

**VIGAN ELECTRIC LIGHT CO., INC. AND LUIS C. SINGSON,
PETITIONERS, VS. HON. LODIVICO D. ARCIAGA, JUDGE OF THE
COURT OF FIRST INSTANCE OF ILOCOS SUR; NATIONAL POWER
CORPORATION; RE...**

G.R. Nos. L-29207 & L-29222. July 31, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

In this special civil action of certiorari and prohibition, petitioners seek to annul the orders of respondent Judge, issued in two distinct civil cases, (a) Civil Case No. 2701—V (National Power Corporation vs. Vigan Electric Light Co., Inc. [VELCO]), wherein respondent Judge set aside a judicial compromise notwithstanding compliance with the terms thereof by VELCO, and the absence of any allegation by the National Power Corporation that its consent thereto is vitiated by mistake, violence, intimidation, undue influence or fraud, and (b) Civil Case No. 2748-V (Republic of the Philippines vs. Vigan Electric Light Co., Inc. [VELCO]), wherein the same respondent Judge, upon filing of the complaint for the collection of deficiency franchise taxes totalling P57,773.24, granted an ex-parte motion to place the properties of VELCO under receivership, and appointed the Clerk of Court as receiver, with bond, although the said properties are not the subject of the action and no proof has been adduced that VELCO was insolvent or was in imminent danger of insolvency.

On May 31, 1967, respondent National Power Corporation filed an action with the Court of First Instance of Ilocos Sur, presided over by respondent Judge, for the collection of unpaid electric power and energy furnished to VELCO amounting to P295,370.97 plus 14% interest thereon, together with attorney's fees and expenses of litigation and costs of suit. The case was docketed as Civil Case No. 2701-V.

On April 26, 1968, the National Power Corporation and the Vigan Electric Light Co., Inc. entered into a Compromise Agreement and submitted the same to the trial court for approval. It must be noted that the terms of the Compromise Agreement were recommended to the Board of Directors, for approval by the General Manager of the National Power Corporation on April 24, 1968 (Annex U-1 of petitioners' Reply) and the same was approved by the Board of Directors on April 25, 1968, and in its resolution the Board authorized the General Manager to sign the said Compromise Agreement (Annex U-2, *idem.*). On April 29, 1968, respondent Judge rendered a decision as follows:

"On this date, April 29, 1968, the parties in this case submitted the following compromise agreement:

COMPROMISE AGREEMENT

'COME NOW plaintiff and defendant, duly assisted by their respective counsels, and unto this Honorable Court most respectfully submit the following Compromise Agreement for approval, the same not containing any proviso contrary to law, public policy and morals;

1. That defendant acknowledges its indebtedness to the plaintiff in the total amount of THREE HUNDRED

NINETY THOUSAND ONE HUNDRED THIRTY SEVEN PESOS AND SIXTY SEVEN CENTAVOS (P390,137.67), Philippine Currency, representing electric power bills from October, 1965 to March, 1968, including accrued interests, adjustments and bank commissions;

2. That defendant agrees and obligates itself, and plaintiff accepts the settlement of aforesaid indebtedness to plaintiff under the following terms:

a. to pay plaintiff the sum equivalent to ten percent (10%) of the total outstanding obligation upon the signing of this Compromise Agreement;

b. to pay plaintiff during the first twelve [12] months from the signing of this Compromise Agreement the sum of FIVE THOUSAND PESOS (P5,000.00) and TEN THOUSAND PESOS (P10,000.00) every month thereafter, until the whole unpaid obligation is fully paid;

c. to pay plaintiff, in addition to the obligations stated in the preceding paragraphs a. and b. the current bills as they fall due.

3. That as soon as defendant's line is connected to plaintiff's Luzon Grid, the Luzon Grid rates will apply to defendant, who shall, however, continue to pay plaintiff a monthly amount equal to the power bills computed on the basis of the old Bantay Diesel Plant rates, but the difference in the computation of the monthly power bills based on the Bantay rates and that of the Luzon Grid rates shall be credited to defendant as additional payments for its bank accounts in addition to the payments made and provided in paragraph 2(b) above until defendant's unpaid obligations shall have been fully paid;

4. That in the event defendant defaulted in two payments of any of the obligations provided in the preceding paragraphs as they fall due, the whole unpaid obligations shall be immediately due and demandable without further notice and plaintiff shall, without further notice, cause the immediate disconnection of electric service to defendant;

5. That the receivership ordered by this Honorable Court will no longer be necessary after accounting and should be lifted.

6. That plaintiff agrees and accepts the foregoing terms and commitments of defendant and in consideration thereof agrees to take judgment in accordance thereof and likewise releases all the securities and mortgages posted and executed in connection with the foregoing obligations.

WHEREFORE, the foregoing Compromise Agreement is respectfully submitted for consideration and approval of this Honorable Court.

Manila, for Vigan, Ilocos Sur, April 26, 1968.

VIGAN ELECTRIC LIGHT CO., INC.

NATIONAL POWER CORPORATION

By:

By:

(SGD.) LIUS C. SINGSON

(SGD.)

R.R. RAVANZO

President and General Manager

General Manager

ASSISTED BY:

JORGE A. GONZALES

Chief Legal Counsel

BENJAMIN SOMERA LAW OFFICE

(SGD.)

LEGORIO C. MENDIORO

LEGORIO C. MENDIORO

Counsel for the Plaintiff

By:

161 Bonifacio Drive

(SGD.) ILLEGIBLE

Port Area, Manila

SUBSCRIBED AND SWORN to before me this 26th day of April, 1968, at Manila, Philippines; affiant L.C. Singson exhibited to me his Res. Cert. No. A-3375239 issued at Vigan, Ilocos Sur on March 20, 1968, and affiant R.R. Ravanzo exhibited to me his Res. Cert. No. A--205100 issued at Manila on January 9, 1968.

(SGD.) ILLEGIBLE

Notary Public

Until December 31, 1968

Doc. No. 401

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Series of 1968.'

"The agreement being not contrary to law, public policy, or public morals, the same is hereby granted in toto, and this Court hereby renders judgment in accordance with said Compromise Agreement. The parties are hereby enjoined to abide strictly with the terms and conditions, set forth in the said Compromise Agreement, as they are decreed to be a full and final settlement of all the issues raised by them in this case.

"The Receiver appointed in this case is hereby directed to submit his final accounting in this case so that an order for the termination of his receivership will be issued.

"Without pronouncement as to costs."

It is not disputed that after the promulgation of the aforementioned decision, VELCO, pursuant to the terms of the judicial compromise, paid the 10% down payment stipulated in the Compromise Agreement amounting to P39,013.76, as well as the monthly installments starting April, 1968, in the amount of P25,000.00.

On May 27, 1968, the Provincial Fiscal of Ilocos Sur, purportedly on behalf of the Province of Ilocos Sur, although said party has not been allowed to intervene in the case pursuant to section 2 of Rule 12 of the Revised Rules of Court, filed in the aforesaid Civil Case No. 2701-V a "motion for reconsideration" to set aside the judicial compromise approved by the court on April 29, 1968, on the vague allegations that (a) the decision as well as the Compromise Agreement are "contrary to public interest," particularly the agreement "to release all the

securities and mortgages posted and executed in connection with the . . . obligations"; (b) "the facts alleged therein are not true," and (c) the decision" is contrary to the facts and the law of the case." On May 28, 1968, the same Provincial Fiscal filed in the said Civil Case No. 2701-V an "amended motion for reconsideration" impugning the financial solvency and capacity of the VELCO to render adequate public service.

On the same day, May 28, 1968, respondent National Power Corporation filed an unverified motion for reconsideration of the decision of the Court of April 29, 1968, alleging that: (1) the "allegations of the Province of Ilocos Sur thru the Provincial Fiscal are serious charges which should be clarified;" (2) Section 6 of the Compromise Agreement to the effect that "the plaintiff agrees and accepts the foregoing terms and commitments of defendant and in consideration thereof agrees to take judgment in accordance thereof and likewise releases all the securities and mortgages posted and executed in connection with the foregoing obligations," should be clarified before the Court, and additional securities and mortgages should be executed by defendant to secure and guarantee payment of its obligations; and (3) the allegations that the lighting and power facilities of defendant in the towns affected are not serviceable and deteriorating and are hazards to the safety and health of the people, "deserve also careful scrutiny and determination by this Honorable Court."

Petitioner VELCO, on June 4, 1968, filed its opposition to the motion of the National Power Corporation, alleging that (a) the judgment rendered on the basis of the compromise agreement is final, unappealable and immediately executory and could not be the object of a motion for reconsideration: (b) the compromise agreement was fairly and deliberately made and entered into between the parties and is not vitiated by any infirmity arising from fraud, mistake, violence, intimidation or undue influence on the part of the defendant; and (c) there is nothing in the aforementioned agreement that can be considered as contrary to or prejudicial to public interest.

In the meantime, on June 24, 1968, Assistant Provincial Fiscal Jose P. Tabanda, on behalf of the Republic of the Philippines, filed a complaint with the Court of First Instance of Ilocos Sur for the collection of Velco's deficiency franchise tax liability for the years 1962-63, 1964-65, and 1966, in the amount of P57,773.24 (Civil Case No. 2748-V).

Immediately after the filing of this new complaint, Assistant Provincial Fiscal Jose P. Tabanda filed on June 25, 1968 an "Urgent Motion for the Appointment of a Receiver" alleging, among others, (4) That the defendant is also indebted to the National Power Corporation in the total sum of P390,137.67 by virtue of which the latter has filed an action for collection before this Honorable Court docketed as Civil Case No. 2701-V and which is now pending; (5) That defendant is further indebted to the Development Bank of the Philippines in the sum of P47,000.00 by virtue of which there is now a pending extra-judicial foreclosure proceedings pending before the Office of the Provincial Sheriff of Ilocos Sur; (6) That plaintiff has further filed a case against defendant for the collection of the sum of P20,321.16 representing the latter's deficiency franchise tax liability for the years 1960 and 1961 and said case is docketed as Civil Case No. 2718-V of this Court and is pending trial: (7) That from the foregoing, it is therefore apparent that defendant corporation has a known total indebtedness of more than half a million pesos which it has failed to pay; (8) That by virtue thereof, it is further apparent that defendant's assets may not be sufficient to cover its lawful obligations and as such, it is in imminent danger of insolvency; (9) That considering further the propensity of defendant corporation in refusing to pay its just debts and obligations, there exists the danger that its properties may be dissipated by it or removed in fraud of creditors; (10) That there is no other sufficient security for the claim sought to be recovered in the present action; (11) That in order to fully guarantee and more completely insure the full payment of the claim being demanded by plaintiff in the present case, the appointment of a receiver is the most convenient and feasible means to protect and preserve the funds, properties, and income from the operation of defendant's electric facilities and prevent the needless and extravagant expenditure of the same."

The next day, or on June 26, 1968, respondent issued an order granting ex-parte Fiscal Tabanda's petition for receivership and appointing Atty. Agileo R. Redoble, Clerk of Court, as the receiver of the properties of VELCO, with bond of only P1,000.00. On the same date, respondent Judge directed the General Manager, the officers and employees of VELCO to allow and permit said receiver to assume his duties and take over the assets and operations of the corporation.

In the meantime, in Civil Case No. 2701-V (National Power Corporation vs. Vigan Electric Light Co., Inc.), the respondent Judge, in his order of June 27, 1968, granted the motions for reconsideration of the Provincial Fiscal of Ilocos Sur and of the National Power Corporation and set aside the compromise judgment. Significant in the said order is the absence of any finding of respondent Judge that the consent of the National Power Corporation to the compromise agreement was vitiated by either violence, force, intimidation, undue influence or fraud.

I

To begin with, respondent Province of Ilocos Sur, duly represented by Provincial Fiscal Jesus Guerrero, has no legal personality in filing the motion for reconsideration in Civil Case No. 2701-V (National Power Corporation vs. Vigan Electric Light Co. Inc.) as an intervenor, to set aside the aforementioned judgment by compromise, for it is not a party to the case. Neither can it intervene in the case there being no previous formal motion filed to intervene duly approved by the court. Where a party desires to intervene in a case, he must first apply for and obtain permission of the court, and after such permission is granted, he must then file and serve a copy of his pleading of intervention on all adverse parties, and a decree entered in favor of the intervenor without such service is null and void[1]. In the absence of leave of court for intervention, a person who might otherwise be permitted to intervene may not ordinarily be regarded as a party.[2] It has been held that intervention is allowed "before or during the trial", the term "trial" being used in its restricted sense, that is, the period for the introduction of evidence by both parties.[3] Thus, where the petition for intervention was received after trial and after decision has already been rendered,[4] or after the case is already submitted for decision in the appeal, denial of the petition for intervention was proper.[5] In any event respondent Province of Ilocos Sur could not have lawfully intervened in the case having no interest in the subject matter of the action which was purely an action in personam for the collection of the debt of VELCO to the National Power Corporation, much less was in any way affected by the compromise agreement entered into by the parties.

II

Equally untenable is the claim of respondents that the setting aside of the compromise agreement was justified on the ground that there was fraud, committed by VELCO which vitiated NPC's consent for the reason that the latter was misled to believe that VELCO was still financially capable when in truth and in fact it was in the state of actual insolvency. The rule is that a judgment upon a compromise is not appealable and is immediately executory, unless a motion is filed to set aside the compromise on the ground of fraud, mistake, or duress, in which event an appeal may be taken from the order denying the motion.[6]

The rule is well-settled that a compromise has the force of res judicata upon the parties and can not be disturbed except for vices of consent or forgery, its obvious purpose being to settle, once and for all, the issues involved and bar all future disputes and controversies thereon.[7] It has all the force and effect of any other judgment and is conclusive upon the parties and their privies. And where a party therein has received the consideration of the compromise agreement, he is estopped from questioning its terms and asking for the reopening of the same on the ground of mistake.[8]

It should be remembered that the grounds relied upon by respondent National Power Corporation in its motion for

reconsideration are not predicated on fraud, duress or mistake. It merely asserts that the reasons interposed by the Province of Ilocos Sur in its motion for reconsideration "deserve careful scrutiny and determination" by the Court. Such reasons were: (1) VELCO is on the verge of insolvency due to its numerous outstanding and long-time unpaid indebtedness with the government and private persons beyond its corporate capability to pay; and (2) the Compromise Agreement and the judgment based thereon are contrary to public interest because the electrical facilities of VELCO are no longer serviceable and are deteriorating. These grounds invoked by respondents are not those sanctioned by law to warrant the annulment or setting aside of a judicial compromise. It must be recalled that the said Compromise Agreement was executed only after the offer therefor submitted by the petitioner Singson on April 18, 1968 (Annex "U"), was favorably recommended for approval by the NPC General Manager (Annex "U-1"), and in accordance therewith a resolution of the NPC Board of Directors was promulgated approving the terms of the compromise and authorizing the General Manager to sign the same on behalf of the National Power Corporation (Annex "U--2"). It has also been shown that petitioners have paid not only the 10% down payment stipulated in the judicial compromise of April 29, 1968, but also the subsequent installments (Annexes "V", "V-1", "V-2", "V-3" and "V--4"). Under these circumstances, the judgment having been final and has been partially executed in respect to VELCO's obligation, the respondent National Power Corporation was estopped from assailing the same and, therefore, respondent Judge, in setting aside the judicial compromise, acted in excess of his jurisdictional authority.

III

It is true as private respondent contends that a receiver may be appointed upon the relation of a creditor of a corporation, where the corporation has been dissolved, or is insolvent, or has forfeited its corporate rights, pursuant to section 2 of Rule 59 of the Revised Rules. It does not necessarily follow, however, that any general representation by a corporate creditor that the corporation is in imminent danger of insolvency would perforce entitle the Court to grant ex-parte the petition for receivership.

The appointment of a receiver is not a matter of strict or absolute right or an imperative requirement, even when stipulated by the parties.[9] In order that a receiver may be appointed in a case, it is required that "an application under oath to that effect must be filed, alleging all the facts necessary to convince the court to grant the same, for the purpose of preserving the property which is the subject of litigation and protecting thereby the rights of all parties interested therein".[10] This requirement is predicated upon the fact that said power, being a delicate one, should be exercised "with extreme caution and only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of the receiver be lost or because they run the risk of being impaired, endeavoring to avoid that the injury thereby caused be greater than the one sought to be averted. For this reason, before the remedy is granted, the consequences or effects thereof should be considered or, at least, estimated in order to avoid causing irreparable injustice or injury to others who are entitled to as much consideration as those seeking it." [11] After all, the ultimate end of a receivership is to prevent injury to the thing in controversy and to preserve it pendente lite or after judgment for the security of all parties in interest, to be finally disposed of as the Court may direct. It being an equitable remedy, it is available only where there is inadequacy, ineffectiveness or exhaustion of legal or other remedies.[12]

It has been ruled that an allegation that a defendant is insolvent is simply a conclusion of law and insufficient as a statement of one of the essential conditions necessary to be pleaded to warrant the appointment of a receiver.[13] The solvency or insolvency of a corporation can ordinarily be shown by proof of its assets, their value, the amount of its liabilities and attendant circumstances.[14] In other words, it is necessary that the applicant alleges specific facts sufficient to show insolvency or the imminence of insolvency, rather than broad conclusions. As a general rule, solvency is presumed especially where a going concern is involved.[15]

It is evident that the "Urgent Motion for the Appointment of a Receiver" filed by Assistant Provincial Fiscal Jose P. Tabanda, Civil Case No. 2748--V, on June 25, 1968, on the basis of which respondent Judge granted ex-parte the receivership, did not contain sufficient facts to show that VELCO was in imminent danger of insolvency, and that receivership was necessary to prevent fraud or to preserve the corporate property from loss, injury or diminution in value for the security of all parties in interest. On the contrary, at the time respondent Judge placed the properties of VELCO under receivership in said Civil Case No. 2748-V, the respondent Judge knew that the obligation of VELCO to the NPC has been settled by way of compromise, and as now shown by petitioners, the Development Bank of the Philippines had agreed to withdraw its petition for foreclosure, as petitioners were then making regular payments for the settlement of their obligation. Had respondent Judge granted the petitioners an opportunity to be heard on the application of the Provincial Fiscal of Ilocos Sur for receivership, all the circumstances and facts of the case, the presence or absence of conditions justifying the relief, and such other matters necessary for ascertaining whether or not the ends of justice would have been served if receivership was granted, would have been fully threshed out. It is, therefore, evident that respondent Judge, in granting with precipitate haste the application for receivership, had not observed great caution and circumspection, much less did he seriously consider the consequences or effects thereof to avoid causing irreparable injury to others who are entitled to as much consideration as the applicant for receivership.

WHEREFORE, the petition is granted. The orders dated June 26 and July 1, 1968 in Civil Case No. 2748-V and the orders dated June 27 and July 2, 1968 in Civil Case No. 2701-V, of respondent Judge are hereby annulled and set aside. The restraining order issued on July 10, 1968 is hereby made permanent. Costs against respondents Province of Ilocos Sur and National Power Corporation.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] Sumulong vs. Moran, 48 Phil., 367; Sec. 2, Rule 12, Revised Rules of Court.

[2] Mercantile Trust Co. vs. Stockton Terminal & E.R. Co., et al., Cal. App. 558, 186 P. 1049.

[3] Rool vs. Mendoza, 92 Phil., 892.

[4] Rool vs. Mendoza, supra.

[5] El Hogar Filipino, et al. vs. Philippine National Bank, 64 Phil., 582.

The motion for intervention was filed after the trial and decision of the original case and therefore out of time. Petitioner, not being an indispensable party, his intervention would unduly delay or prejudice the adjudication of the rights of the original parties. Furthermore, the decision in the case is already final and executory. If he has any right of action at all, he may file an independent action to protect his rights. (Trazo vs. Manila Pencil Co., Inc., et al., G.R. No. L-16501, Jan. 31, 1961, 1 SCRA 403).

[6] De los Reyes vs. De Ugarte, 75 Phil., 505; Enriquez vs. Padilla, 77 Phil. 373; Cotton vs. Almeda Lopez, L-14113, Sept. 19, 1961, 3 SCRA 51; Piano vs. Cayanong, L-18603, Feb. 28, 1963, 7 SCRA 397; Rodriguez vs. Reyes, L--22958, June 30, 1970, 33 SCRA 611. See also Arts. 2032 and 2037, New Civil Code; 2 Am. Jur. 975.

[7] Araneta vs. Perez, L-16187, April 30, 1963, 7 SCRA 923; Osmena vs. Court of Agrarian Relations, L-21156 & L-21187, July 30, 1966, 17 SCRA 828; Serrano vs. Miave, L-14678, March 31, 1965, 13 SCRA 461; Vda. de Guilas vs. David, L-24280, May 27, 1968, 23 SCRA 762; Republic vs. Estenzo, L--24656, Sept. 25, 1968, 25 SCRA 122; Vda. de Corpus vs. Phodaca--Ambrosio, L-30206, March 30, 1970, 32 SCRA 279.

[8] Sabino vs. Cuba, L-18328, Dec. 17, 1966, 18 SCRA 981, 987.

[9] Sanson vs. Barrios, 63 Phil. 198, 202, citing Carolina Portland Cement Co. vs. Baumgartner, 99 Fla. 987; reaffirmed in Sanson vs. Araneta, 64 Phil. 549, 552.

[10] Claudio vs. Zandueta, 64 Phil. 812, 817-818).

[11] Claudio vs. Zandueta, supra: Velasco & Co., vs. Gochuico & Co., 28 Phil. 39; Ralla vs. Alcasid, 6 SCRA 311, 313, 314.

[12] 65 Am. Jur. 2d. 875, Sec. 23.

[13] Insurance Center Inc. vs. Hamilton 218 Ga. 597, 129 SE 2d. 801; Budman vs. Budman, 311 Mo. 351, 279 SW. 122; Jewell vs. Sal-O-Dent Laboratories Inc. (Tex Ct. App.) 69 SW. 2d 544.

[14] In re Great Eastern Fur Dyeing & Dressing Co. Inc., 14 F. Supp. 921.

[15] Hutchinson Coal Co. vs. Miller, 20 F. Supp. 718; Birmingham Disinfectant Co vs. Smith, 174 Ala. 374, 56 So. 721.

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