

JULIANA D. DEL ROSARIO, PETITIONER, VS. HON. JOB MADAYAG, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 145, RTC, MAKATI, AND MA. CECILIA S. LEVISTE, RESPONDENTS.*G.R. No. 118531. August 28, 1995*

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-118531/>**FRANCISCO, J.:**

This is a petition for certiorari and prohibition with prayer for a preliminary injunction and/or temporary restraining order, assailing the following orders issued by respondent Judge Job Madayag of the Regional Trial Court of Makati, Branch 145, in Civil Case No. 91-1263, to wit: 1) Order dated October 12, 1994, granting herein private respondent's Ex-Parte Motion to Recall Motion to Dismiss;^[1] and 2) Order dated November 15, 1994, denying herein petitioner's Motion for Reconsideration from the aforestated order. Petitioner asserts that in the issuance of these orders, respondent judge committed grave and serious abuse of discretion.

At the center of the controversy is a joint Motion to Dismiss in the nature of a compromise agreement to amicably settle the complaint filed by private respondent Ma. Cecilia Leviste against petitioner Juliana del Rosario and five other defendants.

Private respondent filed a complaint for Breach of Contract with Damages on March 8, 1991 before Branch 145 of the Regional Trial Court of Makati, seeking to recover the sum of Three Hundred Three Thousand Seven Hundred Twenty Three Pesos (P303,723.00) representing the value of two lost "balikbayan boxes", shipped to her from New York City through the services of Road Runner International. Petitioner was impleaded as defendant for being the owner of the trucking firm Mountain Hi-Way Express where the balikbayan boxes were eventually found, but already emptied of their contents.

The case was ordered archived twice by respondent judge upon failure of private respondent-complainant to take active steps in prosecuting the same. However, on February 15, 1994,^[2] three years after the complaint was filed, petitioner received an alias summons which, apparently, was the fourth of its kind sent. Unexplainably, the previous notices were never received by petitioner.

On April 11, 1994, petitioner moved for the dismissal of the complaint, invoking as grounds, lack of cause of action, waiver and abandonment.^[3] The trial court however denied the motion, as well as her subsequent motion for reconsideration.

During the pre-trial held on September 5, 1994, only private respondent's counsel appeared in her behalf, armed with a special power of attorney. Noting the possibility of an amicable settlement, respondent judge ordered the parties to negotiate and reset the pre-trial to October 10, 1994.^[4] On said date, despite private respondent's absence, her counsel, together with petitioner and the latter's counsel, filed a joint Motion to Dismiss in the nature of a compromise agreement, consenting to the dismissal of the complaint in consideration of the sum of P7,000.00 in favor of private respondent.

On the following day, however, private respondent's counsel filed an Ex-Parte Motion to Recall Motion to Dismiss,[5] manifesting that private respondent was not amenable to the terms of the Motion to Dismiss earlier reached as she denounced the same upon her arrival from Japan. Furthermore, it was alleged that the compromise agreement was not valid and binding in the absence of the signature of private respondent, in addition to the fact that the check payment of P7,000.00 had not been encashed nor deposited by private respondent.

On October 12, 1994, respondent judge granted private respondent's motion to recall and denied the motion to dismiss earlier filed.[6] Petitioner filed a motion for reconsideration but the same was denied.[7]

Hence, the instant petition.

The crucial issue to be resolved is whether or not respondent judge committed grave abuse of discretion in denying the motion to dismiss in the nature of a compromise agreement executed by petitioner and her counsel with private respondent's counsel.

Petitioner maintains the affirmative, arguing that the compromise agreement is already binding upon the parties and has the effect of *res judicata*.

We do not agree.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which everyone of them prefers to the hope of gaining, balanced by the danger of losing.[8] Basically, a compromise is a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[9]

It is beyond question that the general rule is that a compromise has upon the parties the effect and authority of *res judicata*, with respect to the matter definitely stated therein, or which by implication from its terms should be deemed to have been included therein.[10] And this holds true even if the agreement has not been judicially approved.[11] Nevertheless, it is an equally accepted rule that the courts are authorized to set it aside where it has been persuasively shown that the consent of one of the contracting parties has been vitiated.[12]

The aforementioned exception is applicable to the instant suit. It was not the ministerial duty of the trial court to favorably resolve the compromise agreement submitted to it for approval when it appeared that the consent of one of the parties thereto is lacking. When private respondent immediately filed a motion to recall the joint motion to dismiss a day after the latter motion was filed, she expressly repudiated her consent thereto as she was not amenable to the terms thereof. And although private respondent has authorized her counsel through a special power of attorney to enter into an amicable settlement in her behalf, whatever settlement executed by her counsel was negated by her subsequent act of filing a motion to recall the joint motion to dismiss. By manifesting that she is not amenable to the terms of the compromise agreement embodied in the motion to dismiss, it became evident that private respondent's counsel has acted beyond the scope of his authority in the settlement of the case. Thus, bolstering the trial court's observation that it was unconvinced that private respondent would agree to amicably settle her claim of more than Three Hundred Thousand Pesos (P300,000.00) for a measly sum of Seven Thousand Pesos (P7,000.00).[13] Obviously, private respondent cannot be bound by her counsel's acts as she lost no time in immediately repudiating the same. In fact, there was no showing that she even availed of the benefits provided by the compromise agreement. Her swift action clearly renders the application of the effects of *res judicata* inapplicable in the present case.

Thus, it was not error nor grave abuse of discretion on the part of respondent judge to grant private respondent's

motion to recall the motion to dismiss and deny the motion to dismiss earlier filed, having established that private respondent immediately and expressly repudiated her consent to the compromise agreement.

ACCORDINGLY, the instant petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Annex A, Rollo, p. 21.

[2] Annex B, Rollo, p. 24.

[3] Rollo, p. 46.

[4] Rollo, p. 58.

[5] Rollo, p. 30.

[6] Rollo, p. 21.

[7] Rollo, p. 24.

[8] David vs. Court of Appeals, 214 SCRA 644, 650 (1992) citing Rovero vs. Amparo, 91 Phil. 228, 235 (1952); Arcenas vs. Cinco, 74 SCRA 118, 123 (1976).

[9] Go vs. Intermediate Appellate Court. 183 SCRA 82, 86 (1990).

[10] Nieves vs. Court of Appeals. 198 SCRA 63, 69 (1991); World Machine Enterprises vs. Intermediate Appellate Court, 192 SCRA 459, 465 (1990).

[11] Mayuga vs. Court of Appeals, 154 SCRA 309 (1987) citing Meneses vs. De la Rosa, 77 Phil 34 (1946); Vda. de Guilas vs. David, 23 SCRA 762 (1968); Cochingyan vs. Cloribel, 76 SCRA 361.

[12] Go vs. Intermediate Appellate Court, supra; citing Araneta vs. Perez, 7 SCRA 923, 924; Binamira vs. Ogan-Occena, 148 SCRA 677, 683.

[13] Rollo, p. 24.

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