

**MAJAYJAY MEMORIAL PARK, INC., SPS. ALEXANDER &
EVANGELINE ESTEBAL, AND SPS. PERCIVAL & SONIA ESTEBAL,
PETITIONERS, VS. THE HON. ALBERTO F. SERRANO AS THE
PRESIDING JUDGE OF THE ...**

Ponente: BUESER, J.

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BUESER, J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court assailing the October 27, 2008 Order[1] of the Regional Trial Court of Calamba City, Branch 92, the dispositive portion of which reads -

“WHEREFORE, defendants' Motion to Dismiss the complaint is hereby DENIED for lack of merit. On the other hand, the Motion for Substitution of Parties is hereby GRANTED and Opal Portfolio Investments (SPV-AMC), Inc. is hereby declared substituted as a party plaintiff in lieu of Philippine National Bank.

SO ORDERED.”

and its February 25, 2009 Order[2] denying petitioners' motion for reconsideration.

The Facts

On January 17, 1995, Philippine National Bank (“respondent PNB”) granted Majayjay Memorial Park, Inc. (“petitioner MMPI”) a five year loan accommodation of P4,000,000.00. Subsequently, petitioner availed of the loan accommodation, on separate occasions in various amount, the sum of which totaled P4,000,000.00. Spouses Alexander and Percival Estebel (“petitioner spouses”) executed a joint and solidary agreement, pursuant to the credit agreement, and agreed to be held solidarily liable with petitioner MMPI.

Eventually, petitioners MMPI and spouses (hereinafter, petitioners) failed to pay their obligation when it fell due and demandable. Inevitably, respondent PNB filed an action for sum of money.

In their defense, petitioners averred that respondent PNB failed in discharging its duties and responsibilities under its charter to give all the necessary assistance to its small-time borrowers and this is the reason why petitioners failed to pay their loan on time.

On April 25, 2007, respondent PNB sold, assigned and conveyed all its rights, title and interests in and all obligations arising out of or in connection with the account of petitioner MMPI to Golden Dragon Star Equities, Inc. and Opal Portfolio Investments, Inc. (“respondent Opal”). Later on Golden Dragon Star Equities, Inc. assigned all its rights, title and interest in the said account to respondent Opal.

In view of the foregoing, respondents PNB and Opal filed a joint motion for substitution of party. They prayed that respondent Opal be substituted as plaintiff, in lieu of respondent PNB, and that the former be allowed to participate in the proceedings.

Petitioners opposed the motion for substitution and moved to dismiss the complaint because when PNB assigned

all its rights and interest over the accounts, subject of the case, to respondent Opal, and novation set in and their obligation was extinguished.

The Trial Court's Ruling

In the Order dated October 27, 2008, the trial court denied petitioners' motion to dismiss and granted respondents PNB's and Opal's motion for substitution of parties.

Petitioners' subsequent motion for reconsideration was denied in the trial court's Order dated February 25, 2009.

Hence, this petition.

Issues

WHETHER THE SALE, ASSIGNMENT, AND CONVEYANCE BY RESPONDENT PNB OF ITS RIGHTS, TITLE AND INTERESTS IN AND ALL OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH THE ACCOUNT OF PETITIONER MMPI TO GOLDEN DRAGON STAR EQUITIES, INC. AND OPAL PORTFOLIO INVESTMENTS, INC. RESULTED TO NOVATION AND EXTINGUISHMENT OF THE PETITIONERS OBLIGATION TO RESPONDENT PNB.

This Court's Ruling

In ascribing grave abuse of discretion to the trial court, petitioners argue that the trial court has failed to rule squarely on whether or not there was novation and whether this resulted to the extinguishment of the obligation.

We disagree.

The October 27, 2008 Order of the trial court clearly discussed as to whether there is novation or not. We quote with approval the following pronouncement of the trial court -

“As to defendants' claim that novation has taken place and that the principal obligation has been extinguished thereby, such a proposition is specious. Defendants refer to paragraph 3 of the Article 1291 in relation to Article 1296 of the Civil Code of the Philippines. Article 1291 (3) provides: “obligation may be modified by xxx subrogating a third person in the right of the creditor,” while Article 1296 provides that “when the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent.” Article 1291 (3) of the civil code refers to a modification of the obligation but does not necessarily result in the extinguishment of the obligation of the debtor if the old obligation subsists to the extent of that only the person of the creditor was changed. Besides, the Revised Rules of Court in Rule 3, Section 19 provides that a party may transfer his interest to another person who may continue the action. This legal provision is incompatible with the theory of extinctive novation as a ground for dismissal of the case.”

Obligations may be modified by changing their object or principal creditor or by substituting the person of the debtor. The burden to prove the defense that an obligation has been extinguished by novation falls on the debtor.[3] This petitioner failed to do.

Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.[4]

An extinctive novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation; in this instance, the new agreement will not

have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.[5] In the instant case, what took place was an assignment of credit. An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, dation en payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor.[6]

In an assignment of credit the consent of the debtor is not essential for its perfection; the knowledge thereof or lack of it affecting only the efficaciousness or inefficaciousness of any payment that might have been made. The assignment binds the debtor upon acquiring knowledge of the assignment but he is entitled, even then, to raise against the assignee the same defenses he could set up against the assignor necessary in order that assignment may fully produce legal effects. Thus, the duty to pay does not depend on the consent of the debtor. The purpose of the notice is only to inform that debtor from the date of the assignment. Payment should be made to the assignee and not to the original creditor. The transfer of rights takes place upon perfection of the contract, and ownership of the right, including all appurtenant accessory rights, is acquired by the assignee who steps into the shoes of the original creditor as subrogee of the latter from that amount, the ownership of the right is acquired by the assignee. The law does not require any formal notice to bind the debtor to the assignee, all that the law requires is knowledge of the assignment. Even if the debtor had not been notified, but came to know of the assignment by whatever means, the debtor is bound by it. If the document of assignment is public, it is evidence even against a third person of the facts which gave rise to its execution and of the date of the latter. The transfer of the credit must therefore be held valid and effective from the moment it is made to appear in such instrument, and third persons must recognize it as such, in view of the authenticity of the document, which precludes all suspicion of fraud with respect to the date of the transfer or assignment of the credit.[7]

Clearly then, the assignment of petitioners' loan to respondent Opal did not extinguish petitioners' obligation. As assignee, respondent Opal had acquired all the rights, including all appurtenant accessory rights, of respondent PNB, with regard to the subject loan hence, was rightly substituted as party plaintiff in lieu of respondent PNB.

All told, we find no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the trial court in rendering its assailed Orders. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism, which is wanting in this case.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

De Guia-Salvador (Chairman) and Garcia, JJ., concur.

[1] Rollo, pp.56-58.

[2] Id. at 83.

[3] Agrifina Aquintey vs. Spouses Tibong, G.R. No. 166704, December 20, 2006.

[4] Adriatico Consortium, Inc. et. al. vs. Land Bank of the Philippines, G.R. No. 187838, December 23, 2009.

[5] Supra, note 4.

[6] Ibid.

[7] Ibid.

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