

**MARIANO T. NASSER, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF CALVIN R. BORRE, SR., RESPONDENTS.***G.R. No. 115829. June 05, 1995*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-115829/>**BELLOSILLO, J.:**

The rift between brothers Calvin R. Borre and Arnaldo R. Borre, which has now survived them, originated from their acquisition of a parcel of land in Sitio Lidao, Kaputian, Davao del Norte. Their controversy was initially settled with a compromise between them. But when the same was to be enforced Arnaldo blocked its judicial execution that led to a long and protracted litigation spanning almost two decades and reaching this Court a number of times.

On 29 March 1977 Calvin R. Borre purchased a 2,230-square meter lot from the spouses Dionisio and Inapsa Prieto primarily because of its natural spring which was very ideal for a water supply business. On 2 September 1977 the Prieto spouses again sold the property to Calvin's brother, Arnaldo R. Borre, who also intended to utilize the same for his own water business.

After securing the necessary franchise, certificate of public convenience and municipal permits, Arnaldo started a water servicing business under the name "Lidao Water System." He supplied water to interisland and oceangoing vessels through pipe lines connected from the water source inside the Lidao property to the wharf from where a landing barge would transport the water supply to the vessels docked at the Davao port or anchored nearby.

When Calvin learned of the subsequent sale, he tried to settle the dispute amicably, they being brothers, but was unsuccessful. Hence, on 7 September 1977, he commenced a civil action for declaration of nullity of the sale to Arnaldo with damages against him and the Prieto spouses before the then Court of First Instance of Tagum, Davao, Br. 1, presided by Judge Alejandro C. Silapan, docketed as Civil Case No. 886.[1]

However, in the course of the trial, the parties entered into a compromise agreement. They agreed, inter alia, that the title to the Lidao property would remain in the name of Arnaldo while Calvin, his heirs and assigns, would get a 40% share in the net income of the Lidao Water System after deducting maintenance, development and operating expenses. On 2 February 1978 Judge Silapan approved the compromise agreement.

Calvin later realized that his share could not be accurately determined because the income and expenses of the Lidao Water System had not been properly recorded and accounted. Thus, on 28 August 1980 the trial court upon recommendation of the parties appointed Conrado S. de los Reyes as commissioner tasked to examine, review and audit the books of account of the Lidao Water System and to submit his report and recommendation thereon.

On 31 January 1981 prior to the submission of the commissioner's report, Calvin presented before the trial court the income statement of Samal Water Services, Inc., covering the period from June 1978 to June 1979. According to Calvin, Samal Water Services, Inc., was engaged in the business of transporting water from the Lidao wharf to the interisland and oceangoing vessels docked at the Davao port similar to the services offered by the Lidao Water

System. The water supply was in fact drawn from the Lidao property through pipelines by the Island Spring Ship Water Supplier, a single proprietorship registered under the name of Arnaldo. Calvin had maintained that the principal purpose of Arnaldo in establishing Samal Water Services, Inc., and Island Spring Ship Water Supplier was to transfer his water servicing operations to these juridical entities and thus evade the terms of their compromise agreement. Samal Water Services, Inc., posted a net profit of P184,020.91 for the period from 1978-1979.[2]

Meanwhile Judge Silapan suspended the order of execution of the compromise agreement pending submission of the commissioner's report. However the Deputy Provincial Sheriff of Davao City, apparently unaware of the suspension of the writ of execution, enforced the writ against Arnaldo for the amount of P73,608.00 which was roughly 40% of the reported net income of Samal Water Services, Inc., and was able to obtain a partial satisfaction in the amount of P4,888.83 per his return of 19 March 1981.[3]

On 22 April 1981 the commissioner submitted his report and recommendation to the court a quo. The report mainly based on data personally gathered by de los Reyes himself disclosed that the Lidao Water System posted a net profit of only P13,281.52 for the period from 1 January 1978 to 30 June 1980.[4]

On 5 May 1981, not satisfied with the commissioner's report, Calvin filed an omnibus motion praying that the report be set aside, that a treasurer be designated to take custody of the funds and that Arnaldo or his representatives be directed to deposit the proceeds of the business in court. On 15 May 1981 the trial court granted the motion stating that -

[T]he plaintiff and the defendant, including Mariano Nasser and all others like him who are withdrawing water from Lidao for business, are hereby ordered to deposit effective immediately with the Clerk of Court all such funds/income derived/realized from the water business, to be disposed of in favor of the parties entitled thereto.

Aside from the funds/income of the business which may be in his possession, Mariano Nasser is also ordered to submit to this court at the end of every month authentic records of water withdrawals made by him indicating the tonnage and the corresponding money value thereof, supported by delivery receipts, vouchers and such other pertinent papers to be incorporated into the record of this case (underscoring provided).

Petitioner herein did not comply with the order, prompting the trial court to issue on 25 May 1981 an alias writ of execution with a notice of garnishment of all monies and funds of Everett Lines and Maritime Steamship Company intended or due for payment to Mariano Nasser and/or Nasser Water Ferry Services, Mariano Nasser and/or Nasser Water Ferry Services, Inc., for water drawings made by the latter from the Lidao property.

On 2 June 1981 petitioner filed a motion for reconsideration of the order of garnishment on the ground that he was not a party in Civil Case No. 886 and therefore not bound by the judgment in that case. On 19 June 1981 Nasser filed an omnibus motion alleging that Arnaldo had made cash advances from Nasser Water Ferry Services, Inc., which were allegedly used for the improvement and maintenance of the facilities of the Lidao Water System.

On 22 June 1981 the court a quo denied the omnibus motion of Nasser and ordered him to deposit directly with the Clerk of Court on the 15th of every month his payment for all his water withdrawals from the Lidao source computed at P2.30 per ton. Surprisingly, Arnaldo Borre, and not petitioner, was the one who questioned the order of the trial court before us on 8 July 1981 through a petition for certiorari (G.R. No. 57305), and simultaneously before the Court of Appeals (CA-G.R. No. SP-12252 SCA). On 14 September 1981 the petition filed with this Court was dismissed for lack of merit. Arnaldo filed a motion for reconsideration of the dismissal but this was denied with finality.[5]

Even as the appeal with the Court of Appeals was pending, Arnaldo filed another petition with that court against

the same parties questioning the same orders of the lower court and raising the same issues.[6] Again, Nasser did not join Arnaldo in that appeal. In the meantime the appellate court denied the petition in CA-G.R. No. 12252-SCA.[7] The motion for reconsideration of Arnaldo was also denied in an extended resolution where then Court of Appeals Justice Hugo E. Gutierrez, Jr., berated Arnaldo for appealing twice to that court involving the same parties and issues.[8]

On 16 December 1981 the trial court ordered the issuance of an alias writ of execution to enforce the judgment based on the compromise agreement for the sum of P68,719.17 covering the period from June 1978 to June 1979. On 22 January 1982, in an attempt to delay further the execution of the judgment on the compromise, Arnaldo filed for the second time a petition for certiorari before this Court (G.R. No. 59452). He argued that the order of execution was void because the decision of the trial court could not be enforced until the net income of the Lidao Water System could be ascertained. On 29 September 1982 the petition was dismissed.[9]

But prior to the dismissal of the petition Calvin filed a motion to withdraw the sum of P3,174.70 which Nasser deposited with the Clerk of Court of Judge Silapan. This was opposed by Arnaldo and petitioner on the ground that the same was premature for Arnaldo's (second) petition was still pending before this court. On 26 February 1982 the trial court granted the motion and further declared that -

[T]he commissioner's report which Arnaldo Borre wants to be upheld indicates that he has practically made the Samal Water Services, Inc., as his own property, with the funds thereof at his own disposal. After manifesting his full conformity to the unreliable commissioner's report showing that the income of Samal Water Services Inc., is practically his own income which fraudulently excluded the P184,020.91 admitted by him as an income of the same entity, it is now absurd for Arnaldo Borre to contend that his interest is distinct and separate from that of Samal Water Services, Inc. His clear intention is to use the corporation to perpetuate fraud and subvert justice x x x Regarding the opposition of Nasser Water Ferry Services, Inc., suffice it to say that the same is part of the scheme of Arnaldo Borre to prolong the sufferings of the plaintiff, it being a fact supported by the record that the two (2) are cooperating with each other to deprive the latter of his established rights in this case x x x [10] (Italics supplied)

On 21 September 1982 the Borre brothers and petitioner Nasser entered into a Supplementary Compromise Agreement, supposedly upon the intercession of the latter, whereby they agreed in part -

(6) That as of the present, Mariano Nasser is the established customer/drawer of water from the source, and by way of helping the plaintiff and the defendant to carry on peacefully and smoothly their joint management, maintenance and operation thereof, said Mariano Nasser has graciously agreed to pay out of his water withdrawals from August 12, 1982 up to the present at P2.30 per ton in accordance with the sharing basis already stated above to said plaintiff and defendant, the total payment to be computed under the supervision of former C.F.I. Judge Abelardo Aportadera, Sr., and for this purpose the parties have agreed for the lifting of the writ of garnishment which was served upon the Everett Lines and Maritime Philippines, Inc. to which said Mariano Nasser had delivered the aforestated water withdrawals;

(7) That as an additional gesture of liberality on the part of Mariano Nasser to promote and strengthen the harmonious relationship of plaintiff and defendant under this new set-up, he has voluntarily agreed to substitute his IBAA check, covering the amount of P3,149.00 deposited with the Office of the Clerk of Court, with its cash equivalent, the same to be paid to Calvin Borre with the conformity of his brother, defendant Arnaldo Borre x x x x

(8) That Mariano Nasser is signing this supplementary compromise agreement as proof of his conformity to the provisions concerning him, committing and promising to comply with them. (Underscoring provided)

x x x x x x x x

Calvin and Arnaldo together with petitioner Nasser submitted the Supplementary Compromise Agreement to the trial court for approval. However when Judge Silapan approved the agreement on 21 September 1982 and accordingly issued a writ for its execution, Arnaldo contested the validity of the writ. In the meantime, while the issue was being resolved, the judiciary was reorganized and Civil Case No. 886 was transferred to the Regional Trial Court of Panabo, Davao, Br. 4, presided by Judge Mariano C. Tupas.

For failure of the writ of execution and other alias writs of execution to be enforced, the heirs of Calvin Borre filed a civil suit for damages against Nasser, docketed as Civil Case No. 1586, for the amount of P554,000.00 and to cite him for contempt of court. The case was consolidated with Civil Case No. 886. In his answer, Nasser advanced the same arguments, i.e., that he was not a party in Civil Case No. 886 and therefore not liable on the supplementary compromise agreement; that his participation therein was only to help the Borre brothers settle their differences, and that he had already paid all his water withdrawals from the Lidao property.

On 8 June 1992 Judge Tupas ordered Nasser to support his claim by producing in court all the checks he allegedly issued to Arnaldo in payment for his water withdrawals. He failed to comply with the order. Thus on 24 February 1993 Judge Tupas ordered the issuance of an alias writ of execution for the amount of P566,589.54[11] against petitioner. In his motion for a reconsideration of the order, petitioner reiterated his earlier plea that he was not a party in Civil Case No. 886 and that the amount stated in the writ was not properly computed. The court a quo denied the motion for being pro forma.

Petitioner appealed to the Court of Appeals arguing that the lower court had no jurisdiction to issue a writ of execution by mere motion after the lapse of ten (10) years from the date the judgment sought to be enforced had become final and executory. On 4 March 1994 the appellate court dismissed the appeal holding that -

[T]he writ of execution to enforce the said supplementary agreement x x x was questioned before the Supreme Court by petitioner by way of certiorari and the same was dismissed by the High Court x x x x The Supreme Court ruled that the five-year prescriptive period will not apply where as in this case it was due to a series of dilatory action by defendant Mariano Nasser x x x x after the Supreme Court had dismissed petitioner's appeal x x x he again filed several motions for reconsideration and other pleadings which further resulted in the delay in the issuance of the writ of execution x x x x[12]

Petitioner cannot disclaim any liability on his water drawings from the Lidao property for two (2) reasons: (a) he signed the Supplemental Compromise Agreement and (b) his evident bad faith in conspiring with Arnaldo to deprive Calvin of his rightful share in the business.

The Supplemental Compromise Agreement has superseded the previous agreement between Calvin and Arnaldo and has the effect of res judicata between and among the parties, including petitioner Nasser who is a signatory thereto thereby submitting himself to the jurisdiction of the court,[13] and should not be disturbed except when the consent of one or more parties is vitiated or when there is forgery.[14] From the time a compromise is validly entered into it becomes the source of the rights and obligations of the parties since its purpose is precisely to replace and terminate the controverted claims. As a matter of fact, the first compromise agreement was partially enforced on the basis of the earnings of Samal Water Services, Inc.

Calvin exposed in his motion to issue a writ of execution the real purpose of petitioner Nasser and Nasser Water Ferry Services, Inc., in drawing water from the Lidao Property, i.e., to act as an alter ego of Arnaldo. Nasser had claimed that he and Arnaldo were in a buy and sell business, but this was refuted by Calvin who maintained that Nasser was a mere agent of Arnaldo and Nasser Water Ferry Services, Inc., one of the latter's marketing arms, the

other being Samal Water Services, Inc.[15] Petitioner was given by the trial court an opportunity to dispute these allegations but he failed. This led the court a quo to conclude that petitioner Nasser and Arnaldo conspired with one another in depriving Calvin of his rights under their compromise agreement.

Petitioner, with the aid of his lawyers, has employed dilatory tactics to defeat a final and executory judgment based on the compromise by going into the merits of the case each time a writ of execution was issued. The postponement alone of the consolidated cases for at least sixteen (16) times successfully blocked the repeated attempts of Calvin, and later his heirs, to execute the Supplemental Compromise Agreement.[16] The practice of Arnaldo then, and now petitioner, of filing motions for reconsideration of the orders of execution and, upon their denial, elevating them to the appellate courts, has indeed made a travesty of our judicial process.

Litigation must at some time be terminated, even at the risk of occasional errors, for public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. With more reason when the judgment is based on a compromise agreement, as in the instant case, for the parties are presumed to have freely entered into a covenant to settle their controversy. The unjustified delay in the enforcement of the Supplemental Compromise Agreement should not be tolerated for it sets at naught the role of courts in disposing of justiciable controversies with finality.

WHEREFORE, the petition is DISMISSED. Let an ALIAS WRIT OF EXECUTION of the Order dated 24 February 1993 of the Regional Trial Court of Panabo, Davao, Br. 4, be issued and enforced without further delay. This decision is immediately executory.

With treble costs against petitioner.

**SO ORDERED.**

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.  
Quiason, J., on official leave.

---

[1] Borre v. Silapan, G.R. No. 57305, Rollo, pp. 29-36.

[2] See Rollo, G.R. No. 57305, pp. 48-49.

[3] Order of Judge Silapan in Civil Case No. 886 dated 8 January 1982, Annex "K," Rollo, G.R. No. 59452, p. 86.

[4] Annex "D," Rollo, G.R. No. 59452, pp. 38-56.

[5] Per Minute Resolution of the First Division promulgated 4 November 1981.

[6] Borre v. Silapan, CA-G.R. No. SP-13104, filed 23 September 1981.

[7] Decision penned by Associate Justice Hugo E. Gutierrez, Jr., concurred in by Justices Rodolfo A. Nocon and Carolina Griño-Aquino.

[8] G.R. No. 57305, Rollo, pp. 198-199, 6 October 1981, the Court of Appeals observed that "considering that the petitioner raises the same questions of fact and law already passed upon in the decision sought to be reconsidered, We find the motion dilatory and without merit. This finding is bolstered by the fact that even as this motion is pending determination, the petitioner filed Borre v. Hon. Silapan, et al. x x x raising the same issues based on the same facts which issues we have already considered and adjudicated. Ordinarily, We would require the petitioner to explain under pain of contempt this apparent trifling with this Court x x x we leave it to respondents to raise in

the Supreme Court the question of respect for the Courts and for the judicial process and other matters of ethical behavior and proper procedure x x x x

[9] Per Minute Resolution of the Second Division. No motion for reconsideration was filed.

[10] Annex "I," Rollo, G.R. No. 59452, pp. 106-107.

[11] The amount prayed for in the complaint is P554,000.00 while that appearing in the writ is P566,589.54. The bigger amount was questioned before this Court but the same was sustained and the petition dismissed. (See Decision in *Nasser v. Hon. Tupas*, CA-G.R. SP No. 31705, prom. 4 March 1994).

[12] Decision penned by Associate Justice Artemon D. Luna, concurred in by Associate Justices Arturo B. Buena and Corona Ibay-Somera, Annex "A," Rollo, pp. 21-25.

[13] Annex "H," Rollo, p. 44.

[14] Art. 2038, Civil Code.

[15] Rollo, G.R. No. 59452, pp. 71-74.

[16] Finding of Judge Tupas in his order dated 16 July 1993.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.