

SPECIAL SECOND DIVISION

[CA-G.R. SP No. 120620, May 06, 2014]

MARILYN FUSIN, DOING BUSINESS UNDER THE TRADE NAME "X-TRA MARKETING", PETITIONER, VS. HON. LORENZA R. BORDIOS-PACULDO, SPOUSES EDITHA ALCANTARA AND WILLARDO ALCANTARA, AND ARIES G. ALCANTARA, DOING BUSINESS UNDER THE TRADE NAME "LUCKY 88 AND/OR ATLAS APPLIANCES CENTER", RESPONDENTS.

D E C I S I O N

GAERLAN, S.H., J.:

This is a Petition for Certiorari^[1] filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Order^[2] dated 22 May 2010 rendered by public respondent Hon. Lorenza R. Bordios-Paculdo, as Presiding Judge of the Regional Trial Court, Branch 126 of Caloocan City, in a special civil action for certiorari, docketed as Sp. Civil Action Case No. C-982; and the Order^[3] dated 24 June 2011 denying herein petitioner's Motion for Reconsideration^[4] from the first assailed Order.

FACTS

On 27 February 2008, petitioner (then complainant) Marilyn Fusin filed a Complaint^[5] for Collection of Sum of Money before the Metropolitan Trial Court (MTC) of Caloocan City against private respondents (then defendants) Spouses Editha and Willardo Alcantara, and Aries Alcantara. The Complainant was docketed as Civil Case No. 08-29232.

The Complaint alleged that petitioner, doing business under the trade name "X-Tra Marketing", is engaged in the business of buying and selling furniture and fixtures. Private respondents, who are doing business under the trade name "Lucky 88" and/or "Atlas Appliances Center" were supposedly among petitioner's customers. In the course of the parties' business relations, private respondents allegedly purchased various furniture and fixtures from petitioner, amounting to Php321,023.55, which was covered by post-dated checks. When the check payments to petitioner were later dishonored, petitioner filed the collection case against private respondents jointly for the sum of Php321,023.55.

On 6 August 2008, the parties were referred to mediation. Petitioner represented by Melody Quinones, on one hand, and private respondents Editha Alcantara and Aries Alcantara, on the other hand, executed and signed a Compromise Agreement,^[6] containing the following terms:

"Without going into the merits of the case and for the purpose of buying peace, accused offers to settle the case amicably by paying their total obligation amounting to FIVE HUNDRED TEN THOUSAND FOUR HUNDRED

NINETY PESOS (P510,490.00), which offer private complainant accepts subject to the following mutually acceptable terms and conditions:

- a. The accused gives today the three (3) Zambales Bank customer's check Nos. 0054391 dated October 25, 2008 with the amount of P7,650.00; No. 0054392 dated November 25, 2008 with P7,650.00 and No. 0054393 with P7,650.00 dated December 25, 2008.
- b. The accused issued another four (4) post dated checks from Pacific Ace Savings Bank Nos. 0039611 amounting P5,000.00 dated September 30, 2008; No. 0039612 with P5,000.00 dated October 31, 2008; No. 0039613 with P5,000.00 dated November 30, 2008 and No. 0039614 (sic) P5,000.00 dated December 31, 2008.
- c. On August 29, 2008 hearing, the accused promised to deliver thirty six (36) post dated checks for the remaining balance at P12,987.23 per check due on every end of the month that will start on January 31, 2009 up (sic) December 31, 2011.

In the event that the accused fails to make good any one of the monthly payments and/or violates any of the terms and conditions of this agreement, the unpaid balance shall become due and demandable and the private complainant can now move for the issuance of a writ of execution to enforce the terms and conditions of this compromise agreement."

Private respondent Willardo Alcantara was not a signatory to the said Compromise Agreement.

The Presiding Judge of the Metropolitan Trial Court (MTC) of Caloocan City, Branch 49, referred back the Compromise Agreement to the Philippine Mediation Center (PMC) for possible amendment. This time, however, the mediation before the PMC was unsuccessful and "*petitioner opted that the case be resolved by the court.*"^[7]

On 5 February 2009, petitioner filed a Motion to Approve Partial Compromise Agreement to the Extent of the Amount Alleged in the Complaint and Between the Signatory Parties,^[8] but was denied by the the MTC of Caloocan City, Branch 49, in an Order^[9] dated 8 May 2009, ratiocinating as follows:

"More importantly, as the subject Compromise Agreement also covers and includes other alleged obligations of the defendants which are not mentioned in the herein complaint and thus, beyond the jurisdiction of this Court to determine, it cannot be determined with certainty whether the WHOLE amount of the alleged obligation of the defendants as stated in the complaint, to wit: Three Hundred Twenty One Thousand Twenty (sic) Pesos and 55/100 (Php321,023.55) is included in the amount of Five Hundred Ten Thousand Four Hundred Ninety Pesos (P510,490.00) stated in the Compromise Agreement as the total obligation of the defendants or ONLY A PORTION THEREOF, while the total balance refers to the other alleged liabilities not alleged in the instant complaint. In other words, doubt exists whether in the subject Compromise Agreement, the signatory defendants, Editha and Aries Alcantara acknowledged to pay the full amount of Three Hundred Twenty One Thousand Twenty (sic)

Pesos and 55/100 (Php321,023.55) which the plaintiff is seeking to be partially approved or only a portion thereof. These findings became more significant in the light of the claim of the defendants that their obligation is less than what plaintiff is claiming and that they have almost paid the latter.

WHEREFORE, the "Motion to Approve Partial Compromise Agreement to the Extent of the Amount Alleged in the Complaint and Between the Signatory Parties" is hereby denied.

xxx"

Petitioner's Motion for Reconsideration^[10] was likewise denied by MTC in its Order^[11] dated 25 August 2009.

Feeling aggrieved, petitioner filed a Petition for Certiorari^[12] before the respondent Court, docketed as Sp. Civil Action Case No. C-982.

Acting on the petition for certiorari, public respondent issued the assailed Order^[13] dated 22 May 2010, denying the said petition, for the following reasons:

"In the case at bar, there is no doubt that the obligation is mathematically divisible up to the jurisdiction of the lower court and as alleged in the Compliant for a sum of money in the amount of P321,023.55 and considering that only defendants Editha and Aries Alcantara signed the Compromise Agreement, only the two are liable but each one is liable as a joint debtor, thus, Editha Alcantara as a joint debtor is only liable for one half of P321,023.55 while Aries Alcantara as a joint debtor is also liable for only one half of P321,023.55.

The problem arises as to the performance of the obligation and enforcement of the last paragraph of the Compromise Agreement, to quote:

'In the event that the accused fails to make good any one of the monthly payments and/or violates any of the terms and conditions of this agreement, the unpaid balance shall become due and demandable and the private complainant can now move for the issuance of a writ of execution to enforce the terms and conditions of this compromise agreement.'

because the obligation of defendant Editha and Aries Alcantara is not specifically delineated/divided in the Compromise Agreement, to quote:

'a. The accused gives today the three (3) Zambales Bank customer's check Nos. 0054391 dated October 25, 2008 with the amount of P7,650.00; No. 0054392 dated November 25, 2008 with P7,650.00 and No. 0054393 with P7,650.00 dated December 25, 2008.

b. The accused issued another four (4) post dated checks from Pacific Ace Savings Bank Nos. 0039611 amounting P5,000.00 dated September 30, 2008; No. 0039612 with P5,000.00 dated October 31, 2008; No. 0039613 with P5,000.00 dated

November 30, 2008 and No. 0039614 (sic) P5,000.00 dated December 31, 2008.

c. On August 29, 2008 hearing, the accused promised to deliver thirty six (36) post dated checks for the remaining balance at P12,987.23 per check due on every end of the month that will start on January 31, 2009 up (sic) December 31, 2011.'

that in the event any check will bounce and will not be paid plaintiff Marilyn Fusin can not (sic) establish who between the defendants violate the terms and conditions of the obligation as based on the provisions of said Compromise Agreement as the same does not specify what are the checks issued by defendant Editha Alcantara and what are the checks issued by Aries Alcantara.

Moreover, the Compromise Agreement does not provide for a provision that all the claims and interest of the parties against each other are terminated after compliance with the terms and conditions of the same Compromise Agreement, thus, it is not a settlement of a controversy principally and this is manifested by petitioner's allegation in the Motion to Approve Partial Compromise Agreement to the extent of the amount alleged in the Complaint and between the signatory parties (February 2, 2009) par. 5, 7 to quote:

'that the compromise agreement of the signatory parties can be approved partially to the extent of the claim P321,023.55 as it satisfies that (sic) plaintiff's claim as alleged in the complaint and ends litigation covered by the claim.

That the judgment, however, be without prejudice for the plaintiff to file separate action for the balance of P189,466.45.00 (sic) or for the parties to settle them out of court.'

Verily, the Compromise Agreement does not put to rest the controversy/issues in the main case. xxx"

On 24 June 2010, petitioner filed a Motion for Reconsideration^[14] of the Order date 22 May 2010, which was denied by the respondent judge in an Order^[15] dated 24 June 2011.

Thus, petitioner filed this instant petition before this Court, on the following ground:
^[16]

GROUND

I.

THE HON. PUBLIC RESPONDENT JUDGE LORENZO (SIC) R. BORDIOS-PACULDO, WAS ACTING CONTRARY TO LAW WHEN IT MADE THE OBSERVATION THAT THE COMPROMISE AGREEMENT HAS NOT INCLUDED THE FOLLOWING TERMS AND CONDITIONS: