

**RUFINA C. REYES, VIRGINIA C. CASTRO, FRANCISCA
C. TORRES, ANTONIA C. SABLAN, CONCEPCION C.
CABRERA, Plaintiffs-Appellees**

v.

**JOSE LG. CAMACHO, FRANCISCO LG. CAMACHO, MAXILINO
LG. CAMACHO, LEONARDO LG. CAMACHO, ROSALIA C.
FLORES, MARGARITA C. SABLAN, MAGDELENA C.
BENAVENTE, AND THE OTHER HEIRS OF JUAN
C. CAMACHO AND SOLEDAD LG. CAMACHO,
IF ANY, Defendants-Appellants**

Civil Appeal No. 305

Appellate Division of the High Court

Mariana Islands District

December 4, 1980

Appeal from a judgment for plaintiffs in an action seeking, among other relief, specific performance of a compromise and settlement agreement entered into between the parties, or their predecessors in interest. The Appellate Division of the High Court, per curiam, held that there was no error in a finding of valid consideration for the compromise agreement, there was no valid agreement to mutually rescind the compromise agreement, and there was no error in admitting into evidence a certain document, and therefore the judgment was affirmed.

1. Contracts—Consideration

Court did not err in finding valid consideration which would support a compromise and settlement agreement, where a party surrendered a legal claim, and had an honest and reasonable belief in the validity of the claim.

2. Contracts—Rescission

Generally, any contract can be rescinded by mutual agreement of the parties.

3. Contracts—Rescission

Whether the parties have mutually agreed to rescind a contract is a question of fact.

4. Contracts—Rescission

An agreement to rescind a contract is like any other contract and requires a meeting of the minds and consideration.

5. Contracts—Rescission

The abandonment of a contract by mutual consent may be held to be effective to discharge its obligations.

6. Contracts—Rescission

Ordinarily, the abandonment of a contract is a question of fact and will not be set aside on appeal unless clearly erroneous.

7. Contracts—Rescission

The termination of a contract is not presumed, and the burden of establishing it rests on the party who asserts it.

8. Contracts—Rescission

Where acts and conduct are relied upon to constitute an abandonment or rescission of a contract, such acts must be positive and unequivocal.

9. Contracts—Rescission

Finding of Trial Court that there was no mutual agreement, express or apparent, to rescind a compromise and settlement agreement, was not erroneous, where the facts showed there was no discussed and agreed upon decision to mutually rescind the settlement, and while one party appeared to have the intent to breach the settlement agreement, she did in fact perform her part of the agreement.

10. Evidence—Hearsay—Particular Cases

In an action seeking specific performance of a compromise and settlement agreement, there was no prejudicial error in the admission of a document which may have contained hearsay, where the document had relevance to support consideration for the compromise agreement, and there was no direct objection to its admission on the basis of hearsay, and any hearsay objections would probably have been met by valid exceptions to the hearsay rule.

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Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*

PER CURIAM

This is an appeal from a judgment rendered in favor of plaintiffs on an action seeking, among other relief, specific performance of a compromise and settlement agreement entered into between the parties, or their predecessors in interest.

The issues on appeal revolve around a document entitled "Avinencia," executed on February 25, 1970, by some of the parties to this suit, and a prior action in the Trust Territory High Court, Civil Action No. 223.

Civil Action No. 223 was a petition filed by Soledad D. L. G. Camacho on October 3, 1967, for distribution of a certain parcel of property to herself.

Shortly after this petition was filed, an objection to the distribution of this parcel of land was filed by Rufina C. Reyes.

On February 25, 1970, the *avinencia* was executed by Rufina C. Reyes, one of the plaintiffs herein, and some of the defendants herein, in which the defendants or their predecessors in interest agreed to give certain land to Rufina C. Reyes and her sisters. The Trial Court considered this *avinencia* as a compromise agreement, the apparent consideration being Rufina C. Reyes' withdrawal of her objection to the distribution proposed and requested by Soledad D. L. G. Camacho in Civil Action No. 223.

Appellants assert three grounds of error by the Trial Court:

1. The Court erred in finding valid consideration for a compromise because there was no evidence to support consideration.

2. The Court erred in finding a valid compromise evidenced by the *avinencia* since the evidence clearly shows that both parties rescinded the agreement.

3. The Court erred in admitting Plaintiffs' Exhibit 5.¹

As to the first question, we find there was no error in finding valid consideration for the alleged compromise. The *avinencia* recites an agreement to follow the distribution

¹ Plaintiffs' Exhibit 5 is a Chamorro-language document in which Francisco Leon Guerrero Sablan recorded his recollection of the distribution of the Camacho family lands made by Maria P. Campos Camacho. It also explains why Mr. Sablan had first-hand knowledge of the land distribution made by Maria P. Campos Camacho.

of the family lands made by Maria P. Campos Camacho. The *avinencia*, or compromise, and this litigation stem from a dispute of ownership rights to certain properties belonging originally to Leonardo M. Camacho and his wife Maria P. Campos Camacho. Confusion has existed among descendants of the original owners due to what appellants' counsel has termed a "bewildering assortment of land transfers and transactions with a large number of potentially interested parties."

This confusion resulted essentially from the following: 1) a document prepared in 1931 by Maria P. Campos Camacho which evidently made a distribution of the family lands; this document was subsequently destroyed; 2) Land Title Officer's Determinations which made findings in apparent direct contravention of the 1931 document; and 3) several land exchanges with the Government.

The basic facts were stipulated and incorporated in the Judgment of the Trial Court.

Appellants argue that the 1931 document was a will, destroyed by a person not a party to this suit in 1931 in the presence of the person who wrote the will. The person who wrote the will lived for another 15 years after the destruction of the document, yet never rewrote it. Since plaintiff, Rufina C. Reyes, did not present any evidence of the validity of her claim at the hearing in Civil Action 223 and since there was, in effect, therefore, no will, appellants assert she had no claim, and, therefore, there was no consideration for the compromise.

Appellees counter that the consideration was Rufina C. Reyes' withdrawal of her objection to the petition for distribution of the land petitioned for by Soledad D. L. G. Camacho in Civil Action No. 223; and that it was in fact the appellants who instigated the *avinencia* and sought to aid Rufina C. Reyes to follow through with the withdrawal of her objection. Appellees further point out that even if

the will is meaningless or void, Land Title Officer Determination of Ownership No. 34 and Land Exchange Agreement No. 145 listed the land as being petitioned by Soledad D. L. G. Camacho in the name of Soledad C. Cabrera as the representative of the heirs of Maria P. Campos Camacho. Soledad D. L. G. Camacho petitioned for herself and she was not an heir of Maria P. Campos Camacho, being the daughter-in-law of Maria P. Campos Camacho.

Rufina C. Reyes' claim is therefore two-fold: 1) as an heir of Maria P. Campos Camacho under the determinations of ownership; and 2) based on the underlying claim of the *avinencia*, that of the distribution of the family lands made by Maria P. Campos Camacho.

The surrender of a legal claim, even if the claim is disputed or doubtful, is sufficient consideration for an agreement compromising or settling the claim. 17 Am. Jur. 2d Contracts § 111 (1964); 1 Williston, *Contracts* § 135G (3d ed. Jaeger 1957).

Further, the relinquishment of an invalid claim is sufficient consideration to support a promise if the claimant has an honest and reasonable belief in the validity of the claim. *Id.*

[1] Based on the foregoing, we, as stated above, have concluded that there was no error in finding valid consideration for the compromise.

Appellants additionally argue that, even assuming there was valid consideration for the *avinencia*, it was rescinded by both parties. Appellants state that the Trial Court's conclusion that Rufina C. Reyes' revocation of waiver of objection was a unilateral act not evidencing any agreement to terminate the *avinencia* completely ignores the facts and the law regarding compromise and settlement. We disagree.

Shortly after Rufina C. Reyes filed her waiver of objection on February 25, 1970, appellants informed her they did not wish to honor the *avinencia*. On May 27, 1970, she filed a revocation of waiver of objection. More than a year

later judgment was entered in Civil Action No. 223 as requested by Soledad D. L. G. Camacho. The judgment recites that Rufina C. Reyes withdrew her objection in open court.

[2-5] Generally, any contract can be rescinded by mutual agreement of the parties. Whether the parties have so agreed is a question of fact. *King Features Syndicate v. Courier*, 241 Iowa 870, 43 N.W.2d 718, 41 A.L.R.2d 467, 475 (1950). An agreement to rescind is like any other contract and requires a meeting of the minds and consideration. *In re Warrack Medical Center Hospital*, 282 F. Supp. 988, 990 (N.D. Cal. 1968). Also, the abandonment of a contract by mutual consent may be held to be effective to discharge its obligations. 17 Am. Jur. 2d Contracts § 484 (1964).

[6-8] "Ordinarily, the abandonment of a contract is a question of fact and will not be set aside on appeal unless clearly erroneous." *S.S. Silberblatt, Inc. v. Seaboard Surety Co.*, 417 F.2d 1043, 1054 (8th Cir. 1969). "The termination of a contract is not presumed, and the burden of establishing it rests on the party who asserts it." *Armor & Co. v. Celic*, 294 F.2d 432, 436 (2d Cir. 1961). And "[w]here acts and conduct are relied upon to constitute an abandonment or rescission . . . such acts must be positive and unequivocal." *S.S. Silberblatt, Inc. v. Seaboard Surety Co.*, supra at 1054.

Looking at the facts, there is certainly no question that there was no discussed and agreed upon decision to mutually rescind the *avinencia*.

[9] The Trial Court found no mutual agreement, express or apparent, to rescind the *avinencia* agreement, nor that it was abandoned by Rufina C. Reyes. We conclude that the finding of the Trial Court was not manifestly in error. See: *Arriola v. Arriola*, 4 T.T.R. 486 (App. Div. 1968).

While Rufina C. Reyes temporarily revoked her waiver and appeared, at least for a time, to likewise intend to breach the compromise agreement, she did in fact perform her part of the agreement by withdrawing her objection in open court.

[10] Finally, with regard to the admission of Plaintiffs' Exhibit 5, we find no prejudicial error. It is not precisely clear from the transcript what trial counsel's objection was, other than failure to lay a proper foundation. However, we find that it did have relevance to support consideration for the compromise agreement, that the Trial Court did not abuse its discretion in admitting it, nor did it err in finding that a proper foundation had been laid. Even though it may have been hearsay (the transcript does not reveal a direct hearsay objection), we note that any hearsay objections would probably have been met by exceptions set out in Trust Territory Rules of Evidence, Rules 804(a)(4), 804(b)(5), and 803(24).

Based on the foregoing, we conclude there was no prejudicial error; therefore, the Judgment is AFFIRMED.