ABELARDO B. LICAROS, PETITIONER, VS. ANTONIO P. GATMAITAN, RESPONDENT.

G.R. No. 142838. August 09, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court. The petition seeks to reverse and set aside the Decision[1] dated February 10, 2000 of the Court of Appeals and its Resolution[2] dated April 7, 2000 denying petitioner's Motion for Reconsideration thereto. The appellate court decision reversed the Decision[3] dated November 11, 1997 of the Regional Trial Court of Makati, Branch 145 in Civil Case No. 96-1211.

The facts of the case, as stated in the Decision of the Court of Appeals dated February 10, 2000, are as follows:

> "The Anglo-Asean Bank and Trust Limited (Anglo-Asean, for brevity), is a private bank registered and organized to do business under the laws of the Republic of Vanuatu but not in the Philippines. Its business consists primarily in receiving fund placements by way of deposits from institutions and individual investors from different parts of the world and thereafter investing such deposits in money market placements and potentially profitable capital ventures in Hongkong, Europe and the United States for the purpose of maximizing the returns on those investments.
>
> Enticed by the lucrative prospects of doing business with Anglo-Asean, Abelardo Licaros, a Filipino businessman, decided to make a fund placement with said bank sometime in the 1980's. As it turned out, the grim outcome of Licaros' foray in overseas fund investment was not exactly what he envisioned it to be. More particularly, Licaros, after having invested in Anglo-Asean, encountered tremendous and unexplained difficulties in retrieving, not only the interest or profits, but even the very investments he had put in Anglo-Asean.
>
> Confronted with the dire prospect of not getting back any of his investments, Licaros then decided to seek the counsel of Antonio P. Gatmaitan, a reputable banker and investment manager who had been extending managerial, financial and investment consultancy services to various firms and corporations both here and abroad. To Licaros' relief, Gatmaitan was only too willing enough to help. Gatmaitan voluntarily offered to assume the payment of Anglo-Asean's indebtedness to Licaros subject to certain terms and conditions. In order to effectuate and formalize the parties' respective commitments, the two executed a notarized MEMORANDUM OF AGREEMENT on July 29, 1988 (Exh. "B"; also Exhibit "1"), the full text of which reads:

'Memorandum of Agreement

KNOW ALL MEN BY THESE PRESENTS:

This MEMORANDUM OF AGREEMENT made and executed this 29[th] day of July 1988, at Makati by and between:

ABELARDO B. LICAROS, Filipino, of legal age and holding office at Concepcion Building, Intramuros, Manila hereinafter referred to as THE PARTY OF THE FIRST PART,

and

ANTONIO P. GATMAITAN, Filipino, of legal age and residing at 7 Mangyan St., La Vista, hereinafter referred to as the PARTY OF THE SECOND PART,

WITNESSETH THAT:

WHEREAS, ANGLO-ASEAN BANK & TRUST, a company incorporated by the Republic of Vanuatu, hereinafter referred to as the OFFSHORE BANK, is indebted to the PARTY OF THE FIRST PART in the amount of US dollars; ONE HUNDRED FIFTY THOUSAND ONLY (US$150,000) which debt is now due and demandable.

WHEREAS, the PARTY OF THE FIRST PART has encountered difficulties in securing full settlement of the said indebtedness from the OFFSHORE BANK and has sought a business arrangement with the PARTY OF THE SECOND PART regarding his claims;

WHEREAS, the PARTY OF THE SECOND PART, with his own resources and due to his association with the OFFSHORE BANK, has offered to the PARTY OF THE FIRST PART to assume the payment of the aforesaid indebtedness, upon certain terms and conditions, which offer, the PARTY OF THE FIRST PART has accepted;

WHEREAS, the parties herein have come to an agreement on the nature, form and extent of their mutual prestations which they now record herein with the express conformity of the third parties concerned;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants stipulated herein, the PARTY OF THE FIRST PART and the PARTY OF THE SECOND PART have agreed, as they do hereby agree, as follows:

1. The PARTY OF THE SECOND PART hereby undertakes to pay the PARTY OF THE FIRST PART the amount of US DOLLARS ONE HUNDRED FIFTY THOUSAND ((US$150,000) payable in Philippine Currency at the fixed exchange rate of Philippine Pesos 21 to US$1 without interest on or before July 15, 1993.

For this purpose, the PARTY OF THE SECOND PART shall execute and deliver a non negotiable promissory note, bearing the aforesaid material consideration in favor of the PARTY OF THE FIRST PART upon execution of this MEMORANDUM OF AGREEMENT, which promissory note shall form part as ANNEX A hereof.

2. For and in consideration of the obligation of the PARTY OF THE SECOND PART, the PARTY OF THE FIRST does hereby;

a. Sell, assign, transfer and set over unto the PARTY OF THE SECOND PART that certain debt now due and owing to the PARTY OF THE FIRST PART by the OFFSHORE BANK, to the amount of US Dollars One Hundred Fifty Thousand plus interest due and accruing thereon;

b. Grant the PARTY OF THE SECOND PART the full power and authority, for his own use and benefit, but at his own cost and expense, to demand, collect, receive, compound, compromise and give acquittance for the same or any part thereof, and in the name of the PARTY OF THE FIRST PART, to prosecute, and withdraw any suit or proceedings therefor;

c. Agree and stipulate that the debt assigned herein is justly owing and due to the PARTY OF THE FIRST PART from the said OFFSHORE BANK, and that the PARTY OF THE FIRST PART has not done and will not cause

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anything to be done to diminish or discharge said debt, or to delay or prevent the PARTY OF THE SECOND PART from collecting the same; and;

d. At the request of the PARTY OF SECOND PART and the latter's own cost and expense, to execute and do all such further acts and deeds as shall be reasonably necessary for proving said debt and to more effectually enable the PARTY OF THE SECOND PART to recover the same in accordance with the true intent and meaning of the arrangements herein.

IN WITNESS WHEREOF, the parties have caused this MEMORANDUM OF AGREEMENT to be signed on the date and place first written above.

Sgd. Sgd.

ABELARDO B. LICAROS ANTONIO P. GATMAITAN

PARTY OF THE FIRST PART PARTY OF THE FIRST PART

WITH OUR CONFORME:

ANGLO-ASEAN BANK & TRUST

BY: (Unsigned)

SIGNED IN THE PRESENCE OF:

Sgd. (illegible)

_____ _____

> Conformably with his undertaking under paragraph 1 of the aforequoted agreement, Gatmaitan executed in favor of Licaros a NON-NEGOTIABLE PROMISSORY NOTE WITH ASSIGNMENT OF CASH DIVIDENDS (Exhs. "A"; also Exh. "2"), which promissory note, appended as Annex "A" to the same Memorandum of Agreement, states in full, thus

"NON-NEGOTIABLE PROMISSORY NOTE

WITH ASSIGNMENT OF CASH DIVIDENDS

This promissory note is Annex A of the Memorandum of Agreement executed between Abelardo B. Licaros and Antonio P. Gatmaitan, on _____ 1988 at Makati, Philippines and is an integral part of said Memorandum of Agreement.

P3,150,000.

On or before July 15, 1993, I promise to pay to Abelardo B. Licaros the sum of Philippine Pesos 3,150,000 (P3,150,000) without interest as material consideration for the full settlement of his money claims from ANGLO-ASEAN BANK, referred to in the Memorandum of Agreement as the 'OFFSHORE BANK'.

As security for the payment of this Promissory Note, I hereby ASSIGN, CEDE and TRANSFER, Seventy Percent (70%) of ALL CASH DIVIDENDS, that may be due or owing to me as the registered owner of _____ (_____) shares of stock in the Prudential Life Realty, Inc.

This assignment shall likewise include SEVENTY PERCENT (70%) of cash dividends that may be declared by Prudential Life Realty, Inc. and due or owing to Prudential Life Plan, Inc., of which I am a stockholder, to the

extent of or in proportion to my aforesaid shareholding in Prudential Life Plan, Inc., the latter being the holding company of Prudential Life Realty, Inc.

In the event that I decide to sell or transfer my aforesaid shares in either or both the Prudential Life Plan, Inc. or Prudential Life Realty, Inc. and the Promissory Note remains unpaid or outstanding, I hereby give Mr. Abelardo B. Licaros the first option to buy the said shares.

Manila, Philippines

July _____, 1988

(SGD.)

Antonio P. Gatmaitan

7 Mangyan St., La Vista, QC

Signed in the Presence of

(SGD.)

_____ _____

Francisco A. Alba

President, Prudential Life Plan, Inc.”.

> Thereafter, Gatmaitan presented to Anglo-Asean the Memorandum of Agreement earlier executed by him and Licaros for the purpose of collecting the latter’s placement thereat of U.S.$150,000.00. Albeit the officers of Anglo-Asean allegedly committed themselves to “look into [this matter]”, no formal response was ever made by said bank to either Licaros or Gatmaitan. To date, Anglo-Asean has not acted on Gatmaitan’s monetary claims.
>
> Evidently, because of his inability to collect from Anglo-Asean, Gatmaitan did not bother anymore to make good his promise to pay Licaros the amount stated in his promissory note (Exh. “A”; also Exh. 2”). Licaros, however, thought differently. He felt that he had a right to collect on the basis of the promissory note regardless of the outcome of Gatmaitan's recovery efforts. Thus, in July 1996, Licaros, thru counsel, addressed successive demand letters to Gatmaitan (Exhs. “C” and “D”), demanding payment of the latter’s obligations under the promissory note. Gatmaitan, however, did not accede to these demands.
>
> Hence, on August 1, 1996, in the Regional Trial Court at Makati, Licaros filed the complaint in this case. In his complaint, docketed in the court below as Civil Case No. 96-1211, Licaros prayed for a judgment ordering Gatmaitan to pay him the following:

‘a) Principal Obligation in the amount of Three Million Five Hundred Thousand Pesos (P3,500,000.00);

b) Legal interest thereon at the rate of six (6%) percent per annum from July 16, 1993 when the amount became due until the obligation is fully paid;

c) Twenty percent (20%) of the amount due as reasonable attorney’s fees;

d) Costs of the suit.’”[4]

After trial on the merits, the court a quo rendered judgment in favor of petitioner Licaros and found respondent Gatmaitan liable under the Memorandum of Agreement and Promissory Note for P3,150,000.00 plus 12% interest per annum from July 16, 1993 until the amount is fully paid. Respondent was likewise ordered to pay attorney’s

fees of P200,000.00.[5]

Respondent Gatmaitan appealed the trial court's decision to the Court of Appeals. In a decision promulgated on February 10, 2000, the appellate court reversed the decision of the trial court and held that respondent Gatmaitan did not at any point become obligated to pay to petitioner Licaros the amount stated in the promissory note. In a Resolution dated April 7, 2000, the Court of Appeals denied petitioner's Motion for Reconsideration of its February 10, 2000 Decision.

Hence this petition for review on certiorari where petitioner prays for the reversal of the February 10, 2000 Decision of the Court of Appeals and the reinstatement of the November 11, 1997 decision of the Regional Trial Court.

The threshold issue for the determination of this Court is whether the Memorandum of Agreement between petitioner and respondent is one of assignment of credit or one of conventional subrogation. This matter is determinative of whether or not respondent became liable to petitioner under the promissory note considering that its efficacy is dependent on the Memorandum of Agreement, the note being merely an annex to the said memorandum.[6]

An assignment of credit has been defined as the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.[7]

On the other hand, subrogation has been defined as the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts. Conventional subrogation is that which takes place by agreement of parties.[8]

The general tenor of the foregoing definitions of the terms "subrogation" and "assignment of credit" may make it seem that they are one and the same which they are not. A noted expert in civil law notes their distinctions thus:

> "Under our Code, however, conventional subrogation is not identical to assignment of credit. In the former, the debtor's consent is necessary; in the latter it is not required. Subrogation extinguishes the obligation and gives rise to a new one; assignment refers to the same right which passes from one person to another. The nullity of an old obligation may be cured by subrogation, such that a new obligation will be perfectly valid; but the nullity of an obligation is not remedied by the assignment of the creditor's right to another."[9]

For our purposes, the crucial distinction deals with the necessity of the consent of the debtor in the original transaction. In an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects.[10] What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him as the assignment takes effect only from the time he has knowledge thereof.[11] A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent.[12] On the other hand, conventional subrogation requires an agreement among the three parties concerned – the original creditor, the debtor, and the new creditor. It is a new contractual relation based on the mutual agreement among all the necessary parties. Thus, Article 1301 of the Civil Code explicitly states that "(C)onventional subrogation of a third person requires the consent of the original parties and of the third person."

The trial court, in finding for the petitioner, ruled that the Memorandum of Agreement was in the nature of an assignment of credit. As such, the court a quo held respondent liable for the amount stated in the said agreement even if the parties thereto failed to obtain the consent of Anglo-Asean Bank. On the other hand, the appellate court held that the agreement was one of conventional subrogation which necessarily requires the agreement of all

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the parties concerned. The Court of Appeals thus ruled that the Memorandum of Agreement never came into effect due to the failure of the parties to get the consent of Anglo-Asean Bank to the agreement and, as such, respondent never became liable for the amount stipulated.

We agree with the finding of the Court of Appeals that the Memorandum of Agreement dated July 29, 1988 was in the nature of a conventional subrogation which requires the consent of the debtor, Anglo-Asean Bank, for its validity. We note with approval the following pronouncement of the Court of Appeals:

> "Immediately discernible from above is the common feature of contracts involving conventional subrogation, namely, the approval of the debtor to the subrogation of a third person in place of the creditor. That Gatmaitan and Licaros had intended to treat their agreement as one of conventional subrogation is plainly borne by a stipulation in their Memorandum of Agreement, to wit:

"WHEREAS, the parties herein have come to an agreement on the nature, form and extent of their mutual prestations which they now record herein with the express conformity of the third parties concerned" (emphasis supplied),

> which third party is admittedly Anglo-Asean Bank.
>
> Had the intention been merely to confer on appellant the status of a mere "assignee" of appellee's credit, there is simply no sense for them to have stipulated in their agreement that the same is conditioned on the "express conformity" thereto of Anglo-Asean Bank. That they did so only accentuates their intention to treat the agreement as one of conventional subrogation. And it is basic in the interpretation of contracts that the intention of the parties must be the one pursued (Rule 130, Section 12, Rules of Court).
>
> Given our finding that the Memorandum of Agreement (Exh. "B"; also Exh. "1"), is not one of "assignment of credit" but is actually a "conventional subrogation", the next question that comes to mind is whether such agreement was ever perfected at all. Needless to state, the perfection – or non-perfection – of the subject agreement is of utmost relevance at this point. For, if the same Memorandum of Agreement was actually perfected, then it cannot be denied that Gatmaitan still has a subsisting commitment to pay Licaros on the basis of his promissory note. If not, Licaros' suit for collection must necessarily fail.
>
> Here, it bears stressing that the subject Memorandum of Agreement expressly requires the consent of Anglo-Asean to the subrogation. Upon whom the task of securing such consent devolves, be it on Licaros or Gatmaitan, is of no significance. What counts most is the hard reality that there has been an abject failure to get Anglo-Asean's nod of approval over Gatmaitan's being subrogated in the place of Licaros. Doubtless, the absence of such conformity on the part of Anglo-Asean, which is thereby made a party to the same Memorandum of Agreement, prevented the agreement from becoming effective, much less from being a source of any cause of action for the signatories thereto."[13]

Aside for the "whereas clause" cited by the appellate court in its decision, we likewise note that on the signature page, right under the place reserved for the signatures of petitioner and respondent, there is, typewritten, the words "WITH OUR CONFORME." Under this notation, the words "ANGLO-ASEAN BANK AND TRUST" were written by hand.[14] To our mind, this provision which contemplates the signed conformity of Anglo-Asean Bank, taken together with the aforementioned preambulatory clause leads to the conclusion that both parties intended that Anglo-Asean Bank should signify its agreement and conformity to the contractual arrangement between petitioner and respondent. The fact that Anglo-Asean Bank did not give such consent rendered the agreement inoperative considering that, as previously discussed, the consent of the debtor is needed in the subrogation of a third person to the rights of a creditor.

In this petition, petitioner assails the ruling of the Court of Appeals that what was entered into by the parties was a conventional subrogation of petitioner's rights as creditor of the Anglo-Asean Bank which necessarily requires

the consent of the latter. In support, petitioner alleges that: (1) the Memorandum of Agreement did not create a new obligation and, as such, the same cannot be a conventional subrogation; (2) the consent of Anglo-Asean Bank was not necessary for the validity of the Memorandum of Agreement; (3) assuming that such consent was necessary, respondent failed to secure the same as was incumbent upon him; and (4) respondent himself admitted that the transaction was one of assignment of credit.

Petitioner argues that the parties to the Memorandum of Agreement could not have intended the same to be a conventional subrogation considering that no new obligation was created. According to petitioner, the obligation of Anglo-Asean Bank to pay under Contract No. 00193 was not extinguished and in fact, it was the basic intention of the parties to the Memorandum of Agreement to enforce the same obligation of Anglo-Asean Bank under its contract with petitioner. Considering that the old obligation of Anglo-Asean Bank under Contract No. 00193 was never extinguished under the Memorandum of Agreement, it is contended that the same could not be considered as a conventional subrogation.

We are not persuaded.

It is true that conventional subrogation has the effect of extinguishing the old obligation and giving rise to a new one. However, the extinguishment of the old obligation is the effect of the establishment of a contract for conventional subrogation. It is not a requisite without which a contract for conventional subrogation may not be created. As such, it is not determinative of whether or not a contract of conventional subrogation was constituted.

Moreover, it is of no moment that the subject of the Memorandum of Agreement was the collection of the obligation of Anglo-Asean Bank to petitioner Licaros under Contract No. 00193. Precisely, if conventional subrogation had taken place with the consent of Anglo-Asean Bank to effect a change in the person of its creditor, there is necessarily created a new obligation whereby Anglo-Asean Bank must now give payment to its new creditor, herein respondent.

Petitioner next argues that the consent or conformity of Anglo-Asean Bank is not necessary to the validity of the Memorandum of Agreement as the evidence on record allegedly shows that it was never the intention of the parties thereto to treat the same as one of conventional subrogation. He claims that the preambulatory clause requiring the express conformity of third parties, which admittedly was Anglo-Asean Bank, is a mere surplusage which is not necessary to the validity of the agreement.

As previously discussed, the intention of the parties to treat the Memorandum of Agreement as embodying a conventional subrogation is shown not only by the “whereas clause” but also by the signature space captioned “WITH OUR CONFORME” reserved for the signature of a representative of Anglo-Asean Bank. These provisions in the aforementioned Memorandum of Agreement may not simply be disregarded or dismissed as superfluous.

It is a basic rule in the interpretation of contracts that “(t)he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.”[15] Moreover, under our Rules of Court, it is mandated that “(i)n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”[16] Further, jurisprudence has laid down the rule that contracts should be so construed as to harmonize and give effect to the different provisions thereof.[17]

In the case at bench, the Memorandum of Agreement embodies certain provisions that are consistent with either a conventional subrogation or assignment of credit. It has not been shown that any clause or provision in the Memorandum of Agreement is inconsistent or incompatible with a conventional subrogation. On the other hand,

the two cited provisions requiring consent of the debtor to the memorandum is inconsistent with a contract of assignment of credit. Thus, if we were to interpret the same as one of assignment of credit, then the aforementioned stipulations regarding the consent of Anglo-Asean Bank would be rendered inutile and useless considering that, as previously discussed, the consent of the debtor is not necessary in an assignment of credit.

Petitioner next argues that assuming that the conformity of Anglo-Asean was necessary to the validity of the Memorandum of Agreement, respondent only had himself to blame for the failure to secure such conformity as was, allegedly, incumbent upon him under the memorandum.

As to this argument regarding the party responsible for securing the conformity of Anglo-Asean Bank, we fail to see how this question would have any relevance on the outcome of this case. Having ruled that the consent of Anglo-Asean was necessary for the validity of the Memorandum of Agreement, the determinative fact is that such consent was not secured by either petitioner or respondent which consequently resulted in the invalidity of the said memorandum.

With respect to the argument of petitioner that respondent himself allegedly admitted in open court that an assignment of credit was intended, it is enough to say that respondent apparently used the word “assignment” in his testimony in the general sense. Respondent is not a lawyer and as such, he is not so well versed in law that he would be able to distinguish between the concepts of conventional subrogation and of assignment of credit. Moreover, even assuming that there was an admission on his part, such admission is not conclusive on this court as the nature and interpretation of the Memorandum of Agreement is a question of law which may not be the subject of stipulations and admissions.[18]

Considering the foregoing, it cannot then be said that the consent of the debtor Anglo-Asean Bank is not necessary to the validity of the Memorandum of Agreement. As above stated, the Memorandum of Agreement embodies a contract for conventional subrogation and in such a case, the consent of the original parties and the third person is required.[19] The absence of such conformity by Anglo-Asean Bank prevented the Memorandum of Agreement from becoming valid and effective. Accordingly, the Court of Appeals did not err when it ruled that the Memorandum of Agreement was never perfected.

Having arrived at the above conclusion, the Court finds no need to discuss the other issues raised by petitioner.

WHEREFORE, the instant petition is DENIED and the Decision of the Court of Appeals dated February 10, 2000 and its Resolution dated April 7, 2000 are hereby AFFIRMED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Penned by Associate Justice Cancio Garcia and concurred in by Associate Justices Romeo J. Callejo and Presbitero J. Velasco, Jr.; Rollo, pp. 38-53.

[2] Rollo, pp. 55-56.

[3] Penned by Judge Francisco Donato Villanueva; Rollo, pp. 77-92.

[4] Court of Appeals Decision dated February 10, 2000, pp. 1-7; Rollo, pp. 39-45.

[5] Rollo, p. 92.

[6] Rollo, p. 78.

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[7] Rodriguez vs. Court of Appeals, 207 SCRA 533; Nyco Sales Corp. vs. BA Finance Corp, 200 SCRA 637.

[8] Chemphil Import and Export Corp. vs. Court of Appeals, 251 SCRA 257 citing Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume IV, pp. 401-402.

[9] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines,1991 Edition, Volume IV, p. 401.

[10] Rodriguez vs. Court of Appeals, supra, citing Sison and Sison vs. Yap Tico and Avancena, 37 Phil. 587.

[11] Article 1626, New Civil Code.

[12] National Investment and Development Co. vs. De los Angeles, 40 SCRA 489.

[13] Court of Appeals Decision dated February 10, 2000, pp. 12-13; Rollo, pp. 50-51.

[14] Rollo, p. 81.

[15] Article 1374, New Civil Code; China Banking Corporation vs. Court of Appeals, 265 SCRA 327.

[16] Section 11, Rule 130, Revised Rules of Court.

[17] Phil-Am General Insurance vs. Court of Appeals, 114 SCRA 4; Reparations Commission vs. Northern Lines, Inc., 34 SCRA 203.

[18] PCI Automation Center vs. NLRC, 252 SCRA 493; Tabas vs. California Manufacturing Corp., 169 SCRA 497.

[19] Art. 1301, New Civil Code.

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