CALTEX (PHILIPPINES), INC., PETITIONER, VS. PNOC SHIPPING AND TRANSPORT CORPORATION, RESPONDENT.

G.R. NO. 150711. August 10, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 31 May 2001 Decision[2] and 9 November 2001 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 46097. The Court of Appeals reversed the 1 June 1994 Decision[4] of the Regional Trial Court of Manila, Branch 51 ("trial court"), and dismissed the complaint filed by Caltex (Philippines), Inc. ("Caltex") against PNOC Shipping and Transport Corporation (PSTC).

The Antecedent Facts

On 6 July 1979, PSTC and Luzon Stevedoring Corporation ("LUSTEVECO") entered into an Agreement of Assumption of Obligations ("Agreement"). The Agreement provides that PSTC shall assume all the obligations of LUSTEVECO with respect to the claims enumerated in Annexes "A" and "B" ("Annexes") of the Agreement. The Agreement also provides that PSTC shall control the conduct of any litigation pending or which may be filed with respect to the claims in the Annexes. The Agreement further provides that LUSTEVECO shall deliver to PSTC all papers and records of the claims in the Annexes. Finally, the Agreement provides that LUSTEVECO appoints and constitutes PSTC as its attorney-in-fact to demand and receive any claim out of the countersuits and counterclaims arising from the claims in the Annexes.

Among the actions enumerated in the Annexes is Caltex (Phils.), Inc. v. Luzon Stevedoring Corporation docketed as AC-G.R. CV No. 62613 which at that time was pending before the then Intermediate Appellate Court (IAC). The case was an appeal from the Decision by the then Court of First Instance of Manila (CFI) directing LUSTEVECO to pay Caltex P103,659.44 with legal interest from the filing of the action until full payment. In its 12 November 1985 Decision,[5] the IAC affirmed with modification the Decision of the CFI. The dispositive portion of the Decision reads:

> WHEREFORE, the decision appealed from is hereby MODIFIED and judgment is rendered ordering the defendant [LUSTEVECO] to pay plaintiff [Caltex]:
>
> (a) P126,771.22 under the first cause of action, with legal interest until fully paid;
>
> (b) P103,659.44 under the second cause of action with legal interest until fully paid;
>
> (c) 10% of the sums due as and for attorney's fees;
>
> (d) costs of the suit.
>
> SO ORDERED.[6]

The Decision of the IAC became final and executory.

The Regional Trial Court of Manila, Branch 12, issued a writ of execution in favor of Caltex. However, the judgment was not satisfied because of the prior foreclosure of LUSTEVECO's properties. The Manila Bank Intramuros Branch and the Traders Royal Bank Aduana Branch did not respond to the notices of garnishment.

Caltex subsequently learned of the Agreement between PSTC and LUSTEVECO. Caltex sent successive demands to PSTC asking for the satisfaction of the judgment rendered by the CFI. PSTC requested for the copy of the records of AC-G.R. CV No. 62613. Later, PSTC informed Caltex that it was not a party to AC-G.R. CV No. 62613 and thus, PSTC would not pay LUSTEVECO's judgment debt. PSTC advised Caltex to demand satisfaction of the judgment directly from LUSTEVECO.

Caltex continued to send several demand letters to PSTC. On 5 February 1992, Caltex filed a complaint for sum of money against PSTC. The case was docketed as Civil Case No. 91-59512.

On 1 June 1994, the trial court rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff, ordering defendant to pay plaintiff the sums due the latter in the decision rendered by the Court of Appeals in CA-G.R. No. 62613, CALTEX vs. LUSTEVECO, or to pay plaintiff (Exhibit "C"):
>
> (a) P126,771.22 under the first cause of action, with legal interest from the date of the promulgation of the decision on November 12, 1985 until fully paid;
>
> (b) P103,659.44 under the second cause of action with legal interest from the date of the promulgation of the decision on November 12, 1985 until fully paid;
>
> (c) 10% of the sums due as and for attorney's fees; and
>
> (d) Costs of suit.
>
> SO ORDERED.[7]

PSTC appealed the trial court's Decision.

The Ruling of the Court of Appeals

In its 31 May 2001 Decision, the Court of Appeals found the appeal meritorious. The Court of Appeals ruled that Caltex has no personality to sue PSTC. The Court of Appeals held that non-compliance with the Agreement could only be questioned by the signatories to the contract, namely, LUSTEVECO and PSTC. The Court of Appeals stated that LUSTEVECO and PSTC are the only parties who can file an action to enforce the Agreement. The Court of Appeals considered fatal the omission of LUSTEVECO, the real party in interest, as a party defendant in the case. The Court of Appeals further ruled that Caltex is not a beneficiary of a stipulation pour autrui because there is no stipulation in the Agreement which clearly and deliberately favors Caltex.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the appealed Decision dated June 1, 1994, rendered by the Regional Trial Court of Manila, Branch 51, is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the complaint filed by appellee [Caltex], against appellant [PSTC], for want of cause of action.
>
> SO ORDERED.[8]

Caltex filed a motion for reconsideration of the 31 May 2001 Decision. In a Resolution promulgated on 9 November 2001, the Court of Appeals denied the motion for lack of merit.

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Hence, this petition before this Court.

The Issues

The issues in this case are:

- Whether PSTC is bound by the Agreement when it assumed all the obligations of LUSTEVECO; and

- Whether Caltex is a real party in interest to file an action to recover from PSTC the judgment debt against LUSTEVECO.

The Ruling of this Court

The petition is meritorious.

Caltex May Recover from PSTC Under the Terms of the Agreement

Caltex may recover the judgment debt from PSTC not because of a stipulation in Caltex's favor but because the Agreement provides that PSTC shall assume all the obligations of LUSTEVECO.

In this case, LUSTEVECO transferred, conveyed and assigned to PSTC all of LUSTEVECO's business, properties and assets pertaining to its tanker and bulk business "together with all the obligations relating to the said business, properties and assets." The Agreement, reproduced here in full, provides:

> AGREEMENT OF ASSUMPTIONOF OBLIGATIONS
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> This Agreement of Assumption of Obligations made and executed this 6th day of July 1979, in the City of Manila, by and between:
> LUZON STEVEDORING CORPORATION, a corporation duly organized and existing under and by virtue of Philippine Laws, with offices at Tacoma and Second Streets, Port Area, Manila, represented by GERONIMO Z. VELASCO, in his capacity as Chairman of the Board, hereinafter referred to as ASSIGNOR,
>
> - and -
>
> PNOC SHIPPING AND TRANSPORT CORPORATION, a corporation duly organized and existing under and by virtue of Philippine Laws, with offices at Makati Avenue, Makati, Metro Manila, represented by MARIO V. TIAOQUI, in his capacity as Vice-President, hereinafter referred to as ASSIGNEE,

WITNESSETH : T h a t -

WHEREAS, on April 1, 1979, ASSIGNOR, for valuable consideration, executed an Agreement of Transfer with ASSIGNEE whereby ASSIGNOR transferred, conveyed and assigned unto ASSIGNEE all of ASSIGNOR's business, properties and assets appertaining to its tanker and bulk all (sic) departments, together with all the obligations relating to said business, properties and assets;

WHEREAS, relative to the conduct, operation and management of the business, properties and assets transferred, conveyed and assigned by ASSIGNOR to ASSIGNEE certain actions and claims particularly described in Annex "A" consisting of four (4) pages and Annex "B", consisting of one (1) page, attached hereto and made integral parts hereof, have been filed, either with ASSIGNOR or with appropriate courts and administrative tribunals.

WHEREAS, under the terms and conditions hereinafter mentioned, ASSIGNEE agree[s] to assume the obligations incident and relative to the actions and claims enumerated and described in Annexes "A" and "B" hereof.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

- ASSIGNEE shall assume, as it hereby assumes all the obligations of ASSIGNOR in respect to the actions and claims and described in Annexes "A" and "B";

- ASSIGNEE shall have complete control in the conduct of any and all litigations now pending or may be filed with respect to the actions and claims enumerated and described in Annexes "A" and "B";

- ASSIGNOR shall deliver and convey unto ASSIGNEE all papers, documents, files and any other records appertaining to the actions and claims enumerated and described in Annexes "A" and "B";

- SSIGNOR hereby constitutes and appoints ASSIGNEE, its successors and assigns, the true and lawful attorney of ASSIGNOR, with full power of substitution, for it and in its name, place and stead or otherwise, but on behalf and for the benefit of ASSIGNEE, its successors and assigns, to demand and receive any and all claim[s] out of countersuits or counterclaims arising from the actions and claims enumerated and described in Annexes "A" and "B".[9] (Emphasis supplied)

When PSTC assumed all the properties, business and assets of LUSTEVECO pertaining to LUSTEVECO's tanker and bulk business, PSTC also assumed all of LUSTEVECO's obligations pertaining to such business. The assumption of obligations was stipulated not only in the Agreement of Assumption of Obligations but also in the Agreement of Transfer. The Agreement specifically mentions the case between LUSTEVECO and Caltex, docketed as AC-G.R. CV No. 62613, then pending before the IAC. The Agreement provides that PSTC may demand and receive any claim out of counter-suits or counterclaims arising from the actions enumerated in the Annexes.

PSTC is bound by the Agreement. PSTC cannot accept the benefits without assuming the obligations under the same Agreement. PSTC cannot repudiate its commitment to assume the obligations after taking over the assets for that will amount to defrauding the creditors of LUSTEVECO. It will also result in failure of consideration since the assumption of obligations is part of the consideration for the transfer of the assets from LUSTEVECO to PSTC. Failure of consideration will revert the assets to LUSTEVECO for the benefit of the creditors of LUSTEVECO. Thus, PSTC cannot escape from its undertaking to assume the obligations of LUSTEVECO as stated in the Agreement.

Disposition of Assets should not Prejudice Creditors

Even without the Agreement, PSTC is still liable to Caltex.

The disposition of all or substantially all of the assets of a corporation is allowed under Section 40 of Batas Pambansa Blg. 68, otherwise known as The Corporation Code of the Philippines ("Corporation Code"). Section 40 provides:

> SEC. 40. Sale or other disposition of assets. â”€ Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors, or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock; or in case of non-stock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or

> member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.
>
> A sale or other disposition shall be deemed to cover substantially all the corporate property and assets, if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purposes for which it was incorporated.
>
> x x x x

While the Corporation Code allows the transfer of all or substantially all the properties and assets of a corporation, the transfer should not prejudice the creditors of the assignor. The only way the transfer can proceed without prejudice to the creditors is to hold the assignee liable for the obligations of the assignor. The acquisition by the assignee of all or substantially all of the assets of the assignor necessarily includes the assumption of the assignor's liabilities,[10] unless the creditors who did not consent to the transfer choose to rescind the transfer on the ground of fraud.[11] To allow an assignor to transfer all its business, properties and assets without the consent of its creditors and without requiring the assignee to assume the assignor's obligations will defraud the creditors. The assignment will place the assignor's assets beyond the reach of its creditors.

Here, Caltex could not enforce the judgment debt against LUSTEVECO. The writ of execution could not be satisfied because LUSTEVECO's remaining properties had been foreclosed by lienholders. In addition, all of LUSTEVECO's business, properties and assets pertaining to its tanker and bulk business had been assigned to PSTC without the knowledge of its creditors. Caltex now has no other means of enforcing the judgment debt except against PSTC.

If PSTC refuses to honor its written commitment to assume the obligations of LUSTEVECO, there will be fraud on the creditors of LUSTEVECO. PSTC agreed to take over, and in fact took over, all the assets of LUSTEVECO upon its express written commitment to pay all obligations of LUSTEVECO pertaining to those assets, including specifically the claim of Caltex. LUSTEVECO no longer informed its creditors of the transfer of all of its assets presumably because PSTC committed to pay all such creditors. Such transfer, leaving the claims of creditors unenforceable against the debtor, is fraudulent and rescissible.[12] To allow PSTC now to welsh on its commitment is to sanction a fraud on LUSTEVECO's creditors.[13]

In Oria v. McMicking, the Court enumerated the badges of fraud as follows:

> - The fact that the consideration of the conveyance is fictitious or is inadequate.
>
> - A transfer made by a debtor after suit has been begun and while it is pending against him.
>
> - A sale upon credit by an insolvent debtor.
>
> - Evidence of large indebtedness or complete insolvency.
>
> - The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.
>
> - The fact that the transfer is made between father and son, when there are present other of the above circumstances.
>
> - The failure of the vendee to take exclusive possession of all the property.[14] (Emphasis supplied)

In Pepsi-Cola Bottling Co. v. NLRC,[15] which involved the illegal dismissal of the employees of Pepsi-Cola Distributors of the Philippines (PCD), the Court has ruled that Pepsi-Cola Products Philippines, Inc. (PCPPI)

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which acquired the franchise of PCD is liable for the reinstatement of PCD's employees. The Court rejected PCPPI's argument that it is a company separate and distinct from PCD. The Court ruled that the complaint was filed when PCD was still in existence. Further, there was no evidence that PCPPI, as the new entity or purchasing company, was free from any liabilities incurred by PCD.

In this case, PSTC was aware of the pendency of the case between Caltex and LUSTEVECO. PSTC assumed LUSTEVECO's obligations, including specifically any obligation that might arise from Caltex's suit against LUSTEVECO. The Agreement transferred the unencumbered assets of LUSTEVECO to PSTC, making any money judgment in favor of Caltex unenforceable against LUSTEVECO. To allow PSTC to renege on its obligation under the Agreement will allow PSTC to defraud Caltex. This militates against the statutory policy of protecting creditors from fraudulent contracts.

Article 1313 of the Civil Code provides that "[c]reditors are protected in cases of contracts intended to defraud them." Further, Article 1381 of the Civil Code provides that contracts entered into in fraud of creditors may be rescinded when the creditors cannot in any manner collect the claims due them.[16] Article 1381 applies to contracts where the creditors are not parties, for such contracts are usually made without their knowledge. Thus, a creditor who is not a party to a contract can sue to rescind the contract to prevent fraud upon him. Or, the same creditor can instead choose to enforce the contract if a specific provision in the contract allows him to collect his claim, and thus protect him from fraud.

If PSTC does not assume the obligations of LUSTEVECO as PSTC had committed under the Agreement, the creditors of LUSTEVECO could no longer collect the debts of LUSTEVECO. The assignment becomes a fraud on the part of PSTC, because PSTC would then have inveigled LUSTEVECO to transfer the assets on the promise to pay LUSTEVECO's creditors. However, after taking over the assets, PSTC would now turn around and renege on its promise.

The Agreement, under Article 1291 of the Civil Code,[17] is also a novation of LUSTEVECO's obligations by substituting the person of the debtor. Under Article 1293 of the Civil Code, a novation which consists in substituting a new debtor in place of the original debtor cannot be made without the consent of the creditor.[18] Here, since the Agreement novated the debt without the knowledge and consent of Caltex, the Agreement cannot prejudice Caltex. Thus, the assets that LUSTEVECO transferred to PSTC in consideration, among others, of the novation, or the value of such assets, remain even in the hands of PSTC subject to execution to satisfy the judgment claim of Caltex.

Caltex is a Real Party in Interest

Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides:

> SEC. 2. Parties in interest. â”€ A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Ordinarily, one who is not a privy to a contract may not bring an action to enforce it. However, this case falls under the exception. In Oco v. Limbaring, we ruled:

> The parties to a contract are the real parties in interest in an action upon it, as consistently held by the Court. Only the contracting parties are bound by the stipulation in the contract; they are the ones who would benefit from and could violate it. Thus, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it. One cannot do so, even if the contract performed by the contracting parties would incidentally inure to one's benefit.

> As an exception, parties who have not taken part in a contract may show that they have a real interest affected by its performance or annulment. In other words, those who are not principally or subsidiarily obligated in a contract, in which they had no intervention, may show their detriment that could result from it. x x x[19] (Emphasis supplied)

Caltex may enforce its cause of action against PSTC because PSTC expressly assumed all the obligations of LUSVETECO pertaining to its tanker and bulk business and specifically, those relating to AC-G.R. CV No. 62613. While Caltex is not a party to the Agreement, it has a real interest in the performance of PSTC's obligations under the Agreement because the non-performance of PSTC's obligations will defraud Caltex.

Even if PSTC did not expressly assume to pay the creditors of LUSTEVECO, PSTC would still be liable to Caltex up to the value of the assets transferred. The transfer of all or substantially all of the unencumbered assets of LUSTEVECO to PSTC cannot work to defraud the creditors of LUSTEVECO. A creditor has a real interest to go after any person to whom the debtor fraudulently transferred its assets.

WHEREFORE, we REVERSE and SET ASIDE the 31 May 2001 Decision and 9 November 2001 Resolution of the Court of Appeals in CA-G.R. CV No. 46097. We AFFIRM the 1 June 1994 Decision of the Regional Trial Court of Manila, Branch 51, in Civil Case No. 91-59512. Costs against respondent.

SO ORDERED.

Quisumbing, (Chairperson),Carpio Morales and Tinga, JJ., concur.
Velasco, Jr., J., No part due to prior action in CA.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Presbitero J. Velasco, Jr. and Bienvenido L. Reyes, concurring. Rollo, pp. 41-47.

[3] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Wenceslao I. Agnir, Jr. and Bienvenido L. Reyes, concurring. Rollo, p. 49.

[4] Penned by Judge Rustico V. Panganiban. Rollo, pp. 66-72.

[5] Penned by Associate Justice Jose C. Campos, Jr. with Associate Justices Crisolito Pascual, Serafin E. Camilon and Desiderio P. Jurado, concurring. Records, pp. 14-21.

[6] Id. at 20-21.

[7] Rollo, pp. 71-72.

[8] Id. at 46.

[9] Id. at 50-52.

[10] See Rivera v. Litam & Company, Inc., L-16954, 25 April 1962, 4 SCRA 1072.

[11] See note 16 infra.

[12] Article 1381(3), Civil Code.

[13] See China Banking Corp. v. Court of Appeals, 384 Phil. 116 (2000).

[14] 21 Phil. 243, 250-251 (1912).

[15] G.R. No. 101900, 23 June 1992, 210 SCRA 277. See also Pepsi-Cola Distributors of the Phil., Inc. v. NLRC, 317 Phil. 461 (1995) and Corral v. National Labor Relations Commission, G.R. No. 96795, 12 July 1996, 258 SCRA 704.

[16] Article 1381 of the Civil Code provides:

Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission. (Emphasis supplied)

[17] Article 1291 provides:

Art. 1291. Obligations may be modified by:

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor.

[18] Article 1293 provides:

Art. 1293. 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. Payment made by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

[19] G.R. No. 161298, 31 January 2006, 481 SCRA 348, 358-359.

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