

PROJECT BUILDERS, INC., GALICANO A. CALAPATIA, JR., AND LEANDRO ENRIQUEZ, PETITIONERS, VS. THE COURT OF APPEALS AND INDUSTRIAL FINANCE CORPORATION, RESPONDENTS.

G.R. No. 99433. June 19, 2001

Ponente: VITUG, J.

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VITUG, J.:

This case has been re-raffled to herein ponente pursuant to the Court's Resolution in A.M. No. 00-9-03-SC of 27 February 2001. The petition for review on certiorari oppugns the decision of the Court of Appeals in CA-G.R. CV No. 08582, entitled "Industrial Finance Corporation vs. Project Builders, Inc., et al.," reversing the decision of Branch XX of the Regional Trial Court of Manila in Civil Case No. 141774.

The antecedents of the case were capsulized by the trial court and cited by the appellate court; viz:

"This collection suit was filed on July 17, 1981 by Industrial Finance Corporation (IFC for short) against defendant Project Builders, Inc. (PBI for short), Galicano Calapatia, Jr., Pablo Malasarte, Teodoro Banas and Leandro Enriquez, arising from an alleged deficiency of P1,323,053.08, after the extrajudicial foreclosure of the real estate mortgage.

`The defendants deny liability and in their answer they allege that plaintiff has no cause or right of action because the obligation is already fully paid out of the proceeds of foreclosure sale of defendants' property. Further, defendants alleged that a proper accounting of the transaction between the parties will show that it is the plaintiff who is liable to the defendants.

`The facts, which led to the filing of the case, are as follows:

`On August 21, 1975, plaintiff and defendant PBI entered into an agreement (Exh. `A') whereby it was agreed that plaintiff would provide a maximum amount of P2,000,000.00 against which said defendant would discount and assign to plaintiff on a `with recourse non-collection basis' its (PBI's) accounts receivable under the contracts to sell specified in said agreement. And on June 15, 1976, the same parties entered into an agreement (Exh. `B') whereby it was agreed that PBI's credit line with plaintiff be increased to P5,000,000.00. It was stipulated that the credit line of P5,000,000.00 granted includes the amount already assigned/discounted.

`Against the above-mentioned `credit line,' defendant PBI discounted with plaintiff on different dates accounts receivables with different maturity dates from different condominium-unit buyers. And each time a certain account receivable was discounted, the covering Contract to Sell (Exh. `C-1' to `O-1') was assigned by defendant to plaintiff.

`The total amount of receivables discounted by defendant PBI is P7,986,815.38 and consists of twenty accounts. Of such receivables amounting to P7,986,815.38 plaintiff released to defendant PBI the amount of P4,549,132.72 and the difference of P3,437,682.66 represents the discounting fee or finance fee.

`To secure compliance with the terms and conditions of the agreement dated June 15, 1976 (Exh. `B'), defendants on the same date executed a Deed of Real Estate Mortgage (Exh. `Q') in favor of plaintiff. When

defendants allegedly defaulted in the payment of the subject account, plaintiff foreclosed the mortgage and plaintiff was the highest bidder in the amount of P3,500,000.00.'

'The foreclosed property was redeemed a year later (Exh. 'T'), but after application of the redemption payment, plaintiff claims that there is still a deficiency in the amount of P1,323,053.08, hence, this complaint.'

"The terms and conditions of the Agreement dated June 15, 1976 (Exh. 'B') which are material to the present appeal state as follows:

"1. That the Assignor assigned all its rights and interests on several Contracts to Sell executed by Assignor and the latter's customers.

'2. That the Assignor requested the Assignee to increase the former's credit line to FIVE MILLION (P5,000,000.00) PESOS, Phil. Currency, which was granted by the Assignee subject to the following terms and conditions:

'a. It is hereby agreed that the credit line of P5,000,000.00 granted includes the amount already assigned/discounted by Assignor to Assignee as stated in paragraph 1 of this Agreement.

'b. This assignment/discounting of the Contracts to Sell shall be with recourse to Assignor and on a non-collection basis.

'c. That Assignee will execute a Real Estate Mortgage on 3 lots described as Transfer Certificate of Title Nos. 491702, 491703 and 491704 of the Registry of Deeds of Rizal to secure the faithful performance of the terms and conditions of this agreement and the Contracts to Sell assigned or which may be assigned to Assignee.

'd. Should there be a default on the part of the Assignor to pay Assignee or should Assignor fail to pay Assignee the amount or amounts due to Assignee arising from the assignment of the accounts receivables or remit to Assignee a lesser amount, the Assignor and/or PABLO MALASARTE, ROLANDO L. JUSTO, LEANDRO D. ENRIQUEZ, TEODORO G. BANAS, GALICANO A. CALAPATIA, JR. shall jointly and severally in their personal capacities upon demand by the Assignee, repurchase the Contracts to Sell or installment papers assigned and/or discounted by Assignor in favor of Assignee and/or pay Assignee the remaining balance of the amount of the receivables discounted and/or assigned by Assignor to Assignee.

'e. That the Performance Bond covering the condominium building 'Jovan' located in Mandaluyong, Rizal shall be endorsed and delivered by Assignor to Assignee.

'f. That the Assignor shall comply with all the terms and conditions specified on the said Contracts to Sell, executed by the assignor and its individual purchaser or customers, and assigned/discounted to Assignee whether the assignment is on a with or without recourse basis.

'g. Should it become necessary for the assignee to take any legal action, the Assignor shall pay to the Assignee as attorney's fee allowed by the Rules of Court in the sum equivalent to Twenty (20%) per cent of the total indebtedness then unpaid, plus whatever legal costs incurred, and that any legal action arising out of this agreement may be instituted in the courts of the City of Manila.'"[1]

After the joinder of issues, the trial court dismissed the complaint and ruled on the counterclaim in this wise -

"1.

Ordering plaintiff to return to the defendants the amount of P3,705.91 which plaintiff charged on the account of Dr. Ricardo Ortiz and Olympic Engineering Sales Corporation which had already been paid;

"2.

Ordering plaintiff to pay to defendants the amount of P238,052.53, representing the amount of the promissory

note which was (sic) not been compensated or applied to the account of defendants;

"3.

Ordering plaintiff to return to defendants the amount of P425,833.33, representing the interest collected by plaintiff from defendants from foreclosure to redemption of the real estate mortgage;

"4.

Ordering plaintiff to return to defendants the amount of P344,302.18, representing the prepaid interests collected by plaintiff, since defendants were not allowed to use the period of such prepaid interests;

"5.

Ordering plaintiff to pay attorney's fees in the amount of P20,000.00.

Costs is adjudged against the plaintiff."[2]

The Court of Appeals, in its decision of 14 May 1991, overturned the judgment of the trial court and ruled thusly:

"WHEREFORE, the decision appealed from is REVERSED. Defendants are hereby ordered to pay, jointly and severally, to the plaintiff the deficiency in the amount of P1,237,802.48 with interest thereon at the rate of 12% per annum computed from August 13, 1981 minus the amount of the promissory note in the sum of P238,052.53 with interest thereon at the rate of 12% per annum computed from September 14, 1976, the respective computation of the interest to end upon execution of this decision. No special pronouncement as to costs of suit."[3]

Feeling aggrieved, Public Builders, Inc., and its officers, namely, Galicano Calapatia, Jr., Teodoro Banas and Leandro Enriquez, have come to this Court via a petition for review on certiorari, proffering the following issues:

1.)

Whether Republic Act No. 5980 (Financing Company Act) is intended for the benefit of financing companies or for the protection of public interests;

2.)

Whether or not the above-mentioned Act should be made to apply even when the design or scheme to make it appear that there was a purchase of receivables or credit is only a subterfuge to evade Republic Act No. 3765 (Truth in Lending Act), particularly Section 4 thereof, and compound exorbitant interests under the guise of 'purchase discount;'

3.)

Whether or not said Republic Act No. 5980 should govern the transaction between petitioners and private respondent which in reality was bilateral, not trilateral, and respondent financing company was not really subrogated in the place of the supposed seller or assignor; and

4.)

If said Republic Act No. 5980 should govern the transaction of the parties, should petitioners still answer for any deficiency after the mortgage with which they guaranty the collection of the assigned credit, had been foreclosed?"[4]

At the pith of the controversy lies the question of whether or not the agreement forged by petitioners and private respondent is a simple loan or a financing transaction governed by the provisions of Republic Act No. 5980.[5] Petitioners would have us convinced that the transaction forged by them with private respondent is a simple loan.

It is a contention difficult to accept.

Petitioner corporation, the developer-builder of Jovan Condominium Building, in obtaining a credit line of P5,000,000.00 from private respondent, assigned twenty (20) contracts to sell with accounts receivable from its condominium unit buyers to the latter with recourse to assignor and on a non-collection basis.

Succinctly, private respondent is a financing company as so defined by the Financing Company Act.

(a) "Financing companies," x x x organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, either by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness or by leasing of motor vehicles, heavy equipment and industrial machinery, business and office machines and equipment, appliances and other movable property."[6]

The assignment of the contracts to sell falls within the purview of the Act. The term credit has been defined to -

"(c) x x x mean any loan, mortgage, deed of trust, advance, or discount; any conditional sales contract, any contract to sell, or sale or contract of sale of property or service, either for present or future delivery, under which, part or all of the price is payable subsequent to the making of such sale or contract; any rental-purchase contract; any option, demand, lien, pledge, or other claim against, or for the delivery of, property or money, any purchase, or other acquisition of or any credit upon the security of, any obligation or claim arising out of the foregoing; and any transaction or series of transactions having a similar purpose or effect;"[7]

An assignment of credit is an act of transferring, either onerously or gratuitously, the right of an assignor to an assignee who would then be capable of proceeding against the debtor for enforcement or satisfaction of the credit. The transfer of rights takes place upon perfection of the contract,[8] and ownership of the right, including all appurtenant accessory rights, is thereupon acquired by the assignee. The assignment binds the debtor only 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. Where the assignment is on account of pure liberality on the part of the assignor, the rules on donation would likewise be pertinent; where valuable consideration is involved, the assignment partakes of the nature of a contract of sale or purchase.[9]

Upon an assignment of a contract to sell, the assignee is effectively subrogated in place of the assignor and in a position to enforce the contract to sell to the same extent as the assignor could.

An insistence of petitioners that the subject transaction should be considered a simple loan since private respondent did not communicate with the debtors, condominium unit buyers, to collect payment from them, is untenable. In an assignment of credit, the consent of the debtor is not essential for its perfection,[10] his knowledge thereof or lack of it affecting only the efficaciousness or inefficaciousness of any payment he might make.[11] In *Rodriguez vs. Court of Appeals*,[12] the Court has said:

"We have ruled in *Sison & Sison v. Yap Tico and Avanceña*, 37 Phil. 587 [1918] that definitely, consent is not necessary in order that assignment may fully produce legal effects. Hence, the duty to pay does not depend on the consent of the debtor. Otherwise, all creditors would be prevented from assigning their credits because of the possibility of the debtors' refusal to give consent.

"What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent (*National Investment and Development Co. v. De los Angeles*, 40 SCRA 489 [1971]). The purpose of the notice is only to inform the debtor that from the date of the assignment, payment should be made to the assignee and not to the original creditor."[13]

The assignment, it might be pointed out, was "with recourse," and default in the payment of installments had been

duly established when petitioner corporation foreclosed on the mortgaged parcels of land. The resort to foreclosure of the mortgaged properties did not preclude private respondent from collecting interest from the assigned Contracts To Sell from the time of foreclosure to the redemption of the foreclosed property. The imposition of interest was a mere enforcement or exercise of the right to the ownership of the credit or receivables which the parties stipulated in the 1976 financing agreement. Thus -

"f. That the Assignor shall comply with all the terms and conditions specified on the said Contracts to Sell, executed by the assignor and its individual purchaser or customers, and assigned/discounted to Assignee." [14]

One of the provisions in the contracts to sell, subject matter of the assignment agreement, related to the imposition of interest in the event of default by the debtor in the payment of installments, to wit:

"All payments shall be made on or before their respective due dates without necessity of demand therefor, and failure to make such payments on time shall entitle the Developer to charge interest at the rate of one percent (1%) per month without prejudice to the other remedies available to the Developer." [15]

As owner of the account receivables, private respondent was impressed with the entitlement over such interest payment.

Petitioners' claim that private respondent is proscribed from imposing interest and other charges beyond the limits set out by the Financing Company Act lacks merit. The law states:

"SEC. 5. Limitation on purchase discount, fees, service and other Charges.— In the case of assignments of credit or the buying of installment papers, accounts receivables and other evidences of indebtedness by financing companies, the purchase discount, exclusive of interest and other charges, shall be limited to fourteen (14%) per cent of the value of the credit assigned or the value of the installment papers, accounts receivable and other evidence of indebtedness purchased based on a period of twelve (12) months or less, and to one and one-sixth (1 1/6%) per cent for each additional month or fraction thereof in excess of twelve months, regardless of the terms and conditions of the assignment or purchase."

Clearly, the 14% ceiling provided for purchase discount is exclusive of interest and other charges. A purchase discount is distinct from interest. The term purchase discount refers to the difference between the value of the receivable purchased or credit assigned, and the net amount paid by the finance company for such purchase or assignment, exclusive of fees, service charges, interests and other charges incident to the extension of credit, [16] and it is akin to "time price differential," or the increase in price to cover the expense generally entailed by transactions on credit. [17] There is thus no impingement of the Usury Law even when the controversy might have arisen prior to the adoption by the Central Bank Monetary Board on 03 December 1982 of its Resolution No. 224 on interest ceilings.

WHEREFORE, the petition is DENIED. The challenged decision of the Court of Appeals reversing the decision of the trial court is AFFIRMED. No costs.

SO ORDERED.

Melo (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 57-60.

[2] Rollo, p. 80.

[3] Rollo, pp. 71-72.

[4] Rollo, p. 29-30.

[5] Also known as the Financing Company Act.

[6] Sec. 3, R. A. No. 5980.

[7] Ibid.

[8] Art. 1624, in relation to 1475, New Civil Code.

ART. 1624. An assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of article 1475.

ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment , the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[9] Nyco Sales Corporation vs. BA Finance Corporation, 200 SCRA 637; Rodriquez vs. CA, 207 SCRA 553.

[10] See Art. 1624, New Civil Code.

[11] Art. 1626. The debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation. (New Civil Code.)

[12] 207 SCRA 553.

[13] At p. 559.

[14] Rollo, p. 59.

[15] Rollo, p. 66.

[16] par. (d), Section 2, R. A. 5980.

[17] Emata vs. Intermediate Appellate Court, 174 SCRA 465.

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