

SPOUSES CONSUELO AND ARTURO ARANETA, PETITIONERS, VS. THE COURT OF APPEALS, PILIPINAS BANK AND DELTA MOTOR CORPORATION, RESPONDENTS.

G.R. No. 95253. July 10, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioners Spouses Arturo and Consuelo Araneta pray for the reversal of the respondent Court's September 13, 1990 decision[1] which affirmed the trial court's decision of February 13, 1987[2] dismissing petitioners' complaint against private respondent Pilipinas Bank for not physically delivering to them the Delta Motors Corporation Promissory Note No. 2777 Corporation (Philfinance), which was its undertaking under Denominated Custodian Receipt No. 10847 dated December 29, 1980[3] and the other private respondent Delta Motors Corporation for not honoring said promissory note it had issued to Philfinance on May 6, 1980[4] and which had matured by May 4, 1981.

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

"1. On March 2, 1978, Philfinance, then engaged in the business of trading in securities, and defendant (herein private respondent) Bank entered into a Securities Custodianship Agreement (Exh. 2-Bank) whereby the Bank was appointed as custodian of Philfinance's various government securities, promissory notes, and commercial papers issued by different companies (hereinafter referred to as "securities") and belonging to its various clients' which the latter was holding in the course of its business. This agreement was subject to terms and conditions therein provided, among which is the following:

'The custodian shall not release any of the Securities under custody except upon written instruction of the Depositor. Any instruction relating to the delivery of Securities or out of the Account shall specify the Securities to be delivered, the name and address of the party to whom the delivery is to be made, the account, if any, to be credited or debited, the time, place, terms and conditions of the delivery and such other information as may be required to permit Custodian to effect the delivery requested.'

2. On May 6, 1980, defendant (herein private respondent) Delta, as maker, issued to Philfinance, as payee, a promissory note with Serial No. 2777 in the amount of P2,000,000.00 (Exh. 2-Delta). The said note was to mature on May 4, 1981, on which date the amount payable on the said note would be P2,302,500.00. On the face of said promissory note, the words 'NON-NEGOTIABLE' are printed (Exh. 2-A, Delta). This note was subsequently delivered by Philfinance to the Bank for custody pursuant to the custodianship agreement.

3. On December 29, 1980, plaintiff-spouses, (herein petitioners) through their son, Jose Antonio Araneta, who was then the manager of the Iloilo City Branch of Philfinance, made a money market placement of P200,000.00 in the Iloilo City Branch of Philfinance. In accordance with the normal operating procedure of Philfinance in a transaction of this nature, the placement agreement was not reduced to writing, but Philfinance issued on the same day a Confirmation of Sale No. 15839 (Exh. G) and postdated checks. The confirmation of sale, which was signed by plaintiffs' son as manager, shows upon its face that Philfinance sold to plaintiffs a

Delta Motors Corporation security which would mature on March 30, 1981, although no mention is made therein of the serial number or face amount of the said security. Among the postdated checks issued was RCBC Check No. 9521077 dated March 30, 1981, in the amount of P100,000.00 which was signed by plaintiffs' son himself as branch manager of Philfinance and one Bessie Deocampo (Exh. C). The amount reflected in this check is what is now sought to be collected in this action.

In addition to the confirmation of sale and postdated checks, Philfinance also issued a Security Delivery Receipt No. 16351 (Exh. A) and a Denominated Custodian Receipt issued by defendant Bank (Exh. B). Although these two documents are dated December 29, 1980, they were actually delivered to plaintiffs by Philfinance's Iloilo City Branch a few days later because these documents had to be sent by the Makati office of Philfinance. The Security Delivery Receipt shows upon its face that Philfinance sold to plaintiffs Delta's Promissory note No. 2777 with a face value of P2,302,500.00 with maturity of May 4, 1981, and that the said security was in custodianship with defendant Bank per DCR #10847 dated December 27, 1981 (Exhs. A & A-1). The Denominated Custodian Receipt (Exh. B) shows upon its face that defendant Bank had in its custody DMC Promissory Note 2777 in the amount of P2,302,500.00 with maturity on May 4, 1981, payable to Philfinance and the lower portion of the said DCR contains the following undertaking:

'Upon your written instructions, we shall undertake physical delivery of the above securities fully assigned to you should this Denominated Custodian Receipt remain outstanding in your favor thirty (30) days after its maturity.' (Exh. B-1)

It is this undertaking by the Bank that is also the subject of plaintiffs' action against the Bank.

4. Upon maturity of the postdated RCBC check (Exh. C), plaintiff-Arturo Araneta presented it for encashment with the Iloilo branch of the Rizal Commercial Banking Corporation on July 1, 1981, but the same was dishonored and returned to said plaintiff on the same day with the following annotation: 'Account Closed/Account Under Garnishment,' per return slip of the bank (Exh. C-1). On the following day, plaintiff-spouses jointly addressed a demand letter to defendant Bank (Exhs. D, D-1 & D-2) demanding from the latter 'the immediate physical delivery of the securities assigned to us as security for DCR No. 10847.' The said letter was received by the Bank on July 2, 1981 as shown by the notation at the foot of the letter (Exh. D--3).

5. On July 9, 1981, plaintiffs, thru counsel, addressed another demand-letter to defendant Bank (Exh. E) reiterating the contents of the letter dated July 2, 1981 (Exh. 2) and giving the Bank three (3) days from receipt to deliver to plaintiffs' counsel the securities covered by DCR No. 10847, otherwise plaintiffs would be constrained to institute the corresponding action.

6. On July 10, 1981, prodded by plaintiffs' letter dated July 2, 1981, defendant Bank addressed a letter to Philfinance (Exh. 6-Bank), enclosing therewith a xerox copy of plaintiffs' letter, wherein the Bank inquired for preliminary instruction on the matter. The said letter was received by Philfinance on July 13, 1981, as shown by the stamp of receipt at the foot thereof (Exh. 6-A).

7. On July 14, 1981, the Bank addressed a letter to plaintiffs' counsel, attention Atty. Antonio T. Carpio of the Villaraza law firm (Exh. 7) informing the latter that their demand letter had already been forwarded to Philfinance for appropriate action, and that the Bank would communicate with them at the earliest possible opportunity. This letter was received by the Villaraza law firm on the same day as shown by the stamp mark of receipt. On the same day, the Bank wrote another letter to Philfinance enclosing therewith a copy of the letter dated July 9, 1981 of plaintiffs' counsel, and asking that Philfinance reply thereto as soon as possible (Exh. 7-A).

8. On November 9, 1981, Atty. Carpio of the Villaraza law firm addressed a letter to Mr. Ricardo Silverio, Chairman of Defendant Delta (Exh. F) re their clients' claim and, among other things, appealing to him personally and as Chairman of his company to pay the amount of P100,000.00.

9. On December 22, 1981, after all efforts towards a peaceful settlement of the claim had been exhausted without the desired result, plaintiffs instituted the present action."

Aside from the other defenses raised by respondent bank, it maintained that even if said security is within its custody, the same still forms part of the assets of Philfinance which have been frozen and, therefore, beyond the jurisdiction of the court a quo by virtue of the order dated June 18, 1981 of the SEC.[5]

With the resultant dismissal of its complaint and its affirmation by the appellate court, petitioners instituted this Petition for Review by certiorari and raised as errors of the respondent Court of Appeals, the following:

1. IN APPLYING AGAINST THE PETITIONERS SPOUSES ARANETA THE PROVISIONS OF THE SECURITIES CUSTODIANSHIP AGREEMENT EXECUTED BETWEEN RESPONDENT PILIPINAS BANK AND PHILFINANCE ALTHOUGH THE PETITIONERS SPOUSES ARANETA WERE NOT PARTIES THERETO.

2. IN EXONERATING THE RESPONDENT PILIPINAS BANK FROM LIABILITY ALTHOUGH IT FAILED TO COMPLY WITH ITS CONTRACTUAL OBLIGATIONS UNDER THE DENOMINATED CUSTODIAN RECEIPT TO THE DAMAGE AND PREJUDICE OF PETITIONERS SPOUSES ARANETA.

3. IN APPLYING THE PROVISIONS OF ACT NO. 2031, OTHERWISE KNOWN AS THE NEGOTIABLE INSTRUMENTS LAW, IN DETERMINING THE LIABILITY OF RESPONDENT DELTA TO PETITIONERS SPOUSES ARANETA UNDER ITS PROMISSORY NOTE, NOTWITHSTANDING THE FACT THAT SAID PROMISSORY NOTE WAS NONNEGOTIABLE.

The petitioners claim that:

"It should be stated that the obligation of respondent Pilipinas Bank to petitioners Spouses Araneta was to physically deliver the promissory note which was the evidence of the monetary obligation of Philfinance to petitioners Spouses Araneta. Thus, it is not relevant that the assets and corporate funds of Philfinance were frozen by the Securities and Exchange Commission inasmuch as it was only the document evidencing the right to a part of such funds of Philfinance, i.e. the promissory note, which was to be delivered by respondent Pilipinas Bank, and not the funds themselves. x x x"

They claim further that the Denominated Custodian Receipt clearly had May 4, 1981 as its maturity date and that when they had demanded on July 2 and 9, 1981 that respondent Pilipinas Bank physically deliver the security to them it had been outstanding for more than thirty days after its receipt. They reason out that the SEC Order of June 18, 1981 cannot exempt Pilipinas Bank from responsibility as it is directed only to Philfinance's Board of Directors, their officers and person's acting on their behalf. Thus, respondent Bank is liable to them for damages in the amount of P100,000.00 for defaulting in their abovestated obligation of physically delivering the Delta Motor Corporation Promissory Note No. 2777 mentioned in said Denominated Custodian Receipt.

The Court can draw some insight from the case of *Dharmdas vs. Buenaflor*[6] to resolve this case at bar. In *Dharmdas, J.D. Ramnani & Co.* was declared insolvent in Case No. 37784 of the Court of First Instance of Manila. In said insolvency proceedings, the Bank of the Philippine Islands was appointed receiver. But meanwhile the manager of J.D. Ramnani & Co. had transferred to Dharmdas and others goods belonging to the stock of said insolvent firm in the amount of P12,000.00 in alleged satisfaction of wages due to Dharmdas and the others as employees of the insolvent. When the receiver bank learned about this, it procured a search warrant which was placed in the hands of Buenaflor, the Iloilo Municipality Chief of Police. Whereupon, Buenaflor seized said goods and returned the same to the insolvent's store. Thus, Dharmdas sued Buenaflor to recover the goods or its value in cash in the amount of P12,000.00 in the CFI of Iloilo. The Bank of the Philippine Islands intervened and claimed the property as receiver of said insolvent. While, Dharmdas was testifying in court, the CFI judge stopped the

testimony and dismissed the case for lack of jurisdiction without prejudice to Dharmdas filing a complaint-in-intervention in the insolvency proceedings.

Upon appeal to this Court,[7] We ruled thus:

"It is immaterial to the issues of this case that the proceeding by which the receiver bank obtained possession of the property is supposed to have been irregular, in that it proceeded by means of a search warrant, instead of starting an ordinary action of replevin. It is enough to know that the property once belonged to the insolvent, that it was transferred to the plaintiffs, out of due course, within thirty days prior to the insolvency, and that it is now in the hands of the receiver. This places it in the custody of the court of insolvency, and that court is the only court having jurisdiction to decide all questions concerning the title or right of possession to the same. (De Kraff vs. Velez, 34 Phil., 854.) It is true that the plaintiffs assert a right of action to recover damages to the extent of the value of the property, in case the property itself should not be returned, but this is a derivative right based upon a claim of ownership, and the court of insolvency is the proper forum in which the right should be asserted.

The plaintiffs had a complete remedy by intervention in the insolvency proceedings, and any rights that they possessed would have been duly recognized and protected by the court entertaining those proceedings."

Private respondent Delta Motor Corporation borrowed P2,000,000.00 from Philfinance on May 6, 1980 and issued to said corporation its DMC non-negotiable promissory note No. 2777 payable May 4, 1981.[8] Philfinance then deposited said DMC P/N No. 2777 with private respondent bank pursuant to its Securities Custodianship Agreement.[9] While said DMC P/N No. 2777 was in the custody of private respondent bank, Philfinance sold 1/10th of said DMC P/N to petitioners and it confirmed the sale by issuance of its Confirmation of Sale No. 15839 to them.

Paraphrasing Dharmdas, it is enough to know that the DMC P/N No. 2777 belongs to Philfinance, that it was transferred to the private respondent bank by virtue of its Securities Custodianship Agreement and that by virtue of the June 18, 1981 SEC order, it is available to the SEC-CB Management Committee as receiver. And by virtue of PD 902-A, the Securities and Exchange Commission is the only tribunal which has jurisdiction to decide all questions concerning the title or right of possession to the same.

This Court in *Aleamar's Sibal & Sons, Inc. vs. Elbinias*[10] explained the rationale behind a SEC order for suspension of payments and of placing a corporation under receivership thus:

"It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Aleamar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.

During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.

As between creditors, the key phrase is 'equality is equity (*Central Bank vs. Morfe*, 63 SCRA 114, citing *Ramisch vs. Fulton*, 41 Ohio App. 443, 180 N.E. 735).' When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC."

Both insolvency proceedings and liquidation proceedings have only one aim - to conserve all the remaining assets of the insolvent/liquidated person/corporation for distribution to the creditors, after payment of taxes. Drawing from Our ruling in *Dharmdas*, and considering the exclusive and original jurisdiction given to the SEC[11] to liquidate Philfinance, We rule that respondent Pilipinas Bank did not violate its obligation to physically deliver said DMC P/N No. 2777 to petitioners when it refused to turn over the Promissory Note to petitioners as there was a lawful SEC order freezing all assets of Philfinance for turnover to the SEC-CB Management Committee for it was only the SEC which had the jurisdiction to decide all questions concerning the title or right of possession of said promissory note. Thus, even DMC's claim that it merely "warehoused" said promissory note and never authorized Philfinance to sell, encumber or even assign the same can or should have been threshed out by now by the SEC.

A careful scrutiny of petitioners' exhibits reveals that although the Philfinance check which was not honored was dated March 30, 1981,[12] it was not until July 1, 1981 that said check was deposited.[13] The only plausible reason for this is that their son, then the Iloilo City Branch Manager of Philfinance[14] requested them not to encash the check on March 30, 1981 as Philfinance did not have the funds to honor said check. They were overtaken however by the SEC Order of June 18, 1981 placing Philfinance in a state of suspension of payments due to wanton financial mismanagement. This can be deduced from the fact that out of the petitioners' money market placement of P200,000.00, Philfinance honored the first P100,000.00 but decided to forego payment of the second P100,000.00. This must have been Philfinance's head office's concession to their branch manager Araneta as over 700 other investors with investments of approximately P677,000,000.00 were not accorded any concession at all.[15]

Thus, when Philfinance could only return half of their investment, aside from filing their claim with the SEC, petitioners resorted to judicial proceedings in the court below to recover their investment from respondent Pilipinas Bank when the latter defaulted in its obligation under the Denominated Custodian Receipt. The supervening order of the SEC of June 18, 1981 clearly prevented respondent Bank from delivering the security in question to the petitioner.

As correctly stated by respondent Court:

"(S) till it was not legally possible for the appellee bank to have released to the appellants the original of the controverted promissory note when a demand was first made on July 2, 1981 by the appellants. Pursuant to the orders of the Securities and Exchange Commission dated June 18 and 25, 1981 (Exh. 8, 8-A), the Philippine Underwriters Finance Corporation was placed under suspension of payments and all collections, cash receipts from all sources accruing to Philfinance as of said dates, were to be deposited with the Philippine National Bank in the name of SEC-CB Management Committee in trust for Philfinance. It was also provided that no disbursements of corporate funds shall be made except for the payment of salaries of employees and laborers, fuel, light, water and other facilities needed by the Management Committee in the carrying out of its task, all other disbursements needing the prior approval of the said committee. The insistence of the appellants that since the appellee bank, was not one of those mentioned under the Order dated June 18, 1981 of the SEC as to prevent it from fulfilling the obligation to physically deliver the subject promissory note under the Denominated Custodian Receipt is not worthy of merit. As correctly observed by the lower court:

"The record, however, shows that at the time plaintiffs addressed their letter dated July 2, 1981 (Exh. D) to the Bank, Philfinance had already been placed in a state of suspension of payments, and even if the bank had delivered the security to plaintiffs in compliance with their obligation under the Securities Custodian Receipt, it would have been necessary for plaintiff to course the payment of their claim thru the SEC-CB Management Committee which would have consolidated plaintiffs' claim with all claims against Philfinance for equitable disposition and satisfaction of all claims against Philfinance. x x x"[16]

Clearly, the complaint in the lower court was a scheme to go around the lawful order of the Securities and Exchange Commission.

We quote with approval the trial court's observation that:

"x x x instead of impleading Philfinance who, to the mind of this Court, is directly and principally liable to plaintiffs, the latter had chosen to proceed only against Delta and the Bank with whom plaintiffs admittedly did not have any dealing before the money placement was made; x x x." [17]

Petitioners have admitted that they had filed a claim with the Securities and Exchange Commission (SEC) against Philfinance [18] after the latter was ordered placed in a state of suspension of payments by the SEC in its Orders of June 18, 1981, [19] June 25, 1981 [20] and August 7, 1981. [21]

Petitioners cannot be allowed to obtain an unfair advantage over Philfinance's other creditors by the simple expediency of this case which they filed against Philfinance's custodian of its securities (private respondent bank) and the maker (private respondent Delta Motors) of the promissory note sold to them. Their petition must perforce be denied.

At this point in time, judicial notice can be taken of the fact that the liquidation of Philfinance as ordered by the SEC has been upheld by this Court in the resolutions dated December 9, 1985, March 20, 1986 and April 29, 1987 in G.R. No. 71821 (Ferrera vs. IAC); G.R. No. 71327 (Amor vs. IAC) and G.R. No. 72674 (Philippine Underwriters Finance Corporation vs. SEC), respectively. [22]

There is no need therefore, for Us to discuss the other issues raised by the petitioners.

WHEREFORE, premises considered, the questioned decision of the respondent court is hereby **AFFIRMED** en toto. Costs against the petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] CA-G.R. CV No. 21702 penned by Justice Bonifacio A. Cacdac, Jr. and concurred in by Justice Cesar Francisco and Justice Serafin V. C. Guingona (pp. 36--38, Rollo).

[2] Civil Case No. 1198 penned by Makati RTC Judge Jose L. Coscolluella, Jr.

[3] Ibid., page 50.

[4] Ibid., page 49.

[5] "Pursuant to the directive of the President of the Philippines and upon consultation with the Governor of the Central Bank of the Philippines, the Securities and Exchange Commission and the Central Bank hereby take over the Management of Philippine Underwriters Finance Corporation (PHILFINANCE) with principal office at Philfinance Building, Benavidez St., Legaspi Village, Makati, Metro Manila, in order to prevent further dissipation, loss, wastage or destruction of assets and other properties of the said corporation and to conserve and distribute the same to its creditors.

"The Board of Directors and Officers of the said Corporation are, therefore, required to make and submit a complete inventory of all the assets and liabilities of the corporation; and effect the turn over of the management, assets, properties, books of accounts including all receipts issued by the Corporation from December 1980 up to the time of the take over and all other records of the Corporation unto the duly authorized representatives of this

Commission and the Central Bank within five (5) days from receipt of this Order.

"In order that the take-over can be effectively carried out, the Board of Directors and Officers of PHILFINANCE, their agents, representatives or any person acting in their behalf or stand, singly or collectively, are hereby ordered to refrain, cease and desist effective immediately from, unless otherwise authorized by the Commission, performing their functions or discharging their duties or exercising their powers and authority as such directors and/or officers including but not limited to solicitation of investments, disbursement of corporate funds; sale, assignment or transfer of properties and assets of the corporation; creating or incurring of new or increased indebtedness or execution of any contract or agreement evidencing the same; creation of any encumbrance of the corporate assets or properties, the commission of any act that would constitute preferential treatment of any creditor or class of creditors, until further orders from the Commission. Accordingly, the Board of Directors and Officers of the PHILFINANCE must make themselves available from time to time as may be required by the Commission.

"Considering the directive of the President to conserve the assets of the corporation and obtain an equitable payment to all its creditors, the PHILFINANCE is placed under suspension of payment.

"SO ORDERED."

[6] 57 Phil. 483 (1932).

[7] Ibid., pp. 485-486.

[8] Rollo, Page 49.

[9] Pages 140-145, Original Records.

[10] 186 SCRA 94.

[11] Sections 3 and 5(a), P.D. 902-A.

[12] Rollo, page 47.

[13] Ibid., page 52.

[14] TSN, July 11, 1983, p. 27.

[15] Paragraph No. 1, CB Examination Findings on Philfinance Operation, p. 202, Original Record.

[16] Rollo, pages 44-45.

[17] Paragraph 2, page 62, Rollo.

[18] TSN, May 30, 1984, pp. 133-134.

[19] Pages 151 & 152, Original Records.

[20] Pages 153 & 154, Original Records.

[21] Pages 155 & 156, Original Records.

[22] Philippine Commercial International Bank vs. Court of Appeals, 172 SCRA 436, 441.

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