

INTERNATIONAL HOTEL CORPORATION, FELIX ANGELO BAUTISTA, MARIO B. JULIAN, HERMILO T. RODIS, AND TESTATE ESTATE OF JOSE M. VALERO, PETITIONERS, VS. HON. ELIAS B. ASUNCION, HON. JO...*G.R. No. L-39669. March 10, 1975*

Ponente: BARREDO, J.

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Petition for certiorari to nullify and set aside two resolutions dated August 13 and October 21, 1974, the compromise judgment of May 7, 1974 and the writ of possession of August 15, 1974, all rendered and issued by the respondent court in Civil Case No. 83690, entitled Reparations Commission vs. International Hotel Corporation et al. Basic ground of the petition is that notwithstanding that the said compromise judgment contains portions not agreed upon by the parties, and affecting adversely the petitioners, respondent judges, thru their respective impugned resolutions, denied petitioners' motion for their deletion and instead issued a writ of possession of the subject premises, a hotel under construction, in favor of private respondent Pacific Hotel Corporation.

From the pleadings, We gather that herein petitioners had started the construction of an hotel on their own land, herein involved, which, however, was mortgaged to two banks, the Philippine Commercial and Industrial Bank and the Commercial Bank & Trust Company. In that construction, they utilized materials purchased from the Reparations Commission on terms.

We gather also that in above-mentioned Civil Case No. 83690, the Reparations Commission sued the petitioners and the two banks alleging that notwithstanding that the purchase price of its materials bought from it by petitioners had not yet been paid, the two banks were already taking over the land of petitioners, with the improvements thereon, by virtue of the mortgages. It further alleged that the mortgages were null and void, since under the law, the materials purchased by petitioners remained to be properties of the Commission until fully paid. It asked the court to recognize and give effect to its preferential position as creditor as against the banks.

It turned out, however, that the banks had already actually consolidated petitioners' land and improvements and had, in fact, subsequently sold them, after Civil Case No. 83690 had already been filed, to respondent Pacific Hotel Corporation, among whose stockholders are herein respondents Basilio Lirag, Manuel M. Sison and Danilo Lacerna, who are also stockholders of petitioner International Hotel Corporation. Upon learning of this sale, petitioners filed a third-party complaint against private respondents charging them and the banks, against whom the corresponding cross-claims were also filed, with having connived and conspired against them in bad faith and to their prejudice in entering into such transaction. After issues were joined but before trial could start, a compromise appears to have been arrived at between herein petitioners and private respondents, albeit without the participation of the banks and without the said banks being parties thereto, hence the rendering by the respondent Judge Jorge R. Coquia of the controversial decision of May 7, 1974 reading thus:

"D E C I S I O N

"Submitted for approval by the parties is the Compromise Agreement, which reads as follows:

'MOTION TO APPROVE COMPROMISE

COME NOW the plaintiff, intervenor, defendants, third-party plaintiffs and the third-party defendants, assisted by their respective counsel, and respectfully move for approval by the Honorable Court of the following compromise agreement:

1. Subject to the terms and conditions hereinafter set forth, Pacific Hotel Corporation binds itself to sell or reconvey to, and in favor of, the International Hotel Corporation the parcels of land and improvements involved in the case at bar for and in consideration of the following:

(a) On or before July 7, 1974, International Hotel Corporation shall pay back to the Pacific Hotel Corporation, in Philippine currency, the latter's total investment in said properties, consisting specifically of the following amounts:

(1) P9,943,754.08, representing the purchase price paid to Commercial Bank & Trust Company and Philippine Commercial & Industrial Bank under the Deed of Sale dated October 31, 1973, covering the properties in question;

(2) P951,285.74, representing interest on the aforesaid purchase price reckoned at fourteen per centum (14%) per annum from November 1, 1973 to July 7, 1974, subject, however, to adjustment in case of full payment before July 7, 1974;

(3) P51,360.48, representing the 1974 realty taxes on the properties in question paid by Pacific Hotel Corporation as evidenced by Real Estate Tax Receipt No. 050572-A dated April 19, 1974, of the office of the Treasurer of the City of Manila;

(4) P37,289.08, representing the transfer tax paid under protest under Ordinance No. 7399 of the City of Manila, as evidenced by OR No. 485191-Q dated November 5, 1973; it is understood third party plaintiffs shall be subrogated to all the rights and interests of third-party defendants under the aforesaid protest.

(5) P29,901.00, representing the cost of documentary stamps, plus P7,714.00, covering the filing fee and other fees in connection with the registration of the Deed of Sale and issuance of the transfer certificate of title;

(6) P24,480.00, representing the security guard fees actually paid in connection with the properties in question;

(b) International Hotel Corporation shall likewise pay or refund to Mr. Basilio L. Lirag the sum of P1,812,800.00, Philippine currency, representing his equity investment in International Hotel Corporation including those of Messrs. Manuel M. Sison, Nemesio L. Reyes, Manuel K. Lirag, Danilo R. Lacerna, Winfred S. Salvacion, and Angelo J. Paras;

2. International Hotel Corporation shall make full payment of the aforesaid amounts within a non-extendible period ending July 7, 1974, and such payments shall be in the following manner:

(a) The amounts due in favor of Pacific Hotel Corporation under paragraph 1(a) above shall be deposited by check in the name and account of Pacific Hotel Corporation not later than May 15, 1974 in writing, and said deposit shall not produce the effect of payment except upon actual clearance of the check so deposited;

(b) The amount referred to in par. 1(b) above shall be deposited by check in the name and account of Basilio L. Lirag not later than July 7, 1974 with a bank to be designated by him in writing not later than May 15, 1974, and such deposit shall not produce the effect of payment until actual clearance of the check deposited;

3. Pacific Hotel Corporation shall retain the title to the properties in question until all the payments hereinabove stated shall have been duly and fully effected; in the event that said payments are in fact made

within the period and in the manner prescribed above, Pacific Hotel Corporation shall immediately execute the corresponding deed of sale or reconveyance in favor of International Hotel Corporation and shall deliver to the latter the corresponding owners' duplicate of the certificates of title free and clear of all liens and encumbrances save those now annotated thereon. The expenses for documentation and registration shall be for the account of International Corporation;

Messrs. Basilio L. Lirag, Manuel M. Sison, Nemesio L. Reyes, Manuel K. Lirag, Danilo R. Lacerna, Winfred S. Salvacion, and Angelo J. Paras shall also forthwith surrender to International Hotel Corporation all their respective certificates of stock covering all the shares of stock now held by them in International Hotel Corporation for proper disposition of the latter, if said certificates are still in their possession;

4. In the event that the period prescribed hereinabove expires without full payment by International Hotel Corporation of the amounts stated in sub-pars. (a) and (b) of par. 1 above, Pacific Hotel Corporation shall automatically be considered and recognized as the absolute and lawful owner of the properties in question and shall immediately have the right to obtain from this Honorable Court a writ of possession without need of any prior notice or demand to vacate;

5. Third-party plaintiffs and third-party defendants hereby renounce all other claims and counterclaims against each other in respect to the subject matter of the present controversy.

6. Pacific Hotel Corporation hereby recognizes the existence of the lien of Intervenor Western Steel, Inc. upon the unfinished edifice and to pay the same upon proper determination of the amount thereof, should Pacific Hotel Corporation's ownership of the properties in question prevail pursuant to par. 4 above;

7. International Hotel Corporation likewise recognizes said intervenor's lien and binds itself to pay the same upon proper determination of the amount thereof;

8. Third party plaintiffs and third party defendants recognize the absolute ownership of the plaintiffs to the reparations materials, equipment, technical services and other items which were utilized and availed in the structure currently erected and existing on the hotel site of the International Hotel Corporation as well as all other reparations items already delivered by the plaintiffs to the third party plaintiffs but are not utilized in said structure and IHC or PHC, as the case may be, shall pay the claim of the plaintiffs for all said reparations construction materials, equipment, technical services and other items in the total value, Japan Port, of US\$2,639,832.61 or converted into the Philippine Peso equivalent thereof on the basis of the free market rate of exchange of P3.90 to US\$1.00 in the amount of P10,294,967.48 plus legal interest thereon without prejudice to negotiation between plaintiffs and International Hotel Corporation or Pacific Hotel Corporation as the case may be for the deletion of such interest.

If payment is to be made in cash, the same shall be made within one hundred twenty days from the date of order of the Honorable Court transferring the possession and ownership of the parcels of land in question either to IHC or PHC.

If payment is to be made in installments at the option of IHC or PHC, as the case may be, the same shall be for a period of ten years starting from the date of said order of the Honorable Court, and payment shall be in ten (10) equal yearly installments subject to the requirements and conditions imposed by the Reparations Law, as amended.

9. The parties recognize that all the reparations construction materials, equipment, technical services and other items in the total value, Japan Port, of P10,294,967.48 already delivered by the Reparations Commission to the International Hotel Corporation shall be the total assistance of the Reparations Commission to the hotel project of the International Hotel Corporation and that no further allocation of reparations funds shall be asked for and granted to said hotel project, and that the delivery of said reparations construction materials, equipment, technical services and other items in the total value, Japan Port, of P10,294,967.48 shall be the complete

delivery of the total assistance of the Reparations Commission to said hotel project.

10. In the event that the possession and ownership of the parcels of land in question are transferred to the IHC by this Honorable Court, IHC shall register with the corresponding Register of Deeds the first mortgage executed on said parcels of land and improvements thereon which all the parties recognize the validity and enforceability thereof, said registration of first mortgage shall be made within fifteen days from date of said Court order.

In the event that the possession and ownership of said parcels of land are transferred to the PHC, PHC shall execute a first mortgage on said parcels of land and the improvements thereon in favor of the Reparations Commission as security for the payment of the total value of P10,294,967.48 plus legal interest thereon or submit to the Reparations Commission other forms of collaterals acceptable to the Reparations Commission.

11. International Hotel Corporation or Pacific Hotel Corporation, as the case may be, shall settle all claims of all third party claimants relative to said reparations construction materials, equipment, technical services and other items, if there be such third party claimants.

WHEREFORE, it is respectfully prayed that judgment be rendered approving the foregoing Compromise Agreement, without pronouncement as to costs.

Manila, Philippines.

May 7, 1974.

REPARATIONS COMMISSION

Plaintiff

by:

(SGD.) RUBEN V. SARMIENTO

RUBEN V. SARMIENTO

Counsel for Plaintiff

INTERNATIONAL HOTEL CORPORATION

Third-Party Plaintiff

by:

(SGD.) FELIX ANGELO BAUTISTA

FELIX ANGELO BAUTISTA

As Third Party Plaintiff and as

Attorney-in-fact for Mario B. Julian

and Atty. Hermilo T. Rodis

Assisted by:

(SGD.) SIMEON N. FERRER

SIMEON N. FERRER

Counsel for Third-Party Plaintiffs

(SGD.) CELSO ED. F. UNSON

CELSO ED. F. UNSON

Executor, Estate of Jose M. Valero

(SGD.) EPHRAIM G. GOCHANGCO

EPHRAIM G. GOCHANGCO

Third Party Plaintiff

Assisted by:

AMBROSIO PADILLA LAW OFFICES

by:

(SGD.) MAURO C. REYES, JR.

MAURO C. REYES, JR.

PACIFIC HOTEL CORPORATION

Third Party Defendant

by:

(SGD.) WINFRED S. SALVACION

WINFRED S. SALVACION

Vice President & Director

Attorney-in-Fact

WESTERN STEEL, INC.

Intervenor

by:

(SGD.) H. R. REYES

H. R. REYES

President

Assisted by:

(SGD.) CRISPINO P. REYES

REYES & BENIPAYO

Counsel for Intervenor

(SGD.) AGUSTIN O. BENITEZ

AGUSTIN O. BENITEZ

As Attorney-in-Fact for Third-Party Defendants Basilio L. Lirag, Danilo R. Lacerna, and Manuel M. Sison and as Counsel for Third-Party Defendants'

"Finding the said Compromise Agreement not contrary to law, and in fact it has settled all the issues, the aforesaid Compromise Agreement is hereby APPROVED. According to the parties, although the defendant banks, namely, the Philippine Commercial & Industrial Bank and the Commercial Bank & Trust Company, have not signed this agreement, the issues affecting them have become moot and academic.

In view of said approved Compromise Agreement, the issue raised in the motion for reconsideration filed by the third-party plaintiffs to file the injunction bond also becomes moot and academic.

The writ of preliminary injunction, therefore, is set aside.

WHEREFORE, decision is hereby rendered in accordance with the terms and conditions of said Compromise Agreement.

IT IS SO ORDERED."

(Annex F of Petition, pp. 45-51, Rec.)

Under date of May 14, 1974, petitioners filed a motion for reconsideration and/or modification of this decision, claiming that:

"1. On May 7, 1974 after five (5) continuous hours of hectic bargaining, plaintiff, third-party plaintiffs, third-party defendants, and intervenor, assisted by their respective counsel, finally signed and submitted at about 1:30 p. m. to this Honorable Court a MOTION TO APPROVE COMPROMISE AGREEMENT.

2. This Honorable Court having patiently waited for the agreement to be submitted forthwith approved it. At or about the time such approval was being dictated in the presence of the parties and their counsel, undersigned counsel called the attention of this Honorable Court to the circumstance that the agreement sought to be approved would give rise only to a partial judgment, the defendant Banks not being signatories thereto.

3. Third-party plaintiffs are therefore surprised, to say the least, to receive a copy of this Honorable Court's Decision dated May 7, 1974 containing the following provision:

'According to the parties, although the defendant banks, namely, the Philippine Commercial & Industrial Bank and the Commercial Bank & Trust Company, have not signed this agreement, the issues affecting them have become moot and academic.' (Underscoring supplied)

4. The record will show third-party plaintiffs and/or undersigned counsel never made the foregoing manifestation. On the contrary, regardless of the outcome of the Compromise Agreement, third-party plaintiffs intend to prosecute their Supplemental Cross-Claims as well as their Petition for Contempt against defendant Banks and their officers concerned.

5. Unless the abovequoted provision of the Decision is deleted therefrom, third-party plaintiffs International Hotel Corporation and Felix Angelo Bautista in particular will not deem themselves bound by the Compromise Agreement." (Pp. 52-53, Rec.)

and praying as follows:

"WHEREFORE, it is respectfully prayed that the Decision dated May 7, 1974 be reconsidered and/or modified such that the provision quoted in paragraph 3 above be deleted therefrom and the heading 'Decision' be changed to 'Partial Judgment'." (P. 53, Rec.)

To this motion, none of the parties filed any opposition, but to this date, it does not appear that it has been resolved by respondent court.

In the meanwhile, under date of May 8, 1974, the plaintiff in the court below, the Reparations Commission, also filed its own motion to clarify and supplement the motion to approve compromise and to modify the decision of May 7, 1974. Likewise, on May 25, 1974, Francisco G. Joaquin, Jr. and Rafael Suarez filed a motion to intervene as well as for reconsideration of the same decision, alleging that as stockholders and creditors having substantial interest in petitioner corporation, International Hotel Corporation, they consider the compromise agreement to be contrary to law and public policy, since it provides for the return or refund to private individual respondents herein their contributions to the capital stock, thereby impairing the capital of the company without regard to and to the prejudice of its creditors, apart from the fact that the person who signed the said compromise did not have due authority to do so. And on June 5, 1974, still another party, the Western Steel Inc., an actual intervenor, also moved for the reconsideration of the decision, contending, like petitioners, that there is no basis for the portion thereof referring to the banks. By an order dated June 11, 1974, respondent court "considered submitted for resolution" all these incidents.

As no resolution came forth, however, as of July 3, 1974, and apprehensive that they would be made to comply with the terms of payment specified in the compromise agreement without being assured that their cross-claims against the banks would be considered as preserved for further litigation, petitioners filed on said date a "motion to suspend period of payment under compromise agreement and/or to extend the same," setting the same for hearing on July 12, 1974. It was not until July 20, 1974 that respondents filed their opposition. And by way of counter-move based on the theory that the compromise judgment had already become final and executory, they also filed on July 22, 1974, a "motion for issuance of a writ of possession".

Such was the situation when respondent Judge Elias B. Asuncion, who was acting temporarily in the sala of respondent Judge Coquia, issued his questioned resolution of August 13, 1974 in which, importantly to be noted, he expressly deferred action on petitioners' motion for reconsideration and/or modification dated May 14, 1974 thus:

"'MOTION FOR RECONSIDERATION AND/OR FOR MODIFICATION OF DECISION'
filed by third-party plaintiffs with this Court on May 21, 1974.

This motion, as above-indicated, seeks for a reconsideration and/or modification of the decision rendered by this Court on 7 May 1974 so that the provision quoted above should be deleted from the judgment and that the heading 'Decision' be changed to 'Partial Judgment. The Court, however, holds in abeyance resolution of this motion until the Court shall have a chance to verify from the stenographic notes the different oral manifestations of the parties preferred during the discussions made prior to or on the submission of the 'Motion To Approve Compromise'. This non-resolution of this motion does not, however, constitute a legal obstacle to the enforcement of the judgment based upon the compromise agreement because this particular motion has no bearing whatever to the principal terms, covenants and stipulations of the parties contained in the compromise agreement." (P. 84, Rec.)

It does not appear that Intervenor Western Steel's motion similar to that of petitioners was acted upon, but it is quite obvious that it would have suffered the same fate as that of petitioners. On the other hand, however, in the same resolution, the aforementioned motion of the Reparations Commission, the "motion for leave to intervene and motion for reconsideration" of Joaquin Jr. and Suarez as well as petitioners' "motion to suspend period of payment" were all denied, whereas respondents' motion for the issuance of a writ of possession was granted.

On August 26, 1974, petitioners moved to reconsider the resolution and to lift the writ of possession. Plaintiff Reparations Commission filed also its own motion for reconsideration as did likewise Joaquin Jr. and Suarez. All these motions for reconsideration were denied by Judge Coquia, who had already returned then, in his herein assailed resolution of October 21, 1974.

On the basis of the foregoing facts, petitioners now claim that respondent court acted with grave abuse of discretion in denying in its resolutions of August 13 and October 21, 1974 (1) their motion to suspend or extend the period of payment they are obliged to make under the compromise agreement, (2) their motion to lift the writ of possession, and (3) their motion for reconsideration of the resolution of August 13, 1974, and, consequently, in granting respondents' motion for the issuance of a writ of possession. Petitioners contend that by interpolating in its decision the disputed portion reading:

"x x x . According to the parties, although the defendant banks, namely the Philippine Commercial & Industrial Bank and the Commercial Bank & Trust Company, have not signed this agreement, the issues affecting them have become moot and academic." (P. 51, Rec.)

the respondent court arbitrarily altered the tenor and substance of the compromise agreement to their prejudice, since the said portion "served to dilute the bargain they had struck with herein respondents." Explaining further,

they maintain thus:

"The interpolated paragraph substantially varied the terms of the agreement of the signatories to the MOTION TO APPROVE COMPROMISE as reproduced in the trial court's Decision dated May 7, 1974. Such substantial variance cannot simply be glossed over. To be sure, as observed during the oral argument before this Honorable Court, such variance may be of no consequence to herein respondents. It is crucial however to herein petitioners. To arbitrarily set defendant Banks scot-free is to chop away at a critical portion of herein petitioners' bargain without which they would not have signed the aforesaid MOTION TO APPROVE COMPROMISE. That compromise agreement cannot be read in a vacuum. It must and should be implemented as an integrated whole respecting all the rights accorded thereby to all the signatories thereto. The trial court cannot arbitrarily interpolate any paragraph in such a compromise agreement anymore than it can issue a writ of execution which varies the tenor of its judgment." (P. 211, Rec.)

Moreover, petitioners posit that it was a grave abuse of discretion on the part of respondent court to issue a writ of possession in favor of respondent Pacific Hotel Corporation, without first resolving their motion for reconsideration and/or modification of May 14, 1974 and without determining definitely whether or not petitioners are entitled to the complete elimination of the questioned portion above-quoted of the decision, considering that without such resolution, the decision could not be final and executory. They argue that for them to have voluntarily complied with the terms of the agreement, by paying the sums therein stipulated within the period specified, without the compromise judgment being modified by eliminating the portion in question, would have meant that they are admitting that indeed their cross-claims against the banks had already become moot and academic.

We find such pose of petitioners to be fair and reasonable. The court itself being uncertain as to whether or not there was any factual basis for the inclusion in the compromise judgment of the portion objected to by petitioners, as in fact, it deferred resolution of that point, and since petitioners had made representations to the respondent court that in entering into the compromise agreement and in asking for the approval thereof, they had in mind that what would be rendered would only be a partial judgment which would preserve their right to proceed against the cross-defendant banks, and, importantly, they might lose such right if the portion in controversy were not eliminated, it was but just that before they are made to comply with the terms of the compromise agreement, they should be assured that they would not be prejudiced in any way thereby. The preservation of their cross-claims against the banks may not have been the main inducement that made the petitioners to agree to the compromise, but this does not mean that petitioners' contention that the untimely and unwarranted declaration in the compromise judgment that said cross-claims had become moot and academic is without basis in fact. Common experience alone would dictate that somehow petitioners must have considered their remaining recourse against the banks as something that would help them in meeting the obligations they had incurred to respondents under the compromise agreement.

But respondents maintain, on the other hand, that it was right and proper for respondent court to have acted the way it did. Anent petitioners' motion to suspend, respondents claim that:

"(a) The motion was an obvious and belated cover-up of petitioners' failure to comply with the terms of the Compromise Agreement;

(b) The determination of the period for payment was one of the principal inducements for private respondents to enter into the amicable settlement, let alone the very urgent need of rescuing the unfinished structure from certain ruin;

(c) A suspension of the period could only be validly effected by agreement of all the parties to the compromise, particularly requiring the consent of Pacific Hotel Corporation and the plaintiff Reparations Commission,

whose interests were specially involved by the reckoning of the period.

(d) International Hotel Corporation had actually performed acts unmistakably revealing its intent to comply with or implement the Compromise Judgment itself, by exerting efforts to raise the money called for by said judgment and by actively opposing the motion to set aside the judgment filed by proposed intervenors Joaquin and Suarez. (See p. 8, Annex "4" to Answer.)" (P. 5, Respondents' Memo.)

And they would rely on the factual findings of respondent judges to the effect that:

(a) None of the motions filed by petitioners and the other parties ever assailed the validity of the compromise judgment on grounds of fraud, mistake or duress (p. 2, Annex "O").

(b) None of the parties ever contended that the compromise agreement did not express the true intention or agreement of the parties thereto (Annex "M", p. 3).

(c) So much time had been allowed by the trial court for petitioners to pay the amount due, but petitioners had failed to do so (p. 3, Annex "O").

(d) There is an urgent need for construction of more hotels or hotel rooms in the country (p. 3, Annex "O").

(e) The petitioners' motion to suspend the period of payment has no bearing whatever upon the principal terms, covenants, and stipulations of the parties (p. 4, Annex "M").

(f) The Reparations Commission itself, as plaintiff, had moved for the execution of the judgment and opposed the motion to suspend the period of payment (p. 3, Annex 'O')." (Pp. 6-7, Respondents' Memo.)

In another part of their memorandum, they postulate that:

"x x x, petitioners could have complied with the Compromise Judgment and still preserved their right to question the validity and binding effect of the objectionable finding therein, through the simple expedient of protesting against, or excepting to, or expressly reserving their right to assail, the said objectionable finding.

4. In any event, the finding in question appears on its face to be a mere statement of the Court's opinion entirely outside of the matters adjudged. It may even be conceded that it is a recital not warranted by the text of the compromise agreement as submitted to the court and clearly unnecessary to support the judgment rendered. Even supposing, therefore, that such recital or finding is in conflict with the terms of the dispositive portion of the judgment which reads:

'WHEREFORE, decision is hereby rendered in accordance with the terms and conditions of said Compromise Agreement.'

the same cannot constitute res judicata upon petitioners' rights of action as asserted in their cross-claims against the Banks. Consequently, no prejudice is, or has been, actually caused to them by the presence of such a finding in the Compromise Judgment. Freeman on Judgments is apropos:

'Recitals in a judgment which are outside the matters in issue and adjudged are not res judicata. So recitals of the grounds of a general judgment, where it does not otherwise appear that the matters recited were actually considered or necessary to support the judgment, are not conclusive adjudications. And the reasons for making a finding, recited therein, do not enlarge its res judicata effect; thus the effect of a finding that defendant in ejectment was not in possession is not enlarged by a recital therein of the reasons for the finding. Findings contrary to the judgment are not conclusive as to the matters found. x x x' (2 Freeman on the Law on Judgments, p. 1483; underscoring supplied)

"In short, with or without expunging the questioned finding from the Compromise Judgment (Annex 'F'), petitioners' alleged causes of action against the Banks have neither been diluted nor destroyed. Petitioners cannot, therefore, use the presence of such finding as an excuse for non-compliance, or as a ground for treating the

Compromise Judgment as not final and executory, when in fact it is." (Pp. 13-14, id.)

As a final argument, petitioners invoke equity, claiming that it was the 60-day-non-extendible period of payment fixed in the agreement that was the primary inducement for their having given their conformity to compromise with petitioners, and it is not just and equitable that the latter should have the Court declare that such agreed period shall become operative only from the finality of the judgment approving the compromise.

We have given serious consideration to all these contentions of respondents. We are not persuaded, however, that justice is on their side. We are more inclined to believe as we do hold that the interests of justice would be best served by granting the petition herein.

After all, it cannot be said that petitioners are the ones to blame for what has happened. As we see it, the questioned interpolation in the decision of a virtual dismissal of petitioners' cross-claims against the banks has no basis and is entirely unwarranted. The allegation of petitioners that during the negotiations, no mention at all of said cross-claims was ever made is not disputed by any of the parties. In fact, no one among them, not even the banks who were the beneficiaries thereof opposed petitioners' motion for the elimination of such interpolation. Besides, the respondent court knew all the time ought to have known that the motion for approval of the compromise agreement was signed only by petitioners, as third-party plaintiffs and respondents, as third-party defendants. In other words, the banks were parties neither to the agreement nor to the motion to approve the same.

Just how it occurred to respondent Judge Coquia to declare in effect that by agreement of the parties, "the issues affecting them (the banks) have become moot and academic" is beyond comprehension. More incomprehensible is the attitude of respondent court of not immediately attending to the plea of petitioners that such unwarranted interpolation would impair their position to comply with the agreement and of not seeing to it that the compromise judgment did not contain more or less than what the compromise agreement provides. It is grave abuse of discretion for a court to render a compromise judgment which includes terms not agreed upon by the parties, unless these are required by the law or by the rules to be included or are a necessary consequence of the stipulations thereof. Certainly, the abuse is graver when a motion to correct the error is met practically with indifference and either lack of sympathy for the party who expresses fears of being injured or placed at a disadvantage by the baseless additions made by the court.

Indeed, respondents themselves could have remedied the situation by forthwith joining petitioners in their motion for modification rather than insisting on executing the agreement and demanding from petitioners their "pound of flesh . . . according to letter of the bond".

Respondents insist that actually, the interpolation in question is in law harmless and could not prejudice petitioners whether on the basis of estoppel or res adjudicata. Whatever merit there may be in such a proposition is beside the point. What is important is that respondent court refused to act on petitioners plea that it be eliminated before the decision is executed. Under the circumstances, how could petitioners be convinced that the court had no point in making the pronouncements they were objecting too. It must be borne in mind, in this connection, that in any subsequent incident involving the point in issue, it would be the same court that would make the ruling and not the respondents. It is true that respondent Judge Asuncion did make the observation in his resolution of August 13, 1974 that the "non-resolution (of petitioners' motion for modification) does not however constitute a legal obstacle to the enforcement of the judgment because this particular motion has no bearing whatever to the principal terms, covenants and stipulations of the parties contained in the compromise agreement", but such a simplistic approach overlooks and disregards entirely the fundamental point that in entering into the agreement, petitioners were banking, so they contend and nobody can claim otherwise, on obtaining the relief prayed for in their cross-claims against the banks. It should be noted that in truth, the

cross-claims against the banks alleged connivance by the cross-defendants with the third-party defendants, and since the compromise amounted to an abandonment of the claims against the respondents for their part in the conspiracy, it stands to reason that petitioners could have agreed to such abandonment provided they could continue with their pending claims against the banks. It was, therefore, unjust and inequitable for the respondent court to have declared the compromise judgment final and executory and to have issued the writ of possession, without making sure that petitioners were not to be adversely affected by such officious action.

At the time the respondent court issued the writ of possession, petitioners motion for modification was still unresolved. In fact, it has remained unresolved until now. In this connection, it is Our considered view, and so We hold, that the compromise judgment was not yet final then. Respondent court had virtually included in the compromise agreement something substantial, as far as petitioners are concerned, without the prior consent of either said petitioners or even the respondents. While the dispositive part of the decision simply says that "decision is hereby rendered in accordance with the terms and conditions of said Compromise Agreement", it must be borne in mind that in referring to the cross-claims against the banks, the decision states that their being moot and academic is "according to the parties", which readily implies concordance among them. With this circumstance in view, an ambiguity has arisen as to what the judge meant by "said Compromise Agreement." It was the inescapable duty of the court to clarify that ambiguity without loss of time, and since it failed to do so, petitioners are entitled to relief. We hold, therefore, that the writ of possession in issue here was illegally and invalidly issued, the compromise judgment not having become final yet, precisely because of the failure of the respondent court to act on petitioners' motion for modification, and consequently, in seeking the issuance and taking advantage of said writ, respondents did so at their own risk, specially because no counterclaim has been alleged by them against petitioners in this case.

WHEREFORE, judgment is hereby rendered granting the petition herein in the sense that (1) the resolutions of August 13, 1974 and October 21, 1974, insofar as petitioners are concerned, as well as the writ of possession are set aside, but petitioners may not retake possession of the premises until after they have paid the amounts specified in the compromise agreement within 60 days from the time this decision becomes final; (2) decision of the trial court of May 7, 1974 is hereby modified by eliminating completely the portion thereof stating that "According to the parties, although the defendant banks, namely, the Philippine Commercial & Industrial Bank and the Commercial Bank & Trust Company, have not signed this agreement, the issues affecting them have become moot and academic"; and (3) the respondents shall deliver possession of the premises, subject-matter of this case, as is, but as a matter of equity, the rights, if any exist, of respondents to recover in a separate action the value of any improvements it may have introduced which will redound to the benefit of petitioners is hereby reserved.

No costs.

Makalintal, C.J., Fernando, (Chairman), Fernandez, and Aquino, JJ., concur.

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