

**DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF-APPELLANT,
VS. NATIONAL MERCHANDISING CORPORATION, ET AL.,
DEFENDANTS-APPELLEES, FELIX DUMARAN, ET AL.,
INTERVENORS-APPELLANTS.**

G.R. Nos. L-22957 & L-23737. August 31, 1971

Ponente: DIZON, J.

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DIZON, J.:

On February 27, 1963, the Development Bank of the Philippines, successor of the now defunct Rehabilitation Finance Corporation, both to be referred to hereinafter as the Bank, filed an action in the Court of First Instance of Manila against the National Merchandising Corporation (likewise referred to hereinafter as NAMERCO), John, Paul and Alfonso, all surnamed Sycip, to recover the total sum of P554,632.61, plus interest thereon at 6% per annum from December 5, 1962 up to the date of payment, plus reasonable attorney's fees and costs of suit. The principal amount sought to be recovered was the unpaid balance due on the four (4) promissory notes attached to, and made an integral part of the complaint, executed jointly and severally by said defendants.

On March 19 of the same year the defendants filed an answer, with a counterclaim, wherein, after denying some of the allegations made in the complaint and admitting the others, they interposed the following affirmative and special defenses:

"1.- The alleged promissory notes and mortgage contracts mentioned in paragraph 3 of the herein complaint did not and do not express the true intent of the parties thereto; and the said promissory notes and mortgage contracts were and are merely simulated for the farmers named in the said mortgage contracts, so that they are unenforceable;

2.- The alleged mortgage contracts mentioned in said paragraph 3 of the complaint were and are void and unenforceable, the plaintiff well know that at the time they were executed the chattels covered by such mortgage contracts the defendant National Merchandising corporation was not the absolute owner thereof, as they had been already sold previously to the different farmers or persons named or mentioned in said mortgage contracts, and the execution of said promissory notes and contracts by defendants were in accordance with the wishes of the plaintiff;

3.- The amounts represented by the promissory notes mentioned in paragraph 3 of the complaint were in fact in payments by the plaintiff to herein defendant National Merchandising Corporation for the benefit and to the credit of the farmers named in said mortgage contracts, and representing about 50% of the total selling prices or value of the equipment or chattels previously sold by defendant National Merchandising to said farmers;

4.- By the foreclosures of the alleged chattel mortgages, the plaintiff has renounced and waived whatever right it might have on the promissory notes mentioned in paragraph 3 of the complaint, or on any balance there might be due thereunder;

- 5.- The plaintiff has no cause of action against the defendants upon the said prom-issory notes and mortgage contracts, as the same were and are only a simulation of the real obligors and nature of the obligations;
- 6.- The real owners of the properties covered by the said mortgage contracts as well as the real debtors to the plaintiff for the amounts covered by said promissory notes were and are the farmers named in said mortgage contracts, who have not been made parties in this case and in the foreclosures thereof, and in whose possession and under whose control the properties were taken from by the Provincial Sheriff;
- 7.- The sales at public auction of the mortgaged properties under the said mortgage contracts were made and conducted in the manner against the direction of the defendants to sell the properties separately in order to attract and bring bidders and to obtain the most likely the highest prices or values there-for;
- 8.- The alleged mortgaged properties have the total value, as stated by the plaintiff in said mortgage contracts, of P1,107,181.46, but herein plaintiff had allegedly acquired them for only P67,400.00 very unconscionable, shocking, depreciated price or consideration;
- 9.- The order or writ of attachment issued herein has been obtained by the plaintiff improperly and irregularly, and that the defendants have never at any time ever thought of disposing of their properties in order to defraud their creditors;
- 10.- The plaintiff, well knowing that by having the properties sold as a whole lot none could compete with it in the bidding therefor, and it knowing that there exists no redemption, and believing that the defendants have properties to go after, had the properties sold as a whole lot and against the direction of the defendants, and had caused the properties to be sold to itself for a conscience-shocking, unconscionably depreciated price or consideration; x x x."

Their counterclaim was for the recovery of damages amounting to over a million pesos allegedly suffered by them due to alleged unlawful or malicious and unjust acts committed by the Bank. The latter's answer to defendants' counterclaim alleged the following defenses:

"A- As to the First Counterclaim,

1. It specifically denies each and every allegation in paragraphs 1, 2 and 3 thereof, the truth of the matter being that the various loans granted by the plaintiff to the defendants were all applied for and obtained by them for their exclusive use and benefit, binding themselves, jointly and severally, to repay the same in accordance with the terms and conditions of the mortgage contracts and promissory notes they executed in favor of the plaintiff.

The defendants cannot deny that the defendant NAMERCO owned the mortgaged properties at the time of the mortgage, otherwise, it would not have constituted a mortgage thereon in favor of the plaintiff. That the mortgaged properties are owned by the NAMERCO is so stated in the mortgage contracts executed by it, through its President, the defendant John Sycip, who declared under oath that the same were executed to secure a just and valid obligation and were not entered into for the purpose of fraud. For defendants to insist that the NAMERCO was not the owner of the properties at the time they were mortgaged would, in effect, amount to a confession that they were in bad faith when they obtained the loans from the plaintiff.

2. It likewise denies specifically the allegations in paragraphs 4 and 5 thereof, the same being conclusions of law. Furthermore, the defendants cannot contest the amount realized from the auction sales of the mortgaged properties since they were not precluded from participating therein and offer bids which they believe to be reasonable for the properties. It should be noted that the auction sales were held on different dates and in no instance did the defendants or anyone of them question the regularity of the proceedings while they were then being conducted by the Sheriff.

B. As to the Second Counterclaim,

1. It has no knowledge or information sufficient to form or justify a belief as to the truth of the allegations in paragraphs 1 and 2 thereof and, therefore, denies the same. That the defendants, as alleged by them, have enjoyed and are enjoying a high commercial credit end standing, etc., cannot possibly alter the fact that the defendants obtained the loans in question from the plain-tiff and have not paid the same. Hence, the present suit against them.

2. Finally, as to the allegation in paragraph 3 that by reason of the issuance of the writs of attachment against their properties, the plaintiff has caused the defendants moral damages to the tune of P1,000,000.00 the same is likewise denied, it being frivolous and unfounded."

On September 2, 1963, Felix Dumaran, Solomon Patayan and Kenneth Schultz filed a motion for leave to intervene which the lower court granted days later. On October 1, 1963 they filed their answer in intervention in which, after denying same of the averments made in the complaint and admitting others, they interposed the following affirmative defenses:

"VII

That the intervenors herein Felix Dumaran, Solomon Patayan and Kenneth Schultz are part owners of the tractors with their accessories described under Groups XVII, XXX and XLVI and leaders of their respective groups, of which the acquisition costs were P16,460.00, P25,283.00 and P29,852.57 respectively, or of the total value of P71,595.57;

VIII

That the intervenors herein and other Cotabato farmers purchased from the defendant National Merchandising Corporation the farm equipments described in and covered by all the annexes of the complaint pursuant to special arrangements with government authorities and the then Rehabilitation Finance Corporation, whereby Cotabato farmers were to purchase on credit farm equipments, fifty (50) percent of the purchase price or prices thereof to be paid out of the loan or loans the defendants National Merchandising Corporation, John Sycip, Paul Sycip, and Alfonso Sycip were to obtain for them from the then Rehabilitation Finance Corporation because of their credit standing and that such loan or loans were for the benefit and to the credit of said Cotabato farmers and to be secured by mortgages on the farm equipments sold to them;

IX

That by such special arrangement with government authorities and the then Rehabilitation Finance Corporation, the loans to be applied for and obtained by the defendants National Merchandising Corporation, John Sycip, Paul Sycip, and Alfonso Sycip in their names, to be secured by Cotabato farmers' farm equipments bought from the defendant National Merchandising Corporation, were and are obligations of said farmers, including the intervenors herein;

X

That the foreclosure of said defendants' tractors or farm equipments, and that of the Cotabato farmers, and the sales thereof by the Provincial Sheriff, were irregular and illegal, the Cotabato farmers, including the intervenors herein, never having been duly notified thereof and/or the sales of the equipments;

XI

That at the price or prices the tractors or farm equipments were sold at auction, the same was or were too unconscionable, too depreciated, there being no redemption in such foreclosure sales; and

XII

That the complaint states no cause of action against the defendants and/or the intervenors herein."

Intervenors' pleading prayed for judgment as follows:

- "(a) Dismissing the plaintiff's complaint, with costs against the plaintiff;
- (b) Setting aside the entire pro-ceedings on foreclosures and sale at public auction of the tractors and farm equipments mortgaged to the plaintiff and mentioned in the annexes to the complaint, as having been made irregular and illegal;
- (c) Ordering the plaintiff to return to the intervenors herein the tractors or farm equipments corresponding to them, or in default thereof, to pay to them the value of said tractors and farm equipments; and
- (d) Sentencing the plaintiff to pay to the intervenors herein such amounts as the Honorable Court may deem reason-able and proper as compensatory damages and attorney's fees.

The intervenors herein likewise re-produce, as part of their prayer, the prayer of the answer filed by the de-fendants in the above-entitled case. The intervenors further pray for such other reliefs as this Honorable Court may deem just and equitable in the premises."

On March 4, 1963, over the opposition of the defendants, the trial court issued a writ of preliminary attachment against their properties. On March 12 of the same year the defendants filed a motion to quash the writ, but the same was denied four days later. On March 30, 1963, upon a motion for reconsideration filed by them, the trial court issued an order setting aside the writ of preliminary attach-ment provided the defendants posted bond in the sum of P100,000.00. Said defendants having done so, the writ was dissolved on April 6 of the same year.

After trial upon the issues thus joined, the trial court rendered judgment "dismissing the com-plaint and ordering the plaintiff, instead, to pay the defendants the sum of P550,000.00 as damages, and the costs of suit", and further set aside the prelim-inary attachment issued theretofore.

In due time the Bank perfected its appeal from the aforesaid decision and the same was docketed in this Court as G. R. L-22957.

The intervenors likewise appealed (G. R. L-23737).

The following are the issues raised by the Bank in the six assignments of error submitted in its brief:

- 1) The trial court erred in finding it necessary to determine the nature of the contract between the parties and in later holding that the understanding between them was that the tractors that were to be sold by NAMERCO to the farmers, the Bank would advance a loan of fifty (50%) per cent of the cost thereof to the farmers who, in turn, undertook to pay the amortizations thereof directly to the Bank;
- 2) The trial court erred in holding that, following the intention of the parties, the Bank is not entitled to recover any amount from appellees, and in not holding, instead, that the latter are liable to the Bank in the "deficiency claim of P554,865.14";
- 3) The trial court also erred in holding that the price at which the mortgaged chat-tels were sold at public auction was ridic-ulously low, and in further holding that the bank did not act with fairness and justice in foreclosing the chattel mortgages, and that it was responsible for the depreciated value and worn out condition of the mortgaged chat-tels; and lastly,
- 4) The trial court erred in assessing against the Bank the amount of P500,000.00 for actual, compensatory, exemplary and moral damages and P50,000.00 as attorney's fees.

A fair resolution of the two appeals now before Us demands a detailed statement of the background facts that led to the execution of the contracts of loan in-volved in this case, evidenced by the four promissory notes and four chattel mortgages attached to and made part of the Bank's complaint.

The Bank is a government-owned and controlled corporation established for the purpose of helping in the development of Philippine economy. On the other hand, the NAMERCO is a domestic corporation engaged in the importation and sale of tractors and other farm machineries and equipment, whose officers at the time the contracts involved herein were entered into were John Sycip (President and General Manager), Paul Sycip, Mariano U. Godinez, Quintin Paredes and Marcelino David.

On April 21, 1955, John Sycip, as President and General Manager of NAMERCO, addressed a letter to the Hon. Ramon Magsaysay, President of the Republic of the Philippines, submitting "suggestions and/or proposals that will help your administration in the building up of our nation's economic stability and prosperity, and the lifting up of its poverty from among the masses, especially our rural farmers" (Exhibit 1, p. 342, Fold-er of Exhibits) and expressing the opinion that "if given due approval and assistance, will no doubt help to promote, in due course of time, a wide scale mechani-zation of our agriculture" (Idem). The specific sugges-tions or proposals made in Mr. John Sycip's letter were as follows:

"1. We propose to undertake the estab-lishment of Tractor Pools in different agricultural areas here in the Philippines to serve the farmers in their land prepara-tion. Together with this Project, we shall provide technical assistance whereby the farmers will be assisted, advised or in-structed in the modern ways of farming, what to plant, their marketing, etc. Home industries also will be promoted.

2. We propose to put up from 200 - 300 big diesel tractors in these Tractor Pools within the period of two (2) years. The estimated value of these units will amount to about P5,000,000.00. In order to enable us to realize this big Project, we propose that the Government finances us, through the RFC, Fifty (50%) percent of the value, payable in four (4) years amortization, and against which we shall pledge or secure these machineries until the obligation is fully paid for.

3. The farmers in the areas where the Tractor Pools will be established will be served and Custom Service fees charged for plowing, harrowing, planting, cultivation, harvesting, etc., as may be required.

The fees charged, will cover the cost of operation and its profit to cover the yearly amortization of the cost of tractors and implements invested.

Within the period of 3-4 years, we expect to recover the cost of this invest-ment.

4. Once the value of the tractors and implements are fully recovered and paid for, both to RFC and to us, the ownership of the Tractor Pools will go to the farmers, who, at the start of this Project, will be organized into Associa-tions or Cooperatives. Members of this, will be actively trained in mechanization, farm management and other requirements to be assured, that when the Tractor Pools are turned over to them, they will be capable of continuing the operation successfully.

Through this Project, it will help farm-ers produce cheaper and abundant farm products. In places where irrigations have been estab-lished, it will enable the farmers to obtain two to three plantings every year, thus obtain-ing the maximum production from their lands which will thus increase and improve their eco-nomic and financial status.

Farm mechanization being comparatively new to most farmers in the Philippines, Tractor Pools will likewise serve as a working model or Pilot plant, where data of cost of operation, performance, etc. will be opened to them for study and consideration, with the view of ex-tensively encouraging and introducing mechani-zation all over our country.

With the rural folks' increased productivities, will mean more wealth to them, and business and industries will share in this prosperity too, and the country's economic stability assured with peace, order, and happiness for the entire country against which communism will hardly prevail.

Your approval and endorsement to our pro-proposal, will be an opportunity for civic-spirited private enterprises to show to the country what they can contribute and help to expedite the agricultural development of the country, where ordinarily it would be difficult for the Government, itself, to undertake."

Crystal clear it is from the above proposal that NAMERCO was the party soliciting financial assistance from the Bank for itself in connection with the acquisition of some 200-300 big diesel tractors within a two-year period, of an estimated total value of about P5 Million, and that to enable it "to realize this big project" it proposed "that the Government finances us, through the RFC, Fifty (50%) percent of the value, payable in four (4) years amortization, and against which we shall pledge or secure these machineries until the obligation is fully paid for." The proposal envisioned serving the farmers in the areas where Tractor Pools would be established, Customs Service fees to be charged for plowing, harrowing, planting, cultivation, harvesting, etc., which fees "will cover the cost of operation and its profit to cover the yearly amortization of the cost of tractors and implements invested." The letter further expressed the hope that "within the period of 3-4 years, we expect to recover the cost of this investment." NAMERCO's proposal likewise provided that once the value of the tractors and implements had been fully recovered and paid for "both to RFC and to us, the ownership of the Tractor Pools will go to the farmers."

It is beyond doubt that NAMERCO's proposal was inspired by the desire to "help farmers produce cheaper and abundant farm products," so that they may "increase and improve their economic and financial status." But the scheme was not all charity or philanthropy; it was also intended to have "business and industries x x x share in this prosperity."

NAMERCO's letter of April 21, 1955 - apparently coursed through the NARRA, the Bureau of Agricultural Extension and the Office of Economic Coordination - was finally received by the Bank whose Manager of the Industrial Department referred it to Mr. C. L. Dimacali for study. After a thorough study thereof, Dimacali submitted his report on May 8, 1956 to the Manager, Industrial Department (Exhibit 2). Leaving out Dimacali's summary of NAMERCO's proposal, We reproduce here the relevant portion of his report:

"COMMENTS:

1. The undersigned is of the opinion that this proposal, if acceptable to the RFC, should fall under category of agricultural loan, unless otherwise especially considered as an industrial loan.
2. The indorsement of the President and of the other government instrumentalities are not necessary because the project is "bankable" under the RFC Charter.
3. The project, if carried out will no doubt redound to the benefit of our small farmers "who comprise almost 80% of our country's population", and retrieve from a state of uselessness large tracts of virgin lands and place them in a condition of productivity to the great advantage of the national economy.
4. It is the undersigned's considered opinion that with 50% loan value on the tractors and implements and the joint and several signatures of the individual farmers, members of the association, and with the NAMERCO as guarantor or co-maker, the loan will be amply secured.
5. In the consideration of the proposal, however, the undersigned suggests that the credit responsibility of the NAMERCO be determined."

It appears that on January 4, 1956, prior to the submission of Dimacali's report Mr. John Sycip, as President and

General Manager of NAMERCO, addressed a letter to the Chairman of the Bank "to inquire into the possibility of securing financial assistance from RFC in order to expand the sales and distribution of our agricultural machinery and implements on installment terms to our farmers and small businessmen in rural areas," (Under-lines supplied, Exhibit N) - an inquiry clearly tied up with the suggestions embodied in his letter to President Magsaysay.

After stating that NAMERCO was engaged in assembling and selling farm machinery, etc., and manufacturing rice cone mills, small rice hullers, etc., which were generally sold on installment for a term of 24 months or more, the letter above-mentioned stated that "in view of the increasing volume of sales we already have, it will be necessary for us to secure additional financing" and asked the Bank "for assistance from your Corporation, in the form of discounting of Notes Receivable under such terms and conditions as may be required."

In line - no doubt - with the transaction proposed in its two letters mentioned heretofore, NAMERCO, again through Mr. John Sycip, its President and General Manager, addressed on May 30, 1956 another letter to the Bank (Exhibit M) in which it applied "for a loan of P13,290.50, representing Fifty (50%) percent of the value of Farm Machinery and Implements listed in the attached Proforma Invoice" consisting mainly of one (1) unit - MASSEY HARRIS Tractor, Model 44D to be acquired at a cost of P13,770.00.

Due to its importance, We reproduce the following portions of the letter:

"This machinery and implements will be delivered to bona fide settlers in Lagao, Cotabato, to cultivate their lands allotted to them by the NARRA. Fifty per cent of the cost will be assumed by the undersigned applicant corporation, and the repayment of the loan will likewise be assumed by it. The machinery and implements will be offered on first mortgage as security for the loan.

The applicant will take charge of collecting from the group of farmers concerned the amounts corresponding to the amortization on the R.F.C. loan, together with the payment of 50% of the value of the machinery corresponding to the applicant. The manner of payment is embodied in a contract between the farmers and the dealer-applicant.

We are also attaching hereto the application of the applicants, duly notarized, if the R.F.C. desires to bind them jointly and severally with the undersigned.

The applicant-dealer will supervise the operation or use of the machinery and will undertake to establish repair shops in strategic places if and when sufficient number of units have been supplied to other groups of farmers in a given region. The purpose of this plan is to insure the proper handling of the machinery and implements, to put them into full uses so that the maximum yield may be derived from the farms.

Needless to state, we are ready to comply with any condition that the R.F.C. may require or impose for the successful carrying out of this plan of financing devised to put into proper cultivation thousands of hectares of fertile and cultivable lands now lying idle, or partly being cultivated by purely manual labor with the aid of slow-moving work animals, thereby decidedly increasing agricultural production to the advantage of the national economy.

The applicant-corporation is a Filipino enterprise, the members of whose Board of Directors are;

1. JOHN Z. SYCIP

2. PAUL Z. SYCIP

3. MARIANO U. GODINEZ

4. Hon. QUINTIN PAREDES

5. MARCELINO DAVID

any three of whom, as the R.F.C. may select, will be willing to sign under their personal responsibility the mortgage papers."

The foregoing application for a P13,290.50 loan – the first of four (4) separate loans granted by the Bank to NAMERCO - clearly shows that NAMERCO expressly obligated itself: to sell the tractor, agricultural machinery and equipment to be acquired by it, to bona fide settlers; to assume payment of fifty (50%) percent of the cost of the tractor and equipment described in its letter application; to take charge of collecting from the farmers to whom it would sell said tractor, etc., the cost thereof, expressly assuming the obligation to pay "fifty (50%) percent of the cost" as well as the "repayment of the loan"; to take charge of collecting from the purchasing farmers the amounts corresponding to the amortization on the loan, together with the payment of fifty (50%) percent of the value of the machinery, corresponding to it. Moreover, clearly intended to induce the Bank to grant the loan applied for, NAMERCO further said in its application "we are ready to comply with any condition that the R.F.C. may require or impose for the successful carrying out of this plan of financing x x x" (Underlines supplied).

On August 17, 1956, the Bank advised NAMERCO that its loan application for P13,290.50 had been approved by its Board of Governors subject, however, to the condition, among others, that John Sycip, Paul Sycip and Alfonso Sycip - the principal stockholders and officers of NAMERCO shall sign the corresponding promissory note, jointly and severally with NAMERCO (Exhibit Z).

Thus it seems clear that the original proposal of lending money to the farmers and making NAMERCO only their guarantor or co-maker - as outlined in Exhibit 2 - was dropped entirely. It was evident that banking on John Sycip's letter of May 30, 1956 making of record in unmistakable terms the readiness of NAMERCO and its officers "to comply with any condition that the RFC may require or impose for the successful carrying out of the proposed plan of financing," and the willingness "of any three" of the members of its Board of Directors "to sign under their personal responsibility the mortgage papers", the Bank, to better protect its interests, adopted the final plan under which it would extend aid to NAMERCO. That the Bank did so is not difficult to understand. As between dealing with a big number of poor farmers as its debtors albeit with the guaranty of NAMERCO, the Bank undoubtedly felt better secured with NAMERCO and the Sycips as its solidary debtors, plus the chattel mortgage to be executed by the first. Thus, on October 5, 1956, John Sycip, Paul Sycip and Alfonso Sycip, the first as President of NAMERCO and in his personal capacity, signed the promissory note Exhibit A for the sum of P13,290.50, binding themselves, jointly and severally, to pay said amount in accordance with the terms and conditions thereof; and on the same date, NAMERCO, represented by its President and General Manager, John Sycip, executed the chattel mortgage on the tractor described in its application which further said: "Fifty percent of the cost will be assumed by the undersigned, and the repayment of the loan will likewise be assumed by it." The corresponding check was issued, however, in the name of NAMERCO alone, pursuant to the request of its co-debtors (Exhibit A).

In addition to the P13,290.50 loan already mentioned, NAMERCO subsequently applied for and was granted three more by the Bank under similar conditions as follows: A loan of P135,008.50 granted on February 27, 1957; another loan of P200,000.00 granted on December 16, 1957, and a last one also of P200,000.00 granted on March 3, 1958; all of them covered by the corresponding promissory note (Exhibits B, C and D) and secured by separate chattel mortgage contracts on the tractors and agricultural equipment subsequently sold conditionally by

NAMERCO to several groups of farmers (Exhibits E, F, G and H).

The four loans were in the total sum of P548,299.00. Pursuant to a resolution of the Board of Governors of the Bank, John Sycip, Paul Sycip and Alfonso Sycip signed the corresponding promissory notes, jointly and severally with NAMERCO. The corresponding checks were also released to NAMERCO alone, pursuant to the request of its co-obligors (Exhibit A).

Of importance in the resolution of the issues before Us are the following circumstances: the first chattel mortgage executed by NAMERCO, through its duly authorized President and General Manager, John Sycip, makes an express declaration that the mortgagor was "the absolute owner, free from all liens and encumbrances, of the mortgaged chattels; the mortgagor agreed not to sell, etc., nor in any manner encumber them without the written consent of the mortgagee; if, in spite of this commitment, the mortgaged property was sold, the vendee shall assume the mortgage but with the understanding that such assumption of the mortgage by the vendee, "shall not release the vendor of his obligation to the mortgagee"; on the contrary, both vendor and vendee "shall be jointly and severally liable for said mortgage obligation"; upon default on the part of the mortgagor, the loan shall be-come due and the mortgagee may then immediately fore-close the mortgage judicially or extra-judicially; in case of an extra-judicial foreclosure the auction sale shall take place in the city or capital of the province where the mortgaged properties were located and, whether the foreclosure was judicial or extra-judicial, "the sheriff may, at the option of the mortgagee, sell the chattels individually or as a whole lot"; and finally, the mortgagor shall use the proceeds of the loan "exclu-sively to cover Fifty (50%) Per Cent of the cost" of the tractor or tractors and other agricultural equipment to be purchased by NAMERCO, the latter paying the other Fifty (50%) Per Cent with its own funds; the amount loaned (P13,290.50) shall be available to NAMERCO to pay Fifty (50%) Per Cent of the total acquisition cost (P26,581.00) of the tractor, farm machinery and equipment described in its application, such tractor, etc. "to be sold to a group of farmers composed of Teodulo Santos, Miguel Combo, Paulino Santos, Cesar Santos and Honorio Zeta (Record on Appeal pp. 15-38).

There is no dispute that the three other contracts of chattel mortgage are identical in terms and conditions.

As NAMERCO and its co-obligors defaulted in the payment of the loans, the Bank was constrained to demand from them the remittance pf substantial payments, other-wise, foreclosure proceedings would be commenced. In a letter of May 24, 1962, John Sycip asked for the suspension of the contemplated foreclosure proceedings, inform-ing the Bank that, upon foreclosure, the 47 mortgaged tractors, in the condition they were at that time, would have a selling value of about P100,000.00 only (Exhibit W). This request was denied and foreclosure proceedings were commenced (Exhibits I to I-6). At the ensuing public auc-tion sales conducted by the Provincial Sheriff of Cotabato on different dates and in different places, the mortgaged properties were sold to the Bank, in the absence of bids higher than those made by it, as follows:

"July 30, 1962 - Cotabato City

P 4,250.00

August 28, 1962 - Gen. Santos Cotabato

44,400.00

October 12, 1962 - Marbel Cotabato

14,250.00

October 13, 1962 - Gen. Santos, Cotabato

4,500.00

December 4, 1962 - Marbel, Cotabato

9,000.00

December 5, 1962 - Gen. Santos, Cotabato

1,000.00

March 19, 1963 - Gen. Santos, Cotabato

9,250.00

Total

P86,650.00

(Exhibits J, J-1 to J-6)"

On the date of the first public auction sale - July 30, 1962 - the total of the mortgage debts owing to the Bank from NAMERCO and its co-obligors amounted to P619,881.15. Deducting the amount of P86,650.00 realized from the foreclosure sales, the resulting balance is P554,865.14 - exactly the amount the Bank sought to collect from NAMERCO and its co-obligors.

Upon the pleadings and the evidence of the parties, the trial court held the view that it was necessary to determine "the exact nature of the contract between the parties." And mainly, if not exclusively, on the strength of the testimony of John Sycip, President and General Manager of NAMERCO, it arrived at its conclusion -

"From this evidence, it seems quite self-evident that the understanding between the parties was that of a sale of farm machinery and equipments belonging to the defendant NAMERCO to the different farmers who under-took to pay the same by installment to the RFC for the loan advanced by it and later, after the payment of the said loan, to the defendant NAMERCO. The RFC, however, advanced 50% of the value of the tractors to the defendants, who executed chattel mortgages on the tractors which were sold to the farmers." (R.A. pp. 292-299) (Italic supplied)."

If there seems to be some ambiguity and confusion in the court's conclusion, the same may be ascribed to the fact that it failed to consider that, according to the documentary evidence of record, there were involved in, connection with the proposal submitted by NAMERCO to President Magsaysay - later on endorsed through channel to the Bank for study and action - two separate contracts; one was between NAMERCO and the Bank, the latter as lender or financier, and the other was to be between NAMERCO and its co-obligors, on the one hand, and groups of Cotabato farmers, on the other.

The first contract was a "financing" contract: NAMERCO was to acquire a given number of tractors and other farm machineries and equipment, paying Fifty (50%) percent of the total cost thereof with its own funds, and the remaining Fifty (50%) percent with the funds borrowed and received from the "financier." As the latter approved the "financing" scheme to help NAMERCO carry out its plan of helping the Cotabato farmers mechanize their farming, the contracts between the Bank and NAMERCO and its co-obligors expressly, clearly and repeatedly provided that the tractors, etc. to be acquired by NAMERCO shall be resold to the Cotabato farmers, by groups, at a price "not to be more than the usual cost at which the same machinery and equipment are sold in the local market" (chattel mortgage to secure payment of the P13,290.50 loan, Record on Appeal p. 38).

The second contract, which was exclusively between NAMERCO, on the one hand as seller, and separate groups of Cotabato farmers, as buyers, on the other, was for the conditional resale to the latter of the tractors and other agricultural machinery and equipment to be acquired by NAMERCO, with the understanding that title thereto

would pass to the farmers only upon full payment of the agreed cost. While both contracts were, to a certain degree, inter-related, one did not depend upon the other; much less did they make the Cotabato farmers privy to the contract entered into exclusively between the Bank and NAMERCO and its co-obligors. Obviously, the only interest of the groups of farmers in the BANK-NAMERCO contract was perhaps that they could invoke it to compel NAMERCO to resell to them the tractors and other agricultural machineries and equipment acquired with the help of the Bank.

The contracts between the Bank, as lender, and the NAMERCO and its co-obligors, as borrowers, are crystal clear. They do not need to be construed. No amount of quibbling can render them ambiguous or uncertain. So are, on the other hand, the separate contracts between the NAMERCO and the groups of Cotabato farmers.

Upon the documentary evidence before Us, there cannot be even the slightest doubt as to the obligation of NAMERCO and its co-obligors to repay the loans granted to them by the Bank, or that portion thereof not paid with the proceeds obtained from the foreclosure sale of the chattels mortgaged by them. It is surprising, therefore, that the trial court, based almost exclusively, on the testimony of John Sycip, not only denied recovery to the Bank but sentenced it to pay an obviously unwarranted claim for damages and attorney's fees. In doing so, We are convinced that it committed a gross reversible error.

Gist of John Sycip's pretense and supporting testi-mony is that, upon being confronted with the Bank's demand that the promissory note of P13,290.50 (and the subsequent ones) should be signed by NAMERCO, jointly and severally by himself, Paul and Alfonso Sycip, he went to see the then President Magsaysay; that, after a telephone conversation with a high ranking official of the Bank - who Sycip "thought" was the "President" - the former assured him that "with the chattel mortgage an the tractors, in case of default, the RFC will go after the farmers" instead of going after NAMERCO and its co-obligors.

One needs be exceedingly naive, indeed, to believe this claim. John Sycip's testimony - it is obvious - suffers firstly, from the infirmity of being self-serving intended as it is to free him and his co-obligors from pay-ing the respectable amount of money that they had borrowed from the Bank. Secondly, while President Magsaysay may have made a telephone call upon "presumably" the President of the Bank, Sycip admits that he "could not listen to what they were talking about" (t.s.n., January 9, 1964, pp. 71-75). In the third place - and this is perhaps the most serious objection against his testimony - Sycip attributed something to a dead person who could not rise from his grave to deny the imputation, thus also depriving the adverse party of the right of confrontation.

But assuming, for the sake of argument, that the alleged conversation between President Magsaysay and the "President" of the Bank had taken place and that thereafter the former assured Sycip that he and his co-obligors had nothing to worry about, still the fact remains that President Magsaysay could not have legally bound the Bank, and that whatever personal assurances he had given to the borrowers cannot now relieve them of liability under the terms and conditions set forth in the documents that they subsequently signed, freely and voluntarily, in accordance with the previous assurance they had given to the Bank that they were ready and willing to comply with any condition that the latter would deem fit to impose in order to push through the transaction.

There is, moreover, the circumstance that John Sycip's testimony was uncorroborated by credible evidence. True, Rene Leuterio, at that time an employee of the Sycips, tried to give corroborative testimony, but his own is also suspect intended as it was to absolve his employers from liability.

Lastly, there are these circumstances to consider: the recorded evidence shows that when NAMERCO's applica-tions were being processed, no account was taken at all of any alleged understanding between John Sycip and Pres-ident Magsaysay; Sycip's testimony is contradicted by resolutions of the Board of Directors of NAMERCO authorizing him to negotiate the loans without any condition at all related to the supposed assurance

given by President Mag-saysay; in its applications for loans NAMERCO expressly assumed the obligation to repay the loans.

The well settled jurisprudence applicable to the issue under consideration is that, to justify disregarding the legal effects and consequences of contracts formally and voluntarily entered into, the evidence must be clear and convincing and more than merely preponderant (*Mendezona vs. Philippine Sugar Estate Development Co.* 41 Phil. 475; *Camacho vs. Municipality of Baliuag*, 28 Phil. 416; *Centenera vs. Garcia Palicio*, 29 Phil. 470; *Alojado vs. Lim Siongco*, 51 Phil. 339). We certainly do not have such evidence in the instant case.

Before closing this part of our decision, We make this final consideration. The principal stockholders and officers of NAMERCO, particularly the Sycips who co-signed the promissory notes in question, were, as the lower court found, businessmen of experience and intelligence. It must be assumed, therefore, that they knew what they were doing. It is, indeed, difficult to believe that they would have signed the four (4) promissory notes in question representing a total amount of more than half a million pesos, on the mere verbal assurance of President Magsaysay that, in case of default, they would not be held liable thereon. It is possible, however, that in spite of their intelligence and business experience, they did not foresee failure in the business transaction that they themselves had proposed to President Magsaysay and the Bank. In fact, they expected the whole matter to be liquidated in three or four years time. If this did not happen, it was their misfortune. We might say - paraphrasing *Tan Tua Sia vs. Yu Biao Sontua*, 56 Phil. 707 - that they being of age and businessmen of experience, it must be presumed that they had acted with due care and to have signed the documents in question with full knowledge of their import and the obligations they were assuming thereby; that this presumption of law may not be overcome by the mere testimony of the obligor or obligors; that, to permit a party, when sued upon a contract, to admit that he signed it but to deny that it expresses the agreement he had made, or to allow him to admit that he signed it solely on the verbal assurance given by one party, however high his station may be, that he would not be held liable thereon, would destroy the value of all contracts. Indeed, it would be disastrous to give more weight and reliability to the self-serving testimony of a party bound by the contract than to the contents thereof. *Verba volant, scripta manent*.

Having thus disposed of the issues raised in the first and second assignments of error, We shall now consider jointly those covered by the third and fourth relative to the finding made by the trial court that the price at which the chattels mortgaged were sold at public auction was ridiculously low; that it was the one responsible for their depreciated value and worn-out condition; and that the Bank did not act with fairness and justice in foreclosing the chattel mortgages.

That the obligors jointly and severally signed the promissory notes sued upon and that they were in default is not denied. Accordingly, the mortgagee's right to foreclose the chattel mortgages is beyond question. So is its right to foreclose them judicially or extra-judicially, the contracts of the parties clearly giving that option to the mortgagee. The trial court, therefore, erred in holding that, by exercising such right and option, the Bank acted with unfairness and injustice towards the mortgagors.

It is argued, however, that the Bank should have allowed "the defendant corporation" to sell the tractors, and that because the sale thereof was made by lots, good prices could not be obtained because the price of each lot "was beyond the capacity of any single person to pay," while had they been sold one by one individual farmers could have made offers to buy them. In reasoning thus, the trial court lost sight completely of the fact that the chattel mortgages foreclosed gave the Bank full discretion to sell the tractors and other farming equipment mortgaged, either by lots or by piece. Having given such authority the mortgagor should be the last to complain against the mortgagee exercising it.

Coming now to the lower court's finding that the total price of P67,400.00 was ridiculously low, it must be stated firstly, that that figure is erroneous, the real total amount being P86,650.00 (Exhibits J, J-1 to J-6). This price the trial court considered as ridiculously low in spite of the fact that John Sycip himself said in a letter addressed to the Bank under date of May 24, 1962, that if at that time the Bank was to repossess the 47 tractors, their selling value would only be about P100,000.00 (Ex-hibit W).

Aside from what has been said heretofore, the record discloses that NAMERCO and its co-obligors had failed to show convincingly that the sale of the tractors by piece would have really resulted in a much bigger total sale price.

Notwithstanding what has been said heretofore, a majority of the members of the court is of the opinion that, although in strict law NAMERCO and its co-obligors have no reason to complain in connection with the foreclosure of the chattel mortgages and the price obtained from the public auction sale of the mortgaged chattels, at least in equity they are entitled to have credited to them, in payment of their outstanding obligations, whatever price was obtained by the Bank from the disposal or sale thereof, and that in this connection, the record of the case should be remanded to the trial court for further proceedings.

In the light of all the above, it is clear that the fifth and sixth assignments of error submitted in the Bank's brief are meritorious.

The obligation of NAMERCO and the parties who with it executed the promissory notes sued upon, jointly and severally, appears indubitable, as far as the evidence presented in this case is concerned. On the other hand, having expressed heretofore the view that the Bank had the perfect right to foreclose the chattel mortgages and that it was not responsible at all for the apparently low, price obtained in their sale at foreclosure, the conclusion must be that the trial court erred in sentencing the aforesaid Bank to pay actual, compensatory, exemplary and moral damages, and P50,000.00 by way of attorney's fees.

WHEREFORE, the decision appealed from is hereby reversed and set aside, and another is rendered sentencing the National Merchandising Corporation, John Sycip, Paul Sycip and Alfonso Sycip to pay, jointly and severally, to the appellant Bank, the amount of P554,865.14, with interest thereon at the legal rate from the date of filing of the complaint. With costs.

However, the record of this case is remanded below for further proceedings exclusively to determine the price at which the Bank was able to dispose of the tractors, farming machineries and equipment it acquired at the foreclosure sales conducted in connection with the foreclosure of the chattel mortgages marked as Exhibits E, F, G and H; the resulting net amount to be deducted from the total amount adjudged herein in favor of the Bank.

With reference to the appeal interposed by the intervenors (G.R. No. L-23737), We find the same to be entirely without merit in the light of the findings and conclusions above set forth.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur. Castro, J., took no part.

Barredo, J., concurs in separate opinion but upon further study of the record, instead of concurring, he reserves his vote.

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