



*Mis-DC Batt*  
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Deputy Division Clerk of Court  
Third Division

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

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SUPREME COURT OF THE PHILIPPINES  
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SPOUSES ANTHONY ROGELIO  
BERNARDO and MA. MARTHA  
BERNARDO,

*Petitioners,*

- versus -

UNION BANK OF THE PHILIPPINES  
and the HON. COURT OF APPEALS,

*Respondents.*

G.R. No. 208892

Present:

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO,\* and  
INTING, JJ.

Promulgated:

September 18, 2019

*Mis-DC Batt*

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DECISION

INTING, J.:

We resolve the Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Decision<sup>1</sup> dated February 21, 2013 and the Resolution<sup>2</sup> dated July 18, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 111832.

*The Antecedents*

On August 20, 1999, petitioners, Spouses Anthony Rogelio Bernardo and Ma. Martha Bernardo, obtained a loan amounting to ₱3,032,635.57 from respondent Union Bank of the Philippines (Union Bank).<sup>3</sup> The loan was secured by a real estate mortgage executed by petitioners in Union Bank's favor

\* On leave.

<sup>1</sup> Penned by Associate Justice Noel G. Tijam (formerly a Member of this Court), and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz. *Rollo*, pp. 20-32.

<sup>2</sup> Id. at 34-36.

<sup>3</sup> Id. at 21.

over a 700-square meter lot on which their family home stood, located in Ayala Alabang Village, Muntinlupa City.<sup>4</sup>

Petitioners, however, eventually defaulted in the payment of their loan.<sup>5</sup> Consequently, Union Bank commenced the extrajudicial foreclosure proceedings on the mortgaged property.<sup>6</sup> The foreclosure sale was held on September 28, 2000 wherein Union Bank emerged as the highest bidder.<sup>7</sup> The Certificate of Sale was thereafter issued in Union Bank's favor and duly registered with the Register of Deeds of Muntinlupa City on February 26, 2001.<sup>8</sup>

On February 20, 2002, petitioners filed a Complaint for annulment of the foreclosure sale against Union Bank before the Regional Trial Court (RTC), Branch 256, Muntinlupa City, on the ground of noncompliance with the publication notice requirement prior to the foreclosure sale of the mortgaged property.<sup>9</sup>

During the pre-trial, the parties executed a Compromise Agreement which was then *approved* by the RTC on June 2, 2004.<sup>10</sup> In the Compromise Agreement, petitioners agreed to buy back the foreclosed property for ₱5,459,871.19, with the condition that failure to comply with the terms of the agreement shall entitle Union Bank, among others, to enforce its rights and remedies under the real estate mortgage contract.<sup>11</sup>

Unfortunately, petitioners again defaulted in their payments to Union Bank pursuant to the payment schedule under Section 6(b) of the Compromise Agreement.<sup>12</sup> This prompted Union Bank to file a Motion for Issuance of Writ of Execution before the RTC in order to consolidate its title over the foreclosed property. The RTC granted the motion in its Order dated December 13, 2005 and directed the issuance of a Writ of Execution in the bank's favor.<sup>13</sup> Consequently, title to the foreclosed property was transferred in Union Bank's name under Transfer Certificate of Title No. 18260.<sup>14</sup>

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 37-40; approved by Presiding Judge Alberto L. Lerma.

<sup>11</sup> Id. at 38-39.

<sup>12</sup> Id. at 7 and 38.

<sup>13</sup> Id. at 22.

<sup>14</sup> Id. at 41-42.

On January 8, 2007, petitioners filed a Motion to Quash the Writ of Execution and Notice to Vacate before the RTC.<sup>15</sup> The RTC granted the motion in its Order<sup>16</sup> dated February 13, 2007 but instead of quashing the Writ of Execution, it ordered that the writ be stayed “only for the purpose of collecting all the amounts due and outstanding pursuant to the schedule of payments” under the Compromise Agreement.<sup>17</sup>

While Union Bank's Motion for Reconsideration was pending, petitioners filed a Motion for Judicial Consignation on May 21, 2007.<sup>18</sup> Union Bank opposed the motion and countered that it was not necessary to resort to judicial consignation as the bank was already in the process of evaluating the proposal offered by petitioners.<sup>19</sup>

#### *Ruling of the RTC*

In its Order dated March 31, 2009, the RTC granted Union Bank's Motion for Reconsideration and denied petitioners' Motion for Judicial Consignation.<sup>20</sup>

However, upon petitioners' motion, the RTC *reconsidered* its ruling in its Order dated June 26, 2009 and held that the remedy for Union Bank, should petitioners fail to abide by the terms of payment set forth in the Compromise Agreement, was to move for the execution of the judgment with respect to the amounts due and outstanding and *not* to take actual control and possession of the subject property.<sup>21</sup>

Accordingly, the RTC ruled as follows:

WHEREFORE, in view of the foregoing, the Order dated March 31, 2009 is hereby reconsidered and set aside. On the other hand, the Motion for Judicial Consignation is hereby granted. Accordingly, [petitioners are] hereby ordered to consign and deposit with the Office of the Clerk of Court, Muntinlupa City[,] within ten days from receipt hereof[,] the remaining balance of the total purchase price of the subject property[,] with interest thereon at the rate of 16% per annum up to May 15, 2007. Further, upon full payment by [petitioners] of the agreed purchase price of the subject property,

<sup>15</sup> Id. at 22.

<sup>16</sup> Id. at 44 to 45.

<sup>17</sup> Id. at 45.

<sup>18</sup> Id. at 22.

<sup>19</sup> Id.

<sup>20</sup> Id. at 23.

<sup>21</sup> Id. at 170.

[Union Bank] is hereby ordered to execute a deed of sale in favor of [petitioners].<sup>22</sup>

Union Bank filed a Motion for Reconsideration but the RTC denied the motion in its Order dated September 30, 2009.<sup>23</sup> Aggrieved, Union Bank filed a Petition for *Certiorari* before the CA assailing the RTC Orders.

### *Ruling of the CA*

In its Decision dated February 21, 2013, the CA granted the Petition for *Certiorari*, and reversed and set aside the Order of the RTC.<sup>24</sup> It upheld the validity of the Compromise Agreement entered into by the parties.<sup>25</sup>

The CA found that the RTC had gravely abused its discretion “when it interpreted the Compromise Agreement in such a way as to digress from the clear wordings thereof,”<sup>26</sup> viz.:

To the mind of this Court, the RTC went beyond the clear wordings of the Compromise Agreement, particularly the remedies available to [Union Bank] in case [petitioners fail] to comply with the terms and conditions of the [agreement]. Instead of applying the parties' intention, the RTC interpreted the contract for them. This is not in harmony with the “*plain meaning rule*” under statutory construction.

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Evidently, one of the remedies available to [Union Bank was] to resort to its rights mentioned under the [real estate mortgage] contract, which necessarily include[d] the power and authority “*to take actual possession and control*” of the mortgaged property in the event of [petitioners'] non-compliance with the terms of the Compromise Agreement.<sup>27</sup> (Emphasis supplied.)

Moreover, the CA ruled that the Compromise Agreement did *not* have the effect of extinguishing petitioners' loan obligation to Union Bank.<sup>28</sup> It pointed out that the Compromise Agreement simply granted a new payment scheme and interest rate to petitioners without any alteration as regards their original loan obligation to the bank.<sup>29</sup>

<sup>22</sup> Id. at 23.

<sup>23</sup> Id.

<sup>24</sup> Id. at 32.

<sup>25</sup> Id.

<sup>26</sup> Id. at 31-32.

<sup>27</sup> Id. at 24-25.

<sup>28</sup> Id. at 27.

<sup>29</sup> Id.

Petitioners moved for reconsideration but the CA denied the motion in its Resolution dated July 18, 2013. As a result, petitioners filed the present Petition for *Certiorari* assailing the CA Decision and Resolution.

### *Issues*

The issues for the Court's resolution are: *first*, whether petitioners' original loan obligation to Union Bank was novated by the Compromise Agreement,<sup>30</sup> and *second*, whether Union Bank can resort to the exercise of its rights and remedies under the real estate mortgage contract in case of petitioners' failure to comply with the new payment scheme set forth in the Compromise Agreement.<sup>31</sup>

### *The Court's Ruling*

At the outset, it should be stressed that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.<sup>32</sup> Here, the proper recourse for petitioners was to file a Petition for Review on *Certiorari* under Rule 45 and not to resort to *certiorari* under Rule 65 of the Rules of Court as a substitute for the lost remedy of appeal. As such, the Petition for *Certiorari* should be dismissed outright for being the wrong mode of appeal.

In any case, even *if* the Petition is treated as one duly filed under Rule 45, it would still be denied for lack of merit.

The Civil Code defines a compromise as “a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.”<sup>33</sup> A compromise agreement that is approved by final order of the court has the effect of *res judicata* between the parties,<sup>34</sup> and is deemed a judgment that is subject to execution in accordance with the Rules of Court.<sup>35</sup> “Judges[,] therefore[,] have the *ministerial* and *mandatory* duty to implement and enforce it.”<sup>36</sup>

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<sup>30</sup> Id. at 12.

<sup>31</sup> Id. at 12-13.

<sup>32</sup> RULES OF COURT, Rule 65, Section 1.

<sup>33</sup> CIVIL CODE, Article 2028.

<sup>34</sup> CIVIL CODE, Article 2037.

<sup>35</sup> See *PNOC-EDC v. Abella*, 489 Phil. 515, 535 (2005).

<sup>36</sup> Id. Emphasis supplied.

In implementing a compromise agreement, the “courts cannot modify, impose terms different from the terms of [the] compromise agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion.”<sup>37</sup>

A careful perusal of the Compromise Agreement shows that it was executed by the parties for the settlement of petitioners' outstanding loan obligation with Union Bank.<sup>38</sup> They agreed that petitioners would buy back the foreclosed property from the bank for ₱5,459,871.19, which amount they termed as the “purchase price” in the agreement.<sup>39</sup> The purchase price was to be paid under an amortization schedule, made an integral part of the agreement, that divided payment thereof in equal installments of ₱72,170.25 per month for a period of fifteen (15) years.<sup>40</sup>

Note, in this regard, that the Compromise Agreement specifically referred to the payment of petitioners' original loan obligation as the very purpose for its execution. Since there was no real change in the original obligation, substitution of the person of the debtor, or subrogation of a third person to the rights of the creditor, petitioners' loan obligation to Union Bank *cannot* be said to have been extinguished by novation,<sup>41</sup> as petitioners insist.

The Compromise Agreement, too, enumerated Union Bank's remedies in case petitioners default in the payment of their monthly amortizations with the bank, *viz.* :

8. Failure on the part of [petitioners] to comply with or should [petitioners] violate any of the foregoing terms/provisions of this Compromise Agreement shall entitle [Union Bank] to **forfeit all payments made by [petitioners] which shall be applied as rental for [their] use and possession of the Property** without the need for any judicial action or notice to or demand upon [petitioners] and without prejudice to such other rights as may be available to and at the option of [Union Bank] such as, but not limited to, **bringing an action in court to enforce payment of the Purchase Price or the balance thereof and/or damages, or for any causes of action allowed by law.**

9. Any failure on the part of [petitioners] to comply with the terms of this Compromise Agreement shall entitle the aggrieved party to a Writ of

<sup>37</sup> *Gadrinab v. Salamanca, et al.*, 736 Phil. 279, 295 (2014).

<sup>38</sup> *Rollo*, p. 38.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See CIVIL CODE, Article 1291.

Execution for all the amounts due and outstanding under the terms of this Compromise Agreement against the party responsible for the breach or violation, **including the exercise by [Union Bank] of its rights and remedies under the Real Estate Mortgage.**<sup>42</sup> (Emphasis supplied)

In other words, the remedies available to Union Bank should petitioners fail to abide by the terms of the Compromise Agreement are: *first*, to forfeit all payments made by petitioners which would then be applied as rental for their use and possession of the mortgaged property; *second*, to move for the issuance of a writ of execution to enforce payment of the purchase price or the balance thereof with the trial court; and *third*, to exercise its rights and remedies under the real estate mortgage.

These remedies became readily available to Union Bank when petitioners admittedly<sup>43</sup> failed to pay their monthly amortizations to the bank as required under the Compromise Agreement. Consequently, the RTC was *correct* when it issued its Order dated December 13, 2005 granting the Motion for Issuance of Writ of Execution filed by Union Bank in order to consolidate its title over the foreclosed property.<sup>44</sup>

The *first* error the RTC made was when it *reconsidered* its earlier ruling and ordered that the Writ of Execution it had previously issued in Union Bank's favor be stayed but “*only* for the purpose of collecting all the amounts due and outstanding pursuant to the schedule of payments.”<sup>45</sup>

The *second* error came in spades in the RTC's Order dated June 26, 2009 wherein the trial court declared that: (a) Union Bank had abandoned the real estate mortgage when it entered into the Compromise Agreement with petitioners;<sup>46</sup> and (b) the remedy for Union Bank in case of default in payment on the part of petitioners was to ask the court for execution of the judgment as regards the amounts due and outstanding, and not to take actual control and possession of the foreclosed property.<sup>47</sup>

There is absolutely no basis to the RTC's ruling that Union Bank had abandoned its rights and remedies under the real estate mortgage when it executed the Compromise Agreement with petitioners. The Compromise

<sup>42</sup> *Rollo*, p. 39.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.* at 22.

<sup>45</sup> *See* the Order dated February 13, 2007; *id.* at 44 to 45.

<sup>46</sup> *Id.* at 170.

<sup>47</sup> *Id.*

Agreement itself acknowledged the existence of the real estate mortgage<sup>48</sup> and even included it as part of Union Bank's remedies in case petitioners default in payment of their monthly amortizations,<sup>49</sup> which is precisely what happened in this case.

The RTC, too, gravely abused its discretion when it *limited* the remedies available to Union Bank to just the collection of the balance of the purchase price notwithstanding the clear terms of the Compromise Agreement (Section 9 thereof, in particular), which allowed the bank to exercise its rights and remedies under the real estate mortgage.

Based on these considerations, we see no cogent reason to overturn the CA's factual findings and conclusions. There is no question that the RTC had failed to implement the Compromise Agreement strictly on the terms agreed upon by the parties.

**WHEREFORE**, the Petition is **DISMISSED**. The Decision dated February 21, 2013 and the Resolution dated July 18, 2013 of the Court of Appeals in CA-G.R. SP No. 111832 are **AFFIRMED**.

**SO ORDERED.**

  
**HENRY JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
*Associate Justice*


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<sup>48</sup> Id. at 37.

<sup>49</sup> Id. at 38.



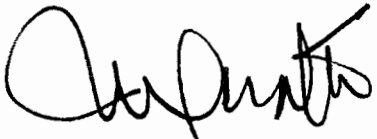
  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

  
**ANDRES B. REYES, JR.**  
 Associate Justice

(On leave)  
**RAMON PAUL L. HERNANDO**  
 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.

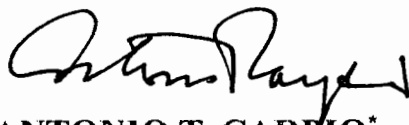
  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

**CERTIFIED TRUE COPY**

  
**MISAELO DOMINGO C. BATTUNG III**  
 Deputy Division Clerk of Court  
 Third Division

  
**ANTONIO T. CARPIO\***  
 Acting Chief Justice

OCT 17 2019

\* Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.