

GUALBERTO TENCHAVEZ, PLAINTIFF AND APPELLANT, VS. ATLAS CONSOLIDATED MINING & DEVELOPMENT CO., ET AL., DEFENDANTS, ATLAS CONSOLIDATED MINING & DEVELOPMENT CO., MINDANAO MOTHER L...

G.R. No. 26153. May 24, 1967

Ponente: DIZON, J.

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DIZON, J.:

On April 14, 1967, the parties in the above-entitled case filed a joint petition for judgment in accordance with the Compromise Agreement thereto attached, of the following tenor:

"WHEREAS, there is now pending before the Supreme Court a case docketed as G. R. No. L--26153 and the parties therein are: GUALBERTO TENCHAVEZ as plaintiff-appellant, and ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, MINDANAO MOTHER LODE MINES, INC., MANUEL LIM, JAMES E. NORTON, JOSE TIONG SEN BEN, MAR-CELO P. KARAAN, ESCOLASTICO CRUZ, S. Z. MISA, CARLOS GUIDOTTI, SEBASTIAN UGARTE, GERRY URBINA, JESUS URBINA, JR., PILAR URBINA, JOSE TRILLO, MERCEDES URBINA, PILAR G. URBINA, ALVARO PASTOR, JR., and EFRAIN C. PELAEZ as defendants-appellants;

"WHEREAS, the parties in the above-mentioned case have agreed, to settle the disputes and claims being litigated in the case under the following terms and conditions, to wit:

1. In consideration of the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, receipt of which is hereby acknowledged by Gualberto Tenchavez (hereinafter referred to as 'TENCHAVEZ'), as full and complete payment, settlement and discharge of any and all claims and causes of action of TENCHAVEZ involved or being litigated in G.R. No. L-26153 and of any and all claims and causes of action of whatsoever kind and nature that TENCHAVEZ had, now has or could or might have against Atlas Consolidated Mining & Development Corporation (hereinafter referred to as 'ATLAS'), Mindanao Mother Lode Mines, Inc., Manuel Lim, James E. Norton, Jose Tiong Sen Ben, Marcelo P. Karaan, Jesus Urbina, Jr., Pilar G. Urbina, Alvaro Pastor, Jr., Escolastico Cruz, S. Z. Misa, Carlos Guidotti, Sebastian Ugarte, Gerry Urbina, Pilar Urbina, Jose Trillo, Mercedes Urbina and Efrain C. Pelaez, TENCHAVEZ hereby relinquishes and waives any and all rights arising out of the award in Civil Case No. R-4848 of the Court of First Instance of Cebu entitled 'Gualberto Tenchavez vs. Atlas Consolidated Mining and Development Corporation, et al.'
2. TENCHAVEZ relinquishes and waives in favor of ATLAS any and all interests, claims and rights that TENCHAVEZ, if any, has or could or might have in the properties and assets of Toledo Mining Co., Inc., a defunct corporation, including but not limited to the mineral claims listed in Annex 'A' hereof and the parcels of land listed in Annex 'B' hereof, which are in the possession of and now belong or pertain exclusively to ATLAS.
3. The aforementioned case has caused TENCHAVEZ the alienation from him of the love and affection of the other members of his family and of his friends, because of certain accusations which TENCHAVEZ made against

them and he hopes that with the dismissal of the complaint and the appeal in said case, the whole incident will be forgotten.

4. TENCHAVEZ hereby acknowledges, confirms and ratifies the validity of (a) the dissolution of Toledo Mining Co., Inc. on June 30, 1953, and the distribution of its assets on December 11, 1953, among Manuel Lim, Jose Tiong Sen Ben, James E. Norton, Sebastian Ugarte, Carlos Guidotti, Marcelo P. Karaan, Jesus Urbina, Escolastico Cruz and S. Z. Misa; (b) the transfer and con-veyance of such assets to Mindanao Mother Lode Mines, Inc.; and (c) the subsequent transfer and conveyance of those assets to ATLAS.

5. TENCHAVEZ now acknowledges, admits and confirms that he did not and does not have any interest, claim or right of whatsoever kind and nature on any of the properties previously or presently possessed, owned and/or operated by ATLAS and on any of the income and profits received, to be received, and/or pertaining to ATLAS.

6. ATLAS, Mindanao Mother Lode Mines, Inc., Manuel Lim, James E. Norton, Jose Tiong Sen Ben, Marcelo P. Karaan, Escolastico Cruz, S. Z. Misa, Carlos Guidotti, Sebastian Ugarte, Gerry Urbina, Jesus Urbina, Jr., Pilar Urbina, Jose Trillo, Mercedes Urbina, Pilar G. Urbina, Efrain C. Pelaez and Alvaro Pastor, Jr. declare and confirm that all claims and causes of action which they have, could or might have against TENCHAVEZ have been and hereby are fully dis-charged, waived, cancelled and declared null and void.

7. It is expressly understood by the parties herein that this Compromise Agreement novates and supersedes the judgment rendered by the Court of First Instance of Cebu in Civil Case No. R-4848 of that court entitled 'Gual-berto Tenchavez vs. Atlas Consolidated Mining and Development Corporation, et al.'

8. The parties herein agree and undertake to file with the Supreme Court a joint petition for the approval of this Compromise Agreement.

9. The parties herein will bear their res-pective attorney's fees and costs of the pro-ceedings before the Court of First Instance and Supreme Court.

"IN WITNESS WHEREOF, the parties on their own behalf and by their duly authorized attor-neys have signed this Compromise Agreement on this 12th day of April 1967, at Makati, Rizal, Philippines.

(SGD.) GUALBERTO TENCHAVEZ

ATTYS. ERNESTO T. MORALES,

DOMINGO QUIBRANZA,

With My Marital Consent: ELIAS MENDOZA,

FILEMON B. BARRIA

and

ISABELO V. BINAMIRA

(SGD.) ELENA S. TENCHAVEZ By

(Wife of Gualberto Tenchavez) (SGD.) not legible

Counsel for Gualberto

Tenchavez

ATLAS CONSOLIDATED MINING

& DEVELOPMENT CORPORATION

By

not legible

PONCE ENRILE, SIGUION REYNA,

MONTECILLO & BELO

By:

Attorneys for Atlas Consolidated

Mining and Development Corporation

et al.

5th Floor, Soriano Building

Ayala, Avenue, Makati, Rizal

IN THE PRESENCE OF:

not legible

not legible

REPUBLIC OF THE PHILIPPINES)

PROVINCE OF RIZAL) ss.

MUNICIPALITY OF MAKATI)

BEFORE ME, the undersigned Notary Public in and for the Province of Rizal, Municipality of Makati, Rizal, on this day personally appeared Gualberto Tenchavez, exhibiting to me his Residence Certificate No. A-1520771, issued at Carcar, Cebu on January 25, 1967, Elena J. Tenchavez, exhibiting to me her Residence Certificate No. A-1520772, issued at Carcar, Cebu on January 25, 1967, and Jose M. Soriano, in his capacity as President of Atlas Consolidated Mining & Development Corporation, exhibiting to me his Residence Certificate No. A-4163819, issued at Makati, Rizal on February 16, 1967, and the Company's Residence Certificates Nos. C-703, issued at Manila on January 12, 1967 and CI-8184, issued at Quezon City on March 16, 1967, both of whom are known to me and to me known to be the persons whose names are subscribed to and who executed the foregoing instrument, and acknowledged to me that they executed the same as an act of their free will and deed, as well as that of his /their principal/s.

I further certify that this instrument refers to a Compromise Agreement consisting of ten (10) pages including this page and Annexes "A" and "B".

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal at Makati, Rizal, Philippines, on this 12th day of April, 1967.

(SGD.) OSCAR R. REYES

Notary Public

Until December 31, 1967

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Series of 1967."

On the same date, defendants-appellants Alvaro Pastor, Jr. and Efrain C. Pelaez, through counsel, filed a pleading entitled "MANIFESTATION OF CONFORMITY TO COMPROMISE AGREEMENT AND PETITION FOR JUDGMENT IN ACCORDANCE WITH SUCH AGREEMENT".

On the same date, Attys. Ernesto T. Morales, F. B. Barria and I. V. Binamira, counsel for the plaintiff, filed their own motion for the approval and recording of their lien for attorney's fees and litigation expenses, a copy of which was furnished to their client by registered mail.

Three days thereafter, Attys. Binamira and Barria sent the following telegram to this Court:

"HON SUPREME COURT

BAGUIO CITY

RESPECTFULLY WE OPPOSE APPROVAL COMPROMISE CASE 26153 GUALBERTO ENCHAVEZ VERSUS ATLAS EXECUTED WITHOUT OUR PREVIOUS KNOWLEDGE NOR CONFORMITY FRAUDULENT CONNIVANCE COLLUSION EVIDENT ATTY ERNESTO MORALES WITH HIS UNCLE GUALBERTO TENCHAVEZ DEFRAUD OUR FEES LITIGATION EXPENSES ADVANCED REITERATING OUR MOTION APRIL ELEVENTH FOR COUNSELS FEES LIEN FILING FORMAL OPPOSITION PLEADING AFTER CONFERRING WITH ATLAS ATTY MORALES MANILA NEXT TUESDAY APRIL EIGHT-EENTH THANKS.

ATTYS BINAMIRA AND BARRIA"

However, on April 19, 1967, Attys. Morales, Barria and Binamira filed "A MOTION TO WITHDRAW THE MOTION FILED BY UNDERSIGNED COUNSEL DATED APRIL 9, 1967 REGARDING ATTORNEY'S FEES" of the following tenor:

"COME now the movants, Attorneys Ernesto T. Morales, F. B. Barria and I. V. Binamira, counsel for the plaintiff-appellant in the above-entitled case, and to this Honorable Court respectfully manifest that:?"

1. Movants filed with this Honorable Court a 'Motion to Approve and Record Lien for Attorney's Fees & Litigation Expenses,' praying for the approval of the lien for attorney's fees and litigation expenses dated April 9, 1967.

2. Attorneys Binamira & Barria sent a cable to this Honorable Court on April 16, 1967 reading as follows:

"RESPECTFULLY WE OPPOSE APPROVAL COMPROMISE CASE 26153 GUALBERTO TENCHAVEZ VERSUS ATLAS EXECUTED WITHOUT OUR PREVIOUS KNOWLEDGE NOR CONFORMITY FRAUDULENT CONNIVANCE COLLUSION EVI-DENT ATTY ERNESTO MORALES WITH HIS UNCLE GUALBERTO TENCHAVEZ DEFRAUD OUR FEES LITIGATION EXPENSES ADVANCED REITERATING OUR MOTION APRIL ELEVENTH FOR COUNSELS FEES LIEN FILING FORMAL OPPOSITION PLEADING AFTER CONFERRING WITH ATLAS ATTY MORALES MANILA NEXT TUESDAY APRIL EIGHTEENTH THANKS'

3. After a conference among the client, Atty. Ernesto Morales and undersigned counsel who was movant in the motion referred to in paragraph 1 hereof, the whole question has now been settled, they have received the attorney's fees under the agreement and all undersigned lawyers are there-fore satisfied with the arrangements.

IN VIEW OF THE FOREGOING, it is respectfully prayed that this Honorable Court consider with-drawn and

of no effect whatsoever the 'Motion to Approve and Record Lien for Attorney's Fees & Litigation Expenses,' dated April 9, 1967 referred to in paragraph 1 hereof and the cabled opposition to the approval of the compromise referred to in paragraph 2 hereof filed with this Honorable Court.

It is furthermore prayed that this Honorable Court approve the compromise agreement presented by the parties dated April 12, 1967.

Cebu City, for Manila, Philippines, April 18, 1967.

ATTYS. ERNESTO T. MORALES,

FILEMON B. BARRIA AND I. V.

BINAMIRA

By

(SGD.) I. V. BINAMIRA

Counsel for the Plaintiff-Appellant

Life Hotel Building, Cebu City

COPY FURNISHED:

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Ayala Avenue, Makati, Rizal

ATTYS. PELAEZ, PELAEZ & PELAEZ

P. O. Box 248, Cebu City

MR. GUALBERTO TENCHAVEZ

Carcar, Cebu"

There being no further objection against the approval of the Compromise Agreement mentioned above and for the rendition of judgment in accordance therewith, the Court hereby approves the same and renders judgment in accordance therewith, ordering the parties thereto to comply with all the terms and stipulations contained therein.

As prayed for in the motion of Attys. Morales, Barria and Binamira dated April 18, 1967, their motion for the approval and recording of their attorney's lien and their opposition to the approval of the Compromise Agreement re-ferred to above are hereby considered withdrawn.

WITHOUT COSTS.

Concepcion, C.J., Reyes, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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