

SPOUSES MANUEL A. AGUILAR AND YOLANDA C. AGUILAR, PETITIONERS, VS. THE MANILA BANKING CORPORATION, RESPONDENT.

G.R. NO. 157911. September 19, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The sad and lamentable spectacle that this case presents, that is, the execution of a final and executory decision forestalled by perpetual dilatory tactics employed by a litigant, makes a blatant mockery of justice. The Court cannot countenance, and in fact, condemns, the outrageous abuse of the judicial process by Spouses Manuel A. Aguilar and Yolanda C. Aguilar (petitioners) and their counsel.

Before the Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated October 29, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 71849 which dismissed petitioners' Petition for Certiorari, and the CA Resolution[2] dated April 29, 2003 which denied petitioners' Motion for Reconsideration.

The procedural antecedents and factual background of the case are as follows:

Sometime in 1979, petitioners obtained a P600,000.00 loan from the Manila Banking Corporation (respondent), secured by a real estate mortgage over their 419-square meter property located at No. 8 Piña St., Valle Verde, Pasig City, covered by Transfer Certificate of Title (TCT) No. 11082. When petitioners failed to pay their obligation, the mortgaged property was extra-judicially foreclosed. Respondent was the winning bidder at public auction sale on May 20, 1982. Consequently, a Certificate of Sale was issued in its favor on June 23, 1982.

Subsequently, on May 30, 1983, instead of redeeming the property, petitioners filed a complaint for annulment of the foreclosure sale of the property before the Regional Trial Court, Branch 165, Pasig City (RTC Branch 165), docketed as Civil Case No. 49793. While the case was pending, the parties entered into a compromise agreement.[3]

Under the Compromise Agreement dated January 23, 1987, the petitioners admitted the validity of the extra-judicial foreclosure and agreed to purchase the property from respondent for P2,548,000.00. Parties agreed that the amount of P100,000.00 shall be payable upon execution of the agreement and the balance of P2,448,000.00, which shall earn twenty-six per cent (26%) interest per annum, shall be payable in eighteen installments from February 23, 1987 to July 27, 1988. They further agreed that in case of default: (a) all outstanding installments and/or interest thereon shall be immediately due; (b) petitioners shall immediately vacate the property and deliver possession thereof to respondent; (c) respondent shall be entitled to register all documents needed to transfer title over the property in their favor; and, (d) respondent shall be entitled to ask for the execution of the judgment or an ancillary remedy necessary to place it in possession of the property. On January 30, 1987, RTC Branch 165 adopted and approved the Compromise Agreement.[4]

Petitioners failed to pay the balance of P2,448,000.00 within the eighteen-installment period from February 23, 1987 to July 27, 1988. A year and three months later, or on October 20, 1989, respondent filed a Motion for Issuance of Writ of Execution to enforce the Decision dated January 30, 1987.[5]

On November 28, 1989, RTC Branch 165 issued an Order granting the motion and issuing a writ of execution: (a) directing petitioners to immediately vacate the property and surrender possession to the respondent; (b) directing the Register of Deeds of Metro Manila, District II to register any and all documents needed to transfer title over the property to respondent and to issue a new certificate of title respondent's favor free from any liens, adverse claims and/or encumbrances; (c) issuing a writ of possession in respondent's favor to place it in possession of the property.[6]

However, on January 22, 1990, petitioners filed a Manifestation praying for deferment of the enforcement of the writ of execution until July 31, 1990 because petitioners have a pending proposal for the settlement of their judgment debt.[7] The manifestation was with the conformity of respondents.[8] On January 24, 1990, RTC Branch 165 issued an Order granting the motion and holding in abeyance the enforcement of the writ of execution until July 31, 1990.[9] However, no settlement was reached by the parties during the period.

One year and four months later, petitioners still failed to settle their judgment debt. Consequently, respondent filed on December 2, 1991 a Manifestation reiterating its motion for the issuance of a writ of execution.[10] On December 5, 1991, RTC Branch 165 issued an Order granting the manifestation and directing the issuance of a writ of execution to enforce the Decision dated January 30, 1987.[11]

To evade the implementation of the writ, petitioners filed on December 20, 1991 an Ex-Parte Motion to Recall the Court's Order dated December 5, 1991 claiming that their obligation was novated by the Letter dated June 7, 1991 from respondent's Statutory Receiver.[12] In said letter, respondent's Statutory Receiver approved the purchase of the property on installment basis over a three-year period at an interest rate of twelve per cent (12%) with P481,265.00 due on September 30, 1991, P481,265.00 due on September 30, 1992, and P724,064.79 due on September 30, 1993.[13]

On December 2, 1992, respondent filed a Manifestation and Motion for Issuance of Alias Writ of Execution manifesting that the Letter dated June 7, 1991 did not novate the Decision dated January 30, 1987 but was a mere accommodation of the petitioners' request for a liberal mode of payment of their account and petitioners still failed to comply with such approved mode of payment.[14]

On December 14, 1992, petitioners filed their Comment and Manifestation praying for a humanitarian and liberal judicial dispensation since that they have been paying their obligations to respondent despite delay due to "financial restraints for family subsistence and their children's educational expenses".[15]

On February 1, 2000, respondent filed an Urgent Ex-Parte Manifestation praying for resolution of the pending incidents.[16] On March 3, 2000, petitioners filed their Opposition claiming that Section 6, Rule 39 of the Rules of Court bars execution, by mere motions, of judgment which is more than five years old. On March 14, 2000, respondent filed its Reply stating that the peculiar circumstances of the case warrant its exclusion from the scope of said Rule.

On March 20, 2000, RTC Branch 165 issued its Order which resolved the pending motions with the Court. With respect to petitioner's ex-parte motion to recall, the Court said that for failure to comply with Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court and considering the nature of petitioners' motion, it treated petitioner's motion as a mere scrap of paper.[17] As to respondent's motion for issuance of a writ of execution, it granted the same, holding that Section 6, Rule 39 of the Rules of Court does not apply since the delay in the execution of the

judgment was due to petitioners who made several alternative payment proposals, requested several extensions of time to pay their account, filed dilatory motions and pleadings and it would be a blatant injustice to allow them to profit from the delays they deliberately caused to escape completely and absolutely the satisfaction of their admitted and confessed obligation by sheer literal adherence to technicality.[18]

On March 30, 2000, petitioners filed their Motion for Reconsideration[19] but RTC Branch 165 denied it in its Order dated May 30, 2000.[20]

On June 20, 2000, petitioners filed a Notice of Appeal[21] but RTC Branch 165 denied it in its Order dated August 21, 2000 on the ground that an order of execution is not appealable.[22]

Thereafter, petitioners filed a six-page Petition for Review on Certiorari with this Court, docketed as G.R. No. 144719, reiterating that the Decision dated January 30, 1987 can no longer be executed on mere motion since it is more than five years old. [23]

In a Resolution dated October 11, 2000, the First Division of this Court denied the petition for violation of the rule on hierarchy of courts and failure to show special and important reasons or exceptional and compelling circumstances that justify a disregard of the rule.[24] Petitioners filed a Motion for Reconsideration but the Court denied it with finality in its Resolution dated December 11, 2000.[25]

Since the Resolution in G.R. No. 144719 became final and executory on January 16, 2001, RTC Branch 165 issued a writ of execution on February 19, 2001 to enforce the Decision dated January 30, 1987.[26] On February 23, 2001, the Sheriff issued a Notice for Compliance of the said writ.[27]

Undaunted by their previous setbacks, petitioners filed on March 6, 2001 in RTC Branch 165 an Omnibus Motion to quash the Writ of Execution insisting anew on their novation and prescription theories.[28] They also moved for consignation of the amount of their obligation under the Letter dated June 7, 1991 of respondent's Statutory Receiver.

On March 14, 2001, respondent filed an Ex-Parte Motion for Order to Divest Plaintiffs' Title and to Direct the Register of Deeds to Transfer Title to Defendant[29] based on Section 10, Rule 39 of the 1997 Rules of Civil Procedure. On March 19, 2001, respondent filed its Opposition (to petitioners' Omnibus Motion) and Motion to Cite Plaintiffs in Contempt claiming that the Omnibus Motion is nothing but petitioners' desperate attempt to thwart or delay the payment of their obligations and they should be declared guilty of indirect contempt for their improper conduct calculated to impede, obstruct and degrade the administration of justice.[30]

On May 2, 2001, petitioners filed an Urgent Motion for Inhibition.[31] While RTC Branch 165 Presiding Judge Marietta A. Legaspi denied the motion for inhibition in her Order dated June 5, 2001, she voluntarily inhibited herself from further participating in the case to show that she has no interest therein.[32] Respondent filed a Motion for Partial Reconsideration[33] to no avail.[34] The case was re-raffled and was assigned to

Branch 268 presided by Judge Amelia C. Manalastas.

On September 17, 2001 and January 4, 2002, respondent filed two Motions to Resolve Pending Incidents.[35] Despite the fact that Judge Manalastas has not actively participated in the case since she has not acted on the pending incidents, petitioners filed on February 5, 2002 a Motion for Inhibition.[36] A day later, on February 6, 2002, Judge Manalastas granted the motion for inhibition.[37] Thus, the case was again re-raffled and was assigned to Branch 167 presided by Judge Jesus G. Bersamira. On February 13, 2002, respondent filed again a Motion to Resolve Pending Incidents.[38]

On March 22 and 26, 2002, both parties filed separate Urgent Motions to Resolve the case.[39] Subsequently,

petitioners filed a Manifestation and Motion that the Letter dated June 7, 1991 be marked as their exhibit.[40] RTC Branch 167 in its Order dated April 30, 2002 admitted the exhibit over the objections of respondent.[41]

On May 24, 2002, RTC Branch 167 rendered its Omnibus Order denying the Omnibus Motion to quash the writ of execution and for consignment, as well as the motion to cite petitioners in contempt and the ex parte motion for an order to divest petitioners' title to respondent. It held that there was no novation because there was no incompatibility between the Letter dated June 7, 1991 and the Decision dated January 30, 1987 with the former only providing for a more liberal scheme of payment and grant of reduced interest; that petitioners' claim that respondent's receivership and the Letter dated June 7, 1991 are supervening events which rendered the execution unjust and impossible is unavailing since there is nothing on record to indicate that such circumstances resulted in unfairness and injustice to petitioners if execution of judgment is carried out; that petitioner's claim that the judgment could no longer be executed by mere motion after the five-year period had elapsed from its finality is specious since any interruption or delay occasioned by petitioners will extend the time within which the judgment may be executed by motion.[42]

No motion for reconsideration was filed by the petitioners. Accordingly, RTC Branch 167 issued a Writ of Execution on July 4, 2002.[43] On July 23, 2002, the Sheriff issued the Notice for Compliance of the said writ.[44]

Petitioners filed on July 26, 2002 a petition for certiorari with the CA, docketed as CA-G.R. SP No. 71849.[45] They reiterated that the Decision dated January 30, 1987 cannot be executed by mere motion filed on February 1, 2000 since more than five years have elapsed.

On October 29, 2002, the CA denied the petition for certiorari.[46] It held that since the delays were occasioned by petitioners' own initiative and for their own advantage, the five-year period allowed for the enforcement of the judgment by motion have been interrupted or suspended.

On November 13, 2002, petitioners filed a Motion for Reconsideration[47] but the CA denied it in its Resolution dated April 29, 2003.[48]

Hence, the present petition anchored on the following grounds:

- THE HONORABLE COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT PRESCRIPTION HAS SET IN IN THIS CASE CONSIDERING THAT MORE THAN FIVE (5) YEARS, NAY, MORE THAN TEN (10) YEARS, HAD ELAPSED SINCE THE DECISION BASED ON COMPROMISE AGREEMENT BECAME FINAL AND EXECUTORY.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT EVENTS AND CIRCUMSTANCES IN THIS CASE HAVE TRANSPIRED AFTER THE DECISION HAD BECOME FINAL AND EXECUTORY THAT WARRANTS AND CALLS FOR STAY OR PRECLUSION OF EXECUTION, CONSIDERING THAT THE LETTER-APPROVAL OF THE STATUTORY RECEIVER OF RESPONDENT PARTAKES OF AN EXCEPTION TO THE GENERAL RULE WHICH HAS BEEN CONSISTENTLY UPHOLD BY THIS HONORABLE SUPREME COURT.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT THE LETTER APPROVAL OF THE STATUTORY RECEIVER NOVATED THE COMPROMISE AGREEMENT AND DECISION BASED ON COMPROMISE AGREEMENT.
- THE HONORABLE COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT THE EQUITIES OF THE CASE FAVOR HEREIN PETITIONERS.[49]

Anent the first ground, petitioners reiterate that under Section 6 of Rule 39, Rules of Court, the execution of the

judgment by mere motion was barred by prescription, given that more than five years had lapsed since the Decision dated January 30, 1987 became final and executory and they cannot be faulted for the delay as they have done nothing that warrants the conclusion that they employed unscrupulous machinations and dilatory tactics.

As to the second ground, petitioners argue that respondent's receivership is a supervening event that rendered execution of the Decision dated January 30, 1987 impossible, if not unjust; that since a bank under receivership is relieved of its obligation to pay interest on the deposits of its depositors, they (petitioners) are also not obliged to pay interest on a loan due it and interest shall commence again only after respondent's resumption of banking operations.

On the third ground, petitioners maintain that the Letter dated June 7, 1991 of respondent's Statutory Receiver novated the Decision dated January 30, 1987 considering the substantial differences in their principal terms and conditions.

On the fourth ground, petitioners aver that the acceleration clause provision of the Compromise Agreement is iniquitous and void for being violative of morals and public policy.

In their Comment, respondent contends that the present petition should be dismissed outright because it is barred by res judicata or the final judgment of this Court in G.R. No. 144719 and petitioners engaged in forum-shopping by deliberately failing to state that they previously filed G.R. No. 144719 where the issue of prescription was raised. Even if the petition is given due course, respondent argues that execution of the Decision dated January 30, 1987 is not barred by prescription; that respondent's receivership and the Letter dated June 7, 1991 of respondent's Statutory Receiver are not circumstances that would render the execution of the judgment unjust, inequitable or even merit a stay of execution; that the Letter dated June 7, 1991 of respondent's Statutory Receiver did not novate the Decision dated January 30, 1987 since there was no intent to novate petitioners' judgment obligation.[50]

In Reply, petitioners argue that res judicata is not applicable since the minute Resolution of the Court in G.R. No. 144719: (a) does not operate as adjudication on the merits, (b) was not rendered with jurisdiction over the parties; and (c) involved different subject matters and causes of action.[51]

In the Resolution dated May 15, 2003, upon motion of petitioner, the Court directed the parties to maintain the status quo until further orders from this Court.[52]

The petition is bereft of merit.

Prefatorily, the Court notes that the petition for certiorari before the CA should have been dismissed outright since petitioners failed to file a motion for reconsideration from the RTC Omnibus Order dated May 24, 2002. Section 1 of Rule 65 of the 1997 Rules of Civil Procedure provides:

SECTION 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack of or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of the law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. ... (Emphasis supplied)

The plain and adequate remedy referred to in the rule is a motion for reconsideration of the assailed decision or order. The purpose for this requirement is to grant an opportunity for the court or agency to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case[53]

without the intervention of a higher court.[54] Thus, the filing of a motion for reconsideration is a condition sine qua non to the institution of a special civil action for certiorari.

While jurisprudence has recognized several exceptions to the rule, such as: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved,[55] none of these exceptions apply here.

In the present case, the petitioners not only failed to explain their failure to file a motion for reconsideration before the RTC, they also failed to show sufficient justification for dispensing with the requirement. A motion for reconsideration is not only expected to be but would actually have provided an adequate and more speedy remedy than the petition for certiorari.[56] Certiorari cannot be resorted to as a shield from the adverse consequences of petitioners' own omission to file the required motion for reconsideration.[57]

In any case, even if petitioners' procedural faux pas is ignored, their contentions on the substantive aspect of the case fail to invite judgment in their favor.

Petitioners are barred from raising the issue on the prescription of execution of the decision by mere motion under the principle of the "law of the case," which is the practice of courts in refusing to reopen what has been decided. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[58]

The law of the case on the issue of prescription of the execution of the decision by mere motion or applicability of Section 6, Rule 39 of the Rules of Court has been settled in the Order dated March 20, 2000 of RTC Branch 165. Upon denial of petitioner's motion for reconsideration, they erroneously sought review with this Court which dismissed their petition for review on certiorari for violation of the rule on hierarchy of courts and for failure to show special and important reasons or exceptional and compelling circumstances that justify a disregard of the rule.[59] This Court's Resolution became final and executory on January 16, 2001. Thus, petitioners are bound thereby. The question of prescription has been settled with finality and may no longer be resurrected by petitioners. It is not subject to review or reversal in any court, even this Court.

The CA failed to consider this principle of law of the case, which is totally different from the concept of res judicata. In *Padillo v. Court of Appeals*,[60] the Court distinguished the two as follows:

x x x Law of the case does not have the finality of the doctrine of res judicata, and applies only to that one case, whereas res judicata forecloses parties or privies in one case by what has been done in another case. In the 1975 case of *Comilang v. Court of Appeals* (Fifth Division.), a further distinction was made in this manner:

The doctrine of law of the case is akin to that of former adjudication, but is more limited in its application. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case. The doctrine of res judicata differs therefrom in that it is applicable to the conclusive determination of issues of fact, although it may include questions of law, and although it may apply to collateral proceedings in the same

action or general proceeding, it is generally concerned with the effect of an adjudication in a wholly independent proceeding.[61]

To elucidate further, res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.[62] The four requisites for res judicata to apply are: (a) the former judgment or order must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment or an order on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action.[63] The fourth requisite is wanting in the present case. There is only one case involved. There is no second independent proceeding or subsequent litigation between the parties. The present petition concerns subsequent proceedings in the same case, with petitioners raising the same issue long settled by a prior appeal.

On the matter of forum shopping, while the Court has held that forum shopping exists only where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another,[64] it must be recalled that the doctrines of law of the case and res judicata are founded on a public policy against reopening that which has previously been decided.[65] Both doctrines share the policy consideration of putting an end to litigation.[66] Thus, the principle of forum shopping should apply by analogy to a case involving the principle of law of the case.

Moreover, although forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion, other than by appeal or certiorari, in another, or when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action,[67] the peculiar circumstances attendant in this case baffle out a situation akin to forum shopping - there is only one court involved, RTC Pasig City, but the issue of prescription was ultimately resolved by two different branches thereof - Branches 165 and 167.

Petitioners first raised before RTC Branch 165 the issue of prescription of the execution of the decision by mere motion. Said RTC Branch 165 ruled against petitioners and the court's order thereon became final and executory. Petitioners raised the issue again in an Omnibus Motion with the same RTC Branch 165. However, they moved for the inhibition of the presiding judge hearing the issue not only once, but twice, both motions granted in their favor and the case was successively raffled and assigned to two different branches of RTC Pasig, first to Branch 268 and then to Branch 167, which ruled against petitioners.

Through the motions for inhibition of the presiding judges and the assignment of the case to different branches of the same court, petitioners sought to obtain from one branch a ruling more favorable than the ruling of another branch. They deliberately sought a friendly branch of the same court to grant them the relief that they wanted, despite the finality of the resolution of one branch on the matter. This is a permutation of forum shopping. It trifles with the courts, abuses their processes, degrades the administration of justice, and congests court dockets.[68]

Be it remembered that the grave evil sought to be avoided by the rules against forum shopping is the rendition by two competent tribunals of two separate, and contradictory decisions. Unscrupulous party-litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. This would make a complete mockery of the judicial system.[69]

As to petitioners' arguments on the inequity of the acceleration clause of the Compromise Agreement,

respondent's receivership as a supervening event, and novation of the Compromise Agreement by the Letter dated June 7, 1991, the Court holds that these were raised as mere afterthought. If petitioners sincerely believed in the merits of their arguments, they should have raised them at the earliest opportunity and pursued their ultimate resolution. However, petitioners did not.

Petitioners are barred from raising arguments concerning the inequity of the acceleration clause of the Compromise Agreement since they only raised it for the first time before the CA in their Petition for Certiorari^[70] in CA-G.R. SP No. 71849. To consider the argument raised belatedly in a pleading filed in the appellate court, especially in the executory stage of the proceedings, would amount to trampling on the basic principles of fair play, justice and due process.

In addition, after adopting and agreeing to the terms and conditions of the Compromise Agreement, petitioners cannot be permitted to subsequently make a complete volte face and attack the validity of the said agreement when they miserably failed to comply with its provisions. Our law and policy do not sanction such a somersault. What's more, petitioners also failed to comply with the reduced purchase amount and interest rate granted in the Letter dated June 7, 1991. They can hardly evoke judicial compassion.

On the arguments relating to the effect of respondent's receivership, petitioners brought this matter for the first time in RTC Branch 165 in their Omnibus Motion dated March 5, 2001, fourteen years after respondent was placed under receivership and was ordered to close operation in 1987. The belated invocation of such circumstance speaks strongly of the staleness of their claim.

Besides, it would be absurd to adopt petitioners' position that they are not obliged to pay interest on their obligation when respondent was placed under receivership. When a bank is placed under receivership, it would only not be able to do new business, that is, to grant new loans or to accept new deposits. However, the receiver of the bank is in fact obliged to collect debts owing to the bank, which debts form part of the assets of the bank.^[71] Thus, petitioners' obligation to pay interest subsists even when respondent was placed under receivership. The respondent's receivership is an extraneous circumstance and has no effect on petitioners' obligation.

On the claim of novation, petitioners raised it for the first time before RTC Branch 165 in their Ex- Parte Motion to Recall the Court's Order dated December 5, 1991^[72] but they did not pursue the matter after their ex-parte motion was denied. They did not raise said issue in their motion for reconsideration or in their first petition for review on certiorari with this Court in G.R. No. 144719. Thus, they are deemed to have abandoned their claim of novation. They cannot be allowed to revive the issue as it is offensive to basic rules of fair play, justice and due process.

Moreover, the Court cannot see how novation can take place considering that the surrounding circumstances negate the same. The established rule is that novation is never presumed; it must be clearly and unequivocally shown.^[73] Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation it is imperative that the new obligation expressly declares that the old obligation is thereby extinguished or that the new obligation be on every point incompatible with the new one.^[74]

In the present case, there is no clear intent of the parties to make the Letter dated June 7, 1991 completely supersede and abolish the Compromise Agreement adopted and approved by the RTC in its Decision dated January 30, 1987. Petitioners were merely granted a more liberal scheme of payment and reduced rate of interest but the conditions relating to the consequences of default in payment remained, such that when petitioners' failed to comply with the approved mode of payment in the Letter dated June 7, 1991, respondents were entitled to call for enforcement of the Decision dated January 30, 1987 and eject petitioners from the property. The well-settled rule is that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that

expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.[75] Hence, there is no merit to petitioners' claim of novation.

Without a doubt, the present case is an instance where the due process routine vigorously pursued by petitioners is but a clear-cut device meant to perpetually forestall execution of an otherwise final and executory decision. Aside from clogging court dockets, the strategy is deplorably a common course resorted to by losing litigants in the hope of evading manifest obligations. The Court condemns this outrageous abuse of the judicial process by the petitioners and their counsels.

It is an important fundamental principle in the judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid and final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply to the detriment of the administration of justice.[76]

The Court reminds petitioners' counsel of the duty of lawyers who, as officers of the court, must see to it that the orderly administration of justice must not be unduly impeded. It is the duty of a counsel to advise his client, ordinarily a layman on the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable.[77]

There should be a greater awareness on the part of litigants and counsels that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in the present case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

Verily, by the undue delay in the execution of a final judgment in their favor, respondents have suffered an injustice. The Court views with disfavor the unjustified delay in the enforcement of the final decision and orders in the present case. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[78] Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

WHEREFORE, the present petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 71849 are AFFIRMED. The status quo order issued by this Court on May 15, 2003 is LIFTED. The Regional Trial Court, Branch 167, Pasig City, is directed to issue the corresponding writ of execution and the Sheriff of the court is ordered to enforce the same to its ultimate conclusion.

Triple costs against petitioners.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria (now retired) and concurred in by Associate Justices Renato C. Dacudao and Danilo B. Pine (now retired), CA rollo, p. 495

[2] CA rollo, p. 618.

[3] Id. at 44.

[4] Id. at 40.

[5] Id. at 49.

[6] Id. at 52.

[7] Id. at 53.

[8] Id.

[9] Id. at 55.

[10] Id. at 56.

[11] Id. at 58.

[12] Id. at 59.

[13] Id. at 61.

[14] Id. at 240.

[15] Id. at 246.

[16] Id. at 62.

[17] Id. at 72.

[18] Id. at 68.

[19] Id. at 99.

[20] Id. at 102.

[21] Id. at 104.

[22] Id. at 105.

[23] Entitled, "Manuel Aguilar and Yolanda Aguilar v. The Manila Banking Corporation", Annex "J" of the Comment, id. at 262.

[24] CA rollo, p. 106.

[25] Id. at 107.

[26] Id. at 77.

[27] Id. at 79.

[28] Id. at 82.

[29] Id. at 359.

[30] id. at 108.

[31] Id. at 134.

[32] Id. at 136.

[33] Id. at 140.

[34] Id. at 148.

[35] Id. at 154 and 164.

[36] Id. at 168.

[37] Id. at 170.

[38] Id. at 400.

[39] Id. at 171 and 175.

[40] Id. at 424.

[41] Id. at 426.

[42] Id. at 32.

[43] Id. at 35.

[44] Id. at 39.

[45] Id. at 2.

[46] Supra note 1.

[47] Id. at 507.

[48] Supra note 2.

[49] Rollo, pp. 16-17.

[50] Id. at 173.

[51] Id. at 648.

[52] Id. at 163.

[53] Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez, G.R. No. 142913, August 9, 2005, 466 SCRA 120, 127; Interiorient Maritime Enterprises, Inc. v. National Labor Relations Commission, 330 Phil. 493, 503 (1996).

[54] S/G Luna v. National Labor Relations Commission, 336 Phil. 963, 969 (1997); Villarama v. National Labor Relations Commission, G.R. No. 106341, September 2, 1994, 236 SCRA 280, 287.

[55] Tan, Jr. v. Sandiganbayan, 354 Phil. 463, 469-470 (1998); Tan v. Court of Appeals, 341 Phil. 570, 576-578 (1997).

[56] Alcosero v. National Labor Relations Commission, 351 Phil. 368, 378 (1998); Plaza v. Hon. Mencias and Filipinas Motor Services, Inc., 116 Phil. 875, 879 (1962).

[57] Seagull Shipmanagement and Transport, Inc. v. National Labor Relations Commission, 388 Phil. 906, 912 (2000); Alcosero v. National Labor Relations Commission, supra.

[58] Padillo v. Court of Appeals, 422 Phil. 334, 351 (2001).

[59] Supra note 24.

[60] Supra note 58.

[61] Id. at 352.

[62] Equitable Philippine Commercial International Bank v. Court of Appeals, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 553; Development Bank of the Philippines v. Court of Appeals, G.R. No. 110203, May 9, 2001, 357 SCRA 626, 632.

[63] De la Cruz v. Joaquin, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 589; Bardillon v. Barangay Masili of Calamba, Laguna, 450 Phil. 521, 529 (2003).

[64] De la Cruz v. Joaquin, supra; Tolentino v. Natanauan, G.R. No. 135441, November 20, 2003, 416 SCRA 273, 282.

[65] 46 Am Jur 2d, Judgments, § 520, citing Rail N Ranch Corp. v. State, 7 Ariz App 558, 441 P2d 786.

[66] Id.

[67] Villaluz v. Ligon, G.R. No. 143721, August 31, 2005, 468 SCRA 486, 499; Top Rate Construction & Gen. Services, Inc. v. Paxton Development Corporation, 457 Phil. 740, 748 (2003).

[68] Villaluz v. Ligon, supra note 67.

[69] Guaranteed Hotels, Inc. v. Baltao, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746; TF Ventures, Inc. v. Matsuura, G.R. No. 154177, June 9, 2004, 431 SCRA 526, 531.

[70] Supra note 45.

[71] Provident Savings Bank v. Court of Appeals, G.R. No. 97218, May 17, 1993, 222 SCRA 125, 131-132.

[72] Supra note 12.

[73] Garcia v. Llamas, G.R. No. 154127, December 8, 2003, 417 SCRA 292, 294; Agro Conglomerates, Inc. v. Court of Appeals, 401 Phil. 644, 656 (2000).

[74] Civil Code, Art. 1292; Ajax Marketing & Development Corporation v. Court of Appeals, G.R. No. 118585, September 14, 1995, 248 SCRA 222, 227.

[75] Spouses Reyes v. BPI Family Savings Bank, Inc., G.R. Nos. 149840-41, March 31, 2006; Garcia, Jr. v. Court of Appeals, G.R. No. L-80201, November 20, 1990, 191 SCRA 493, 502.

[76] Ferinon v. Sta. Romana, 123 Phil. 191, 195 (1966).

[77] Perez v. Lantin, 133 Phil. 219, 226 (1968).

[78] Natalia Realty, Inc. v. Court of Appeals, 440 Phil. 1, 28 (2002); Nasser v. Court of Appeals, 314 Phil. 871, 883 (1995).

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