462 Phil. 779

FIRST DIVISION

[G.R. No. 154127, December 08, 2003]

ROMEO C. GARCIA, PETITIONER, VS. DIONISIO V. LLAMAS, RESPONDENT.

DECISION

PANGANIBAN, J.:

Novation cannot be presumed. It must be clearly shown either by the express assent of the parties or by the complete incompatibility between the old and the new agreements. Petitioner herein fails to show either requirement convincingly; hence, the summary judgment holding him liable as a joint and solidary debtor stands.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the November 26, 2001 Decision[2] and the June 26, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 60521. The appellate court disposed as follows:

> **"UPON THE VIEW WE TAKE OF THIS CASE, THUS,** the judgment appealed from, insofar as it pertains to [Petitioner] Romeo Garcia, must be, as it hereby is, **AFFIRMED**, subject to the modification that the award for attorney's fees and cost of suit is **DELETED**. The portion of the judgment that pertains to x x x Eduardo de Jesus is **SET ASIDE** and **VACATED**. Accordingly, the case against x x x Eduardo de Jesus is **REMANDED** to the court of origin for purposes of receiving *ex parte* [Respondent] Dionisio Llamas' evidence against x x x Eduardo de Jesus." [4]

The challenged Resolution, on the other hand, denied petitioner's Motion for Reconsideration.

The Antecedents

The antecedents of the case are narrated by the CA as follows:

> "This case started out as a complaint for sum of money and damages by x x x [Respondent] Dionisio Llamas against x x x [Petitioner] Romeo Garcia and Eduardo de Jesus. Docketed as Civil Case No. Q97-32-873, the complaint alleged that on 23 December 1996[,] [petitioner and de Jesus] borrowed P400,000.00 from [respondent]; that, on the same day, [they] executed a promissory note wherein they bound themselves jointly and severally to pay the loan on or before 23 January 1997 with a 5% interest per month; that the loan has long been overdue and, despite

repeated demands, [petitioner and de Jesus] have failed and refused to pay it; and that, by reason of the[ir] unjustified refusal, [respondent] was compelled to engage the services of counsel to whom he agreed to pay 25% of the sum to be recovered from [petitioner and de Jesus], plus P2,000.00 for every appearance in court. Annexed to the complaint were the promissory note above-mentioned and a demand letter, dated 02 May 1997, by [respondent] addressed to [petitioner and de Jesus].

"Resisting the complaint, [Petitioner Garcia,] in his [Answer,] averred that he assumed no liability under the promissory note because he signed it merely as an accommodation party for x x x de Jesus; and, alternatively, that he is relieved from any liability arising from the note inasmuch as the loan had been paid by x x x de Jesus by means of a check dated 17 April 1997; and that, in any event, the issuance of the check and [respondent's] acceptance thereof novated or superseded the note.

"[Respondent] tendered a reply to [Petitioner] Garcia's answer, thereunder asserting that the loan remained unpaid for the reason that the check issued by x x x de Jesus bounced, and that [Petitioner] Garcia's answer was not even accompanied by a certificate of non-forum shopping. Annexed to the reply were the face of the check and the reverse side thereof.

"For his part, x x x de Jesus asserted in his [A]nswer with [C]ounterclaim that out of the supposed P400,000.00 loan, he received only P360,000.00, the P40,000.00 having been advance interest thereon for two months, that is, for January and February 1997; that[,] in fact[,] he paid the sum of P120,000.00 by way of interests; that this was made when [respondent's] daughter, one Nits Llamas-Quijencio, received from the Central Police District Command at Bicutan, Taguig, Metro Manila (where x x x de Jesus worked), the sum of P40,000.00, representing the peso equivalent of his accumulated leave credits, another P40,000.00 as advance interest, and still another P40,000.00 as interest for the months of March and April 1997; that he had difficulty in paying the loan and had asked [respondent] for an extension of time; that [respondent] acted in bad faith in instituting the case, [respondent] having agreed to accept the benefits he (de Jesus) would receive for his retirement, but [respondent] nonetheless filed the instant case while his retirement was being processed; and that, in defense of his rights, he agreed to pay his counsel P20,000.00 [as] attorney's fees, plus P1,000.00 for every court appearance.

"During the pre-trial conference, x x x de Jesus and his lawyer did not appear, nor did they file any pre-trial brief. Neither did [Petitioner] Garcia file a pre-trial brief, and his counsel even manifested that he would no [longer] present evidence. Given this development, the trial court gave [respondent] permission to present his evidence *ex parte* against x x x de Jesus; and, as regards [Petitioner] Garcia, the trial court directed [respondent] to file a motion for judgment on the pleadings, and for [Petitioner] Garcia to file his comment or opposition thereto.

"Instead, [respondent] filed a [M]otion to declare [Petitioner] Garcia in

> default and to allow him to present his evidence *ex parte*. Meanwhile, [Petitioner] Garcia filed a [M]anifestation submitting his defense to a judgment on the pleadings. Subsequently, [respondent] filed a [M]anifestation/[M]otion to submit the case for judgement on the pleadings, withdrawing in the process his previous motion. Thereunder, he asserted that [petitioner's and de Jesus'] solidary liability under the promissory note cannot be any clearer, and that the check issued by de Jesus did not discharge the loan since the check bounced."[5]

On July 7, 1998, the Regional Trial Court (RTC) of Quezon City (Branch 222) disposed of the case as follows:

> "WHEREFORE, premises considered, judgment on the pleadings is hereby rendered in favor of [respondent] and against [petitioner and De Jesus], who are hereby ordered to pay, jointly and severally, the [respondent] the following sums, to wit:
>
> > `1) P400,000.00 representing the principal amount plus 5% interest thereon per month from January 23, 1997 until the same shall have been fully paid, less the amount of P120,000.00 representing interests already paid by x x x de Jesus;
> >
> > `2) P100,000.00 as attorney's fees plus appearance fee of P2,000.00 for each day of [c]ourt appearance, and;
> >
> > `3) Cost of this suit.'"[6]

Ruling of the Court of Appeals

The CA ruled that the trial court had erred when it rendered a judgment on the pleadings against De Jesus. According to the appellate court, his Answer raised genuinely contentious issues. Moreover, he was still required to present his evidence *ex parte.* Thus, respondent was not *ipso facto* entitled to the RTC judgment, even though De Jesus had been declared in default. The case against the latter was therefore remanded by the CA to the trial court for the *ex parte* reception of the former's evidence.

As to petitioner, the CA treated his case as a summary judgment, because his Answer had failed to raise even a single genuine issue regarding any material fact.

The appellate court ruled that no novation -- express or implied -- had taken place when respondent accepted the check from De Jesus. According to the CA, the check was issued precisely to pay for the loan that was covered by the promissory note jointly and severally undertaken by petitioner and De Jesus. Respondent's acceptance of the check did not serve to make De Jesus the sole debtor because, *first*, the obligation incurred by him and petitioner was joint and several; and, *second*, the check -- which had been intended to extinguish the obligation -- bounced upon its presentment.

Hence, this Petition.[7]

Issues

Petitioner submits the following issues for our consideration:

"I

Whether or not the Honorable Court of Appeals gravely erred in not holding that novation applies in the instant case as x x x Eduardo de Jesus had expressly assumed sole and exclusive liability for the loan obligation he obtained from x x x Respondent Dionisio Llamas, as clearly evidenced by:

a) Issuance by x x x de Jesus of a check in payment of the full amount of the loan of P400,000.00 in favor of Respondent Llamas, although the check subsequently bounced[;]

b) Acceptance of the check by the x x x respondent x x x which resulted in [the] substitution by x x x de Jesus or [the superseding of] the promissory note;

c) x x x de Jesus having paid interests on the loan in the total amount of P120,000.00;

d) The fact that Respondent Llamas agreed to the proposal of x x x de Jesus that due to financial difficulties, he be given an extension of time to pay his loan obligation and that his retirement benefits from the Philippine National Police will answer for said obligation.

"II

Whether or not the Honorable Court of Appeals seriously erred in not holding that the defense of petitioner that he was merely an accommodation party, despite the fact that the promissory note provided for a joint and solidary liability, should have been given weight and credence considering that subsequent events showed that the principal obligor was in truth and in fact x x x de Jesus, as evidenced by the foregoing circumstances showing his assumption of sole liability over the loan obligation.

"III

Whether or not judgment on the pleadings or summary judgment was properly availed of by Respondent Llamas, despite the fact that there are genuine issues of fact, which the Honorable Court of Appeals itself admitted in its Decision, which call for the presentation of evidence in a full-blown trial."[8]

Simply put, the issues are the following: 1) whether there was novation of the obligation; 2) whether the defense that petitioner was only an accommodation party had any basis; and 3) whether the judgment against him -- be it a judgment on the

pleadings or a summary judgment -- was proper.

The Court's Ruling

The Petition has no merit.

First Issue:
Novation

Petitioner seeks to extricate himself from his obligation as joint and solidary debtor by insisting that novation took place, either through the substitution of De Jesus as sole debtor or the replacement of the promissory note by the check. Alternatively, the former argues that the original obligation was extinguished when the latter, who was his co-obligor, "paid" the loan with the check.

The fallacy of the second (alternative) argument is all too apparent. The check could not have extinguished the obligation, because it bounced upon presentment. By law,[9] the delivery of a check produces the effect of payment only when it is encashed.

We now come to the main issue of whether novation took place.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[10] Article 1293 of the Civil Code defines novation as follows:

> "Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in articles 1236 and 1237."

In general, there are two modes of substituting the person of the debtor: (1) *expromision* and (2) *delegacion*. In *expromision*, the initiative for the change does not come from -- and may even be made without the knowledge of -- the debtor, since it consists of a third person's assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In *delegacion*, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary.[11] Both modes of substitution by the debtor require the consent of the creditor.[12]

Novation may also be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.[13] Whether extinctive or modificatory, novation is made either by changing the object or the principal conditions, referred to as objective or real novation; or by substituting the person of the debtor or subrogating a third person to the rights of the creditor, an act known as subjective or personal novation.[14] For novation to take place, the following requisites must concur: