

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**RAFAEL M. SUMADCHAT, doing  
business under the name and style “R.  
SUMADCHAT CUSTOMS BONDED  
WAREHOUSE, General Order No. 238”,  
*Petitioner,***

***-versus-***

**G.R. No. 52197  
January 30, 1982**

**HONORABLE COURT OF APPEALS and  
ST. LOUIS REALTY CORPORATION,  
*Respondents.***

X-----X

**DECISION**

**GUERRERO, J.:**

This is a Petition for Review on *Certiorari* filed by petitioner seeking to set aside the decision of the respondent Court of Appeals<sup>[1]</sup> in CA-G.R. No. SP-07953-R entitled “St. Louis Realty Corporation vs. Hon. Pedro B. Rabadon, et al.” for certiorari and prohibition with writ of preliminary injunction annulling the challenged orders of the Court of First Instance of Manila, Branch IX in Civil Case No. 80838, dated April 21, 1978 and April 28, 1978.

The background facts are as follows:

Petitioner, on August 20, 1970, filed with the Court of First Instance of Manila, Branch IX, a complaint against private respondent St. Louis Realty Corp. for the recovery of certain sums of money representing charges covering a shipment of machineries and equipments and for attorney's fees, the case docketed as Civil Case No. 80838. After trial, the Court of First Instance rendered a decision on September 10, 1976, ordering private respondent (defendant therein) to pay the petitioner (plaintiff therein) a total amount of P1,069,174.41 with interest thereon at the rate of 10% per annum from the date of the filing of the complaint, plus attorney's fees in the amount of P30,000.00 and costs of the suit. In a subsequent order dated December 8, 1976, the said money judgment of P1,069,174.41 was increased to P1,214,363.54. Petitioner (plaintiff therein) thereafter filed a motion for execution pending appeal, and on January 31, 1977, the Court of First Instance issued an order directing the issuance of the writ of execution pending appeal; the writ was issued on February 4, 1977.

Private respondent (defendant therein) moved for reconsideration which the court denied. Private respondent went up to the Court of Appeals in a petition for certiorari and prohibition with writ of preliminary injunction, said petition docketed as CA No. SP-06427 entitled "St. Louis Realty Corporation vs. Hon. Manuel P. Reyes, et al." and was denied in the resolution of the Court of Appeals dated March 15, 1977.

In view of the denial of its motion for reconsideration of the resolution dated March 15, 1977, private respondent filed before the Supreme Court a petition for certiorari and prohibition docketed under G.R. No. L-46019, filed May 17, 1977.

Thereafter, an amicable settlement of all the cases aforementioned was negotiated and finally concluded between petitioner and private respondent and as a consequence thereof (1) private respondent withdrew on June 16, 1977 its appeal from the decision rendered by the Court of First Instance in Civil Case No. 80838 since the records of the case had not yet been elevated to the Court of Appeals; (2) private respondent likewise moved to withdraw on June 15, 1977 its petition for certiorari in CA-G.R. No. SP-06427-R in the Court of

Appeals and (3) it also moved to withdraw on June 16, 1977 its petition in the Supreme Court docketed as G.R. No. L-46019. All the three motions mentioned above were filed with the conformity of the petitioner.

In the motion to withdraw appeal from the decision rendered in Civil Case No. 80838 by the Court of First Instance, the terms of the amicable settlement between the parties are recited, which We quote:

“2. In the meantime, defendant has offered and plaintiff has accepted, an amicable settlement of the controversy between them whereby defendant shall pay to plaintiff in full settlement of the judgment rendered by this Honorable Court the amount of P900,000.00 plus P15,000.00 which constitutes one-half of the amount awarded as and for attorney’s fees in the said Decision, which shall be paid as follows:

‘(a) Six Hundred Thousand (P600,000.00) Pesos in cash or in Manager’s/Cashier’s Check to be paid within a period of sixty (60) days from date of the signing of this Motion;

(b) The balance of Three Hundred Thousand (P300,000.00) Pesos to be paid in cash or Manager’s/Cashier’s Check within sixty (60) days after the payment of the P600,000.00 aforestated; and

(c) The amount of P15,000.00 as and for attorney’s fees to be paid by the defendant to plaintiff’s counsel on record on the date of the signing of this Motion.

3. For and in consideration of the foregoing premises, plaintiff has agreed, upon payment of the P600,000.00 stated in 2(a) above, to release all the machineries, equipments and other goods of the defendant which are stored in plaintiff’s warehouse, free and clear of any and all charges, liens or encumbrances of whatever kind or nature; and to lift his levy on execution and garnishment of funds in various

banks, pursuant to the Order of this Honorable Court dated 31 January, 1977, to the extent of two-thirds (2/3) of the value of the properties levied upon and the full amount of the funds garnished, particularly including in such lifting levies on certificates of title covering the properties of defendant which have already been paid by the corresponding lotbuyers; it being understood, that in all cases where certificates of title have already been issued to said properties in favor of plaintiff as a result of execution sale, the properties covered by such certificates of sale shall be considered as redeemed in accordance with law and the corresponding documents of reconveyance shall be properly executed in favor of defendant.

4. Upon the signing of this Motion, defendant shall withdraw its appeal with the Court of Appeals, its Petition for Certiorari filed also in the Court of Appeals; and its Petition for Certiorari filed with the Supreme Court.”<sup>[2]</sup>

It is not disputed that private respondent paid the sum of P15,000.00 as and for attorney’s fees to the counsel of petitioner on June 15, 1977 upon the signing of the Motion to Withdraw Appeal, and the sum of P600,000.00 on August 22, 1977, leaving a balance of the compromise amount in the sum of P300,000.00.

Claiming that private respondent failed to pay the remaining balance of P300,000.00 which it had committed to pay within 60 days from date of payment of the P600,000.00 first due, petitioner filed with the Court of First Instance a motion under date of April 15, 1978 for the issuance of an alias writ of execution. Said motion for issuance of an alias writ of execution was set for the consideration and resolution of the court on April 20, 1978 and copy of the motion was furnished Atty. Romeo Z. Comia, counsel for St. Louis Realty, at his address at 2020 Shaw Boulevard, Pasig, Metro Manila, and was received by one Artemio Dulay on April 17, 1978. On April 19, 1978, private respondent thru a new counsel, Atty. Belleza A. Demaisip, with address given at 652 Retiro corner Palali Sts., Quezon City, filed an Urgent Motion to Reset Hearing of Motion for Issuance of Alias Writ of Execution “to another date, at least ten (10) days from today preferable on May 5 or 8, 1978.”

The Court, acting thru then Vacation Judge Pedro Rabadon, in its order of April 21, 1978, denied the Motion to Reset the Hearing of the Motion for Issuance of Alias Writ of Execution on the ground of “non-compliance with the formalities of the law,” and granted the issuance of the writ prayed for.

Private respondent filed a Motion for Reconsideration of the April 21, 1978 order of Judge Rabadon but the same was denied by the Court in the order of the Regular Judge Manuel Reyes on April 28, 1978.

Not satisfied, private respondent went to the Court of Appeals in a petition for certiorari and prohibition with writ of preliminary mandatory injunction under docket No. SP-07953-R. On October 29, 1979, respondent Court of Appeals rendered its decision setting aside and declaring of no legal force and effect, and enjoined the enforcement and implementation of the challenged orders dated April 21 and 28, 1978 of the Court of First Instance.

Petitioner filed a motion for reconsideration of the decision. The Court of Appeals denied the same in its resolution of December 20, 1979.

Petitioner now raises the following issues for the resolution of this Court, to wit:

- “1. Whether respondent Court of Appeals erred in finding: (a) the order dated 21 April 1978 of Vacation Judge Pedro Rabadon in Civil Case No. 80838 denying herein private respondent’s ‘Urgent Motion to Reset Hearing of Motion for Issuance of an Alias Writ of Execution’ and (b) the order of Judge Manuel Reyes dated 28 April 1978 denying herein private respondent’s motion for reconsideration of the order of 21 April 1978 as having been issued with grave abuse of discretion amounting to lack of jurisdiction.
2. Whether respondent Court of Appeals erred in giving undue consideration and emphasis on the supposed violation by herein petitioner of the compromise agreement contained in the motion to withdraw appeal without giving

like significance to herein private respondent's violation of said agreement, contrary to the universal guiding rules in equity proceedings, and particularly since these matters were not all in the issue in the case and no competent evidence thereon had been duly adduced."

Petitioner submits that respondent Court of Appeals erred in that, assuming for the sake of argument that there was error in issuing the disputed orders, such error did not amount to a grave abuse of discretion which would have justified respondent Court of Appeals in setting aside the disputed orders under Sec. 1, Rule 65 of the Revised Rules of Court. He further contends that there are valid reasons and sufficient circumstances to sustain the disputed orders of the trial court.

The challenged orders dated April 21, 1978 and April 28, 1978 are hereunder quoted, thus:

"ORDER

For being in order, the motion for issuance of alias writ of execution is hereby granted.

The urgent motion to reset hearing of aforesaid motion for alias writ of execution is hereby denied for non-compliance with the formalities of law.

Let the corresponding alias writ of execution be issued for the amount prayed for in the motion. Messrs. Reynaldo Batoon and Apolonio Golfo, Deputy Sheriffs of this Branch, are hereby appointed special sheriffs to enforce the said writ of execution.

SO ORDERED.

Manila, Philippines, April 21, 1978.

(SGD) PEDRO D. RABADON  
*Judge*"

“ORDER

Defendant’s motion for reconsideration of April 24, 1978 is hereby denied for lack of merit.

Apropos, the alias writ of execution already issued by this Court to enforce the decision of September 10, 1976 as amended by the order of December 8, 1976 — less the amount of P615,000.00 which was already paid by defendant — stands.

SO ORDERED.

Manila, Philippines, April 28, 1978.

(SGD.) MANUEL T. REYES  
*Judge*”

Respondent Court of Appeals sustained the grounds raised by private respondent against said orders that (1) the order of respondent Judge Rabadon was issued without giving St. Louis Realty an opportunity to be heard and thus deprived it of the right to due process and (2) that St. Louis Realty Corp. was justified in withholding payment of the P300,000.00 representing the unpaid balance of the compromise agreement.

Resolving the first ground, respondent Court of Appeals ruled that the order of Judge Rabadon denying the motion to reset “is unsatisfactory” because the denial order did not point out what formalities of the law were not complied with. We quote the court’s ruling, thus:

“(I)t is Our considered view that there was indeed palpable error and manifest abuse of discretion on the part of respondent Judge Rabadon in denying the resetting of hearing on the motion for issuance of the alias writ of execution which was asked by private respondent to be scheduled for April 20, 1978, at 8:30 a.m. Copy of this motion was received by petitioner’s counsel in the afternoon of April 18, 1978. The principal ground invoked by petitioner’s counsel, Atty. Belleza A. Demaisip, for the resetting to May 8 or May 9, 1978, of the scheduled hearing

of April 20, 1978 was because on the same date and time she was to appear as a counsel de officio in the hearing of a criminal case involving a detention prisoner (CC 20690, CFI, Branch XXIV, Pasig, Rizal) which is intransferable in character (par. 2, Motion; Annex W, Petition). These reasons and circumstances alleged by petitioner's counsel have not been controverted nor disproved and yet in the challenged order of respondent Judge Rabadon, denying the resetting of the hearing, no consideration nor even mention of the invoked reasons justifying a postponement was even mentioned. Respondent Judge ignored said reasons and simply fell back on a statement in his order (Annex W, page 204, Petition) that the said motion of petitioner is denied for non-compliance with the formalities of law, without even pointing out what said formalities are. Consequently, We find this void as perplexing and in Our view the said order is unsatisfactory." (Emphasis supplied.).

Respondent Court of Appeals rejected the contention of petitioner that the phrase "for non-compliance with the formalities of the law" refers to the fact that the counsel who filed the motion to reset the hearing of petitioner's motion for issuance of alias writ of execution is Atty. Belleza A. Demaisip who was not the counsel of record for private respondent St. Louis Realty Corp. in the trial court and did not priorly or simultaneously enter her appearance in collaboration with the counsel of record, Atty. Romeo Z. Comia, who had not withdrawn his appearance, and that Atty. Demaisip had therefore, no legal personality to appear in the case. The appellate court held that such contention was without substantial merit because the appearance of Atty. Demaisip before the Regular Judge Manuel Reyes was not repudiated by the Judge as it was obviously sanctioned by him when he acted on Atty. Demaisip's motion for reconsideration.

We do not agree with the Court of Appeals' ruling that the denial by the lower court of the motion to reset the hearing on the motion for alias writ of execution by reason of non-compliance with the formalities of the law constituted grave abuse of discretion amounting to excess or lack of jurisdiction.

We cannot accept the reasoning of the Court of Appeals that "if Judge Manuel Reyes could acknowledge the appearance of Atty. Demaisip

who filed the motion for reconsideration without questioning or attributing the effect to such an appearance of an apparently collaborating counsel, We find it difficult to accept that in the earlier incident before Judge Rabadon, this respondent Judge would be justified in invoking that perhaps, at most would be a technicality productive of no manifest prejudice to anyone.”

The fact that Judge Rabadon required compliance with the formalities of the law when the new counsel, Atty. Demaisip, filed her motion for deferment while Judge Reyes did not question her appearance in the subsequent motion for reconsideration is no reason to rule that Judge Rabadon acted with grave abuse of discretion in denying the motion for deferment, for evidently, Judge Rabadon was simply and faithfully applying and implementing the provisions of the Rules of Court, Section 26, Rule 138, re: Change of Attorneys, insofar as the initial appearance of Atty. Demaisip was concerned in the case. The above rule provides:

“Sec. 26. — Change of Attorneys. — An attorney may retire at any time from any action or special proceedings, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In the case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.”

X x x”

Under Our established jurisprudence, no substitution of attorneys will be allowed unless the following requisites concur: (1) there must always be filed a written application for substitution; (2) there must always be filed the written consent of the client to the substitution; (3) there must be filed the written consent of the attorney to be substituted, if such consent can be obtained; (4) in case such written consent cannot be procured, there must be filed with the application for substitution proof of the service of notice of such motion in the manner required by the rules on the attorney to be substituted. (U.S.

vs. Jacinto Borromeo, 20 Phil. 189; Ulanday vs. Manila Railroad Co., 45 Phil. 540; Ramos vs. Potenciano, 9 SCRA 589; Ong Ching vs. Ramolete, 51 SCRA 13; Cortez vs. Court of Appeals, 83 SCRA 31; Aderne vs. Aldaba, 83 SCRA 734).

It has also been held that courts may not presume that the counsel of record had already been substituted by second counsel merely from the filing of formal appearance by the latter. The requirements for substitution of counsel of record should be complied with for substitution to be effective. (Magpayo vs. Court of Appeals, 61 SCRA 115).

The spirit and context of the provision of Section 2, Rule 13 of the Rules, that the appearance of an attorney shall be filed with the court and served upon the parties affected thereby clearly indicate that the appearance of an attorney must be made in writing. The reason for such requirement is to enable the officers concerned to effectively serve processes on the attorney of record. (Luzon Rubber & Manufacturing Co. vs. Sixto Estaris and the Court of Appeals, L-31439, Aug. 31, 1973, 52 SCRA 391).

Since the counsel of record, Atty. Romeo Z. Comia, had not duly withdrawn his appearance or agreed to be substituted and/or collaborated with Atty. Demaisip, the former "is obligated to protect his client's interest until he is released from his professional relationship with his client. For its part, the court could recognize no other representation in behalf of the client except such counsel of record until a formal substitution of attorney is effected." (Wack-Wack Golf and Country Club, Inc. vs. Court of Appeals, 106 Phil. 501, 504).

And In re Clemente M. Soriano, 33 SCRA 801, the Supreme Court held that "before taking over a case handled by a peer in the Bar, a lawyer is enjoined to obtain the conformity of the counsel whom he would substitute. And if this cannot be had then he should, at the very least, give notice to such lawyer of the contemplated substitution." Likewise, in Fojas, et al. vs. Navarro, L-26365, 32 SCRA 476, We held that "unless the procedure prescribed by Rule 138, Section 26 on substitution of attorneys is complied with, the attorney whose appearance is on record before the filing of the application for

substitution should be regarded as the attorney entitled to be notified of all notices and pleadings and responsible for the conduct of the case.”

In the light of these strict rules and formalities that must be followed, it is not correct for the respondent Court of Appeals to hold that the same merely constitute “a technically productive of no manifest prejudice to anyone.”

Moreover, the Motion to Reset for Hearing is substantially a motion for postponement filed by the new counsel, Atty. Demaisip, who had no legal personality to appear in the case and for a ground that was personal to her and not to the counsel of record, Atty. Romeo Z. Comia. The new counsel had no right to assume that her motion for postponement will be granted by the court because the grant or denial of a motion for postponement is a matter addressed to the sound discretion of the trial judge and unless it is clearly shown that such discretion was gravely abused, the resolution of the Judge will not be interfered with.

We also find no grave abuse of discretion committed by Judge Rabadon in hearing the Motion to Reset on April 20, 1978, assuming that notice to counsel of record was received on April 18, 1978 (although the same notice had been actually received by Security Guard Artemio Dulay stationed at the address of counsel of record) for under the Rules of Court, Rule 15, Sec. 4, the court may “for good cause shown may hear a motion on shorter notice, especially on matters which the court may dispose of on its own motion.” Incidentally, the Motion to Reset raised no objection to the alleged 3-days notice, hence, it may be said that non-compliance had been cured by private respondent’s filing of a Motion for Reconsideration of the Order of the Court granting the Motion for Issuance of Alias Writ of Execution.

Private respondent’s claim that he was deprived of his constitutional right to have a day in court thereby depriving him of his right to due process of law is without merit for it is not disputed that said respondent was heard on its Motion for Reconsideration subsequently filed upon the denial of its Motion to Reset for Hearing the Motion for Issuance of Alias Writ of Execution. The rule is well

established that “in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard.” (Bermejo vs. Barrios, L-23614; Camorin vs. Barrios, L-23615, Feb. 27, 1970, 31 SCRA 764, 775-776 cited in Cornejo vs. Secretary of Justice, L-32818, June 28, 1974, 57 SCRA 663). “Absence of previous notice is not itself a substantial defect; what the law abhors is the lack of opportunity to be heard.” (Manuel vs. Villalena, et al., L-28218, February 27, 1970, 37 SCRA 745, 751).

In the context of the above facts and circumstances, We hold that Vacation Judge Rabadon and Regular Judge Manuel Reyes committed no grave abuse of discretion in issuing the orders dated April 21, 1978 and April 28, 1978, respectively. We find no such capricious and whimsical exercise of judgment which is equivalent to lack of jurisdiction, no patent and gross abuse as to amount to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, and no exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility.

On the second issue, petitioner assails the Court of Appeals in “making its own findings of certain vital facts relating to the alleged violations on the basis of the conflicting claims of petitioner and private respondent even before, and without, the evidence properly before it. Aside from being entirely unjustified, for the Court of Appeals to make such factual conclusions, would in effect, unduly expand its certiorari jurisdiction to include matters not sufficiently meritorious for it to rule upon. At any rate, if the material facts of the alleged violations are controverted, as in the case then before the Court of Appeals, the certiorari jurisdiction would not have been exercised in favor of private respondent as no grave abuse of discretion is discernible from the actuations of the then respondent judges. In addition, the factual conclusions of the Court of Appeals preempts the primary function of the lower court, namely, to determine the existence of any violation and the party responsible therefor by competent evidence still to be adduced, and then come to a decision.

There is merit to the contention of the petitioner that the issue of alleged violations by petitioner of the compromise agreement was never raised in the execution proceedings before either Judge Rabadon or Judge Reyes for in the Motion to Reset for Hearing the Motion for Issuance of Alias Writ of Execution as well as in the Motion for Reconsideration filed by the new counsel, Atty. Demaisip, for private respondent St. Louis Realty Corp. there is no averment regarding such alleged violations except that as stated in paragraph 5 in the Motion for Reconsideration which states:

“5. As regards the balance of P300,000.00, the delay in payment of the same is mainly due to some conflict of interpretation as regards the tenor of the agreement between the parties as to when the period within which the P300,000.00 should be paid, should commence to run.”

Upon denial of said Motion for Reconsideration for lack of merit by Regular Judge Manuel Reyes in the questioned order of April 28, 1978, private respondent then filed its petition for certiorari and prohibition (C.A.-G.R. No. 07953-R) complaining and assailing the aforesaid order of Judge Reyes in that the latter should have granted the Motion for Reconsideration and should have allowed private respondent to file a written opposition to petitioner’s Motion for Issuance of Alias Writ of Execution and substantiate by evidence its opposition. More specifically, private respondent alleges, thus:

“The respondent Hon. Manuel T. Reyes should have granted the petitioner’s Motion for Reconsideration, set aside the Order of April 21, 1978 which was issued by the respondent Hon. Judge Pedro B. Rabadon and should have allowed the petitioner to file a written opposition to the Motion for Issuance of Alias Writ of Execution and substantiate by evidence the petitioner’s written opposition to determine once and for all as to whether or not the private respondent violated the terms and conditions agreed upon in the said Motion to Withdraw Appeal particularly paragraph 8 thereof and whether or not the petitioner was really justified in withholding the payment of the sum of P300,000.00 representing the balance of the compromise amount or whether or not an Alias writ of Execution be issued to enforce the payment of the said amount of P300,000.00 or

the balance of the judgment award per the decision of September 10, 1976 as amended by the Order of December 30, 1976. If the petitioner was allowed by the respondent judges to file its written opposition and substantiate the sums by evidence, the Orders of April 21, 1978 and April 28, 1978 should have not been issued at all because from the evidences in the possession of the petitioner, the latter was and is justified in withholding the payment of the said sum of P300,000.00 in the light of the repeated, consistent and continuous violations committed by the private respondent with respect to the provisions of paragraph 3 of the said Motion to Withdraw Appeal particularly the non-inclusion in the lifting of the levy and Certificate of Redemption up to the present of the lots covered by the Sheriff's Certificate of Redemption are 'considered redeemed in accordance with law' as well as the lots already paid by the petitioner's lotbuyers. This simple, plain and clear obligation of the private respondent under paragraph 3 of said Motion to Withdraw Appeal has not been complied with by the private respondent up to the present despite repeated written demands and reminders made by the petitioner to private respondent, thru counsel." (Records, pp. 147-148).

That the private respondent did not present evidence before the trial court proving that petitioner herein vitiated the terms and conditions of the Compromise Agreement is clear and manifest from the following allegations in the petition before respondent Court of Appeals, to wit:

"If the petitioner was given time to file its written opposition and substantiate the same by evidence, the petitioner could have successfully proved that the private respondent violated the terms and conditions agreed upon in the said Motion to Withdraw Appeal and the petitioner was and still is justified in withholding the payment of the said amount of P300,000.00 and that the questioned Order of April 21, 1978 and April 28, 1978 could not have been issued at all by the respondent Judges." (Records, p. 152).

And so for the first time, private respondent raised the issue of violation by herein petitioner of the terms and conditions of the Compromise Agreement in its petition for certiorari and prohibition before the Court of Appeals, CA-G.R. No. 07953-R. And among other things, private respondent alleges the following assertions, as follows:

“It was only on January 18, 1978 and not immediately upon receipt of the said sum of P600,000.00 on August 22, 1977 when the private respondent causes the lifting of the garnishment with respect to 2/3 of the funds garnished in the different banks of the petitioner. Despite the said written request of the petitioner, the private respondent, up to the present, had not taken any positive step to lift the levy or cause the execution and delivery of another certificate of redemption with respect to the lots paid by the petitioner’s lotbuyers and the lots which are the subject matters of the sheriff’s certificate of sale which lots are ‘considered redeemed in accordance with law’ as agreed upon under paragraph 3 of the said Motion to Withdraw Appeal. To make things worst, the private respondent, in pursuance of the violation of the terms and conditions contained in paragraph 3 of the said Motion to Withdraw Appeal, caused the execution of the Sheriff’s Final Deed of Sale covering the lots which have been paid by the petitioner’s lotbuyers as well as the lots which are the subject matters of the Sheriff’s Certificate of Sale and are ‘considered redeemed in accordance with law’ as agreed upon in paragraph 3 of the said Motion to Withdraw Appeal and filed with Branch IX of the Court of First Instance of Manila a Motion for Confirmation of Sheriff’s Final Deed of Sale and Consolidation of Ownership dated May 30, 1978 which is set for hearing on June 2, 1978 at 8:30 o’clock in the morning.” (Records, pp. 150-151).

Notwithstanding the absence of competent evidence proving the supposed violations of the Compromise Agreement by the petitioner, not only in the Motion for Reconsideration but also in the petition for certiorari before respondent Court of Appeals, and notwithstanding the denials of said violations by the petitioner in his Comments, paragraph 9, to the petition asserting that he has performed his part of the reciprocal obligation when he lifted “the levy on execution on at

least 2/3 of the real properties levied upon and the lifting of the garnishment on its funds,” which lifting of levy on real properties is shown by the Certificate of Redemption whereby the sheriffs have cancelled and set aside the effects of the auction sale in the execution sale of the real properties as of August 19, 1977, the respondent appellate court immediately concluded that petitioner has not fulfilled at all the obligations imposed upon him, most particularly the execution of the corresponding deeds of reconveyance of the properties, where certificates of sales have already been issued in favor of the petitioner as a result of the execution sale, said court merely relying and accepting the “factual assurances” of the private respondent. The court then concluded that petitioner has no right yet and should not demand performance by the private respondent in payment of the P300,000.00 or to execution to satisfy this amount.

We rule that respondent court erred grievously in granting and issuing the writ of certiorari prayed for.

There is no dispute that petitioner had lifted the levy on execution on at least 2/3 of the value of the real properties levied upon, notwithstanding the delay incurred due to the haggling of the parties on the question of valuation of the properties; that he has lifted the garnishment on the funds of the private respondent; and that a Certificate of Redemption had been executed on December 29, 1977 by Deputy Sheriffs Apolonio Golfo and Reynaldo Batoon, cancelling the effects of the execution sale of the real properties as of August 19, 1977. The Certificate of Redemption lists and describes 76 lots attached as Annex “B”, pp. 241-281 of the Records.

As to the alleged failure to execute the corresponding document of reconveyance covering the lots of private respondent which have been paid by the lotbuyers as well as the lots or properties covered by the Sheriffs’ Certificate of Sale and considered as redeemed in accordance with law, petitioner contends that he and private respondent “further agreed — in order to make it more formal — that the Certificate of Reconveyance as redemption be accomplished by the two Deputy Sheriffs who issued the Certificate of Sale to petitioner in the execution sale first had.” (Memorandum for Petitioner, p. 311, Records).

Petitioner further submits that “under Section 31, Rule 39, if the judgment debtor redeems property already sold on execution, ‘the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made must execute and deliver a certificate of redemption.’” Since the sale on execution, held on 16 March 1977 had been conducted by Deputy Sheriffs Apolonio Golfo and Reynaldo Batoon, the parties agreed to have the Certificate of Redemption duly executed by said Sheriffs.

“It is quite clear, then, that the ‘deed of reconveyance’ contemplated by the parties under paragraph 3 of the compromise agreement was duly satisfied by the execution of said Certificate of Redemption, which is indeed the proper procedure indicated in Section 31 of Rule 39. Incidentally, the said Certificate of Redemption was duly accepted by private respondent without any protest or objection.” (Memorandum for Petitioner, Records, p. 311).

We find that private respondent has not denied nor disputed the foregoing allegations and submission of petitioner. The Certificate of Redemption above-mentioned is a public record affecting the 76 parcels of land therein listed and described, originally owned by private respondent St. Louis Realty Corp. which must be deemed to have had knowledge and information of the same. It follows that by the execution of said Certificate of Redemption pursuant to Rule 39, Section 31 of the Rules of Court, there has been a substantial compliance with paragraph 3 of the Compromise Agreement embodied in the Motion to Withdraw Appeal. There is, therefore, no more obstacle to the payment of the balance of P300,000.00 and in the event of failure thereof, the enforcement of the alias writ of execution issued by the court a quo to satisfy payment thereof.

As the respondent court itself detected “the subtle desire of petitioner (St. Louis Realty Corp.) to avail of the use of said amount of P300,000.00 which it is obliged to pay when it declined to consign the stated sum, presumably to make use of it for the time being for its own advantage,” it is now incumbent upon herein private respondent St. Louis Realty Corp. to comply with the Compromise Agreement. Since the purpose of a compromise is to replace and terminate controverted claims (Republic vs. Estenzo, L-24656, September 25,

1968, 25 SCRA 122; Arcenas vs. Cinco, 74 SCRA 118) and the Compromise Agreement has been approved by the court by acting favorably on the Motion to Withdraw Appeal containing the terms and conditions of the settlement, the parties are bound by its terms. (Masangkay vs. Masangkay, 74 SCRA 122).

Private respondent is duty bound under the Compromise Agreement to pay petitioner the balance of P300,000.00, and the alias writ of execution should be issued for this amount including legal interest from October 22, 1977 until paid in view of the holding of the respondent Court of Appeals that “the petitioner herein (St. Louis Realty) should be obliged to pay the private respondent (Sumadchat) the aforesated balance of P300,000.00 with legal interest on this amount from October 22, 1977 when said amount would have become due under the terms of their said agreement,” (Decision of CA, p. 43, Records) to which We agree and affirm.

**WHEREFORE, IN VIEW OF THE FOREGOING**, the decision appealed from is hereby **SET ASIDE** and **REVERSED**. The Orders issued by the court a quo dated April 21, 1978 and April 28, 1978 are hereby reinstated but modified in the sense that the alias writ of execution shall be issued for the amount of P300,000.00 plus legal interest from October 22, 1977 until paid. No costs.

**SO ORDERED.**

**Makasiar, Fernandez, Melencio-Herrera and Plana, JJ., concur.**

**Teehankee, J., (Chairman), concurs in the result.**

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[1] Special Division of Five, Alampay, J., ponente with Sundiam and Victoriano JJ., concurring and German and Geraldez, JJ., dissenting.

[2] Annex “A”, Records, pp. 199-200