

BENEDICTO V. YUJUICO[], PETITIONER, V. FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), SUBSTITUTED BY PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.[], RESPONDENT.

G.R. No. 186196. August 15, 2018

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CAGUIOA, J:

This is a Petition for Review on Certiorari[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated January 23, 2009 in CA-G.R. CV No. 87836. The CA Decision partially granted the appeal and affirmed with modification the Decision[4] dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City (RTC) in Civil Case No. 97-2522.

Facts and Antecedent Proceedings

The CA Decision narrates the following antecedent facts of the case:

On May 14, 1993, appellant then Far East Bank and Trust Company (appellant bank, for brevity) approved the renewal of appellee GTI Sportswear Corporation's Omnibus Credit Line (OCL) with a total amount of P35,000,000.00. The credit line was available in the form of letters of credit, trust receipts, margin loan, export packing credit line, bills purchase line and export bills purchase line. This was secured by a Comprehensive Surety Agreement executed by appellee Benedicto V. Yujuico in his personal capacity. He was also the president of appellee GTI.

Sometime in May 1995, negotiations were undertaken to settle appellee GTI's trust receipt obligation under the OCL. During these negotiations, appellee GTI made known to appellant bank its request for the conversion of its peso loan to US dollar-denominated loan. An exchange of communications concerning the conversion transpired but no definite agreement on the said conversion was put into writing.

On June 26, 1995, appellee Yujuico, in behalf of appellee GTI and in his personal capacity as surety, and appellant's First Vice President Ricardo G. Lazatin, in behalf of appellant bank, signed a Loan Restructuring Agreement (LRA), the subject of which was appellee GTI's outstanding balance on its Omnibus Credit Line in the amount of P25,208,874.84[5] as of May 31, 1995. The agreement expressly stated that the restructured loan continues to be secured by the Comprehensive Surety Agreement previously executed by appellee Yujuico in favor of appellant bank.

After the signing of the restructuring agreement, appellee GTI, reiterated its request for the re-denomination of its loan obligation to US dollars. Appellant bank, however, denied the request and informed appellees that the conversion was not deemed workable in view of the following considerations: appellant bank requires long-term FCDU loans to be fully collateralized and appellee GTI, as borrower, must have adequate FCDU placements with appellant bank as well as maintain substantial deposit ADB levels.

In a letter dated September 22, 1997, appellant bank demanded that appellee GTI update all its unpaid amortizations on the outstanding restructured loan with a principal balance of P11,376,666.25 not later than

September 30, 1997 and to settle all its other past due obligations to avert any legal action.

On October 29, 1997, appellees filed against appellant bank a Complaint for Specific Performance with Preliminary Injunction with the Regional Trial Court of Makati City. Appellees alleged that during the signing of the loan restructuring agreement, they were assured by the officers of appellant bank, namely: Paul Regondola and Jacqueline Fernandez, that after a few payments on its obligation, appellee GTI's peso loan would be converted to US dollars. Also, sometime in October 1996, Paul Regondola confirmed by phone that the conversion of appellee GTI's loan from peso to US Dollars had been approved by appellant bank. This prompted appellee GTI's financial consultant Bermundo to send appellant bank a letter dated October 31, 1996 acknowledging appellant bank's alleged confirmation of the approval of the conversion of the restructured loan. This letter was not denied by appellant bank until December 18, 1996 when it informed appellees that the conversion of the restructured loan to US dollars was not deemed workable because of certain considerations. These considerations, however, were not conveyed to appellees beforehand.

Appellees averred further that under the US dollar-denominated loan, appellee GTI would be paying lower interest and would save the total amount of P2,844,228.00.

Hence, appellees prayed that appellant bank be directed to convert GTI's loan to US dollars retroactively effective October 1, 1996 and that appellant bank be directed to pay appellees P2,844,228.00 representing savings that could have accrued in favor of appellees in terms of the difference in interest payments. They also prayed for exemplary damages and attorney's fees.

In an Answer dated December 4, 1997, appellant bank denied that it made assurances to appellees that it would approve the latter's request for conversion of the peso loan to US dollar. Appellant bank informed appellees that the request for conversion would be considered depending on appellee's performance on the restructuring agreement and their compliance with the requisites set by appellant bank. Sometime in October 1996, Regondola informed appellee GTI's financial consultant, Pablito Bermundo, that the request was approved in principle, subject to some conditions which appellant bank imposes before approving similar requests for conversion. Appellee GTI, however, was not able to comply with the requirements resulting in the denial of their request for conversion. Hence, appellant bank prayed that the complaint be dismissed.

By way of counterclaim, appellant bank prayed that appellees be ordered to jointly and severally pay their obligations under the loan restructuring agreement amounting to P15,798,642.39 as well as appellees' other obligations under the Export Packing Credit Facility in the amount of P2,333,531.11 and Trust Receipt Agreements in the amount of P1,922,646.60.

In a Decision dated October 6, 2004, the court a quo ruled that appellant bank indeed agreed to convert to US dollar appellee GTI's peso loan obligation. The conversion also resulted in the novation of appellee GTI's loan obligation. As a result, appellee Yujuico was accordingly released from his obligations as surety pursuant to Article 1215 of the New Civil Code in conjunction with paragraph 1 of Article 1291 of the same Code. In addition, the court a quo dismissed without prejudice appellant bank's counterclaims for failure to pay the required filing fees. x x x

x x x x

[The dispositive portion of the RTC Decision dated October 6, 2004 states:

PREMISES CONSIDERED, judgment is rendered in favor of the plaintiffs and against the defendant Bank of the Philippine Island (sic), directing the latter to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of plaintiff GTI from Philippine Peso loan account into a US Dollar denominated loan obligation; and finding the original Omnibus Credit Line entered into by plaintiff GTI with defendant BPI to have been novated, the Comprehensive Surety Agreement executed by plaintiff Yujuico covering said loan is deemed extinguished and the latter is released from his obligation as surety.

The compulsory counterclaims of the defendant which are actually permissive counterclaims are not admitted and are therefore DISMISSED without prejudice for failure of the defendant to pay the required filing fees.

SO ORDERED.[6]]

Appellant bank then filed a Motion for Reconsideration. x x x

[In the Motion for Reconsideration[7] dated November 2, 2004, appellant bank manifested that:

x x x Anent the first ground, defendant hereby manifests its acceptance of and willingness to abide by the decision of the [RTC]. As mandated by the [RTC], defendant BPI acknowledges and confirms its obligation to convert the restructured Omnibus Line of plaintiff GTI Sportswear from a peso account into a US Dollar denominated loan obligation. In support thereof, defendant attaches herewith and makes an integral part hereof as Annex "A" the Statement of Account[8] of the plaintiffs under the restructured Omnibus Line as of October 31, 2004. The Statement of Account reflects defendant's computation of the outstanding obligation of the plaintiffs on the basis of a peso-dollar rate of exchange at [\$1] = P26.30, then the prevailing rate[.]

x x x With the submission of the foregoing computation, plaintiffs should now be directed to pay defendant under the restructured Omnibus Line the amount of US\$1,132,795.31 plus the stipulated interests and penalty charges thereon from October 31, 20[0]4 until the same is fully paid in US dollar currency[.] [9]

The appellant bank raised as second ground, the correctness of the release of Yujuico from his obligation as a surety of the loan obtained by appellee GTI and took the position that there was no novation.[10] As third ground, appellant bank argued that its permissive counterclaim against plaintiffs should not have been dismissed for failure to pay the required docket fees.[11]]

The motion for reconsideration was denied in an Order dated March 4, 2005.

Aggrieved, appellant bank filed [an] appeal [before the CA].[12]

In a Decision[13] dated January 23, 2009, the CA partially granted the appeal. The CA no longer delved on the issue of whether or not the parties perfected a contract on the conversion of the restructured loan to US dollars in view of appellant bank's acknowledgment and confirmation of its obligation to convert the restructured loan to US dollars in its Motion for Reconsideration dated November 2, 2004.[14] The lone issue left for determination as far as the CA was concerned was whether or not the conversion of the peso-denominated loan is tantamount to novation warranting the extinguishment of appellee Yujuico's obligations as a surety.[15] On the said issue, the CA ruled that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI Sportswear Corporation (GTI) and appellant bank were not novated and appellee Yujuico remained to be liable as a surety under the Comprehensive Surety Agreement.[16]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant appeal is hereby PARTIALLY GRANTED. Accordingly, the Decision dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City is AFFIRMED WITH MODIFICATION in that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI and appellant were not novated and appellee Yujuico remains to be liable as surety under the Comprehensive Surety Agreement.

SO ORDERED.[17]

Hence, the present Rule 45 Petition dated March 12, 2009 filed by petitioner Benedicto V. Yujuico (Yujuico). GTI, petitioner Yujuico's co-plaintiff before the RTC and co-appellee before the CA, did not join as co-petitioner in the Petition. Respondent Far East Bank and Trust Company (now Bank of the Philippine Islands), substituted

by Philippine Asset Investment (SPV-AMC), Inc. (PAI) filed a Comment[18] dated December 7, 2009. Petitioner Yujuico filed a Reply[19] dated May 20, 2010. Pursuant to the Court's Resolution[20] dated January 15, 2014, which granted the Motion for Substitution[21] filed by Philippine Investment One (SPV-AMC), Inc. (PIO) as the assignee of all the rights, title and interest over the Non-Performing Loan of GTI of the assignor PAI by virtue of the Deed of Assignment[22] dated May 11, 2007 executed by PAI and PIO[23], PIO (respondent) was allowed to substitute for PAI as new party respondent in this case.

Issues

Petitioner Yujuico raises the following issues in the Petition:

- whether the CA has legal basis to resolve and declare that there was no novation between GTI and respondent;
- whether the CA has legal basis to resolve and declare that petitioner Yujuico remains liable as surety of the obligation of GTI; and
- whether the CA has legal basis to entertain the appeal as respondent had already performed a partial execution of the Decision of the RTC which prevents and/or precludes respondent from questioning and/or appealing the judgment/Decision of the RTC.[24]

The Court's Ruling

Petitioner Yujuico fails to convince the Court that the CA erred. His Petition is not meritorious.

The third issue will be resolved first because it directly impacts on the other two issues.

Petitioner Yujuico takes the position that pursuant to the leading case of *Verches v. Rios*[25] (*Verches*), "in x x x converting the restructured Omnibus Credit Line/loan of GTI Sportswear Corporation from Philippine Peso to United States Dollar denominated [respondent] has clearly and definitely partially executed the judgment/decision of the Trial Court and/or has voluntarily acquiesced or ratified partially the execution of the judgment/decision of the Trial Court." [26]

Petitioner Yujuico entirely misses the import of the Court's ruling in *Verches*, which is extensively reproduced below:

There is no dispute about any material fact. Plaintiffs complaint is founded upon an indivisible cause of action to recover the sum of P2,400 arising out of a fraudulent breach of a contract, upon which the lower court rendered judgment in favor of the plaintiff for the sum of P1,000, from which the plaintiff appealed assigning the following errors:

"The lower court erred in sentencing the defendant to pay the plaintiff only the sum of P1,000 instead of sentencing her to the payment of the sum of P2,400 with legal interest thereon."

After his appeal was taken and perfected, the plaintiff filed a motion in this court for leave to have an execution issued out of the court below on the judgment in his favor against the defendant for P1,000. That motion was granted by the vacation Justice x x x and this order of the vacation Justice was approved by the court in banc x x x. Based upon the order of the vacation Justice x x x, the plaintiff applied to the lower court and obtained leave to issue an execution on his judgment for P1,000, and that execution was issued out of the lower court, and eventually the defendant was forced to, and did, pay the P1,000 to plaintiff, who signed the receipt x x x.

The proof is conclusive that, through an execution issued on his motion, the plaintiff has obtained satisfaction in full of his judgment for P1,000. xxx

Although the amount involved is small, the question presented is one of first impression in this court, and is important to the legal profession.

The case of *Paine vs. Woolley* (80 Ky., 568), is a leading, well written case on the question presented, the syllabus of which is as follows:

"1. A party who has recovered a judgment upon a claim which is indivisible, and has, after its rendition, coerced by execution full satisfaction, cannot maintain an appeal in this court, against the objections of the judgment debtor, upon the ground that he has not recovered enough.

"2. This rule applies to judgments in equity as well as at law.

"3. Having elected to collect his judgment, appellant ratified it, and should be estopped from prosecuting the appeal as inconsistent with his collection of the amount adjudged to him."

And on page 573, the opinion says:

"We may, therefore, conclude with perfect confidence that the general principle is that a party who has recovered judgment on a claim which cannot be split up and made the basis of several causes of action, and afterwards coerced full satisfaction by writ of execution or authority of the court, cannot maintain an appeal from the judgment against the objections of the judgment debtor.

"Counsel for appellants have cited a number of authorities which, it is contended, establish a different rule; but after a patient and thorough examination of each case, we are unable to find that any of them go further than to hold that neither a voluntary payment by the defendant of the judgment, nor a partial satisfaction thereof under coercion, will constitute a waiver of the appeal or a release of errors. But the weight of authority is to the effect that an acceptance of full satisfaction of the judgment annihilates the right to further prosecute the appeal, while there are cases holding the contrary view."

The following authorities are also square in point:

"One who complains of a judgment must be consistent in his conduct with reference to it. If he recognizes its validity, he will not be heard to say that it is erroneous." (*Babbit vs. Corby*, 13 Kan., 612; *Merchant's Nat. Bank vs. Quinton*, 9 Kan. App., 882; 57 Pac, 261.)

"A party who is dissatisfied with a decree in his favor has the option to have it reviewed by proper proceedings, or to enforce it and receive its benefits; but he cannot pursue both courses, since one is inconsistent with the other." (*Harte vs. Castetter*, 38 Neb., 571; 57 N. W., 381.)

"If one desires to appeal from an order made in a litigation in which he is a party, he should accept no benefit under it, for he cannot do both." (*Cogswell vs. Colley*, 22 Wis., 381.)

"The right to accept the fruits of a judgment, and the right of appeal therefrom are not concurrent. On the contrary, they are totally inconsistent. An election to take one of these courses is, therefore, a renunciation of the other." (*Estate of Shaver*, 131 Cal., 219.)

"When an appellee has paid, and the appellant has accepted payment of a judgment from which an appeal has been taken, there is nothing more in controversy, and the court will not entertain or permit the prosecution of the appeal." (*State ex rel. Neal vs. Kamp*, 111 Ind., 56.)

"The right to proceed upon a judgment or decree, and invoke the process of the court, and thus acquire or otherwise secure and enjoy the fruits of such judgment or decree, is wholly inconsistent with the right to appeal from it." (*Merriam vs. Victory Mining Co.*, 37 Or., 321.)

"It is manifestly unjust to permit a partly successful litigant to take all the money the decree gives him, and then speculate upon the possibilities of getting more by means of a writ of error." (*Holt vs. Rees*, 46 Ill., 181.)

"The receipt of money due upon a decree, and the allowance of its satisfaction in consequence of the payment in full before an appeal, is a waiver of all errors, unless the money thus received is returned or tendered to the appellee before the proceeding to assign errors in the appellate court." (Murphy's Heirs vs. Murphy's Adm'r., 45 Ala., 123.)

The rule is also sustained by the supreme court of Louisiana, where it is held:

"An appellant from a judgment in his favor for a less amount than he claimed, who, after taking his appeal, causes a fi.fa.[27] to be issued upon the judgment, will be considered voluntarily to have executed such judgment, and to have abandoned his appeal." (Campbell vs. Orillion, 3 La. Ann., 115.)

"A party in whose favor a judgment appealed from was rendered, who partially executes the same by compulsory legal process, must be considered as having acquiesced in such judgment, and cannot afterwards, by appeal or answer to his adversary's appeal, or otherwise, ask that the judgment be amended." (Wiemann's Succession, 112 La., 293; 36 So., 354.)

"It cannot be controverted, declared the court in De Egana's Succession, supra, that under the laws and jurisprudence of this state, the party who voluntarily executes, either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies, either partially or in toto, the execution of that judgment, is not permitted to appeal from it." De Egana's Succession, 18 La. Ann., 59.)

"To receive the amount of a judgment, in whole or in part, is, in its natural significance, as well as under the Louisiana jurisprudence, an acquiescence in the judgment. And to receive a part of a judgment is as significant of an acquiescence of the judgment as would be the reception of the whole." (Flowers vs. Hughes, 46 La. Ann., 436; 15 So., 14.)

Owing to the similarity of the jurisprudence of that State with the law of the Philippine Islands, the Louisiana decisions are important and should have great weight in this court.

Plaintiff's cause of action is indivisible.

The plaintiff, having applied to this court for leave to issue an execution out of the lower court on his judgment for P1,000, and, through coercion, having collected that judgment and receipted for it in full, ought not to be heard in this Court to say that the judgment of the lower court was erroneous. It may be, as plaintiff claims, that in the collection of a judgment for P1,000 on an execution, it never was his purpose or intent to waive or abandon his appeal from that judgment.

His cause of action being indivisible, and the judgment from which plaintiffs appeal was taken having been satisfied by an execution issued on his own motion, there is nothing left from which to appeal. Upon an indivisible cause of action, plaintiff, through an execution, cannot collect a judgment in his favor and at the same time prosecute an appeal from that judgment upon the ground that it was erroneous and should have been for more money.[28]

To distill the foregoing, the party, who is barred from appealing and claiming that he has not recovered enough, must have recovered a judgment upon a claim which is indivisible and, after its rendition, has coerced by execution full or partial satisfaction. Thus, having elected to collect from the judgment by execution, he has ratified it, either in toto or partially, and should be estopped from prosecuting an appeal inconsistent with his collection of the amount adjudged to him.

In fine, the claim must be one which is indivisible and there must be an execution of the judgment, either partially or fully. Indeed, the claim of respondent against GTI and petitioner Yujuico is indivisible since it cannot be split up and made the basis for several causes of action. However, there is yet no execution of the RTC Decision, either fully or partially. Respondent merely acceded to the directive of the RTC "to acknowledge and confirm its

obligation to convert the restructured Omnibus Credit Line of x x x GTI from Philippine Peso loan account into a US Dollar denominated loan obligation." [29] In fact, the RTC, while it recognized that GTI is indebted to respondent, ruled that "[t]he liquidation of this obligation is however subject to a condition that the bank [(respondent)] must first comply with its obligation to convert the Peso loan account into a US Dollar denominated loan and thereafter [compute] the outstanding obligation of [GTI and petitioner Yujuico] to it." [30] Even in the Motion for Reconsideration [31] dated November 2, 2004 filed by respondent wherein it manifested its acceptance of and willingness to abide by the RTC directive, respondent alleged that "[w]ith the submission of the x x x computation [of the outstanding obligation of GTI and petitioner Yujuico pursuant to the Statement of Account it attached as Annex 'A' thereof, they] should now be directed to pay [respondent] under the restructured Omnibus Line the amount of US\$1,132,795.31 plus the stipulated interests and penalty charges thereon from October 31, 20[0]4 until the same is fully paid in US dollar currency." [32] Thus, GTI or petitioner Yujuico has not been coerced by execution to satisfy the RTC judgment; and respondent is not precluded to appeal the resolution of the RTC that there is novation and petitioner Yujuico is released from his obligation as a surety. Additionally, respondent questioned the release of petitioner Yujuico as surety and the ruling on the presence of novation in the said Motion for Reconsideration.

Tañada v. Court of Appeals [33] cited by petitioner Yujuico is not persuasive. In that case, the assailed order of the lower court dated April 8, 1941, which was subsequently opposed by Narcisa Mendoza (Mendoza), the defendant therein, "had become final and executory, [and] it could no longer be disturbed, not even by the very court which rendered it" because "Mendoza did not question the reasonableness of said order before the court, much less did she interpose an appeal therefrom." [34] The actuations of Mendoza after the issuance of the said order — surrender to the Register of Deeds the certificates of title covering the lands involved for annotation of therein petitioners' lien; delivery to the petitioners their one-half share of the yearly produce from 1941 to 1958 — were tantamount to virtual acquiescence to the assailed order and she could not subsequently be allowed to repudiate her representations or assume an inconsistent posture. [35] It is within this context that the principle being raised by petitioner Yujuico was invoked by the Court.

Regarding the first issue, novation is governed principally by Articles 1291 and 1292 of the Civil Code, which provide:

ART. 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor.

ART. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of novation as follows:

x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one. [36] Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old. [37] xxx This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation. Thus, article 1291 provides that obligations may be modified. [38]

As to its essence, novation may be classified into: (a) objective or real, (b) subjective or personal, or (c) mixed.[39] Article 1291(1) contemplates an objective or real novation where there is a change in the cause, object or principal conditions of the obligations while (2) and (3) of said Article contemplate a passive one where there is a substitution of the person of the debtor and an active one where there is subrogation of a third person in the rights of the creditor.[40] Mixed novation, on the other hand, refers to a combination of objective and subjective novation.[41]

As to its form or constitution, novation may be express, when it is declared in unequivocal terms that the old obligation is extinguished by a new one which substitutes the same, or implied or tacit, when the old and the new obligations are incompatible with each other on every point.[42]

As to extent or effect, novation may be total or extinctive[43], when there is an absolute extinguishment of the old obligation, or partial, when there is merely a modification of the old obligation.[44]

The Court agrees with the finding of the CA that "[t]he attendant facts do not make out a case of novation"[45] in the sense of a total or extinctive novation. As explained by the CA:

A perusal of the records reveals that there is no document that states in unequivocal terms that the agreement to convert the loan from peso to US dollar would abrogate the loan restructuring agreement or the omnibus credit line. Instead what is readily apparent from the exchange of communications concerning the request for conversion is that the parties recognize the subsistence of the loan restructuring agreement. In fact, in the letter dated September 5, 1995 sent by x x x GTI to [respondent] reiterating the former's request to re-dominate its loan obligation from peso to US dollar, x x x GTI even assured [respondent] that the other terms of the restructuring agreement would be complied with. Verily, where the parties to the new obligation expressly recognize the continuing existence and validity of the old one, there can be no novation.[46]

Neither do we see any substantial incompatibility between the obligations of the parties under the restructuring agreement and the agreement to convert the loan as to warrant a finding of an implied novation. Implied novation necessitates that the incompatibility between the old and new obligations be total on every point such that the old obligation is completely superseded by the new one.[47] This is not the case here. The only modification that the conversion agreement introduced was that [GTI's and petitioner Yujuico's] loan obligation would be payable in US dollars instead of Philippine pesos. Incidentally, the applicable interest rate is lower on account of the change in currency. These alterations, however, do not suffice to constitute novation. 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.[48] At most, the changes introduced by the conversion of the loan obligation amount merely to modificatory novation, which results from the alteration of the terms and conditions of an obligation without altering its essence.[49]

In the 1912 case of *Zapanta v. De Rotaeché*,^[50] the plaintiff therein commenced an action against Zapanta for the purpose of recovering the sum of 7,179.48 pesos Mexican currency; the trial court rendered a judgment in favor of the plaintiff therein and against Zapanta for the said sum of 7,179.48 pesos Mexican currency, which equaled the sum of P6,353.52. Subsequent to the judgment, the plaintiff therein and Zapanta entered into an agreement or contract whereby Zapanta acknowledged his indebtedness in the sum of P6,353.52 as declared in the judgment and as Zapanta was unable to pay said amount in a lump sum, he promised to pay at the end of each month to the plaintiff therein P150 per month; the sum owed was to bear interest at 3% per annum; and in case of nonfulfillment of Zapanta's promise, said plaintiff would be at liberty to enter suit against him. When Zapanta failed to punctually comply with the provisions of the agreement, the plaintiff therein sued for the issuance of a writ of execution of the judgment.^[51] In resolving the issue of whether the plaintiff therein had lost his right to the writ of the execution under the said judgment and the remedy was for the said plaintiff to commence an action

against Zapanta upon said agreement, the Court ruled as follows:

x x x The Civil Code[52], in article 1156[53], provides the method by which all civil obligations may be extinguished. One of the methods recognized by said code for the extinguishment of obligations is that by novation. (Civil Code, arts. 1156, 1203 to 1213[54].) In order, however, that an obligation shall be extinguished by another obligation (by novation) which substitutes it, the law requires that the novation or extinguishment shall be expressly declared or that the old and new obligations shall be absolutely incompatible. (Civil Code, art. 1204.) In the present case, the contract referred to does not expressly extinguish the obligations existing in said judgment. Upon the contrary it expressly recognizes the obligations existing between the parties in said judgment and expressly provides a method by which the same shall be extinguished, which method is, as is expressly indicated in said contract, by monthly payments. The contract, instead of containing provisions "absolutely incompatible" with the obligations of the judgment, expressly ratifies such obligations and contains provisions for satisfying them. The said agreement simply gave the plaintiff a method and more time for the satisfaction of [the] judgment. It did not extinguish the obligations contained in the judgment, until the terms of said contract had been fully complied with. Had the plaintiff continued to comply with the conditions of said contract, he might have successfully invoked its provisions against the issuance of an execution upon the said judgment. The contract and the punctual compliance with its terms only delayed the right of the defendant to an execution upon the judgment. The judgment was not satisfied and the obligations existing thereunder still subsisted until the terms of the agreement had been fully complied with. The plaintiff was bound to perform the conditions mentioned in said contract punctually and fully, in default of which the defendant was remitted to the original rights under his judgment.[55]

The Court observed in *Sandico, Sr. v. Piguig*[56] that:

Novation results in two stipulations — one to extinguish an existing obligation, the other to substitute a new one in its place.[57] Fundamental it is that novation effects a substitution or modification of an obligation by another or an extinguishment of one obligation by the creation of another. In the case at hand, we fail to see what new or modified obligation arose out of the payment by the respondent of the reduced amount of P4,000 and substituted the monetary liability for P6,000 of the said respondent under the appellate court's judgment. Additionally, to sustain novation necessitates that the same be so declared in unequivocal terms — clearly and unmistakably shown by the express agreement of the parties or by acts of equivalent import — or that there is complete and substantial incompatibility between the two obligations.[58]

From the foregoing, it can be gathered that, at best, the agreement to convert the Peso-denominated restructured loan into a US Dollar-denominated one is an implied or tacit, partial, modificatory novation. There was merely a change in the method of payment.

As to the second issue, without a total or extinctive novation, the surety agreement subsists.

Aside from the absence of a "perfect" novation, the CA said that "another circumstance that militates against the release of [petitioner] Yujuico as surety is the fact that he executed a comprehensive or continuing surety, one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked." [59] The CA added:

x x x The comprehensive characteristic of the surety is evident in the Comprehensive Surety Agreement by which [petitioner] Yujuico guaranteed in joint and several capacity, the punctual payment at maturity of any and all indebtedness of every kind which, at the time of execution was or may thereafter become due or owing [to respondent by the Borrower, GTI]. Indubitably, these provisions are broad enough to include the loan obligation under the loan restructuring agreement even after its conversion to US dollar. x x x [60]

The Court fully agrees with the CA. While Article 1215 of the Civil Code provides that novation, compensation or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish

the obligation, the novation contemplated therein is a total or extinctive novation of the old obligation. Also, the Comprehensive Surety Agreement that petitioner Yujuico executed in favor of respondent is so worded that it covers "any and all other indebtedness of every kind which is now or may hereafter become due or owing to [respondent] by the Borrower." [61]

WHEREFORE, the Petition is hereby DENIED. The Decision dated January 23, 2009 of the Court of Appeals in CA-G.R. CV No. 87836 is AFFIRMED.

SO ORDERED.

Perlas-Bernabe (Acting Chairperson), Jardeleza, [***] A. Reyes, Jr., and J. Reyes, Jr., JJ., concur.

[*] In the Motion for Extension of Time to File Petition for Review on Certiorari dated February 18, 2009 (rollo, pp. 3-7) the caption reflects GTI Sportswear Corporation and Benedicto V. Yujuico as the petitioners. However, in the Petition for Review on Certiorari dated March 12, 2009 (rollo, pp. 11-51) subsequently filed, only the name of Benedicto V. Yujuico appears as petitioner in the caption.

[**] Per Resolution of the Court dated January 15, 2014; rollo, p. 280.

[***] Designated additional Member per Raffle dated July 30, 2018.

[1] Rollo, pp. 11-51, excluding Annexes.

[2] Id. at 53-69. Penned by Associate Justice Ramon R. Garcia, with Associate Justices Edgardo P. Cruz and Magdangal M. De Leon concurring.

[3] Seventh Division.

[4] Rollo, pp. 75-85. Penned by Pairing Judge Cesar D. Santamaria.

[5] See rollo, p. 79.

[6] Rollo, p. 85.

[7] Id. at 87-96, including Annexes.

[8] The Statement of Account (Annex "A") states that principal of the restructured loan as of October 31, 2004 was P10,998,027.38 or US\$418,175.95 with interest from 10/01/96 to 10/31/04 at 8.8402% interest rate equivalent to interest amount of US\$303,134.24 and penalty at 12% penalty rate equivalent to US\$411,485.13. Thus, the total amount due was US\$1,132,795.31. Id. at 94.

[9] Rollo, p. 88.

[10] Id. at 89.

[11] Id. at 90.

[12] CA Decision dated January 23, 2009, id. at 55-61.

[13] Id. at 53-69.

[14] Id. at 62.

[15] Id.

[16] Id. at 68.

[17] Id.

[18] Id. at 214-225.

[19] Id. at 230-240, excluding Annexes.

[20] Id. at 280-281.

[21] Id. at 267-274, excluding Annexes.

[22] Id. at 278-279.

[23] Id. at 268.

[24] Petition, id. at 29.

[25] 48 Phil. 16 (1925).

[26] Petition, rollo, p. 43.

[27] A writ of fieri facias (or Writ of Fi Fa) is a document issued by the Clerk of Magistrate Court for the purpose of recording a lien on the judgment debtor's property. It is also the legal instrument by which the sheriff of a county may seize the assets of a judgment debtor. < <https://www.accgov.com/709/Writs-of-Fieri-Facias> >.

[28] Verches v. Rios, supra note 25, at 19-23.

[29] RTC Decision dated October 6, 2004, rollo, p. 85.

[30] Id. at 84.

[31] Rollo, pp. 87-96, including Annexes.

[32] Id. at 88.

[33] 223 Phil. 634 (1985).

[34] Id. at 639.

[35] Id.

[36] Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV (1983 Rev. 2[nd] Ed.), p. 410, citing 8 Manresa, p. 751.

[37] Id., citing Gov't v. Bautista (CA), 37 O.G. 1880; 3 Castan, 8[th] ed., p. 306.

[38] Id. at 410-411.

[39] Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS (1987 9th Rev. Ed.), p. 323, citing 3 Castan, 7[th] Ed., p. 284.

[40] Id.

[41] Id., citing 3 Castan, 7[th] Ed., p. 284.

[42] Id., citing CIVIL CODE, Art. 1292.

[43] Edgardo L. Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED, Vol. IV (2016 18[th] Ed.), p. 489.

[44] Id. at 490.

[45] CA Decision dated January 23, 2009, rollo, p. 63.

[46] Id. at 64, citing *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 708 (2003), further citing *Cochingyan, Jr. v. R&B Surety and Insurance Co., Inc.*, 235 Phil. 332, 345 (1987).

[47] Id., citing *Iloilo Traders Finance Inc. v. Heirs of Sps. Soriano*, 452 Phil. 82, 89 (2003).

[48] Id. at 64-65, citing *Sps. Reyes v. BPI Family Savings Bank, Inc.*, 520 Phil. 801, 808 (2006).

[49] Id. at 65, citing *Swagman Hotels and Travel, Inc. v. Court of Appeals*, 495 Phil. 161, 175 (2005).

[50] 21 Phil. 154 (1912).

[51] Id. at 156-158.

[52] OLD CIVIL CODE or the CIVIL CODE OF 1889.

[53] CIVIL CODE (Republic Act No. 386), Art. 1231.

[54] Id., Arts. 1291, 1292, 1293, 1295, 1296, 1298, 1300, 1302, 1303, and 1304.

[55] *Zapanta v. De Rotaeché*, *supra* note 50, at 159-160.

[56] 149 Phil. 422 (1971).

[57] Id. at 433, citing *Tin Siuco v. Habana*, 45 Phil 707 (1924).

[58] Id., citing CIVIL CODE, Art. 1292.

[59] CA Decision dated January 23, 2009, rollo, p. 65, citing *Fortune Motors (Phils.) Corporation v. Court of Appeals*, 335 Phil. 315, 326 (1997).

[60] Id.

[61] Id. at 66; emphasis omitted.

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