

GOLDSTAR RIVERMOUNT, INC., PETITIONER, VS. ADVENT CAPITAL AND FINANCE CORP., (FORMERLY ALL ASIA CAPITAL AND TRUST CORP.), RESPONDENT.

G.R. No. 211204. December 10, 2018

Ponente: J. REYES, JR., J.

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J. REYES, JR., J.:

This case is about the validity of a dation in payment entered into between a debtor and a creditor.

The Facts

On December 9, 1998, petitioner Goldstar Rivermount, Inc. (Goldstar) borrowed P55,000,000 from respondent Advent Capital and Finance Corp. (Advent), formerly All Asia Capital and Trust Corp. The loan was payable in seven years, and it was secured by a real estate mortgage over Goldstar's property, covered by Transfer Certificate of Title No. T-278069, and a chattel mortgage over its equipment.[1]

Goldstar failed to pay its amortizations, which prompted it to offer its mortgaged properties as payment for the loan that had ballooned to P66,012,292.85. On May 26, 2000, Goldstar and Advent signed a Dation in Payment as settlement for the loan. They also executed a Memorandum of Agreement (Memorandum) on the same day, wherein Goldstar was given the right to redeem the properties within one year, and may continue to occupy and lease it for a monthly rental of P600,000.00.[2]

Later on, Goldstar learned that Advent had previously assigned its receivables from the loan to the Development Bank of the Philippines (DBP) on November 24, 1998. Goldstar alleged that Advent was no longer its creditor when they agreed to a Dation in Payment on May 26, 2000, thus, making the contract void.[3] It is Goldstar's position that since Advent had assigned its rights to DBP prior to the Dation in Payment, their contract is a nullity.[4] Goldstar filed a complaint for declaration of nullity of the Dation in Payment in the Regional Trial Court (RTC) of Davao City, Branch 13, and was docketed as Civil Case No. 28,484-01.

For its part, Advent declared that on February 18, 1997, it borrowed money from DBP for relending to Investment Enterprises such as Goldstar. The loan was embodied in a Subsidiary Loan Agreement.[5]

Advent admitted that it executed a Deed of Assignment in favor of DBP on November 24, 1998, to secure its loan and to transfer its receivables from the loans granted to Investment Enterprises. The Deed of Assignment also provided that DBP may exercise its rights as assignee on the condition that Advent defaults in its payment.[6]

Advent disclosed that it lent P55,000,000 to Goldstar on December 9, 1998, and when Goldstar failed to pay its amortizations, they agreed to settle the loan through a Dation in Payment and a Memorandum on May 26, 2000.[7]

On July 27, 2000, Advent and DBP signed an Amendment of, and Addendum to, the Deed of Assignment (Amendment and Addendum), wherein DBP has the right to manage Advent's loans to Investment Enterprises

without the need of declaring Advent in default. Advent argued that since the Dation in Payment and the Memorandum were signed prior to the Amendment and Addendum, Advent remained in control of the loan and its mortgages, and it was then required that Advent be in default before DBP may take over the management of the loan.[8]

The RTC Decision

On January 25, 2010, the RTC dismissed the complaint and rendered a Decision[9] in Advent's favor. The RTC observed that at the time Goldstar filed its complaint on March 23, 2001, it had barely two months before the expiration of its right of redemption over the properties subject of the Dation in Payment. The RTC determined that when Goldstar learned about the Deed of Assignment between Advent and DBP, Goldstar found an excuse to file an action to nullify the Dation in Payment.[10]

The RTC agreed with Advent's argument that the reason for the execution of the Deed of Assignment was to secure Advent's loan with DBP. Based on the wordings of the Deed of Assignment, Advent remains the creditor of Investment Enterprises until it defaults in its payment. Upon default, only then can DBP administer and enforce its rights on the loans of Investment Enterprises.[11]

Goldstar moved for reconsideration, which the RTC denied.[12] Undeterred, Goldstar appealed to the Court of Appeals-Cagayan de Oro City (CA).

The CA Decision

On May 30, 2013,[13] the CA affirmed the RTC, and sustained its finding that the Deed of Assignment between Advent and DBP was for the security of Advent's loan. The CA referred to the terms of the Deed of Assignment, which disclosed that the transfer of rights and credits to DBP was conditioned on Advent's default in payment. In the absence of proof that Advent was in default at the time the Dation in Payment was signed, there is no transfer of rights and credits from Advent to DBP.[14]

The CA further discussed that it was only after the execution of the Amendment and Addendum that DBP was given the right to assume the management of Advent's loans to Investment Enterprises without the need of declaring it in default. Since the Dation in Payment and the Memorandum were signed prior to the Amendment and Addendum, the original terms of the Deed of Assignment apply. In which case, Advent has to be in default before DBP may assume the management of the loans.[15]

Lastly, the CA explained that DBP's Letter to Goldstar dated July 28, 2000, expressing its intention to exercise its rights under the Amendment and Addendum, did not affect the validity of the Dation in Payment because at the time of its execution, Advent is Goldstar's creditor who has a right to enter into a dation in payment contract.[16] Thus, the CA dismissed Goldstar's appeal.

Goldstar moved for reconsideration, which the CA denied in its January 13, 2014 Resolution.[17] Undaunted, Goldstar elevated the case before the Court through a petition for review on certiorari, under Rule 45 of the Rules of Court, as amended.

The Issues Presented

Goldstar raised two issues in its Memorandum:

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE DEED OF ASSIGNMENT IN QUESTION WAS MERELY FOR A SECURITY FOR THE LOAN OF THE RESPONDENT TO DBP AND THAT DBP COULD ONLY COME IN CASE THE FORMER DEFAULTED IN THE PAYMENT OF ITS OBLIGATION TO THE LATTER; [and]

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISREGARDING THE LETTER OF DBP DATED JULY 28, 2000 WHICH IN EFFECT [IS] A MANIFESTATION THAT RESPONDENT HAD INDEED DEFAULTED IN ITS OBLIGATION TO IT AND IT THEREFORE TOOK AWAY FROM THE RESPONDENT THE RIGHT TO COLLECT FROM THE PETITIONER, AS AN ASSIGNOR AND OR AS ATTORNEY-IN-FACT.[.][18]

Likewise, Advent presented two issues in its Memorandum:

[1]

WHETHER OR NOT THE PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE DACION IN PAYMENT; AND

[2]

WHETHER OR NOT THE PETITIONER IS GUILTY OF FORUM SHOPPING.[19]

In sum, the issue to be resolved is whether or not the CA committed a reversible error in dismissing the appeal, and ruling that Advent may validly enter into a Dacion in Payment with Goldstar.

The Court's Ruling

The petition is denied.

Before proceeding to the substantive issue, the Court opts to first tackle a technical issue. The Court observed that the following two issues raised by Advent were not included in its Comment, and these were presented for the first time in its Memorandum:

[1]

WHETHER OR NOT THE PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE DACION IN PAYMENT; AND

[2]

WHETHER OR NOT THE PETITIONER IS GUILTY OF FORUM SHOPPING.[20]

Furthermore, Advent's Comment contained only one argument, that is, "[w]e humbly submit that the issues/assignment of errors presented by the petitioner are not pure questions of law." [21] Advent did not reiterate this argument in its Memorandum and instead focused its discussion on the two new Issues.

The Court specifically stated in its Notice, [22] dated November 10, 2014, that "[n]o new issues may be raised by a party in his/its memorandum and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned." [23] Advent's failure to abide with the Court's notice violates the principles of due process and fair play. By not incorporating the two new issues in its Comment, Goldstar was not given the opportunity to submit its counter-arguments in its Reply. In *De los Santos v. Lucenio*, [24] the Court held "that x x x belated allegations x x x changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process." Thus, the Court resolves to disregard the new issues raised, and considers as waived or abandoned its original argument in the Comment.

We now proceed to the substantive issue of whether or not the CA committed a reversible error in dismissing the appeal, and ruling that Advent may validly enter into a Dacion in Payment with Goldstar.

The CA held that the transfer of rights or credits from Advent to DBP was conditioned on Advent's default in payment. The CA based its Decision on Sections 8 and 12 of the Deed of Assignment, which clearly indicate that

Advent has the right to administer and enforce the loan, and unless it is in default in its payment to DBP, only then can DBP substitute Advent as a creditor of Investment Enterprises.

8. In accordance with the SLA, the administration and enforcement of the Project Loan/s, including all matters provided for or contemplated by the Project Loan Agreement/s, the note/s, lien instruments, insurance policy/ies and other documents relating to the Project Loan/s, shall be handled solely by the ASSIGNOR [Advent]. x x x

x x x x

12. Any provision herein to the contrary notwithstanding, should the ASSIGNOR be in default under the terms of the SLA, the ASSIGNEE may, at its option, enforce, sue on, collect, or take over the collection of payments then or thereafter due on the note/s and notify the IE/s of the same to make payment to the ASSIGNEE or take such steps or remedies as it may deem proper or necessary to collect the proceeds of the note/s or to recover upon the liens, collaterals, insurance policies and other documents relating to the Project Loan/s for purposes of satisfying its claim on the Subsidiary Loan/s.[25] (Emphases supplied)

The Court agrees with the CA's finding, and found more bases to support the CA's Decision. Section 9 of the Deed of Assignment is crystal clear that Advent shall deal with Investment Enterprises, unless declared in default.

9. x x x. Accordingly, the ASSIGNOR shall, unless an Event of Default (as defined in the SLA) is declared, continue to deal with the IE/s, and payment of the obligations arising from the Project Loans, the note/s, lien instruments, insurance policy and other documents relating to the Project Loans when made to the ASSIGNOR shall effectively discharge such obligations of the IE/s.[26] (Emphasis supplied)

The Court further observed that Section 10 of the Deed of Assignment authorizes Advent to act as DBP's attorney-in-fact and to enter into any contract with Goldstar pertaining to its loan.

10. Should the ASSIGNOR, in the exercise of its power under the next preceding paragraph, declare the entire outstanding balance of the Project Loan/s immediately due and payable, it is understood that the ASSIGNOR shall act, as it is hereby constituted and appointed to act, as the duly authorized attorney-in-fact of the ASSIGNEE, insofar as its rights, interest and participation then existing, in the notes, the Project Loan Agreement/s, lien instruments, insurance policy/ies and documents relating to the IE/s' loan are concerned, for purposes of such action, proceeding or remedy as the ASSIGNOR may deem necessary, convenient or expedient to recover any and all amounts due and owing from the IE/s. As such attorney-in-fact, the ASSIGNOR shall have in addition to its power to prosecute any such action, proceedings or remedy, the power to take or rec over possession of, lease, collect rentals for, make repairs or improvements on, or execute any contract of sale, lease or other transaction concerning the properties or collaterals mortgaged as security for the payment of the note/s, and to exercise such powers, rights as may be necessary to protect the interest of the ASSIGNEE. x x x[27] (Emphases supplied)

Section 10 of the Deed of Assignment gives Advent the authority to act in behalf of DBP in case the Project Loans are declared due and demandable. Advent has the power to enter into a contract with Investment Enterprises, such as Goldstar, to secure payment of an outstanding obligation, and to do acts to protect not just its interest as creditor, but also of DBP as assignee.

In sum, both Sections 9 and 10 of the Deed of Assignment are proof that Advent may validly enter in a Dation in Payment with Goldstar. Sections 9 and 10 validate the Dacion in Payment and the Memorandum signed by Goldstar and Advent, as they settle a due and demandable loan and, at the same time, secure Advent's loan to DBP.

Article 1159 of the New Civil Code states that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." If the terms of a contract are clear and leave no

doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall control.[28] In its Decision, the CA simply enforced what was stated in the terms and conditions of the Deed of Assignment. Having established its basis in law and evidence on record, we see no error in the CA's Decision.

Goldstar's argument that Advent was no longer its creditor at the time the Dation in Payment and the Memorandum were signed is untenable, because the Deed of Assignment specifically provides a condition before DBP may exercise its rights as assignee. The deed clearly stated that Advent must be declared in default before DBP may take over as assignee of the Project Loans. The unanimous finding of the trial court and the appellate court that the condition was not met is persuasive and binding upon the Court in the absence of substantial evidence to the contrary.

Goldstar further avers that DBP's letter dated July 28, 2000, directing it to pay its loan to the latter, is an indication that Advent had defaulted in its payment and DBP is now its new creditor. The letter states that DBP was exercising its rights under the Deed of Assignment, as amended, and that it is now substituting Advent as the new creditor of Goldstar. The pertinent body of the letter declares:

We refer to your subloan which was funded under the Wholesale Lending Program of the Development Bank of the Philippines (DBP) and assigned to DBP by All Asia Capital and Trust Corporation (AACTC) [now Advent] under its Deed of Assignment dated November 24, 1998, as amended on July 27, 2000.

Under the terms and conditions of said Deed of Assignment of AACTC, as amended, the latter assigns, transfers and conveys in favor of DBP, its titles and interests in and to the credits specifically set forth in the subloan agreements executed between AACTC and its borrowers, including the mortgages, pledges, guarantees and other collaterals securing the subloans. By virtue of this provision, there is now a substitution of creditor and DBP is now effectively your creditor. Hence, the OECF obligation under your AACTC subloan is now transferred to DBP and becomes your direct obligation to DBP.

For this reason, we now request you to pay directly to DBP all amortizations falling due on your account until its maturity on December 24, 2005. We shall regularly send you the billing statements for amortizations falling due for your reference in making the remittances.[29] (Emphases supplied)

Goldstar's argument is unsustainable. First, whether or not Advent has defaulted in its payment since July 28, 2000 is a question of fact, which should be left for the trial court to decide. Second, the letter is immaterial and irrelevant in resolving whether or not Advent may validly enter into a Dation in Payment at the time of its execution on May 26, 2000. The basis of the letter is the Amendment and Addendum, which is inexistent at the time the Dation in Payment was signed. Further, the letter does not change the fact that, at the time of the execution of the Dation in Payment, Advent has the right to enter into any contract with Investment Enterprises, like Goldstar, under the original terms of the Deed of Assignment.

Article 1315 of the New Civil Code provides that "[c]ontracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law." [30] From the moment Goldstar and Advent executed the Dation in Payment, Goldstar agreed to transfer its rights and titles over the mortgaged properties as settlement of its loan obligation. Goldstar cannot resort to delaying tactics in fulfilling its part of the contract, by alleging amendments in the Deed of Assignment. To reiterate, the Dation in Payment was signed on May 26, 2000, while the Amendment and Addendum was executed two months later on July 27, 2000. Undoubtedly, the Amendment and Addendum was non-existent at the time Goldstar and Advent signed the Dation in Payment. Therefore, Goldstar cannot rely on a non-existing document to nullify a legally binding agreement. The original terms of the Deed of Assignment prevail; in which case, Advent is the creditor and has the right to collect and manage Goldstar's loan.

Section 1, Rule 45 of the Rules of Court states that only questions of law may be raised. While jurisprudence provided several exceptions to this rule, the petitioner must allege, substantiate, and prove the applicable exception/s so that the Court may review the facts of the case.[31] Otherwise, the factual findings of the trial court, when affirmed by the CA, are binding on the Court.

Here, Goldstar failed to demonstrate how the CA's factual findings presented an error of law. Goldstar's allegations on how the CA erred in ruling that DBP may take over only when Advent is in default and in disregarding DBP's letter rely on a re-evaluation of the evidence. Goldstar failed to prove that its petition falls under any of the exceptions to the general rule allowing only questions of law to be raised in a petition for review, so that this Court may review the evidence presented.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals-Cagayan De Oro City Decision dated May 30, 2013 and its Resolution dated January 13, 2014 in CA-G.R. CV No. 02341-MIN are AFFIRMED.

SO ORDERED.

Peralta (Chairperson), Leonen, Gesmundo, and Hernando, JJ., concur.

Also referred to as "All Asia Capital and Trust Corporation" in some parts of the rollo.

[1] Rollo, p. 28.

[2] Id.

[3] Id.

[4] Id. at 149.

[5] Id. at 28-29.

[6] Id. at 29.

[7] Id.

[8] Id. at 29-30.

[9] Penned by Presiding Judge Isaac G. Robillo, Sr.; id. at 27.

[10] Id. at 30-31.

[11] Id. at 31.

[12] Id.

[13] Penned by Associate Justice Renato C. Francisco, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring; id. at 27-37.

[14] Id. at 33-35.

[15] Id. at 35-36.

[16] Id. at 36.

[17] Id. at 42-43.

[18] Id. at 151.

[19] Id. at 131.

[20] Id.

[21] Id. at 98.

[22] Id. at 121-122.

[23] Id. at 122.

[24] G.R. No. 215659, March 19, 2018.

[25] Rollo, pp. 199-200.

[26] Id.

[27] Id. at 200.

[28] Hilltop Market Fish Vendors' Association, Inc. v. Hon. Yaranon, G.R. No. 188057, July 12, 2017.

[29] Rollo, p. 203.

[30] Ka Kuen Chua, doing business under the name and style Ka Kuen Chua Architectural v. Colorite Marketing Corp., G.R. Nos. 193969-70 and 194027-28, July 5, 2017.

[31] Dee Hwa Liang Foundation Medical Center and Anthony Dee v. Asiamed Supplies and Equipment Corp., G.R. No. 205638, August 23, 2017.

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