

**THE PASAY CITY GOVERNMENT, THE CITY MAYOR OF DEFEND-ANT
PASAY CITY GOVERNMENT, THE MEMBERS OF THE MUNICI-PAL
BOARD OF PASAY CITY AND THE CITY TREASURER OF PASAY CITY
GOVERNMENT,...**

G.R. No. L-32162. September 28, 1984

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MAKASIAR, J., Chairman:

This is a petition for review on certiorari of the order rendered by the Court of First In-stance of Manila, Branch X, presided by Honorable Judge Jose L. Moya on July 23, 1969, the disposi-tive portion of which is as follows:

"WHEREFORE, the motions for reconsideration, dated July 21 and July 22, 1969, are denied and it is ordered once more that the writ of execution as well as of garnishment already issued be enforced by taking possession of the amount of P613,096.00 from the deposits of the Pasay City government in the branch of the Philippine National Bank in Pasay City and delivering them to the plaintiff.

"SO ORDERED" (p. 78, rec.),

on the ground, among others, that:

xx xx xx

"It is further argued that under the compromise, the plain-tiff is required to submit a performance bond upon the approval thereof and that he has not yet done so. At the hearing of the motion of June 21, it was in the amount of P60,000.00 which was thereafter increased to P100,000.00 to make it equal to 20% of the cost of the next stage of the construction to be undertaken by the plaintiff. This is a sufficient compliance. Since the work is to be undertaken by stages, it would be unrea-sonable to compel the plain-tiff to submit a performance bond equal to the cost of the entire project, it not being known when the City of Pasay shall have the funds for the completion thereof and it claims it does not even have money to pay for the phase of the work finished years ago. Besides, there is noth-ing in the compromise which makes the submission of the bond a condition precedent to the payment of P613,096.00 to the plaintiff" (p. 76, rec.).

On August 12, 1964, respondent-appellee V.D. Isip, Sons & Associates represented by Vicente David Isip entered into a contract with the City of Pasay represented by the then Mayor Pablo Cuneta. The contract entitled "Contract and Agreement" was for the construction of a new Pasay City Hall at F.B. Harrison St., Pasay City. Pertinent provision of the said contract is as follows:

xx xx xx

"Whereas one of the condi-tions set forth in the proposal is that the Contractor shall start the construction of the Pasay City Hall Building as per plans and specifications by stages advancing the necessary amount needed for each stage of work and the Party of the First Part (Pasay City) to reimburse the amount spent on the work accomplished by the Contractor before proceeding on the next stage xx xx

xx xx xx

"2. That the work shall be done in stages to be determined by the City Engineer considering structural and functional criteria and consistent with funds immediately available for the purpose;

"3. That the Contractor shall advance the necessary amount needed for each stage of work; Provided that the Contractor, shall before starting each stage of work, inform the First Party in writing as to the amount necessary to be advanced by the former; xx xx

"4. That the Party of the First Part shall reimburse the Contractor the cost of the work completed as estimated by the City Engineer for each stage of work before the Contractor proceed to the next stage; xx xx" (pp. 33-34, rec.).

Pursuant to the aforesaid contract, the respondent-appellee proceeded with the construction of the new Pasay City Hall building as per duly approved plans and specifications. The respondent-appellee accomplished under various stages of construction the amount of work (including supplies and materials) equivalent to an estimated value of ONE MILLION SEVEN HUNDRED THIRTEEN THOUSAND NINETY-SIX PESOS (P1,713,096.00) of the total contract price of FOUR MILLION NINE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED 80/100 PESOS (P4,914,500.80).

The appellants paid only the total amount of ONE MILLION ONE HUNDRED THOUSAND PESOS (P1,100,000.00) to the respondent-appellee leaving an amount of SIX HUNDRED THIRTEEN THOUSAND NINETY SIX PESOS (P613,096.00) immediately due from the petitioner-appellants to the respondent-appellee.

Notwithstanding demands for payment thereof, the petitioner-appellants failed to remit the aforesaid amount of P613,096.00 to the respondent-appellee.

On May 16, 1968, respondent appellee filed an action for specific performance with damages against herein petitioners-appellants before the respondent Court.

On May 23, 1968, the appellants filed a motion for the amendment of the complaint and for bill of particulars (p. 9, Appellant's Brief; p. 159, rec.). This was denied by the respondent Court. The appellants later filed a motion for reconsideration. This was likewise denied. On August 10, 1968, the appellants filed their answer.

The parties arrived at a draft of amicable agreement which was submitted to the Municipal Board of Pasay City for its consideration. Protracted pre-trial hearings and conferences were held where the respondent Court suggested and advised that "under the principle of quantum meruit, the plaintiff is forthwith entitled to at least that which is due to him for defendants under the contract and that public interest must perforce require the continuity of construction of a public work project, instead of delaying its immediate completion by litigating upon technical grounds which would undoubtedly redound to public detriment" (p. 40, rec.).

On February 25, 1969, the Municipal Board of Pasay enacted Ordinance No. 1012 which approved the Compromise Agreement and also authorized and empowered the incumbent City Mayor Jovito Claudio to represent the appellant Pasay City Government, subject to the final approval of the respondent Court herein.

On March 12, 1969, the respondent Court approved the said Compromise Agreement including a Manifestation and Addendum thereto. Relevant provisions of the said compromise agreement are as follows:

"1. That the contract and agreement, Annex 'A' hereof, dated August 12, 1964 x x x is hereby formally confirmed and officially approved by the parties hereto, subject to the following changes and/or modifications only:

xx xx xx

"B. That immediately upon final approval hereof by this Honorable Court, the plaintiff contractor will submit

and file in favor of Pasay City Government a new performance bond in the amount required by per-tinent law, rules and regulations, in pro-portion to the remain-ing value or cost of the unfinished work of the construction as per approved plans and specifications x x

xx xx xx

"D. That if and when warranted by the finances and income of the Pasay City Government and subject to the pertinent and applicable government auditing and account-ing rules and procedure, the plaintiff contrac-tor shall without delay finish and complete the construction as per attached plans and specifications x x within a period of one (1) year from the date of final approval of this compromise agreement by this Honorable Court, pro-vided, however that in any case or event the construction here-in contemplated shall not extend beyond one and a half (1½) years from the date of the final approval hereof by this Honorable Court;

xx xx xx

"2. That within a reasonable period of time, at least ninety (90) days from the final approval of this Compromise Agreement by this Honorable Court, the defend-ant Pasay City Government shall pay and remit the amount of SIX HUNDRED THIRTEEN THOUSAND NINETY-SIX PESOS (P613,096.00) x x x to the plaintiff contractor, who, in turn, immediately upon receipt thereof, shall be bound and obliged to commence and start the construction work correspond-ing to the next stage thereof;

"3. That within a similar period, the defendant Pasay City Government shall pay and remit to plaintiff contractor an amount equivalent to three (3%) per cent of the abovementioned amount of SIX HUNDRED THIRTEEN THOUSAND NINETY-SIX PESOS (P613,096.00), for and as adverse attorney's fees in this case;

"4. That any and all other claims of plaintiff contractor in its complaint relative to and arising out of the contract, Annex 'A' hereof, are hereby waived and relinquished and the case against the defendants City Mayor, Jovito O. Claudio, City Treasurer and Members of the Municipal Board of Pasay City, either in their official or personal capacities, are hereby likewise waived, relinquished and dismissed with prejudice;

"5. That any willful, gross, deliberate and wanton violation and/or avoidance of the terms and conditions of this Compro-mise Agreement by either of the parties herein shall, with due notice, forthwith entitle the aggrieved party to an imme-diate execution hereof and to the necessary and corresponding reliefs and remedies therefor" (pp. 43-46, rec.).

On April 10, 1969, the appellants filed an urgent motion seeking a declaration of legality of the original contract and agreement dated August 4, 1964 from the respondent Court. On May 10, 1969, the respondent Court issued an order declaring that the original contract is legal and valid (p. 59, rec.).

On June 21, 1969, at the instance of the appellee, the respondent Court granted an order of execution pursuant to which a writ of execution dated June 25, 1969 was issued.

On July 9, 1969, an application for and notice of garnishment were made and effected upon the funds of appellant Pasay City Govern-ment with the Philippine National Bank (p. 61, rec.).

On July 11, 1969, the appellant filed an urgent motion to set aside the respondent Court's order of June 21, 1969 and to quash the writ of execution issued pursuant thereto upon the following grounds: 1) that the execution sought was then still premature, the period of 90 days stipulated not having elapsed as yet; 2) that the obligations of the parties under the Compromise Agreement were reciprocal and the appellee not having put up a new performance bond in the sufficient amount equivalent to 20% of the remaining cost of construction as per agreement, the appellants cannot be obliged to pay the sum due appellee as yet; 3) that the Sheriff has no power or authority to levy or garnish on execu-tion the general funds, especially more so, the trust funds of the defendant Pasay City (pp. 63--66, rec.).

On July 19, 1969, the respondent Court issued an order stating that inasmuch as the defendant has not yet paid the plaintiff as of this date then "the writ of execution and of garnishment are declared to be again in full force and effect x x" (p. 67, rec.).

On July 22, 1969, the appellants filed a motion for reconsideration on three grounds, to wit:

- "1. That the same is not supported by the facts and pertinent law, rule and regulation on the matter;
- "2. That the funds of the defendant Pasay City Government which were garnished by the City Sheriff are by law exempt from execution and/or garnishment; and
- "3. That plaintiffs' claim may not as yet be enforceable by execution" (pp. 68-71, rec.).

On July 22, 1969, the respondent Court denied and rejected the appellants' motion for reconsideration. The respondent Court ordered the enforcement of the garnishment already issued to the City Sheriff for Pasay by taking possession of the amount of P613,096.00 from the deposits of appellant Pasay City Government with the Philippine National Bank, Pasay City Branch and delivering the same to the plaintiff.

On July 23, 1969, the respondent Court issued an order, the pertinent provision of which is now being questioned by the appellants in this petition for review on certiorari, to wit:

"It is further argued that under the compromise, the plaintiff is required to submit a performance bond upon the approval thereof and that he has not yet done so. At the hearing of the motion of June 21, it was shown that the plaintiff has submitted a performance bond in the amount of P60,000.00 which was thereafter increased to P100,000.00 to make it equal to 20% of the cost of the next stage of the construction to be undertaken by the plaintiff. This is a sufficient compliance. Since the work is to be undertaken by stages, it would be unreasonable to compel the plaintiff to submit a performance bond equal to the cost of the entire project, it not being known when the City of Pasay shall have the funds for the completion thereof and it claims it does not even have money to pay for the phase of the work finished years ago. Besides, there is nothing in the compromise which makes the submission of the bond a condition precedent to the payment of P613,096.00 to the plaintiff" (p. 76, rec.).

On July 23, 1969, the appellants filed their notice of appeal from the orders of the respondent Court dated June 21, July 19 and July 23, 1969 (p. 2, rec.).

On July 24, 1969, the appellants filed their manifestation and petition to suspend the writ of execution and garnishment (pp. 80-82, rec.).

On July 25, 1969, the appellants filed their manifestation and withdrawal of notice of appeal. On July 28, 1969, the respondent Court approved said withdrawal (p. 85, rec.).

On August 22, 1969, the appellants filed an amended notice of appeal (pp. 86-87, rec.) and a record on appeal which were duly approved as per order of the respondent Court dated January 7, 1970 and a notice of transmittal dated May 29, 1970 (p. 89, rec.).

On October 23, 1969, the plaintiff, Vicente David Isip, in the original complaint for specific performance filed an urgent motion for permit to serve a supplemental complaint seeking rescission of the original contract titled Contract and Agreement and of the Compromise Agreement and claiming damages in the sum of P672,653.91 alleging the violations of the defendants specially the Pasay City Government in complying with its obligations incumbent upon it in the compromise agreement and in view of the rights granted to the plaintiff in paragraph 5 of the resolutive clause of the compromise agreement.

On June 5, 1970, the Supreme Court resolved to require the petitioner-appellants to file a petition for review on

certiorari (p. 6, rec.).

On June 29, 1970, the defendants filed their cautionary answer to the supplemental complaint alleging that the Court has no jurisdiction over the subject of the present supplemental complaint; that the cause of action is already barred by prior judgment; that the principle of res judicata applies; that plaintiff's supplemental complaint states no cause of action and that the present claim of plain-tiff has been paid, waived, abandoned and extinguished.

On July 14, 1970, the appellants filed their petition for review on certiorari (pp. 11-24, rec.). This was denied for lack of merit by the Supreme Court.

On August 14, 1970, the respondent Court set for pre-trial the supplemental complaint.

On October 16, 1970, the Supreme Court granted the petitioner's motion for reconsideration and their petition for review on certiorari was given due course (p. 102, rec.).

On July 21, 1971, the appellees filed their brief praying that the petition for review on certiorari be dismissed since the issues involved in the supplemental complaint are prejudicial to the present petition for review (p. 179, rec.). On December 6, 1971, the appellants filed their manifestation and petition alleging that the supplemental complaint is not prejudicial to the present petition for review (p. 199-201, rec.).

The two purposes of a compromise agreement are enunciated in Article 2028 of the New Civil Code, to wit:

"A. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

The first purpose -- "to avoid a litigation" -- occurs when there is a threat of an impending litigation. At this point, no case has yet reached the courts. The moment a case has been filed in court then the second purpose -- "to put an end to one already commenced" -- applies.

In the herein case, We are concerned with the second purpose. The latter purpose is given effect in Article 2037 of the New Civil Code which reads:

"Article 2037. A compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise."

A compromise agreement not contrary to law, public order, public policy, morals or good customs is a valid contract which is the law between the parties themselves (Municipal Board of Cabanatuan City vs. Samahang Magsasaka, Inc., 62 SCRA 435). A judgment on a compromise is final and executory (Samonte vs. Samonte, 64 SCRA 524). It is immediately executory (Pamintuan vs. Muños, et al., L-26331, 22 SCRA 1109 [March 15, 1968]) in the absence of a motion to set the same aside on the ground of fraud, mistake or duress (Cadano vs. Cadano, L-34998, 49 SCRA 33 [January 11, 1973]).

In fact in the herein case before Us, execution has already been issued. Considering this in the light of Article 2041 of the New Civil Code, to wit:

"Art. 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.",

it is obvious that the respondent-appellee did not only succeed in enforcing the compromise but said plaintiff-appellee likewise wants to rescind the said compromise. It is clear from the language of the law, specifically Article 2041 of the New Civil Code that one of the parties to a compromise has two options: 1) to

enforce the compromise; or 2) to rescind the same and insist upon his original demand. The respondent-appellee in the case herein before Us wants to avail of both of these options. This can not be done. The respondent-appellee cannot ask for rescission of the compromise agreement after it has already enjoyed the first option of enforcing the compromise by asking for a writ of execution resulting thereby in the garnishment of the Pasay City funds deposited with the Philippine National Bank which eventually was delivered to the respondent-appellee.

Upon the issuance of the writ of execution, the petitioner-appellants moved for its quashal alleging among other things the exemption of the government from execution. This move on the part of the petitioner-appellant is at first glance laudable for "all government funds deposited with the Philippine National Bank by any agency or instrumentality of the government, whether by way of general or special deposit, remain government funds and may not be subject to garnishment or levy (Commissioner of Public Highways vs. San Diego, L-30098, 31 SCRA 616 [Feb. 18, 1970]). But, inasmuch as an ordinance has already been enacted expressly appropriating the amount of P613,096.00 of payment to the respondent-appellee, then the herein case is covered by the exception to the general rule stated in the case of Republic vs. Palacio (L-20322, 23 SCRA 899 [May 29, 1968]), to wit:

"Judgments against a State in cases where it has consented to be sued, generally operate merely to liquidate and establish plaintiff's claim in the absence of express provision; otherwise they cannot be enforced by processes of the law; and it is for the legislature to provide for the payment in such manner as it sees fit."

Hence, the respondent Court was correct in refusing to quash the writ of execution it has issued.

Having established that the compromise agreement was final and immediately executory, and in fact was already enforced, the respondent Court was in error when it still entertained the supplemental complaint filed by the respondent-appellee for by then the respondent Court had no more jurisdiction over the subject matter. When a decision has become final and executory, the court no longer has the power and jurisdiction to alter, amend or revoke, and its only power thereof is to order its execution (Ocampo vs. Caluag, L-21113, 19 SCRA 791 [April 27, 1967]).

After the perfection of an appeal, the trial court loses jurisdiction over its judgment and cannot vacate the same (Alama vs. Abbas, L-19616, 18 SCRA 679 [Nov. 29, 1966]; Commissioner of Immigration vs. Romero, L-19782, 10 SCRA 216 [Jan. 31, 1964]; Valdez vs. CFI, etc., L-3366 [April 27, 1951] cited in Cabungcal vs. Fernandez, L-16520, 10 SCRA 731 [April 30, 1964]; Government vs. Mendoza, 51 Phil. 403; Ayllon vs. Siojo, 26 Phil. 195).

Moreover, supplemental pleadings are meant to supply deficiencies in aid of original pleading, not to entirely substitute the latter (British Traders' Insurance Co., Ltd. vs. Commissioner of Internal Revenue, L-20501, 13 SCRA 719, 728 [April 30, 1965]). Here, the respondent-appellee originally asked for specific performance which was later settled through a compromise agreement. After this, the respondent-appellee asked for rescission of both the contract and agreement and the compromise agreement using a supplemental complaint. It is clear that the supplemental complaint We have before Us is not only to "supply deficiencies in aid of original pleading" but is also meant as an entirely new "substitute" to the latter. A supplemental complaint must be consistent with and in aid of, the cause of action set forth in the original complaint and a new and independent cause of action cannot be set up by such complaint (Bishop vs. Taylor, 210 App. Div. 1, 205 NYS 653), especially where judgment has already been obtained by him in the original action (Anadarko National Bank vs. Anadarko First National Bank, 39 Okl. 225, 134 Phil. 866).

WE find no error in the order of the respondent Court dated July 23, 1969. From the reading of the premises and provisions of the contract and agreement which was "formally confirmed and officially approved by the parties" in the compromise agreement later entered into by the same parties, subject only to the enumerated changes

and/or modifications, it is obvious that the contracting parties envisioned a stage by stage construction (on the part of the re-spondent-appellee) and payment (on the part of the defendant-appellant). This is manifested in the contract and agreement, to quote:

xx xx xx

"WHEREAS, one of the conditions set forth in the proposal is that the Contractor shall start the construction of the Pasay City Hall building as per plans and specifications by stages advancing the necessary amount needed for each stage of work and the Party of the First Part to reimburse the amount spent on the work accomplished by the Contractor before proceeding on the next stage; Provided, the First Party shall supply the cement needed;

xx xx xx

"2. That the work shall be done in stages to be determined by the City Engineer considering structural and functional criteria and consistent with funds immediately available for the purpose;

"3. That the Contractor shall advance the necessary amount needed for each stage of work; Provided that the Contractor shall, before starting each stage of work, inform the First Party in writing as to the amount necessary to be advanced by the former; xx xx

"4. That the Party of the First Part shall reimburse the Contractor the cost of the work completed as estimated by the City Engineer for each stage of work before the Contractor proceed to the next stage;" (pp. 33-34, rec.).

And sub-paragraph H of paragraph 1 and paragraph 2 of the compromise agreement also reiterated the stage by stage construction and payment as follows:

"H. That detailed, separate reports on the progress of the construction work during each stage shall regularly be submitted to the City Engineer and the City Mayor;

xx xx xx

"2. That within a reasonable period of time, at least ninety (90) days from the final approval of this Compromise Agreement by this Honorable Court, the defendant Pasay City Government shall pay and remit the amount of SIX HUNDRED THIRTEEN THOUSAND NINETY-SIX PESOS (P613,096.00) xx xx to the plaintiff contractor, who, in turn, immediately upon receipt thereof, shall be bound and obliged to commence and start the construction work corresponding to the next stage thereof; xx xx" (p. 45, rec.).

Sub-paragraph B of paragraph 1 of the Compro-mise Agreement, to wit:

"B. That immediately upon final approval hereof by this Honorable Court, the plaintiff contractor will submit and file in favor of Pasay City Government a new performance bond in the amount required by pertinent law, rules and regulations, in propor-tion to the remaining value or cost of the unfinished work of the construction as per approved plans and specifications xx x" (p. 44, rec.).

read together with the stage-by-stage construction and payment approach, would inevitably lead to the conclusion that the parties to the compromise con-templated a divisible obligation necessitating therefore a performance bond "in proportion to" the uncompleted work.

What is crucial in sub-paragraph B of para-graph 1 of the compromise agreement are the words "in proportion." If the parties really intended the legal rate of 20% performance bond to refer to the whole unfinished work, then the provision should have required the plaintiff contractor to submit and file a new performance bond to cover the remaining value/cost of the unfinished work of the construction. Using the words in proportion then significantly changed the meaning of the paragraph to ultimately mean a performance bond equal to 20% of the next stage of

work to be done.

And, We note that in the Contract and Agreement, the respondent-appellee was allowed to file a performance bond of P222,250.00 which is but 5% of the total bid of P4,914,500.80. A security bond was likewise filed with an amount of P97,290.00. The sum total of bond then filed was P320,540.00 which is just 6.5% of the total bid. It is rather curious why all of a sudden the petitioners-appellants are insisting on a 20% performance bond of the entire unfinished work when they were quite content with a bond just 5% of the entire work. For Us to allow the petitioners-appellants to adamantly stick to the 20% performance bond would be tantamount to allowing them to evade their obligation in the compromise agreement. This cannot be allowed. The bond of a contractor for a public work should not be extended beyond the reasonable intent as gathered from the purpose and language of the instrument construed in connection with the proposals, plans and specifications, and contract (John L. Roper Lumber Co. vs. Lawson, 195 NC 840, 143 SE 847, 67 ALR 984).

The premium of the bond will be sizable and will eat up the profit of the contractor, who is faced with the fluctuation of prices of materials due to inflation and devaluation. Right now, many contractors cannot proceed with the implementation of their contracts because of the extraordinary rise in cost of materials and labor. No contractor would be willing to bid for public works contracts under the oppressive interpretation by petitioners-appellants.

Again, the respondent Court was correct in ruling that the submission of the bond was not a condition precedent to the payment of P613,096.00 to the plaintiff. Nowhere in the Contract and Agreement nor in the Compromise Agreement could be found the fact that payment by the petitioners-appellants of the amount of P613,096.00 was dependent upon the submission by the respondent-appellee of the performance bond. It cannot be argued that reciprocal obligation was created in the Compromise Agreement, for the obligation to pay on the part of the petitioners-appellants was established several years ago when the respondent-appellee finished some of the stages of construction. And, this argument is already moot and academic, for the amount of P613,096.00 has already been collected through execution and garnishment upon the funds of Pasay City with the Philippine National Bank.

Inasmuch as the parties in the herein case have agreed in the Compromise Agreement, to wit:

"3. That within a similar period the defendant Pasay City Government shall pay and remit to plaintiff contractor an amount equivalent to three (3%) percent of the abovementioned amount of SIX HUNDRED THIRTEEN NINETY-SIX PESOS (P613,096.00), for and as adverse attorney's fees in this case; xxx" (p. 45, rec.),

WE hereby grant the amount of P18,392.78 which is 3% of P613,096.00 as attorney's fees in favor of the respondent-appellee.

WHEREFORE, THE ORDER OF THE RESPONDENT COURT DATED JULY 23, 1969 IS HEREBY AFFIRMED AND THE PETITIONERS-APPELLANTS ARE HEREBY DIRECTED TO PAY ATTORNEY'S FEES IN THE AMOUNT OF EIGHTEEN THOUSAND THREE HUNDRED NINETY-TWO AND 78/100 (P18,392.78) PESOS. COSTS AGAINST PETITIONERS-APPELLANTS.

SO ORDERED.

Abad Santos, Escolin, and Cuevas, JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

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