

ILOILO TRADERS FINANCE INC., PETITIONER, VS. HEIRS OF OSCAR SORIANO JR., AND MARTA L. SORIANO, RESPONDENTS.

G.R. No. 149683. June 16, 2003

Ponente: VITUG, J.

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VITUG, J.:

On 23 October 1979 and 29 February 1980, the spouses Oscar Soriano and Marta Soriano executed two promissory notes, secured by real property mortgages, in favor of petitioner Iloilo Traders Finance, Inc. (ITF). When the Sorianos defaulted on the notes, ITF, on 23 June 1981, moved for the extrajudicial foreclosure of the mortgages. Evidently, in order to forestall the foreclosure, respondent spouses filed, on 27 August 1981, a complaint for "Declaration of a Void Contract, Injunction and Damages." On 06 January 1982, the trial court issued a writ of preliminary injunction to suspend the public sale of the hypothecated property. On 16 August 1983, the parties entered into an "Amicable Settlement" and, after affixing their signatures thereon, submitted the agreement before the court. Instead of approving forthwith the amicable settlement, the trial court required the parties to first give some clarifications on a number of items. The order read in part —

"Paragraph 4 of the compromise agreement dated August 16, 1983 states: 'That the plaintiffs waive any claims, counterclaims, attorney's fees or damages that they may have against herein defendants.'

"Plaintiffs and defendant Iloilo Traders Finance, Inc., are directed to clarify whether the words 'herein defendants' include defendants Bernadette Castellano and the provincial sheriff of Iloilo.

"If the plaintiffs desire to dismiss the complaint against defendants Castellano and the provincial sheriff of Iloilo, they should state it categorically and in writing.

"Furthermore, the Court wants to know from the plaintiffs and defendant Iloilo Traders Finance, Inc., if the writ of preliminary injunction issued on January 6, 1982 should be lifted as to all three defendants.

"The clarification herein sought after by the Court shall be made in writing and signed by the parties concerned, assisted by their respective attorneys.

"This Order shall be complied with within a period of ten (10) days from notice hereof." [1]

The parties failed to comply with the court order. Resultantly, the trial court disapproved the amicable settlement and set the case for pre-trial. Nothing much could be gleaned from the records about what might have transpired next not until seven years later when the Soriano couple filed a motion to submit anew the amicable settlement. The motion was opposed by ITF on the ground that the amount expressed in the settlement would no longer be accurate considering the lapse of seven years, implying in a way that it could be amendable thereto if the computation were to be revised. The trial court denied the Soriano motion. Significantly, while the order of denial was made on the thesis that the debtor spouses, without the consent of ITF, could not unilaterally resurrect the amicable settlement, the trial court, nevertheless, made the following observations —

"x x x (T)hat in relation to the disapproved Amicable Settlement, the intention of ITF to agree and abide by the

provisions thereof, as evidenced by the signatures thereto of its President and counsels, cannot be ignored. That intention pervades to the present time since the disapproval by the court pertains only to a technicality which in no way intruded into the substance of the agreement reached by the parties. Such being the case, the Amicable Settlement had novated the original agreement of that parties as embodied in the promissory note. The rights and obligations of the parties, therefore, at this time should be based on the provisions of the amicable settlement, these should pertain to the principal amount as of that date which the parties pegged at P431,200.00 and the legal rate of interest thereon.

"The foregoing should however be a good issue in another forum, not in the present case."[2]

Taking cue from the court order, the Sorianos withdrew their complaint and, on 16 October 1991, filed a case for novation and specific performance, docketed Civil Case No. 20047, before the Regional Trial Court, Branch 37, of Iloilo City. The case ultimately concluded with a finding made by the trial court in favor of herein respondents. On appeal to it, the Court of Appeals affirmed the judgment of the court a quo.

The parties have submitted that the issue focuses on whether or not the amicable settlement entered into between the parties has novated the original obligation and also, as they would correctly suggest in their argument, on whether the proposed terms of the amicable settlement were carried out or have been rendered inefficacious.

The "amicable settlement" read —

"COME NOW plaintiffs and defendant Iloilo Traders Finance, Inc., assisted by their respective undersigned counsels and to this Honorable Court most respectfully submit the following Amicable Settlement, thus:

"1. That the total of the two (2) accounts of plaintiff to herein defendant as of June 30, 1983 is Two Hundred Ninety Thousand Six Hundred Ninety One Pesos (P290,691.00) of which amount P10,691.00 shall be paid by plaintiffs to herein defendant at the time of the signing of this Amicable Settlement;

"2. That to this amount of P290,691.00 shall be added P151,200.00 by way of interest for 36 months thus making a total of Four Hundred Thirty One Thousand Two Hundred Pesos (P431,200.00);

"3. That this amount of P431,200.00 shall be paid by plaintiffs to herein defendant in 36 monthly installments as follows, the first installment at P12,005.00 shall be paid on or before August 16, 1983 and the 2nd to 36th installments at P11,977.00 shall be paid on the 15th day of each month thereafter until fully paid;

"4. That the plaintiffs waive any claims, counterclaims, attorney's fees or damages that they may have against herein defendants;

"5. That should plaintiffs fail to comply with the terms of this Amicable Settlement the preliminary injunction issued in the case shall be immediately dissolved and the foreclosure and public auction sale of the properties of the plaintiffs subject of the mortgage to defendant shall immediately take place and the corresponding writ of execution shall issue from this Court;

"6. That this Amicable Settlement is submitted as the basis for decision in this case.

"WHEREFORE, it is respectfully prayed of this Honorable Court that the foregoing Amicable Settlement be approved."[3]

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate;[4] in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one.[5] Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one

having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.

An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation.[6] Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (e.g., a change in interest rates[7] or an extension of time to pay[8]); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.

An amicable settlement or a compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[9] It may be judicial or extrajudicial; the absence of court approval notwithstanding,[10] the agreement can become the source of rights and obligations of the parties.

It would appear that the arrangement reached by the Soriano spouses and ITF would have the original obligation of respondent spouses on two promissory notes for the sums of P150,000.00 and P80,000.00, both secured by real estate mortgages, impliedly modified. The amicable settlement contained modificatory changes. Thus, (1) it increased the indebtedness of the Soriano spouses, merely due to accruing interest, from P290,691.00 to P431,200.00; (2) it extended the period of payment and provided for new terms of payment; and (3) it provided for a waiver of claims, counterclaims, attorney's fees or damages that the debtor-spouses might have against their creditor, but the settlement neither cancelled, nor materially altered the usual clauses in, the real estate mortgages, e.g., the foreclosure of the mortgaged property in case of default.

Verily, the parties entered into the agreement basically to put an end to Civil Case No. 14007 then pending before the Regional Trial Court.[11] Concededly, the provisions of the settlement were beneficial to the respondent couple. The compromise extended the terms of payment and implicitly deferred the extrajudicial foreclosure of the mortgaged property. It was well to the interest of respondent spouses to ensure its judicial approval; instead, they went to ignore the order of the trial court and virtually failed to make any further appearance in court. This conduct on the part of respondent spouses gave petitioner the correct impression that the Sorianos did not intend to be bound by the compromise settlement, and its non-materialization negated the very purpose for which it was executed.

Given the circumstances, the provisions of Article 2041 of the Civil Code come in point —

"If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand."

As so well put in *Diongzon vs. Court of Appeals*,[12] a "supposed new agreement is deemed not to have taken effect where a debtor never complied with his undertaking." In such a case, the other party is given the option to enforce the provisions of the amicable settlement or to rescind it[13] and may insist upon the original demand without the necessity for a prior judicial declaration of rescission.[14]

WHEREFORE, the decision of the Court of Appeals in C.A. G.R. CV No. 46910, affirming that of the court a quo, is REVERSED and SET ASIDE, and another is entered dismissing the complaint in Civil Case No. 20047 before the Regional Trial Court, Branch 37, of Iloilo City. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 45-46.

[2] Rollo, p. 47.

[3] Rollo, pp. 14-16.

[4] Reyes vs. Court of Appeals, G.R. No. 120817, 04 November 1996, 264 SCRA 35.

[5] Fortune Motors (Phils.) Corp. vs. CA, G.R. No. 112191, 07 February 1997, 267 SCRA 653.

[6] Quinto vs. People, G.R. No. 126712, 14 April 1999, 305 SCRA 708.

[7] Bank of P.I. vs. Abaladejo, No. 30490, 27 March 1929, 53 Phil 14.

[8] Kabankalan Sugar Co. vs. Pacheco, No. 33654, 29 December 1930, 55 Phil. 555.

[9] Civil Code, Article 2028.

[10] Judicial approval however is necessary in compromises entered into by guardians, parents, absentee's representatives, and administrators or executors of decedent's estates. (Article 2032, Civil Code)

[11] Paragraph 6 of the settlement is clear - "That this Amicable Settlement is submitted as a basis for the decision in this case."

[12] 321 SCRA 477.

[13] Pasay City Government vs. CFI of Manila, Br. X, L-32162, 28 September 1984, 132 SCRA 156.

[14] Leonor vs. Sycip, L-14220, 29 April 1961, 1 SCRA 1215.

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