

**AMPARO JOVEN DE CORTES & NOEL J. CORTES (JESUS NOEL),
PLAINTIFFS-APPELLEES, VS. MARY E. VENTURANZA, ETC., JOSE
OLEDAN & ERLINDA M. OLEDAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-26058. October 28, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Direct appeal by the defendants-appellants from the decision of the Court of First Instance of Bulacan against them in its Civil Case No. 2693, entitled "Felix Cortes y Ochoa, and Noel J. Cortes (Jesus Noel), plaintiffs, versus Gregorio Venturanza, Mary E. Venturanza, Jose Oledan and Erlinda M. Oledan, defendants."

The original plaintiffs in this case were Felix Cortes y Ochoa and Noel J. Cortes, and the original defendants were Gregorio Venturanza, Mary E. Venturanza, Jose Oledan and Erlinda M. Oledan. On December 11, 1967, defendant Gregorio Venturanza died. Accordingly, as prayed for by appellees, Mary E. Venturanza, Edna, Lucille, Greymar, Sylvia, Edward and Mary Grace, all surnamed Venturanza, surviving spouse and children of the deceased Gregorio Venturanza, were substituted as appellants, in place of the deceased, by resolution of this Court dated February 28, 1968. On September 12, 1968, Felix Cortes y Ochoa died. Appellees, through counsel, thereupon filed a petition praying that the title of this case be changed to read: "Amparo Joven de Cortes and Noel J. Cortes (Jesus Noel), plaintiffs-appellees, versus Mary E. Venturanza, etc., Jose Oledan and Erlinda M. Oledan, defendants-appellants", which petition was granted by this Court in its resolution dated April 11, 1969.

The background facts may be gleaned from the pertinent portions of the decision of the court a quo, as follows:

"Plaintiff Felix Cortes y Ochoa and Noel J. Cortes filed the instant action for foreclosure of real estate against the defendants Gregorio Venturanza, Mary E. Venturanza, Jose Oledan and Erlinda M. Oledan. The complaint alleges that plaintiff Felix Cortes y Ochoa was the original owner of nine (9) parcels of land covered by Transfer Certificates of Title Nos. 21334 to 21342, inclusive, while plaintiff Noel J. Cortes was likewise the original owner of twenty-four (24) parcels of land covered by Transfer Certificates of Title Nos. 21343, 21345, 21347 to 21367, inclusive, all of the land records of Bulacan; that on October 24, 1958 said plaintiffs sold and delivered to the defendants all the above-mentioned thirty-three (33) parcels of land with all the improvements thereon for the total sum of P716,573.90 of which defendants agreed to pay jointly and severally the plaintiffs the sum of P100,000.00 upon the signing and execution of a deed of sale and P40,000.00 on January 1, 1959 thereby leaving a balance of P576,573.90 which the defendants agreed and bound themselves to pay plaintiffs jointly and severally within three (3) years from January 1, 1959 with interest thereon at the rate of 6% per annum; that defendants further agreed and bound themselves to secure the payment of the said balance of P576,573.90 with a first mortgage upon the said 33 parcels of land with improvements; that the defendants have already paid the plaintiffs the total sum of P140,000.00 that of the unpaid balance owing to plaintiffs, P169,484.24 pertain(ing)s to plaintiff Felix Cortes and P407,089.66 pertains to plaintiff Noel J. Cortes; that upon the registration of the deed of sale and mortgage with the office of the register of deeds of Bulacan new certificates of title for the 33 parcels of land were issued in the names of the defendants and the mortgage obligation was noted thereon; that the mortgage obligation fell due on January 1, 1962, but despite

repeated demands for payment, defendants failed and refused to pay the said balance of P576,573.90 to plaintiffs; that from the time the mortgage obligation fell due and demandable up to December 1, 1962 the total interest due from the defendants on the balance of their obligation is 8103,783.32 computed at the stipulated interest of 6% per annum; that it is stipulated in the deed of sale with purchase money mortgage that in the event of default by defendants to pay the obligation secured by the mortgage and a suit is brought for the foreclosure of the mortgage or any other legal proceedings is instituted for the enforcement of plaintiffs' right, defendants would be obligated and bound to pay the plaintiffs' reasonable compensation for attorney's fees which plaintiffs fixed at P50,000.00.

"Defendants Spouses Venturanza admit the allegations of the complaint regarding plaintiffs' former ownership of the lands in question as well as their execution of the mortgage in favor of plaintiffs but allege that they are at present the registered owners of the same parcels of land by virtue of the sale thereof made to them; they likewise admit the allotment of payment to plaintiffs of the balance of their obligation, but allege that the said balance has not yet become due and demandable so that they have not incurred in default. As special affirmative defense defendants Venturanza allege that the document designated as deed of sale with purchase money mortgage does not express the true intent and agreement of the parties with respect to the manner of payment of the balance of the purchase price, the truth being that defendants will pay the balance of the purchase price in the amount of P576,573.90 to the plaintiffs, and the latter agreed, as soon as defendants will have received from the Land Tenure Administration the purchase price of their (defendants') hacienda in Bugo, Cagayan de Oro in the amount of P360,000.00 which hacienda is the object of expropriation proceedings before the Court of First Instance of said City; that it was agreed moreover that defendants will complete payment of the balance of the purchase price upon the consummation of the sale of their other hacienda at Buhi, Camarines Sur to one Mr. de Castro for P837,000.00 more or less; that this negotiation was known to plaintiffs who agreed to wait for the sale of the same properties by defendants; that, the property in question was bought by defendant for speculative purposes. As second special and affirmative defenses defendants allege that the deed of sale with purchase money mortgage had been novated by a subsequent agreement regarding the manner and period of payment to be made by defendants and that, therefore, the cause of action has not yet accrued.

"Defendants Jose Oledan and Erlinda M. Oledan deny the material allegations of the complaint with respect to the mortgage obligation alleging that plaintiff's cause of action against them has been extinguished and, therefore, did not become due against them on January 1, 1962; that even as regards their co-defendants Venturanzas the mortgage obligation did not become due on January 1, 1962 there having been a novation of the original agreement which affected material changes in the manner and condition of time of payment of the balance of the mortgage obligation. By way of affirmative defenses defendants Oledans alleged that the deed of sale with purchase money mortgage fails to express the true intent and agreement of the parties thereto insofar as the nature of the liability of the defendants is concerned, the true intention being to hold them (defendants Oledan) obligated unto plaintiffs only to the extent of the proportion of their share, ownership and interests in the property conveyed; that their obligation to plaintiffs has been extinguished by novation; that their obligation to plaintiffs has been extinguished by the assumption of the obligation by defendants Venturanza as provided for in the agreement among defendants dated December 28, 1959, such assumption of the obligation being made with full knowledge (of) and consent of plaintiffs which partakes of the character of a novation of the original agreement and that by their failure to seasonably interrupt any opposition to the assumption of any obligation by defendants Venturanza and to take appropriate action thereon, plaintiffs have waived their right to proceed against them.

"By way of cross-claim against their co-defendants Venturanza, defendants Oledan allege that on December 28, 1958 they and their co-defendants executed and entered into an agreement whereby they sold, transferred unto their co-defendants all their shares, ownership and interest in the property subject of a deed of sale with purchase money mortgage for and in consideration of the sum of P44,571.66 payable at the time and in the manner specified in the written agreement; that of the aforementioned consideration cross-defendants have

paid to them the sum of P22,285.83 thereby leaving a 'balance still due and unpaid in the amount of P22,285.83 which cross-defendants have failed to pay within the period stipulated in their agreement; that it is further stipulated in their agreement with cross-defendants that in the event of failure by the latter to pay the said balance within the period agreed upon they (cross-defendants) shall pay to them the sum of P6,367.30 for the period August 8, 1960 to August 28, 1961; another amount of P6,367.30 for the period August 28, 1961 to August 28, 1962 and still another amount of P6,367.30 for the period August 28, 1963 by way of penalty, which despite repeated demands cross-defendants have failed to pay; that it is further stipulated in their agreement that in the event of default on the part of cross-defendants, interest in the legal rate of 6% per annum shall be borne by the unpaid balance in the amount of P22,285.83 plus the penalties afore-mentioned.

"By way of counter-claim, defendants cross-plaintiffs allege that at the time defendants executed the agreement dated December 28, 1958 plaintiffs had full knowledge of and gave their consent to the transfer of their shares, ownership and interest in favor of their co-defendants, as well as the assumption by the latter of the mortgage obligation; that despite such knowledge and consent, plaintiffs induced cross-defendants not to register the agree-ment and effect the issuance of new transfer certificate of title in the name solely of defendants Venturanza, evidently for the purpose of preserving cause of action against them under the deed of sale with purchase money mortgage; that as a consequence of-plaintiffs' injurious and malicious suit against them they suffered mental anguish, serious anxiety, besmirched reputation and moral shock on the basis of which plaintiffs should be held answerable to them in moral damages in the amount of P100,000.00 aside from exemplary damages; and that as a consequence of plaintiffs' having filed the instant action against them they were compelled to engage the services of counsel and incurred expenses of litigation in the total amount of P20,000.00 for which plaintiffs should be held liable to them" (pp. 93-100, Corrected Rec. on Appeal, pp. 320-323, rec.).

After due trial, the court a quo rendered its judgment with the following rationale and dispositive portion:

"There is no question that defendants are indebted to plaintiffs on the mortgage executed by them contained in the document denominated as 'Deed of Sale with Purchase Money Mortgage' (Exhibit 'A') to the tune of P576,573.90 with interest thereon at the stipulated rate of 6% per annum. The pertinent portion of the document in question is quoted, as follows:

'(c) The remaining balance of the purchase price, after deducting the sums of P100,000.00 and P40,000.00, mentioned in Paragraphs (a) and (b) of this Article II, aggregating the sum of Five Hundred Seventy Six Thousand Five Hundred Seventy Three Pesos and Ninety Centavos (P576,573.90) shall be paid jointly and severally, by the vendees to the vendors within three (3) years from January 1, 1959, with interest thereon at the rate of six per centum (6%) per annum, until fully paid, of which the sum of P169,484.24, plus the cor-responding interest thereon, shall be paid by the vendees to the vendor, Felix Cortes y Ochoa, and the balance of P407,089.66, plus the corresponding interest thereon, shall be paid by the Vendees to the Vendor, Noel J. Cortes.'

"Defendants do not deny their failure to make good their obligation to pay plaintiffs the balance of the purchase price within the three-year period agreed upon in their document. However, defendants Venturanzas explained their failure as being due to their inability to collect the payment pf the sale of their own property located in Buhi Camarines Sur, and Bugo, Cagayan de Oro. In this con-nection, we are again quoting a specific provision of the agreement between the parties as regards the payment of the obligation, thus:

'C. In the event that the vendees shall fail to pay to the vendors, in the form and manner provided in Paragraphs (b) and (c) of Article II hereof, the said sums of P40,000.00 and P576,573.90, and the interest thereon, or should the vendees make default in the performance of any one or more of the conditions stipulated herein, the Vendors shall have the right, at their election, to foreclos(ur)e this mortgage, and to that end the vendors are hereby appointed the attorneys-in-fact, for the Vendees, with full power of substitution, to enter upon and take possession of the mortgaged properties, without the order of any court or any other authority other than herein granted, and to

sell and dispose of the same to the highest bidder at public auction, x x.'

"Defendants claim that there had been a novation of the contract between them and plaintiffs on account of the transfer made by defendants Oledans of their interest in the property in favor of their co-defendants Venturanzas, with the knowledge and consent of the plaintiffs. As regards this claim of defendants, we have another pertinent provision of their contract which reads as follows:

'B. The vendees may, during the existence of this mortgage, sell the property hereby mortgaged, or any part thereof, or encumber the same with a second mortgage, with the previous written consent of the vendors. x x x'

"In view of the foregoing stipulations in the contract between the parties, while plaintiffs may have knowledge of the transfer made by defendants Oledans of their interest in the property in question in favor of their co-defendants, yet insofar as the original contract between plaintiffs and defendants are concerned, the provisions thereof shall govern. For plaintiffs' written consent to any transfer is required by the provisions of their contract. Since defendants were aware of the said provision, they should have taken steps to obtain plaintiffs' written consent if only to effect a novation. To the mind of the court, it must have been due to a premonition on the part of plaintiffs that there might be a substitution of debtor that gave rise to the inclusion of the aforementioned provision in their original contract.

"It having been satisfactorily established that defendants are indeed indebted to plaintiffs on the mortgage constituted by them over the parcels of land in question, the period of payment of the obligations having become due, plaintiffs are, therefore, entitled to a foreclosure of the said mortgage.

"The next question that crops up for determination is whether or not defendants Oledans have a right against their co-defendants Venturanzas in this case. Exhibit 1-Oledan which is an Agreement and Deed of Sale of Undivided Share in Real Estate entered into by and between the Venturanzas and the Oledans clearly shows that by virtue of said document, the Venturanzas assumed the whole obligation to plaintiffs for and in consideration of the sum of P44,571.66, one-half of which amount was paid to the Oledans upon the execution and signing thereof and the balance payable within 8 months therefrom. The Venturanzas do not assail the veracity of the document. However, they seem to deny having agreed to the provisions of the penalty clause claiming that the Oledans assured them that the same was just incorporated therein as a matter of form but that it would not be enforced. The Venturanzas having agreed to assume, as in fact, they have assumed the whole obligation to the plaintiffs, they should, therefore, be held liable to the Oledans for whatever the latter shall be bound to pay to plaintiffs under the original contract known as Deed of Sale with Purchase Money Mortgage.

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendants, ordering the latter jointly and severally to pay to the former or to deposit with the clerk of court the sum of P576,573.90 with interest thereon at the stipulated rate of 6% per annum until fully paid, within 90 days from notice hereof. In default of such payment the mortgaged property will be sold at public auction to realize the mortgage indebtedness and costs, in accordance with law.

"On the cross-claim filed by defendants-cross-claimants Oledans, cross-defendants Venturanzas are ordered to reimburse to the former the amount which cross-claimants are to pay to plaintiffs under the above judgment.

"The parties will bear their own costs and expenses of litigation" (pp. 107-113, Corrected Record on Appeal, pp. 327-330, rec.).

Not satisfied with the foregoing decision of the court a quo, particularly with respect to its dis-positive portion, plaintiffs filed a motion for reconsideration and/or new trial, dated October 19, 1965, and an urgent supplemental motion for reconsideration, dated November 2, 1965. The defendants Oledans likewise filed their motion for reconsideration dated November 2, 1965, and the defendants Venturanzas also filed a motion for reconsideration dated November 10, 1965.

Resolving the aforesaid motions of the parties litigants, the trial court amended the dispositive portion of its decision in question in its order dated November 22, 1965, which reads as follows:

"This case is again before the Court upon a motion for reconsideration and/or new trial filed by plaintiffs dated October 19, 1965, an urgent supplemental motion for reconsideration dated November 2, 1965 filed by the same plaintiffs, a motion for reconsideration dated November 2, 1965 filed by defendants Oledans, and a motion for reconsideration dated November 10, 1965 filed by defendants Venturanzas.

"After a careful deliberation of the different motions for reconsideration filed by the parties, the Court believes a further modification of the decision of September 30, 1965, as amended by the order of October 15, 1965, is in order. This, in accordance with the agreement entered into by the parties embodied in the document designated as Deed of Sale with Purchase Money Mortgage.

"WHEREFORE, the dispositive part of the decision of September 30, 1965 is hereby re-amended so as to read as follows:

'WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendants ordering the latter, jointly and severally, to pay the former or to deposit with the clerk of court the sum of P576,573.90 with interest thereon at the stipulated rate of 6% per annum from January 1, 1959 until fully paid, within 90 days from notice hereof. In default of such payment the mort-gaged property will be sold at public auction to realize the mortgage indebtedness and costs, in accordance with law.

'On the cross-claim by the defendants-cross--claimants Oledans, cross-defendants Venturanzas are ordered to reimburse to the former the amount which cross-claimants are to pay to plaintiffs, under the above judgment.

'The parties will bear their own costs and expenses of litigation.'

"With the foregoing resolution, the motion for reconsideration filed by defendants Venturanzas and Oledans are, therefore, DENIED" (pp. 151-152, Corrected Record on Appeal, pp. 349--350, rec.).

From the foregoing judgment, as amended, the defendants Venturanzas and Oledans now appeal directly before this Court. The Venturanzas assigned four (4) errors while the Oledans assigned five (5) errors allegedly committed by the trial court, WE believe these errors taken together all boil down to the following issues:

a. Whether, upon the filing by plaintiffs of their complaint against the defendants on December 12, 1962, the obligation of the defendants had not yet become due and demandable and, hence, the complaint was filed prematurely.

b. Whether the payment of P576,573.90 with interest thereon at the stipulated rate of 6% per annum was to be made dependent upon the consummation of the sale of the two haciendas of defendants Venturanzas and, hence, there was a novation of the contract of sale with purchase money mortgage, Exhibit B, as a result of a change in the manner of payment.

c. Whether the sale on December 28, 1959 by the defendants Oledans to their co-defendants Venturanzas, of all their rights and interests in the property, subject-matter of the deed of sale with purchase money mortgage, Exhibit B, likewise consti-tuted a novation thereof and, therefore, had the effect of discharging the defendants Oledans from their original obligation to the plaintiffs.

1. The first and second issues involve an inter-pretation of paragraph II (c) of the Deed of Sale with Purchase Money Mortgage, Exhibit B, which provides as follows:

"(c) The remaining balance of the purchase price, after deducting the sums of P100,000.00 and P40,000.00, mentioned in Paragraphs (a) and (b) of this Article II, aggregating the sum of FIVE HUNDRED

SEVENTY-SIX THOUSAND FIVE HUNDRED SEVENTY-THREE PESOS AND NINETY CENTAVOS (P576,573.90) shall be paid, jointly and severally, by the VENDEES to the VENDORS WITHIN THREE (3) years from January 1, 1959, with interest at the rate of Six Per Centum (6%) per annum, until fully paid, of which the sum of P169,484.24, plus the corresponding interest thereon, shall be paid by the VENDEES to the VENDOR, FELIX CORTES y OCHOA, and the balance of P407,089.66, plus the corresponding interest thereon, shall be paid by the VENDEES to the VENDOR, NOEL J. CORTES. x x x."

With respect to the first issue - whether the complaint was filed prematurely - there is no dispute that plaintiffs filed their complaint on December 12, 1962; that under the terms of the contract, the pertinent portion of which is quoted above, the defendants were given until January 1, 1962 within which to pay their obligation; and that January 1, 1962 had passed without the defendants having paid to the plaintiffs the sum of P576,573.90 and the corresponding interest thereon notwithstanding repeated demands for payment made upon and duly received by them (Exhs. D, D-3, E, E-3, pp. 72, 73, 73-A, 74-75, Folder of Exhibits). Therefore, when plaintiffs filed the complaint on December 12, 1962; the effects of default as against the defendants had already arisen. Besides, no less than the defendants Venturanzas themselves admitted in their brief that they were delayed in the payment of the balance of their obligation to the plaintiffs. Let us turn to page 25 of their brief:

"The delay in the payment of the balance of the purchase price due to the plaintiffs-appellees was caused by the delay in the receipt of the payment of the purchase price of the two haciendas of the herein defendants-appellants Venturanza spouses. The non-compliance of herein defendants-appellants with their obligations to plaintiffs-appellees was due to circumstances not within their control. x x x"

One cannot admit being delayed in the payment of his obligation unless he believes that his obligation is already due and demandable. Stated otherwise, there is no delay if the obligation is not yet due.

The alleged cause of their default in paying the balance of the price, is not force majeure nor an act of God. Hence, their failure to pay is not justified.

2. With respect to the, second issue, defendants Venturanzas contend that the three-year period provided for in the Deed of Sale with Purchase Money Mortgage, Exhibit B, was dependent on the date when they would be able to collect the purchase price of the two properties they were trying to sell. For this purpose, they claim that Dr. Cortes, one of the plaintiffs, granted them an extension of time within which to pay and this act of Dr. Cortes constituted a novation of the contract.

This claim of defendants Venturanzas is equally devoid of merit. A careful reading of the Deed of Sale with Purchase Money Mortgage, Exhibit B, reveals the conspicuous absence of any provision making the consummation of the said contract dependent on the ability of defendants Venturanzas to collect the purchase price of their two haciendas. If this were the intention of the parties, they should have clearly stated it in the contract. It is true the defendants wrote two letters to Dr. Cortes and/or his lawyer (Exhibits H and I-Venturanza, p. 90, Folder of Exhibits), wherein the defendants Venturanzas requested an extension of time within which to pay and Dr. Cortes admitted having been informed of the alleged projected sale of defendants Venturanzas' properties. Dr. Cortes, however, vehemently denied having given said defendants any extension of time.

The deed of sale with purchase money mortgage clearly indicates that the balance of P576,573.90 shall be paid by the defendants, jointly and severally, within three (3) years from January 1, 1959, with interest at the rate of 6% per annum, until fully paid. On January 1, 1962, the defendants failed and refused to pay their obligation. This is a clear case of an obligation with a definite period *ex die*, which period was incidentally established for the benefit of the defendants. The evidence presented by the plaintiffs to substantiate these facts approaches moral certainty, not merely preponderance of evidence. Hence, defendants' defense of novation as to the period for payment, fails.

Furthermore, according to Article 1159 of the New Civil Code, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. The deed, Exhibit B, does not show on its face that any of the limitations of the freedom of contract under Article 1306 of the same Code, such as law, morals, good customs, public order, or public policy, exists. On the contrary, the terms of said exhibit are so clear and leave no doubt with respect to the intention of the contracting parties. Hence, the literal meaning of its stipulations shall control (Art. 1370, New Civil Code). This is so because the intention of the parties is clearly manifested and they are presumed to intend the consequences of their voluntary acts (Sec. 5, par. [c], Rule 131, Revised Rules of Court). There being nothing in the deed, Exhibit B, which would argue against its enforcement, it follows that there is no ground or reason why it should not be given effect.

WE, therefore, see no reason to overturn the finding of the court a quo that the defendants are indebted to the plaintiffs on the mortgage constituted by them over the 33 parcels of land in question since the period for payment of the obligation had become due and, therefore, plaintiffs are entitled to a foreclosure of the said mortgage.

3. The third and last issue pertains to the principal defense of the defendants Oledans. These defendants claim that because they transferred their interest and participation in the property subject of the Deed of Sale with Purchase Money Mortgage, Exhibit B, to the defendants Venturanzas allegedly with the knowledge and consent of the plaintiffs, novation by substitution of the person of the debtor took place and, therefore, their obligation to the plaintiffs had been extinguished.

In resolving this issue, it is important to state some principles and jurisprudence underlying the concept and nature of novation as a mode of extinguishing obligations.

According to Manresa, novation is the extinguish-ment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person to the rights of the creditor (8 Manresa 428, cited in IV Civil Code of the Philippines by Tolentino, 1962 ed., p. 352). Unlike other modes of extinction of obligations, novation is a juridical act with a dual function - it extinguishes an obligation and creates a new one in lieu of the old.

Article 1293 of the New Civil Code provides:

"Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor" (underscoring supplied).

Under this provision, there are two forms of novation by substituting the person of the debtor, and they are: (1) expromission and (2) delegacion. In the former, the initiative for the change does not come from the debtor and may even be made without his knowledge, since it consists in a third person assuming the obligation. As such, it logically requires the consent of the third person and the creditor. In the latter, the debtor offers and the creditor accepts a third person who consents to the substitution and assumes the obligation, so that the intervention and the consent of these three persons are necessary (8 Manresa 436-437, cited in IV Civil Code of the Philippines by Tolentino, 1962 ed., p. 360). In these two modes of substitution, the consent of the creditor is an indispensable requirement (Garcia vs. Khu Yek Chiong, 65 Phil. 466, 468).

Defendants Oledans' theory is that the Agree-ment and Deed of Sale of Undivided Share in Real Estate (Exhibit 1-Oledan, p. 91, Folder of Exhibits), executed and entered into by and between them and their co-defendants Venturanzas, and which in effect transferred all their interest and participation in the property subject of the deed of mortgage (Exhibit. B) to their co-defendants Venturanzas, extinguished their obligation to the plaintiffs. In support of their theory, they cited Article 1293 of the New Civil Code, quoted above, and then concluded that the

creditor's consent to the novation which consists in substituting a new debtor in place of the original one "is entirely unnecessary and senseless." They also cited the cases of *Rio Grande Oil Co. vs. Coleman* (39 O.G. No. 38, 986) and *Santisimo Rosario de Molo vs. Gemperle* (39 O.G. No. 59, 1410), both decided by the Court of Appeals, through the learned Mr. Justice Sabino Padilla, who later became an active and respected member of this Court.

A perusal of the aforecited cases shows the following:

From the *Coleman* case:

"x x x A personal novation by substitution of another in place of the debtor may be effected with or without the knowledge of the debtor but not without the consent of the creditor (Art. 1205, Civil Code [now Art. 1293, New Civil Code]). This is the legal provision applicable to the case at bar. The reason for the requirement that the creditor give his consent to the substitution is obvious. The substitution of another in place of the debtor may prevent or delay the fulfillment or performance of the obligation by reason of the inability or insolvency of the new debtor; hence, the consent of the creditor is necessary. This kind of substitution may take place without the knowledge of the debtor when a third party assumes the obligation of the debtor with the consent of the creditor. The novation effected in this way is called *expromision*. Substitution may also take place when the debtor offers and the creditor accepts a third party who assumes the obligation of the debtor. The novation made in this manner is called *delegacion*. (Art. 1206, Civil Code [now Art. 1295, New Civil Code]). In these two modes of substitution, the consent of the creditor is always required. x x x" (Underscoring supplied).

From the *Gemperle* case:

"A personal novation by substitution of another in place of the debtor may take place with or without the knowledge of the debtor but not without the consent of the creditor (article 1205, Civil Code [now Art. 1293, New Civil Code]). The reason for the requirement of the creditor's consent to such substitution is obvious. Substitution of one debtor for another may delay or prevent the fulfillment or performance of the obligation by reason of the temporary inability or insolvency of the new debtor. In a novation that takes place when the debtor offers and the creditor accepts a third party in place of the former debtor, the consent of the creditor is also necessary (art. 1206, Civil Code [now Art. 1295, New Civil Code]). x x x"

After going over carefully the aforecited portions of the decisions of the Court of Appeals, cited by the defendants *Oledans*, WE find that they do not help any the cause of said defendants; on the contrary, they both militate against their theory. Be that as it may, suffice it to state that while the Agreement and Deed of Sale of Undivided Share in Real Estate, Exhibit 1-Oledan, might have created a juridical relation as between defendants *Venturanzas* and *Oledans*, it cannot however affect the relation between them on one hand, and the plaintiffs, on the other, since the latter are not privies to the said agreement, and this kind of novation cannot be made without the consent of the plaintiffs (*Garcia vs. Khu Yek Chiong, et al.*, supra). One reason for the requirement of the creditor's consent to such substitution is obvious. Substitution of one debtor for another may delay or prevent the fulfillment of the obligation by reason, of the financial inability or insolvency of the new debtor; hence, the creditor should agree to accept the substitution in order that it may be binding on him.

Incidentally, this case is, in practically all respects, similar to, if not identical with, the case of *McCullough & Co. vs. Veloso and Serna* (46 Phil. 1). In that case, plaintiff sold to defendant *Veloso* its property known as "*McCullough Building*" consisting of a land with the building thereon, for the price of P700,000.00. *Veloso* paid a down payment of P50,000.00 cash on account at the execution of the contract, and the balance of P650,000.00 to be paid on installment basis. To secure the payment of the balance, *Veloso* mortgaged the property purchased in favor of *McCullough*. It was stipulated that in case of failure on the part of *Veloso* to comply with any of the

stipulations contained in the mortgage deed, all the installments with the interest thereon at the rate of 7% per annum shall become due, and the creditor shall then have the right to bring the proper action in court.

Subsequently, Veloso sold the property with the improvements thereon for P100,000.00 to Serna, who agreed to respect the mortgage on the property in favor of McCullough and to assume Veloso's obligation to pay the plaintiff the balance. Veloso paid P50,000.00 on account of the P650,000.00 and Serna made several payments up to the total sum of P250,000.00. Subsequently, however, neither Veloso nor Serna made any payment upon the last installments, by virtue of which delay, the whole obligation became due. McCullough went to court.

After due trial, the court sentenced defendant Veloso to pay the plaintiff the sum of P510,047.34, with interest thereon at 7% per annum, within three months; otherwise, the property mortgaged shall be sold at public auction to the highest bidder and in the manner provided by law, the proceeds of the sale to be applied to the payment of the judgment, after deducting the fees of the court's officer.

On appeal, defendant Veloso contended that having sold the property to Serna, and the latter having assumed the obligation to pay the plaintiff the unpaid balance of the price secured by the mortgage upon the property, he was relieved from the obligation and it then devolved upon Serna to pay the plaintiff. This means that as a consequence of the contract between the appellant and Serna, the contract between him and the plaintiff was novated by the substitution of Serna as a new debtor.

The Supreme Court ruled -

"In order that this novation may take place, the law requires the consent of the creditor (Art. 1205 of the Old Civil Code; now Art. 1293 of the New Civil Code). The plaintiff did not intervene in the contract between Veloso and Serna and did not expressly give his consent to this substitution. Novation must be express, and cannot be presumed."

In the case at bar, the agreement, Exhibit 1- Oledan, relied upon by the defendants Oledans, does not show on its face that the plaintiffs intervened in, much less gave their consent to, the substitution; as a matter of fact, plaintiff Cortes vehemently denied having consented to the transfer of rights from the Oledans to the Venturauzas alone. *Res inter alios actor alteri nocere non debet*. Besides, no less than defendant Jose Oledan himself testified that he did not personally see Dr. Cortes about the transfer of rights in Exhibit 1-Oledan, despite his commitment with his co-defendants in said agreement "to inform Messrs. Felix Cortes and Noel J. Cortes (Jesus Noel) of the execution of the said agreement" (p. 15, t.s.n. hearing of January 19, 1965). There is thus a complete absence of *animus novandi*, whether express or implied, on the part of the creditors - the Corteses.

With respect to the claim of plaintiffs for reasonable attorney's fees, paragraph III (G) of the Deed of Sale with Purchase Money Mortgage, Exhibit B, provides:

"G. In the event of default on the part of the VENDEES and by reason thereof a suit is brought for the foreclosure of this mortgage or any other legal proceeding is instituted for the enforcement of any of the rights of the VENDORS hereunder, a reasonable compensation shall be paid, jointly and severally, by the VENDEES to the VENDORS for attorney's fees, in addition to the fees and costs allowed by the Rules of Court."

The validity of, the above agreement for reasonable attorney's fees was questioned in the pleadings of the defendants before the trial court. Before this Court, the plaintiffs in their brief (pp. 121-123, 126), called OUR attention to the oversight in respect thereto committed by the court a quo.

With respect, however, to the interest due to the plaintiffs on the indebtedness of the defendants, WE are reminded of the mandate of Article 2212 of the New Civil Code, which provides:

"Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be

silent upon this point."

Per stipulation, plaintiffs are entitled to collect from defendants interest at the rate of six per centum (6%) per annum on the remaining balance of P576,573.90 from January 1, 1959. Hence, for the period from January 1, 1959 to December 12, 1962, the date of the filing of the complaint, plaintiffs are entitled to collect from the defendants, by way of interest at six percent per annum, the sum of P136,482.13. Applying the aforequoted legal provision, this amount of P136,482.13 should be added to the principal of P576,573.90. making a total of P713,056.03, which shall earn legal interest stipulated at six percent per annum from December 13, 1962 until fully paid. Such interest is not due to stipulation; rather it is due to the mandate of the law hereinabove quoted.

Now, considering that the total amount recoverable in this case approximates 1.4 million pesos as of October 31, 1977 (consisting of principal of P576,573.90, plus P136,482.13 interest from January 1, 1959 to December 12, 1962, plus P636,827.37 interest from December 13, 1962 to October 31, 1977), and that every step in the foreclosure proceedings had been tenaciously contested, not to mention the work it will still require counsel for the plaintiffs to collect the same by judicial proceedings, WE find that P50,000.00 is a reasonable amount to which the plaintiffs are entitled as and for attorney's fees.

Anent the cross-claim of defendants Oledans against their co-defendants Venturanzas to the effect "that the defendants Venturanzas are liable to them for the balance of P22,285.83 in addition to the penalties stipulated in the agreement and deed of sale, Exhibit 1-Oledan, and the interests provided therein, WE find the claim for the balance of P22,285.83 meritorious.

On their claim for penalties and interests as provided for in the same agreement, cross-claimants and defendants Oledans rely on the pertinent portions of the agreement, which read:

"x x x x x

"2. That upon the execution and signing of this Agreement, the PARTIES OF THE FIRST PART (the Venturanzas) will pay to the PARTIES OF THE SECOND PART (the Oledans), and the latter hereby acknowledge receipt thereof, of the sum of TWENTY TWO THOUSAND (TWO HUNDRED) AND EIGHTY FIVE PESOS AND EIGHTY THREE CENTAVOS (P22,285.83), Philippine Currency (Prudential Bank Check No. 965159) and the balance of Twenty Two Thousand Two Hundred and Eighty Five Pesos and Eighty Three Centavos (P22,285.83), Philippine Currency, shall be paid by the PARTIES OF THE FIRST PART to the PARTIES OF THE SECOND PART within eight (8) months from the date and execution of this Agreement and Deed of Sale;

"x x x x x x x x x x

"4. That in the event of failure on the part of the PARTIES OF THE FIRST PART to pay the said balance of Twenty Two Thousand Two Hundred and Eighty Five Pesos and Eighty Centavos (P22,285.80) within the said period of eight (8) months stipulated above, the said PARTIES OF THE FIRST PART will pay to the PARTIES OF THE SECOND PART a penalty of Six Thousand Three Hundred Sixty Seven Pesos and Thirty Centavos (P6,367.30) for the period from August 28, 1960 to August 28, 1961; another penalty of P6,367.30 for the period from August 28, 1961 to August 28, 1962; and another penalty of P6,367.30 for the period from August 28, 1962 to August 28, 1963. It is agreed that any part payment on the said balance of P22,285.80 has no effect on the payment of the penalty provided for herein, and in case of non-payment of the full amount of the balance of P22,285.80 within the said period of three years aforementioned or up to August 28, 1963, then the said balance left unpaid plus the penalties due, as provided for herein, shall bear an interest at the legal rate. It is of course understood, that the penalties and interest provided for herein shall not apply if the PARTIES OF THE FIRST PART shall pay the said balance of Twenty Two Thousand Two Hundred and Eighty Five Pesos and Eighty Centavos (P22,285.80) within the eight (8) months stipulated in paragraph 2 above, or on or before

August 28, 1960;

"x x x x x x x x x x

(Brief for defendants Oledans, pp. 32-34, Folder of Exhibits, pp. 92-93).

A meticulous analysis of the aforequoted portions of Exhibit 1-Oledan shows:

1. That the Venturanzas were given a period of eight (8) months from and after December 28, 1959 - the date of the execution of the agreement - within which to pay the balance of P22,285.80;
2. That in the event of failure on the part of the Venturanzas to pay the said balance of P22,285.80 within the said period of eight (8) months, the Venturanzas would pay to the Oledans a penalty of P6,367.30 annually, beginning August 28, 1960, for a period of three (3) years up to August 28, 1963, regard-less of any partial payment which the Venturanzas might make on the balance of P22,285.80; and
3. That in case of non-payment of the whole obligation of P22,285.80 within the stipulated period of three (3) years from August 28, 1960 to August 28, 1963, such obligation or any balance thereof remaining unpaid, plus the penalties due at the rate of P6,367.30 annually for three (3) years, shall earn interest at the legal rate.

Going over the entire agreement, Exhibit 1-Oledan, WE have noted the following:

1. That in connection with the deed of sale with mortgage, Exhibit B, the Venturanzas were the ones who paid out of their own personal funds the One Hundred Thousand Pesos (P100,000.00) to the plaintiffs, representing the down payment on the purchase price of the property, with the under-standing that the Oledans would reimburse the Venturanzas their one-half (1/2) share of P50,000.00;
2. That subsequently, the Oledans decided not to continue with the payment or reimbursement to the Venturanzas of their one-half (1/2) share of P50,000.00 as above indicated, but they agreed to share in the amount of their investment of only P20,000.00;
3. That the Venturanzas were again the ones who paid out of their own personal funds the succeeding P40,000.00, which fell due on January 1, 1959, to the plaintiffs;
4. That it was only on January 16, 1959 that the Oledans were able to reimburse to the Venturanzas their one-half (½) share of the P40,000.00; and
5. That the sum of P20,000.00 was the only amount paid by the Oledans to and/or invested with the Venturanzas in their joint venture envisioned in the deed of sale with mortgage, Exhibit B.

In support of their claim for penalties and interests, the cross-claimants and defendants Oledans contend that "this is a normal stipulation contracts of--this character." WE do not agree and hereby reject such claim for a ties as well as for interests.

Settled is the rule that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy (Art. 1306, New Civil Code). The records show that cross-claimants and defendants Oledans more than broke even on their investment of P20,000.00 when they received from their co-defendants Venturanzas the sum of P22,285.83 on December 28, 1959. From all indications, it would seem that defendants Venturanzas threw caution to the four winds, so to say, and bound themselves to pay to their co-defendants Oledans the stipulated penalty of P6,367.30 annually for three (3) years, beginning August 28, 1960, in their belief that within the said period of time they would have more than enough money with which to pay their obligation to the plaintiffs. Unfortunately, however, to their great disappointment, the unexpected happened as they ended up with no money

with which to pay not only the balance of their obligation to the plaintiffs in the sum of P576,573.90, but also the balance of their obligation to their co-defendants Oledans in the sum of P22,285.30. Be that as it may, justice and morality cannot consent to and sanction a clearly iniquitous deprivation of property, repulsive to the common sense of man. This is what this Court said some sixty (60) years ago in the case of Ibarra vs. Aveyro and Pre (37 Phil. 273, 282), which WE cannot help but quote hereunder:

"Notwithstanding the imprudence and temerity shown by the defendants by their execution of a ruinous engagement, assumed, as it appears, knowingly and voluntarily, morality and justice cannot consent to and sanction a repugnant spoliation and iniquitous deprivation of property, repulsive to the common sense of man; and therefore, as all acts performed against the provisions of law are null and void, and as the penal clause referred to, notwithstanding its being an ostensible violation of morals, was inserted in said promissory note, and as there is no law that expressly authorizes it, we must conclude that the contracting party favored by said penal clause totally lacks all right of action to enforce its fulfillment" (underscoring supplied).

WHEREFORE, THE APPEALED JUDGMENT IS MODIFIED AND ANOTHER ONE IS RENDERED, DIRECTING:

I. ALL THE DEFENDANTS-APPELLANTS VENTURANZAS AND OLEDANS TO PAY JOINTLY AND SEVERALLY THE PLAINTIFFS-APPELLEES:

A. THE SUM OF FIVE HUNDRED SEVENTY SIX THOUSAND FIVE HUNDRED SEVENTY THREE PESOS AND NINETY CENTAVOS (P576,573.90), PLUS ONE HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED EIGHTY TWO PESOS AND THIRTEEN CENTAVOS (P136,482.13) INTEREST AT THE RATE OF SIX PER CENTUM (6%) PER ANNUM FROM JANUARY 1, 1959 TO DECEMBER 12, 1962, PLUS INTEREST AT THE SAME RATE ON THE PRINCIPAL AMOUNT OF P576,573.90 ADDED TO THE ACCRUED INTEREST, FOR THE PERIOD FROM DECEMBER 13, 1962 UNTIL THE WHOLE OBLIGATION IS FULLY PAID, WITHIN NINETY (90) DAYS FROM NOTICE HEREOF IN DEFAULT OF SUCH PAYMENT, THE MORTGAGED PROPERTIES SHALL BE SOLD AT PUBLIC AUCTION TO REALIZE THE MORTGAGE INDEBTEDNESS AND COSTS IN ACCORDANCE WITH LAW; AND

B. THE SUM OF FIFTY THOUSAND PESOS (P50,000.00) AS ATTORNEY'S FEES:

II. THE CROSS-DEFENDANTS VENTURANZAS TO PAY AND/OR REIMBURSE THE CROSS-CLAIMANTS OLEDANS:

A. THE SUM OF TWENTY TWO THOUSAND TWO HUNDRED AND EIGHTY FIVE PESOS AND EIGHTY THREE CENTAVOS (P22,285.83), PLUS INTEREST AT THE RATE OF SIX PERCENT (6%) PER ANNUM COUNTED FROM THE FINALITY OF THIS DECISION, UNTIL THE SAME IS FULLY PAID;

B. THE AMOUNT WHICH SAID CROSS-CLAIMANTS MAY PAY TO PLAINTIFFS-APPELLEES UNDER THIS JUDGMENT; AND

III. THE DEFENDANTS-APPELLANTS VENTURANZAS TO PAY TREBLE COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

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