

NATIONAL ELECTRIFICATION ADMINISTRATION, PETITIONER, VS. COURT OF APPEALS, ERNESTO L. SULA, DEPUTY SHERIFF OF RTC, BRANCH 98, CONSTRUCTION SERVICES OF AUSTRALIA-PHILIPPINES, INC...*G.R. No. 103585. October 06, 1997*

Ponente: TORRES, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-103585/>**TORRES, JR., J.:**

On March 8, 1985, private respondent Construction Services of Australia-Philippines, Inc. (CONSAPHIL) filed a complaint before the Regional Trial Court of Quezon City, Branch 98, to collect a sum of money plus damages from private respondent Engineering and Construction Corporation of Asia (ECCO-ASIA) based on its Sub-Contract Work Agreement with the latter covering the portion of the contracted work of respondent ECCO-ASIA with Pangasinan Electric Cooperative, Inc. (PANELCO). It impleaded PANELCO and National Electrification Administration (NEA) on the ground that they were bound to pay the value of its accomplished work under the sub-Contract Work Agreement since PANELCO was allegedly "the ultimate beneficiary of the construction project" and since petitioner was allegedly "the manager and holder" of funds loaned by PANELCO from foreign sources and has in its possession the unreleased 10% retention money due to the respondent ECCO-ASIA "to guarantee payment of all claims against [respondent ECCO-ASIA]."

On August 22, 1986, the trial court issued a Writ of Preliminary Injunction enjoining petitioner from releasing the 10% retention money and other funds of respondent ECCO-ASIA in the amount of P1.2 million. In a Motion dated September 11, 1986, respondent CONSAPHIL moved that petitioner be ordered to deposit the P1.2 million with the Philippine National Bank, Philippine Heart Center for Asia but it was denied by the trial court in an order dated December 4, 1986. However, in an Order dated March 3, 1987, the trial court reconsidered its previous Order of December 4, 1986 and directed petitioner to deposit the sum of P1.2 million with the PNB, PHCA Branch. Thereafter, a request for Admission[1] dated January 28, 1987 was filed by respondent CONSAPHIL requesting petitioner to admit or deny the following, among others:

- 1.) That the retained money belonging to the defendant ECCO-ASIA held by the defendant NEA amounts to P1,390,789.40;"

In a response to Request for Admission[2] dated March 6, 1987, petitioner admitted the aforequoted statement.

In an order dated August 6, 1990, the trial court dismissed the complaint against PANELCO and the petitioner and at the same time required the latter to surrender to the court the physical and legal custody of the P1.2 million deposit at PNB, PHCA branch to be placed under its name. In a Partial Motion for Reconsideration dated August 17, 1990, petitioner moved for the reconsideration of the preceding Order on the ground that the dismissal of the complaint against it automatically lifted the writ of preliminary injunction over its P1.2 million at PNB, PHCA branch, citing the ruling in *Golez vs. Leonidas*, 107 SCRA 187. However, on October 5, 1990, the trial court rendered judgment approving the compromise agreement between the remaining parties, respondent

CONSAPHIL and ECCO-ASIA. On October 17, 1990, a writ of execution was issued against the P1.2 million deposit at PNB, PHCA branch. Thus, in a Motion to quash Writ of Execution dated October 24, 1990, petitioner NEA moved to quash the writ of execution against its P1.2 million deposit at PNB, PHCA branch, on the ground that the dismissal of the case against it automatically lifted the preliminary injunction issued thereunder and that there had been no judicial trial prior to the dismissal of the complaint against it determining that the P1.2. Million belongs to respondent ECCO-ASIA. Thereafter, respondent Sheriff executed against petitioner's million deposit. On December 3, 1991, petitioner filed a civil action for certiorari under rule 65 before respondent Court of Appeals which was dismissed in a decision dated January 14, 1992. Henceforth, the instant petition with four assignment of errors, to wit:

I. THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER HAS ANY RIGHT OF APPEAL FROM THE ORDERS OF THE TRIAL COURT DATED AUGUST 6, 1990 AND MAY 29, 1990, AND NOT HAVING AVAILED OF THE SAME, PETITIONER IS PRECLUDED FROM RESORTING TO A SPECIAL CIVIL ACTION OF CERTIORARI FILED BEFORE IT.

II. THE COURT OF APPEALS ERRED IN RULING THAT THE DECISION OF THE TRIAL COURT DATED OCTOBER 5, 1991, A JUDGMENT BASED ON A COMPROMISE AGREEMENT BETWEEN RESPONDENTS CONSAPHIL AND ECCO-ASIA, HAS THE EFFECT OF RES JUDICATA AGAINST PETITIONER'S SPECIAL CIVIL ACTION OF CERTIORARI FILED BEFORE IT.

III. THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER HAD ADMITTED IN THE PLEADINGS FILED BEFORE THE TRIAL COURT THAT THE P1.2 MILLION BELONGS TO RESPONDENT ECCO-ASIA.

IV. THE COURT OF APPEALS FAILED TO CONSIDER THAT THE TRIAL COURT HAD NO JURISDICTION IN PROCEEDING AGAINST PETITIONER'S P1.2 MILLION, THE PRELIMINARY INJUNCTION COVERING IT HAVING BEEN AUTOMATICALLY LIFTED BY PETITIONER'S DISMISSAL FROM THE CASE PURSUANT TO THE RULING OF *GOLEZ VS. LEONIDAS*, 107 SCRA 187.

The petition is bereft of merit.

As judiciously pointed out by the respondent Court of Appeals and we quote:

The order of August 6, 1990 ordering petitioner to surrender to the court the physical and legal custody of the P1.2 million and the order of May 29, 1991 denying the motion to quash writ of execution have become final and executory. Having become final because never appealed, the orders of August 6, 1990 and May 29, 1991 may no longer be modified in any substantial respect. The Issues thereby may no longer be relitigated. Any attempt to do so through another action or proceeding would be barred by the familiar doctrine of res judicata, even if the subsequent proceeding resorted to were the special action of certiorari under Rule 65 of the Rules of Court. Well known is the rule, too, that certiorari as a special civil action may not be resorted to a substitute for a lost appeal (*Mercado vs. CA*, 162 SCRA 75; *Dela Cruz vs. IAC*, 134 SCRA 417; *Balagtas Realty Corporation vs. Romillo, Jr.*, 130 SCRA 145; *Lobete vs. Sundiam*, 123 SCRA 95). Indeed, the existence and availability of the right of appeal are antithetical to the availment of the special civil action of certiorari. (*Bell Carpets International Trading Corporation vs. Court of Appeals*, 185 SCRA 35, 45). The finality of the order of August 6, 1990, the decision of October 5, 1990, and the order of May 29, 1991 are not to be ignored as these are important aspects of the case that bar any inquiry into the merits of the same. The petitioner should have properly disputed these challenged acts of the respondent court by means of a timely appeal, but it did not."

We are not persuaded by the argument of the petitioner that the respondent court erred in ruling that decision of the trial court dated October 5, 1991, a judgment based on a compromise agreement between respondents CONSAPHIL and ECCO-ASIA, has the effect of res judicata against petitioner's special civil action of certiorari

filed before it. It is well-settled that a compromise agreement, once approved by the court cannot and should not be disturbed except for vices of consent or forgery. In the case at bar, petitioner failed to show that the compromise agreement entered into by CONSAPHIL and ECCO-ASIA was vitiated by fraud and forgery. The fundamental principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once.[3]

Contrary to the claim of the petitioner, the judicial issue was well-founded. In fact it was clearly shown that it was petitioner NEA who judicially admitted that the retained money amounting to P1,390,789.40 held by it and deposited at PNB, PHCA branch, belongs to private respondent ECCO-ASIA. The following observation of the Court of Appeals is noteworthy:

First. In response for request of admission, petitioner NEA admitted the allegations in paragraph 1,3,4,5,6, and 7 of the request for admission of CONSAPHIL. Paragraph 1 of the request for admission states that " the retained money belonging to the defendant ECCO-ASIA held by defendant NEA amounts to P1,390,789.40."

"Second. In paragraph 7 of its answer to the complaint, petitioner admitted the allegations contained in paragraph 19 of the complaint. Paragraph 19 of the complaint alleges the defendant NEA has in its possession the 10% retention money of the defendant ECCO-ASIA which is being restrained to guarantee the payment of all claims against defendant ECCO-ASIA."

Section 4 of Rule 129 of the Rules of Court provides that "An admission, verbal or written, made by party in the course of proceedings in the same case, does not require proof. The admission maybe contradicted only by showing that it was made through palpable mistake or that no such admission was made." In the absence of compelling reason to the contrary, judicial admission as to the ownership of the money deposited with PNB, PHCA branch is binding on NEA. In other words, admission to the pleading filed in court that private respondent ECCO-ASIA owns the retained money in question is binding on the petitioner.

With regards to the last argument of the petitioner that the trial court had no jurisdiction in proceeding against petitioner's P1.2 million, the preliminary injunction covering it having been automatically lifted by petitioner's dismissal from the case pursuant to the ruling case of Golez vs. Leonidas, 107 SCRA 187, does not hold water. The case cited by the petitioner is misplaced because it pertains to the lifting of writ of preliminary injunction upon the dismissal of the main case. In the case at bar, the main case was not dismissed by the trial court. The trial continues until the court finally approves the compromise agreement entered into by the remaining parties CONSAPHIL and ECCO-ASIA. The dismissal of the case against NEA should not result in the dismissal of the action against the other parties and the court where said case is pending retains jurisdiction to continue hearing the case as against the remaining parties.

There being no error in the part of the respondent court, the instant petition is hereby DENIED due course.
SO ORDERED.

Regalado, (Chairman), and Puno, JJ., concur.
Mendoza, J., on leave.

[1] Annex "N", CA Rollo.

"REQUEST FOR ADMISSION"

Plaintiff, by counsel, hereby requests the defendant National Electrification Administration ("NEA") to admit or deny under oath the following matters not later than ten (10) days from receipt of this request for admission:

1. That the retained money belonging to the defendant ECCO-ASIA held by the defendant NEA amounts to P1,390,789.40;
2. That the sum of P773,561.00 are payments due to the defendant ECCO-ASIA and their releases to defendant ECCO-ASIA are being withheld by the defendant NEA;
3. That the total claims filed with the defendant ECCO-ASIA against the receivables of the defendant ECCO-ASIA due from the defendant PANELCO and/or NEA amount to P455,428.18;
4. That the time extensions granted to defendant ECCO-ASIA by the defendant PANELCO and/or defendant NEA cover a total of 103 calendar days beginning 19 September 1982 and ending 31 December 1982;
5. That liquidated damages imposed upon the defendant ECCO-ASIA by the defendant PANELCO and/or defendant NEA is equivalent to the maximum penalty provided for by their contract of 20% of the total contract price or P2,815,664.33 and is subject of a request for reconsideration made by the defendant ECCO-ASIA;
6. That the sub-contract work agreement entered into by and between the plaintiff and the defendant ECCO-ASIA has not been approved by either the defendant PANELCO and/or defendant NEA;
7. That the defendant ECCO-ASIA stopped further construction work on 25 November 1983 and has a work accomplishment as of such day equivalent to 99.3421% of the total scope of work of the main contract between defendant PANELCO and defendant ECCO-ASIA."

[2] Annex "P", CA Rollo.

"RESPONSE TO REQUEST FOR ADMISSION

Defendant National Electrification Administration (NEA), through undersigned counsel, in response to the request for admission of plaintiff dated January 28, 1987 unto this Honorable Court respectfully states that:

1. It admits the allegations in paragraphs 1,3,4,5,6 and 7 of the request for admission of plaintiff, and
2. It specifically denies the allegations in paragraph 2 of the request for admission of plaintiff, the truth of the matter being that the payments due to the defendant ECCO-ASIA release of which are being withheld by the defendant National Electrification Administration are in the sum of P700,110.41."

[3] Vda. De Kilayko vs. Tengco, 207 SCRA 600.

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