**SUPREME COURT**
**SECOND DIVISION**

**CITY OF ZAMBOANGA, VITALIANO D. AGAN, EFREN S. MARIANO AND PEDRO A. PACIO,**
***Petitioners*,**

***-versus-***

**G.R. No. 86760**
**April 30, 1991**

**HON. PELAGIO S. MANDI, Presiding Judge of Regional Trial Court, Branch 12, AURELIO JULIAN AND BENITA LEDESMA JULIAN,**
***Respondents*.**
**x----------x**

## D E C I S I O N

**MELENCIO-HERRERA, *J.*:**

The focal point of inquiry in this controversy is the validity and enforceability of the Compromise Agreement entered into between the parties, which petitioners assail as without binding force and effect by reason of lack of this Court's approval. Hence, this Petition.

The antecedent facts hark back to 11 February 1982 when a Complaint for Eminent Domain was lodged before the Regional Trial Court, Branch XVI, Zamboanga City (Civil Case No. 2645),[1] by petitioner City of Zamboanga (the City, for brevity) against private respondent

spouses, Aurelio Julian and Benita Ledesma (the Julians, for short) over the latter's 56,865 sq. m. lot (Lot No. 8) covered by TCT No. T-49,759, situated in Abongabong, Pasonanca, Zamboanga City (hereinafter, the Eminent Domain Case). The expropriation was intended for the expansion of the Pasonanca Park and for other public purposes.

In a Decision, dated 19 March 1984, the Court a quo gave the City the authority to enter, take and retain possession of the property sought to be expropriated upon payment of just compensation fixed at PO. 18 per sq.m., or a total of P10,428.00.

That Decision was affirmed in toto by the Court of Appeals on 29 January 1987 (the Appellate Court Decision).[2]

On 12 February 1987, the Julians filed a "Notice of Appeal" to the Supreme Court.

On 16 March 1987, the Julians wrote a letter to the then OIC Mayor Julio Cesar F. Climaco, stating, inter alia, that pending appeal, "we are accepting the offer of the City of Zamboanga to buy our lot at the uniform price of P3.00 per square meter, and should this decision of ours to sell to the City at the price stated is acceptable to the City we will move for the dismissal of the appeal on the ground of amicable settlement."

The Letter was endorsed to the Sangguniang Panglunsod of Zamboanga City, which adopted Resolution No. 260 on 13 May 1987 authorizing the OIC Mayor:

> "to sign for and in behalf of the City Government of Zamboanga the Compromise Agreement for the acquisition of the properties of Mr. Aurelio G. Julian located at Abong-abong, this city, at the price of P3.00 per square meter, as submitted by the City Legal officer, subject, however, to the approval of the Supreme Court, and if approved, to authorize him to sign for and in behalf of the city the corresponding deed of sale." (Emphasis supplied).

On 4 June 1987, the Compromise Agreement was signed. On the same date, the parties filed with this Court a Motion to Approve

Compromise Agreement. On 27 October 1987, the Julians, through counsel, wrote the Clerk of Court of the Court of Appeals requesting that the records of the case be forwarded immediately to this Court so that the Motion to Approve Compromise Agreement could be acted on.

On 6 January 1988, notwithstanding non-approval of the Compromise Agreement by this Court, the Sangguniang Panglunsod of the City, in its Resolution No. 7, gave authority to the OIC Mayor to sign for and on behalf of the City the Deed of Absolute Sale covering the acquisition by the City of the subject lot at the price of P3.00 per sq. m. Said Resolution did not impose any condition of prior approval by the Supreme Court. And so it was that pursuant to the authorization granted, the Deed was duly signed by the parties on 11 January 1988 for and in consideration of the total sum of P170,595.00 at P3.00 per sq.m.

On 4 February 1988, the City received copy of the Entry of Judgment of the Appellate Court Decision, showing that it had become final and executory on 21 February 1987. Significantly, however, the Entry of Judgment was made only on 26 January 1988 (Annex G, Petition, p. 54, Rollo).

On 24 March 1988, on the ground that the City was reneging on the Compromise Agreement, the Julians instituted before the Regional Trial Court of Zamboanga City, Branch 12, presided over by respondent Judge, a Petition for Mandamus (CV No. 3357) praying that the City be made to comply with said Agreement, "particularly to pay the Julians the amount of P170,595.00 for the purchase of Lot No. 8" (the Mandamus Case).

In its Answer, the City traversed the Petition by contending that the Julians had no cause of action against it since this Court's approval of the Compromise Agreement was never obtained because of the abandonment of the appeal, consequently, said Agreement never became operative and enforceable. Moreover, according to the City, citing Article 2040 of the Civil Code, a final judgment may not be the subject of a compromise agreement, which must be entered into before or during litigation and not after final judgment, the reason being that there being no more controversy, a compromise is useless.

Deciding the Mandamus Case on 13 October 1988, respondent Judge issued the Writ, approved the Deed of Absolute Sale entered into between the parties on 11 January 1988 as a result of the Compromise Agreement, and ordered the City to pay the total sum of P170,595.00 for the expropriated property at the price of P3.00 per sq.m. That disposition relied; among others, on the ruling in Dormitorio, et al. vs. Fernandez, et al. (L-25895, 21 August 1976, 72 SCRA 388), that a final and executory judgment of a trial court may be novated by the subsequent agreement of the parties.

Reconsideration sought by the City having been denied, it has availed of this Petition for Certiorari charging that Respondent Judge acted without or in excess of jurisdiction and with grave abuse of discretion in granting Mandamus and denying its plea for reconsideration.

This Court initially resolved to deny the Petition for failure of the City to submit proof of service of the Petition on the lower court and on the adverse parties, as required by Circular No. 1-88, paragraph 2, but reconsidered its position upon satisfactory showing by the City that what it had actually filed was a special civil action for Certiorari under Rule 65, which does not require such service.

Upon the factual milieu, we uphold the challenged judgment in the Mandamus Case.

It is true that in its Resolution No. 260 of 13 May 1987, the City had authorized the execution of the Compromise Agreement and the Deed of Sale "subject to the approval of the Supreme Court." However, the subsequent acts of the parties clearly show that the City was no longer insisting on that suspensive condition. Thus, as stated in Respondent Judge's Decision (p. 1), "immediately after the filing of notice of appeal to the Supreme Court, the OIC Mayor negotiated for the purchase of the subject property at P3.00 per sq.m." "to prevent a lengthy litigation at the Supreme Court and respondent city was also paying the same price of P3.00 per square meter to other adjoining lot owners." The Julians accepted the City offer in their letter of 16 March 1987. Further, the subsequent Sangguniang Panglunsod Resolution No. 7 did away with that condition. And to cap it all, the Deed of Sale was signed and finalized by the parties fully cognizant

that such approval had not been obtained. By virtue of the settlement thus arrived at, the Julians abandoned their appeal to this Court and withdrew from a pending litigation. All these developments transpired before the entry of the Appellate Court judgment was made on 26 January 1988.

To all intents and purposes, therefore, new rights and obligations as between the parties had been created of their own volition. There was clear proof of an animus novandi and an obvious intent to supersede the previous judgment in the Eminent Domain Case. With this patent manifestation of will, that Decision must be deemed to have been novated by the parties themselves (cf. Dormitorio vs. Hon. Jose Fernandez, L-25897, 21 August 1976, 72 SCRA 388), with the result that said original Decision had lost force and effect.

The finality of the Appellate Court Decision, therefore, which was unknown to the parties at the time of settlement, neither produced any legal effect since the appeal had effectively been withdrawn. There was no longer any lower Court Decision that could be the subject of an appeal.

The City maintains, however, that it was not aware of the abandonment of the appeal for which reason it entered into the compromise. This is not entirely accurate, however, since it was made known that the dismissal of the appeal was being made as a reciprocal concession for the settlement. Besides, as provided for by Article 2038 of the Civil Code, "one of the parties can not set up a mistake of fact as against the other if the latter, by virtue of the compromise has withdrawn from a litigation already commenced," as in this case, where the Julians had desisted from pursuing their appeal.

It may be conceded that the City was unaware that the judgment in the Eminent Domain Case had attained finality. Ignorance of a judgment, however, is not a valid ground for attacking a compromise. The course of action should have been an action for rescission which, in this case, has not been availed of Article 2040 of the Civil Code explicitly provides:

> "If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being

> unaware of the existence of the final judgment, the compromise may be rescinded.
>
> "Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise."

The Julians were well within their rights in seeking the enforcement of the compromise through a Petition for Mandamus on the strength of Article 2041 of the Civil Code, providing that:

> "If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand."

**WHEREFORE**, upon the finding that the Writ of Mandamus was properly issued, this Petition is hereby **DISMISSED**. No pronouncement as to costs.

**SO ORDERED.**

**Paras, Padilla, Sarmiento and Regalado, *JJ.*, concur.**

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[1] Judge Jesus C. Carbon, Jr., presiding.
[2] Penned by Justice Bienvenido C. Ejercito and concurred in by Justices Oscar R. Victoriano and Antonio M. Martinez.