

FIRST DIVISION

[G.R. No. 150718, March 26, 2003]

BASILIO BORJA, SR., PETITIONER, VS. SULYAP, INC. AND THE COURT OF APPEALS, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review assailing the April 20, 2001 Decision^[1] of the Court of Appeals in CA-G.R. CV No. 62237, and its October 31, 2001 Resolution^[2] denying petitioner's motion for reconsideration.

The antecedent facts reveal that petitioner Basilio Borja, Sr., as lessor, and private respondent Sulyap Inc., as lessee, entered into a contract of lease involving a one-storey office building owned by the petitioner and located at 12th Street, New Manila, Quezon City. Pursuant to the lease, private respondent paid, among others, advance rentals, association dues and deposit for electrical and telephone expenses. Upon the expiration of their lease contract, private respondent demanded the return of the said advance rentals, dues and deposit but the petitioner refused to do so. Thus, on October 5, 1995, the former filed with the Regional Trial Court of Quezon City, Branch 80, a complaint for sum of money against the petitioner.^[3] Subsequently, the parties entered into and submitted to the trial court a "Compromise Agreement" dated October 16, 1995.^[4] On the basis thereof, the trial court, on October 24, 1995 rendered a decision^[5] approving the compromise agreement. The full text of the said decision reads:

Parties thru counsel submitted the following compromise agreement:

"1. That the parties agree that defendant is the LESSOR and owner of the premises subject of the herein complaint and that herein plaintiff is the LESSEE thereof who is to vacate the leased premises peacefully on November 7, 1995;

2. That in the possession of defendant are the following amounts:

- a) P20,000.00 – deposited by plaintiff to defendant on June 7, 1994 for utilities;
- b) 5,400.00 – as returnable association dues to plaintiff;
- c) 30,000.00 – deposited by the plaintiff to defendant on August 30, 1994, for telephone [expenses];
- d) 55,000.00 – ... [rental] deposit [to be applied as rental payment] for the period of October 7 to November 7, 1995.

3. That likewise plaintiff paid for the 5% withholding taxes to the Bureau of Internal Revenue for the rentals which is due from the defendant amounting to P25,175.00 covering the period from July 1994, to July of 1995, whereon plaintiff is hereto attaching proof of payment or receipts as annexes "A" and "B" of said withholding taxes and had been credited to the defendant entitling plaintiff to full reimbursement;

4. That it is expressly agreed that prior to or on November 7, 1995, defendant will reimburse to plaintiff the withholding taxes paid to the Bureau of Internal Revenue in the name of defendant upon signing of the herein compromise agreement plus the association dues of P5,400.00 or a total of P30,575.00;

5. That with the P55,000.00 consumed by way of rentals up to November 7, 1995, there will be left in the possession of defendant of plaintiff's money in the amount of P50,000.00; said amount shall be turned over by defendant to plaintiff within 5 days from arrival of billings for telephone, electrical and water charges only;

6. That the amount shall be subject to actual billings ending November 7, 1995 only and shall immediately as stated, be hand[ed] over to plaintiff;

7. That it is expressly agreed that the parties shall comply in good faith to the terms of the herein compromise agreement and that **any amount due not paid within the period stated in this agreement shall earn 2% interest per month until fully paid plus twenty five 25% attorney's fees of the amount collectible** and that writ of execution shall be issued as a matter of right. (Emphasis supplied)

WHEREFORE, in light of the above, it is respectfully prayed of this Honorable Court that judgment be rendered on the basis of the above compromise agreement.

Manila for Quezon City

October 16, 1995."

Finding the foregoing compromise agreement to be not contrary to law, morals and public policy, the same is hereby APPROVED.

WHEREFORE, judgment is hereby rendered in accordance with the terms and conditions set forth in the compromise agreement and the parties are hereby enjoined to comply with and abide by the said terms and conditions thereof.

SO ORDERED.^[6]

Petitioner, however, failed to pay the amounts of P30,575.00 and P50,000.00 stated in the judicial compromise. Hence, private respondent filed a motion for the issuance of a writ of execution for the total amounts of P30,575.00 and P50,000.00 or a total of P102,733.12, inclusive of 2% interest and 25% attorney's fees.^[7] The

trial court, in its February 7, 1996 order,^[8] granted the motion over the opposition^[9] of the petitioner. On May 24, 1996, the latter filed a motion to quash the writ of execution, contending that the penalty of 2% monthly interest and 25% attorney's fees should not be imposed on him because his failure to pay the amounts of P30,575.00 and P50,000.00 within the agreed period was due to private respondent's fault.^[10]

On February 20, 1997, petitioner filed another motion praying for the quashal of the writ of execution and modification of the decision.^[11] This time, he contended that there was fraud in the execution of the compromise agreement. He claimed that 3 sets of compromise agreement were submitted for his approval. Among them, he allegedly chose and signed the compromise agreement which contained no stipulation as to the payment of 2% monthly interest and 25% attorney's fees in case of default in payment. He alleged that his former counsel, Atty. Leonardo Cruz, who assisted him in entering into the said agreement, removed the page of the genuine compromise agreement where he affixed his signature and fraudulently attached the same to the compromise agreement submitted to the court in order to make it appear that he agreed to the penalty clause embodied therein.

Private respondent, on the other hand, vehemently denied the contention of the petitioner. To refute the latter's claim, he presented Atty. Leonardo Cruz, who declared that the petitioner gave his consent to the inclusion of the penalty clause of 2% monthly interest and 25% attorney's fees in the compromise agreement. He added that the compromise agreement approved by the court was in fact signed by the petitioner inside the courtroom before the same was submitted for approval. Atty. Cruz stressed that the penalty clause of 2% interest per month until full payment of the amount due, plus 25% thereof as attorney's fees, in case of default in payment, was actually chosen by the petitioner over another proposed more burdensome penalty clause which states - "That it is expressly agreed that the parties shall comply in good faith to the terms of the herein compromise agreement and that any violation thereof shall automatically entitle the aggrieved party to damages in the amount of P250,000.00 plus P50,000.00 attorney's fees."^[12]

On October 26, 1998, the trial court issued the assailed order denying petitioner's motion seeking to quash the writ of execution and to modify the judgment on compromise. It gave credence to the testimony of Atty. Leonardo Cruz that petitioner consented to the penalty clause in the compromise agreement. The court further noted that it was only on February 20, 1997, or more than one year from receipt of the judgment on compromise on October 25, 1995, when he questioned the inclusion of the penalty clause in the approved compromise agreement despite several opportunities to raise said objection. The dispositive portion of the said order states:

WHEREFORE, premises considered, and as earlier stated, the defendant's motion to quash the writ of execution and modification of judgment is denied.

SO ORDERED.^[13]

On appeal by the petitioner to the Court of Appeals, the latter affirmed the challenged order of the trial court.