

**PHILIPPINE LAWIN BUS, CO., MASTER TOURS & TRAVEL CORP.,  
MARCIANO TAN, ISIDRO TAN, ESTEBAN TAN AND HENRY TAN,  
PETITIONERS, VS. COURT OF APPEALS AND ADVANCE CAPITAL  
CORPORATION, R...**

*G.R. No. 130972. January 23, 2002*

Ponente: PARDO, J.

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**PARDO, J.:**

**The Case**

The case is a petition for review via certiorari of the decision of the Court of Appeals,[1] reversing that of the trial court[2] and sentencing petitioners as follows:

“WHEREFORE, the appealed decision should be, as it is hereby REVERSED and SET ASIDE. In lieu thereof, a new one is hereby rendered ordering the defendants-appellees to pay, jointly and solidarily, in favor of plaintiff-appellant Advance Capital Corporation, the following amounts:

“1. P16,484,994.42, the principal obligation under the two promissory note Nos. 003 and 00037 plus interest and penalties;

“2. P100,000.00 for loss of goodwill and good reputation;

“3. An amount equivalent to 10% of the collectible amount, plus P50,000, as acceptance fee and P500 per appearance, as and for attorney’s fees: and

“4. P100,000 as litigation expenses.

“Costs shall be taxed against defendant-appellees.

“SO ORDERED.”[3]

**The Facts**

The facts, as found by the Court of Appeals, are as follows:

“On 7 August 1990 plaintiff Advance Capital Corporation, a licensed lending investor, extended a loan to defendant Philippine Lawin Bus Company (hereafter referred to as LAWIN), in the amount of P8,000,000.00 payable within a period of one (1) year, as evidenced by a Credit Agreement (Exhibits “B” to “B-4-B”). The defendant, through Marciano Tan, its Executive Vice President, executed Promissory Note No. 003, for the amount of P8,000,000.00 (Exhs. “C” to “C-1”).

“To guarantee payment of the loan, defendant Lawin executed in favor of plaintiff the following documents: (1) A Deed of Chattel Mortgage wherein 9 units of buses were constituted as collaterals (Exhibits “F” to “F-7”); (2) A joint and several UNDERTAKING of defendant Master Tours and Travel Corporation dated 07 August 1990, signed by Isidro Tan and Marciano Tan (Exhs. “H” to “H-1”); and (3) A joint and several

UNDERTAKING dated 21 August 1990, executed and signed by Esteban, Isidro, Marciano and Henry, all surnamed Tan (Exhs. "I" to "I-6").

"Out of the P8,000,000.00 loan, P1,800,000.00 was paid. Thus, on 02 November 1990, defendant Bus Company was able to avail an additional loan of P2,000,000.00 for one (1) month under Promissory Note 00028 (Exhs. "J"- "J-1").

"Defendant LAWIN failed to pay the aforementioned promissory note and the same was renewed on 03 December 1990 to become due on or before 01 February 1991, under Promissory Note 00037 (Exh. "K").

"On 15 May 1991 for failure to pay the two promissory notes, defendant LAWIN was granted a loan re-structuring for two (2) months to mature on 31 July 1991.

"Despite the restructuring, defendant LAWIN failed to pay. Thus, plaintiff foreclosed the mortgaged buses and as the sole bidder thereof, the amount of P2,000,000.00 was accepted by the deputy sheriff conducting the sale and credited to the account of defendant LAWIN.

"Thereafter, on 27 May 1992, identical demand letters were sent to the defendants to pay their obligation (Exhs. "X" to "CC"). Despite repeated demands, the defendants failed to pay their indebtedness which totaled of P16,484,992.42 as of 31 July 1992 (Exhs. "DD"- "DD-1").

"Thus, the suit for sum of money, wherein the plaintiff prays that defendants solidarily pay plaintiff as of July 31, 1992 the sum of (a) P16,484,994.12 as principal obligation under the two promissory notes Nos. 003 and 00037, plus interests and penalties: (b) P300,000.00 for loss of good will and good business reputation: (c) attorney's fees amounting to P100,000.00 as acceptance fee and a sum equivalent to 10% of the collectible amount, and P500.00 as appearance fee; (d) P200,000.00 as litigation expenses; (e) exemplary damages in an amount to be awarded at the court's discretion; and (f) the costs.

"On 04 September 1993, a writ of preliminary injunction was issued with respect to movable and immovable properties of the defendants.

"In answer to the complaint, defendants-appellees assert by way of special and affirmative defense, that there was already an arrangement as to the full settlement of the loan obligation by way of:

"17.A. Sale of the nine (9) units passenger buses the proceeds of which will be credited against the loan amount as full payment thereof; or in the alternative.

"17.B. Plaintiff will shoulder and bear the cost of rehabilitating the buses, with the amount thereof to be included in the total obligation of defendant Lawin and the bus operated, with the earnings thereof to be applied to the loan obligation of defendant Lawin." (p. 4 Answer; p. 166, rec.)

"Defendants further assert that the foreclosure sale was in violation of the aforequoted arrangement and prayed for the nullification of the same and the dismissal of the complaint." [4]

On 28 June 1995, the trial court rendered a decision dismissing the complaint, as follows:

"WHEREFORE, judgment is rendered as follows:

"1. Dismissing the complaint for lack of merit;

"2. Declaring the foreclosure and auction sale null and void;

"3. Declaring the obligation or indebtedness of defendants EXTINGUISHED;

"4. Declaring the writ of attachment issued in this case null and void and, therefore, is hereby declared dissolved; and

“5. Ordering the Sheriff of this Branch or whoever is in possession, to return all the personal properties attached in this case to the owner/s thereof within one (1) week from the finality of this decision;

“6. Dismissing defendant’s counterclaim for lack of sufficient merit.

“No pronouncement as to costs.

“SO ORDERED.”[5]

In time, respondent Advance Capital Corporation appealed from the decision to the Court of Appeals.[6]

On 30 September 1997, the Court of Appeals promulgated a decision reversing that of the trial court, the dispositive portion of which is set out in the opening paragraph of this decision.

Hence, this appeal.[7]

#### The Issue

The issue raised is whether there was dacion en pago between the parties upon the surrender or transfer of the mortgaged buses to the respondent.[8]

#### The Court’s Ruling

We deny the petition, with modification.

The issue raised is factual. In an appeal via certiorari, we may not review the factual findings of the Court of Appeals.[9] When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court,[10] unless the case falls under any of the recognized exceptions to the rule.[11]

Petitioner failed to prove that the case falls within the exceptions.[12] The Supreme Court is not a trier of facts.[13] It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.[14] A question of fact would arise in such event.[15]

Nonetheless, we agree with the Court of Appeals that there was no dacion en pago that took place between the parties.

In dacion en pago, property is alienated to the creditor in satisfaction of a debt in money.[16] It 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.”[17] It “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.”[18]

Article 1245 of the Civil Code provides that the law on sales shall govern an agreement of dacion en pago. A contract of sale is perfected at the moment there is a meeting of the minds of the parties thereto upon the thing which is the object of the contract and upon the price.[19] In *Filinvest Credit Corporation v. Philippine Acetylene Co., Inc.*, we said:

“x x x. In dacion en pago, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor’s debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes

place in dacion en pago is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.”[20]

In this case, there was no meeting of the minds between the parties on whether the loan of the petitioners would be extinguished by dacion en pago. The petitioners anchor their claim solely on the testimony of Marciano Tan that he proposed to extinguish petitioners’ obligation by the surrender of the nine buses to the respondent acceded to as shown by receipts its representative made.[21] However, the receipts executed by respondent’s representative as proof of an agreement of the parties that delivery of the buses to private respondent would result in extinguishing petitioner’s obligation do not in any way reflect the intention of the parties that ownership thereof by respondent would be complete and absolute. The receipts show that the two buses were delivered to respondent in order that it would take custody for the purpose of selling the same. The receipts themselves in fact show that petitioners deemed respondent as their agent in the sale of the two vehicles whereby the proceeds thereof would be applied in payment of petitioners’ indebtedness to respondent. Such an agreement negates transfer of absolute ownership over the property to respondent, as in a sale. Thus, in *Philippine National Bank v. Pineda*[22] we held that where machinery and equipment were repossessed to secure the payment of a loan obligation and not for the purpose of transferring ownership thereof to the creditor in satisfaction of said loan, no dacion en pago was ever accomplished.

#### The Fallo

IN VIEW WHEREOF, the Court DENIES the petition and AFFIRMS the decision of the Court of Appeals[23] with MODIFICATION as follows:

WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE. In lieu thereof, judgment is hereby rendered ordering defendants-appellees to pay, jointly and severally, plaintiff-appellant Advance Capital Corp. the following amounts:

(1) P16,484,994.42, the principal obligation under the two promissory notes plus 12% per annum from the finality of this decision until fully paid;

(2) P50,000.00 as attorney’s fees;

(3) Costs of suit.

All other monetary awards are deleted.

#### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G. R. CV No. 50080, promulgated on September 30, 1997, Petition, Annex “E”, Rollo, pp. 79-92. Martinez, A. M. J., ponente, Ibay-Somera and Agcaoili, JJ., concurring.

[2] Regional Trial Court of Makati, Branch 145, Decision, dated June 28, 1995. Judge Job B. Madayag, presiding, Rollo, pp. 60-77.

[3] Rollo, pp. 79-92, at pp. 91-92.

[4] Rollo, pp. 79-92, at pp. 80-81.

[5] Rollo, pp. 60-77, at pp. 76-77.

[6] Docketed as CA-G. R. CV No. 50080.

[7] Petition filed on November 26, 1997, Rollo, pp. 6-39. On October 21, 1998, we gave due course to the petition. (Rollo, p. 138).

[8] Comment, Rollo, pp. 114-131, at p. 117.

[9] *Cristobal v. Court of Appeals*, 353 Phil. 320, 326 [1998]; *Sarmiento v. Court of Appeals*, 353 Phil. 834, 845-846 [1998]; *Concepcion v. Court of Appeals*, 324 SCRA 85 [2000], citing *Congregation of the Virgin Mary v. Court of Appeals*, 353 Phil. 591, 597 [1998] and *Sarmiento v. Court of Appeals*, *supra*; *Arriola v. Mahilum*, 337 SCRA 464, 469 [2000]; *Bolanos v. Court of Appeals*, 345 SCRA 125, 130-131 [2000].

[10] *Atillo v. Court of Appeals*, 334 Phil. 546, 555 [1997].

[11] *Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc.*, 366 Phil. 439, 452 [1999].

[12] *Rivera v. Court of Appeals*, 348 Phil. 734, 743 [1998].

[13] *Trade Unions of the Philippines v. Laguesma*, 236 SCRA 586 [1994].

[14] *Trade Unions of the Philippines v. Laguesma*, *supra*, Note 13.

[15] *Cheesman v. Intermediate Appellate Court*, 193 SCRA 93 [1991]; *Ramos v. Pepsi Cola Bottling Co.*, 125 Phil. 701 [1967]; *Pilar Dev. Corp. v. Intermediate Appellate Court*, 146 SCRA 215 [1986]; *Arroyo v. Beaterio del Santissimo Rosario de Molo*, 132 Phil. 9 [1968]; *Bernardo v. Court of Appeals*, 216 SCRA 224 [1992].

[16] Art. 1245, Civil Code.

[17] Tolentino, *Civil Code of the Philippines*, Vol. IV, 1991 ed., p. 293, citing 2 *Castan* 525; 8 *Manresa* 324 and *Filinvest Credit Corporation vs. Philippine Acetylene Co.*, 197 Phil. 394 [1982].

[18] *Caltex (Philippines), Inc. v. Intermediate Appellate Court*, 215 SCRA 580, 589 [1992], quoting *Lopez v. Court of Appeals*, 114 SCRA 671, 685 [1982].

[19] *Fule v. Court of Appeals*, 350 Phil. 349, 363 [1998], citing Art. 1475 of the Civil Code, and *Romero v. Court of Appeals*, 320 Phil. 269 [1995].

[20] *Supra*, at pp. 402-403.

[21] TSN, June 18, 1995, pp. 3-4; Court of Appeals Decision, pp. 7-8.

**[22] 197 SCRA 1, 10 [1991].**

[23] In CA-G. R. CV No. 50080.

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