

**PROVINCE OF PANGASINAN AND RAFAEL M. COLET, PETITIONERS,
VS. THE COURT OF APPEALS, THE REGIONAL TRIAL COURT,
QUEZON CITY, BRANCH 80, ROGELIO R. COQUIAL AND THE SHERIFF
AND/OR DE...**

G.R. No. 104266. March 31, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari seeking reversal of the decision of public respondent Court of Appeals[1] dated December 6, 1991 in CA-G.R. SP Case No. 26149; and its resolution dated February 18, 1992.

We shall narrate only the relevant antecedent facts:

On April 27, 1990, private respondent Rogelio R. Coquial filed a complaint[2] against petitioners Province of Pangasinan and Provincial Governor Rafael M. Colet before the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-90-5337. He alleged therein the following: 1) they entered into a contract for the improvement of 6.492 kilometers of the Urdaneta-Mapandan Road, Phase I and Phase II, for a total consideration of P5,169,932.10; 2) upon 100% completion of Phase I, it was accepted by petitioners and in accordance with the report of the auditors, private respondent should be paid P3,174,083.20; 3) petitioners had paid only P1,320,000.00, leaving a balance of P1,854,083.20, which petitioners refused to pay; and 4) he has also completed 60% of Phase II which costs P1,000,000.00 but petitioners, who have decided not to pursue the project, refused to pay. He, therefore, prayed for the payment of said amounts, including monetary awards for damages and attorney's fees.

On December 19, 1990, private respondent filed a motion for partial summary judgment on the balance of P1,854,083.20.

On April 24, 1991, the trial court granted the motion filed by private respondent. The dispositive portion of its resolution reads:

"WHEREFORE, summary partial judgment of Phase I is hereby rendered in favor of the plaintiff as against the defendants, ordering the defendants to pay plaintiff the sum of P1,854,083.20 representing the unpaid remaining balance of the Contract of Cost of Phase I.

SO ORDERED."[3]

At the hearing on April 26, 1991, the counsel of petitioners received a copy of the resolution. He asked the trial court for a ten (10) day extension from April 26, 1991, within which to file a motion for reconsideration. Instead of ten (10) days, the trial court granted him twenty (20) days, or until May 16, 1991.

On May 16, 1991, the counsel of petitioners filed an urgent ex-parte motion for extension of time to file the motion for reconsideration, for an additional ten (10) days, or until May 26, 1991. The motion was granted by the

trial court.

On May 27, 1991, petitioners filed the motion for reconsideration, contending that since May 26, 1991 was a Sunday, the filing of the motion on the following day was still on time.

On July 15, 1991, the trial court issued an order denying the motion, a copy of which was received by petitioners on August 5, 1991. On July 26, 1991, private respondent filed a motion for execution of the partial summary judgment. On August 28, 1991, petitioners filed a notice of appeal.

In the trial court's order dated September 3, 1991, it denied due course to the notice of appeal on the ground that it should have been filed not later than May 11, 1991 and pursuant to Section 5, Rule 36 of the Rules of Court,[4] its resolution dated April 24, 1991 has become final and executory. In the same order, it granted the motion for execution.[5]

On September 10, 1991, the trial court issued the writ of execution.[6] On September 30, 1991, it ordered the garnishment of petitioners' bank account.[7]

Petitioners then filed a petition for certiorari before public respondent Court of Appeals to nullify the trial court's order dated September 3, 1991 and the writ of execution; and mandamus to compel the trial court to give due course to the appeal interposed by them.

On December 6, 1991, the respondent court denied the petition for certiorari and mandamus rationalizing, as follows:

"The petition cannot prosper. In the first place, the rule enunciated in the en banc resolution of the Supreme Court, promulgated on May 30, 1986, proscribes the filing of a motion for extension of time to file a motion for reconsideration either with the Metropolitan or Municipal Trial Courts, Regional Trial Courts, or this Court. [See *Bayaca vs. Intermediate Appellate Court*, No. L-74824, 144 SCRA 161, 163 (1986) citing *Habaluyas Enterprises, Inc. vs. Japzon*, No. L-70895, 138 SCRA 46, 48 (1985)]. In the case at bar the filing of such a (sic) motion for extension by Pangasinan did not interrupt the period of appeal. Thus, as of May 16 (sic), 1991, i.e., the last day within which Pangasinan should have filed its motion for reconsideration, the summary partial judgment in question became final and executory. The fact that Pangasinan filed its motion for extension of time to file a motion for reconsideration on that day was of no moment since, for the reason already stated above, such motion for extension was void.

Furthermore, even on the assumption that the final resolution sought to be appealed from or, to be enforced, is a partial judgment where multiple appeals are allowed and the period of appeal is 30 days as provided for in Sec. 19(b) of the Interim Rules promulgated on January 11, 1983 by the Supreme Court, still the partial judgment in question had also become final and executory at the time the notice of appeal was filed for failure of Pangasinan to file its record on appeal as required by the aforesaid provisions of the Interim Rules. Thus, without a record on appeal, it is as though no appeal had been taken from such judgment at all." [8]

On December 19, 1991, petitioners filed an urgent motion for reconsideration based on the ground that the trial court's resolution dated April 24, 1991 is merely interlocutory, citing the case of *Guevarra, et al. v. Court of Appeals, et al.*[9] They elucidated that this ground was the subject of their addendum dated December 11, 1991, which unknown to them, was prepared and filed after the decision of the respondent court was rendered. They, therefore prayed, *inter alia*, that the respondent court reconsider its decision and render another confirming that the April 24, 1991 resolution of the trial court is interlocutory and declaring void the writ of execution and order of garnishment.

On February 18, 1992, the motion for reconsideration was denied after the respondent court found "no cogent reason to change, modify and/or otherwise reverse the decision considering that not only does the motion reiterate

the same arguments advanced before and does not present any matter not already considered and resolved in the decision, but also the private respondent's opposition has successfully refuted petitioners' arguments in said motion." [10]

Hence, the present petition, wherein petitioners again invoke Our ruling in *Guevarra, et al. v. Court of Appeals, et al.*, *supra*.

Petitioners are correct.

We were categorical in the case of *Guevarra, et al. v. Court of Appeals, et al.*, *supra*, that a partial summary judgment is merely interlocutory and not a final judgment. Its nature is specifically provided for in Section 4 of Rule 34 of the Rules of Court, which reads:

"SEC. 4. Case not fully adjudicated on motion.- If on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

What Rule 34 contemplates is that the appeal from the partial summary judgment shall be taken together with the judgment that may be rendered in the entire case after a trial is conducted on the material facts on which a substantial controversy exists. The trial court and the respondent court erroneously relied on Section 5 of Rule 36 of the Rules of Court, which pertains to judgments in general.

In addition, inasmuch as a partial summary judgment does not finally dispose of the action, execution thereof shall not issue, conformably with Section 1 of Rule 39 of the Rules of Court.

WHEREFORE, the petition is hereby GRANTED. The questioned decision and resolution of the Court of Appeals are SET ASIDE. The trial court's orders dated September 3, 10 and 30, 1991 are likewise SET ASIDE.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Penned by Justice Jesus M. Elbinias with the concurrence of Justice Gloria C. Paras and Justice Fermin A. Martin, Jr.

[2] Pp. 33-36, Rollo.

[3] P. 27, Rollo.

[4] SEC. 5. Judgment at various stages.- When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[5] Pp. 28-29, Rollo.

[6] Pp. 30-31, Rollo.

[7] P. 32, Rollo.

[8] P. 21, Rollo.

[9] G.R. Nos. L-49017 and 49024, 124 SCRA 297 (1983).

[10] P. 24, Rollo.

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