

**MANUEL M. DOMINGO, DOING BUSINESS AS JAN 26 ENTERPRISES,
PLAINTIFF-APPELLEE, VS. MS MAXCO COMPANY, INC, DEFENDANT,**

Ponente: SORONGON, J.

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SORONGON, J.:

This is an Appeal[1] from the Decision[2] dated December 18, 2009 of the Regional Trial Court (RTC) of Pasay City, Branch 109 in Civil Case No. 06-0200CFM, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring plaintiff as successful party as far as defendant MS Maxco and to pay plaintiff the sum of P804,068.21 with legal interest from the filing of the case plus costs;
2. Directing co-defendant Fort Bonifacio Development Corporation to secure the amount of P804,068.21 in the retention money in the name of MS Maxco for and in behalf of plaintiff and as preferred creditor.

SO ORDERED."

The genesis of this case is the claim of plaintiff-appellee Manuel M. Domingo (Domingo) as against the "Retention Money" due to MS Maxco Company, Inc. (Maxco) which is being held by Fort Bonifacio Development Corporation (FBDC). According to Domingo, he has the right to collect the said retention money by virtue of a Deed of Assignment executed by Maxco in his favor up to the extent of its obligation in the total amount of Php804,068.21. Unable to collect the amount, he filed a complaint for sum of money with the RTC of Pasay City, impleading FBDC and Maxco as alternative defendants.

The issues of whether or not Domingo has a cause of action against FBDC and whether or not the trial court has jurisdiction over the case were earlier brought before this Court via a Petition[3] to which the latter ruled in favor of Domingo to the effect that the filing of the case against the defendants was based upon his right to receive payment for the financial obligation incurred by Maxco (formerly LMM Construction) which has an inchoate right on the retention money being held by FBDC. And, since the controversy does not pertain to any violation in the trade contract between Maxco or even Domingo as assignee of the latter and FBDC, jurisdiction therefore rests with the trial court and not with the Construction Industry Arbitration Commission (CIAC). The said decision was upheld by the Supreme Court in G.R. No. 180765, which for a better clarity and understanding thereof we will herein quote the facts as spelled out by the Supreme Court, *mutatis mutandis*, thus:

FBDC is a domestic corporation duly organized under Philippine Laws and is engaged in the business of real estate development. In turn, Domingo is the assignee of Maxco's receivable from FBDC.

On July 5, 2000, FBDC entered into a Trade Contract[4] with Maxco for partial structural and architectural works pertaining to the Bonifacio Ridge Condominium Project. According to the terms of the contract, FBDC shall withhold a "retention money" equivalent to 5% of the contract price for a period of one year after the completion of the project to guarantee the performance by Maxco of all corrective works during the defect-liability period. The defect-liability period shall refer to the twelve (12) month-period within which Maxco is obligated to repair any defects in the project at no cost to FBDC which period shall be reckoned from

the issuance of a practical completion.[5] Thereafter, if there is any excess left from the retention money, the same shall be returned to Maxco.

Due to the defect and delay in the work of Maxco, FBDC was constrained to unilaterally terminate[6] the Trade Contract and hire another contractor to finish the rest of the work left undone by Maxco. Despite the termination of the agreement, however, FBDC was liable to pay Maxco a fraction of the contract price in proportion to the works performed by the latter. Thus, the defect-liability period commenced in January 2005 and ended in December 2005 following the issuance of the practical completion sometime in December 2004.

Meantime, the first Notice of Garnishment[7] against the receivables of Maxco in connection with CIAC Case No. 11-2002 in favor of Asia-Con Builders in the amount of P5,990,927.77 was received by FBDC.

Subsequently, on April 30, 2005, FBDC received Domingo's letter[8] dated April 18, 2005 inquiring about the retention money and notifying the former of the assignment to him by Maxco of a portion of the retention money in the total amount of P804,068.21. Attached to the said letter is a copy of the notarized Deed of Assignment dated February 28, 2005.[9] In reply[10], FBDC confirmed the existence of the retention money but the same is not yet due and demandable. Furthermore, the retention money is also being garnished by the other creditors of Maxco. In a letter[11] dated October 14, 2005, Domingo, thru counsel, asserted that they could not be prejudiced by any garnishment or claims of other creditors subsequent to the assignment because the portion to be set aside is deemed to be the property of Domingo.

Before Domingo's claim could be fully addressed, FBDC, received the second Notice of Garnishment[12] against the retention money issued by the National Labor Relations Commission (NLRC) to satisfy the liability of Maxco to Nicolas Consigna in NLRC Case NO. 00-07-05483-2003.

Subsequently, FBDC received on July 13, 2005 an Order of Delivery of Money[13] in connection with the first notice of garnishment, issued by the Office of the Clerk of Court and Ex-Officio Sheriff directing petitioner to deliver to Asia-Con Builders the amount of P5,990,927.77 to which FBDC complied by delivering to Asia-Con Builders on July 22, 2005 and August 11, 2005 partial payments amounting to P1,170,601.81.

Then, on January 26, 2006, FBDC received the third Notice of Garnishment[14] in connection with the favorable judgment obtained by Concrete Masters, Inc. against Maxco to which FBDC delivered the amount of P558,448.27.

Consequently, on January 31, 2006, FBDC denied Domingo's claim on the retention money, reasoning that after the completion of the rectification works on the condominium project and satisfaction of the various garnishment orders, there was no more left of the retention money of Maxco.[15]

During the trial, Engr. Richard Yap, FBDC's project consultant, testified[16] that after deducting the cost of the various repairs that had to be undertaken, Maxco's retention money was reduced to Php5,699,281.71. This balance, however, were paid to various parties by virtue of writs of garnishment made upon said retention money. Thus:

Remaining Retention Money Due to MS Maxco (including remaining billable amounts)[17]

P17,237,060.83

Less: Garnishment Order[18] dated July 20, 2004 and Order of Delivery of Money dated July 13, 2005 Secured by Asia-Con.

(P5,110,833.44)[19])

Garnishment Order[20] dated June 6, 2005 secured by Nicolas Consigna

(P181,635.01)[21]

Garnishment Order[22] dated January 26, 2006 secured by Concrete Masters, Inc.

(P558,448.27)[23]

Costs of Rectification of Defects[24]

(P11,567.779.12)

Total

(P181,635.01)

Nonetheless, records show that FBDC was only able to fully satisfy the first notice of garnishment in the amount of P5,110,833.44 on January 31, 2006, the very same date that it expressly denied Domingo's claim. Also, FBDC complied with the notice of garnishment in connection with the case filed by Concrete Masters, Inc. in the amount of P558,448.27 on February 8, 2006, a week after its denial of Domingo's claim.

Because of the foregoing events, Domingo instituted Civil Case No. 06-0200CFM before the RTC of Pasig City, Branch 109 against FBDC and Maxco. In said case, the trial court ruled that Maxco is liable to pay Domingo the retention money of P804,068.21. As regards the liability of FBDC, the trial court opined that under the rules on preference of credit Domingo cannot bind FBDC to the principal liability of Maxco because FBDC is not a debtor of Domingo. But having acquired jurisdiction over the person of FBDC, it can now direct FBDC to secure the amount of P804,068.21 with interest from the retention money to Domingo for being a preferred creditor of MAXCO.

Dissatisfied with the disposition of the trial court, defendant-appellant via this appeal alleged:

I

THE HONORABLE LOWER COURT GRAVELY ERRED IN DIRECTING DEFENDANT-APPELLANT FBDC TO SECURE, FOR AND ON BEHALF OF PLAINTIFF-APPELLEE DOMINGO, THE AMOUNT OF EIGHT HUNDRED FOUR THOUSAND SIXTY-EIGHT AND 21/100 PESOS (P804,068.21) FROM THE RETENTION MONEY OF MS MAXCO.

II

THE HONORABLE LOWER COURT GRAVELY ERRED IN NOT FINDING THAT MS MAXCO'S RETENTION MONEY WAS COMPLETELY EXHAUSTED BY DEFENDANT-APPELLANT FBDC'S PAYMENTS TO THE FORMER'S GARNISHING CREDITORS.

Synthesizing the foregoing assignment of errors, the central issue to be resolved is whether or not the findings and conclusions of the trial court are supported by law and jurisprudence. To fully settle the main issue, there is a need to discuss a number of sub-issues, to wit:

First, was the Deed of Assignment signed between Maxco and Domingo valid? If so, what would be its effect to the obligation of FBDC insofar as the retention money is concerned;

Second, what is the effect of the deed of assignment insofar as the other attaching creditors are concerned?

Third, will the subsequent release of the retention money to the attaching creditors or garnishees after the notice of the assignment of credit release FBDC from any liability under the law.

Fourth, as assignor what is the nature of Maxco's obligation, can the trial court pronounce that it is simultaneously liable with FBDC?

Preliminarily, we find that the trial court was in a quandary as to what law or rule should apply in the given state

of facts. This is evident from the assailed decision where it made reference to both the rules on assignment of credit and the rules on preference of credit. The trial court held that it refused to treat FBDC as a principal debtor within the meaning of the law on preference of credit because Domingo is not FBDC's creditor. Yet, it ordered FBDC to consider Domingo as a preferred creditor and set aside for him the amount of P804,068.21. Treating Domingo as a preferred creditor only indicates that the trial court applied the rules on preference of credits albeit on a different reason, that is, it had acquired jurisdiction over the person of FBDC. The rules on concurrence and preference of credit does not apply to the case at bar because this is not a case involving the insolvency of Maxco nor is it an in rem action which involves all creditors of Maxco in a liquidation proceeding. In *Philippine Savings Bank vs. Lantin*[25], the Supreme Court ruled that the law on the concurrence and preference of credits cannot be applied in a mere action to collect from the obligor. For the trial court therefore to refer and declare Domingo as a preferred creditor within the meaning of the rules on concurrence and preference of credit is an erroneous conclusion.

Moreover, we note that both parties are in agreement that the trial court's pronouncement in the fallo of its decision imposing a direct liability on FBDC to set aside the amount of Php804,068.21 ran counter with its own findings and conclusions. We join the parties in this observation so much so that we are most impelled to recalibrate the evidence on record to completely settle all the issues surrounding this case. Nonetheless, it may be deduced from the conclusion of the trial court as stated in the dispositive portion of the decision that both Maxco and FBDC are found liable to Domingo in the amount of 804,08068.21.

But before we delve on the meat of the controversy there is another preliminary issue that we need to address, that is, can we pronounce any judgment as to Maxco's liability whether it be a confirmation of the pronouncement made by the trial court or a total reversal of its liability notwithstanding that it did not file its own appeal therefrom.

In *Cayaba vs. Court of Appeals*[26] it was held that:

The rule on this matter is that a reversal of a judgment on appeal is binding on the parties to the suit but does not inure to the benefit of parties who did not join in the appeal. The recognized exception is when their rights and liabilities and those of the parties appealing are so interwoven and dependent so as to be inseparable, in which case a reversal as to one operates as a reversal to all.

Petilla vs. Court of Appeals was a case where precisely one of the respondents, Maximiniana Marcella, derived her title from her co-respondent, Evaristo Marcella. The petitioners therein claimed that since Maximiniana did not appeal, she could not benefit from Evaristo's appeal.

The Court found out that she did appeal; it further stated that:

Even assuming for the sake of argument that said respondent did not appeal from the judgment of the lower court, this Court has held that a defendant may nevertheless be benefited by the judgment in favor of her co-defendants who interposed an appeal. As we have already said, whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other co-judgment debtors depends solely upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all. (*Municipality of Orion vs. Concha*, 50 Phil. 482; quoted with approval in *Gov't. of the Phil. vs. Tizon*, 20 SCRA 1182) (emphasis supplied)

In the same vein, it is petitioner's position that if the Rural Bank of Olongapo wins the appeal, the victory of the bank inures to his benefit since he derives his title from said bank, thereby upholding his ownership of the property in question. If the bank loses the appeal, it may still elevate the matter to this Court under Rule 45. And

if it wins, petitioner is benefited."

Having threshed out the preliminary matters of this case, We shall now proceed to discuss the more important issues at hand.

The Deed of Assignment signed between Maxco and Domingo is valid. Thus, from the time notice was effected upon FBDC, the law imposes upon it the duty to set aside the particular amount so assigned under the said Deed.

In the Trade Contract between FBDC and Maxco, the former is authorized to set aside 5% of the contract price (retention money) to be used as fund for corrective repairs. It was also clearly understood that whatever excess left of the retention money would be returned to Maxco. And, since Maxco was indebted to Domingo in the amount of P804,068.21, it assigned to the latter its rights to the retention money. In turn, Domingo lost no time to inquire and notify FBDC about the assignment of Maxco's rights to the said retention money in his favor.

Assignment of credits is governed by Articles 1624 to 1635 of the Civil Code of the Philippines. Its formalities, perfection and nature are therefore, governed under the law on sales. These provisions of law cover not only assignment of credits but also all other incorporeal rights which rights may be doubtful, present, and future so long as they are licit and can be exercised by a third person.[27]

Jurisprudence[28] teaches that an assignment of credit is an act of transferring, either onerously or gratuitously, the right of an assignor to an assignee who would then be capable of proceeding against the debtor for enforcement or satisfaction of the credit. The transfer of rights takes place upon perfection of the contract, and ownership of the right, including all appurtenant accessory rights[29], is thereupon acquired by the assignee. The assignment binds the debtor only 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. Where the assignment is on account of pure liberality on the part of the assignor, the rules on donation would likewise be pertinent; where valuable consideration is involved, the assignment partakes of the nature of a contract of sale or purchase.

Verily, assignment of credit may be in the form of sale, but at times it may constitute a dation in payment, such as when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person.[30] In *Casabuena vs. Court of Appeals*[31], it was clarified that in assignment of credit only transfer of a right takes place not the ownership of a thing. Thus:

An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, transfers his credit and its accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor. Stated simply, it is the process of transferring the right of the assignor to the assignee, who would then be allowed to proceed against the debtor. The assignment involves no transfer of ownership but merely effects the transfer rights which the assignor has at the time, to the assignee. (emphasis supplied)

After the assignment is perfected, its effects are as follows: (1) the assignment transfers to the assignee the right to collect the full value of the credit, even if he paid a price less than such value; (2) the assignment transfers also all the accessory rights; and (3) the debtor can set up against the assignee the defenses he could have set up against the assignor.[32] But, before the assignment can affect third persons, the requirement of Article 1625 must be

complied with, thus:

Art. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

In the case of *Servicewide Specialist, Inc. vs. Court of Appeals*[33] it was held that Articles 1625, 1626 and 1627 of the Civil Code on assignment of credits do not require the debtor's consent for the validity thereof and so as to render him liable to the assignee. The law speaks not of consent but of notice to the debtor, the purpose of which is to inform the latter that from the date of assignment he should make payment to the assignee and not to the original creditor. The notice contemplated here is for the protection of the assignee because before said date, payment to the original creditor is valid.

Applying the foregoing doctrine to the case at bar, We find that the Deed of Assignment between Maxco and Domingo is valid. And, since it was duly notarized, it can be considered a public instrument. So that when FBDC was notified of the said deed of assignment on April 30, 2005, FBDC was already aware of the said assignment of credit thereby making him liable to pay the claim of Domingo pursuant to Article 1625 of the Civil Code. Accordingly, when the retention money was already due for release, FBDC should have paid Domingo ahead of the other creditors.

By reason of the Deed of Assignment the garnishees who were constituted after the notice was effectively made to Maxco will be barred from attaching the portion of the retention money to the extent of the amount so assigned.

Article 1626 of the New Civil Code provides that the debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation.

In discussing the legal ramifications of the aforesaid provision of law, professor Arturo Tolentino aptly explained that insofar as attaching creditors are concerned, the effect of notice of assignment made to the debtor will bar them from attaching the credit of the assignor. Thus:

"When the assignment has become effective against third persons under this article, even if the debtor has not yet been notified, the assigned credit can no longer be attached by creditors of the assignor.

This means that the assignee can object to the payment of the debt to the attaching creditor of the assignor, and may prevent such payment by merely notifying the debtor, even after the attachment notice to the latter. The assignee is entitled to payment, as against the attaching creditor of the assignor. But if the debtor is not notified of the assignment, and he pays to the creditor of the assignor by virtue of the attachment, he will be released, under article 1626.

If the attachment, however, is subsequent to the notification of the assignment to the debtor, the debtor will not be released if he pays under the attachment, if the assignment is in a public instrument. In this case, the assignment is already effective both against the attaching creditor and the debtor himself. The debtor pays at his own risk, under the attachment."[34]

Applying the foregoing treatise of authorities to the case at bar, we find that FBDC should be held liable for its

failure to honor the claim of Domingo under the Deed of Assignment.

The subsequent release of the retention money to the attaching creditors or garnishees after the notice of the assignment of credit did not release FBDC from his obligation insofar as Domingo is concerned.

FBDC argued that it should be released from any liability for prioritizing the release of the retention money to the garnishees despite Domingo's prior notice of the assignment of credit because it did so only in deference to a valid order of the court, i.e. writs of execution.

To a certain extent FBDC is correct on this point. Indeed, by authority of the writs of execution, it has the obligation under the law to set aside the amounts it is being ordered to set aside and release them to the named garnishees. However, it must be noted that the writ of execution or notice of garnishment only covers those which are in the name of Maxco as of the said date of notice. In the case at bar, the amount assigned to Domingo can no longer be considered as the property of Maxco.

True, FBDC was in receipt of the first notice of garnishment on July 2004 which is unarguably made prior to the time Domingo communicated his right to the retention money. However, at that time, the issue regarding the retention money was not yet due and demandable because Maxco's right over the retention money was only settled in 2006. Besides, even if the notice of garnishment came on July 24, 2004, which was prior to the notice of the deed of assignment, the same does not have the effect of diminishing Domingo's right since an assignee can legally prevent the payment thereof to the attaching creditors prior to the release of payment.

Furthermore, even granting that FBDC did pay Asia Con Builders in the total amount of P5,110,833.44 ahead of Domingo and the other creditors, still there was a balance of Php5,699,281.71 retention money from which the claim of Domingo may be taken from. Surprisingly, FBDC prioritized all claims of the other subsequent garnishees who have communicated their claim after Domingo made his own claim. It was therefore erroneous for FBDC to give preference to the attaching creditors who have sent their notices of garnishment only after Domingo notified FBDC of the assigned credit.

Such being the case, it can then be argued that FBDC failed to respect the right of Domingo as an assignee, rendering it liable to pay him the amount of P804,068.21 with legal interest until fully paid as and by way of actual or compensatory damages. Indeed, because of the unjust refusal of FBDC to honor and accept the rightful claim of Domingo, the latter had consequently suffered damages for which he must be compensated.

Maxco is not primarily liable.
The trial court erred in declaring Maxco liable to pay Domingo the amount of Php804,068.21.

As far as Maxco is concerned, we find that the trial court erred in declaring it primarily liable to Domingo. As an assignor, Maxco's liability will arise only upon a violation of its warranties as provided under Article 1628 of the Civil Code which provides:

Art. 1628. The vendor in good faith shall be responsible for the existence and legality of the credit at the time of the sale, unless it should have been sold as doubtful; but not for the solvency of the debtor, unless it has been so expressly stipulated or unless the insolvency was prior to the sale and of common knowledge.

Even in these case he shall only be liable for the price received and for the expenses specified in No. 1 of article 1616.

The vendor in bad faith shall always be answerable for the payment of all expenses, and for damages.

In fine, since the retention money was in existence at the time of the assignment and there being no evidence that the assigned credit was doubtful or fabricated, Maxco's liability under its warranty cannot as yet be adjudged.

WHEREFORE, We DISMISS the Appeal for want of merit. Further, in view of the points we have herein set forth, We MODIFY the appealed Decision of the Regional Trial Court of Pasay City, Branch 109 in Civil Case No. 06-200 to conform to the evidence thuswise: (i) Fort Bonifacio Development Corporation (FBDC) is held liable to pay Manuel M. Domingo the amount of Eight Hundred Four Thousand Sixty Eight and 21/100 (P804,068.21) with legal interest from the date of the finality of this Decision until fully paid as and by way of actual or compensatory damages; and (ii) the pronouncement made as against defendant MS MAXCO COMPANY, INC. is DELETED its obligation under Article 1628 of the New Civil Code not having been properly established.

SO ORDERED.

Carandang, (Chairperson), and Gonzales-Sison, JJ., concur.

[1] Rollo, pages 87-135.

[2] Rolo, pages 17-84.

[3] FBDC vs. Domingo, CA-GR SP No. 97731, July 19, 2007.

[4] Records, volume 4, Exhibit "1", pages 44-86.

[5] Records, Volume 4, Exhibit "103", pages 250-257.

[6] Records, Volume 4, Exhibit "15", pages 113-114.

[7] Records, Volume 4, Exhibit "2", page 81.

[8] Records, Volume 1, Exhibit "B", page 8.

[9] Records, volume , Exhibit "A", pages 6-7.

[10] Records, Volume 1, Exhibit "C", pages 9-10.

[11] Records, Volume 1, Exhibit "D", page 11.

[12] Records, Volume 4, Exhibit "3" page 82

[13] Records, Volume 4, Exhibit "5", page 88.

[14] Records, Volume 4, Exhibit "13 page 102.

[15] Records, Volume 1, Exhibit "H", page 15.

[16] Records, Volume 4, Exhibit 129, pages 389-406.

- [17] Records, Volume 4, Exhibits "102" and "102-A", pages 248-249.
- [18] Records, Volume 4, Exhibits "2", page 81.
- [19] Records, Volume 4, Exhibit "130" at page 404, in relation to Exhibits "6", "6-A", "7" and "7-A", pages 89-94.
- [20] Supra note 10.
- [21] Records, Volume 4, Exhibits "4" and "4-A", page 87.
- [22] Records, Volume 4, Exhibit "13" - "14", page 102-104.
- [23] Records, Volume 4, Exhibit "98", page 239.
- [24] Supra, note 7.
- [25] G.R. No. L-33929, September 2, 1983.
- [26] G.R. No. 95918, March 5, 1993.
- [27] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume V, 1992 ed. Page 188.
- [28] Project Builders, Inc. et al., vs. The Court of Appeals, G.R. No. 99433, June 19, 2001; Rodriguez vs. Court of Appeals, G.R. No. 84220, March 25, 1992.
- [29] Article 1528 of the Civil Code provides the following: The sale or assignment of a credit includes that of all accessory rights, such as guaranty, suretyship, mortgage, pledge, or privilege.
- [30] Spouses Serfino vs. FEBTC, G.R. No. 171845, October 10, 2012.
- [31] G.R. No. 115410, February 27, 1998.
- [32] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume V, 1992 ed. Page 189.
- [33] G.R. No. 116363, December 10, 1999.
- [34] Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume V, 1992 ed. Page 192.

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