in said case, although he should have done so. Plaintiffs, as the prevailing parties, could not be expected to raise any question re-garding the same.

Appellant would also refer this Court to Cordovero v. Villaruz, 46 Phil. 473 and Robles v. Timario, G.R. No. L-13911, April 28, 1960 in support of the proposition that there was no effective modification of the original judgment since the lower court never set aside nor revoked the same. We know of no rule requiring that when a court partially reconsiders its judgment, which is not yet final or sub-ject of a perfected appeal, the former judgment must first be totally revoked and a new judgment be rendered. Neither are We impressed by the cases cited. In Cordovero v. Villaruz, it was ruled, inter alia, that where a new trial is granted, the former decision must be revoked. In the case at bar, no new trial was granted for none was sought. In sustaining plaintiffs' motion to reconsider, the lower court therefore did not have to revoke totally its former judgment. In Robles v. Timario, the judgment of the lower court, which inadvertently omitted the imposition of inte-rest, had already become final and it was only in the or-der of execution that attempt was made to cure the over-sight. This Court ruled there that said oversight should have been cured prior to the finality of the judgment. In the case at bar, however, the judgment was modified prior to the perfection of the appeal, and while the lower court still had control over said judgment.

WHEREFORE, the orders appealed from are hereby af-firmed, with treble costs to be paid by appellant Yap's

counsel.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

Castro, J., did not take part.

Concepcion, C.J., on leave.

[1] Record on Appeal, pp. 36-37.

[2] Record on Appeal, pp. 39-40.

[3] See Record on Appeal filed in *Mindanao Academy, Inc. v. Yap*, L-17681-82, Feb. 26, 1965, p. 143.

[4] See, at pp. 141-143.

[5] *Mindanao Academy, Inc. v. Yap*, L-17681-82, Feb. 26, 1965.

[6] This is the aggregate of the following, items: (1) P32,550, the monthly rental of P300 for 108.5 months; (2) P8,- 910.75, legal interest from July 31, 1956 until July 15, 1965; and (3) P1,000 as attorney's fees.

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