

COMMERCIAL CREDIT CORPORATION OF CAGAYAN DE ORO, PETITIONER, VS. THE COURT OF APPEALS AND THE CAGAYAN DE ORO COLISEUM, INC., RESPONDENTS.

G.R. No. 78315. January 02, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In this petition for review of a decision of the Court of Appeals in CA G.R. SP No. 10888[1] the issue is whether or not a compromise judgment which was found by the Court of Appeals to be lawful may be modified by the same court.

Sometime in 1978 private respondent Cagayan De Oro Coliseum, Inc. executed a promissory note in the amount of P329,852.54 in favor of petitioner Commercial Credit Corporation of Cagayan De Oro, payable in 36 monthly installments. The note is secured by a real estate mortgage duly executed by private respondent in favor of petitioner. As said respondent defaulted in the payment of the monthly installments due, petitioner proceeded with the extrajudicial foreclosure of the real estate mortgage in September, 1979.

Five minority stockholders of private respondent then instituted Special Civil Action No. 68111 in the then Court of First Instance (CFI) of Misamis Oriental questioning the power of the private respondent to execute the real estate mortgage without the consent of its stockholders. In due course a compromise agreement was entered into by the parties on the basis of which a compromise judgment was rendered by the trial court on March 11, 1980 which reads as follows:

“J U D G M E N T

The parties in the above-entitled case assisted by their respective counsel, submitted for the approval of the Court the following Compromise Agreement, to wit:

COMES NOW, Parties, Petitioners and Respondents, represented by their respective counsels, unto this Honorable Court, most respectfully submit for approval the following Compromise Agreement:

1. That, Petitioners herein hereby state that they ratified and approved the loan and real estate mortgage entered into and assigned by the Cagayan de Oro Coliseum, Inc. to the Commercial Credit Corporation of Cagayan de Oro and as such therefore, the issue raised by the herein petitioners in the above entitled case has become moot and academic;
2. That, by virtue of the aforementioned, the Cagayan de Oro Coliseum, Inc. thru its Board of Directors and represented by its President, Mr. Johnny Wilson, hereby admits its total outstanding obligation to herein Respondent Commercial Credit Corporation of Cagayan de Oro in the amount of TWO HUNDRED FORTY NINE THOUSAND TWO HUNDRED SIXTY THREE & 23/100 PESOS (P249,263.23), as of February 15, 1980, including therein the sum of P10,000.00 representing attorney's fees for Respondent Commercial Credit Corporation of Cagayan de Oro;

3. That the Cagayan de Oro Coliseum, Inc. has agreed to pay the above obligation plus interest on diminishing balance computed yearly at sixteen (16) per cent per annum, thus:

Total Account.. P249,263.23

Total Interest.. 76,138.60

Total Payable.. P325,401.83

4. That, the Cagayan de Oro Coliseum, Inc. hereby agrees to pay the foregoing obligation in paragraph (3) hereof in equal monthly installments of P11,000.00, the first installment shall be payable in February, 1980 and every month thereafter until the whole account payable as aforementioned is fully paid;

5. That, failure on the part of Respondent Cagayan de Oro Coliseum, Inc. to pay any of the installments as they shall become due, the whole amount then outstanding and unpaid shall immediately become due and payable in its entirety and shall render the judgment herein to be immediately final, unappealable and executory; and the overdue and unpaid installments shall earn a three (3%) per cent per month penalty charge until fully paid, plus five percent (5%) of the outstanding balance as additional attorney's fee;

6. That, Respondent Commercial Credit Corporation of Cagayan de Oro hereby agrees to withdraw its application with Respondent City Sheriff of Cagayan de Oro for the extra-judicial foreclosure of the real estate mortgage subject of this complaint;

7. That, the Parties herein waive in favor of each other any and all forms of damage arising out of, connected with and/or as a result of this action.

WHEREFORE, the Parties respectfully pray of this Honorable Court that judgment in accordance with the Compromise Agreement be rendered." (Pages 25-27, Rollo)

However as private respondent failed to comply with the terms of the judgment for failure to pay several installments in the amount of P70,152.65 which matured on July 13, 1982, petitioner filed an ex-parte motion for the issuance of a writ of execution on March 4, 1983. The court granted the said motion in an order dated March 10, 1983. A notice of auction sale was issued on March 11, 1983. Private respondent filed a motion for reconsideration of said order alleging that it had paid its obligation. The execution of the writ was suspended pending consideration of said motion. An opposition thereto was filed by petitioner to which a reply was filed by the private respondent and, in turn, the comment of the petitioner was also submitted. On November 26, 1986, the trial court denied said motion for reconsideration and, accordingly, a writ of execution was issued on December 4, 1986. The Deputy Provincial Sheriff set the auction sale for January 23, 1987. However, said auction sale did not take place as scheduled due to some internal problems in the office of sheriff.

Private respondent then filed a special civil action in the Court of Appeals to annul said compromise judgment, alleging that the trial court acted in serious violation of law and/or in grave abuse of discretion. In due course, a decision was rendered by said appellate court on February 13, 1987, the dispositive part of which reads as follows:

"WHEREFORE, the present petition is DENIED due course and is hereby DISMISSED. Effective March 16, 1983, the overdue and unpaid installments shall earn one half per cent (1/2%) per month penalty charge until fully paid, plus two per cent (2%) of the outstanding balance as additional attorney's fees." (page 33, Rollo)

A motion for reconsideration of the decision was filed by petitioner. On March 23, 1987 a resolution denying the motion was issued by the respondent appellate court.

On the other hand, private respondent also filed a motion for reconsideration and comment on the petitioner's

motion for reconsideration. On May 19, 1987, respondent Court issued a resolution, the dispositive part of which reads as follows:

"Acting on the said first part of the petitioner's motion for reconsideration as well as the private respondent's comment thereon, the aforestated grounds for said motion having been already taken up by this Court in reaching the said February 13, 1987 decision, and finding no reason to disturb the same, the said motion as to its said first part, is DENIED for lack of merit.

As to the said second part of petitioner's motion for reconsideration, for clarity, the dispositive portion of the February 13, 1987 decision is re-worded to read as follows:

"WHEREFORE, the present petition is GRANTED in the sense that effective March 16, 1983, the overdue and unpaid installments shall earn one half per cent (1/2%) per month penalty charge until fully paid, plus two per cent (2%) of the outstanding balance as additional attorney's fees."

And in view of such disposition,

1)

THE JUDGMENT DATED MARCH 11, 1980 AND THE ORDER DATED NOVEMBER 26, 1986 OF RESPONDENT COURT ARE HEREBY DECLARED MODIFIED CONFORMABLY WITH THE FEBRUARY 13, 1987 DECISION OF THIS COURT; and

2)

THE WRIT OF EXECUTION ISSUED BY RESPONDENT CLERK OF COURT, AND THE SHERIFF'S NOTICE OF SALE. THE PUBLIC AUCTION SALE AND THE CERTIFICATE OF SALE ARE DECLARED NULL AND VOID IN SO FAR AS THEY ARE NOT IN ACCORDANCE WITH AND IN EXCESS OF THE NOW MODIFIED JUDGMENT AND MODIFIED ORDER OF THE RESPONDENT COURT DATED MARCH 11, 1980 AND NOVEMBER 26, 1986, RESPECTIVELY." (Page 148, Rollo)

Hence, the herein petition for review on certiorari wherein petitioner alleges the following reasons as warranting the grant of the petition:

"a)

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT MODIFIED THE TRIAL COURT'S COMPROMISE JUDGMENT AFTER IT DENIED DUE COURSE AND DISMISSED THE PETITION FOR ANNULMENT OF RESPONDENT COLISEUM.

b)

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN APPLYING ARTICLE 1229 OF THE CIVIL CODE IN THE CASE AT BAR.

c)

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT

MODIFIED THE EFFECTS OF THE 3% PENALTY INTEREST AND ATTORNEY'S FEES. AFTER IT UPHELD THE LEGALITY OF THE COMPROMISE JUDGMENT OF THE TRIAL COURT." (Page 14, Rollo)

The petition is impressed with merit. It is axiomatic that a compromise judgment is final and immediately executory. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right and the execution becomes a ministerial duty of the part of the court.[2] A judicial compromise has the force and effect of *res judicata*. [3]

Such a final and executory judgment cannot be modified or amended. If an amendment is to be made, it may consist only of supplying an omission, striking out a superfluity or interpreting an ambiguous phrase therein in relation to the body of the decision which gives it life.[4] A compromise judgment should not be disturbed except for vices in consent or forgery.[5]

In the present case, the compromise agreement was voluntarily entered into by the parties assisted by their respective counsels and was duly approved by the trial court. Indeed, it was confirmed by the respondent appellate court to be lawful. There was, therefore, no cogent basis for the respondent appellate court to modify said compromise agreement by reducing the penalty and attorney's fees provided for therein.

In spite of the protestation of private respondent that the penalty and interests provided in the compromise agreement was violative of the Usury Law, the respondent appellate court, applying the provisions of Central Bank Circular No. 721, found no violation thereof as in fact the imposition of the penalty is sanctioned by Article 1226 of the Civil Code. The respondent court cited the *De Venecia vs. del Rosario*[6] where this Court held that in the absence of a stipulation to the contrary, recovery of both the penalty and the interest until full payment of the debt is allowed under existing laws.

The modification of said compromise judgment by the respondent appellate court is predicated on the provision of Article 1229 of the Civil Code which provides as follows:

"ART. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

The foregoing provision of the law applies only to obligations or contract, subject of a litigation, the condition being that the same has been partly or irregularly complied with by the debtor. The provision also applies even if there has been no performance, as long as the penalty is iniquitous or unconscionable. It cannot apply to a final and executory judgment.

When the parties entered into the said compromise agreement and submitted the same for the approval of the trial Court, its terms and conditions must be the primordial consideration why the parties voluntarily entered into the same. The trial court approved it because it is lawful, and is not against public policy or morals. Even the respondent Court of Appeals upheld the validity of the said compromise agreement. Hence, the respondent court has no authority to reduce the penalty and attorney's fees therein stipulated which is the law between the parties and is *res judicata*.

WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals dated February 13, 1987 and its resolutions dated March 23, 1987 and May 19, 1987 are hereby SET ASIDE and another judgment is hereby rendered affirming in toto the compromise judgment of the trial court dated March 11, 1980, with costs against private respondent. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] With Madame Justice Gloria C. Paras as ponente, concurred in by Justices Nathanael D. De Pano, Jr., and Conrado D. Limcaoco.

[2] Pamintuan vs. Muñoz, 22 SCRA 1109 (1968).

[3] Binamira vs. Ogan-Occeña 148 SCRA 677 (1987); Lopez vs. Bermejo, 141 SCRA 5 (1986); M & M Management Aids, Inc. vs. CA 130, 225; Zagala vs. Jimenez, 152 SCRA 147 (1987).

[4] Republic vs. Angeles, 41 SCRA 422 (1971); Central Bank vs. CA, 61 SCRA 348 (1974).

[5] Binamira vs. Ogan-Occeña, supra.

[6] 18 SCRA 792 (1966).

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