ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. PHILIPPINE COMMERCIAL INTERNATIONAL BANK, RESPONDENT.

G.R. NO. 153827. April 25, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Asian Construction and Development Corporation or "ASIAKONSTRUKT," seeks the reversal and setting aside of the decision[1]dated March 15, 2002 and the Resolution[2]dated June 3, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 68189. The assailed decision affirm with modification the Summary Judgment rendered by the Regional Trial Court (RTC) of Makati City in an action for a sum of money thereat commenced by the herein respondent, Philippine Commercial International Bank (PCIBANK) against the petitioner, while the challenged resolution denied petitioner's motion for reconsideration.

The facts:

On February 24, 1999, in the RTC of Makati City, respondent PCIBANK filed a complaint[3]for a sum of money with prayer for a writ of preliminary attachment against petitioner ASIAKONSTRUKT. Docketed as Civil Case No. 99-432, the complaint alleged, inter alia, as follows:

> FIRST CAUSE OF ACTION
>
> 2.01 On various occasions, ASIAKONSTRUKT obtained U.S. dollar denominated credit accommodations from PCIBANK in the amount of Four Million Four Hundred Eighty Seven Thousand U.S. dollars (US$4,487,000.00), exclusive of interests, charges and fees thereon and the cost of collecting the same. These credit accommodations are covered by the following promissory notes:
>
> xxx xxx xxx
>
> 2.02 Prompt and faithful payment of all the foregoing promissory notes was secured by the following deeds of assignment executed by ASIAKONSTRUKT in favor of PCIBANK:
> (a) Deed of Assignment of Receivables/Contract Proceeds dated 20 July 1994... where ASIAKONSTRUKT assigned its receivables from its Contract ... with the National Power Corporation (NPC) in the amount of P54,500,000;
>
> (b) Deed of Assignment of Receivables ... dated 28 June 1995 ... where ASIAKONSTRUKT assigned its receivables from its Contract ... with the NPC in the amount of ...P26,281,000.00;
>
> (c) Deed of Assignment of Receivables dated 28 August 1995 ... where ASIAKONSTRUKT assigned its receivables from its Sub-Contract with ABB Power, Inc., in the amount of P43,000,000.00;
>
> (d) Deed of Assignment of Contract Proceeds dated 27 March 1996 ... where ASIAKONSTRUKT assigned its receivables from its contracts with PNOC ... in the aggregate amount of P46,000,000.00; and

> (e) Deed of Assignment of Contract Proceeds ... dated 20 February 1997 ... where ASIAKONSTRUKT assigned its receivables from the Ormat Philippines, Inc., in the aggregate amount of US$3,350,000.00;

2.03 All the foregoing deeds of assignments stipulate, among others, the following terms and conditions:

> a) The assignment is for the purpose of securing payment of the principal amount and the interests and bank charges accruing thereon, the costs of collecting the same and all other expenses which PCIBANK may be put in connection with or as an incident of the assignment;
>
> b) That the assignment secures also any extension or renewal of the credit which is the subject thereof as any and all other obligations of ASIAKONSTRUKT of whatever kind and nature as appear in the records of PCIBANK, which ASIAKONSTRUKT accepts as the final and conclusive evidence of such obligations to PCIBANK, ...whether contracted before, during or after the constitution of [the assignment agreement]...;
>
> c) That PCIBANK authorizes ASIAKONSTRUKT, at the latter's expense, to "collect and receive for [PCIBANK] all the Receivables"; and
>
> d) That ASIAKONSTRUKT "shall have no right, and agrees not to use any of the proceeds of any collections, it being agreed by the parties that [ASIAKONSTRUKT] divests itself of all the rights, title and interest in said Receivables and the proceeds of the collection received thereon."

2.04 The promissory notes have remained not fully paid despite their having become due and demandable. Repeated verbal and written demands were made upon ASIAKONSTRUKT, but to no avail. It has failed and refused, and continues to fail and refuse, to pay its outstanding obligations to PCIBANK...;

2.05 As a result of ASIAKONSTRUKT's refusal to pay its outstanding obligations, PCIBANK was constrained to refer the matter - to counsel and thus incur attorney's fees and legal costs.

2.06 The aggregate unpaid obligation of ASIAKONSTRUKT to PCIBANK, as of 31 December 1998, amounts to... US$4,553,446.06, broken down as follows:

Principal US$ 4,067,867.23
Interest US$ 291,263.27
Penalties US$ 194,315.56
TOTAL US$ 4,553,446.06

For its second cause of action, PCIBANK alleged in the same complaint as follows:

> SECOND CAUSE OF ACTION
>
> 4.02 ... as a result of the fraudulent acts of ASIAKONSTRUKT, PCIBANK suffered the following damages, all of which ASIAKONSTRUKT must be held to pay PCIBANK:
>
> 4.02.1 Exemplary damages, in the interest of public good and purposes of correction, in the amount of not less than P50,000.00;
>
> 4.02.2 Attorney's fees in the amount of not less than .... P1,800,000.00; and
>
> 4.02.3 Costs of suit.

In support of its prayer for a writ of preliminary attachment embodied in the complaint, plaintiff PCIBANK alleges the following:

> 3.02 ... ASIAKONSTRUKT is guilty of fraud in contracting the debt, in the performance thereof, or both, xxx;
>
> 303. PCIBANK agreed to enter into the above-mentioned credit accommodations primarily because of the

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> existence of the deeds of assignment listed above. However, from telephone inquiries made with responsible officers of the National Power Corporation, ABB Power, Inc., PNOC and Ormat Philippines, Inc., PCIBANK was surprised to learn that ASIAKONSTRUKT had long ago collected the contract proceeds, or portions thereof, which were previously assigned to PCIBANK. However, to date, it has yet to turn over these proceeds to PCIBANK. Worse, PCIBANK learned that the contract proceeds were used by ASIAKONSTRUKT for its own purposes " clear evidence of fraud, which has deprived PCIBANK of its security. ASIAKONSTRUKT's unauthorized use of the contract proceeds for its own purposes was subsequently confirmed by Mr. Napoleon Garcia, Vice President for Finance of ASIAKONSTRUKT, in a telephone discussion on 12 January 1999 with Ms. Maricel E. Salaveria of PCIBANK. xxx Needless to say, ASIAKONSTRUKT has fraudulently collected such receivables to the prejudice of PCIBANK.
>
> 3.04 ... it is evident that ASIAKONSTRUKT never had any intention of complying with the deeds of assignment. ASIAKONSTRUKT only misled PCIBANK into believing that it had sufficient security to ensure payment of its loan obligations.
>
> 3.05 Alternatively, granting, in argumenti gratia, that ASIAKONSTRUKT, at the time it executed the foregoing deeds of assignment, really intended to abide by their terms and conditions, it nevertheless committed manifest fraud when it collected the contract proceeds, and instead of remitting them to PCIBANK, used them for its own purposes.

In an order[4]dated April 13, 1999, the trial court, after receiving ex parte PCIBANK's evidence in support of its prayer for preliminary attachment, directed the issuance of the desired writ, thus:

> WHEREFORE, let a writ of preliminary attachment issue against all the property of defendant not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's principal claim of US$4,553,446.06, representing the alleged unpaid obligation of defendant, inclusive of interest and penalty charges, as of December 31, 1998, which is equivalent to P174,260,380.72, upon plaintiff's filing of a bond in an equal amount to answer for all it may sustain by reason of the attachment if the Court shall finally adjudge that plaintiff was not entitled thereto.
>
> SO ORDERED.

With plaintiff PCIBANK having posted the requisite bond, a writ of preliminary attachment was thereafter issued by the trial court. Per records, defendant ASIAKONSTRUKT did not file any motion for the quashal or dissolution of the writ.

Meanwhile, on August 27, 1999, defendant ASIAKONSTRUKT filed its Answer,[5] thereunder making admissions and denials. Defendant admits, subject to its defenses, the material allegations of the Complaint as regards its indebtedness to plaintiff PCIBANK and its execution of the various deeds of assignment enumerated therein. It, however, denies, for lack of knowledge sufficient to form a belief as to the truth thereof, the averments in the Complaint that it has not paid, despite demands, its due and demandable obligations, as well as the amounts due the plaintiff as itemized in paragraph 2.06, supra, of the Complaint. It likewise denies PCIBANK's allegations in the same Complaint in support of its prayer for a writ of preliminary attachment, particularly its having fraudulently misappropriated for its own use the contract proceeds/receivables under the contracts mentioned in the several deeds of assignments, claiming in this respect that it has still remaining receivables from those contracts.

By way of defenses, defendant pleads in its Answer the alleged "severe financial and currency crisis" which hit the Philippines in July 1997, which adversely affected and ultimately put it out of business. Defendant adds that the deeds of assignments it executed in favor of PCIBANK were standard forms proposed by the bank as pre-condition for the release of the loans and therefore partake of the nature of contracts of adhesion, leaving the

defendant to the alternative of "taking it or leaving it." By way of counterclaim, defendant prayed for an award of P1,000,000.00 as and for attorney's fees and P200,000.00 as litigation expenses.

On January 24, 2000, plaintiff PCIBANK filed a verified Motion for Summary Judgment,[6]therein contending that the defenses interposed by the defendant are sham and contrived, that the alleged financial crisis pleaded in the Answer is not a fortuitous event that would excuse debtors from their loan obligations, nor is it an exempting circumstance under Article 1262 of the New Civil Code where, as here, the same is attended by bad faith. In the same motion, PCIBANK also asserts that the deeds of assignments executed in its favor are not contracts of adhesion, and even if they were, the same are valid.

To the Motion for Summary Judgment, defendant interposed an Opposition[7]insisting that its Answer tendered or raised genuine and substantial issues of material facts which require full-blown trial, namely:

> - Whether or not defendant received all or part of the proceeds/receivables due from the contracts mentioned in the deeds of assignment at the time the complaint was filed;
>
> - Granting that defendant received those proceeds/receivables, whether or not defendant fraudulently misappropriated the same;
>
> - Whether or not defendant is virtually insolvent as a result of the regionwide economic crisis that hit Asia, causing the Philippine peso to depreciate drastically; and
>
> - Whether the parties dealt with each other on equal footing with respect to the execution of the deeds of assignment as to give the defendant an honest opportunity to reject the onerous terms imposed therein.

Significantly, defendant did not append to its aforementioned Opposition any affidavit in support of the alleged genuine issues of material facts mentioned therein.

Before the pending incident (motion for summary judgment) could be resolved by the trial court, plaintiff PCIBANK waived its claim for exemplary damages and agreed to reduce its claim for attorney's fees from P1,800,000.00 to P1,260,000.00, but made it clear that its waiver of exemplary damages and reduction of attorney's fees are subject to the condition that a full and final disposition of the case is obtained via summary judgment.

On May 16, 2000, the trial court, acting favorably on PCIBANK's motion for summary judgment, came out with its Summary Judgment,[8]the decretal portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff:
>
> - the sum of US$4,553,446.06, or its equivalent in Philippine currency at the time of payment, with interest thereon at the rate of 8.27% per annum from February 24, 1999 until fully paid;
>
> - P1,260,000.00 as and for attorney's fees; and
>
> - the costs of suit.
>
> SO ORDERED.

Explains the trial court in rendering its Summary Judgment:

> A thorough examination of the parties' pleadings and their respective stand in the foregoing motion, the court finds that indeed with defendant's admission of the first cause of action there remains no question of facts in issue. Further, the proffered defenses are worthless, unsubstantial, sham and contrived.
>
> Considering that there is no more issue to be resolved, the court hereby grants plaintiff's Motion and renders

> Judgment in favor of the plaintiff against the defendant based on their respective pleadings in accordance with Section 4, Rule 35 of the Rules of Court.

In time, petitioner went to the CA whereat its appellate recourse was docketed as CA-G.R. CV No. 68189. As stated at the threshold hereof, the CA, in its decision[9] of May 15, 2002, affirmed with modification the Summary Judgment rendered by the trial court, the modification being as regards the award for attorney's fees which the CA reduced to P1,000,000.00, to wit:

> IN THE LIGHT OF ALL THE FOREGOING, the appeal is PARTIALLY GRANTED. The "Decision" appealed from is AFFIRMED with the MODIFICATION THAT THE AWARD FOR ATTORNEY'S FEES is reduced to P1,000,000.00.
>
> SO ORDERED.

With its motion for reconsideration having been denied by the CA in its Resolution[10] of June 3, 2002, petitioner is now with us via the present recourse, raising the following issues:

> I WHETHER OR NOT THERE IS A GENUINE ISSUE AS TO A MATERIAL FACT WHICH RULES OUT THE PROPRIETY OF A SUMMARY JUDGMENT.
>
> II WHETHER OR NOT THE AWARD OF ATTORNEY'S FEES IS EXORBITANT OR UNCONSCIONABLE.

We DENY.

As in the two courts below, it is petitioner's posture that summary judgment is improper in this case because there are genuine issues of fact which have to be threshed out during trial, to wit: (a) whether or not petitioner was able to collect only a portion of the contract proceeds/receivables it was bound to deliver, remit and tender to respondent under the several deeds of assignment it executed in favor of the latter; and (b) whether or not petitioner fraudulently misappropriated and used for its benefit the said proceeds/receivables. Ergo, so petitioner maintains, genuine triable issues of fact are present in this case, which thereby precludes rendition of summary judgment.

We are not persuaded.

Under Rule 35 of the 1997 Rules of Procedure, as amended, except as to the amount of damages, when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed.[11] Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial.[12]

Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.

A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts

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have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[13]

The CA, in its challenged decision, stated and we are in full accord with it:

> In the present recourse, the [petitioner] relied not only on the judicial admissions - in its pleadings, more specifically its "Answer" to the complaint, the testimony of Maricel Salaveria as well as Exhibits "A" to "T-3", adduced in evidence by the [respondent], during the hearing on its plea for the issuance, by the Court a quo, of a writ of preliminary attachment. Significantly, the [petitioner] did not bother filing a motion for the quashal of the "Writ" issued by the Court a quo.
>
> It must be borne in mind, too, that the [petitioner] admitted, in its "Answer" " the due execution and authenticity of the documents appended to the complaint ... . The [petitioner] did not deny its liability for the principal amount claimed by the [respondent] in its complaint. The [petitioner] merely alleged, by way of defenses, that it failed to pay its account ... because of the region-wide economic crisis that engulfed Asia, in July, 1997, and the "Deeds of Assignment" executed by it in favor of the [respondent] were contracts of adhesion:
>
> xxx xxx xxx
>
> The [petitioner] elaborated on and catalogued its defenses in its "Appellants Brief" what it believed, as "genuine issues".
>
> "(i) Whether or not [petitioner] received all or part of the proceeds/receivables due from the construction contracts at the time the civil action was filed;
>
> (ii) Granting that [petitioner] received the proceeds/receivables from the construction contracts, whether or not [petitioner] fraudulently misappropriated the same;
>
> (iii) Whether or not [petitioner] had become virtually insolvent as a result of the region-wide economic crisis that hit Asia, causing the Philippine peso to depreciate dramatically; and
>
> (iv) Whether or not [respondent] and [petitioner] dealt with each other on equal footing with respect to the execution of the deeds of assignment of receivables as to give [petitioner] an honest opportunity to reject the onerous terms imposed on it."
>
> However, the [petitioner] failed to append, to its "Opposition" to the "Motion for Summary Judgment", - "Affidavits" showing the factual basis for its defenses of "extraordinary deflation," including facts, figures and data showing its financial condition before and after the economic crisis and that the crisis was the proximate cause of its financial distress. It bears stressing that the [petitioner] was burdened to demonstrate, by its "Affidavits" and documentary evidence, that, indeed, the Philippines was engulfed in an extraordinary deflation of the Philippine Peso and that the same was the proximate cause of the financial distress, it claimed, it suffered.
>
> xxx xxx xxx
>
> Where, on the basis of the records, inclusive of the pleadings of the parties, and the testimonial and documentary evidence adduced by the [respondent], supportive of its plea for a writ of preliminary attachment, the [respondent] had causes of action against the [petitioner], it behooved the [petitioner] to controvert the same with affidavits/documentary evidence showing a prima facie genuine defense. As the Appellate Court of Illinois so aptly declared:
> The defendant must show that he has a bona fide defense to the action, one which he may be able to establish. It must be a plausible ground of defense, something fairly arguable and of a substantial character. This he must

> show by affidavits or other proof.
>
> The trial court, of course, must determine from the affidavits filed whether the defendant has interposed a sufficiently good defense to entitle it to defend, but where defendant's affidavits present no substantial triable issues of fact, the court will grant the motion for summary judgment.

xxx xxx xxx

The failure of the [petitioner] to append to its "Opposition" any "Affidavits" showing that its defenses were not contrived or cosmetic to delay judgment - created a presumption that the defenses of the [petitioner] were not offered in good faith and that the same could not be sustained (Unites States versus Fiedler, et al., Federal Reported, 2[nd,] 578).

If, indeed, the [petitioner] believed it that was prevented from complying with its obligations to the [respondent], under its contracts, it should have interposed a counterclaims for rescission of contracts, conformably with the pronouncement of our Supreme Court, thus:

xxx xxx xxx

The [petitioner] did not. This only exposed the barrenness of the pose of the [petitioner].

The [petitioner] may have experienced financial difficulties because of the "1997 economic crisis" that ensued in Asia. However, the same does not constitute a valid justification for the [petitioner] to renege on its obligations to the [respondent]. The [petitioner] cannot even find solace in Articles 1266 and 1267 of the New Civil Code for, as declared by our Supreme Court:

> It is a fundamental rule that contracts, once perfected, bind both contracting parties, and obligations arising therefrom have the force of law between the parties and should be complied with in good faith. But the law recognizes exceptions to the principle of the obligatory force of contracts. One exception is laid down in Article 1266 of the Civil Code, which reads: "The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor."

Petitioner cannot, however, successfully take refuge in the said article, since it is applicable only to obligations "to do," and not obligations "to give." An obligation "to do" includes all kinds of work or service; while an obligation "to give" is a prestation which consists in the delivery of a movable or an immovable thing in order to create a real right, or for the use of the recipient, or for its simple possession, or in order to return it to its owner.

xxx xxx xxx

In this case, petitioner wants this Court to believe that the abrupt change in the political climate of the country after the EDSA Revolution and its poor financial condition "rendered the performance of the lease contract impractical and inimical to the corporate survival of the petitioner." (Philippine National Construction Corporation versus Court of Appeals, et al., 272 SCRA 183, at pages 191-192, supra)

The [petitioner] even failed to append any "Affidavit" to its "Opposition" showing how much it had received from its construction contracts and how and to whom the said collections had been appended. The [petitioner] had personal and sole knowledge of the aforesaid particulars while the [respondent] did not.

In fine, we rule and so hold that the CA did not commit any reversible error in affirming the summary judgment rendered by the trial court as, at bottom, there existed no genuine issue as to any material fact. We also sustain the CA's reduction in the award of attorney's fees to only P1,000,000.00, given the fact that there was no full-blown trial.

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WHEREFORE, the assailed CA decision is AFFIRMED in toto and this petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.
Puno, (Chairperson), J., on leave.

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[1] Penned by then Associate Justice Romeo J. Callejo, Sr. (now a member of this Court), with Associate Justices Remedios J. Salazar-Fernando and Perlita Tirona, (ret.), concurring; Rollo, pp. 34-58.

[2]Id. at 59.

[3]Id. at 61-69.

[4]Original Records, p. 320.

[5]Rollo, pp. 70-75.

[6] Rollo, pp. 78-85.

[7] Id. at pp. 88-94.

[8]Id. at 102-107.

[9] Rollo, pp. 34-58.

[10] Rollo, p. 59.

[11] Northwest Airlines vs. CA, G.R. No. 120337, January 20, 1998, 284 SCRA 408.

[12] Excelsa Industries, Inc, vs. CA,G.R. No. 105455, August 23, 1995, 247 SCRA 560.

[13] Evadel Realty and Development Corporation vs. Soriano, G.R. No. 144291, April 20, 2001, 357 SCRA 395, 401.

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