

**URBANO DE VENECIA AND CRISANTA M. DE VENECIA,
PLAINTIFFS-APPELLANTS, VS. AQUILINO DEL ROSARIO AND MARIA
DE LA PEÑA ALIAS M. DEL ROSARIO, DEFENDANTS-APPELLEES.**

G. R. No. L-23246. November 24, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

In accordance with the compromise agreement the Court of First Instance of Pangasinan rendered the following decision of December 12, 1959:

"The parties in this case assisted by their respective attorneys, submit to this Court the following compromise agreement which reads:

"Now come the parties, assisted by their respective attorneys, and to this Honorable Court respectfully submit the following agreement and settlement of this case:

"1. That the defendants herein admit having been indebted to the plaintiffs in the amount of P6,475.26 and hereby confess judgment thereto in favor of the plaintiffs;

"2. That herein defendants agree and covenant to effect payment of said obligation on the following terms:

"(a) That the sum of P1,000.00 should be paid by the defendants to the plaintiffs on or about January 20, 1959;

"(b) That the defendants likewise should pay to the plaintiffs the sum of P475.26 on or about March 20, 1959;

"(c) That the remaining balance of P5,000.00 shall be paid by the defendants to the plaintiffs within a period of one (1) year at 12% interest from March 20, 1959 in equal monthly installments with corresponding interest as computed.

"3. That to secure the faithful compliance and performance of said obligation defendants herein, by these presents, cede and convey by way of security, free from any lien the following real properties which are owned by them, and all and whatever proprietary rights, interest, or participation which they have therein. (Here follows a description of the parcels of land.)

"4. In the event defendants fail to pay the above-mentioned obligation under the term herein set forth, or in default of two of the installments, whatever balance remaining shall immediately become due and payable and herein plaintiffs can secure the immediate execution of the judgment in the case, and the defendants waive whatever right a mortgagor may have short of foreclosure proceedings. A penal clause is inserted in this agreement to the effect that if defendants fail to perform their obligation an additional 10% shall be charged, in addition to the interest, agreed upon, to cover damages of plaintiffs.'

"This agreement is hereby approved and it is hereby ordered that the parties are enjoined to comply with the terms of the agreement."

As only the first installments of P1000.00 and P475.26 were paid, the plaintiffs sought the execution of the judgment. A writ of execution was issued but it expired unserved. An alias writ of execution was issued the validity of which was challenged but upheld by this Court in L-18405, September 30, 1963, wherein We ordered

execution to be first directed against the mortgaged lands before levy on other properties of defendants. Upon remand to the lower court a second alias writ of execution was issued on December 4, 1963 ordering the provincial sheriff to levy on the three parcels of land mortgaged to satisfy the balance in the indebtedness of P5,000.00 "plus the sum of P300 representing the interest on said sum of P5,000 from March 20, 1959 to September 20, 1959 and the further sum of P500 representing 10% of the same amount as penalty." The plaintiffs, claiming that the writ did not conform with the decision of December 12, 1959, moved ex parte on December 5, 1963 to amend the writ to read thus: "plus 12% per annum on the sum of P5,000 from March 20, 1959 until the sum is fully paid and the further sum of P500 representing 10% of the same amount as penalty." The court granted, the following day, the amendment prayed for but not in so far as the interest was to be paid "until the whole sum is fully paid" declaring that the penalty takes the place of the interest.

From denials of their two motions for reconsideration, plaintiffs took this present appeal directly to Us, there being no dispute as to the facts.

Should We order the amendment of the writ to allow interest to run until the whole sum Is fully paid?

Our substantive law on the matter provides:

"In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. x x x." [1]

As correctly observed by the defendants, paragraph 2(c) of the decision of December 12, 1959 provides for payment "within a period of one (1) year at 12% interest from March 20, 1959 in equal monthly installments with corresponding interest as computed." Paragraph 4 of the same however further provides that "a penalty clause is inserted in this agreement to the effect that if defendants fail to perform their obligation, an additional 10% shall be charged, in addition to the interest, agreed upon, to cover damages of plaintiffs." We believe that this part of the decision, particularly the phrase We underscored above, provides the exception sanctioned by the Civil Code. For clearly the intent of the parties is to allow recovery of both the penalty and the interest, the latter to run, as agreed upon, that is, until full payment of the debt. The cases where the penalty takes the place of the interest are those where no stipulation to the contrary is provided for. Such are the instances in the authorities advanced by the defendants but such is not the case herein.

We cannot accept as tenable the argument that the amendment sought would also amend the decision of December 12, 1959. The writ issued was to comply with the judgment. If the writ does not conform to the judgment, We fail to see why We cannot order its amendment so that the judgment may be properly satisfied.

WHEREFORE, the appealed orders are reversed and the amendment of the alias writ of execution dated December 4, 1963 is hereby granted to include recovery of 12% interest per annum from March 20, 1959 until the whole debt is fully paid and the further sum of P500.00 representing 10% of the same amount as penalty. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

[1] Article 1226, Civil Code of the Philippines.

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