

AGRIFINA AQUINTEY, PETITIONER, VS. SPOUSES FELICIDAD AND RICO TIBONG, RESPONDENTS.

G.R. NO. 166704. December 20, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review under Rule 45 of the Revised Rules on Civil Procedure of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 78075, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, and the Resolution[3] of the appellate court denying reconsideration thereof.

The Antecedents

On May 6, 1999, petitioner Agrifina Aquintey filed before the RTC of Baguio City, a complaint for sum of money and damages against the respondents, spouses Felicidad and Rico Tibong. Agrifina alleged that Felicidad had secured loans from her on several occasions, at monthly interest rates of 6% to 7%. Despite demands, the spouses Tibong failed to pay their outstanding loan, amounting to P773,000.00 exclusive of interests. The complaint contained the following prayer:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court, after due notice and hearing, to render judgment ordering defendants to pay plaintiff the following:

- a). SEVEN HUNDRED SEVENTY-THREE THOUSAND PESOS (P773,000.00) representing the principal obligation of the defendants with the stipulated interests of six (6%) percent per month from May 11, 1999 to date and or those that are stipulated on the contracts as mentioned from paragraph two (2) of the complaint.
- b). FIFTEEN PERCENT (15%) of the total accumulated obligations as attorney's fees.
- c). Actual expenses representing the filing fee and other charges and expenses to be incurred during the prosecution of this case.

Further prays for such other relief and remedies just and equitable under the premises.[4]

Agrifina appended a copy of the Counter-Affidavit executed by Felicidad in I.S. No. 93-334, as well as copies of the promissory notes and acknowledgment receipts executed by Felicidad covering the loaned amounts.[5]

In their Answer with Counterclaim,[6] spouses Tibong admitted that they had secured loans from Agrifina. The proceeds of the loan were then re-lent to other borrowers at higher interest rates. They, likewise, alleged that they had executed deeds of assignment in favor of Agrifina, and that their debtors had executed promissory notes in Agrifina's favor. According to the spouses Tibong, this resulted in a novation of the original obligation to Agrifina. They insisted that by virtue of these documents, Agrifina became the new collector of their debtors; and the obligation to pay the balance of their loans had been extinguished.

The spouses Tibong specifically denied the material averments in paragraphs 2 and 2.1 of the complaint. While

they did not state the total amount of their loans, they declared that they did not receive anything from Agrifina without any written receipt.[7] They prayed for that the complaint be dismissed.

In their Pre-Trial Brief, the spouses Tibong maintained that they have never obtained any loan from Agrifina without the benefit of a written document.[8]

On August 17, 2000, the trial court issued a Pre-Trial Order where the following issues of the case were defined:

Whether or not plaintiff is entitled to her claim of P773,000.00;

Whether or not plaintiff is entitled to stipulated interests in the promissory notes; and

Whether or not the parties are entitled to their claim for damages.[9]

The Case for Petitioner

Agrifina and Felicidad were classmates at the University of Pangasinan. Felicidad's husband, Rico, also happened to be a distant relative of Agrifina. Upon Felicidad's prodding, Agrifina agreed to lend money to Felicidad. According to Felicidad, Agrifina would be earning interests higher than those given by the bank for her money. Felicidad told Agrifina that since she (Felicidad) was engaged in the sale of dry goods at the GP Shopping Arcade, she would use the money to buy bonnells and thread.[10] Thus, Agrifina lent a total sum of P773,000.00 to Felicidad, and each loan transaction was covered by either a promissory note or an acknowledgment receipt.[11] Agrifina stated that she had lost the receipts signed by Felicidad for the following amounts: P100,000.00, P34,000.00 and P2,000.00.[12] The particulars of the transactions are as follows:

Amount Date Obtained Interest Per Mo. Due Date

P 100,000.00 May 11, 1989 6% August 11, 1989

4,000.00 June 8, 1989 - -

50,000.00 June 13, 1989 6%

On demand

60,000.00 Aug. 16, 1989 7%

January 1990

205,000.00 Oct. 13, 1989 7%

January 1990

128,000.00 Oct. 19, 1989 7%

January 1990

2,000.00 Nov. 12, 1989 6%

April 28, 1990

10,000.00 June 13, 1990 - -

80,000.00 Jan. 4, 1990 - -

34,000.00 - 6%

October 19, 1989

100,000.00 July 14, 1989 5%

October 1989[13]

According to Agrifina, Felicidad was able to pay only her loans amounting to P122,600.00.[14]

In July 1990, Felicidad gave to Agrifina City Trust Bank Check No. 126804 dated August 25, 1990 in the amount of P50,000.00 as partial payment.[15] However, the check was dishonored for having been drawn against insufficient funds.[16] Agrifina then filed a criminal case against Felicidad in the Office of the City Prosecutor. An Information for violation of Batas Pambansa Bilang 22 was filed against Felicidad, docketed as Criminal Case No. 11181-R. After trial, the court ordered Felicidad to pay P50,000.00. Felicidad complied and paid the face value of the check.[17]

In the meantime, Agrifina learned that Felicidad had re-loaned the amounts to other borrowers.[18] Agrifina sought the assistance of Atty. Torres G. A-ayo who advised her to require Felicidad to execute deeds of assignment over Felicidad's debtors. The lawyer also suggested that Felicidad's debtors execute promissory notes in Agrifina's favor, to "turn over" their loans from Felicidad. This arrangement would facilitate collection of Felicidad's account. Agrifina agreed to the proposal.[19] Agrifina, Felicidad, and the latter's debtors had a conference[20] where Atty. A-ayo explained that Agrifina could apply her collections as payments of Felicidad's account.[21]

From August 7, 1990 to October, 1990, Felicidad executed deeds of assignment of credits (obligations)[22] duly notarized by Atty. A-ayo, in which Felicidad transferred and assigned to Agrifina the total amount of P546,459.00 due from her debtors.[23] In the said deeds, Felicidad confirmed that her debtors were no longer indebted to her for their respective loans. For her part, Agrifina conformed to the deeds of assignment relative to the loans of Virginia Morada and Corazon Dalisay.[24] She was furnished copies of the deeds as well as the promissory notes.[25]

The following debtors of Felicidad executed promissory notes where they obliged themselves to pay directly to Agrifina:

Debtors Account Date of Instrument Date Payable

Juliet & Tommy Tibong P50,000.00 August 7, 1990 November 4, 1990 and February 4, 1991

Corazon Dalisay 8,000.00 August 7, 1990 No date

Rita Chomacog 4,480.00 August 8, 1990 September 23, 1990

Antoinette Manuel

12,000.00 October 19, 1990 March 30, 1991

Rosemarie Bandas

8,000.00 August 8, 1990 February 3, 1991

Fely Cirilo 63,600.00 September 13, 1990 No date

Virginia Morada 62,379.00 August 9, 1990 February 9, 1991

Carmelita Casuga 59,000.00 August 28, 1990 February 28, 1991

Merlinda Gelacio 17,200.00 August 29, 1990 November 29, 1990[26]

T o t a l – P284,659.00

Agrifina narrated that Felicidad showed to her the way to the debtors' houses to enable her to collect from them. One of the debtors, Helen Cabang, did not execute any promissory note but conformed to the Deed of Assignment of Credit which Felicidad executed in favor of Agrifina.[27] Eliza Abance conformed to the deed of assignment

for and in behalf of her sister, Fely Cirilo.[28] Edna Papat-iw was not able to affix her signature on the deed of assignment nor sign the promissory note because she was in Taipei, Taiwan.[29]

Following the execution of the deeds of assignment and promissory notes, Agrifina was able to collect the total amount of P301,000.00 from Felicidad's debtors.[30] In April 1990, she tried to collect the balance of Felicidad's account, but the latter told her to wait until her debtors had money.[31] When Felicidad reneged on her promise, Agrifina filed a complaint in the Office of the Barangay Captain for the collection of P773,000.00. However, no settlement was arrived at.[32]

The Case for Respondents

Felicidad testified that she and her friend Agrifina had been engaged in the money-lending business.[33] Agrifina would lend her money with monthly interest,[34] and she, in turn, would re-lend the money to borrowers at a higher interest rate. Their business relationship turned sour when Agrifina started complaining that she (Felicidad) was actually earning more than Agrifina.[35] Before the respective maturity dates of her debtors' loans, Agrifina asked her to pay her account since Agrifina needed money to buy a house and lot in Manila. However, she told Agrifina that she could not pay yet, as her debtors' loan payments were not yet due.[36] Agrifina then came to her store every afternoon to collect from her, and persuaded her to go to Atty. Torres G. A-ayo for legal advice.[37] The lawyer suggested that she indorse the accounts of her debtors to Agrifina so that the latter would be the one to collect from her debtors and she would no longer have any obligation to Agrifina.[38] She then executed deeds of assignment in favor of Agrifina covering the sums of money due from her debtors. She signed the deeds prepared by Atty. A-ayo in the presence of Agrifina.[39] Some of the debtors signed the promissory notes which were likewise prepared by the lawyer. Thereafter, Agrifina personally collected from Felicidad's debtors.[40] Felicidad further narrated that she received P250,000.00 from one of her debtors, Rey Rivera, and remitted the payment to Agrifina.[41]

Agrifina testified, on rebuttal, that she did not enter into a re-lending business with Felicidad. When she asked Felicidad to consolidate her loans in one document, the latter told her to seek the assistance of Atty. A-ayo.[42] The lawyer suggested that Felicidad assign her credits in order to help her collect her loans.[43] She agreed to the deeds of assignment to help Felicidad collect from the debtors.[44]

On January 20, 2003, the trial court rendered its Decision[45] in favor of Agrifina. The fallo of the decision reads:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants ordering the latter to pay the plaintiffs (sic) the following amounts:

- P472,000 as actual obligation with the stipulated interest of 6% per month from May 11, 1999 until the said obligation is fully paid. However, the amount of P50,000 shall be deducted from the total accumulated interest for the same was already paid by the defendant as admitted by the plaintiff in her complaint,
- P25,000 as attorney's fees,
- [T]o pay the costs.

SO ORDERED.[46]

The trial court ruled that Felicidad's obligation had not been novated by the deeds of assignment and the promissory notes executed by Felicidad's borrowers. It explained that the documents did not contain any express agreement to novate and extinguish Felicidad's obligation. It declared that the deeds and notes were separate contracts which could stand alone from the original indebtedness of Felicidad. Considering, however, Agrifina's admission that she was able to collect from Felicidad's debtors the total amount of P301,000.00, this should be

deducted from the latter's accountability.[47] Hence, the balance, exclusive of interests, amounted to P472,000.00.

On appeal, the CA affirmed with modification the decision of the RTC and stated that, based on the promissory notes and acknowledgment receipts signed by Felicidad, the appellants secured loans from the appellee in the total principal amount of only P637,000.00, not P773,000.00 as declared by the trial court. The CA found that, other than Agrifina's bare testimony that she had lost the promissory notes and acknowledgment receipts, she failed to present competent documentary evidence to substantiate her claim that Felicidad had, likewise, borrowed the amounts of P100,000.00, P34,000.00, and P2,000.00. Of the P637,000.00 total account, P585,659.00 was covered by the deeds of assignment and promissory notes; hence, the balance of Felicidad's account amounted to only P51,341.00. The fallo of the decision reads:

WHEREFORE, in view of the foregoing, the decision dated January 20, 2003 of the RTC, Baguio City, Branch 61 in Civil Case No. 4370-R is hereby MODIFIED. Defendants-appellants are hereby ordered to pay the balance of the total indebtedness in the amount of P51,341.00 plus the stipulated interest of 6% per month from May 11, 1999 until the finality of this decision.

SO ORDERED.[48]

The appellate court sustained the trial court's ruling that Felicidad's obligation to Agrifina had not been novated by the deeds of assignment and promissory notes executed in the latter's favor. Although Agrifina was subrogated as a new creditor in lieu of Felicidad, Felicidad's obligation to Agrifina under the loan transaction remained; there was no intention on their part to novate the original obligation. Nonetheless, the appellate court held that the legal effects of the deeds of assignment could not be totally disregarded. The assignments of credits were onerous, hence, had the effect of payment, pro tanto, of the outstanding obligation. The fact that Agrifina never repudiated or rescinded such assignments only shows that she had accepted and conformed to it. Consequently, she cannot collect both from Felicidad and her individual debtors without running afoul to the principle of unjust enrichment. Agrifina's primary recourse then is against Felicidad's individual debtors on the basis of the deeds of assignment and promissory notes.

The CA further declared that the deeds of assignment executed by Felicidad had the effect of payment of her outstanding obligation to Agrifina in the amount of P585,659.00. It ruled that, since an assignment of credit is in the nature of a sale, the assignors remained liable for the warranties as they are responsible for the existence and legality of the credit at the time of the assignment.

Both parties moved to have the decision reconsidered,[49] but the appellate court denied both motions on December 21, 2004.[50]

Agrifina, now petitioner, filed the instant petition, contending that

- The Honorable Court of Appeals erred in ruling that the deeds of assignment in favor of petitioner has the effect of payment of the original obligation even as it ruled out that the original obligation and the assigned credit are distinct and separate and can stand independently from each other;
- The Honorable Court of Appeals erred in passing upon issues raised for the first time on appeal; and
- The Honorable Court of Appeals erred in resolving fact not in issue.[51]

Petitioner avers that the appellate court erred in ruling that respondents' original obligation amounted to only P637,000.00 (instead of P773,000.00) simply because she lost the promissory notes/receipts which evidenced the loans executed by respondent Felicidad Tibong. She insists that the issue of whether Felicidad owed her less than P773,000.00 was not raised by respondents during pre-trial and in their appellate brief; the appellate court was thus proscribed from taking cognizance of the issue.

Petitioner avers that respondents failed to deny, in their verified answer, that they had secured the P773,000.00 loan; hence, respondents are deemed to have admitted the allegation in the complaint that the loans secured by respondent from her amounted to P773,000.00. As gleaned from the trial court's pre-trial order, the main issue is whether or not she should be made to pay this amount.

Petitioner further maintains that the CA erred in deducting the total amount of P585,659.00 covered by the deeds of assignment executed by Felicidad and the promissory notes executed by the latter's debtors, and that the balance of respondents' account was only P51,341.00. Moreover, the appellate court's ruling that there was no novation runs counter to its holding that the primary recourse was against Felicidad's debtors. Petitioner avers that of the 11 deeds of assignment and promissory notes, only two bore her signature.[52] She insists that she is not bound by the deeds which she did not sign. By assigning the obligation to pay petitioner their loan accounts, Felicidad's debtors merely assumed the latter's obligation and became co-debtors to petitioner. Respondents were not released from their obligation under their loan transactions, and she had the option to demand payment from them or their debtors. Citing the ruling of this Court in *Magdalena Estates, Inc. v. Rodriguez*,[53] petitioner insists that the first debtor is not released from responsibility upon reaching an agreement with the creditor. The payment by a third person of the first debtor's obligation does not constitute novation, and the creditor can still enforce the obligation against the original debtor. Petitioner also cites the ruling of this Court in *Guerrero v. Court of Appeals*. [54]

In their Comment on the petition, respondents aver that by virtue of respondent Felicidad's execution of the deeds of assignment, and the original debtors' execution of the promissory notes (along with their conformity to the deeds of assignment with petitioner's consent), their loan accounts with petitioner amounting to P585,659.00 had been effectively extinguished. Respondents point out that this is in accordance with Article 1291, paragraph 2, of the Civil Code. Thus, the original debtors of respondents had been substituted as petitioner's new debtors.

Respondents counter that petitioner had been subrogated to their right to collect the loan accounts of their debtors. In fact, petitioner, as the new creditor of respondents' former debtors had been able to collect the latter's loan accounts which amounted to P301,000.00. The sums received by respondents' debtors were the same loans which they obliged to pay to petitioner under the promissory notes executed in petitioner's favor.

Respondents aver that their obligation to petitioner cannot stand or exist separately from the original debtors' obligation to petitioner as the new creditor. If allowed to collect from them as well as from their original debtors, petitioner would be enriching herself at the expense of respondents. Thus, despite the fact that petitioner had collected P172,600.00 from respondents and P301,000.00 from the original debtors, petitioner still sought to collect P773,000.00 from them in the RTC. Under the deeds of assignment executed by Felicidad and the original debtors' promissory notes, the original debtors' accounts were assigned to petitioner who would be the new creditor. In fine, respondents are no longer liable to petitioner for the balance of their loan account inclusive of interests. Respondents also insist that petitioner failed to prove that she (petitioner) was merely authorized to collect the accounts of the original debtors so as to facilitate the payment of respondents' loan obligation.

The Issues

The threshold issues are: (1) whether respondent Felicidad Tibong borrowed P773,000.00 from petitioner; and (2) whether the obligation of respondents to pay the balance of their loans, including interest, was partially extinguished by the execution of the deeds of assignment in favor of petitioner, relative to the loans of Edna Papat-iw, Helen Cabang, Antoinette Manuel, and Fely Cirilo in the total amount of P371,000.00.

The Ruling of the Court

We have carefully reviewed the brief of respondents as appellants in the CA, and find that, indeed, they had raised the issue of whether they received P773,000.00 by way of loans from petitioner. They averred that, as gleaned from the documentary evidence of petitioner in the RTC, the total amount they borrowed was only P673,000.00. They asserted that petitioner failed to adduce concrete evidence that they received P773,000.00 from her.[55]

We agree, however, with petitioner that the appellate court erred in reversing the finding of the RTC simply because petitioner failed to present any document or receipt signed by Felicidad.

Section 10, Rule 8 of the Rules of Civil Procedure requires a defendant to "specify each material allegation of fact the truth of which he does not admit and, whenever practicable, x x x set forth the substance of the matters upon which he relies to support his denial.[56]

Section 11, Rule 8 of the same Rules provides that allegations of the complaint not specifically denied are deemed admitted.[57]

The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table.[58]

A denial is not made specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word "specifically." When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are plainly and necessarily within the defendant's knowledge, an alleged "ignorance or lack of information" will not be considered as a specific denial. Section 11, Rule 8 of the Rules also provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied.[59] Thus, the answer should be so definite and certain in its allegations that the pleader's adversary should not be left in doubt as to what is admitted, what is denied, and what is covered by denials of knowledge as sufficient to form a belief.[60]

In the present case, petitioner alleged the following in her complaint:

2. That defendants are indebted to the plaintiff in the principal amount of SEVEN HUNDRED SEVENTY-THREE THOUSAND PESOS (P773,000.00) Philippine Currency with a stipulated interest which are broken down as follows. The said principal amounts was admitted by the defendants in their counter-affidavit submitted before the court. Such affidavit is hereby attached as Annex "A;"[61]

x x x x

H) The sum of THIRTY FOUR THOUSAND PESOS (P34,000.00) with interest at six (6%) per cent per month and payable on October 19, 1989, however[,] the receipt for the meantime cannot be recovered as it was misplaced by the plaintiff but the letter of defendant FELICIDAD TIBONG is hereby attached as Annex "H" for the appreciation of the Honorable court;

I) The sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) with interest at five (5%) percent per month, obtained on July 14, 1989 and payable on October 14, 1989. Such receipt was lost but admitted by the defendants in their counter-affidavit as attached [to] this complaint and marked as Annex "A" mentioned in paragraph one (1); x x x[62]

In their Answer, respondents admitted that they had secured loans from petitioner. While the allegations in paragraph 2 of the complaint were specifically denied, respondents merely averred that petitioner and respondent Felicidad entered into an agreement for the lending of money to interested borrowers at a higher interest rate. Respondents failed to declare the exact amount of the loans they had secured from petitioner. They also failed to deny the allegation in paragraph 2 of the complaint that respondent Felicidad signed and submitted a

counter-affidavit in I.S. No. 93-334 where she admitted having secured loans from petitioner in the amount of P773,000.00. Respondents, likewise, failed to deny the allegation in paragraph 2(h) of the complaint that respondents had secured a P34,000.00 loan payable on October 19, 1989, evidenced by a receipt which petitioner had misplaced. Although respondents specifically denied in paragraph 2.11 of their Answer the allegations in paragraph 2(I) of the complaint, they merely alleged that "they have not received sums of money from the plaintiff without any receipt therefor."

Respondents, likewise, failed to specifically deny another allegation in the complaint that they had secured a P100,000.00 loan from petitioner on July 14, 1989; that the loan was payable on October 14, 1989; and evidenced by a receipt which petitioner claimed to have lost. Neither did respondents deny the allegation that respondents admitted their loan of P100,000.00 in the counter-affidavit of respondent Felicidad, which was appended to the complaint as Annex "A." In fine, respondents had admitted the existence of their P773,000.00 loan from petitioner.

We agree with the finding of the CA that petitioner had no right to collect from respondents the total amount of P301,000.00, which includes more than P178,980.00 which respondent Felicidad collected from Tibong, Dalisay, Morada, Chomacog, Cabang, Casuga, Gelacio, and Manuel. Petitioner cannot again collect the same amount from respondents; otherwise, she would be enriching herself at their expense. Neither can petitioner collect from respondents more than P103,500.00 which she had already collected from Nimo, Cantas, Rivera, Donguis, Fernandez and Ramirez.

There is no longer a need for the Court to still resolve the issue of whether respondents' obligation to pay the balance of their loan account to petitioner was partially extinguished by the promissory notes executed by Juliet Tibong, Corazon Dalisay, Rita Chomacog, Carmelita Casuga, Merlinda Gelacio and Antoinette Manuel because, as admitted by petitioner, she was able to collect the amounts under the notes from said debtors and applied them to respondents' accounts.

Under Article 1231(b) of the New Civil Code, novation is enumerated as one of the ways by which obligations are extinguished. Obligations may be modified by changing their object or principal creditor or by substituting the person of the debtor.[63] The burden to prove the defense that an obligation has been extinguished by novation falls on the debtor.[64] The nature of novation was extensively explained in *Iloilo Traders Finance, Inc. v. Heirs of Sps. Oscar Soriano, Jr.*,[65] as follows:

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.

An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (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. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (e.g., a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.[66] (Citations Omitted)

Novation which consists in substituting a new debtor (delegado) in the place of the original one (delegante) may be made even without the knowledge or against the will of the latter but not without the consent of the creditor. Substitution of the person of the debtor may be effected by delegacion, meaning, the debtor offers, and the creditor (delegatario), accepts a third person who consents to the substitution and assumes the obligation. Thus, the consent of those three persons is necessary.[67] In this kind of novation, it is not enough to extend the juridical relation to a third person; it is necessary that the old debtor be released from the obligation, and the third person or new debtor take his place in the relation.[68] Without such release, there is no novation; the third person who has assumed the obligation of the debtor merely becomes a co-debtor or a surety. If there is no agreement as to solidarity, the first and the new debtor are considered obligated jointly.[69]

In *Di Franco v. Steinbaum*,[70] the appellate court ruled that as to the consideration necessary to support a contract of novation, the rule is the same as in other contracts. The consideration need not be pecuniary or even beneficial to the person promising. It is sufficient if it be a loss of an inconvenience, such as the relinquishment of a right or the discharge of a debt, the postponement of a remedy, the discontinuance of a suit, or forbearance to sue.

In *City National Bank of Huron, S.D. v. Fuller*,[71] the Circuit Court of Appeals ruled that the theory of novation is that the new debtor contracts with the old debtor that he will pay the debt, and also to the same effect with the creditor, while the latter agrees to accept the new debtor for the old. A novation is not made by showing that the substituted debtor agreed to pay the debt; it must appear that he agreed with the creditor to do so. Moreover, the agreement must be based on the consideration of the creditor's agreement to look to the new debtor instead of the old. It is not essential that acceptance of the terms of the novation and release of the debtor be shown by express agreement. Facts and circumstances surrounding the transaction and the subsequent conduct of the parties may show acceptance as clearly as an express agreement, albeit implied.[72]

We find in this case that the CA correctly found that respondents' obligation to pay the balance of their account with petitioner was extinguished, pro tanto, by the deeds of assignment of credit executed by respondent Felicidad in favor of petitioner.

An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, dation in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor.[73] It may be in the form of sale, but at times it may constitute a dation in payment, such as when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person.[74]

In *Vda. de Jayme v. Court of Appeals*,[75] the Court held that dacion en pago is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's obligation. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in dacion en pago is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.[76]

The requisites for dacion en pago are: (1) there must be a performance of the prestation in lieu of payment (*animo solvendi*) which may consist in the delivery of a corporeal thing or a real right or a credit against the third person; (2) there must be some difference between the prestation due and that which is given in substitution (*aliud pro alio*); and (3) there must be an agreement between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due.[77]

All the requisites for a valid dation in payment are present in this case. As gleaned from the deeds, respondent Felicidad assigned to petitioner her credits "to make good" the balance of her obligation. Felicidad testified that she executed the deeds to enable her to make partial payments of her account, since she could not comply with petitioner's frenetic demands to pay the account in cash. Petitioner and respondent Felicidad agreed to relieve the latter of her obligation to pay the balance of her account, and for petitioner to collect the same from respondent's debtors.

Admittedly, some of respondents' debtors, like Edna Papat-iw, were not able to affix their conformity to the deeds. In an assignment of credit, however, the consent of the debtor is not essential for its perfection; the knowledge thereof or lack of it affecting only the efficaciousness or inefficaciousness of any payment that might have been made. The assignment binds the debtor upon acquiring knowledge of the assignment but he is entitled, even then, to raise against the assignee the same defenses he could set up against the assignor[78] necessary in order that assignment may fully produce legal effects. Thus, the duty to pay does not depend on the consent of the debtor. The purpose of the notice is only to inform that debtor from the date of the assignment. Payment should be made to the assignee and not to the original creditor.

The transfer of rights takes place upon perfection of the contract, and ownership of the right, including all appurtenant accessory rights, is acquired by the assignee[79] who steps into the shoes of the original creditor as subrogee of the latter[80] from that amount, the ownership of the right is acquired by the assignee. The law does not require any formal notice to bind the debtor to the assignee, all that the law requires is knowledge of the assignment. Even if the debtor had not been notified, but came to know of the assignment by whatever means, the debtor is bound by it. If the document of assignment is public, it is evidence even against a third person of the facts which gave rise to its execution and of the date of the latter. The transfer of the credit must therefore be held valid and effective from the moment it is made to appear in such instrument, and third persons must recognize it as such, in view of the authenticity of the document, which precludes all suspicion of fraud with respect to the date of the transfer or assignment of the credit.[81]

As gleaned from the deeds executed by respondent Felicidad relative to the accounts of her other debtors, petitioner was authorized to collect the amounts of P6,000.00 from Cabang, and P63,600.00 from Cirilo. They obliged themselves to pay petitioner. Respondent Felicidad, likewise, unequivocally declared that Cabang and Cirilo no longer had any obligation to her.

Equally significant is the fact that, since 1990, when respondent Felicidad executed the deeds, petitioner no longer attempted to collect from respondents the balance of their accounts. It was only in 1999, or after nine (9) years had elapsed that petitioner attempted to collect from respondents. In the meantime, petitioner had collected from respondents' debtors the amount of P301,000.00.

While it is true that respondent Felicidad likewise authorized petitioner in the deeds to collect the debtors' accounts, and for the latter to pay the same directly, it cannot thereby be considered that respondent merely authorized petitioner to collect the accounts of respondents' debtors and for her to apply her collections in partial payments of their accounts. It bears stressing that petitioner, as assignee, acquired all the rights and remedies passed by Felicidad, as assignee, at the time of the assignment.[82] Such rights and remedies include the right to

collect her debtors' obligations to her.

Petitioner cannot find solace in the Court's ruling in *Magdalena Estates*. In that case, the Court ruled that the mere fact that novation does not follow as a matter of course when the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation when there is no agreement that the first debtor would be released from responsibility. Thus, the creditor can still enforce the obligation against the original debtor.

In the present case, petitioner and respondent Felicidad agreed that the amounts due from respondents' debtors were intended to "make good in part" the account of respondents. Case law is that, an assignment will, ordinarily, be interpreted or construed in accordance with the rules of construction governing contracts generally, the primary object being always to ascertain and carry out the intention of the parties. This intention is to be derived from a consideration of the whole instrument, all parts of which should be given effect, and is to be sought in the words and language employed.[83]

Indeed, the Court must not go beyond the rational scope of the words used in construing an assignment, words should be construed according to their ordinary meaning, unless something in the assignment indicates that they are being used in a special sense. So, if the words are free from ambiguity and expressed plainly the purpose of the instrument, there is no occasion for interpretation; but where necessary, words must be interpreted in the light of the particular subject matter.[84] And surrounding circumstances may be considered in order to understand more perfectly the intention of the parties. Thus, the object to be accomplished through the assignment, and the relations and conduct of the parties may be considered in construing the document.

Although it has been said that an ambiguous or uncertain assignment should be construed most strictly against the assignor, the general rule is that any ambiguity or uncertainty in the meaning of an assignment will be resolved against the party who prepared it; hence, if the assignment was prepared by the assignee, it will be construed most strictly against him or her.[85] One who chooses the words by which a right is given ought to be held to the strict interpretation of them, rather than the other who only accepts them.[86]

Considering all the foregoing, we find that respondents still have a balance on their account to petitioner in the principal amount of P33,841.00, the difference between their loan of P773,000.00 less P585,659.00, the payment of respondents' other debtors amounting to P103,500.00, and the P50,000.00 payment made by respondents.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision and Resolution of the Court of Appeals are AFFIRMED with MODIFICATION in that the balance of the principal account of the respondents to the petitioner is P33,841.00. No costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

* Retired as of December 7, 2006.

**Working Chairperson.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Presiding Justice (now Supreme Court Associate Justice) Cancio C. Garcia and Associate Justice Hakim S. Abdulwahid concurring; rollo, pp. 131-143.

[2] Penned by Judge Antonio C. Reyes; rollo, pp. 96-97.

[3] Rollo, pp. 148-154.

- [4] Records, pp. 5-6.
- [5] Annexes "A" to "H"; id. at 8-14.
- [6] Records, pp. 24-27.
- [7] Id. at 26.
- [8] Id. at 51.
- [9] Id. at 72.
- [10] TSN, January 31, 2001, p. 6.
- [11] TSN, January 10, 2001, p. 6.
- [12] Id. at 5.
- [13] Exhibits "B," "C," "D," "E," "F," "G," & "H"; records, pp. 151-157.
- [14] TSN, January 31, 2001, p. 11.
- [15] Exhibit "13"; records, p. 250.
- [16] TSN, January 10, 2001, p. 14.
- [17] Records, p. 4.
- [18] TSN, February 1, 2001, p. 3.
- [19] TSN, February 22, 2001, p. 9.
- [20] TSN, February 1, 2001, pp. 4-5.
- [21] TSN, February 22, 2001, p. 10.
- [22] Exhibits "1" to "11"; records, pp. 237-247.
- [23] Spouses Juliet and Tommy Tibong, Corazon Dalisay, Rita Chomacog, Rosemarie Bandas, Virginia Morada, Helen Cabang, Edna Papat-iw, Carmelita Casuga, Merlinda Gelacio, Antoinette Manuel, Fely Cirilo and Lourdes Nimo.
- [24] Records, pp. 238 & 241.
- [25] TSN, February 1, 2001, p. 6.
- [26] Records, pp. 237-247.
- [27] Id. at 242.
- [28] Id. at 247.
- [29] Exhibit "7," id. at 243.
- [30] TSN, February 22, 2001, pp. 10-11.
- [31] Id. at 11.
- [32] Exhibit "I," records, p. 159.

[33] TSN, September 13, 2001, p. 3.

[34] Id. at. 4.

[35] Id. at 5.

[36] Id. at 6.

[37] Id. at 6-7.

[38] Id. at 8.

[39] Id. at 9.

[40] Id. at 11-12.

[41] TSN, September 27, 2001, pp. 34-35.

[42] TSN, June 24, 2002, p. 8.

[43] Id. at 9.

[44] Id. at 10-11.

[45] Rollo, pp. 96-97; id. at 10-11.

[46] Id. at 97; Id. at 319.

[47] Id. at 318-319.

[48] Rollo, p. 142.

[49] CA rollo, pp. 81-95.

[50] Id. at 148-154.

[51] Rollo, p. 19.

[52] Records, pp. 238 & 242.

[53] No. L-18411, December 17, 1966, 18 SCRA 967.

[54] No. L-22366, October 30, 1969, 29 SCRA 791.

[55] Appellants' Brief, p. 15.

[56] The provision reads in full:

SEC. 10. Specific denial. – A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

[57] SEC. 11. Allegations not specifically denied deemed admitted. – Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath.

- [58] Philippine National Bank v. Court of Appeals, G.R. No. 126153, January 14, 2004, 419 SCRA 281, 287.
- [59] Id. at 286-287.
- [60] Kirchmam v. Eschman, 127 N.E. 328.
- [61] Records, p. 1.
- [62] Id. at 4.
- [63] Civil Code, Article 1291.
- [64] Rules of COURT, Rule 131, Section 5.
- [65] 452 Phil. 82 (2003).
- [66] Id. at 89-90.
- [67] Garcia v. Llamas, G.R. No. 154127, December 8, 2003, 417 SCRA 292, 300.
- [68] Lopez v. Court of Appeals, L-33157, June 29, 1982, 114 SCRA 671, 688.
- [69] COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. IV, p. 360.
- [70] 177 S.W. 2d 697.
- [71] 52 F.2d 870.
- [72] Babst v. Court of Appeals, 403 Phil. 244, 259-260 (2001).
- [73] Lo v. KJS Eco-Formwork System Phil., Inc., 459 Phil. 538-539 (2003); South City Homes, Inc. v. BA Finance Corporation, 432 Phil. 84, 95 (2001); Far East Bank & Trust Co. v. Diaz Realty, Inc., 416 Phil. 147, 161 (2001); Casabuena v. Court of Appeals, 350 Phil. 237, 243-244 (1998); and Manila Banking Corporation v. Teodoro, Jr., G.R. No. 53955, January 13, 1989, 169 SCRA 95, 102.
- [74] Manila Banking Corporation v. Teodoro, Jr., G.R. No. 53955, January 13, 1989, 169 SCRA 95, 102. See also Lo v. KJS Eco-Formwork System Phil., Inc., 459 Phil. 532, 539 (2003); Project Builders, Inc. v. Court of Appeals, 411 Phil. 264, 273 (2001); Rodriguez v. Court of Appeals, G.R. No. 84220, March 25, 1992, 207 SCRA 553, 558; and Nyco Sales Corp. v. BA Finance Corp., G.R. No. 71694, August 16, 1991, 200 SCRA 637, 641.
- [75] 439 Phil. 192 (2002).
- [76] Id. at 210.
- [77] Lo v. KJS Eco-Formwork System Phil., Inc., 459 Phil. 532, 539, (2003).
- [78] National Investment and Development Co. v. De Los Angeles, No. L-30150, August 31, 1971, 40 SCRA 487, 496 (1971).
- [79] Project Builders, Inc. v. Court of Appeals, 411 Phil. 264, 274 (2001).
- [80] South City Homes, Inc. v. BA Finance Corporation, 423 Phil. 84, 95 (2001).
- [81] Tolentino, CIVIL CODE OF THE PHILIPPINES, VOL. V, 1959 ed., pp. 168-1969.
- [82] Federal Insurance Co. v. Summers, 403 F.2d. 971.

[83] GA C.J.S. Assignments, p. 709.

[84] Genard v. Hosmer, 189 N.E. 46.

[85] In Re: Davis' Estate, 263 N.Y.S. 482; 147 Misc. 96.

[86] Shiro v. Drew, 174 F. Supp. 495.

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