

THIRD DIVISION

[G.R. No. 220926, July 05, 2017]

LUIS JUAN L. VIRATA AND UEM-MARA PHILIPPINES CORPORATION (NOW KNOWN AS CAVITEX INFRASTRUCTURE CORPORATION), PETITIONERS, VS. ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOS-TAN, AND MANUEL ESTRELLA, RESPONDENTS.

[G.R. No. 221058]

WESTMONT INVESTMENT, CORPORATION, PETITIONER, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221109]

MANUEL ESTRELLA, PETITIONER, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221135]

SIMEON CUA, VICENTE CUALOPING, AND HENRY CUALOPING, PETITIONERS, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221218]

ANTHONY T. REYES, PETITIONER, VS. ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, AND MANUEL ESTRELLA, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

For resolution is the consolidated petitions assailing the September 30, 2014 Decision^[1] and October 14, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 97817.^[3] Said rulings affirmed the trial court judgment declaring petitioners solidarily liable to Alejandro Ng Wee (Ng Wee) in the amount of P213,290,410.36, plus interests and damages.

The Facts

Ng Wee was a valued client of Westmont Bank. Sometime in 1998, he was enticed by the bank manager to make money placements with Westmont Investment Corporation (Wincorp), a domestic corporation organized and licensed to operate as an investment house, and one of the bank's affiliates.^[4] Offered to him were "*sans recourse*" transactions with the following mechanics as summarized by the CA:

x x x A corporate borrower who needs financial assistance or funding to run its business or to serve as working capital is screened by Wincorp. Once it qualifies as an accredited borrower, Wincorp enters into a Credit Line Agreement for a specific amount with the corporation which the latter can draw upon in a series of availments over a period of time. The agreement stipulates that Wincorp shall extend a credit facility on "best effort" basis and that every drawdown by the accredited borrower shall be evidenced by a promissory note executed in favor of Wincorp and/or the investor/s who has/have agreed to extend the credit facility. Wincorp then scouts for investors willing to provide the funds needed by the accredited borrower. The investor is matched with the accredited borrower. An investor who provides the fund is issued a Confirmation Advice which indicates the amount of his investment, the due date, the term, the yield, the maturity and the name of the borrower.^[5]

Lured by representations that the "*sans recourse*" transactions are safe, stable, high-yielding, and involve little to no risk, Ng Wee, sometime in 1998, placed investments thereon under accounts in his own name, or in those of his trustees: Angel Archangel, Elizabeth Ng Wee, Roberto Tabada Tan, and Alex Lim Tan.^[6] In exchange, Wincorp issued Ng Wee and his trustees Confirmation Advices informing them of the identity of the borrower with whom they were matched, and the terms under which the said borrower would repay them. The contents of a Confirmation Advice are typically as follows:

This is to confirm that pursuant to your authority, we have acted in your behalf and/or for your benefit, risk or account without recourse or liability, real or contingent, to Westmont Investment Corporation in respect of the loan granted to the Borrower named and under the terms specified hereunder

Borrower: _____

Amount	Rate: %	Term:	Value Date:	Due Date:
Yield:	Tax:	Maturity Value:	Instrument:	
Payment on Value Date			TONo.	

For your convenience but without any obligation on our part, we may act as your collecting and paying agent for this transaction. Kindly note that your receipt hereof is an indication of your conformity to the foregoing terms and conditions of the transaction.^[7]

Special Power of Attorneys (SPAs) are also prepared for the signature of the lender investor. The SPAs uniformly provide:

The undersigned, whose personal circumstances are stated hereunder, hereby, by these presents, appoints, names and constitutes Westmont Investment Corporation (Wincorp), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at 7th Floor, Westmont Bank Building, 411 Quintin Paredes Street, Binondo, Manila, as the Attorney-in-Fact of the undersigned:

To agree, deliver, sign, execute loan documents relative to the borrowing of: _____ ("The Borrower") to whom the undersigned, thru Wincorp, agreed to lend the principal sum of PESOS _____

HEREBY GIVING AND GRANTING unto said Attorney-in-Fact power and authority to do and perform all and every act and thing whatsoever requisite or necessary to be done in and about the premises, HEREBY RATIFYING AND CONFIRMING all that said Attorney-in-Fact shall lawfully do or cause to be done by virtue of these presents.^[8]

Ng Wee's initial investments were matched with Hottick Holdings Corporation (Hottick), one of Wincorp's accredited borrowers, the majority shares of which was owned by a Malaysian national by the name of Tan Sri Halim Saad (Halim Saad). Halim Saad was then the controlling shareowner of UEM-MARA, which has substantial interests in the Manila Cavite Express Tollway Project (Cavitex).^[9]

Hottick was extended a credit facility^[10] with a maximum drawdown of P1,500,908,026.87 in consideration of the following securities it issued in favor of Wincorp: (1) a Suretyship Agreement^[11] executed by herein petitioner Luis Juan Virata (Virata); (2) a Suretyship Agreement^[12] executed by YBHG Tan Sri Halim Saad; and (3) a Third Party Real Estate Mortgage^[13] executed by National Steel Corporation (NSC).

Hottick fully availed of the loan facility extended by Wincorp, but it defaulted in paying its outstanding obligations when the Asian financial crisis struck. As a result, Wincorp filed a collection suit against Hottick, Halim Saad, and NSC for the repayment of the loan and related costs.^[14] A Writ of Preliminary Attachment was then issued against Halim Saad's properties, which included the assets of UEM-MARA Philippines Corporation (UEM-MARA).^[15] Virata was not impleaded as a party defendant in the case.

To induce the parties to settle, petitioner Virata offered to guarantee the full payment of the loan. The guarantee was embodied in the July 27, 1999 Memorandum of Agreement^[16] between him and Wincorp. Virata was then able to broker a compromise between Wincorp and Halim Saad that paved the way for the execution of a Settlement Agreement^[17] dated July 28, 1999. In the Settlement Agreement, Halim Saad agreed to pay USD1,000,000.00 to Wincorp in satisfaction of any and all claims the latter may have against the former under the Surety Agreement that secured Hottick's loan. As a result, Wincorp dropped Halim Saad from the case and the Writ of Preliminary Attachment over the assets of UEM-MARA was dissolved.^[18]

Thereafter, Wincorp executed a Waiver and Quitclaim^[19] dated December 1, 1999 in favor of Virata, releasing the latter from any obligation arising from the Memorandum of Agreement, except for his obligation to transfer forty percent (40%) equity of UEM Development Philippines, Inc. (UPDI) and forty percent (40%) of UPDI's interest in the tollway project to Wincorp. Apparently, the Memorandum of Agreement is a mere accommodation that is not meant to give rise to any legal obligation in Wincorp's favor as against Virata, other than the stipulated equity transfer.

Alarmed by the news of Hottick's default and financial distress, Ng Wee confronted Wincorp and inquired about the status of his investments. Wincorp assured him that the losses from the Hottick account will be absorbed by the company and that his investments would be transferred instead to a new borrower account. In view of these representations, Ng Wee continued making money placements, rolling over his previous investments in Hottick and even increased his stakes in the new borrower account Power Merge Corporation (Power Merge).^[20]

Incorporated on August 4, 1997, Power Merge^[21] is a domestic corporation, the primary purpose of which is to *"invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real or personal property of every kind and description."*^[22] Petitioner Virata is the majority stockholder of the corporation, owning 374,996 out of its 375,000 subscribed capital stock.^[23]

In a special meeting of Wincorp's board of directors held on February 9, 1999, the investment house resolved to file the collection case against Halim Saad and Hottick,^[24] and, on even date, approved Power Merge's application for a credit line, extending a credit facility to the latter in the maximum amount of P1,300,000,000.00.^[25] Based on the minutes of the special meeting,^[26] board chairman John Anthony B. Espiritu, Wincorp President Antonio T. Ong (Ong), Mariza Santos-Tan (Santos-Tan), Manuel N. Tankiansee (Tankiansee),^[27] and petitioners Manuel A. Estrella (Estrella), Simeon Cua, Henry T. Cualoping, and Vicente Cualoping (Cua and the Cualopings) were allegedly in attendance. Thus, on February 15, 1999, Wincorp President Ong and Vice-President for Operations petitioner Anthony Reyes (Reyes) executed a Credit Line Agreement^[28] in favor of Power Merge with petitioner Virata's conformity.

Barely a month later, on March 11, 1999, Wincorp, through another board meeting allegedly attended by the same personalities, increased Power Merge's maximum credit limit to P2,500,000,000.00.^[29] Accordingly, an Amendment to the Credit Line Agreement^[30] (Amendment) was executed on March 15, 1999 by the same representatives of the two parties.

Power Merge made a total of six (6) drawdowns from the amended Credit Line Agreement in the aggregate amount of P2,183,755,253.11.^[31]

Following protocol, Power Merge issued Promissory Notes in favor of Wincorp, either for itself or as agent for or on behalf of certain investors, for each drawdown. The Promissory Notes issued can be summarized thusly:^[32]

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Promissory Note No.	Availment Date	Maturity Date	Principal
1411	February 12, 1999	February 12, 2000	P8,618,877.35
1537	February 10, 1999	February 10, 2000	P1,124,781,081.10
1538	March 12, 1999	March 11, 2000	P215,660.99
1539	March 12, 1999	March 11, 2000	P671,402,608.61
1540	March 17, 1999	March 16, 2000	P378,381,629.15
1541	March 22, 1999	March 21, 2000	P355,395.91
Total			P2,183,755,253.11

And pertinently, the template for the Promissory Notes read:

PROMISSORY NOTE

For value received, I/We _____, hereby promise to pay WESTMONT INVESTMENT CORPORATION (*WINCORP*), either for itself or as agent for and on behalf of certain INVESTORS who have placed/invested funds with *WINCORP* the principal sum of _____ (_____), Philippine Currency, on _____ with interest rate of _____ percent (____%) per annum, or equivalently the Maturity Amount of _____ PESOS (_____) Philippine Currency.

Demand and Dishonor Waived: In case of default in the payment of this Promissory Note, an additional interest on the Maturity Amount at the rate of three percent (3%) per month shall accrue from the date immediately following the Maturity Date hereof until the same is fully paid. In addition, I/We shall be liable to pay liquidated damages in the amount equivalent to twenty percent (20%) of the Maturity amount.

If this Note is placed in the hands of an attorney for collection, or if payment herein is collected by suit or through other legal proceedings, I/We promise to pay WINCORP a sum equal to twenty-five (25%) of the total amount due and payable as and for attorney's fees and cost of collection.^[33]

After receiving the promissory notes from Power Merge, Wincorp, in turn, issued Confirmation Advices to Ng Wee and his trustees, as well as to the other investors who were matched with Power Merge. A summary of the said Confirmation Advices reveals that out of the P2,183,755,253.11 drawn by Power Merge, the aggregate amount of P213,290,410.36 was sourced from Ng Wee's money placements under the names of his trustees:^[34]

Serial No.	Name	Principal Amount of Placement	Due Date	Maturity Value