

KOMATSU INDUSTRIES (PHIL.), INC., PETITIONER, VS. COURT OF APPEALS AND PILIPINAS BANK, RESPONDENTS.*G.R. No. 111634. October 18, 1995*

Ponente: BELLOSILLO, J.

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PETITIONER KOMATSU INDUSTRIES (PHIL.), INC., obtained from private respondent Pilipinas Bank on 16 October 1978 credit facilities amounting to P3,000,000.00 secured by a Chattel Mortgage executed by its Executive Vice-President and General Manager Edmundo S. Silverio and its Treasurer E. N. Capulong covering pieces of heavy equipment such as bulldozers, payloaders, air compressor and generating units.[1] The loan was restructured on 29 February 1980 and converted to a term of two (2) years in the amount of P7,633,245.52 to mature on 12 February 1982, as evidenced by Promissory Note No. TL-109/80.[2] As securities for the loan both parties agreed that the previous Chattel Mortgage would remain in full force and another one would be executed. Thus on 9 April 1980 another Chattel Mortgage was executed by petitioner over certain bulldozers and graders.[3]

Subsequently, in consideration of petitioner's payment of ten percent (10%) of its principal obligation and of the outstanding interest thereon, the loan was once again restructured and converted to a term of three (3) years, as evidenced by Promissory Note No. TL-693 executed on 24 December 1981 and secured by the same Chattel Mortgages.[4] The second Promissory Note had a face value of P6,869,266.08 with twenty-three percent (23%) interest per annum payable in four equal semi-annual installments of P1,717,316.52. The first installment fell due on 24 June 1983 and the succeeding installments on or before the 24th day of every succeeding semester thereafter.

Petitioner failed to pay a single installment despite repeated demands. Neither did it deliver the properties subject of the Chattel Mortgages to private respondent. Thus, on 28 September 1984 private respondent filed a complaint for replevin and damages with an alternative prayer for money judgment in the event that the mortgaged properties could not be seized. Subsequently, private respondent filed an amended complaint and posted a bond. On 5 November 1984 the trial court issued a seizure order directing its Deputy Sheriff to take the properties subject of the two (2) Chattel Mortgages into his custody until further orders. On 22 November 1984 the Deputy Sheriff submitted a partial return stating that a more extensive effort was needed to implement the writ of seizure.

Private respondent later filed a motion to recall the writ and to cancel the bond on the ground that recovery of subject properties was futile. This was granted on 1 August 1986.

On 20 January 1989 the trial court rendered judgment ordering petitioner to pay private respondent: (1) P6,869,266.08 representing the principal obligation on the Promissory Note of 24 December 1981 with interest thereon at the rate of twenty-three percent (23%) per annum from 24 December 1983 until fully paid; (2) three percent (3%) of P6,869,266.08 per annum as penalty and collection charges in the form of liquidated damages from 24 December 1983 until fully paid; (3) fifteen percent (15%) of the total amount due or P1,030,389.91 as attorney's fees; and, (4) P17,848.00 and P178.00 as filing and research fees, and P24,119.25 as premium,

documentary stamps, notarial fees and other charges.[5]

On 18 June 1993 the decision was affirmed with modification by respondent Court of Appeals as regards the reckoning date when the interest and charges would commence.[6] According to respondent court the sums of money involved were bound to earn legal interest from the time of judicial demand, i.e., filing of the action on 28 September 1984 and not on 24 December 1983.[7]

On 26 August 1993 the motion for reconsideration was denied.[8]

Petitioner imputes error on the appellate court in: (1) failing to consider the doctrine of no default for unliquidated and unascertained sum due; (2) not considering the assignment of receivables from the accounts of Quezon Transport, Inc./Jose Zubiri, Davao Stevedores Terminal, Inc., Emil Gaston, and a special time deposit; (3) not considering the amount of P250,000.00 which was credited by private respondent to the wrong account; (4) holding that there was no promissory estoppel; and, (5) holding that both Chattel Mortgages were valid and subsisting.

Petitioner does not deny its indebtedness to private respondent but claims that it was still in the process of reconciliation when the case was filed by private respondent, and that prior to the due date of the first installment it offered its receivables to private respondent from Quezon Transport, Inc./Jose Zubiri, Davao Stevedores Terminal, Inc., Emil Gaston, and a special time deposit. This assignment was accepted by private respondent which credited the amount of P250,000.00 to the deed of assignment instead of to the Promissory Note of 24 December 1981. Respondent appellate court should have ruled that the doctrine of no default for unliquidated and unascertained sum due was applicable to this case. There were negotiations for the complete settlement of the obligation. Petitioner offered real and personal properties as dacion en pago. Pursuant to this offer and by way of giving its implied consent private respondent sent investigators and appraisers to evaluate the properties. Aside from the fact that the Chattel Mortgages of 16 October 1978 and 9 April 1980 involved different amounts, it was admitted that the Chattel Mortgage of 16 October 1978 was already novated by the Promissory Note of 29 February 1980. Only the Chattel Mortgage of 9 April 1980 remains valid and subsisting.

It is apparent at once that the issues raised are mainly factual, and the Court finds no circumstance of weight or significance that would impair the correctness and validity of the findings of fact and conclusions of the trial court.[9] No reversible error was committed by respondent appellate court in affirming with modification the decision of the trial court.

The lack of merit in the first three (3) assignments of error can easily be discerned from the testimony of petitioner's own witness, Mr. Ernesto S. Angeles, Finance Manager of petitioner, who said that petitioner offered/assigned its accounts and/or receivables from Quezon Transport, Inc., and Davao Stevedores Terminal, Inc., which were worth approximately P5,000,000.00 as embodied in the letter of 7 June 1983 addressed to Mr. Stephen del Rosario, Assistant Vice President of private respondent. But the offer did not materialize. In the credit memo of private respondent dated 5 September 1983 it was stated that the special time deposit of petitioner in the amount of P250,000.00, which already matured, was to be credited to the account of Quezon Transport, Inc./Jose Zubiri, per authorization of petitioner dated 7 June 1983.[10] During the re-cross examination, Mr. Angeles affirmed that petitioner obtained a copy of the memo way back in September 1983. From the time of receipt petitioner did not question the application; it did so only during the hearing of the case.[11]

Estoppel may arise from the making of a promise even without consideration if it was intended that the promise should be relied upon, and in fact it was relied upon, and if a refusal to enforce it would be to virtually sanction the perpetration of fraud or would result in another injustice.[12] There is no showing that private respondent assured petitioner that it was agreeable to the payment of the obligation by way of dacion en pago. If private

respondent caused the appraisal of the properties offered, that could not be considered as a commitment on its part to enter into dacion en pago. At most it would only indicate that private respondent wanted to study petitioner's proposal but found the properties unacceptable. Thus the principle of promissory estoppel does not apply.

Having thus concluded we find it futile to resolve the issue as to whether the two (2) Chattel Mortgages are valid and subsisting since the trial court has instead chosen to grant the alternative prayer of private respondent for money judgment.

WHEREFORE, the petition is DENIED. The decision of respondent Court of Appeals dated 18 June 1993 as well as its resolution of 26 August 1993 is AFFIRMED, with costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Exh. "A," Records, p. 29.

[2] Exh. "B," Records, p. 30.

[3] Exh. "C," id., p. 31.

[4] Exh. "D," id., p. 32.

[5] Records, p. 267.

[6] Rollo, p. 32.

[7] Citing *Lirag Textile Mills, Inc. v. Social Security System*, No. L-33205, 31 August 1987, 153 SCRA 338.

[8] Rollo, p. 34.

[9] *People v. Abordo*, G.R. No. 101187, 23 July 1993, 224 SCRA 725.

[10] Exh. "4," Envelope of Exhibits attached to Records.

[11] TSN, 30 June 1987, pp. 19-21.

[12] *Prudential Bank v. Gapultos*, No. L-41835, 19 January 1990, 181 SCRA 159; *Go Ong v. Court of Appeals*, G.R. No. 75884, 24 September 1987, 154 SCRA 270.

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