

ANASTACIO G. DUÑO, PETITIONER, VS. ADRIANO LOPEÑA, ROSA RAMOS AND HON. ANDRES REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, RESPONDENTS.

G.R. No. 18377. December 29, 1962

Ponente: REGALA, J.

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REGALA, J.:

On September 10, 1959, herein petitioner Anastacio G. Duño and one Rodrigo S. Gonzales purchased 3 parcels of land from the respondents Adriano Lopena and Rosa Ramos for the total price of P269,804.00. Of this amount, P28,000.00 was given as down payment with the agreement that the balance of P241,804.00 would be paid in 6 monthly installments.

To secure the payment of the balance Anastacio G. Duño and Rodrigo S. Gonzales, the vendees, on September 11, 1958, executed over the same 3 parcels of land a Deed of Real Estate Mortgage in favor of the respondents Adriano Lopena and Rosa Ramos. This deed was duly registered with the Office of the Register of Deeds of Rizal; with the condition that failure of the vendees to pay any of the installments on their maturity dates shall automatically cause the entire unpaid balance to become due and demandable.

The vendees defaulted on the first installment. It resulted then that on November 7, 1959, the vendors, herein respondents Adriano Lopena and Rosa Ramos, filed a complaint for the foreclosure of the aforementioned real estate mortgage with the Court of First Instance of Rizal, the Hon. Judge Andres Reyes, presiding. This complaint was answered by the herein petitioner and the other vendee, Rodrigo S. Gonzales, on December 7, 1959.

Meanwhile, there were 2 other civil cases filed in the same lower court against the same defendants Anastacio Duño and Rodrigo S. Gonzales. The plaintiff in one was a certain Dionisio Lopena, and in the other case, the complainants were Bernardo Lopena and Maria de la Cruz. Both complaints involved the same cause of action as that of the herein respondents Adriano Lopena and Rosa Ramos. As a matter of fact, all three cases arose but of one transaction. In view of the identical nature of the above three cases, they were consolidated by the lower court into just one proceeding.

It must be made clear, however, that this present decision refers solely to the interests and claim of Adriano A Lopena against Anastacio Duño alone.

Before the cases could be tried, a compromise agreement dated January 15, 1960 was submitted to the lower court for approval. It was signed by the herein respondents Adriano Lopena and Rosa Ramos on one hand, and, Rodrigo S. Gonzales, on the other. It was not signed by the herein petitioner. However, Rodrigo S. Gonzales represented that his signature was for both himself and the herein petitioner. Moreover, Anastacio Duño's counsel of record, Atty. Manuel O. Chan, the same lawyer who signed and submitted for him the answer to the complaint, was present at the preparation of the compromise agreement and this counsel affixed his signature thereto.

The text of this agreement is hereunder quoted:

COMPROMISE AGREEMENT

COME NOW the parties in the above entitled cases and unto this Hon. Court respectfully set forth:

That, the plaintiffs, have agreed to give the defendants up to June 30, 1960 to pay the mortgage indebtedness in each of the said cases;

That, should the defendants fail to pay the said mortgage indebtedness, judgments of foreclosure shall thereafter be entered against the said defendants;

That, the defendants hereby waive the period of redemption provided by law after entry of judgments;

That, in the event of sale of the properties involved in these three cases, the defendants agree that the said properties shall be sold at one time at public auction, that is, one piece of property cannot be sold without the others."

This compromise agreement was approved by the lower court on the same day it was submitted, January 15, 1960.

Subsequently, on May 3, 1960, a so called Tri-Party Agreement was drawn. The signatories to it were Anastacio Duño (herein petitioner) and Rodrigo S. Gonzales as debtors, Adriano Lopena and Rosa Ramos (herein respondents) as creditors, and, one Emma R. Santos as payor. The stipulations of the Tri-Party Agreement were as follows:

"A TRI-PARTY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This contract entered into by and between—

(1) EMMA R. SANTOS, Filipino, of legal age, single, with residence and postal address at _____, Rizal Avenue, Manila, hereinafter referred to as the PAYOR,

(2) ANASTACIO C. DUÑO, Filipino, of legal age, single, with residence and postal address at 137 N. Domingo, Quezon City, and RODRIGO S. GONZALES, Filipino, of legal age, married to Magdalena Balatbat, with residence and postal address at 73 Maryland, Quezon City, hereinafter referred to as the DEBTOR,

and

(3) DIONISIO LOPENA, married to Teofila Nofuente, Librada Lopena married to Arellano Cawagas, BERNARDO LOPENA, married to Maria de la Cruz, and ADRIANO LOPENA, married to Rosa Ramos, all of whom are Filipinos, legal ages, with residence and postal address at Sucat, Muntinlupa, Rizal, hereinafter represented by their attorney of record, ANTONIO LOPENA, hereinafter referred to as the CREDITOR,

WITNESSETH:

WHEREAS, the DEBTOR is indebted to the Creditor as of this date in the aggregate amount of P503,000.00 for the collection of which, the latter as party plaintiffs have instituted foreclosure proceedings against the former as party defendants in Civil Cases Nos. 5872, 5873 and 5874 now pending in the Court of First Instance, Pasig, Rizal;

WHEREAS, the PAYOR, hereby submits and binds herself to the force and effect of the Order dated January 15, 1960, of the Court of First Instance of Pasig, Rizal, Branch VI, which order is hereby made an integral part of this agreement as ANNEX "A";

WHEREAS, the PAYOR, with due knowledge and consent of the Debtor, hereby proposes to pay the aforesaid indebtedness in the sum of P503,000.00 to the Creditor for and in behalf of the DEBTOR under the following terms and conditions:

(a) To pay the said P503,000.00 in installments in the following schedule of amounts and time:

P50,000.00 on or before May 31, 1960

70,000.00 on or before June 30, 1960

70,000.00 on or before July 31, 1960

313,000.00 on or before Aug. 31, 1960

(b)

That the DEBTOR and the PAYOR hereby waive any right to object and oblige themselves not to oppose the motion that the Creditor may file during the first week of July 1960, or subsequently thereafter, informing the Court of the exact money obligation of the DEBTOR which shall be P503,000.00 minus whatever payments, if any, made before June 30, 1960 by the PAYOR, and praying for the issuance of an order to sell the property covered by the mortgage.

(c)

That the CREDITOR, once he has the order referred to, should not execute the same by giving it to the sheriff if the PAYOR. is regular and punctual in the payment of all the installments stated above. PROVIDED, however, if the PAYOR defaults or fails to pay anyone of the installments in the manner stated above, the PAYOR and the DEBTOR hereby permit, the CREDITOR to execute the order of sale referred to above, and they (PAYOR and DEBTOR) hereby waive any and all objections or oppositions to the propriety of the public auction sale and to the confirmation of the sale to be made by the court.

(d)

That the CREDITOR, at his option, may execute the August installment stated in letter (a) of this paragraph if the PAYOR has paid regularly the May, June, and July installments, and provided further that one-half (1/2) of the August installment in the amount of P156,500.00 is paid on the said date of August 31, 1960.

NOW, THEREFORE, for and in consideration of the foregoing stipulations, the DEBTOR and CREDITOR hereby accept, approve and ratify the above-mentioned propositions of the PAYOR, and all the parties herein bind and oblige themselves to comply to the covenants and stipulations aforesaid;

That by mutual agreements of all the parties herein, this Tri-party Agreement may be submitted to Court to form integral parts of the records of the Civil Cases mentioned above;

IN WITNESS WHEREOF, the parties hereunto affix their signatures on this 3rd day of May, 1960 in the City of Manila, Philippines.

When Anastacio Duño (herein petitioner) and Rodrigo S. Gonzales failed to pay the balance of their indebtedness on June 30, 1960, herein respondents Lopena and Ramos filed on July 5, 1960, a Motion for the Sale of Mortgaged Property. Although this last motion was filed ex parte, Anastacio Duño and Rodrigo S. Gonzales were notified of it by the lower court. Neither of them, however, despite the notice, filed any opposition thereto. As a result, the lower court granted the above motion on July 19, 1960, and ordered the sale of the mortgaged property.

On August 25, 1960, the 3 parcels of land above-mentioned were sold by the Sheriff at a public auction whereat herein petitioners, together with the plaintiffs of the other two cases, won as the highest bidders. The said sheriff's sale was later confirmed by the lower court on August 30, 1960. In this connection, it should also be made of record that before confirming the sale, the lower court gave due notice of the motion for the confirmation to the herein petitioner who filed no opposition therefor.

On August 31, 1960, Anastacio Duño filed a motion to set aside all the proceedings on the ground that the compromise agreement dated January 15, 1960 was void ab initio with respect to him because he did not sign the same. Consequently, he argued, all subsequent proceedings under and by virtue of the compromise agreement, including foreclosure sale of August 25, 1960, were void and null as regards him. This motion to set aside, however, was denied by the lower court in its order of December 14, 1960.

Upon denial of the said motion to set aside, Anastacio Duño filed a Notice of Appeal from the order of August 31, 1960 approving the foreclosure sale of August 25, 1960, as well as the order of December 14, 1960, denying his motion to set aside. The approval of the record on appeal, however, was opposed by the herein respondent spouses, who claimed that the judgment was not appealable having been rendered by virtue of the compromise agreement. The opposition was contained in a motion to dismiss the appeal. Anastacio Duño filed a reply to the above motion. Soon thereafter, the lower court dismissed the appeal.

Two issues were raised to this Court for review, to wit:

- (1) Was the compromise agreement of January 15, 1960, the Order of the same date approving the same, and, all the proceedings subsequent thereto, valid or void insofar as the petitioner herein is concerned?
- (2) Did the lower court abuse its discretion when it dismissed the appeal of the herein petitioner?

Petitioner Anastacio Duño insists that the Compromise Agreement was void ab initio and could have no effect whatsoever against him because he did not sign the same. Furthermore, as it was void, all the proceedings subsequent to its execution, including the Order approving it were similarly void and could not result to anything adverse to his interest.

The argument was not well taken. It is true that a compromise is, in itself, a contract. It is as such that the Civil Code speaks of it.

"ART. 2028. A compromise is a contract whereby the parties by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

Moreover, under Art. 1878 of the Civil Code, a third person cannot bind another to a compromise agreement unless he, the third person, has obtained a special power of attorney for that purpose from the party intended to be bound.

"ART. 1878. Special powers of attorney are necessary in the following cases:

* * * * *

(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objection to the venue of an action or to abandon a prescription already acquired;"

However, although the Civil Code expressly requires a special power of attorney in order that one may compromise an interest of another, it is neither accurate nor correct to conclude that its absence renders the compromise agreement void. In such a case, the compromise is contract. It must be governed by the rules and the law merely unenforceable. This results from its nature as a on contracts.

"ART. 1403. The following contracts are unenforceable unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers."

Logically, then, the next inquiry in this case should be whether the herein petitioner, Anastacio Duño, had or had not ratified the compromise agreement. If he had, then the compromise agreement was legally enforced against him; otherwise, he should be sustained in his contention that it never bound him, nor ever could it be made to bind him.

The ratification of the compromise agreement was conclusively established by the tri-party agreement of May 3, 1960. It is to be noted that the compromise agreement was submitted to and approved by the lower court on January 15, 1960. Now, the Tri-Party Agreement referred itself to that order when it stipulated thus:

"WHEREAS, the PAYOR, hereby submits and binds herself to the force and effect of the Order dated January 15, 1960, of the Court of First Instance, of Pasig, Rizal, Branch IV, which order is hereby made an integral part of this agreement as Annex "A".

Having so consented to making that court order approving the compromise agreement an integral part of the Tri-Party Agreement, how can the petitioner herein now repudiate the compromise agreement and claim he has not authorized it?

When it appears that the client, on becoming aware of the compromise and the judgment thereon, fails to repudiate promptly the action of his attorney, he will not afterwards be heard to contest its validity (Rivero vs. Rivero, 59 Phil. 15).

Besides, this Court has not overlooked the fact that while indeed Anastacio Duño was not a signatory to the compromise agreement, the principal provision of the said instrument was for his benefit. Originally, Anastacio Duño's obligation matured and became demandable on October 10, 1959. However, the compromise agreement extended the date of maturity to June 30, 1960. More than anything, therefore, the compromise agreement operated to benefit the herein petitioner because it afforded him more time and opportunity to fulfill his monetary obligations under the contract. If only for this reason, this Court believes that the herein petitioner should not be heard to repudiate the said agreement.

Lastly, the compromise agreement stated "that, should the defendants fail to pay the said mortgage indebtedness, judgment of foreclosure shall thereafter be entered against the said defendants;" Beyond doubt, this was ratified by the Tri-Party Agreement when it covenanted that—

"If the PAYOR defaults or fails to pay anyone of the installments in the manner stated above, the PAYOR and the DEBTOR hereby permit the CREDITOR to execute the order of sale referred to above (the Judgment of Foreclosure), and they (PAYOR and DEBTOR) hereby waive any and all objections or oppositions to the propriety of the public auction sale and to the confirmation of the sale to be made by the Court."

Petitioner Duñgo finally argued that even assuming that the compromise agreement was valid, it nevertheless could not be enforced against him because it has been novated by the Tri-Party Agreement which brought in a third party, namely, Emma R. Santos, who assumed the mortgaged obligation of the herein petitioner.

This Court cannot accept the argument. Novation by presumption has never been favored. To be sustained, it need be established that the old and new contracts are incompatible in all points, or that the will to novate appears by express agreement of the parties or in acts of similar import. (*Martinez vs. Cavives*, 25 Phil. 581; *Tiu Sinco vs. Havana*, 45 Phil. 707; *Asia Banking Corporation vs. Lacson Co.*, 48 Phil., 482; *Pascual vs. Lacsamana*, 100 Phil., 381; 53 Off. Gaz. 2467).

An obligation to pay a sum of money is not novated in a new instrument wherein the old is ratified, by changing only the term of payment and adding other obligations not incompatible with the old one (*Inchausti vs. Yulo*, 34 Phil. 978; *Pablo vs. Sapuiigan* 71 Phil. 145) or wherein the old contract is merely supplemented by the new one (*Ramos vs. Gibbon*, 67 Phil., 371).

Herein petitioner claims that when a third party, Emma R. Santos, came in and assumed the mortgaged obligation novation resulted thereby inasmuch as a new debtor was substituted in place of the original one. In this kind of novation, however, it is not enough that the juridical relation of the parties to the original contract is extended to a third person; it is necessary that the old debtor be released from the obligation, and the third person or new debtor takes his place in the new relation. Without such release, there is no novation; the third person who has assumed the obligation of the debtor merely becomes a co-debtor or surety. If there is no agreement as to solidarity, the first and the new debtors are considered obligated jointly. (*IV Tolentino*, Civil Code, p. 360, citing *Manresa*). There was no such release of the original debtor in the Tri-Party Agreement.

It is a very common thing in business affairs for a stranger to a contract to assume its obligations; and, while this may have the effect of adding to the number of persons liable, it does not necessarily imply the extinguishment of the liability of the first debtor (*Rios vs. Jacinto*, etc. 49 Phil. 7; *Garcia vs. Khu Yek Chiong*, 65 Phil. 466). The mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility, does not constitute a novation, and the creditor can still enforce the obligation against the original debtor (*Straight vs. Haskell*, 49 Phil. 614; *Pacific Commercial Co. vs. Sotto*, 34 Phil. 237; *Estate of Mota vs. Serra*, 47 Phil. 464).

In view of the foregoing, We hold that the Tri-Party Agreement was an instrument intended to render effective the compromise agreement. It merely complimented and ratified the same. That a third person was involved in it is inconsequential. Nowhere in the new agreement may the release of the herein petitioner be even inferred.

Having held that the compromise agreement was valid and enforceable against the herein petitioner, it follows that the lower court committed no abuse of discretion when it dismissed the appeal of the herein petitioner.

WHEREFORE, the petition for certiorari and mandamus filed by the herein petitioner is hereby dismissed. The order of the lower court dismissing the appeal is hereby affirmed, with costs.

Labrador, Concepcion, Reyes, J. B. L., Barrera, and Makalintal, JJ., concur.

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