

**CALIFORNIA BUS LINES, INC., PETITIONER, VS. STATE INVESTMENT HOUSE, INC., RESPONDENT.***G.R. No. 147950. December 11, 2003*

Ponente: QUISUMBING, J.

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In this petition for review, California Bus Lines, Inc., assails the decision,[1] dated April 17, 2001, of the Court of Appeals in CA-G.R. CV No. 52667, reversing the judgment[2], dated June 3, 1993, of the Regional Trial Court of Manila, Branch 13, in Civil Case No. 84-28505 entitled *State Investment House, Inc. v. California Bus Lines, Inc.*, for collection of a sum of money. The Court of Appeals held petitioner California Bus Lines, Inc., liable for the value of five promissory notes assigned to respondent State Investment House, Inc.

The facts, as culled from the records, are as follows:

Sometime in 1979, Delta Motors Corporation--M.A.N. Division (Delta) applied for financial assistance from respondent State Investment House, Inc. (hereafter SIHI), a domestic corporation engaged in the business of quasi-banking. SIHI agreed to extend a credit line to Delta for P25,000,000.00 in three separate credit agreements dated May 11, June 19, and August 22, 1979.[3] On several occasions, Delta availed of the credit line by discounting with SIHI some of its receivables, which evidence actual sales of Delta's vehicles. Delta eventually became indebted to SIHI to the tune of P24,010,269.32.[4]

Meanwhile, from April 1979 to May 1980, petitioner California Bus Lines, Inc. (hereafter CBLI), purchased on installment basis 35 units of M.A.N. Diesel Buses and two (2) units of M.A.N. Diesel Conversion Engines from Delta. To secure the payment of the purchase price of the 35 buses, CBLI and its president, Mr. Dionisio O. Llamas, executed sixteen (16) promissory notes in favor of Delta on January 23 and April 25, 1980.[5] In each promissory note, CBLI promised to pay Delta or order, P2,314,000 payable in 60 monthly installments starting August 31, 1980, with interest at 14% per annum. CBLI further promised to pay the holder of the said notes 25% of the amount due on the same as attorney's fees and expenses of collection, whether actually incurred or not, in case of judicial proceedings to enforce collection. In addition to the notes, CBLI executed chattel mortgages over the 35 buses in Delta's favor.

When CBLI defaulted on all payments due, it entered into a restructuring agreement with Delta on October 7, 1981, to cover its overdue obligations under the promissory notes.[6] The restructuring agreement provided for a new schedule of payments of CBLI's past due installments, extending the period to pay, and stipulating daily remittance instead of the previously agreed monthly remittance of payments. In case of default, Delta would have the authority to take over the management and operations of CBLI until CBLI and/or its president, Mr. Dionisio Llamas, remitted and/or updated CBLI's past due account. CBLI and Delta also increased the interest rate to 16% p.a. and added a documentation fee of 2% p.a. and a 4% p.a. restructuring fee.

On December 23, 1981, Delta executed a Continuing Deed of Assignment of Receivables[7] in favor of SIHI as security for the payment of its obligations to SIHI per the credit agreements. In view of Delta's failure to pay, the

loan agreements were restructured under a Memorandum of Agreement dated March 31, 1982.[8] Delta obligated itself to pay a fixed monthly amortization of P400,000 to SIHI and to discount with SIHI P8,000,000 worth of receivables with the understanding that SIHI shall apply the proceeds against Delta's overdue accounts.

CBLI continued having trouble meeting its obligations to Delta. This prompted Delta to threaten CBLI with the enforcement of the management takeover clause. To pre-empt the take-over, CBLI filed on May 3, 1982, a complaint for injunction[9], docketed as Civil Case No. 0023-P, with the Court of First Instance of Rizal, Pasay City, (now Regional Trial Court of Pasay City). In due time, Delta filed its amended answer with applications for the issuance of a writ of preliminary mandatory injunction to enforce the management takeover clause and a writ of preliminary attachment over the buses it sold to CBLI.[10] On December 27, 1982,[11] the trial court granted Delta's prayer for issuance of a writ of preliminary mandatory injunction and preliminary attachment on account of the fraudulent disposition by CBLI of its assets.

On September 15, 1983, pursuant to the Memorandum of Agreement, Delta executed a Deed of Sale[12] assigning to SIHI five (5) of the sixteen (16) promissory notes[13] from California Bus Lines, Inc. At the time of assignment, these five promissory notes, identified and numbered as 80-53, 80-54, 80-55, 80-56, and 80-57, had a total value of P16,152,819.80 inclusive of interest at 14% per annum.

SIHI subsequently sent a demand letter dated December 13, 1983,[14] to CBLI requiring CBLI to remit the payments due on the five promissory notes directly to it. CBLI replied informing SIHI of Civil Case No. 0023-P and of the fact that Delta had taken over its management and operations.[15]

As regards Delta's remaining obligation to SIHI, Delta offered its available bus units, valued at P27,067,162.22, as payment in kind.[16] On December 29, 1983, SIHI accepted Delta's offer, and Delta transferred the ownership of its available buses to SIHI, which in turn acknowledged full payment of Delta's remaining obligation.[17] When SIHI was unable to take possession of the buses, SIHI filed a petition for recovery of possession with prayer for issuance of a writ of replevin before the RTC of Manila, Branch 6, docketed as Civil Case No. 84-23019. The Manila RTC issued a writ of replevin and SIHI was able to take possession of 17 bus units belonging to Delta. SIHI applied the proceeds from the sale of the said 17 buses amounting to P12,870,526.98 to Delta's outstanding obligation. Delta's obligation to SIHI was thus reduced to P20,061,898.97. On December 5, 1984, Branch 6 of the RTC of Manila rendered judgment in Civil Case No. 84-23019 ordering Delta to pay SIHI this amount.

Thereafter, Delta and CBLI entered into a compromise agreement on July 24, 1984,[18] in Civil Case No. 0023-P, the injunction case before the RTC of Pasay. CBLI agreed that Delta would exercise its right to extrajudicially foreclose on the chattel mortgages over the 35 bus units. The RTC of Pasay approved this compromise agreement the following day, July 25, 1984.[19] Following this, CBLI vehemently refused to pay SIHI the value of the five promissory notes, contending that the compromise agreement was in full settlement of all its obligations to Delta including its obligations under the promissory notes.

On December 26, 1984, SIHI filed a complaint, docketed as Civil Case No. 84-28505, against CBLI in the Regional Trial Court of Manila, Branch 34, to collect on the five (5) promissory notes with interest at 14% p.a. SIHI also prayed for the issuance of a writ of preliminary attachment against the properties of CBLI.[20]

On December 28, 1984, Delta filed a petition for extrajudicial foreclosure of chattel mortgages pursuant to its compromise agreement with CBLI. On January 2, 1985, Delta filed in the RTC of Pasay a motion for execution of the judgment based on the compromise agreement.[21] The RTC of Pasay granted this motion the following day.[22]

In view of Delta's petition and motion for execution per the judgment of compromise, the RTC of Manila granted in Civil Case No. 84-28505 SIHI's application for preliminary attachment on January 4, 1985.[23] Consequently, SIHI was able to attach and physically take possession of thirty-two (32) buses belonging to CBLI.[24] However, acting on CBLI's motion to quash the writ of preliminary attachment, the same court resolved on January 15, 1986,[25] to discharge the writ of preliminary attachment. SIHI assailed the discharge of the writ before the Intermediate Appellate Court (now Court of Appeals) in a petition for certiorari and prohibition, docketed as CA-G.R. SP No. 08378. On July 31, 1987, the Court of Appeals granted SIHI's petition in CA-GR SP No. 08378 and ruled that the writ of preliminary attachment issued by Branch 34 of the RTC Manila in Civil Case No. 84-28505 should stay.[26] The decision of the Court of Appeals attained finality on August 22, 1987.[27]

Meanwhile, pursuant to the January 3, 1985 Order of the RTC of Pasay, the sheriff of Pasay City conducted a public auction and issued a certificate of sheriff's sale to Delta on April 2, 1987, attesting to the fact that Delta bought 14 of the 35 buses for P3,920,000.[28] On April 7, 1987, the sheriff of Manila, by virtue of the writ of execution dated March 27, 1987, issued by Branch 6 of the RTC of Manila in Civil Case No. 84-23019, sold the same 14 buses at public auction in partial satisfaction of the judgment SIHI obtained against Delta in Civil Case No. 84-23019.

Sometime in May 1987, Civil Case No. 84-28505 was raffled to Branch 13 of the RTC of Manila in view of the retirement of the presiding judge of Branch 34. Subsequently, SIHI moved to sell the sixteen (16) buses of CBLI which had previously been attached by the sheriff in Civil Case No. 84-28505 pursuant to the January 4, 1985, Order of the RTC of Manila.[29] SIHI's motion was granted on December 16, 1987.[30] On November 29, 1988, however, SIHI filed an urgent ex-parte motion to amend this order claiming that through inadvertence and excusable negligence of its new counsel, it made a mistake in the list of buses in the Motion to Sell Attached Properties it had earlier filed.[31] SIHI explained that 14 of the buses listed had already been sold to Delta on April 2, 1987, by virtue of the January 3, 1985 Order of the RTC of Pasay, and that two of the buses listed had been released to third party, claimant Pilipinas Bank, by Order dated September 16, 1987[32] of Branch 13 of the RTC of Manila.

CBLI opposed SIHI's motion to allow the sale of the 16 buses. On May 3, 1989,[33] Branch 13 of the RTC of Manila denied SIHI's urgent motion to allow the sale of the 16 buses listed in its motion to amend. The trial court ruled that the best interest of the parties might be better served by denying further sales of the buses and to go direct to the trial of the case on the merits.[34]

After trial, judgment was rendered in Civil Case No. 84-28505 on June 3, 1993, discharging CBLI from liability on the five promissory notes. The trial court likewise favorably ruled on CBLI's compulsory counterclaim. The trial court directed SIHI to return the 16 buses or to pay CBLI P4,000,000 representing the value of the seized buses, with interest at 12% p.a. to begin from January 11, 1985, the date SIHI seized the buses, until payment is made. In ruling against SIHI, the trial court held that the restructuring agreement dated October 7, 1981, between Delta and CBLI novated the five promissory notes; hence, at the time Delta assigned the five promissory notes to SIHI, the notes were already merged in the restructuring agreement and cannot be enforced against CBLI.

SIHI appealed the decision to the Court of Appeals. The case was docketed as CA-G.R. CV No. 52667. On April 17, 2001, the Court of Appeals decided CA-G.R. CV No. 52667 in this manner:

WHEREFORE, based on the foregoing premises and finding the appeal to be meritorious, We find defendant-appellee CBLI liable for the value of the five (5) promissory notes subject of the complaint a quo less the proceeds from the attached sixteen (16) buses. The award of attorney's fees and costs is eliminated. The appealed decision is hereby REVERSED. No costs.

SO ORDERED.[35]

Hence, this appeal where CBLI contends that

- THE COURT OF APPEALS ERRED IN DECLARING THAT THE RESTRUCTURING AGREEMENT BETWEEN DELTA AND THE PETITIONER DID NOT SUBSTANTIALLY NOVATE THE TERMS OF THE FIVE PROMISSORY NOTES.
- THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPROMISE AGREEMENT BETWEEN DELTA AND THE PETITIONER IN THE PASAY CITY CASE DID NOT SUPERSEDE AND DISCHARGE THE PROMISSORY NOTES.
- THE COURT OF APPEALS ERRED IN UPHOLDING THE CONTINUING VALIDITY OF THE PRELIMINARY ATTACHMENT AND EXONERATING THE RESPONDENT OF MALEFACTIONS IN PRESERVING AND ASSERTING ITS RIGHTS THEREUNDER.[36]

Essentially, the issues are (1) whether the Restructuring Agreement dated October 7, 1981, between petitioner CBLI and Delta Motors, Corp. novated the five promissory notes Delta Motors, Corp. assigned to respondent SIHI, and (2) whether the compromise agreement in Civil Case No. 0023-P superseded and/or discharged the subject five promissory notes. The issues being interrelated, they shall be jointly discussed.

CBLI first contends that the Restructuring Agreement did not merely change the incidental elements of the obligation under all sixteen (16) promissory notes, but it also increased the obligations of CBLI with the addition of new obligations that were incompatible with the old obligations in the said notes.[37] CBLI adds that even if the restructuring agreement did not totally extinguish the obligations under the sixteen (16) promissory notes, the July 24, 1984, compromise agreement executed in Civil Case No. 0023-P did.[38] CBLI cites paragraph 5 of the compromise agreement which states that the agreement between it and CBLI was in "full and final settlement, adjudication and termination of all their rights and obligations as of the date of (the) agreement, and of the issues in (the) case." According to CBLI, inasmuch as the five promissory notes were subject matters of the Civil Case No. 0023-P, the decision approving the compromise agreement operated as *res judicata* in the present case.[39]

Novation has been defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor.[40]

Novation, in its broad concept, may either be extinctive or modificatory.[41] It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement.[42] An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal).[43] Novation has two functions: one to extinguish an existing obligation, the other to substitute a new one in its place.[44] For novation to take place, four essential requisites have to be met, namely, (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.[45]

Novation is never presumed,[46] and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[47]

The extinguishment of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly.[48] The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one.[49] Upon the

other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.[50] While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The first is when novation has been explicitly stated and declared in unequivocal terms. The second is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether the two obligations can stand together, each one having its independent existence.[51] If they cannot, they are incompatible and the latter obligation novates the first.[52] Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.[53]

The necessity to prove the foregoing by clear and convincing evidence is accentuated where the obligation of the debtor invoking the defense of novation has already matured.[54]

With respect to obligations to pay a sum of money, this Court has consistently applied the well-settled rule that the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, and adds other obligations not incompatible with the old ones, or where the new contract merely supplements the old one.[55]

In *Inchausti & Co. v. Yulo*[56] this Court held that an obligation to pay a sum of money is not novated in a new instrument wherein the old is ratified, by changing only the term of payment and adding other obligations not incompatible with the old one. In *Tible v. Aquino*[57] and *Pascual v. Lacsamana*[58] this Court declared that it is well settled that a mere extension of payment and the addition of another obligation not incompatible with the old one is not a novation thereof.

In this case, the attendant facts do not make out a case of novation. The restructuring agreement between Delta and CBLI executed on October 7, 1981, shows that the parties did not expressly stipulate that the restructuring agreement novated the promissory notes. Absent an unequivocal declaration of extinguishment of the pre-existing obligation, only a showing of complete incompatibility between the old and the new obligation would sustain a finding of novation by implication.[59] However, our review of its terms yields no incompatibility between the promissory notes and the restructuring agreement.

The five promissory notes, which Delta assigned to SIHI on September 13, 1983, contained the following common stipulations:

- They were payable in 60 monthly installments up to July 31, 1985;
- Interest: 14% per annum;
- Failure to pay any of the installments would render the entire remaining balance due and payable at the option of the holder of the notes;
- In case of judicial collection on the notes, the maker (CBLI) and co-maker (its president, Mr. Dionisio O. Llamas, Jr) were solidarily liable of attorney's fees and expenses of 25% of the amount due in addition to the costs of suit.

The restructuring agreement, for its part, had the following provisions:

WHEREAS, CBL and LLAMAS admit their past due installment on the following promissory notes:

- PN Nos. 16 to 26 (11 units)  
Past Due as of September 30, 1981 - P1,411,434.00

- PN Nos. 52 to 57 (24 units)  
Past Due as of September 30, 1981 - P1,105,353.00

WHEREAS, the parties agreed to restructure the above-mentioned past due installments under the following terms and conditions:

- PN Nos. 16 to 26 (11 units) - 37 months  
PN Nos. 52 to 57 (24 units) - 46 months
- Interest Rate: 16% per annum
- Documentation Fee: 2% per annum
- Penalty previously incurred and Restructuring fee: 4% p.a.
- Mode of Payment: Daily Remittance

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree and covenant as follows:

- That the past due installment referred to above plus the current and/or falling due amortization as of October 1, 1981 for Promissory Notes Nos. 16 to 26 and 52 to 57 shall be paid by CBL and/or LLAMAS in accordance with the following schedule of payments:

Daily payments of P11,000.00 from  
October 1 to December 31, 1981

Daily payments of P12,000.00 from  
January 1, 1982 to March 31, 1982

Daily payments of P13,000.00 from  
April 1, 1982 to June 30, 1982

Daily payments of P14,000.00 from  
July 1, 1982 to September 30, 1982

Daily payments of P15,000.00 from  
October 1, 1982 to December 31, 1982

Daily payments of P16,000.00 from  
January 1, 1983 to June 30, 1983

Daily payments of P17,000.00 from  
July 1, 1983

- CBL or LLAMAS shall remit to DMC on or before 11:00 a.m. everyday the daily cash payments due to DMC in accordance with the schedule in paragraph 1. DMC may send a collector to receive the amount due at CBL's premises. All delayed remittances shall be charged additional 2% penalty interest per month.

- All payments shall be applied to amortizations and penalties due in accordance with paragraph of the restructured past due installments above mentioned and PN Nos. 16 to 26 and 52 to 57.

- DMC may at anytime assign and/or send its representatives to monitor the operations of CBL pertaining to

the financial and field operations and service and maintenance matters of M.A.N. units. Records needed by the DMC representatives in monitoring said operations shall be made available by CBL and LLAMAS.

- Within thirty (30) days after the end of the terms of the PN Nos. 16 to 26 and 52 to 57, CBL or LLAMAS shall remit in lump sum whatever balance is left after deducting all payments made from what is due and payable to DMC in accordance with paragraph 1 of this agreement and PN Nos. 16 to 26 and 52 to 57.

- In the event that CBL and LLAMAS fail to remit the daily remittance agreed upon and the total accumulated unremitted amount has reached and (sic) equivalent of Sixty (60) days, DMC and Silverio shall exercise any or all of the following options:

(a)

The whole sum remaining then unpaid plus 2% penalty per month and 16% interest per annum on total past due installments will immediately become due and payable. In the event of judicial proceedings to enforce collection, CBL and LLAMAS will pay to DMC an additional sum equivalent to 25% of the amount due for attorney's fees and expenses of collection, whether actually incurred or not, in addition to the cost of suit;

(b)

To enforce in accordance with law, their rights under the Chattel Mortgage over various M.A.N. Diesel bus with Nos. CU 80-39, 80-40, 80-41, 80-42, 80-43, 80-44 and 80-15, and/or

(c)

To take over management and operations of CBL until such time that CBL and/or LLAMAS have remitted and/or updated their past due account with DMC.

- DMC and SILVERIO shall insure to CBL continuous supply of spare parts for the M.A.N. Diesel Buses and shall make available to CBL at the price prevailing at the time of purchase, an inventory of spare parts consisting of at least ninety (90%) percent of the needs of CBL based on a moving 6-month requirement to be prepared and submitted by CBL, and acceptable to DMC, within the first week of each month.

- Except as otherwise modified in this Agreement, the terms and conditions stipulated in PN Nos. 16 to 26 and 52 to 57 shall continue to govern the relationship between the parties and that the Chattel Mortgage over various M.A.N. Diesel Buses with Nos. CM No. 80-39, 80-40, 80-41, 80-42, 80-43, 80-44 and CM No. 80-15 as well as the Deed of Pledge executed by Mr. Llamas shall continue to secure the obligation until full payment.

- DMC and SILVERIO undertake to recall or withdraw its previous request to Notary Public Alberto G. Doller and to instruct him not to proceed with the public auction sale of the shares of stock of CBL subject-matter of the Deed of Pledge of Shares. LLAMAS, on the other hand, undertakes to move for the immediate dismissal of Civil Case No. 9460-P entitled "Dionisio O. Llamas vs. Alberto G. Doller, et al.", Court of First Instance of Pasay, Branch XXIX.[60]

It is clear from the foregoing that the restructuring agreement, instead of containing provisions "absolutely incompatible" with the obligations of the judgment, expressly ratifies such obligations in paragraph 8 and contains provisions for satisfying them. There was no change in the object of the prior obligations. The restructuring agreement merely provided for a new schedule of payments and additional security in paragraph 6 (c) giving Delta authority to take over the management and operations of CBLI in case CBLI fails to pay installments equivalent to 60 days. Where the parties to the new obligation expressly recognize the continuing existence and

validity of the old one, there can be no novation.[61] Moreover, this Court has ruled that an agreement subsequently executed between a seller and a buyer that provided for a different schedule and manner of payment, to restructure the mode of payments by the buyer so that it could settle its outstanding obligation in spite of its delinquency in payment, is not tantamount to novation. [62]

The addition of other obligations likewise did not extinguish the promissory notes. In *Young v. CA*[63], this Court ruled that a change in the incidental elements of, or an addition of such element to, an obligation, unless otherwise expressed by the parties will not result in its extinguishment.

In fine, the restructuring agreement can stand together with the promissory notes.

Neither is there merit in CBLI's argument that the compromise agreement dated July 24, 1984, in Civil Case No. 0023-P superseded and/or discharged the five promissory notes. Both Delta and CBLI cannot deny that the five promissory notes were no longer subject of Civil Case No. 0023-P when they entered into the compromise agreement on July 24, 1984.

Having previously assigned the five promissory notes to SIHI, Delta had no more right to compromise the same. Delta's limited authority to collect for SIHI stipulated in the September 13, 1985, Deed of Sale cannot be construed to include the power to compromise CBLI's obligations in the said promissory notes. An authority to compromise, by express provision of Article 1878[64] of the Civil Code, requires a special power of attorney, which is not present in this case. Incidentally, Delta's authority to collect in behalf of SIHI was, by express provision of the Continuing Deed of Assignment,[65] automatically revoked when SIHI opted to collect directly from CBLI.

As regards CBLI, SIHI's demand letter dated December 13, 1983, requiring CBLI to remit the payments directly to SIHI effectively revoked Delta's limited right to collect in behalf of SIHI. This should have dispelled CBLI's erroneous notion that Delta was acting in behalf of SIHI, with authority to compromise the five promissory notes.

But more importantly, the compromise agreement itself provided that it covered the rights and obligations only of Delta and CBLI and that it did not refer to, nor cover the rights of, SIHI as the new creditor of CBLI in the subject promissory notes. CBLI and Delta stipulated in paragraph 5 of the agreement that:

- This COMPROMISE AGREEMENT constitutes the entire understanding by and between the plaintiffs and the defendants as well as their lawyers, and operates as full and final settlement, adjudication and termination of all their rights and obligations as of the date of this agreement, and of the issues in this case.[66]

Even in the absence of such a provision, the compromise agreement still cannot bind SIHI under the settled rule that a compromise agreement determines the rights and obligations of only the parties to it.[67] Therefore, we hold that the compromise agreement covered the rights and obligations only of Delta and CBLI and only with respect to the eleven (11) other promissory notes that remained with Delta.

CBLI next maintains that SIHI is estopped from questioning the compromise agreement because SIHI failed to intervene in Civil Case No. 0023-P after CBLI informed it of the takeover by Delta of CBLI's management and operations and the resultant impossibility for CBLI to comply with its obligations in the subject promissory notes. CBLI also adds that SIHI's failure to intervene in Civil Case No. 0023-P is proof that Delta continued to act in SIHI's behalf in effecting collection under the notes.

The contention is untenable. As a result of the assignment, Delta relinquished all its rights to the subject promissory notes in favor of SIHI. This had the effect of separating the five promissory notes from the 16 promissory notes subject of Civil Case No. 0023-P. From that time, CBLI's obligations to SIHI embodied in the five promissory notes became separate and distinct from CBLI's obligations in eleven (11) other promissory notes

that remained with Delta. Thus, any breach of these independent obligations gives rise to a separate cause of action in favor of SIHI against CBLI. Considering that Delta's assignment to SIHI of these five promissory notes had the effect of removing the said notes from Civil Case No. 0023-P, there was no reason for SIHI to intervene in the said case. SIHI did not have any interest to protect in Civil Case No. 0023-P.

Moreover, intervention is not mandatory, but only optional and permissive.[68] Notably, Section 2,[69] Rule 12 of the then 1988 Revised Rules of Procedure uses the word 'may' in defining the right to intervene. The present rules maintain the permissive nature of intervention in Section 1, Rule 19 of the 1997 Rules of Civil Procedure, which provides as follows:

SEC. 1. Who may intervene.—A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.[70]

Also, recall that Delta transferred the five promissory notes to SIHI on September 13, 1983 while Civil Case No. 0023-P was pending. Then as now, the rule in case of transfer of interest *pendente lite* is that the action may be continued by or against the original party unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.[71] The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[72]

In light of the foregoing, SIHI's refusal to intervene in Civil Case No. 0023-P in another court does not amount to an estoppel that may prevent SIHI from instituting a separate and independent action of its own.[73] This is especially so since it does not appear that a separate proceeding would be inadequate to protect fully SIHI's rights.[74] Indeed, SIHI's refusal to intervene is precisely because it considered that its rights would be better protected in a separate and independent suit.

The judgment on compromise in Civil Case No. 0023-P did not operate as *res judicata* to prevent SIHI from prosecuting its claims in the present case. As previously discussed, the compromise agreement and the judgment on compromise in Civil Case No. 0023-P covered only Delta and CBLI and their respective rights under the 11 promissory notes not assigned to SIHI. In contrast, the instant case involves SIHI and CBLI and the five promissory notes. There being no identity of parties and subject matter, there is no *res judicata*.

CBLI maintains, however, that in any event, recovery under the subject promissory notes is no longer allowed by Article 1484(3)[75] of the Civil Code, which prohibits a creditor from suing for the deficiency after it has foreclosed on the chattel mortgages. SIHI, being the successor-in-interest of Delta, is no longer allowed to recover on the promissory notes given as security for the purchase price of the 35 buses because Delta had already extrajudicially foreclosed on the chattel mortgages over the said buses on April 2, 1987.

This claim is likewise untenable.

Article 1484(3) finds no application in the present case. The extrajudicial foreclosure of the chattel mortgages Delta effected cannot prejudice SIHI's rights. As stated earlier, the assignment of the five notes operated to create a separate and independent obligation on the part of CBLI to SIHI, distinct and separate from CBLI's obligations to Delta. And since there was a previous revocation of Delta's authority to collect for SIHI, Delta was no longer SIHI's collecting agent. CBLI, in turn, knew of the assignment and Delta's lack of authority to compromise the subject notes, yet it readily agreed to the foreclosure. To sanction CBLI's argument and to apply Article 1484 (3)

to this case would work injustice to SIHI by depriving it of its right to collect against CBLI who has not paid its obligations.

That SIHI later on levied on execution and acquired in the ensuing public sale in Civil Case No. 84-23019 the buses Delta earlier extrajudicially foreclosed on April 2, 1987, in Civil Case No. 0023-P, did not operate to render the compromise agreement and the foreclosure binding on SIHI. At the time SIHI effected the levy on execution to satisfy its judgment credit against Delta in Civil Case No. 84-23019, the said buses already pertained to Delta by virtue of the April 2, 1987 auction sale. CBLI no longer had any interest in the said buses. Under the circumstances, we cannot see how SIHI's belated acquisition of the foreclosed buses operates to hold the compromise agreement—and consequently Article 1484(3)—applicable to SIHI as CBLI contends. CBLI's last contention must, therefore, fail. We hold that the writ of execution to enforce the judgment of compromise in Civil Case No. 0023-P and the foreclosure sale of April 2, 1987, done pursuant to the said writ of execution affected only the eleven (11) other promissory notes covered by the compromise agreement and the judgment on compromise in Civil Case No. 0023-P.

In support of its third assignment of error, CBLI maintains that there was no basis for SIHI's application for a writ of preliminary attachment.[76] According to CBLI, it committed no fraud in contracting its obligation under the five promissory notes because it was financially sound when it issued the said notes on April 25, 1980.[77] CBLI also asserts that at no time did it falsely represent to SIHI that it would be able to pay its obligations under the five promissory notes.[78] According to CBLI, it was not guilty of fraudulent concealment, removal, or disposal, or of fraudulent intent to conceal, remove, or dispose of its properties to defraud its creditors;[79] and that SIHI's bare allegations on this matter were insufficient for the preliminary attachment of CBLI's properties.[80]

The question whether the attachment of the sixteen (16) buses was valid and in accordance with law, however, has already been resolved with finality by the Court of Appeals in CA-G.R. SP No. 08376. In its July 31, 1987, decision, the Court of Appeals upheld the legality of the writ of preliminary attachment SIHI obtained and ruled that the trial court judge acted with grave abuse of discretion in discharging the writ of attachment despite the clear presence of a determined scheme on the part of CBLI to dispose of its property. Considering that the said Court of Appeals decision has already attained finality on August 22, 1987, there exists no reason to resolve this question anew. Reasons of public policy, judicial orderliness, economy and judicial time and the interests of litigants as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of courts or tribunals of competent jurisdiction.[81]

Finally, in the light of the justness of SIHI's claim against CBLI, we cannot sustain CBLI's contention that the Court of Appeals erred in dismissing its counterclaim for lost income and the value of the 16 buses over which SIHI obtained a writ of preliminary attachment. Where the party who requested the attachment acted in good faith and without malice, the claim for damages resulting from the attachment of property cannot be sustained.[82]

WHEREFORE, the decision dated April 17, 2001, of the Court of Appeals in CA-G.R. CV No. 52667 is AFFIRMED. Petitioner California Bus Lines, Inc., is ORDERED to pay respondent State Investment House, Inc., the value of the five (5) promissory notes subject of the complaint in Civil Case No. 84-28505 less the proceeds from the sale of the attached sixteen (16) buses. No pronouncement as to costs.

### **SO ORDERED.**

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Rollo, pp. 62-72. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices

Cancio C. Garcia and Oswaldo D. Agcaoili.

[2] Id. at 52-60.

[3] Records, pp. 10-21; 1077-1079.

[4] Id. at 3.

[5] Id. at 1215.

[6] Id. at 170-174.

[7] Id. at 22-26; 1080-1084.

[8] Id. at 28-31; 1086-1089.

[9] Id. at 175-181.

[10] Id. at 183-220.

[11] Id. at 225-236.

[12] Id. at 32-33; 1090-1091.

[13] Id. at 34-53; 1092-1111.

[14] Id. at 54-55; 1112-1113.

[15] Id. at 281.

[16] Id. at 282.

[17] Id. at 283-285.

[18] Id. at 258-264.

[19] Id. at 265.

[20] Id. at 1-9.

[21] Id. at 274-276.

[22] Id. at 278.

[23] Id. at 61.

[24] Id. at 292-295; 306.

[25] Id. at 691-694.

[26] CA Rollo, p. 103.

[27] Ibid.

[28] Id. at 101.

[29] Records, pp. 761-764.

[30] Id. at 772.

[31] Id. at 795-797.

- [32] Id. at 755.
- [33] Id. at 861-865.
- [34] Id. at 864.
- [35] Rollo, p. 72.
- [36] Id. at 26, 29-30, 36.
- [37] Rollo, pp. 294-295.
- [38] Id. at 297.
- [39] Id. at 299.
- [40] Idolor v. Court of Appeals, G.R. No. 141853, 7 February 2001, 351 SCRA 399, 407.
- [41] Ocampo-Paule v. Court of Appeals, G.R. No. 145872, 4 February 2002, 376 SCRA 83, 88.
- [42] Ibid.
- [43] Babst v. Court of Appeals, G.R. Nos. 99398 & 104625, 26 January 2001, 350 SCRA 341, 356.
- [44] Ibid.
- [45] Reyes v. Court of Appeals, G.R. No. 120817, 4 November 1996, 264 SCRA 35, 43.
- [46] Sps. Reyes v. Court of Appeals, G.R. No. 147758, 26 June 2002, 383 SCRA 471, 482.
- [47] Quinto v. People, G.R. No. 126712, 14 April 1999, 305 SCRA 708, 714.
- [48] Ocampo-Paule v. Court of Appeals, *supra*, note 41 at 88.
- [49] Quinto v. People, *supra*, note 47 at 715.
- [50] Ocampo-Paule v. CA, *supra*, note 48.
- [51] Molino v. Security Diners International Corporation, G.R. No. 136780, 16 August 2001, 363 SCRA 358, 366.
- [52] Ibid.
- [53] Quinto v. People, *supra* note 47 at 715-716.
- [54] Guerrero v. Court of Appeals, 140 Phil. 335, 342-343 (1969).
- [55] Sps. Reyes v. Court of Appeals, *supra*, note 46; Magdalena Estates, Inc. v. Rodriguez, 125 Phil. 151, 157 (1966).
- [56] 34 Phil. 978, 986 (1914).
- [57] No. L-28967, 22 July 1975, 65 SCRA 207, 218.
- [58] 100 Phil. 381, 385 (1956).
- [59] Cochingyan, Jr. v. R&B Surety and Insurance Co., Inc., No. L-47369, 30 June 1987, 151 SCRA 339, 350.
- [60] Records, pp. 170-173,

[61] *Cochingyan, Jr. v. R&B Surety and Insurance Co., Inc.*, No. L-47369, 30 June 1987, 151 SCRA 339, 350.

[62] *Tropical Homes, Inc. v. Court of Appeals*, G.R. No. 111858, 14 May 1997, 272 SCRA 428; See also *Tible v. Aquino*, No. L-28967, 22 July 1975, 65 SCRA 207, 217-218.

[63] G.R. No. 83271, 8 May 1991, 196 SCRA 795, 800.

[64] ART. 1878. Special powers of attorney are necessary in the following cases:

...

(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;

...

[65] Records, p. 3.

[66] Records, p. 264. Emphasis supplied.

[67] *Guerrero v. Court of Appeals*, No. L-22366, 30 October 1969, 29 SCRA 791, 796.

[68] *Cruzcosa v. Hon. H. Concepcion*, 101 Phil. 146, 150 (1957).

[69] SEC. 2. Intervention.—A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, x x x.

[70] Emphasis supplied.

[71] Section 19, Rule 3 of the Rules of Court.

[72] Section 9, Rule 3 of the Rules of Court.

[73] See *Vda. De Cailles v. Mayuga*, G.R. No. 30859, 20 February 1989, 170 SCRA 347, 356.

[74] *Ibid.*

[75] ART. 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1)

Exact fulfillment of the obligation, should the vendee fail to pay;

(2)

Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3)

Foreclose the chattel mortgage of the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

[76] Rollo, p. 304.

[77] Id. at 306-308.

[78] Id. at 304, 308.

[79] Id. at 309.

[80] Id. at 309-310.

[81] *Turqueza v. Hernando*, No. L-51626, 30 April 1980, 97 SCRA 483, 488.

[82] *Banque Generale Belge v. Walter Bull & Co., Inc.*, 84 Phil. 164, 172 (1949).

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