

BENITO H. LOPEZ, PETITIONER, VS. THE COURT OF APPEALS AND THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., RESPONDENTS.

G.R. No. L-33157. June 29, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

On June 2, 1959, petitioner Benito H. Lopez obtained a loan in the amount of P20,000.00 from the Prudential Bank and Trust Company. On the same date, he executed a promissory note for the same amount, in favor of the said Bank, binding himself to repay the said sum one (1) year after the said date, with interest at the rate of 10% per annum. In addition to said promissory note, he executed Surety Bond No. 14164 in which he, as principal, and Philippine American General Insurance Co., Inc. (PHILAMGEN) as surety, bound themselves jointly and severally in favor of Prudential Bank for the payment of the sum of P20,000.00.

On the same occasion, Lopez also executed in favor of Philamgen an indemnity agreement whereby he agreed "to indemnify the Company and keep it indemnified and hold the same harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatever kind and nature which the Company shall or may at any time sustain or incur in consequence of having become surety upon the bond." [1] At the same time, Lopez executed a deed of assignment of 4,000 shares of the Baguio Military Institution entitled "Stock Assignment Separate from Certificate", which reads:

"This deed of assignment executed by BENITO H. LOPEZ, Filipino, of legal age, married and with residence and postal address at Baguio City, Philippines, now and hereinafter called the 'ASSIGNOR', in favor of the PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at Wilson Building, Juan Luna, Manila, Philippines, now and hereinafter called the 'ASSIGNEE-SURETY COMPANY'.

- WITNESSETH -

"That for and in consideration of the obligations undertaken by the ASSIGNEE-SURETY COMPANY under the terms and conditions of SURETY BOND NO. 14164, issued on behalf of said BENITO H. LOPEZ and in favor of the PRUDENTIAL BANK & TRUST COMPANY, Manila, Philippines, in the amount of PESOS TWENTY THOUSAND ONLY (P20,000.00), Philippine Currency, and for value received, the ASSIGNOR hereby sells, assigns, and transfers unto THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., Four Thousand (4,000) shares of the Baguio Military Institute, Inc. standing in the name of said Assignor on the books of said Baguio Military Institute, Inc. represented by Certificate No. 44 herewith and do hereby irrevocably constitutes and appoints THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC. as attorney to transfer the said stock on the books of the within named military institute with full power of substitution in the premises." [2]

With the execution of this deed of assignment, Lopez endorsed the stock certificate and delivered it to Philamgen.

It appears from the evidence on record that the loan of P20,000.00 was approved conditioned upon the posting of a surety bond of a bonding company acceptable to the bank. Thus, Lopez persuaded Emilio Abello, Assistant Executive Vice-President of Philamgen and member of the Bond Underwriting Committee to request Atty. Timoteo J. Sumawang, Assistant Vice-President and Manager of the Bonding Department, to accommodate him in putting up the bond against the security of his shares of stock with the Baguio Military Institute, Inc. It was their understanding that if he could not pay the loan, Vice-President Abello and Pio Pedrosa of the Prudential Bank would buy the shares of stocks and out of the proceeds thereof, the loan would be paid to the Prudential Bank.

On June 2, 1960, Lopez' obligation matured without it being settled. Thus, the Prudential Bank made demands for payment both upon Lopez and Philamgen. In turn, Philamgen sent Lopez several written demands for the latter to pay his note (Exhibit H, H-1 & H-2), but Lopez did not comply with said demands. Hence, the Prudential Bank sometime in August, 1961 filed a case against them to enforce payment on the promissory note plus interest.

Upon receipt of the copies of complaint, Atty. Sumawang confronted Emilio Abello and Pio Pedrosa regarding their commitment to buy the shares of stock of Lopez in the event that the latter failed to pay his obligations to the Prudential Bank. Vice-President Abello then instructed Atty. Sumawang to transfer the shares of stock to Philamgen and made a commitment that thereafter he (Abello) and Pio Pedrosa will buy the shares of stock from it so that the proceeds could be paid to the bank, and in the meantime Philamgen will not pay the bank because it did not want payment under the terms of the bank.[3]

Due to said commitment and instruction of Vice-President Abello, Assistant Treasurer Marcial C. Cruz requested the transfer of Stock Certificate No. 44 for 4,000 shares to Philamgen in a letter dated October 31, 1961. Stock Certificate No. 44 in the name of Lopez was accordingly cancelled and in lieu thereof Stock Certificate No. 171 was issued by the Baguio Military Institute in the name of Philamgen on November 17, 1961.

The complaint was thereafter dismissed. But when no payment was still made by the principal debtor or by the surety, the Prudential Bank filed on November 8, 1963 another complaint for the recovery of the P20,000.00. On November 18, 1963, after being informed of said complaint, Lopez addressed the following letter to Philamgen:

"Dear Mr. Sumawang:

This is with reference to yours of the 13th instant advising me of a complaint filed against us by Prudential Bank & Trust Co. regarding my loan of P20,000.00. In this connection, I would like to know what happened to my shares of stocks of Baguio Military Academy which were pledged to your goodselves to secure said obligation. These shares of stock I think are more than enough to answer for said obligation."[4]

On December 9, 1963, Philamgen was forced to pay the Prudential Bank the sum of P27,785.89 which included the principal loan and accumulated interest and the Prudential Bank executed a subrogation receipt on the same date.

On March 18, 1965, Philamgen brought an action in the Court of First Instance of Manila (Civil Case No. 60272, "The Philippine American General Insurance Co., Inc. vs. Benito H. Lopez") for reimbursement of the said amount. After hearing, the said court rendered judgment dismissing the complaint holding:

"The contention of the plaintiff that the stock of the defendant were merely pledged to it by the defendant is not borne out by the evidence. On the contrary, it appears to be contradicted by the facts of the case. The shares of stock of the defendant were actually transferred to the plaintiff when it became clear after the plaintiff and the defendant had been sued by the Prudential Bank that plaintiff would be compelled to make the payment to the Prudential Bank, in view of the inability of the defendant Benito H. Lopez to pay his said obligation. The certificate bearing No. 44 was cancelled and upon request of the plaintiff to the Baguio Military Institute a new

certificate of stock was issued in the name of the plaintiff bearing No. 171, by means of which plaintiff became the registered owner of the 4,000 shares originally belonging to the defendant.

"It is noteworthy that the transfer of the stocks of the defendant in the name of the plaintiff company was made at the instance of Messrs. Abello and Pedrosa, who promised to buy the same from the plaintiff. Now that these shares of stock of the defendant had already been transferred in the name of the plaintiff, the defendant has already divested himself of the said stocks, and it would seem that the remedy of the plaintiff is to go after Messrs. Abello and Pedrosa on their promise to pay for the said stocks. To go after the defendant after the plaintiff had already become the owner of his shares of stock and compel him to pay his obligation to the Prudential Bank would be most unfair, unjust and illogical, for it would amount to double payment on his part. After the plaintiff had already appropriated the said shares of stock, it has already lost its right to recover anything from the defendant, for the reason that the transfer of the said stocks was made without qualification. This transfer takes the form of a reimbursement of what plaintiff had paid to the Prudential Bank, thereby depriving the plaintiff of its right to go after the defendant, herein."[5]

Philamgen appealed to the Court of Appeals raising these assignments of errors:

I

"The lower court erred in finding that the evidence does not bear out the contention of plaintiff that the shares of stock belonging to defendant were transferred by him to plaintiff by way of pledge.

II

"The lower court erred in finding that plaintiff company appropriated unto itself the shares of stock pledged to it by defendant Benito Lopez and in finding that, with the transfer of the stock in the name of plaintiff company, the latter has already been paid or reimbursed what it paid to Prudential Bank.

III

"The lower court erred in not finding that the instant case is one where the pledgee has abandoned the security and elected instead to enforce his claim against the pledgor by ordinary action."[6]

On December 17, 1970, the Court of Appeals promulgated a decision in favor of the Philamgen, thereby upholding the foregoing assignments of errors. It declared that the stock assignment was a mere pledge; that the transfer of the stocks in the name of Philamgen was not intended to make it the owner thereof; that assuming that Philamgen had appropriated the stocks, this appropriation is null and void as a stipulation authorizing it is a pactum commissorium; and that pending payment, Philamgen is merely holding the stock as a security for the payment of Lopez' obligation. The dispositive portion of the said decision states:

"WHEREFORE, the decision of the lower court is hereby reversed, and another one is hereby entered ordering the defendant to pay the plaintiff the sum of P27,785.89 with interest at the rate of 12% per annum from December 9, 1963, 10% of the P27,785.89 as attorney's fees and the costs of the suit."[7]

The motion for reconsideration with prayer to set the same for oral argument having been denied, Lopez brought this petition for review on certiorari presenting for resolution these questions:

a) Where, as in this case, a party "sells, assigns and transfers" and delivers shares of stock to another, duly endorsed in blank, in consideration of a contingent obligation of the former to the latter, and, the obligations having arisen, the latter causes the shares of stock to be transferred in its name, what is the juridical nature of the transaction - a dation in payment or a pledge?

b) Where, as in this case, the debtor assigns the shares of stock to the creditor under an agreement between the latter and determinate third persons that the latter would buy the shares of stock so that the obligations could be

paid out of the proceeds, was there a novation of the obligation by substitution of debtor?[8]

Philamgen failed to file its comment on the petition for review on certiorari within the extended period which expired on March 19, 1971. This Court thereby resolved to require Lopez to file his brief.[9]

Under the first assignment of error, Lopez argues in his brief:

"That the Court of Appeals erred in holding that when petitioner 'sold, assigned, transferred' and delivered shares of stock, duly endorsed in blank, to private respondent in consideration of a contingent obligation of the former to the latter and the obligation having thereafter arisen, the latter caused the shares of stock to be transferred to it, taking a new certificate of stock in its name, the transaction was a pledge, and in not holding instead that it was a dation in payment." [10]

Considering the explicit terms of the deed denominated "Stock Assignment Separate from Certificate", hereinbefore copied verbatim, Lopez sold, assigned and transferred unto Philamgen the stocks involved "for and in consideration of the obligations undertaken" by Philamgen "under the terms and conditions of the surety bond executed by it in favor of the Prudential Bank" and "for value received". On its face, it is neither pledge nor dation in payment. The document speaks of an outright sale as there is a complete and unconditional divestiture of the incorporeal property consisting of stocks from Lopez to Philamgen. The transfer appears to have been an absolute conveyance of the stocks to Philamgen whether or not Lopez defaults in the payment of P20,000.00 to Prudential Bank. While it is a conveyance in consideration of a contingent obligation, it is not itself a conditional conveyance.

It is true that if Lopez should "well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated" in his promissory note to Prudential Bank, the obligation of Philamgen under the surety bond would become null and void. Corollarily, the stock assignment, which is predicated on the obligation of Philamgen under the surety bond, would necessarily become null and void likewise, for want of cause or consideration under Article 1352 of the New Civil Code. But this is not the case here because aside from the obligations undertaken by Philamgen under the surety bond, the stock assignment had other considerations referred to therein as "value received". Hence, based on the manifest terms thereof, it is an absolute transfer.

Notwithstanding the express terms of the "Stock Assignment Separate from Certificate", however, We hold and rule that the transaction should not be regarded as an absolute conveyance in view of the circumstances obtaining at the time of the execution thereof.

It should be remembered that on June 2, 1959, the day Lopez obtained a loan of P20,000.00 from Prudential Bank, Lopez executed a promissory note for P20,000.00, plus interest at the rate of ten (10%) per cent per annum, in favor of said Bank. He likewise posted a surety bond to secure his full and faithful performance of his obligation under the promissory note with Philamgen as his surety. In return for the undertaking of Philamgen under the surety bond, Lopez executed on the same day not only an indemnity agreement but also a stock assignment.

The indemnity agreement and the stock assignment must be considered together as related transactions because in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (Article 1371, New Civil Code). Thus, considering that the indemnity agreement connotes a continuing obligation of Lopez towards Philamgen while the stock assignment indicates a complete discharge of the same obligation, the existence of the indemnity agreement whereby Lopez had to pay a premium of P1,000.00 for a period of one year and agreed at all times to indemnify Philamgen of any and all kinds of losses which the latter might sustain by reason of it becoming a surety, is inconsistent with the theory of an absolute sale for and in consideration of the same undertaking of Philamgen. There would have been no necessity for the execution of the

indemnity agreement if the stock assignment was really intended as an absolute conveyance. Hence, there are strong and cogent reasons to conclude that the parties intended said stock assignment to complement the indemnity agreement and thereby sufficiently guarantee the indemnification of Philamgen should it be required to pay Lopez' loan to Prudential Bank.

"The character of the transaction between the parties is to be determined by their intention, regardless of what language was used or what the form of the transfer was. If it was intended to secure the payment of money, it must be construed as a pledge; but if there was some other intention, it is not a pledge. However, even though a transfer, if regarded by itself, appears to have been absolute, its object and character might still be qualified and explained by a contemporaneous writing declaring it to have been a deposit of the property as collateral security. It has been said that a transfer of property by the debtor to a creditor, even if sufficient on its face to make an absolute conveyance, should be treated as a pledge if the debt continues in existence and is not discharged by the transfer, and that accordingly, the use of the terms ordinarily importing conveyance, of absolute ownership will not be given that effect in such a transaction if they are also commonly used in pledges and mort-gages and therefore do not unqualifiedly indicate a transfer of absolute ownership, in the absence of clear and unambiguous language or other circumstances excluding an intent to pledge." [11]

We agree with the holding of the respondent Court of Appeals that the stock assignment, Exhibit C, is in truth and in fact, a pledge. Indeed, the facts and circumstances leading to the execution of the stock assignment, Exhibit C, and the admission of Lopez prove that it is in fact a pledge. The appellate court is correct in ruling that the following requirements of a contract of pledge have been satisfied: (1) that it be constituted to secure the fulfillment of a principal obligation; (2) that the pledgor be the absolute owner of the thing pledged; and (3) that the person constituting the pledge has the free disposal of the property, and in the absence thereof, that he be legally authorized for the purpose. (Article 2085, New Civil Code).

Article 2087 of the New Civil Code providing that it is also the essence of these contracts (pledge, mortgage, and antichresis) that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor, further supports the appellate court's ruling, which We also affirm. On this point further, the Court of Appeals correctly ruled:

"In addition to the requisites prescribed in article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement. (Art. 2093, N.C.C.) Incorporeal rights, including shares of stock may also be pledged (Art. 2095, N.C.C.) All these requisites are found in the transaction between the parties leading to the execution of the Stock Assignment, Exhibit C. And that it is a pledge was admitted by the defendant in his letter of November 18 1963, Exhibit G, already quoted above, where he asked what had happened to his shares of stock 'which were pledged to your good selves to secure the said obligation'. The testimony of the defendant- appellee that it was their agreement or understanding that if he would be unable to pay the loan to the Prudential Bank, plaintiff could sell the shares of stock or appropriate the same in full payment of his debt is a mere after-thought, conceived after he learned of the transfer of his stock to the plaintiff in the books of the Baguio Military Institute."

We also do not agree with the contention of petitioner that "petitioner's 'sale, assignment and transfer' unto private respondent of the shares of stock, coupled with their endorsement in blank and delivery, comes exactly under the Civil Code's de-finition of dation in payment, a long recognized and deeply rooted concept in Civil Law denominated by Spanish commentators as ' adjudicacion en pago.'"

According to Article 1245 of the New Civil Code, dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

Speaking of the concept of dation in payment, it is well to cite that:

"Dation in payment is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. (2 Castan 525; 8 Manresa, 324) The property given may consist, not only of a thing, but also of a real right (such as a usufruct) or of a credit against a third person. (Perez Gonzalez & Alguer: 2-I Enneccerus, Kipp & Wolff 317). Thus, it has been held that the assignment to the creditor of the interest of the debtor in an inheritance in payment of his debt, is valid and extinguishes the debt. (Ignacio vs. Martinez, 33 Phil. 576)

"The modern concept of dation in payment considers it as a novation by change of the object, and this is to our mind the more juridically correct view. Our Civil Code, however, provides in this article that, where the debt is in money, the law on sales shall govern; in this case, the act is deemed to be a sale, with the amount of the obligation to the extent that it is extinguished being considered as the price. Does this mean that there can be no dation in payment if the debt is not in money? We do not think so. It is precisely in obligations which are not money debts, in which the true juridical nature of dation in payment becomes manifest. There is a real novation with immediate performance of the new obligation. The fact that there must be a prior agreement of the parties on the delivery of the thing in lieu of the original prestation, shows that there is a novation which extinguishes the original obligation, and the delivery is a mere performance of the new obligation.

"The dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement, express or implied, or by their silence, consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished. (8 Manresa 324; 3 Valverde 174 fn.)

"Assignment of property by the debtor to his creditors, provided for in article 1255, is similar to dation in payment in that both are substitute forms of performance of an obligation. Unlike the assignment for the benefit of creditors, however, dation in payment does not involve plurality of creditors, nor the whole of the property of the debtor. It does not suppose a situation of financial difficulties, for it may be made even by a person who is completely solvent. It merely involves a change of the object of the obligation by agreement of the parties and at the same time fulfilling the same voluntarily. (8 Manresa 324)."[12]

Considering the above jurisprudence, We find that the debt or obligation at bar has not matured on June 2, 1959 when Lopez "alienated" his 4,000 shares of stock to Philamgen. Lopez' obligation would arise only when he would default in the payment of the principal obligation (the loan) to the bank and Philamgen had to pay for it. Such fact being adverse to the nature and concept of dation in payment, the same could not have been constituted when the stock assignment was executed. Moreover, there is no express provision in the terms of the stock assignment between Philamgen and Lopez that the principal obligation (which is the loan) is immediately extinguished by reason of such assignment.

In case of doubt as to whether a transaction is a pledge or a dation in payment, the presumption is in favor of pledge, the latter being the lesser trans-mission of rights and interests. Under American jurisprudence,

"A distinction might also be made between delivery of property in payment of debt and delivery of such property as collateral security for the debt. Generally, such a transfer was presumed to be made for collateral security, in the absence of evidence tending to show an intention on the part of the parties that the transfer was in satisfaction of the debt. This presumption of a transfer for collateral security arose particularly where the property given was commercial paper, or some other 'specialty' chose of action, that conferred rights upon transfer by delivery of a different nature from the debt, whose value was neither intrinsic nor apparent and was not agreed upon by the parties."[13]

Petitioner's argument that even assuming, arguendo that the transaction was at its inception a pledge, it gave way to a dation in payment when the obligation secured came into existence and private respondent had the stocks transferred to it in the corporate books and took a stock certificate in its name, is without merit. The fact that the

execution of the stock assignment is accompanied by the delivery of the shares of stock, duly endorsed in blank to Philamgen is no proof that the transaction is a dation in payment. Likewise, the fact that Philamgen had the shares of stock trans-ferred to it in the books of the corporation and took a certificate in its name in lieu of Lopez which was cancelled does not amount to conversion of the stock to one's own use. The transfer of title to incorporeal property is generally an essential part of the delivery of the same in pledge. It merely constitutes evidence of the pledgee's right of property in the thing pledged.

"By the contract of pledge, the pledgor does not part with his general right of property in the collateral. The general property therein remains in him, and only a special property vests in the pledgee. The pledgee does not acquire an interest in the property, except as a security for his debt. Thus, the pledgee holds possession of the security subject to the rights of the pledgor; he cannot acquire any interest therein that is adverse to the pledgor's title. Moreover, even where the legal title to incorporeal property which may be pledged is transferred to a pledgee as collateral security, he takes only a special property therein. Such transfer merely performs the office that the delivery of possession does in case of a pledge of corporeal property.

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"The pledgee has been considered as having a lien on the pledged property. The extent of such lien is measured by the amount of the debt or the obligation that is secured by the collateral, and the lien continues to exist as long as the pledgee retains actual or symbolic possession of the property, and the debt or obligation remains unpaid. Payment of the debt ex-tinguishes the lien.

"Though a pledgee of corporation stock does not become personally liable as a stockholder of the company, he may have the shares transferred to him on the books of the corporation if he has been authorized to do so.

"The general property in the pledge remains in the pledgor after default as well as prior thereto. The failure of the pledgor to pay his debt at maturity in no way affects the nature of the pledgee's rights concerning the property pledged, except that he then becomes entitled to proceed to make the security available in the manner prescribed by law or by the terms of the contract, x x x." [15]

In his second assignment of error, petitioner contends that the Court of Appeals erred in not holding that since private respondent entered into an agreement with determinate third persons whereby the latter would buy the said shares so sold, assigned and transferred to the former by the petitioner for the purpose of paying petitioner's obligation out of the proceeds, there was a novation of the obligation by substitution of debtor.

We do not agree.

Under Article 1291 of the New Civil Code, obligations may be modified by: (1) changing their object or principal condition; (2) substituting the person of the debtor; (3) subrogating a third person in the rights of the creditor. And in order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (Article 1292, N.C.C.) Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237. (Article 1293, N.C.C.)

Commenting on the second concept of novation, that is, substituting the person of the debtor, Manresa opines, thus:

"In this kind of novation, it is not enough to extend the juridical relation to a third person; it is necessary that the old debtor be released from the obligation, and the third person or new debtor take his place in the relation. Without such re-lease, there is no novation; the third person who has assumed the obligation of the debtor

merely becomes a co-debtor or a surety. If there is no agreement as to solidarity, the first and the new debtor are considered obligated jointly." (8 Man-resa 435, cited in Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, p. 360)

In the case at bar, the undertaking of Messrs. Emilio Abello and Pio Pedrosa that they would buy the shares of stock so that Philamgen could be reimbursed from the proceeds that it paid to Prudential Bank does not necessarily imply the extinguishment of the liability of petitioner Lopez. Since it was not established nor shown that Lopez would be released from responsibility, the same does not constitute novation and hence, Philamgen may still enforce the obligation. As the Court of Appeals correctly held that "(t)he representation of Mr. Abello to Atty. Sumawang that he and Mr. Pedrosa would buy the stocks was a purely private arrangement between them, not an agreement between (Philamgen) and (Lopez)" and which We hereby affirm, petitioner's second assignment of error must be rejected.

In fine, We hold and rule that the transaction entered into by and between petitioner and respondent under the Stock Assignment Separate From Certificate in relation to the Surety Bond No. 14164 and the Indemnity Agreement, all executed and dated June 2, 1959, constitutes a pledge of the 40,000 shares of stock by the petitioner- pledgor in favor of the private respondent- pledgee, and not a dacion en pago. It is also Our ruling that upon the facts established, there was no novation of the obligation by substitution of debtor.

The promise of Abello and Pedrosa to buy the shares from private respondent not having materialized (which promise was given to said respondent only and not to petitioner) and no action was taken against the two by said respondent who chose instead to sue the petitioner on the Indemnity Agreement, it is quite clear that this respondent has abandoned its right and interest over the pledged properties and must, therefore, release or return the same to the petitioner- pledgor upon the latter's satisfaction of his obligation under the Indemnity Agreement.

It must also be made clear that there is no double payment nor unjust enrichment in this case because We have ruled that the shares of stock were merely pledged. As the Court of Appeals said:

"The appellant (Philam) is not enriching himself at the expense of the appellee. True, the stock certificate of the appellee had been in the name of the appellant but the transfer was merely nominal, and was not intended to make the plaintiff the owner thereof. No offer had been made for the return of the stocks to the defendant. As the appellant had stated, the appellee could have the stocks transferred to him anytime as long as he reimburses the plaintiff the amount it had paid to the Prudential Bank. Pending payment, plaintiff is merely holding the certificates as a pledge or security for the payment of defendant's obligation."

The above holding of the appellate court is correct and We affirm the same.

As to the third assignment of error which is merely the consequence of the first two assignments of errors, the same is also devoid of merit.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision of the Court of Appeals is hereby AFFIRMED in toto, with costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Annex "B", Complaint, Record on Appeal, p. 15.

[2] Annex "1", Answer, Record on Appeal, pp. 32-33.

- [3] T.S.N., pp. 14-15.
- [4] Rollo, p. 26.
- [5] Record on Appeal, pp. 49-51.
- [6] CA Decision, p. 5; Rollo, p. 26.
- [7] CA Decision, p. 12; Rollo, p. 33.
- [8] Rollo, pp. 5-6.
- [9] Rollo, p. 43.
- [10] Brief for Petitioner, p. 1.
- [11] 68 Am. Jur. 2d, Secured Transactions, Section 50.
- [12] Tolentino, Commentaries & Jurisprudence on the Civil Code of the Philippines, Vol. IV, pp. 276-277.
- [13] 68 Am. Jur. 2d, Secured Transactions, Section 51, underscoring supplied.
- [14] 68 Am. Jur. 2d, Secured Transactions, Section 62, underscoring supplied.

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