

WESTMONT BANK (FORMERLY ASSOCIATED CITIZENS BANK AND NOW UNITED OVERSEAS BANK, PHILS.) AND THE PROVINCIAL SHERIFF OF RIZAL, PETITIONERS, VS. INLAND CONSTRUCTION AND DEVELOPMENT ...

G.R. No. 123650. March 23, 2009

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-123650/>

CARPIO MORALES, J.:

Inland Construction and Development Corp. (Inland) obtained various loans and other credit accommodations from petitioner, then known as Associated Citizens Bank ([the bank] which later became United Overseas Bank, Phils., and still later Westmost Bank) in 1977.

To secure the payment of its obligations, Inland executed real estate mortgages over three real properties in Pasig City covered by Transfer Certificates of Title Nos. 4820, 4821 and 4822.[1]

Inland likewise issued promissory notes in favor of the bank, viz:

Promissory Note No. BD-2739-77

Amount: P155,000.00

Due Date: January 2, 1978[2]

Promissory Note No. BD-2884-77

Amount: P880,000.00

Due Date: February 23, 1978[3]

Promissory Note No. BD-2997

Amount: P60,000.00

Due Date: March 22, 1978[4] (Emphasis supplied)

When the first and second promissory notes fell due, Inland defaulted in its payments. It, however, authorized the bank to debit P350,000 from its savings account to partially satisfy its obligations.[5]

It appears that by a Deed of Assignment, Conveyance and Release dated May 2, 1978, Felix Aranda, President of Inland, assigned and conveyed all his rights and interests at Hanil-Gonzales Construction & Development (Phils.) Corporation (Hanil-Gonzales Corporation) in favor of Horacio Abrantes (Abrantes), Executive Vice-President and General Manager of Hanil-Gonzales Corporation. Under the same Deed of Assignment, it appears that Abrantes assumed, among other obligations of Inland and Aranda, Promissory Note No. BD-2884-77 in the amount of P800,000 as shown in the May 26, 1978 Deed of Assignment of Obligation in which Aranda and Inland, on one hand, and Abrantes and Hanil-Gonzales Corporation, on the other, forged as follows:

x x x x.

WHEREAS, among the obligations assumed by Mr. HORACIO C. ABRANTES [in the May 2, 1978 Deed] is

the account of the FIRST PARTY (Aranda and Inland) in favor of the ASSOCIATED CITIZENS BANK as evidenced by Promissory Note No. BD-2884-77 in the amount of EIGHT HUNDRED EIGHTY THOUSAND (P880,000.00) PESOS, x x x x;

WHEREAS, the parties herein have agreed to obtain the conformity of the ASSOCIATED CITIZENS BANK to the foregoing arrangement x x x x;

NOW, THEREFORE, the herein parties have mutually agreed that the SECOND PARTY (Abrantes and Hanil-Gonzalez) shall assume full and complete liability and responsibility for the payment to ASSOCIATED CITIZENS BANK Promissory Note No. BD-2884-77 x x x x.

THE SECOND PARTY shall make such necessary arrangements with the ASSOCIATED CITIZENS BANK for the full liquidation of said account, x x x x.

x x x x. (Emphasis and underscoring supplied)

The bank's Account Officer, Lionel Calo Jr. (Calo), signed for its conformity to the deed.[6]

On December 14, 1979, Inland was served a Notice of Sheriff's Sale foreclosing the real estate mortgages over its real properties, prompting it to file a complaint for injunction against the bank and the Provincial Sheriff of Rizal at the Regional Trial Court (RTC) of Pasig City.[7] This complaint was later amended.[8]

Answering the amended complaint, the bank underscored that it "had no knowledge, much less did it give its conformity to the alleged assignment of the obligation covered by PN# BD-2884 [-77]."[9]

The trial court found that the bank ratified the act of its account officer Calo, thus:

x x x x. Culled from the evidence on record, the Court finds that the defendant Bank ratified the act of Calo when its Executive Committee failed to repudiate the assignment within a reasonable time and even approved the request for a restructuring of Liberty Const. & Dev. Corp./Hanil-Gonzales Construction & Development Corp.'s obligations, which included the P880,000.00 loan (Exhibit "U" to "X", and its submarkings). Clearly, the assumption of the loan was very well known to the defendant Bank and the latter posed no objection to it. In fact, the positive act on the part of the defendant in restructuring the loan of the assignee attest to its consent in the said transaction. The evidence on record conveys the fact that the Hanil-Gonzales Const. and Development Corp. assumed the obligation of the plaintiff on the SECOND NOTE. Later, it asked the defendant for a restructuring of its loan, including the P880,000.00 loan. Thereafter, payments were made by the assignee to the defendant Bank. The preponderance of evidence tilts heavily in favor of the plaintiff claiming that a case of delegacion occurs.[10] (Emphasis and italics supplied; Underscoring in the original)

It accordingly rendered judgment in favor of Inland by Decision[11] of March 31, 1992, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, permanently, perpetually and forever restraining and enjoining the defendants Associated Citizens Bank and the Sheriff of this Court from proceeding with the foreclosure of and conducting an auction sale on the real estate covered by and embraced in Transfer Certificates of Title Nos. 4820, 4821 and 4822 of the Register of Deeds of Rizal (now Pasig, Metro Manila) and to refund to plaintiff the amount of P8,866.89, with legal interest thereon from the filing of the complaint until full payment, with costs.

SO ORDERED. (Emphasis and underscoring supplied)

The bank appealed the trial court's decision to the Court of Appeals which, by Decision[12] of May 31, 1995, modified the same, disposing as follows:[13]

WHEREFORE, the decision appealed from is hereby AFFIRMED only insofar as it finds appellant Associated

Bank to have ratified the Deed of Assignment (Exhibit "O"), but REVERSED in all other respects, and judgment is accordingly rendered ordering the plaintiff-appellee Inland Construction and Development Corporation to pay defendant-appellant Associated Bank the sum of One Hundred Eighty Six Thousand Two Hundred Forty One Pesos and Eighty Six Centavos (P186,241.86) with legal interest thereon computed from December 21, 1979 until the same is fully paid.

No pronouncement as to costs.

SO ORDERED. (Underscoring supplied)

In affirming the observation of the trial court that the bank ratified the assignment of Inland's Promissory Note No. BD-2884-77, the appellate court discoursed as follows:

In the instant case, both the assignors (Aranda and Inland) and assignees (Abrantes and Hanil-Gonzales) in the subject deed of assignment have been major clients of Associated Bank for several years with accounts amounting to millions of pesos. For several years, Associated Bank had, either intentionally or negligently, been habitually clothing Calo with the apparent powers to perform acts in behalf of the bank. x x x x.

x x x x.

Calo signed the subject deed of assignment on or about May 26, 1978. The principal obligation covered by the deed involved a hefty sum of eight hundred eighty thousand pesos (P880,000.00). Despite the enormity of the amount involved, Associated Bank never made any attempt to repudiate the act of Calo until almost seven (7) years later, when Mitos C. Olivares, Manager of the Cash Department of Associated Bank, issued an INTER-OFFICE MEMORANDUM dated May 20, 1985 which pertinently reads:

"2) Conforme of Associated Bank signed by Lionel Calo Jr. has no bearing since he has no authority to sign for the bank as he was only an account officer with no signing authority;

x x x x.

5) I suggest, Mr. Calo be asked to be present at court hearings to explain why he signed for the bank, knowing his limitations"

The abovequoted inter-office memorandum is addressed internally to the other offices within Associated Bank. It is not addressed to Inland or any outsider for that matter. Worse, it was not even offered in evidence by Associated Bank to give Inland the opportunity to object to or comment on the said document, but was merely attached as one of the annexes to the bank's MEMORANDUM FOR DEFENDANTS. Obviously, no evidentiary weight may be attached to said inter-office memorandum, which is even self serving. In fact, it ought not to be considered at all. (Emphasis and underscoring supplied)

The appellate court, however, specifically mentioned that the "lower court erred when it rendered a decision which `permanently, perpetually and forever' restrains the sheriff from proceeding with the threatened foreclosure auction sale of the subject mortgage properties." [14]

The bank moved for partial reconsideration of the appellate court's decision on the aspect of its ratification of the Deed of Assignment but the same was denied by Resolution [15] of January 24, 1996.

The bank, via two different counsels, [16] filed before this Court separate petitions for review, G.R. No. 123650, Associated Citizens Bank, et al. v. Court of Appeals, et al; and G.R. No. 123822, Westmont Bank (formerly Associated Bank) v. Inland Construction & Development Corp., assailing the same appellate court's decision. Owing to a series of oversight, [17] the petition in G.R. 123650 was initially dismissed but was later reinstated by Resolution of June 21, 1999.

The records[18] show that Inland failed to file its comment and memorandum on the petitions.

Both petitions for review impute error on the part of the appellate court in

...AFFIRMING THE FINDING OF THE TRIAL COURT THAT PETITIONER HAVE [SIC] RATIFIED THE DEED OF ASSIGNMENT (EXH. "O").

The bank, which had, as reflected early on, become known as Westmont Bank (petitioner), maintains that Calo had no authority to bind it in the Deed of Assignment and that a single, isolated unauthorized act of its agent is not sufficient to establish that it clothed him with apparent authority. Petitioner adds that the records fail to disclose evidence of similar acts of Calo executed either in its favor or in favor of other parties.[19] Moreover, petitioner reasserts that the unauthorized act of Calo never came to its knowledge, hence, it is not estopped from repudiating the Deed of Assignment.[20]

The petitions fail.

The general rule remains that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[21] If a corporation, however, consciously lets one of its officers, or any other agent, to act within the scope of an apparent authority, it will be estopped from denying such officer's authority.[22]

The records show that Calo was the one assigned to transact on petitioner's behalf respecting the loan transactions and arrangements of Inland as well as those of Hanil-Gonzales and Abrantes. Since it conducted business through Calo, who is an Account Officer, it is presumed that he had authority to sign for the bank in the Deed of Assignment.

Petitioner cannot feign ignorance of the May 26, 1978 Deed of Assignment, the pertinent portion of which was quoted above. Notably, assignee Abrantes notified petitioner about his assumption of Inland's obligation. Thus, in his July 26, 1979 letter to petitioner, he wrote:

This refers to the accounts of Liberty Construction and Development Corporation (LCDC) and our sister-company, Hanil-Gonzalez Construction & Development Corporation (HG CDC) which as of July 31, 1979 was computed at P1,814,442.40, inclusive of interest, penalties and fees, net of marginal deposits. This includes the account of Inland Construction & Development Corporation which had been assumed by HG CDC.[23] (Emphasis and underscoring supplied)

That petitioner sent the following reply-letter, dated November 29, 1982, to the above-quoted letter to it of assignee Abrantes indicates that it had full and complete knowledge of the assumption by Abrantes of Inland's obligation:

We are pleased to advise you that our Executive Committee in its meeting last November 25, 1982, has approved your request for the restructuring of your outstanding obligations x x x x.[24] (Underscoring supplied)

Respecting this reply-letter of the bank granting Hanil-Gonzales' request to restructure its loans, petitioner, as a banking institution, is expected to have exercised the highest degree of diligence and meticulousness in the conduct of its business. When it received the loan restructuring request, with specific mention of Inland's Promissory Note No. BD-2884-77, petitioner-bank was under obligation to fastidiously scrutinize such loan account. And since it clearly approved the request for restructuring, any "uncertainty" that its reply-letter approving such request may not thus work to prejudice Hanil-Gonzales or Inland.

Petitioner relies heavily, however, on the Court's pronouncement in Yao Ka Sin Trading that it was incumbent

upon, in this case, Inland to prove that petitioner had clothed its account officer with apparent power to conform to the Deed of Assignment.[25]

Petitioner's simplistic reading of *Yao Ka Sin Trading v. Court of Appeals*[26] does not impress. In *Yao Ka Sin Trading*, the therein respondent cement company had shown by clear and convincing evidence that its president was not authorized to undertake a particular transaction. It presented its by-laws stating that only its board of directors has the power to enter into an agreement or contract of any kind. The company's board of directors even forthwith issued a resolution to repudiate the contract. Thus, it was only after the company successfully discharged its burden that the other party, the therein petitioner *Yao Ka Sin Trading*, had to prove that indeed the cement company had clothed its president with the apparent power to execute the contract by evidence of similar acts executed in its favor or in favor of other parties.

Unmistakably, the Court's directive in *Yao Ka Sin Trading* is that a corporation should first prove by clear evidence that its corporate officer is not in fact authorized to act on its behalf before the burden of evidence shifts to the other party to prove, by previous specific acts, that an officer was clothed by the corporation with apparent authority.

It bears noting that in *Westmont Bank v. Pronstroller*,[27] the therein petitioner *Westmont Bank*, through a management committee, proved that it rejected the letter-agreement entered into by its assistant vice-president. Consequently, the therein respondent had to prove by citing other instances of the said officer's apparent authority to bind the bank-therein petitioner.

In the present petitions, petitioner-bank failed to discharge its primary burden of proving that Calo was not authorized to bind it, as it did not present proof that Calo was unauthorized. It did not present, much less cite, any Resolution from its Board of Directors or its Charter or By-laws from which the Court could reasonably infer that he indeed had no authority to sign in its behalf or bind it in the Deed of Assignment. The May 20, 1985 inter-office memorandum[28] stating that Calo had "no signing authority" remains self-serving as it does not even form part of petitioner's body of evidence.

Thus, the assertion that the petitioner cannot be faulted for its delay in repudiating the apparent authority of Calo is similarly flawed, there being no evidence on record that it had actually repudiated such apparent authority. It should be noted that it was the bank which pleaded that defense in the first place. What is extant in the records is a reasonable certainty that the bank had ratified the Deed of Assignment.

The assumption that a ruling on the issue of ratification would affect any and all foreclosure proceedings on the mortgaged properties remains unfounded. For the challenged appellate court's Decision[29] still mentioned the possibility of foreclosing on the mortgaged properties as Inland was still indebted to the bank in the amount of P186, 241.86 covering the other two promissory notes (No. BD-2739-77 and No. BD-2997) and other obligations that Inland was not able to satisfy upon maturity.

Both the trial court's and the appellate court's inferences and conclusion that petitioner ratified its account officer's act are thus rationally based on evidence and circumstances duly highlighted in their respective decisions. Absent any serious abuse or evident lack of basis or capriciousness of any kind, the lower courts' findings of fact are conclusive upon this Court.[30]

WHEREFORE, the petitions are DENIED. The decision of the Court of Appeals in CA-G.R. CV No. 39634 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Velasco, Jr., and Nachura, JJ., concur.
Brion, J., please dissenting opinion.

[*] Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on official leave.

[1] Records, pp. 2-3.

[2] Id. at 248; Exhibit "B."

[3] Id. at 250; Exhibit "C."

[4] Id. at 252; Exhibit "D."

[5] Id. at 256.

[6] Ibid. at 260; Exhibit "O-1."

[7] Id. at 2-8.

[8] Id. at 237-247.

[9] Id. at 307-308.

[10] Id. at 568-569.

[11] Id. at 562-577.

[12] Rollo (G.R. No. 123650), pp. 29-54.

[13] Penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justices Arturo B. Buena and Delilah V. Magtolis..

[14] Rollo (G.R. No. 123822), p. 68.

[15] Rollo (G.R. No. 123650), p. 55.

[16] Agulto Hilao and Associates in G.R. No. 123650 and Villanueva Eborra & Caña Law Offices in G.R. No. 123822.

[17] Rollo (G.R. No. 123822), pp. 288-289; In the Status Report of August 18, 2005 by Atty. Enriqueta Esguerra-Vidal, First Division clerk of court, it was stated that "The motion for extension of time to file petition was denied in G.R. No. 123650 for failure to submit proof of service. The motion for extension of time in G.R. No. 123822 was granted.

However, the petition for review intended for G.R. No. 123822 was attached to G.R. No. 123650. This was eventually dismissed in the resolution of June 17, 1996 in G.R. No. 123650 for non-compliance with the statement of material dates and for late filing. On August 1, 1996, the entry of judgment was issued in G.R. No. 123650. Respondent Inland Construction and Development Corporation, through its counsel, Atty. Honesto Cueva filed a motion to remand case to the court of origin.

Owing to this confusion, counsel for G.R. No. 123822 filed a motion for clarification with prayer that the petition in G.R. No. 123650 be admitted as part of the records of G.R. No. 123822. Several other pleadings were filed to

seek correction of this mistake such as the motion to resolve another motion for clarification and motion for reconsideration. Eventually, on June 21, 1999, the Court granted the reconsideration, reinstated the petition and required the respondent corporation to comment.

[18] Ibid; Mrs. Corazon Aranda, wife of Felix Aranda, President of respondent corporation filed a letter informing the court of the formal withdrawal of the respondent corporation's counsel and of the death of her husband and requesting for time to look for another lawyer. In the resolution September 8, 1999, the Court required respondent corporation to submit the name and address of lawyer. This resolution was served on Mrs. Aranda but unserved on respondent corporation.

Petitioner was required to submit the new address of respondent corporation but submitted the same address as before.

Despite the lack of comment on the petition, the case was given due course and the parties were required to file memoranda on August 2, 2000. The due course resolution mentioned of a comment being considered but the Division Clerk of Court explained that this was merely an inadvertence as the format due course resolution was used.

Petitioner filed its memorandum but respondent corporation has no memorandum up to this date for the reason that resolutions sent to it have all returned unserved.

[19] Rollo (G.R. No. 123822), pp. 221.

[20] Id. at 222-223.

[21] Premium Marble Resources v. Court of Appeals, G.R. No. 96551, 264 SCRA 11, 18 citing Visayan v. NLRC, G.R. No. 69999, April 30, 1991, 196 SCRA 410.

[22] People's Aircargo and Warehousing Co. v. Court of Appeals, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 184-185 citing Francisco v. GSIS, 7 SCRA 577, 583 (1963).

[23] Rollo (G.R. No. 123822), p. 17-18.

[24] Ibid. at 17.

[25] Id. at 784.

[26] G.R. No. 53820, June 15, 1992, 209 SCRA 763.

[27] G.R. No. 148444, July 14, 2008.

[28] Records, p. 557.

[29] Part of the CA Decision reads:

x x x x.

It is uncontroverted that Inland obtained numerous and separate credit accommodations from [Westmont Bank]. The obligation under Promissory Note No. BD-2884-77 is only the tip-of-the-iceberg of Inland's numerous obligations to [Westmont Bank]. If Inland fails to pay the obligations incurred under Promissory Note No. BD-2884-77, [Westmont Bank] may not foreclose the subject mortgaged properties on that ground alone. However, if Inland defaults on its other obligations to [Westmont Bank], the latter is justified in foreclosing the subject mortgaged properties, x x x x.

[30] Cang v. Court of Appeals, G.R. No. 105308, 357 Phil. 129, 146 (1998) citing Del Mundo v. Court of

Appeals, 327 Phil. 463, 471 (1996).

DISSENTING OPINION

BRION, J.:

I dissent based on three points. First, the ponencia misappreciated the rule on burden of proof and burden of evidence by blaming the bank for the failure to prove that Calo had the authority to bind it. Second, as the lower courts did, the ponencia glossed over evidence on record that would lead to a contrary conclusion. Third, on very thin evidentiary support, the ponencia rushed to the conclusion that there was a novation that resulted in the substitution of debtor in the petitioner's loan agreement with respondent.

The present case is rooted in the complaint for injunction filed by Inland against the bank when the latter foreclosed on the real estate mortgage that the former had constituted on its properties to secure the payment of its loan from the bank. Among others, Inland based its complaint on a Deed of Assignment (dated May 26, 1978) of its loan of P880,000.00 to Hanil-Gonzales and Abrantes (collectively referred to as Hanil-Gonzales). The trial court concluded that the -

... defendant bank ratified the act of Calo when its Executive Committee failed to repudiate the assignment within a reasonable time and even approved the request for a restructuring of Liberty Construction / Hanil-Gonzales Construction & Development Corp.'s obligation which included the P880,000.00 loan.

The Court of Appeals (CA) decision practically parroted this line when it noted that "[f]or several years Associated Bank had, either intentionally or negligently, been habitually clothing Calo with apparent powers to perform acts in behalf of the bank," and that "Associated Bank never made any attempt to repudiate the act of Calo, until seven (7) years later," citing an internal bank memorandum that it ironically observed "was not even offered in evidence by Associated Bank." The ponencia, on the other hand, maintained the position that the Deed of Assignment is valid and binding on the bank based on its finding that (a) Calo, as the bank's representative, had the required authority to enter into the transaction; and (b) the bank's subsequent acts showed its knowledge and conformity with the subject assignment when it agreed to restructure Hanil-Gonzales' loan obligations with the bank.

On my first point, Inland's case for injunction was anchored on the Deed of Assignment, the actionable document it cited and attached to its amended complaint for injunction. The ultimate issue for Inland was whether there was basis to prevent the bank for foreclosing on the mortgage. It claimed that no basis exists because it had been freed from the obligation to pay because Hanil-Gonzales assumed the obligation under a Deed of Assignment and that the bank consented to the substitution of debtor. In its answer, the bank immediately and properly denied that it was a party to the Deed; it expressly stated that its alleged consent was given by Calo, an officer who did not have the authority to sign for and bind the bank.

Under this situation, it was for Inland to convince the trier of facts that indeed the Deed of Assignment exists and that the bank gave its consent to this deed; thus it had been freed from the obligation to pay the loan it secured from the bank. Under this claim, Calo's authority to act in behalf of the bank was an affirmative allegation on the part of Inland; it therefore had the burden to present clear and convincing evidence to prove that the bank gave its consent because Calo had the necessary authority to bind the bank.^[1] If Inland fails to discharge this burden, the bank need not even present refuting evidence.

I note that the Deed of Assignment was essentially a bi-partite agreement between the assignor (Aranda and Inland) and the assignee (Abrantes and Hanil-Gonzales) who agreed "to obtain the conformity of the

ASSOCIATED CITIZENS BANK to the foregoing arrangement."[2] The Deed was duly notarized with the parties, other than Calo, signing the notarial acknowledgment. Notably, Calo merely signed to give conformity; he was not a direct party to the deed, and he did not likewise indicate or attach proof of his authority to sign for the bank. Thus, on the face of this Deed, Inland had the burden to prove that there was valid consent by the bank so that it (Inland) could be freed of liability, i.e., by proving that Calo had the authority to sign and bind the bank. This is highlighted by the fact that the bank placed its binding participation in the Deed in issue. In the absence of any direct evidence of such authority, Inland could have proven this authority only by proof that the bank had given Calo apparent authority. Under the doctrine of apparent authority, the principal is liable only as to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none has been given.

Significantly, there was no reference in the ponencia to past acts of the bank sufficient to create the impression that Calo was clothed with apparent authority, i.e., specific instances in the past showing that the bank allowed Calo, as a bank officer, to act with authority to bind the corporation, and that he did so without the bank's objection. Such apparent authority may be established by proof of the course of business, the usages and practices of the bank and by the knowledge which the board of directors had, or must be presumed to have, of acts of Calo in and about the bank's affairs.[3]

Interestingly, the ponencia could only name Calo as the officer in charge of the accounts of Inland and Hanil-Gonzales with the bank, and point out that he signed the deed of assignment. Thus, the inevitable question was: what was the extent of Calo's duties as an account officer? If these involve merely the ordinary, routine administrative aspects of handling the accounts of the bank's clients (as opposed to managerial and discretionary transactions), then there is no basis to recognize in Calo the authority to consent a substitution of debtors that would novate Inland's and the bank's loan and accessory security agreements. What this authority really was, the local courts and the ponencia did not say.

To reiterate, in the absence of proof of the bank's consent given through an officer expressly or impliedly and adduced at the first instance by Inland to support its plea to restrain the bank from foreclosing on the mortgage given, then no burden of evidence shifts to the bank to prove anything, particularly the fact that Calo was not authorized to sign for the bank and bind the bank. Apparently, the lower courts duly recognized that no evidentiary basis existed to recognize Calo's binding authority; hence, the lower courts simply relied on evidence that the bank ratified the assignment Inland made, thus freeing Inland from the obligation to pay the bank.

The issue of ratification brings me to my second point that there exists no evidence that there had been ratification of any agreement substituting Hanil-Gonzales as the new debtor bound to pay for Inland's obligation to the bank. In the first place, it is not correct to say that the bank did not immediately repudiate the Deed of Assignment and Calo's consent. To arrive at the point of repudiating the assignment, it must be first shown that the deed officially came to the knowledge of the bank. Other than Calo's alleged participation, I see no proof in the record or one cited in the ponencia to show that there had been official notice to the bank. On the contrary, the evidence on record shows that after the Deed of Assignment on May 26, 1978, Inland was still paying its indebtedness to the bank. In fact, the Amended Complaint itself acknowledges that as of December 29, 1978, Inland still paid the bank P104,000.68, evidenced by an attached photocopy of the receipt the bank issued; and on November 7, 1979, Inland paid and was duly receipted for P100,000.00. The foreclosure came only in December 1979. Under these facts, admitted no less by Inland, can it be concluded that there was effective notice on the bank that Inland was no longer liable? It may well be asked - what is there to ratify when the parties to the loan agreement themselves showed that they recognized the loan to be subsisting at the time of the foreclosure and of the filing of the complaint for injunction?

The act of ratification that the lower courts pointed to and which the ponencia itself recognized was the alleged approval by the bank's Executive Committee of the re-structuring of the loans of Hanil-Gonzales that included Inland's loan of P880,000.00. I find the recognition of ratification questionable for several reasons. The cited Executive Board action came only in 1982,[4] or way after the foreclosure transpired (in December 1979). Thus, it was not a defense that could have been available at the time the foreclosure was made. The alleged ratification, too, was only a part of the re-structuring of the loans of Liberty Construction and Development Corporation and its sister-company, Hanil-Gonzales Construction and Development Corporation. It mentioned only that "[t]his includes the account of Inland Construction & Development Corporation which had been assumed by HGCDC." In other words, it was not a transaction between the bank, on the one hand, and HGCDC and Inland, on the other, relating specifically to Inland's loan and security obligations.

The only legitimate conclusion that may be derived from these facts is that HGCDC undertook to pay the indebtedness of Inland. There was no reference in any way to the Deed of Assignment that was allegedly being ratified. No statement indicated the terms, as between HGCDC and Inland, of the assumption of liability. Specifically, there was no indication that the Executive Committee was accepting that HGCDC was henceforth the debtor in substitution of Inland, and that the latter's accessory mortgage obligation had been waived by the bank. The plain reality that spoke for itself, even at that time, was that there was no such substitution and no waiver of the mortgage that Inland constituted over its properties; otherwise, the present case which was then pending would have already been settled. Thus, I could not avoid concluding that the lower courts' and the ponencia's conclusion that there had been ratification was propped up by very meager evidentiary support and that, if at all, the ponencia drew the wrong conclusions from the given facts.

My last cause for dissent is a legal point relating to novation or the substitution of debtors in a loan transaction. There are two ways to effect novation: expressly, when it is explicitly stated and declared in unequivocal terms, or impliedly, when the two obligations are incompatible on every point.[5] The Court declared in *Ajax Marketing and Development Corporaiton v. Court of Appeals*: [6]

[T]o effect a subjective novation by a change in the person of the debtor, it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety. xxx Novation arising from a purported change in the person of the debtor must be clear and express xxx.

Taking the above principles and Article 1293 of the Civil Code[7] together, two things must thus exist for there to be a valid novation by substitution of the debtor: clear and express release of the original debtor from the obligation upon the assumption by the new debtor of the obligation, and the consent of the creditor thereto.

In this case, the deed of assignment cannot be considered as expressly novating Inland's promissory note. Although the terms of the deed declare that Hanil-Gonzales assumes full and complete liability to pay the loan obligation of Inland under its promissory note, there was no effective consent by the creditor to the substitution of the debtor. Calo's authority to bind the Bank - the issue presented before the Court for adjudication - has been discredited by the failure to show Calo's authority, or at the very least, to attribute prior conduct by the bank holding out Calo's authority to sign and bind the bank.

Neither can it be convincingly declared that implied novation took place when the bank agreed to restructure Hanil-Gonzales' loan that included Inland's. There is no irreconcilable incompatibility between the obligation of Inland under its promissory note and that of Hanil-Gonzales' under the loan restructuring agreement. That a creditor agrees to accept payment by a third person of the debt does not constitute an implied acceptance of the substitution of the debtor, absent any agreement expressly releasing the original debtor; the creditor may still

enforce the obligation against the original debtor.[8] Nothing in the agreement to restructure the loan declared that Inland was released from its obligation under its promissory notes; in fact, as earlier mentioned, the prior foreclosure proceedings instituted by the bank precluded this inference. Although the bank clearly consented to the restructuring of the loan, this cannot be presumed to include the consent to release the original debtor from the obligation. Without such release, there is no novation; the third person who assumed the obligation of the debtor merely becomes either a co-debtor or a surety - depending on the circumstances: if there is no agreement as to solidarity, the first and the new debtors are considered obligated jointly.[9]

I rest my dissent on these considerations of facts and law.

[1] See: San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, G.R. No. 129459, September 29, 1998, 296 SCRA 631.

[2] Ponencia, p. 3.

[3] Rural Bank of Milaor (Camarines Sur) v. Ocfemia, G.R. No. 137686, February 8, 2000, 235 SCRA 901.

[4] See: ponencia, pp. 8-9.

[5] National Power Corporation v. Dayrit, G.R. Nos. L-62845 to 46, November 26, 1983, 125 SCRA 849; California Bus Lines, Inc. v. State Investment House, Inc., G.R. No. 147950, December 11, 2003, 418 SCRA 297.

[6] G.R. No. 118585, September 14, 1995, 248 SCRA 223.

[7] 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 xxx. [Emphasis supplied].

[8] Magdalena Estates Inc. v. Rodriguez, 125 Phil. 151 (1966), citing Pacific Commercial Company v. Sotto, 34 Phil. 237 (1916); Quinto v. People, G.R. No. 126712, April 14, 1999, 305 SCRA 708.

[9] Servicewide Specialists v. Intermediate Appellate Court, G.R. No. 74553, June 8, 1989, 174 SCRA 80.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.