

**JOSE MA. ANSALDO, PETITIONER, VS. COURT OF APPEALS, AND
PHILIPINE COMMERCIAL AND INDUSTRIAL BANK, RESPONDENTS.***G.R. No. L-47696. August 29, 1989*

Ponente: NARVASA, J.

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A corporation known as Transoceanic Factors Corporation (hereafter, TFC) executed six (6) promissory notes in favor of Philippine Commercial & Industrial Bank (hereafter, PCIB). The notes were signed for the firm by its president, A.S. Moreno, over a span of some three (3) months, and were made out in various amounts. One was for P50,000.00; two (2) were for P15,000.00 each; two (2), for P20,000.00 each; and the sixth, for P30,000.00, or an aggregate of P150,000.00, exclusive of interest. The interest was fixed at the rate of 10% per annum for all the notes except the first, as to which the interest rate was set at 11% per annum. The notes all had the same maturity date.[1]

At about the same time and in separate transactions, TFC in its turn extended two (2) loans at interest of 14% per annum: one to Jose M. Ansaldo, in the sum of P28,967.39, another, to Teofilo Reyes, Jr., in the amount of P26,000.00. Each obligation was evidenced by a negotiable promissory note[2] in which, among other things, each promisor (1) waived "demand, presentment, protest and notice of protest and non-payment" (of the note) and (2) undertook, in case of default -

(a) " ** to pay the holder an additional sum of ten (10%) per centum of the balance due on ** (the) note, as liquidated damages; ** (i)n case extra-judicial collection is indorsed to an attorney,** an additional sum equal to five (5%) per centum of the amount due, or twenty-five (25%) per centum of the amount due in case of suit, and an additional sum in case of appeal, as attorney's fees in addition to the legal costs provided in the Rules of Court;" and

(b) to waive "[i]n case of judicial execution*** all rights under the provisions of Rule 39, Section 12 of the Rules of Court."

TFC paid to PCIB -- on account of its obligation to the latter in the total amount of P150,000.00, as above stated -- only P78,504.43, leaving a balance of P71,495.57, exclusive of interest.[3]

TFC also endorsed to PCIB "for value," the promissory notes of Ansaldo and Reyes.[4]

Alleging that despite the obligations having matured, and notwithstanding repeated demands for payment thereof, TFC as well as Ansaldo and Reyes had failed to pay, PCIB subsequently filed suit in the Court of First Instance of Manila to enforce said prestations in accordance with the terms of the corresponding written agreements.[5] The suit ultimately resulted in a judgment in PCIB's favor,[6] ordering:

1) TFC "to pay the plaintiff (PCIB) the sum of P71,495.57, with interest at the rate of 10% per annum from June 1, 1966 until full payment, plus the further sum of 10% of the amount due for and as attorney's fees;"

2) Ansaldo "to pay the plaintiff the sum of P28,967.39 under the promissory note Exhibit G, with interest at the

rate of 14% per annum, from December 29, 1964 until full payment minus the sum of P3,011.42 previously paid by him to defendant (TFC) Transoceanic;" and

3) Reyes "to pay the plaintiff the sum of P26,000.00 under the promissory note Exhibit H, with interest at the rate of 12% per annum from August 2, 1965 until full payment."

The Court declared, among other things, that:

- 1) in an assignment of credit, the consent of the debtor is not necessary to make him liable to the assignee (adverting to Articles 1625, 1626 and 1627 of the Civil Code), what the law requires being notice to the debtor and not consent of the latter;
- 2) the promissory note, being payable to order, may be negotiated by mere indorsement (Sec. 184, Negotiable Instruments Law);
- 3) the evidence sufficiently established that Ansaldo had received notice of the assignment of his promissory note; and
- 4) the requirement that the assignment be evidenced by a public instrument in Article 1625 of the Civil Code "is only necessary to produce effects against third persons, and Reyes * * (like Ansaldo) is not a third person, he being the debtor of the credit which was assigned to the plaintiff.

Ansaldo and Reyes appealed to the Court of Appeals.[7] That Court rendered judgment in due course, affirming that of the Trial Court. The affirming judgment has since been appealed to this Court, but only by Ansaldo.

In its Decision, the First Division of the Appellate Tribunal, speaking through the Presiding Justice at the time, Hon. Magno S. Gatmaitan,[8] held as regards Arnaldo's contentions, that -

- 1) it was TFC's right "to assign, in other words, sell" its credits against Ansaldo and Reyes, to a third person;
- 2) there was no need that the assignment be in a public document, this being required only "to produce** effect as against third persons" (Article 1625, Civil Code), i.e., "to adversely affect 3rd persons," i.e., "a 3rd person with a right against original creditor, for example, an original creditor of creditor, - against whom surely such an assignment by his debtor (creditor in the credit assigned) would be prejudicial, because he, creditor of assigning creditor, would thus be deprived of an attachable asset of his debtor **;"
- 3) neither Ansaldo nor Reyes could complain against the assignment, "for whether assigned or not, their obligations were not changed nor enlarged; of course if they before notice of assignment, had paid unto Transoceanic, they should not be prejudiced either, such payments made previous to notice under the law, and in justice, should unto them be credited, - as indeed, trial Judge credited Ansaldo with his payments made of P3,011.42 previous to notice unto him **;"
- 4) that it was the assignee (PCIB), instead of the creditor-assignor (TFC), which notified Ansaldo of the assignment is of no moment: "irrespective of who notified him, * * what is important is that he be notified; * * it is assignee who is most interested to notify, not creditor assignor who probably would have lost all interest after he has assigned; if it be argued that if it is assignee who notifies, that might be questionable, debtor might have his doubts, it is easy for him; to inquire from his creditor **;"
- 5) that the assignment of Ansaldo's credit was made "after it had become long overdue," is also inconsequential, since this would not "mean that Ansaldo's obligation had thereby disappeared * *, for the Negotiable Instruments Law itself says that presentment for payment is not necessary in order to charge the person primarily liable * *; indeed, it is most difficult to understand that just because demand was not made with presentation of evidence of

the obligation within a reasonable time, the promissory note can already be said to have become a dead obligation * * (and) original drawer, primarily liable, should wait until lapse of prescriptive period for him to claim that * *;" and

6) the claim that the assignment had not been made by an authorized official of TFC was untenable not only because "for the first time raised on appeal but also * * (because) absent any disauthorization from Transoceanic's board of directors, the act of its President of endorsing unto plaintiff Bank is not easy to see as outside of the ordinary prerogative of an official in his position, more than this, perhaps also that should be an intramural matter * * between Board and President Moreno of Transoceanic, but when President endorsed to plaintiff Bank, and Bank by that got possession of the promissory note, it already became duty of debtor to pay unto Bank,- it would on the contrary have been rashness if after notice of that, debtor should still pay unto Transoceanic, banking on alleged lack of authority of President of Transoceanic to sign the assignment **."

Except for the question of the claimed lack of authority on the part of TFC's president to execute the assignment of credit in favor of PCIB -- improperly raised for the first time on appeal, as observed by the Court of Appeals -- the issues raised by Ansaldo were set up by him in, and after analysis and assessment rejected by, both the Trial Court and the Appellate Tribunal. This Court sees no error whatever in the appreciation of the facts by either Court or their application of the relevant law and jurisprudence to those facts, inclusive of the question posed anew by Ansaldo relative to the alleged absence of authority on the part of TFC's president to assign the corporation's credit to PCIB.

The only other issue set up by Ansaldo in this Court is what he alleges to be the failure of PCIB to exhibit to him his promissory note, invoking Section 74 of the Negotiable Instruments Law to the effect that "(t)he instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it." It suffices to dispose of this issue by pointing out that it was never raised in either the Court of Appeals or the Trial Court, and cannot be raised for the first time in this Court. In any case, it is on its face a petty issue, for (1) if, according to him, such an exhibition was needful to give him an opportunity to determine the genuineness of the instrument,[9] this was rendered unnecessary not only by his omission to contest it, but also by his admission of the authenticity of the note implicit from his averment that he had made substantial payments thereon;[10] and (2) he had, moreover expressly waived "demand, presentment, protest and notice of protest and non-payment" of the note.

WHEREFORE, the appealed Decision of the Court of Appeals is hereby AFFIRMED, with costs against the petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 17-28

[2] Id., pp. 29-30, 31-32, respectively

[3] Id., pp. 13-14

[4] Id., p. 13. The Trial Court's finding is that Ansaldo's note "was assigned or indorsed by Transoceanic, acting thru Moreno, in favor of plaintiff" (PCIB); and Reyes's note "was likewise assigned or indorsed by Transoceanic in favor of the plaintiff acting thru Anselmo del Rosario who succeeded Moreno as president of Transoceanic **" (Rollo, p. 39).

[5] The case was docketed as Civil Case No. 74496, Rollo, pp. 10 et seq.

[6] Rendered by then Judge (later Court of Appeals Justice, and then Associate Justice of the Supreme Court) Conrado M. Vasquez (Rollo, pp. 38-45)

[7] The appeal was docketed as CA-G.R. No. 54003-R of the First Division

[8] With whom concurred de Castro and Reyes, JJ. (Rollo, pp. 48-57)

[9] Rollo, p. 6

[10] Id., p. 36

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