

NATIONAL POWER CORPORATION, PETITIONER, VS. JUDGE ABELARDO M. DAYRIT, COURT OF FIRST INSTANCE OF MANILA, BRANCH 39, AND DANIEL R. ROXAS, DOING BUSINESS AS UNITED VETERANS SECURI...

G.R. Nos. 62845-46. November 25, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to set aside the Order, dated September 22, 1982, of the respondent judge. The prayer is premised on the allegation that the questioned Order was issued with grave abuse of discretion.

In Civil Case No. 133528 of the defunct Court of First Instance of Manila, DANIEL E. ROXAS, doing business under the name and style of United Veterans Security Agency and Foreign Boats Watchmen, sued the NATIONAL POWER CORPORATION (NPC) and two of its officers in Iligan City. The purpose of the suit was to compel the NPC to restore the contract of Roxas for security services which the former had terminated.

After several incidents, the litigants entered into a Compromise Agreement on October 14, 1981, and they asked the Court to approve it. Accordingly, a Decision was rendered on October 30, 1981, which reads as follows:

"In order to abbreviate the proceedings in this case, the parties, instead of going into trial, submitted a compromise agreement, as follows:

"The parties, DANIEL E. ROXAS, etc. and NATIONAL POWER CORPORATION, ET AL., represented by its President Mr. Gabriel Y. Itchon with due and proper authority under NP Board Resolution No. 81-224, assisted by their respective counsel, to this Honorable Court respectfully submit the following compromise agreement:

1. The defendant National Power Corporation shall pay to plaintiff the sum of P7,277.45, representing the amount due to plaintiff for the services of one of plaintiff's supervisors;
2. The defendant shall pay plaintiff the value of the line materials which were stolen but recovered, by plaintiff's agency which value is to be determined after a joint inventory by the representatives of both parties;
3. The parties shall continue with the contract of security services under the same terms and conditions as the previous contract effective upon the signing thereof;
4. The parties waive all their respective claims and counterclaims in favor of each other;
5. The parties agree to faithfully comply with the foregoing agreement.

P R A Y E R

WHEREFORE, it is respectfully prayed that the Hon. Court approve the following compromise agreement.'

"Examining the foregoing agreement, the Court finds that the same is in accordance with law and not against

morals and public policy.

"CONFORMABLY, the Court hereby renders judgment in accordance with the terms and conditions thereof, enjoining the parties to strictly comply with the terms and conditions of the compromise agreement, without pronouncement as to cost." (Rollo, pp. 33-34.)

The judgment was not implemented for reasons which have no relevance here.

On May 14, 1982, the NPC executed another contract for security services with Josette L. Roxas whose relationship to Daniel is not shown. At any rate Daniel has owned the contract. The NPC refused to implement the new contract for which reason Daniel filed a Motion for Execution in the aforesaid civil case which had been re-numbered R-82-10787. The Motion reads:

"PLAINTIFF, by counsel, respectfully shows:

"1. On October 30, 1981, this Honorable Court rendered its decision based on compromise agreement submitted by the parties, under which it was provided, among others, that -

'3. The parties shall continue with the contract of security services under the same terms and conditions as the previous contract effective upon the signing thereof;'

"2. To date, after more than about eight (8) months since the decision of this Honorable Court, defendant National Power Corporation, through bad faith by reason of excuses made one after another, has yet to comply with the aforesaid terms of the decision. It has not reinstated the contract with the plaintiff in gross violation of the terms of the said compromise agreement which this Honorable Court approved, 'enjoining the parties to strictly comply with the terms and conditions of the compromise agreement';

"3. Hence, plaintiff is compelled to seek the assistance of this Honorable Court for the execution of its decision.

P R A Y E R

"WHEREFORE, it is respectfully prayed that this Honorable Court order the issuance of the writ of execution for the enforcement of the aforesaid portion of its decision." (Rollo, pp. 35-36.)

Acting on the Motion, the respondent judge issued the following Order:

"Acting on the motion for execution dated July 14, 1982, visibly over the objection and/or opposition to the motion for execution dated July 19, 1982, the Court, considering that the decision of October 30, 1981 was based on a Compromise Agreement entered into by and between the parties which decidedly, become final and executory, is inclined to grant said action.

"CONFORMABLY, let the corresponding writ of execution be issued to be served by the Deputy Sheriff assigned to this branch." (Rollo, p. 54.)

The NPC assails the Order on the ground that it directs execution of a contract which had been novated by that of May 14, 1982. Upon the other hand, Roxas claims that said contract was executed precisely to implement the compromise agreement for which reason there was no novation.

We sustain the private respondent. Article I of the May 14, 1982, agreement supports his contention. Said article reads:

"ARTICLE I

DOCUMENTS COMPRISING THE CONTRACT

The letter proposal dated September 5, 1981; CORPORATION'S counter-proposal dated September 11, 1981; Board Resolution No. 81-244 dated September 28, 1981; the Compromise Agreement and Court Decision dated October 30, 1981 in Civil Case No. 133528 CFI-Manila; other subsequent letters and the performance bond of AGENCY to be filed in favor of CORPORATION in the manner hereinafter provided, are hereby expressly made integral parts of this contract by reference." (Rollo, pp. 59-60.)

It is elementary that novation is never presumed; it must be explicitly stated or there must be manifest incompatibility between the old and the new obligations in every aspect. Thus the Civil Code provides:

"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."

In the case at bar there is nothing in the May 14, 1982, agreement which supports the petitioner's contention. There is neither explicit novation nor incompatibility on every point between the "old" and the "new" agreements.

WHEREFORE, the petition is denied for lack of merit with costs against the petitioner.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Aquino, J., no part.

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