



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 OCT 25 2016

THIRD DIVISION

**EVER ELECTRICAL
 MANUFACTURING, INC.,
 VICENTE C. GO and GEORGE
 C. GO,**

G.R. Nos. 187822-23

Present:

Petitioners, PERALTA, J.,
Acting Chairperson,
 BERSAMIN,*
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

**PHILIPPINE BANK OF
 COMMUNICATIONS (PBCOM),
 represented by its Vice-President,
 MR. DOMINGO S. AURE,**

Promulgated:

Respondent. August 3, 2016

Wilfredo V. Lapitan

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DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Ever Electrical Manufacturing, Inc. (Ever), its President Vicente Go (Vicente) and Board Director George Go (collectively, the petitioners) questioning the Decision² dated November 28, 2008 and Resolution³ dated May 6, 2009 of the Court of Appeals (CA) in CA-G.R. SP Nos. 84631 and 87444.

* Additional Member per Raffle dated August 1, 2016 *vice* Associate Justice Presbitero J. Velasco, Jr.

¹ *Rollo*, pp. 4-32.

² Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr. concurring; *id.* at 147-155.

³ *Id.* at 157-158.

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Antecedent Facts

Ever is a duly organized domestic corporation with a history of transacting with respondent Philippine Bank of Communications (PBCom), a domestic commercial bank.⁴ The parties had been involved in litigation for collection of a sum of money where PBCom was able to get a favorable Partial Judgment⁵ dated July 23, 2001 issued by the Regional Trial Court (RTC) of Manila, Branch 24, in Civil Case No. 01-100899.

On December 13, 2002, Ever, represented by Vicente, took out a loan from PBCom in the amount of ₱65,000,000.00 for its working capital.⁶ As security, Ever mortgaged two parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-61475 and T-61476 with areas of 10,025 square meters and 9,117 sq m, respectively, located at National Road, Barangay Makiling, Calamba, Laguna.⁷ On December 27, 2002, Ever executed Promissory Note No. 8200013327,⁸ which stated that the loan had a maturity date of December 27, 2010, and an interest rate of 8.5937% *per annum* for 10 years.

On February 14, 2003, the parties entered into a compromise agreement whereby Vicente voluntarily undertook to pay for Ever’s loan with PBCom. Under the terms of the compromise agreement, Vicente would make partial payments as stated in the promissory note with a caveat that any failure on his part to pay the installment due would make the whole amount immediately demandable. The compromise agreement reads as follows:

⁴ Id. at 5.
⁵ Rendered by Judge Antonio M. Eugenio, Jr.; records, Vol. I, pp. 145-150.
⁶ The Loan Approval letter reads:
Gentlemen:

We are pleased to advise the approval of the following facility in your favor the availability of which is subject to the Bank’s discretion and perfection of securing documentation.

<u>I. Amount</u>	<u>Terms and Conditions</u>
P65,000,000.00	Partially Secured Term Loan
	Purpose : To finance personal working capital requirements
	Tenor : Eight (8) years
	Repayment on Principal : 1. Equal semi-annual principal payments amounting to P625,000.00 for the first two years to commence at the end of the second quarter.
	2. Balance after 2nd year in equal quarterly payments starting the end of the 27 th month until full payment of the loan.

⁷ x x x x; CA *rollo* (CA-G.R. SP No. 84631), pp. 37-38, at 37. (Emphasis ours)
⁸ Id.
Rollo, pp. 36-39.

WHEREAS, [VICENTE] has offered to assume full liability and to undertake the full payment of all the past due accounts of [EVER] and to exempt from any and all obligations/liabilities his co-defendants-sureties GEORGE C. GO and NG MENG TAM arising from and subject of the above-captioned litigation, without prejudice to the right of [VICENTE] to avail himself of his right for reimbursement under *Art. 1236 of the Civil Code of the Philippines*;

WHEREAS, [PBCom] has agreed and accepted [VICENTE's] aforementioned offer to pay, in accordance with the terms and conditions of the Promissory Note 8200013327 dated 27 Dec. 2002, copy of which is hereto attached as Annex "A" hereof.

WHEREAS, [VICENTE] fully understands that **failure on his part to make partial payments** of the amount due under the said Promissory Note **shall make the whole balance of the unpaid amounts due and demandable**, less the amounts actually paid on account, **without any necessity of notice to him** and [PBCom] **shall be entitled to the issuance of the corresponding writ of execution** for the full amounts due as specified in the prayer of the above-mentioned complaint.⁹ (Emphasis ours)

On February 21, 2003, the RTC approved the compromise agreement.¹⁰ Consequently, the loan was restructured.

However, Vicente was not able to make the necessary payments as stipulated in the compromise agreement. PBCom, thus, filed with the RTC a motion for execution. PBCom alleged that Vicente violated the terms of the compromise agreement for non-payment of installments from September to December 2003 and the first quarter of 2004. It prayed that a writ of execution be issued per the terms of the compromise agreement.¹¹

Ruling of the RTC

On May 4, 2004, the RTC found merit in PBCom's application for a writ of execution and granted the same.¹² A writ of execution¹³ dated May 14, 2004 was thereby issued. The petitioners moved for reconsideration.¹⁴

⁹ Id. at 33.

¹⁰ Records, Vol. III, pp. 432-433.

¹¹ Id. at 519-521.

¹² CA *rollo* (CA-G.R. SP No. 87444), pp. 44-45.

¹³ Id. at 46-48.

¹⁴ Records, Vol. III, pp. 559-568.

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Thereafter, on May 19, 2004, a Notice of Levy upon Realty¹⁵ was issued by the Deputy Sheriff to the Register of Deeds (RD) of Calamba, Laguna. He informed the RD that the properties described under TCT Nos. T-61475 and T-61476 were under *custodia legis* and thus requested that the proper annotations be made in the Book of the RD.

On June 9, 2004, the RTC denied the petitioners' motion for reconsideration. It found that while the petitioners did in fact make some payments, these were not in accord with the clear terms of the compromise agreement which required quarterly payments for a specific amount.¹⁶

On June 11, 2004, the Sheriff issued a Notice of Sale and scheduled the public auction on July 14, 2004 for the parcels of land.¹⁷ Due to some postponements, public auction was actually held on September 16, 2004 where PBCom won as the highest bidder.¹⁸

Ruling of the CA

The petitioners then filed with the CA two petitions for *certiorari*¹⁹ questioning the validity of the writ of execution, levy on execution and the auction sale. The petitions were consolidated.²⁰

While the case was pending, TCT Nos. 61475 and 61476 were cancelled and TCT Nos. 060-2012023698 and 060-2012023699 were issued by the RD of Calamba, Laguna, in favor of Star Asset Management NPL, Inc. The pendency of the instant case was annotated at the back of the new titles.²¹

In the Decision²² dated November 28, 2008, the CA dismissed the petitions for lack of merit after finding that the evidence supported the conclusion of the RTC that Vicente failed to make installment payments for the period covering January 21, 2004 to

¹⁵ CA *rollo* (CA-G.R. SP No. 87444), pp. 49-50.

¹⁶ Records, Vol. III, pp. 630-631.

¹⁷ CA *rollo* (CA-G.R. SP No. 84631), pp. 145-147.

¹⁸ See Sheriff's Minutes of Sale, records, Vol. II, p. 206, and Sheriff's Certificate of Sale, pp. 207-208.

¹⁹ Docketed as CA-G.R. SP Nos. 84631 and 87444; CA *rollo* (CA-G.R. SP No. 84631), pp. 2-31 and CA *rollo* (CA-G.R. SP No. 87444), pp. 2-30.

²⁰ CA Thirteenth Division Resolution dated July 28, 2005, CA *rollo* (CA-G.R. SP No. 84631), pp. 558-560 and CA Former Fourteenth Division Resolution dated June 15, 2005, CA *rollo* (CA-G.R. SP No. 87444), pp. 217-220.

²¹ See the petitioners' Motion to Restore Possession; *rollo*, pp. 225-228, at 226.

²² Id. at 147-155.

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March 31, 2004 in direct contravention of the terms of the compromise agreement. The liability amounted to ₱1,125,000.00 including interests and penalty charges. The CA stated that the petitioners did not deny the allegation, and merely asserted that Vicente made payments for the period of April 2, 2003 to January 20, 2004. Since Vicente defaulted in the payments and under the terms of the compromise agreement to which he agreed, the immediate issuance of a writ of execution was in order.

The CA also found no merit with the petitioners' contention that the writ of execution was not valid on the ground that it was issued against the properties of Ever and not against Vicente who assumed sole responsibility for the payment of the loan. The compromise agreement specifically stated that in the event that Vicente failed to comply with the terms of the compromise agreement, execution would revert to the full amounts in the complaint. Since the writ of execution was valid, the notice of levy and the levy on execution, as well as the public auction, were also valid and binding on the parties. The CA, thus, ruled that the RTC did not commit any grave abuse of discretion. The dispositive portion of the decision reads:

WHEREFORE, the *Consolidated Petition for Certiorari* is hereby **DISMISSED**.

SO ORDERED.²³

Vicente moved for reconsideration but it was denied in a Resolution²⁴ dated May 6, 2009.

Hence, this petition.

The petitioners assert that Vicente had faithfully complied with the terms of the compromise agreement. The petitioners argue that the writ of execution had been issued prematurely on two points: 1) that Vicente did not violate the terms of the compromise agreement; and 2) that the compromise agreement effectively novated the original contract pursuant to Article 1293 of the Civil Code.

²³ Id. at 154.

²⁴ Id. at 157-158.

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Vicente further states that PBCom's application for the issuance of a writ of execution on March 26, 2004 was premature since amortizations for the first quarter of 2004 were not yet due and demandable, as these were still due on March 31, 2004.²⁵

More importantly, Vicente argues that the writ of execution was erroneously issued against Ever. He alleges that the Partial Judgment dated July 23, 2001 of the RTC was novated by the compromise agreement. As a consequence, Ever's obligation to PBCom was already extinguished as it was substituted by Vicente when he assumed full responsibility of the loan repayment. Under Article 1293 of the Civil Code, Ever had been substituted by Vicente thus novating the obligation.²⁶

For its part, PBCom maintains that the writ of execution was valid. It reiterates that Vicente had defaulted in the payment of the quarterly installment, comprising the principal, interests and penalty amounting to ₱1,125,000.00 for the period of September 30, 2003 to December 31, 2003. Vicente once again defaulted paying the installment for the period of December 31, 2003 to March 31, 2004. With the petitioner's failure to abide by the terms of the compromise agreement, the whole balance of the obligation became immediately due and demandable.²⁷

With respect to the petitioners' claim that the writ of execution was directed at the wrong party, PBCom stressed that the compromise agreement is clear that upon the failure of Vicente to make installment payments, the bank is entitled to "the issuance of the corresponding writ of execution for the full amounts due as specified in the prayer of the above-captioned complaint."²⁸

The Issues Presented

1. Whether or not the CA correctly drew the conclusion that Vicente failed to comply with the compromise agreement in the face of the existence of payments made by Vicente.
2. Whether or not there was novation of the Partial Judgment dated July 23, 2001.

²⁵ Id. at 21-22.

²⁶ Id. at 27-30.

²⁷ Id. at 187.

²⁸ Id. at 188-190.

3. Whether or not the issue on novation of the Partial Judgment dated July 23, 2001 by the February 21, 2003 decision was resolved by the CA.
4. Whether or not the writ of execution was correctly issued against the petitioners.²⁹

Simply, the issue for the Court's consideration is whether the CA erred in ruling that the writ of execution, levy on execution and auction sale were valid.

Ruling of the Court

The Court denies the petition.

The Court is not a trier of facts. In *Spouses Bernales v. Heirs of Julian Sambaan*,³⁰ the Court reiterated that for a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. On the other hand, there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts.³¹

Here, the petitioners essentially argue that since the parties entered into a compromise agreement, which was judicially approved, the same novated the original loan agreement.

The Court disagrees.

Under the Civil Code, novation is one of the means to extinguish an obligation. This is done either by changing the object or principal conditions, by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.³² It is a relative extinguishment since a new obligation is created in lieu of the old obligation. The following requisites must be met for novation to take place:

²⁹ Id. at 20.

³⁰ 624 Phil. 88 (2010).

³¹ Id. at 97.

³² CIVIL CODE OF THE PHILIPPINES, Article 1291 provides:
Art. 1291. Obligations may be modified by:
(1) Changing their object or principal conditions;
(2) Substituting the person of the debtor;
(3) Subrogating a third person in the rights of the creditor.



- (1) There must be a previous valid obligation;
- (2) There must be an agreement of the parties concerned to a new contract;
- (3) There must be the extinguishment of the old contract; and
- (4) There must be the validity of the new contract.³³

However, novation is never presumed.³⁴ Article 1292 of 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.

It must be established that the old and new contracts are incompatible on all points, or that the will to novate appear by express agreement of the parties or acts of equivalent import.³⁵ In the absence of an express provision, a contract may still be considered novated impliedly if it passes the test of incompatibility, that is, whether the contracts can stand together, each one having an independent existence.³⁶

In the early case of *Santos v. Reyes, et al.*,³⁷ the Court held that there was no novation where under the original contract consisting of a principal debtor and a surety, the latter subsequently made an agreement with the creditor to be bound as a principal for the same obligation. There, the Court stated that there can be no effective novation if the contract was not extinguished by an instrument subsequently executed therefor.³⁸

As stated in Article 1291, novation may also be brought about by a change in the person of the debtor. Article 1293 of the Civil Code states:

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 the rights mentioned in Articles 1236 and 1237.

³³ *Agro Conglomerates, Inc. v. CA*, 401 Phil. 644, 655-656 (2000).

³⁴ *Philippine Savings Bank v. Spouses Mañalac, Jr.*, 496 Phil. 671, 687 (2005).

³⁵ Tolentino, *Civil Code of the Philippines*, Volume IV, p. 383.

³⁶ *Id.* at 384.

³⁷ 10 Phil. 123 (1908).

³⁸ *Id.* at 124-125.

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In *Mercantile Insurance Co., Inc. v. CA*,³⁹ the Court said:

The general rule is that novation is never presumed; it must always be clearly and unequivocally shown. Thus, “the mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, **when there is no agreement that the first debtor shall be released from responsibility, does not constitute novation, and the creditor can still enforce the obligation against the original debtor.**”⁴⁰ (Emphasis ours and citations omitted)

In the present case, the compromise agreement entered into by the parties does not contain any provision releasing Ever (the debtor) from its liability to PBCom (the lender). In fact, the first paragraph of the approved compromise agreement states:

WHEREAS, [VICENTE] has offered to assume full liability and to undertake the full payment of all the past due accounts of [EVER] and to exempt from any and all obligations/liabilities his co-defendants-sureties **GEORGE C. GO and NG MENG TAM** arising from and subject of the above-captioned litigation, without prejudice to the right of [VICENTE] to avail himself of his right for reimbursement under Art. 1236 of the Civil Code of the Philippines[.]⁴¹ (Emphasis ours)

There is nothing to be construed from the above-stated paragraph releasing Ever from its obligation. Under the terms of the agreement, Vicente is an additional person who would ensure that the loan of Ever to PBCom would be paid. Under the rules of novation, the mere act of adding another person to be personally liable, who in this case is Vicente, did not constitute novation since there was no agreement to release Ever from its responsibility to PBCom. Thus, absent the release of Ever from the original obligation, PBCom may still enforce the obligation against it.

Since there was no novation, PBCom may proceed to collect from the original debtor, Ever, under the terms of the original loan agreement. The Court holds that there was no irregularity in the issuance of the writ of execution, levy on the properties and the subsequent sale of the auction sale.

WHEREFORE, the petition is **DENIED**. The Decision dated November 28, 2008 and Resolution dated May 6, 2009 of the Court of Appeals in CA-G.R. SP Nos. 84631 and 87444 are hereby **AFFIRMED**.

³⁹ 273 Phil. 415 (1991).


⁴⁰ Id. at 423.

⁴¹ *Rollo*, p. 33.

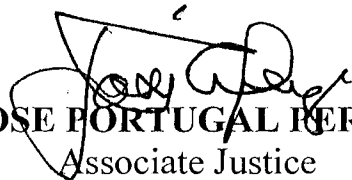
SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

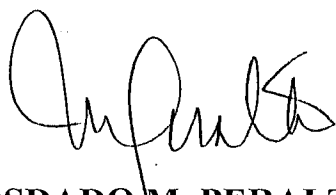

LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


FRANCIS H.JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

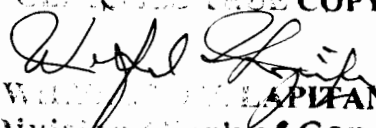

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WENCESLAO L. LAPIDAN
Division Clerk of Court
Third Division

OCT 25 2016

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