

**INDUSTRIAL & COMMERCIAL FACTORS, INC. PETITIONER, VS.
AURORA S. MARASIGAN AND/OR LRM ELECTRONICS, INC. &
HONORABLE COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-35647. February 26, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition to review on certiorari the decision[*] of the Court of Appeals, dated 15 August 1972, in CA--G.R. no. 43416-R, entitled "Industrial & Commercial Factors, Inc., petitioner-appellant, versus Aurora S. Marasigan and/or LRM Electronics, Inc., defendants-appellees" affirming the decision[**] of the Court of First Instance of Manila, Branch XXII, dated 2 December 1968, in Civil Case no. 72847; and the Order of the respondent court dated 2 October 1972 denying the petitioner's motion for reconsideration.

The facts are as follows:

"This action for recovery of a sum of money was commenced by Industrial & Commercial Factors, Inc., a domestic corporation, on May 7, 1968 in the Court of First Instance of Manila against Aurora S. Marasigan and/or LRM Electronics, Inc., also a domestic corporation.

The petitioner's complaint states that on December 9, 1963, plaintiff and defendant Marasigan as proprietor of LRM Electronics, then a single proprietorship, entered into a Financing and Servicing agreement, whereby the latter undertook to sell and assign and the former undertook to purchase and acquire certain accounts receivable described therein, Annex "A"; that on the same date, pursuant to the terms and conditions of the Financing and Servicing Agreement, said defendant assigned to plaintiff all her "rights, claims, prerogatives, accounts receivable and interests to and/or arising or which will arise out of Discounts Sales Company Purchase Order No. 1083-A, dated November 20, 1963, for a total of 246 16", 19" and 23" Matador TV sets, which document is made to form an integral part hereof by reference", under the terms of a Deed of Assignment, Annex "B"; that of the accounts receivable assigned in the manner heretofore mentioned, there arose an outstanding amount of P95,144.15, owing from the Discount Sales Company under the aforementioned Purchase Order No. 1083-A, Annex "C", in favor of plaintiff as of September 21, 1965; that the aforesaid amount has long been due and demandable but notwithstanding repeated demands by plaintiff, said Discount Sales Company failed and refused without any justifiable reason to pay the same; that in the meantime, without the knowledge of plaintiff, the aforesaid single proprietorship "LRM Electronics" was organized and incorporated under the laws of the Philippines with the corporate name "LRM Electronics, Inc.", and continued to carry on the business of the former; that in accordance with the terms of the said Financing & Servicing Agreement, Annex "A", particularly paragraph 11 thereof, plaintiff duly resold and reassigned the outstanding accounts receivable to the defendants and accordingly made the corresponding demands for the payment thereof; that notwithstanding said repeated demands, however, defendants failed and refused to pay their long overdue obligation to plaintiff; x x x; that as a result of defendants' unwarranted failure and refusal to pay their overdue obligation to plaintiff, the latter was forced to institute this action x x x.

For failure to file their answer, the defendants were declared in default and the plaintiff was "authorized to

present evidence in support of the allegations of the complaint before the Branch Clerk of Court who is (was) commissioned to receive same"[1].

In its decision, dated 2 December 1968, the trial court dismissed the complaint. We quote from the trial court's decision as to why the complaint was dismissed:

"The plaintiff did not present in evidence purchase order No. 1083-A of Discount Sales Company, and the accounts receivable which arose out of said purchase order. Accordingly, there is no way for the court to ascertain how much of the accounts receivable discounted with the plaintiff, have remained outstanding on the date of maturity which was five months from December 9, 1963 or May 9, 1964.

The lone witness for the plaintiff could not even state how many TV sets, out of the 246 units mentioned in the deed of assignment and financing agreement, were delivered by defendant Marasigan to Discount Sales Company. But even if he did, his testimony would not be the best evidence because from the very nature of the situation, delivery receipts and/or other documents must have been executed by the parties concerned, and they should have been presented in evidence.

Similarly, the same witness could not state the exact amount received by the plaintiff from Discount Sales Company as he merely limited himself to stating that it was more or less P20,000.

x x x

Moreover, there is variance between the allegations of the complaint and evidence adduced by the plaintiff. In paragraph 7 of the complaint, it was alleged that the plaintiff "duly resold and reassigned the outstanding accounts receivable to the defendants", but no document evidencing the transaction was presented. The lone witness for the plaintiff did not even mention of any resale and/or reassignment of the outstanding accounts receivable to the defendant, but merely limited to stating that demands were made on Discount Sales Company and defendant Marasigan for the payment of the amount allegedly due the plaintiff. As a matter of fact, the demand letter dated September 21, 1965 (Exhibit C) sent by the Legal Officer of the plaintiff to defendant Marasigan is silent and did not state that the plaintiff had resold and/or reassigned to the latter the accounts receivable"[2].

Petitioner appealed to the Court of Appeals which, as aforesaid, affirmed the decision of the trial court. Hence, this petition for review on certiorari, the petitioner raising the following assignment of errors:

" I

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT "THE PLAINTIFF DID NOT PRESENT IN EVIDENCE PURCHASE ORDER NO. 1083-A OF DISCOUNT SALES COMPANY, x x x ACCORDINGLY THERE IS NO WAY FOR THE COURT TO ASCERTAIN HOW MUCH OF THE "ACCOUNTS RECEIVABLE" DISCOUNTED WITH THE PLAINTIFF, HAVE REMAINED OUTSTANDING ON THE DATE OF MATURITY. x x x."

II

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT "THERE IS ABSOLUTELY NO EVIDENCE THAT THE PLAINTIFF HAD RESOLD OR REASSIGNED THE ACCOUNTS RECEIVABLE TO THE DEFENDANTS x x x".

III

THE RESPONDENT COURT OF APPEALS ERRED IN NOT REVERSING THE DECISION OF THE TRIAL COURT AND IN CONSEQUENTLY NOT HOLDING RESPONDENTS-APPELLEES LIABLE UNDER THEIR CONTRACT WITH PETITIONER-APPELLANT"[3].

Under the first assignment of error, petitioner contends that when it reassigned Purchase Order No. 1083-A to

private respondents on the ground that Discount Sales Company (DSC) had refused to pay, private respondents immediately became liable under the reassignment, and petitioner did not have to prove the actual performance by private respondents under said purchase order[4]. In effect, petitioner claims that there was no need for it to present Purchase Order No. 1083-A, as well as the discounted accounts receivable, for it to succeed in its action before the trial court against private respondents.

The action of the petitioner for recovery of a sum of money, worth P95,144.15, from the private respondents, was based upon the discounted accounts receivable due from Discount Sales Company, which petitioner supposedly reassigned to private respondents. This supposed reassignment was grounded upon the Financing and Servicing Agreement which they (petitioner and private respondent Marasigan) entered into, particularly paragraph 11 (a) & (b)[5], which states:

"11. That FACTORS (petitioner) may resell or reassign to FIRM (private respondents) the accounts receivable discounted by FACTORS and the FIRM shall repurchase the same for the total amount due, owing and outstanding from the FIRM's customers at the time of the resale or reassignment for any or all of the following grounds:

(a) When the customer (DSC) for any reason is unable to pay the whole amount or any part thereof under the terms of the accounts receivable;

(b) When the customer refuses to pay the whole amount under the accounts receivable discounted;

x x x."

Since the petitioner did not present in evidence Discount Sales Company's Purchase Order No. 1083-A, and the total accounts receivable which arose out of said purchase order, there was no way of finding out the exact amount due from DSC to the private respondents, that was supposedly covered by the assignment made by the latter to the petitioner. So, there was no basis for the trial court in ascertaining how much remained outstanding out of the accounts receivable that were discounted by the petitioner, on their date of maturity, or on 9 May 1964.

The trial court could not, therefore, give credence to the allegation of the petitioner that there was refusal or failure on the part of DSC to pay the whole amount under the accounts receivable, which in effect would have justified the petitioner into reassigning said accounts receivable to private respondents, in accordance with the terms of the Financing and Servicing Agreement and the Deed of Assignment.

Even petitioner's allegation that Purchase Order No. 1083-A of DSC was made an integral part of the Deed of Assignment by reference is not sufficient. The reference made to the purchase order in the Deed of Assignment mentioned nothing about the extent of deliveries made by the private respondents to DSC, or anything about the amount involved under the said accounts receivable discounted by the petitioner. It only stated that:

"x x x LRM Electronics x x x by these presents, cede, transfer, assign, and set over unto the Industrial and Commercial Factors, Inc., its successors and assigns, all the rights, claims, prerogatives, accounts receivables and interests of the LRM Electronics to and/or arising or which will arise out of a Discount Sales Company Purchase Order No. 1083-A, dated November 20, 1963, for a total of 246 16", 19" and 23" Mata-dor TV sets, which document is made to form an integral part hereof by reference".[6]

Neither is the testimony of the lone witness for the petitioner of value. As the trial court observed, the witness could not state how many TV sets out of the 246 units mentioned in the Financing and Servicing Agreement and in the Deed of Assignment were delivered by private respondents to DSC. Nor could he state the exact amount received by the petitioner from DSC under said accounts receivable. Instead, he limited himself to stating that it was more or less P20,700.00. And even if he knew, as the trial court correctly pointed out, his testimony would not be the best evidence because from the very nature of the situation, delivery receipts and/or other documents

must have been executed by the parties concerned, and they should have been presented. But such vital pieces of evidence were not presented, so that there is absolutely no evidence to explain how the petitioner arrived at P95,114.15 as the total amount overdue on 21 September 1965[7].

As to the second assignment of error, even if we overlook the fact that petitioner failed to present a valid ground for the exercise of its right to reassign the accounts receivable to private respondents, still the respondent court committed no error in holding that there is absolutely no evidence that the petitioner had resold or reassigned the accounts receivable to the private respondents. Petitioner presented no document evidencing the reassignment of the accounts receivable to the private respondents. Even the demand made by petitioner on DSC to pay the accounts receivable, at a time when the petitioner had supposedly reassigned said accounts receivables to private respondents[8], is inconsistent with the petitioner's assertion that there was reassignment. Under the Financing and Servicing Agreement[9], petitioner was obligated to notify private respondents' customer, meaning DSC, of the intended resale and reassignment, and not to demand payment from DSC at the same time that it was reassigning the accounts receivable to the private respondents. Otherwise, this could result in a double recovery.

Hence, the respondent court committed no error in holding that there was failure on the part of the petitioner to prove that it had reassigned the accounts receivable in question to the private respondents which made the latter liable to it.

Based on the foregoing, the respondent court committed no reversible error in affirming the decision of the trial court.

WHEREFORE, the petition is DENIED. The decision of the respondent court is AFFIRMED. Costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[*] Penned by Justice Ramon Fernandez, with the concurrence of Justices Hermogenes Concepcion, Jr. and Cecilia Munoz Palma

[**] Penned by Judge Federico C. Alikpala

[1] Decision of the Court of Appeals, pp. 1-4

[2] Record on Appeal, pp. 30-32

[3] Petitioner's Brief, pp. 6-7

[4] Petitioner's Brief, p. 7

[5] Rollo, pp. 20-21

[6] Record on Appeal, Annex B, p. 21

[7] Record on Appeal, p. 12

[8] Decision of the Court of Appeals, p. 6

[9] Record on Appeal, p. 15

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