

PHILIPPINE NATIONAL BANK, PETITIONER, VS. GLORIA G. VDA. DE ONG ACERO, ARNOLFO ONG ACERO & SOLEDAD ONG ACERO CHUA, RESPONDENTS.*G.R. No. 69255. February 27, 1987*

Ponente: NARVASA, J.

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Savings Account No. 010-5878868-D of Isabela Wood Construction & Development Corporation, opened with the Philippine National Bank on March 9, 1979 in the amount of P2 million, is the subject of two (2) conflicting claims, sought to be definitively resolved in the proceedings at bar.[1] One claim is asserted by the ACEROS — Gloria G. Vda. de Ong Acero, Arnolfo Ong Acero and Soledad Ong Acero-Chua, judgment creditors of the depositor (hereafter simply referred to as ISABELA) — who seek to enforce against said savings account the final and executory judgment rendered in their favor by the Court of First Instance of Rizal (QC Br. XVI). The other claim has been put forth by the Philippine National Bank (hereafter, simply PNB) which claims that since ISABELA was at some point in time both its debtor and creditor — ISABELA's deposit being deemed a loan to it (PNB) — there had occurred a mutual set-off between them, which effectively precluded the ACEROS' recourse to that deposit.

The controversy was decided by the Intermediate Appellate Court adversely to the PNB. It is this decision that the PNB would have this Court reverse.

The ACEROS' claim to the bank deposit is more specifically founded upon the garnishment thereof by the sheriff, effected in execution of the partial judgment rendered by the CFI at Quezon City in their favor on November 18, 1979. The partial judgment ordered payment by ISABELA to the ACEROS of the amount of P1,532,000.07.[2] Notice of garnishment was served on the PNB on January 9, 1980, pursuant to the writ of execution dated December 23, 1979.[3] This was followed by an Order issued on February 15, 1980 directing PNB to hand over this amount of P1,532,000.07 to the sheriff for delivery, in turn, to the ACEROS. Not quite two months later, or on April 8, 1980, a second (and the final and complete judgment) was promulgated by the CFI in favor of the ACEROS and against ISABELA, the dispositive part of which is as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendant:

- Reiterating the dispositive portion of the partial judgment issued by this Court, dated November 16, 1979, ordering the defendant to pay to the plaintiff the amount of P1,532,000.07 as principal, with interest at 12% per annum from December 11, 1975 until the whole amount is fully paid;
- Ordering defendant to pay the plaintiffs the amount of P207,148.00 as compensatory damages, with legal interest thereon from the filing of the complaint until the whole amount is fully paid;
- Ordering defendant to pay plaintiffs the amount of P383,000.00 as and by way of attorney's fees."[4]

On the other hand, PNB's claim to the two-million-peso deposit in question is made to rest on an agreement between it and ISABELA in virtue of which, according to PNB: (1) the deposit was made by ISABELA as "collateral" in connection with its indebtedness to PNB as to which it (ISABELA) had assumed certain contractual undertakings; and (2) in the event of ISABELA's failure to fulfill those undertakings, PNB was empowered to apply the deposit to the payment of that indebtedness. The facts upon which PNB's theory stands are summarized in the Order of CFI Judge Solano dated October 1, 1982,[5] relevant portions of which are here reproduced: "On October 13, 1977, Isabela Wood Construction and Development Corporation ** entered into a Credit Agreement with PNB. Under the agreement PNB, having approved the application of defendant (Isabela & c.) for the establishment for its account of a deferred letter of credit in the amount of DM 4,695,947.00 in favor of the Maschinenfabrik Augsburg Nunberg (MAN) of Germany from whom defendant purchased thirty-five (35) units of MAN trucks, defendant corporation agreed to put up, as collaterals, among others, the following:

'4. The CLIENT shall assign to the BANK the proceeds of its contract with the Department of Public Works for the construction of Nagapit Suspension Bridge (Substructure) in Cagayan.'

This particular proviso in the aforesaid agreement was to be subsequently confirmed by Faustino Dy, Jr., as president of defendant corporation, in a letter to the PNB, dated February 21, 1970, quoted in full as follows:

"Gentlemen:

This is to confirm our arrangement that the treasury warrant in the amount of P2,704 million in favor of Isabela Wood Construction and Development Corporation to be delivered either by the Commission on Audit or the Ministry of Public Highways, shall be placed in a savings account with your bank to the extent of P2 million.

'The said amount shall remain in the savings account until we are able to comply with the delivery and registration of the mortgage in favor of the Philippine National Bank of our Parañaque property, and the securing from Metropolitan Bank and Home Owners Savings and Loan Association to allow PNB a second mortgage on the properties of Isabela Wood Construction Group, Inc., presently under first mortgage with them.'

Thus, on March 9, 1970, pursuant to paragraph 4 of the Credit Agreement, pursuant to paragraph 4 of the Credit Agreement quoted above, PNB thru its International Department opened the savings account in question, under Account No. 010-58768-D, with an initial deposit of P2,000,000.00, proceeds of a treasury warrant delivered to PNB (EXHIBIT 3-A).

Since defendant corporation failed to deliver to PNB by way of mortgage its Parañaque property, neither was defendant corporation able to secure from Metropolitan Bank and Home Owners Savings and Loan Association its consent to allow PNB a second mortgage, and considering that the obligation of defendant corporation to PNB have been due and unsettled PNB applied the amount of P2,102804.11 in defendant's savings account of PNB."

It was upon this version of the facts, and its theory thereon based of a mutual set-off, or compensation, between it and ISABELA — in accordance with Articles 1278 et seq of the Civil Code — that PNB intervened in the action between the ACEROS and ISABELA on or about February 28, 1980 and moved for reconsideration of the Order of February 15, 1980 (requiring it to turn over to the sheriff the sum of P1,532,000.07, supra: fn. 2). But its motion met with no success. It was denied by the Lower Court (Hon. Judge Apostol, presiding) by Order dated

May 14, 1980.[6] And a motion for the reconsideration of that Order of May 14, 1980 was also denied, by Order dated August 11, 1980.

PNB again moved for reconsideration, this time of the Order of August 11, 1980; it also pleaded for suspension in the meantime of the enforcement of the Orders of February 15, and May 14, 1980. Its persistence seemingly paid off. For the Trial Court (now presided over by Hon. Judge Solano), directed on October 9, 1980 the setting aside of said Orders of May 14, and August 11, 1980, and set for hearing PNB's first motion for the reconsideration of the Order of February 15, 1980.[7] Several months afterwards, or more precisely on October 1, 1982, the Order of February 15, 1980 was itself also struck down,[8] the Lower Court opining that under the circumstances, there had been a valid assignment by ISABELA to PNB of the amount deposited, which effectively placed that amount beyond the reach of the ACEROS, viz:

"When the two million or so treasury warrant, proceeds of defendant's contract with the government was delivered to PNB, said amount, per agreement aforequoted, had already been assigned by defendant corporation to PNB, as collateral.

The said amount is not a pledge.

The assignment is valid. The defendant need not be the owner thereof at the time of assignment.

'An assignment of credit and other incorporeal rights shall be perfected in accordance with the provisions of Article 1475.

'The contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the interest and upon its price.'

It is not necessary for the perfection of the contract of sale that the thing be delivered and that the price be paid. Neither is it necessary that the thing should belong to the vendor at the time of the perfection of the contract, it being sufficient that the vendor has the right to transfer ownership thereof at the time it is delivered."

The shoe was now on the other foot. It was the ACEROS' turn to move for reconsideration, which they did as regards this Order of October 1, 1982; but by Order promulgated on December 14, 1982, the Court declined to modify its resolution.

The ACEROS then appealed to the Intermediate Appellate Court which, after due proceedings, sustained them. On September 14, 1984, it rendered judgment the dispositive part whereof reads as follows:

"WHEREFORE, the Orders of October 1 and December 14, 1982 of the Court a quo are hereby REVERSED and SET ASIDE, and in their stead, it is hereby adjudged:

- That the Order of February 15, 1980 of the Court a quo is hereby ordered reinstated;
- That intervenor PNB must deliver the amount stated in the Order of February 15, 1980 with interest thereon at 12% from February 15, 1980 until delivered to appellants, the amount of interest to be paid by PNB and not to be deducted from the deposit of Isabela Wood;
- That intervenor PNB must pay attorney's fees and expenses of litigation to appellants in the amount of P10,000.00 plus the costs of suit."[9]

This dispositive part was subsequently modified, at the ACEROS' instance, by Resolution dated November 8, 1984 which inter alia "additionally ** (ordered) PNB to likewise deliver to appellants the balance of the deposit of Isabela Wood Construction and Development Corporation after first deducting the amount applied to the partial judgment of P1,532,000.00 in satisfaction of appellants' final judgment."[10]

PNB's main thesis is that when it opened a savings account for ISABELA on March 9, 1979 in the amount of P2M, it (PNB) became indebted to ISABELA in that amount.[11] So that when ISABELA itself subsequently came to be indebted to it on account of ISABELA's breach of the terms of the Credit Agreement of October 13, 1977, and therefore ISABELA and PNB became at the same time creditors and debtors of each other, compensation automatically took place between them, in accordance with Article 1278 of the Civil Code. The amounts due from each other were, in its view, applied by operation of law to satisfy and extinguish their respective credits. More specifically, the P2M owed by PNB to ISABELA was automatically applied in payment and extinguishment of PNB's own credit against ISABELA. This having taken place, that amount of P2M could no longer be levied on by any other creditor of ISABELA, as the ACEROS attempted to do in the case at bar, in order to satisfy their judgment against ISABELA.

Article 1278 of the Civil Code does indeed provide that "Compensation shall take place when two persons, in their own right, are creditors and debtors of each other." Also true is that compensation may transpire by operation of law, as when all the requisites therefor, set out in Article 1279, are present. Nonetheless, these legal provisions can not apply to PNB's advantage under the circumstances of the case at bar.

The insuperable obstacle to the success of PNB's cause is the factual finding of the IAC, by which upon firmly established rules even this Court is bound[12], that it has not proven by competent evidence that it is a creditor of ISABELA. The only evidence presented by PNB towards this end consists of two (2) documents marked in its behalf as Exhibits 1 and 2. But as the IAC has cogently observed, these documents do not prove any indebtedness of ISABELA to PNB. All they do prove is that a letter of credit might have been opened for ISABELA by PNB, but not that the credit was ever availed of (by ISABELA's foreign correspondent [MAN]), or that the goods thereby covered were in fact shipped, and received by ISABELA.

Quite obviously, as the IAC has further observed, the most persuasive evidence of these facts — i.e., ISABELA's availment of the credit, as well as the actual delivery of the goods covered by and shipped pursuant to the letter of credit — assuming these facts to have occurred, would naturally and logically have been in PNB's possession and could have been readily submitted to the Court, to wit:

- "1. The document of availment by the foreign creditor of the letter of credit.
2. The document of release of the amounts mentioned in the agreement.
3. The documents showing that the trucks (transported to the Philippines by the foreign creditor [MAN]) were shipped to ** and received by Isabela.
4. The trust receipts by which possession was given to Isabela of the 35 (Imported) trucks.
5. The chattel mortgages over the trucks required under No. 3 of II Collaterals of the Credit Agreement (Exhibit 1).
6. The receipt by Isabela of the standing accounts sent by PNB.
7. The receipt of the letter of demand by Isabela Wood." [13]

It bears stressing that PNB did not at all want for opportunity to produce these documents, if it does indeed have them. Judge Solano, it should be recalled, specifically allowed PNB to introduce evidence in relation to its Motion for Reconsideration filed on August 26, 1980.[14] and thus furnished the occasion for PNB to prove, among others, ISABELA's debt to it. PNB unaccountably failed to do so. Moreover, PNB never even attempted to offer or exhibit such evidence, in the course of the appellate proceedings before the IAC, which is a certain indication, in that Court's view, that PNB does not really have these proofs at all.

For this singular omission PNB offers no explanation except that it saw no necessity to submit the documents in evidence, because sometime on March 14, 1980, the ACEROS' attorney had been shown those precise documents — setting forth ISABELA's loan obligations, such as the import bills and the sight draft covering drawings on the L/C for ISABELA's account — and after all, the ACEROS had not really put this indebtedness in issue.[15] The explanation cannot be taken seriously. In the picturesque but forceful language of the Appellate Court, the explanation "is silly as you do not prove a fact in issue by showing evidence in support thereof to the opposing counsel; you prove it by submitting evidence to the proper court." The fact is that the record does not disclose that the ACEROS have ever admitted the asserted theory of ISABELA's indebtedness to PNB. At any rate, not being privies to whatever transactions might have generated that indebtedness, they were clearly not in a position to make any declaration on the matter. The fact is, too, that the avowed indebtedness of ISABELA was an essential element of PNB's claim to the former's P2 million deposit and hence, it was incumbent on the latter to demonstrate it by competent evidence if it wished its claim to be judicially recognized and enforced. This, it has failed to do. The failure is fatal to its claim.

PNB has however posited an alternative theory, which is that the P2M deposit had been assigned to it by ISABELA as "collateral", although not by way of pledge; that ISABELA had explicitly authorized it to apply the P2M deposit in payment of its indebtedness; and that PNB had in fact applied the deposit to the payment of ISABELA's debt on February 26, 1980, in concept of voluntary compensation.[16] This second, alternative theory, is as untenable as the first.

In the first place, there being no indebtedness to PNB on ISABELA's part, there is in consequence no occasion to speak of any mutual set-off, or compensation, whether it be legal, i.e., which automatically occurs by operation of law, or voluntary, i.e., which can only take place by agreement of the parties.[17]

In the second place, the documents indicated by PNB as constitutive of the claimed assignment do not in truth make out any such transaction. While the Credit Agreement of October 13, 1977 (Exh. 1) declares it to be ISABELA's intention to "assign to the BANK the proceeds of its contract with the Department of Public Works for the construction of Nagapit Suspension Bridge (Substructure) in Cagayan"[18], it does not appear that that intention was adhered to, much less carried out. The letter of ISABELA's president dated February 21, 1979 (Exh. 2) would on the contrary seem to indicate the abandonment of that intention, in the light of the statements therein that the amount of P2M (representing the bulk of the proceeds of its contract referred to) "shall be placed in a savings account" and that "said amount shall remain in the savings account until ** (ISABELA is) able to comply with" specified commitments — these being: the constitution and registration of a mortgage in PNB's favor over its "Parañaque property", and the obtention from the first mortgage thereof of consent for the creation of a second lien on the property.[19] These statements are to be sure inconsistent with the notion of an assignment of the money. In addition, there is yet another circumstance militating against the actuality of such an assignment — the "most telling argument" against it, in fact, in the mind of the Appellate Court — and that is, that PNB itself, through its International Department, deposited the whole amount of P2 million, not in its name, but in the name of ISABELA[20], without any accompanying statement even remotely intimating that it (PNB) was the owner of the deposit, or that an assignment thereof was intended, or that some condition or lien was meant to burden it.

Even if it be assumed that such an assignment had indeed been made, and PNB had been really authorized to apply the P2M deposit to the satisfaction of ISABELA's indebtedness to it, nevertheless, since the record reveals that the application was attempted to be made by PNB only on February 26, 1980, that essayed application was ineffectual and futile because at that time, the deposit was already in custodia legis, notice of garnishment thereof having been served on PNB on January 9, 1980 (pursuant to the writ of execution issued by the Court of First Instance on December 23, 1979 for the enforcement of the partial judgment in the ACEROS' favor rendered on

November 18, 1979).

One final factor precludes according validity to PNB's arguments. On the assumption that the P2M deposit was in truth assigned as some sort of "collateral" to PNB — although as PNB insists, it was not in the form of a pledge — the agreement postulated by PNB that it had been authorized to assume ownership of the fund upon the coming into being of ISABELA's indebtedness is void ab initio, it being in the nature of a pactum commisorium, proscribed as contrary to public policy.[21]

WHEREFORE, the judgment of the Intermediate Appellate Court subject of the instant appeal, being fully in accord with the facts and the law, is hereby affirmed in toto. Costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Appeal by certiorari from the judgment of the Intermediate Appellate Court in AC-G.R. CV No. 009978: Caguioa, J. ponente.

[2] Rollo, pp. 115-116

[3] Id., p. 117

[4] Id., p. 78

[5] Id., pp. 118-121.

[6] Id., pp. 51-52.

[7] Id., pp. 117.

[8] Id., pp. 118-121.

[9] Id., p. 64.

[10] Id., p. 71.

[11] Citing: Tian Tiong Tick v. American Apothecaries, 38 O.G. 889 [65 Phil. 414]; Gullas v. National Bank, 62 Phil. 519; Rollo, pp. 31-35.

[12] Estate of R. Jalandoni vs. C.A., et al., G.R. No. 50374-76, Sept. 24, 1986, citing Sec. 2 (26 par.), Rule 45 of the Rules of Court; Terunez v. IAC, 134 SCRA 414, and other cases.

[13] Rollo, pp. 128-129

[14] Id., pp. 117-118

[15] Id., pp. 41-43

[16] Id., pp. 40-41, 126-127.

[17] SEE e.g., Caguioa, E., Comments & Cases on Civil Law, 1[st] ed. [1968], Vol. IV, p. 287 [citing 3 Castan, 8[th] ed., pp. 298-299]; Paras, Civil Code Annotated, 11th ed (1985), Vol. IV, p.409.

[18] See footnote 5, supra.

[19] See footnote 5, supra.

[20] Rollo, pp. 123-124.

[21] Art. 2088, Civil Code; Reyes v. Nebrija 98 Phil. 639.

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