

MOBIL OIL PHILIPPINES, INC., PETITIONER, VS. COURT OF FIRST INSTANCE OF RIZAL, BRANCH VI, GEMINIANO F. YABUT AND AGUEDA ENRIQUEZ YABUT, RESPONDENTS.

G.R. No. L-40457. May 08, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari filed by petitioner Mobil Oil Philippines, Inc. questioning (1) the Order of respondent Court of First Instance, Branch VI, Pasig, Rizal, promulgated on November 20, 1974 declaring its earlier Decision dated July 25, 1974 as null and void insofar as it concerned private respondents Geminiano F. Yabut and Agueda Enriquez-Yabut, and (2) the Order promulgated on February 20, 1975 and denying petitioner's Motion for the Issuance of a Writ of Execution and Appointment of Special Sheriff.

The facts of the case are as follows:

On November 8, 1972, petitioner filed a complaint[1] in the Court of First Instance of Rizal against the partnership La Mallorca and its general partners, which included private respondents, for collection of a sum of money arising from gasoline purchased on credit but not paid, for damages and attorney's fees.

On December 22, 1972, petitioner, with leave of court, filed an Amended Complaint[2] impleading the heirs of the deceased partners as defendants. During the hearing held on April 1, 1974, after petitioner had presented its evidence, the parties agreed to submit the case for decision on the basis of the evidence on record adduced by petitioner but "to exclude past interest in the amount of P150,000.00 and to award nominal attorney's fees." Consequently, on July 25, 1974, a Decision[3] was rendered in favor of the petitioner and against defendants. Private respondents thereafter filed a Petition to Modify Decision and/or Petition for Reconsideration,[4] which was opposed[5] by petitioner.

The Petition to Modify Decision and/or Reconsideration is predicated on the following grounds:

1. That there was no stipulation or agreement of the parties on the award of attorney's fees;
2. That Miguel Enriquez, not being a general partner, could not bind the partnership in the Sales Agreement he signed with plaintiff; and
3. That defendant Geminiano Yabut already withdrew as partner and president of La Mallorca as of September 14, 1972.

On November 20, 1974, respondent court issued its disputed Order[6] declaring its decision null and void insofar as private respondents were concerned on the ground that there was no evidence to show that the counsel for the defendants had been duly authorized by their respective clients to enter into a stipulation or facts, a compromise agreement or a confession judgment with petitioner, a ground never raised by the parties. Petitioner filed a Motion for Reconsideration and Clarification,[7] seeking the reconsideration of said order or, if not reconsidered,

clarification from respondent court as to whether or not there will be further proceedings for reception of private respondents' evidence in court. Respondent court denied the motion, as well as petitioner's Motion for the Issuance of a Writ of Execution and Appointment of Special Sheriff, by way of the Order dated February 20, 1975. Hence, this petition.

The issue presented before Us is whether or not public respondent acted with grave abuse of discretion amounting to lack of jurisdiction in declaring null and void its earlier decision of July 25, 1974.

We find merit in the instant petition.

In the Order of November 20, 1974,[8] respondent Court declared the decision dated July 25, 1974 null and void for the following reason:

"There is no evidence on record to show that the attorneys of record for the defendants had been duly authorized by their respective clients, including present movants, to enter into a stipulation of facts or a compromise agreement or confession of judgment. And any settlement or confession of judgment which an attorney may enter for his client without any written authority cannot bind the client. To be sure, the stipulation of facts which amounts to or approximates a compromise agreement, or waives a right or practically confesses judgment, entered into by a lawyer without the consent and conformity of his clients, is an absolute nullity. This precisely is what appears to be the stipulation of the movants, as well as the other defendants as the records show. In view of the conclusion thus reached, it would appear that there is no necessity to discuss the other grounds raised by the movants."

The records show that petitioner had already adduced evidence and formally offered its evidence in court; that at the hearing of April 1, 1974, for the presentation of defendants' evidence, the parties through their counsels,[9] mutually agreed to the waiver of the presentation of defendants' evidence on one hand, and the waiver of past interest in the amount of P150,000.00 on the part of plaintiff and the payment of only nominal attorney's fees, thus the respondent court issued the following Order:

"Calling this case for hearing today, the parties pray the Court that they are submitting the case for decision on the basis of the evidence thus presented but to exclude past interest in the amount of about P150,000.00 and to award nominal attorney's fees.

Finding the said motion in order, let judgment be rendered in accordance with the evidence so far presented." [10]

The foregoing Order is not a stipulation of facts nor a confession of judgment. If at all, there has been a mutual waiver by the parties of the right to present evidence in court on the part of the defendants on one hand, and waiver of interest in the amount of P150,000.00 and the stipulated attorney's fees of 25% of the principal amount on the part of the plaintiff, except a nominal one.

The counsels of the parties in this case had the implied authority to do all acts necessary or incidental to the prosecution and management of the suit in behalf of their clients who were all present and never objected to the disputed order of the respondent court. They have the exclusive management of the procedural aspect of the litigation including the enforcement of the rights and remedies of their client. Thus, when the case was submitted for decision on the evidence so far presented, the counsel for private respondents acted within the scope of his authority as agent and lawyer in negotiating for favorable terms for his clients. It may be that in waiving the presentation of defendants' evidence, counsel believed that petitioner's evidence was insufficient to prove its cause of action or knowing the futility of resisting the claim, defendants opted to waive their right to present evidence in exchange for the condonation of past interest in the amount of around P150,000.00 and the award of a nominal attorney's fees instead of the 25% stipulated in the Sales Agreement and Invoices. In fact, when counsel secured a

waiver of the accumulated interest of P150,000.00, and the 25% stipulated attorney's fees, the defendants were certainly benefited.

Parties are bound by the acts and mistakes of their counsel in procedural matters. Mistakes of counsel as to the relevancy or irrelevancy of certain evidence or mistakes in the proper defense, in the introduction of certain evidence, or in argumentation are, among others all mistakes of procedure, and they bind the clients, as in the instant case.[11]

Having obtained what defendants bargained for and having wrongly appreciated the sufficiency or insufficiency of petitioner's evidence, private respondents are now estopped from assailing the decision dated July 25, 1974.

Records would show that private respondents have not submitted any evidence or pleading to contest the authority of their counsel to waive as he did waive presentation of their evidence in exchange for and in consideration of petitioner's waiver of past interest and the stipulated 25% of attorney's fees.

Even if We construe the Order of April 1, 1974 to be based on an oral compromise agreement, the same is valid for as held in the case of *Cadano vs. Cadano*[12] an oral compromise may be the basis of a judgment although written evidence thereof is not signed. It has been said that the elements necessary to a valid agreement of compromise are the reality of the claim made and the bona fides of the compromise.[13]

The validity of a judgment or order of a court cannot be assailed collaterally unless the ground of attack is lack of jurisdiction or irregularity in their entry apparent on the face of the record or because it is vitiated by fraud. If the purported nullity of the judgment lies on the party's lack of consent to the compromise agreement, the remedy of the aggrieved party is to have it reconsidered, and if denied, to appeal from such judgment, or if final to apply for relief under Rule 38.[14] It is well settled that a judgment on 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 case an appeal may be taken from the order denying the motion.[15]

Moreover, We do not find the grounds relied upon in private respondents' Petition to Modify Decision to be meritorious.

Mr. Miguel Enriquez automatically became a general partner of the partnership La Mallorca being one of the heirs of the deceased partner Mariano Enriquez. Article IV of the uncontested Articles of Co-Partnership of La Mallorca provides:

"IV. Partners. – The parties above-named, with their civil status, citizenship and residences set forth after their respective names, shall be members comprising this partnership, all of whom shall be general partners.

If during the existence of this co?partnership, any of the herein partners should die, the co-partnership shall continue to exist amongst the surviving partners and the heir or heirs of the deceased partner or partners; Provided, However, that if the heir or heirs of the deceased partner or partners elect not to continue in the co-partnership, the surviving partners shall have the right to acquire the interests of the deceased partner or partners at their book value based upon the last balance sheet of the co--partnership, and in proportion to their respective capital contributions; And, Provided Further, that should a partner or partners desire to withdraw from the co?partnership and the remaining partners are not willing to acquire his or their shares or interest in the co-partnership in accordance with the foregoing provisions, the co?partnership shall not thereby be dissolved, but such retiring partner or partners shall only be entitled to his or their shares in the assets of the co-partnership according to the latest balance sheet which have been drawn prior to the date of his or their withdrawal. In such event, the co-partnership shall continue amongst the remaining partners."[16]

As to respondent Geminiano Yabut's claim that he cannot be liable as a partner, he having withdrawn as such, does not convince Us. The debt was incurred long before his withdrawal as partner and his resignation as

President of La Mallorca on September 14, 1972. Respondent Geminiano Yabut could not just withdraw unilaterally from the partnership to avoid his liability as a general partner to third persons like the petitioner in the instant case.

This is likewise true with regard to the alleged non-active participation of respondent Agueda Yabut in the partnership. Active participation in a partnership is not a condition precedent for membership in a partnership so as to be entitled to its profits nor be burdened with its liabilities.

From the foregoing, it is evident that the court a quo erred in issuing the Orders of November 20, 1974 and February 20, 1975 nullifying the decision dated July 25, 1974 and dismissing the complaint against private respondents Geminiano Yabut and Agueda Enriquez-Yabut.

WHEREFORE, the Orders of November 20, 1974 and February 20, 1975 is hereby REVERSED and SET ASIDE and the Decision dated July 25, 1975 is reinstated and declaring the same valid and binding against private respondents Geminiano Yabut and Agueda Enriquez-Yabut. With costs de officio.

SO ORDERED.

Melencio-Herrera, Paras, and Regalado, JJ., concur.
Padilla, J., No part, former counsel of Mobil Oil.

[1] Annex "A", Petition, Rollo, pp. 11-15.

[2] Annex "B", Petition, Rollo, pp. 23-29.

[3] The dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the defendant La Mallorca Partnership to pay the plaintiff the sum of P337,393.94; on the second cause of action, ordering La Mallorca Partnership to pay the plaintiff the sum of P401,129.00 with legal interest at the legal rate from the date of the filing of the complaint until fully paid, but in default of such payment, ordering all the defendant's partners to pay the plaintiff, jointly and subsidiarily, all the said amount, on the third cause of action, ordering La Mallorca Partnership to pay the plaintiff by way of attorney's fees a sum equivalent to 10% of all the amounts under the first and second cause of action, and in default of such payment, ordering the defendant's partners to pay the plaintiff, jointly and subsidiarily the said amount, and to pay the costs.

"The Compulsory Counterclaim interposed by defendants La Mallorca, et. al., represented by Atty. Felipe C. Magat, is hereby dismissed for lack of merit.

"SO ORDERED."

Annex "D", Petition, Rollo, 53-60.

[4] Annex "E", Petition, Rollo, pp. 61-66.

[5] Annex "F", Petition, Rollo, pp. 70-77.

[6] Annex "G", Petition, Rollo, pp. 83-85.

[7] Annex "H", Petition, Rollo, p. 86.

[8] Annex "G", supra.

[9] Atty. Cesar Berroya (for Mobil), Atty. Fidel Zosimo Canilao (for partners Alfredo Balingit and Manuela Enriquez Balingit), Atty. Felipe Magat (for all other partners including Geminiano Yabut and Agueda E. Yabut, but excluding the heirs of Geronimo T. Enriquez)

[10] Annex "A-Mobil", Rollo, p. 78.

[11] Isaac vs. Mendoza, L-2820, 89 Phil. 279 (1952).

[12] L-34998, 49 SCRA 33 (1973).

[13] Chaffee vs. Chaffee, 197 Mich. 33, 163 N.W. 879; Grandin vs. Grandin, 49 N.J.L. 508, 9 A. 756, 60 Am. Rep. 642.

[14] Vda. de Celis vs. Vda. de la Santa, G.R. No. 5294, 93 Phil. 909, (1953).

[15] De los Reyes vs. Ugarte, L-82, 75 Phil. 505, (1945); Enriquez vs. Padilla, L-782, 77 Phil. 373, (1946).

[16] Decision, pp. 4-5, Rollo, pp. 56-57.

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