

**THE MANILA BANKING CORPORATION, PLAINTIFF-APPELLEE, VS.
ANASTACIO TEODORO, JR., AND GRACE ANNA TEODORO,
DEFENDANTS-APPELLANTS.**

G.R. No. 53955. January 13, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision[*] of the Court of First Instance of Manila, Branch XVII in Civil Case No. 78178 for collection of sum of money based on promissory notes executed by the defendants-appellants in favor of plaintiff-appellee bank. The dispositive portion of the appealed decision (Record on Appeal, p. 33) reads as follows:

"WHEREFORE judgment is hereby rendered (a) sentencing defendants, Anastacio Teodoro, Jr. and Grace Anna Teodoro jointly and severally, to pay plaintiff the sum of P15,037.11 plus 12% interest per annum from September 30, 1969 until fully paid, in pay-ment of Promissory Notes No. 11487, plus the sum of P1,000.00 as attorney's fees; and (b) sentencing defendant Anastacio Teodoro, Jr. to pay plaintiff the sum of P8,934.74, plus interest at 12% per annum from September 30, 1969 until fully paid, in payment of Promissory Notes Nos. 11515 and 11699, plus the sum of P500.00 as attorney's fees.

With costs against defendants."

The facts of the case as found by the trial court are as follows:

"On April 25, 1966, defendants, together with Anastacio Teodoro, Sr., jointly and severally, executed in favor of plaintiff a Promissory Note (No. 11487) for the sum of P10,420.00 payable in 120 days, or on August 25, 1966, at 12% interest per annum. Defendants failed to pay the said amount in spite of repeated demands and the obligation as of September 30, 1969 stood at P15,137.11 including accrued interest and service charge.

On May 3, 1966 and June 20, 1966, de-fendants Anastacio Teodoro, Sr. (Father) and Anastacio Teodoro, Jr. (Son) executed in favor of plaintiff two Promissory Notes (Nos. 11515 and 11699) for P8,000.00 and P1,000.00 re-spectively, payable in 120 days at 12% interest per annum. Father and Son made a partial pay-ment on the May 3, 1966 Promissory Note but none on the June 20, 1966 Promissory Note, leaving still an unpaid balance of P8,934.74 as of September 30, 1969 including accrued interest and service charge.

The three Promissory Notes stipulated that any interest due if not paid at the end of every month shall be added to the total amount then due, the whole amount to bear interest at the rate of 12% per annum until fully paid; and in case of collection through an attorney-at-law, the makers shall, jointly and severally, pay 10% of the amount over-due as attorney's fees, which in no case shall be less than P200.00.

It appears that on January 24, 1964, the Son executed in favor of plaintiff a Deed of Assignment of Receivables from the Emergency Employment Administration in the sum of P44,635.00. The Deed of Assignment provided that it was for and in consideration of certain credits, loans, overdrafts and other credit accommodations extended to defendants as security for the payment of said sum and the interest thereon, and

that defendants `do hereby remise, release and quitclaim all its rights, title, and interest in and to the accounts receivables.' Further:

'(1) the title and right of pos-session to said accounts receivable is to remain in the assignee, and it shall have the right to collect the same from the debtor, and whatsoever the Assignor does in connection with the collection of said accounts, it agrees to do as agent and representative of the Assignee and in trust for said Assignee x x x;

(6) The Assignor guarantees the existence and legality of said accounts receivable, and the due and punctual pay-ment thereof unto the assignee, x x x on demand, x x x and further, that Assignor warrants the solvency and credit worthi-ness of each and every account.

(7) The Assignor does hereby guarantee the payment when due of all sums payable under the contracts giving rise to the accounts receivable x x x including reasonable attorney's fees in enforcing any rights against the debtors of the assigned accounts receivable and will pay upon demand, the entire unpaid balance of said contract in the event of non--payment by the said debtors of any monthly sum at its due date or of any other default by said debtors x x x.

(9) x x x This Assignment shall also stand as a continuing guarantee for any and all whatsoever there is or in the future there will be justly owing from the Assignor to the Assignee x x x.'

In their stipulations of Fact, it is admitted by the parties that plaintiff ex-tended loans to defendants on the basis and by reason of certain contracts entered into by the defunct Emergency Employment Adminis-tration (EEA) with defendants for the fabri-cation of fishing boats, and that the Philippine Fisheries Commission succeeded the EEA after its abolition; that non-payment of the notes was due to the failure of the Commission to pay defendants after the latter had complied with their contractual obligations; and that the President of plaintiff Bank took steps to collect from the Commission, but no col-lection was effected.

For failure of defendants to pay the sums due on the Promissory Notes, this action was instituted on November 13, 1969, originally against the Father, Son, and the latter's wife. Because the Father died, however, during the pendency of the suit, the case as against him was dismissed under the provisions of Section 21, Rule 3 of the Rules of Court. The action, then is against defendants Son and his wife for the collection of the sum of P15,037.11 on Promissory Note No. 14487; and against defendant Son for the recovery of P8,394.74 on Promissory Notes Nos. 11515 and 11699, plus interest on both amounts at 12% per annum from September 30, 1969 until fully paid, and 10% of the amounts due as attorney's fees.

Neither of the parties presented any testimonial evidence and submitted the case for decision based on their Stipulations of Fact and on their documentary evidence.

The issues, as defined by the parties are: (1) whether or not plaintiff's claim is already considered paid by the Deed of Assignment of Receivables by the Son; and (2) whether or not it is plaintiff who should directly sue the Philippine Fisheries Commission for collection." (Record on Appeal, p. 29-32).

On April 17, 1972, the trial court rendered its judgment adverse to defendants. On June 8, 1972, defendants filed a motion for reconsideration (Record on Appeal, p. 33) which was denied by the trial court in its order of June 14, 1972 (Record on Appeal, p. 37). On June 23, 1972, defendants filed with the lower court their notice of appeal together with the appeal bond (Record on Appeal, p. 38). The record of appeal was forwarded to the Court of Appeals on August 22, 1972 (Record on Appeal, p 42).

In their appeal (Brief for the Appellants, Rollo, p. 12), appellants raised a single assignment of error, that is -

"THAT THE DECISION IN QUESTION AMOUNTS TO A JUDICIAL REMAKING OF THE CONTRACT BETWEEN THE PARTIES, IN VIOLATION OF LAW; HENCE, TANTAMOUNT TO LACK OR EXCESS

OF JURISDICTION."

As the appeal involves a pure question of law, the Court of Appeals, in its resolution promulgated on March 6, 1980, certified the case to this Court (Rollo, p. 24). The Record on Appeal was forwarded to this Court on March 31, 1980 (Rollo, p. 1).

In the resolution of May 30, 1980, the First Division of this Court ordered that the case be docketed and declared submitted for decision (Rollo, p. 33).

On March 7, 1988, considering the length of time that the case has been pending with the Court and to determine whether supervening events may have rendered the case moot and academic, the Court resolved (1) to require the parties to MOVE IN THE PREMISES within thirty days from notice, and in case they fail to make the proper manifestation within the required period, (2) to consider the case terminated and closed with the entry of judgment accordingly made thereon (Rollo, p. 40).

On April 27, 1988, appellee moved for a resolution of the appeal/review interposed by defendants-appellants (Rollo, p. 41).

The major issues raised in this case are as follows: (1) whether or not the assignment of receivables has the effect of payment of all the loans contracted by appellants from appellee bank; and (2) whether or not appellee bank must first exhaust all legal remedies against the Philippine Fisheries Commission before it can proceed against appellants for collections of loan under the promissory notes which are plaintiff's bases in the action for collection in Civil Case No. 78178.

"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 need of the consent of the debtor, transfers his credit and its accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor. x x x It may be in the form of a 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, or it may constitute a donation as when it is by gratuitous title; or it may even be merely by way of guaranty, as when the creditor gives as a collateral, to secure his own debt in favor of the assignee, without transmitting ownership. The character that it may assume determines its requisites and effects, its regulation, and the capacity of the parties to execute it; and in every case, the obligations between assignor and assignee will depend upon the judicial relation which is the basis of the assignment" (Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 5, pp. 165-166).

There is no question as to the validity of the assignment of receivables executed by appellants in favor of appellee bank. The issue is with regard to its legal effects.

I

It is evident that the assignment of receivables executed by appellants on January 24, 1964 did not transfer the ownership of the receivables to appellee bank and release appellants from their loans with the bank incurred under promissory notes Nos. 11487, 11515 and 11699.

The Deed of Assignment provided that it was for and in consideration of certain credits, loans, overdrafts, and their credit accommodations in the sum of P10,000.00 extended to appellants by appellee bank, and as security for the payment of said sum and the interest thereon; that appellants as assignors, remise, release, and quitclaim to assignee bank all their rights, title and interest in and to the accounts receivable assigned (1st paragraph). It was further stipulated that the assignment will also stand as a continuing guaranty for future loans of appellants to appellee bank and correspondingly the assignment shall also extend to all the accounts receivable; appellants shall

also obtain in the future, until the consideration on the loans secured by appellants from appellee bank shall have been fully paid by them (No. 9).

The position of appellants, however, is that the deed of assignment is a quitclaim in consideration of their indebtedness to appellee bank, not mere guaranty, in view of the following provisions of the deed of assignment:

"x x x the Assignor do hereby remise, release and quit-claim unto said assignee all its rights, title and interest in the accounts receivable described hereunder." (Underscoring supplied by appellants, first par., Deed of Assignment)."

"x x x that the title and right of possession to said account receivable is to remain in said assignee and it shall have the right to collect directly from the debtor, and whatsoever the Assignor does in connection with the collection of said accounts, it agrees to do so as agent and representative of the Assignee and in trust for said Assignee x x x" (Ibid, par. 2 of Deed of Assignment)." (Record on Appeal, p. 27)

The character of the transactions between the parties is not, however, determined by the language used in the document but by their intention. Thus, the Court, quoting from the American Jurisprudence (68 2d, Secured Transaction, Section 50) said:

"The character of the transaction between the parties is to be determined by their intention, regardless of what language was used or what the form of the transfer was. If it was intended to secure the payment of money, it must be construed as a pledge. However, even though a transfer, if regarded by itself, appears to have been absolute, its object and character might still be qualified and explained by a contemporaneous writing declaring it to have been a deposit of the property as collateral security. It has been said that a transfer of property by the debtor to a creditor, even if sufficient on its face to make an absolute conveyance, should be treated as a pledge if the debt continues in existence and is not discharged by the transfer, and that accordingly, the use of the terms ordinarily importing conveyance, of absolute ownership will not be given that effect in such a transaction if they are also commonly used in pledges and mort-gages and therefore do not unqualifiedly indicate a transfer of absolute ownership, in the absence of clear and ambiguous language or other circumstances excluding an intent to pledge." (Lopez v. Court of Appeals, 114 SCRA 671 [1982]).

Definitely, the assignment of the receivables did not result from a sale transaction. It cannot be said to have been constituted by virtue of a dation in payment for appellants' loans with the bank evidenced by promissory note Nos. 11487, 11515 and 11699 which are the subject of the suit for collection in Civil Case No. 78178. At the time the deed of assignment was executed, said loans were non-existent yet. The deed of assignment was executed on January 24, 1964 (Exh. "G"), while promissory note No. 11487 is dated April 25, 1966 (Exh. "A"), promissory note 11515, dated May 3, 1966 (Exh. "B"), and promissory note 11699, on June 20, 1966 (Exh. "C"). At most, it was a dation in payment for P10,000.00 the amount of credit from appellee bank indicated in the deed of assignment. At the time the assignment was executed, there was no obligation to be extinguished except the amount of P10,000.00. Moreover, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other (Article 1292, New Civil Code).

Obviously, the deed of assignment was intended as collateral security for the bank loans of appellants, as a continuing guaranty for whatever sums would be owing by defendants to plaintiff, as stated in stipulation No. 9 of the deed.

In case of doubt as to whether a transaction is a pledge or a dation in payment, the presumption is in favor of pledge, the latter being the lesser transmission of rights and interests (Lopez v. Court of Appeals, supra).

In one case, the assignments of rights, title and interest of the defendant in the contracts of lease of two buildings

as well as her rights, title and interest in the land on which the buildings were constructed to secure an overdraft from a bank amounting to P110,000.00 which was increased to P150,000.00, then to P165,000.00 was considered by the Court to be documents of mortgage contracts inasmuch as they were executed to guarantee the principal obligations of the defendant consisting of the overdrafts or the indebtedness resulting therefrom. The Court ruled that an assignment to guarantee an obligation is in effect a mortgage and not an absolute conveyance of title which confers ownership on the assignee (*Peoples Bank & Trust Co. v. Odom*, 64 Phil. 126 [1937]).

II

As to whether or not appellee bank must have to exhaust all legal remedies against the Philippine Fisheries Commission before it can proceed against appellants for collection of loans under their promissory notes, must also be answered in the negative.

The obligation of appellants under the promissory notes not having been released by the assignment of receivables, appellants remain as the principal debtors of appellee bank rather than mere guarantors. The deed of assignment merely guarantees said obligations. That the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor, under Article 2058 of the New Civil Code does not therefore apply to them. It is of course of the essence of a contract of pledge or mortgage that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor (Article 2087, New Civil Code). In the instant case, appellants are both the principal debtors and the pledgors or mortgagors. Resort to one is, therefore, resort to the other.

Appellee bank did try to collect on the pledged receivables. As the Emergency Employment Agency (EEA) which issued the receivables had been abolished, the collection had to be coursed through the Office of the President which disapproved the same. (Record on Appeal, p. 16). The receivable became virtually worthless leaving appellants' loans from appellee bank unsecured. It is but proper that after their repeated demands made on appellants for the settlement of their obligations, appellee bank should proceed against appellants. It would be an exercise in futility to proceed against a defunct office for the collection of the receivables pledged.

WHEREFORE, the appeal is Dismissed for lack of merit and the appealed decision of the trial court is affirmed in toto.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Cortes, JJ., concur.

Feliciano, J., see concurring opinion.

[*]Penned by then Judge of the Court of First Instance of Manila, Ameurfina Melencio-Herrera, now Associate Justice of the Court.

CONCURRING OPINION

FELICIANO, J.:

I quite agree with the general reasoning of and the results reached by my distinguished brother Bidin in respect of both of the principal issues he addressed in his opinion.

I would merely wish to add a few lines in respect of the point made by Bidin, J., that "the character of the transactions between the parties is not, however, determined by the language used in the document but by their intention." This statement is basically not exceptionable, so far as it goes. It might, however, be borne in mind that

the intent of the parties to the transaction is to be determined, in the first instance, by the very language which they used. The deed of assignment contains language which suggest that the parties intended to effect a complete alienation of title to and rights over the receivables which are the subject of the assignment. This language is comprised of words like "remise," "release and quitclaim" and clauses like "the title and right of possession to said accounts receivable is to remain in said assignee" who "shall have the right to collect directly from the debtor." The same intent is also suggested by the use of the words "agent and representative of the assignee" in referring to the assignor.

The point that appears to me to be worth making is that although in its form, the deed of assignment of receivables partakes of the nature of a complete alienation of the receivables assigned, such form should be taken in conjunction with, and indeed must be qualified and controlled by, other language showing an intent of the parties that title to the receivables shall pass to the assignee for the limited purpose of securing another principal, obligation owed by the assignor to the assignee. Title moves from assignor to assignee but that title is defeasible being designed to collateralize the principal obligation. Operationally, what this means is that the assignee is burdened with an obligation of taking the proceeds of the receivables assigned and applying such proceeds to the satisfaction of the principal obligation and returning any balance remaining thereafter to the assignor.

The parties gave the deed of assignment the form of an absolute conveyance of title over the receivables assigned, essentially for the convenience of the assignee. Without such formally unlimited conveyance of title, the assignee would have to treat the deed of assignment as no more than a deed of pledge or of chattel mortgage. In other words, in such hypothetical case, should the assignee seek to realize upon the security given to him through the deed of assignment (which would then have to comply with the documentation and registration requirements of a pledge or chattel mortgage), the assignee would have to foreclose upon the securities or credits assigned and place them on public sale and there acquire the same. It should be recalled that under the principle which forbids a pactum commisorium (Article 2088, Civil Code), a mortgagee or pledgee is prohibited from simply taking and appropriating the personal property turned over to him as security for the payment of a principal obligation. A deed of assignment by way of security avoids the necessity of a public sale imposed by the rule on pactum commisorium, by in effect placing the sale of the collateral up front.

The foregoing is applicable where, as in the present instance, the deed of assignment of receivables combines elements of both a complete or absolute alienation of the credits being assigned and a security arrangement to assure payment of a principal obligation. Where the second element is absent, that is, where there is nothing to indicate that the parties intended the deed of assignment to function as a security device, it would of course follow that the simple absolute conveyance embodied in the deed of assignment would be operative; the assignment would constitute essentially a mode of payment or dacion en pago. Put a little differently, in order that a deed of assignment of receivables which is in form an absolute conveyance of title to the credits being assigned, may be qualified and treated as a security arrangement, language to such effect must be found in the document itself and that language, precisely, is embodied in the deed of assignment in the instant case. Finally, it might be noted that that deed simply follows a form in standard use in commercial banking.

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