

**INTESTATE ESTATE OF THE LATE RICARDO P. PRESBITERO, SR.,
REPRESENTED BY ITS ADMINISTRA-TOR, RICARDO PRESBITERO,
JR., PETITIONER, VS. HONORABLE COURT OF APPEALS AND
LEONARDO CAÑO...**

G.R. No. 102432. January 21, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse the 6 February 1991 Decision[1] of the Eleventh Division of the Court of Appeals in CA-G.R. CV No. 18255[2] which affirmed, with modification, the ruling of the Regional Trial Court (RTC) (Branch XV, Cotabato City) in Civil Case No. 68.

The antecedents of this case, culled from the pleadings, are not disputed.

On 19 August 1981, Ricardo Presbitero, Sr. entered into two (2) written contracts with private respondent Leonardo Cañoso. In the first, entitled "Conformity of Agreement,"[3] Presbitero retained the services of the latter to negotiate with the Land Bank of the Philippines (LBP) and the Ministry of Agrarian Reform (MAR) in Cotabato City for the sale, under a voluntary offer arrangement, of Hacienda Maria which comprises some 270 hectares of land located at Balogo, Pigcawayan, North Cotabato and which is owned by the former. The hacienda had been placed under Operation Land Transfer pursuant to Presidential Decree No. 27. The private respondent bound himself "to finish the processing and submission of documents with in (sic) the period of One hundre (sic) Twenty Days (120 days) to Manila, by the Land Bank of the Philippines and Ministry of Agrarian Reform Cotabato City and shall be subjected to the delay of the approval of the DBP additional loan negotiated by RICARDO P. PRESBITERO in Bacolod City x x x." In the second contract, denominated as a "Contract of Service,"[4] Presbitero bound himself to compensate the private respondent "for his efforts, services and other related expenses in making the necessary followup (sic) of the preparation, production of pertinent documents required," and "to effect the recovery of the proceed (sic) of the land transfer payment from the Land Bank of the Philippines," in an amount equivalent to "Twenty Five per cent (25%) of the gross total sales of my properties described above which is (sic) subject of Operation Land Transfer."

Before Presbitero's claim with the LBP was approved, a third agreement was entered into with the private respondent in Bacolod City under which the latter's original fee of 25% was reduced to 17½%.

When his claim was finally approved, Presbitero sent two (2) letters to the LBP concerning the release of a part of the proceeds to the private respondent. The first letter, dated 16 May 1983 and addressed to the LBP President,[5] requested that the "amount equivalent to Seventeen and One Half (17½%) per cent be released in the name of Leonardo Canoso, proportionate to (sic) cash and Land Bank Bonds, on every releases (sic) until the final release of the claim." The second, dated 14 June 1983,[6] made reference to the LBP's letter of 6 June 1983 and requested that he (Presbitero) be notified in writing upon receipt; the latter also informed the LBP that he will "personally release the cash and bonds to Mr. Canoso due to advances made by him during the processing of the documents."

However, when a part of the proceeds was released, the private respondent was not given his share as agreed upon. Hence, the latter filed a complaint against Presbitero before the RTC of Cotabato City which was docketed as Civil Case No. 68 and assigned to Branch 15 of the said court.

In due time, after the issues were joined, the case was calendared for trial. Several postponements were obtained by the petitioner. The hearing set for 1 July 1987 was postponed to 31 August 1987 and 1-3 September 1987 "upon agreement of both parties and in order to dispose this (sic) case as early as possible it appearing that it is long pending." [7] However, petitioner, through counsel, Atty. Alex Abastillas, sent a telegram, which was received by the trial court only on 1 September 1987, asking for the postponement of the hearing last agreed upon. The reason given was that the petitioner was financially handicapped to come for the hearing. The court denied the motion in an order issued on that date, the pertinent portion of which reads:

"x x x Atty. Alex Abastillas knows very well that the Rules of Court do (sic) not recognize financial handicap for the postponement of the case and for this purpose (sic) therefore the motion for postponement is hereby denied. Moreover, when the Order of this Court dated July 1, 1987 was made, the defendant was represented by two counsels: one Atty. Alex Abastillas and another lawyer in the person of Atty. Antonio Sumayod who is a resident of this City and there is no reason why the defendant could not be represented by counsel. While the Court was preparing an order the motion of Atty. Alex Abastillas was handed over to the Presiding Judge for his perusal but notwithstanding the arrival of this urgent motion for postponement, the Court denied the said motion for lack of merit." [8]

The trial court then allowed the private respondent to present his evidence ex-parte.

On 18 September 1987, Presbitero filed an "Alternative Motion for Reconsideration and/or to Cross-Examine Witnesses for the Plaintiff." The court denied the motion in its Order of 22 September 1987 and then reconsidered the same in the Order of 20 October 1987; the latter order also granted Presbitero's motion for the reception of his evidence. [9]

On 18 April 1988, the trial court handed down a decision in favor of the private respondent, the dispositive portion of which reads:

"IN view of the foregoing, JUDGMENT is hereby rendered ordering the defendant to pay the plaintiff in the amount of P65,227.01 in cash and P586,875.00 in bonds which is 25% of the collectible (sic) of the defendant from the Land Bank and ordering the defendant to pay plaintiff the amount of P20,000.00 as attorney's fee plus the sum of P20,000.00 as compensatory damages. For the enforcement of the payment of the above-mentioned amount, Land Bank of the Philippines is hereby directed to segregate the above-mentioned amount from the amount payable to defendant in order that it can be paid directly to plaintiff for the purpose of complying the (sic) Order of this court." [10]

Dissatisfied with the decision, Presbitero appealed to the public respondent Court of Appeals. In his Brief, Presbitero asserted that the trial court erred: a) in allowing evidence ex-parte for private respondent without giving him the right to cross-examine the witnesses despite the fact that his motion for postponement was based on reasonable grounds; b) in declaring that the contract between him and the private respondent which was for the follow-up on LBP claims, and therefore similar to influence peddling, is valid; c) in not holding that his consent to the contract was procured through fraud; d) in declaring, granting the contract's validity, that the private respondent has fully complied with its terms and conditions; e) in declaring that private respondent had followed up on the claims with the LBP and other government entities; and f) in ordering the LBP of Manila to set aside the claims of the private respondent although the former is not a party to the case; hence, the court acquired no jurisdiction over the same. [11]

In its decision, [12] respondent Court modified the decision appealed from by reducing the principal award to the

private respondent from 25% to 17½% of the amount to be collected by Presbitero from the LBP. The dispositive portion thereof reads:

"PREMISES CONSIDERED, the decision appealed from is hereby MODIFIED to read thus: In view of the foregoing, JUDGMENT is hereby rendered ordering the defendant to pay the plaintiff 17½% of the collectible (sic) of the defendant from the Land Bank (to be paid in cash and in bonds in the stipulated proportion) and ordering the defendant to pay plaintiff the amount of P20,000.00 as attorney's fee plus the sum of P20,000.00 as compensatory damages. For the enforcement of the payment of the above-mentioned amount, Land Bank of the Philippines is hereby directed to segregate the above-mentioned amount from the amount payable to defendant in order that it can be paid directly to plaintiff for the purpose of complying with the Order of this Court.

SO ORDERED."[13]

His motion for reconsideration having been denied by the respondent Court on 8 October 1991,[14] Presbitero decided to bring his cause to this Court by way of a petition for review under Rule 45 of the Rules of Court. On 18 October 1991, he filed a motion for extension of time to file the petition,[15] which was granted. It appears, however, that he subsequently died; as a result thereof, the petition was filed, by mail, on 3 December 1991 in the name of the Intestate Estate of the Late Ricardo Presbitero Sr., represented by Ricardo Presbitero, Jr. who was duly appointed administrator by the RTC of Negros Occidental in Special Proceedings No. 100. [16]

Following the submission of the comment of the private respondent to the petition, as well as the reply of the petitioner thereto and the private respondent's rejoinder to said reply, We gave due course to the petition and required the parties to submit their respective memoranda,[17] which they subsequently complied with.

Petitioner contends in its Petition and Memorandum that the respondent Court erred: (a) in not reversing the trial court's order -- which allowed the private respondent to present evidence ex-parte without affording Presbitero the right of cross examination -- despite the fact that the motion for postponement of the scheduled hearings was based on very valid grounds, and (b) in finding that the private respondent has complied with the terms and conditions of the contract in question.[18]

Petitioner argues that Presbitero sought the postponement of the scheduled hearings to 31 August and 1-3 September 1987 "not so much for the financial constraint on his ability to provide funds for the trip to Cotabato City where the trial court sits, as for the physical difficulty, as well as the risks and inadvisability of travel during those perilous days which properly constituted themselves to be of judicial notice ... which the trial court sadly chose to ignore." In justifying Presbitero's failure to obtain the necessary plane accommodations, petitioner referred to "the coup attempt staged by some military elements which consequently disrupted travel nationwide." [19]

As to the second assigned error, petitioner contends that the respondent Court erred in declaring that the terms and conditions of the contract were complied with. As provided thereunder, the private respondent was to submit all requirements needed by the DAR and the LBP for the land transfer to effect the payment thereof from the LBP. This was to be completed within a stipulated period of 120 days. In failing to comply with the said stipulation, the private respondent acquired no right to be compensated. It is also asserted that the rule on promissory estoppel enunciated in the case of *Ramos vs. Central Bank of the Philippines*, [20] applies in this case.

Upon the other hand, the private respondent maintains that the respondent Court did not commit any grave abuse of discretion or error in affirming the decision of the lower court. There was no denial of Presbitero's right to due process since he was afforded the opportunity to cross examine the private respondent's witnesses during trial but advertently refused to do so. He also alleges that there is an erroneous interpretation by the petitioner of the

120-day period stipulated in the contract. Contrary to the petitioner's allegations, no promise was ever made by the private respondent to deliver the proceeds of the sale of Presbitero's property within the period of 120 days.

Additionally, private respondent faults Presbitero for the delay of the submission of some of the needed requirements. In conclusion, the private respondent prays that the payment of his claim be made in accordance with what was originally agreed upon in the contract entered into by both parties.

Except as hereinafter modified, the decision subject of this petition must be affirmed.

1. A motion for postponement is not a matter of right;^[21] it is addressed to the sound discretion of the court^[22] which should be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby.^[23] Unless grave abuse thereof is shown,^[24] such discretion will not be interfered with either by mandamus,^[25] or by appeal.^[26] Furthermore, as a rule, postponements may be granted only upon meritorious grounds.^[27] No party has the right to presume that his motion for postponement would be granted.^[28]

The trial court committed no error or grave abuse of discretion in denying the petitioner's motion to postpone the hearings of 31 August and 1-3 September 1987. That setting resulted from the agreement of the parties made as early as July 1987 after Presbitero had already obtained several prior postponements. Moreover, this last motion was most informally made -- through a telegram -- thereby violating the basic rule on motions.^[29] In some instances, resort thereto may be allowed because of extraordinary circumstances -- such as a party's or counsel's sudden death, force majeure or an act of God rendering impossible the accomplishment of its purpose. In the instant case, no such circumstances existed. Petitioner grounded his motion on financial incapacity, which was not alleged to have taken place so unexpectedly or a few days before 31 August 1987. Thus, he could have been under that ordeal for some time; if this were true, then there is no reason why he could not have seasonably filed the motion. Moreover, one of his lawyers resides in Cotabato City; this lawyer could have appeared on the scheduled dates. Clearly then, the motion was a dilatory tactic. The plea that there was a coup d'etat at the time is a delayed afterthought. This was not the reason proffered in the telegram. Besides, Presbitero was in fact allowed to present his evidence per the Order of 20 October 1987.^[30] Moreover, any due process deficiency arising from an ex-parte reception of evidence despite a motion for postponement of hearing may be cured by a subsequent motion for reconsideration.^[31] It is to be noted that the trial court was rather liberal to the petitioner as the latter's previous motions -- this was not the only time Presbitero had moved for a postponement -- had all been granted.

2. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.^[32] Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.^[33]

In this case, the contracts entered into by the parties were valid contracts. The two (2) complementary instruments gave rise to reciprocal obligations which are defined as those that arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.^[34]

No error was committed by the appellate and trial courts in concluding that the private respondent complied with the terms and conditions of the contracts. This is supported by the evidence, both testimonial and documentary, presented by the private respondent during trial before the lower court. Moreover, Presbitero's letter to the LBP authorizing the release of a portion of the proceeds to the private respondent reinforces the latter's position that he has actually complied with the terms and conditions of the contract. In upholding the trial court's decision, the Court of Appeals emphasized:

x x x

"The assertion regarding non-performance could well be traversed by the fact that on May 16, 1983, the defendant-appellant wrote a letter (Exhibit 'C') to the Land Bank of the Philippines authorizing the release of 17½% of the proceeds due the appellant in favor of plaintiff-appellee Cañoso. May 16, 1983 is way past the 120 days deadline which ended in December, 1981. The P12,000.00 and P7,500 prices per hectare (sic) were known to the defendant-appellant as early as November 18, 1981 (Exhibit H). The survey was conducted not later than 1982 (pp. 22-23, t.s.n., September 3, 1987). The disposition of the office and bodega was negotiated from the very start (Exhibit 'H-12'); hence if there had been any failure, thereof, the defendant-appellant would have known of it before writing Exhibit C. The negotiations with the land occupants were among the very first steps taken relative to the land transfer (pp. 5-9, t.s.n., September 3, 1987).

Exhibit C (supra) is perceived by this Court as evidence of the fact that strict compliance with the provisions of Exhibits A and B were no longer expected and demanded by the defendant-appellant, resulting in a waiver of the stipulations above-specified or a novation of the agreements entered into. This Court notes that the defendant-appellant has advanced the following two reasons for his retraction of Exhibit C. First is his claim that it was made on the basis of the plaintiff-appellee's representation that all documents were already submitted. Second is his fear that he may not be able to collect the advances he made to the said plaintiff-appellee. None of those two reasons is related to the above terms and conditions allegedly breached." [35]

In the interpretation of contracts, it is the general rule that if the terms thereof are clear as to the intention of the contracting parties, the literal meaning of the stipulations shall control.[36] Furthermore, subsequent or contemporaneous acts of the contracting parties shall be considered in judging their intention.[37] In this case, it was clearly agreed upon by the contracting parties that the private respondent would undertake, among others, the processing, negotiation and follow-up of Presbitero's claim with the LBP within a stipulated period of 120 days. The collection of the proceeds from the LBP was not among the matters contemplated by the parties in the said agreement. All they had in mind was that the preparation, processing and filing of the necessary documents were needed to effect the recovery of proceeds from the LBP.

And even if we are to assume that the private respondent breached the agreement by not fully accomplishing his obligation within the stipulated period, said breach was not of a nature which would justify a rescission of the contract. We ruled in the case of *Bacolod-Murcia Milling Co., Inc. vs. Court of Appeals*[38] that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement; the question of whether a breach of contract is substantial depends upon the attending circumstances.[39] In the case at bar, no substantial breach was committed by the private respondent sufficient enough to warrant a rescission. From all indications, private respondent was able to perform his obligation; this conclusion follows in the wake of the approval of the claim. Under Article 1234 of the New Civil Code, if the obligation has been substantially performed in good faith, the obligor (private respondent) may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee (Presbitero). Moreover, when the obligee accepts the performance, as what happened in this case, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.[40] Finally, to allow Presbitero to rescind the contract would not only violate the well-settled rule on mutuality of contracts -- which provides that the validity or compliance of a contract cannot be left to the will of one of the contracting parties[41] -- but would also work an injustice to the rights of the private respondent who has already performed his obligation pursuant to their agreement. Presbitero's correlative obligation must perforce be also fulfilled. There is no evidence to indicate that the private respondent was remiss or negligent in the performance of his obligation. Neither was there any evidence presented to show that it was through Presbitero's own efforts that his claim with the LBP was approved.

The two (2) assigned errors in this case must thus fail.

However, We find the award for compensatory damages to be improper. There is nothing that supports it in the findings of fact of the trial court and of the respondent Court of Appeals. Also, considering that the LBP was not a party in Civil Case No. 68, it cannot be ordered to perform an act for or against any of the parties in this case.

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the challenged Decision of the respondent Court of Appeals of 6 February 1991 in CA-G.R. CV No. 18255 is hereby AFFIRMED subject to the above modifications on the dispositive portion thereof. As modified, the award of P20,000.00 as compensatory damages and the last sentence of the said dispositive portion affecting the Land Bank of the Philippines are DELETED.

No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Per Associate Justice Serafin V.C. Guingona, concurred in by Associate Justices Nathanael P. De Pano, Jr. and Eduardo R. Bengzon; Rollo, 24-32.

[2] Entitled "Leonardo Cañoso vs. Ricardo Presbitero."

[3] Exhibit "A"; also, Annex "A" of Petition; Rollo, 21-22.

[4] Exhibit "B"; also, Annex "B", Id.; Id., 23.

[5] Exhibit "C"; see also private Respondent's Comment, 3-4; Rollo, 36, et seq.

[6] Exhibit "D"; Id., 4; Id.

[7] Court of Appeals Decision, 6; Annex "C" of Petition; Rollo, 29.

[8] Id., 5; Id., 28.

[9] Private Respondent's Comment, 2-3.

[10] Rollo, 24.

[11] Rollo, 24-25.

[12] Annex "C" of Petition; Id., 24-32.

[13] Id., 31.

[14] Rollo, 33.

[15] Id., 2-4.

[16] Id., 7.

[17] Resolution of 25 May 1992; Id., 54.

[18] Rollo, 14-15; 76; 79.

[19] Id., 14.

[20] 41 SCRA 565 [1971].

[21] *Linis vs. Rovira*, 61 Phil. 137 [1935].

[22] *Lichauco vs. Lim*, 6 Phil. 271 [1906]; *Go Changjo vs. Roldan Sy Changjo*, 18 Phil. 405 [1911]; *Lino Luna vs. Arcenas*, 34 Phil. 80 [1916]; *Rivera vs. Ong Che*, 37 Phil. 355 [1917]; *Fabillo vs. Tionko, et al.*, 43 Phil. 317 [1922]; *Philippine Guaranty Co. vs. Belando*, 53 Phil. 410 [1929]; *Tropical Building Specialties, Inc. vs. Nuevas*, 26 SCRA 708 [1969].

[23] MORAN, *Comments on the Rules of Court*, vol. I, 1979 ed., 571.

[24] *Panti vs. Provincial Board*, 106 Phil. 1093 [1960]; *National Lumber & Hardware Co. vs. Velasco*, 106 Phil. 1098 [1960].

[25] *Olsen vs. Fressel & Co.*, 37 Phil. 121 [1917].

[26] *Samson vs. Naval*, 41 Phil. 838 [1918]; *Pellicena vs. Gonzalez*, 6 Phil., 50 [1906]; *Torrefiel vs. Toriano*, 91 Phil. 209 [1952].

[27] *Garces vs. Valenzuela*, 170 SCRA 745 [1989].

[28] *Auyong Hian vs. Court of Tax Appeals*, 59 SCRA 110 [1974]; *China Banking Corp. vs. Court of Appeals*, 70 SCRA 398 [1976]; *De Vera vs. Santos*, 79 SCRA 72 [1977].

[29] Sections 4, 5 and 6, Rule 15, Rules of Court.

[30] Rollo, 38.

[31] *Beng vs. City Sheriff of Manila*, 83 SCRA 229 [1978].

[32] Article 1159, New Civil Code.

[33] Article 1409(1), New Civil Code; *Roman Catholic Bishop of Malolos, Inc. vs. Intermediate Appellate Court*, 191 SCRA 411 [1990].

[34] TOLENTINO, *Civil Code of the Philippines*, vol. IV, 175.

[35] Court of Appeals Decision, 7-8; Rollo, 29-30.

[36] Article 1370, paragraph 1, Civil Code; *Matienzo vs. Servidad*, 107 SCRA 276 [1981]; *Gonzales vs. Court of Appeals*, 124 SCRA 630 [1983]; *Henson vs. Intermediate Appellate Court*, 148 SCRA 11 [1987]; *Prudential Bank & Trust Co. vs. Community Builders Co., Inc.*, 165 SCRA 285 [1988].

[37] Articles 1371, Civil Code.

[38] 182 SCRA 24 [1990].

[39] *Citing Universal Food Corporation vs. Court of Appeals, et al.*, 33 SCRA 1 [1970].

[40] Article 1235, Civil Code.

[41] Article 1308, *Id.*

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