

## SECOND DIVISION

[ G.R. NO. 153827, April 25, 2006 ]

**ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. PHILIPPINE COMMERCIAL INTERNATIONAL  
BANK, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for review under Rule 45 of the Rules of Court, petitioner Asian Construction and Development Corporation or "ASIAKONSTRUKT," seeks the reversal and setting aside of the decision<sup>[1]</sup> dated March 15, 2002 and the Resolution<sup>[2]</sup> dated June 3, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 68189. The assailed decision affirm with modification the **Summary Judgment** rendered by the Regional Trial Court (RTC) of Makati City in an action for a sum of money thereat commenced by the herein respondent, Philippine Commercial International Bank (PCIBANK) against the petitioner, while the challenged resolution denied petitioner's motion for reconsideration.

The facts:

On February 24, 1999, in the RTC of Makati City, respondent PCIBANK filed a complaint<sup>[3]</sup> for a sum of money with prayer for a writ of preliminary attachment against petitioner ASIAKONSTRUKT. Docketed as Civil Case No. 99-432, the complaint alleged, inter alia, as follows:

#### FIRST CAUSE OF ACTION

2.01 On various occasions, ASIAKONSTRUKT obtained U.S. dollar denominated credit accommodations from PCIBANK in the amount of Four Million Four Hundred Eighty Seven Thousand U.S. dollars (US\$4,487,000.00), exclusive of interests, charges and fees thereon and the cost of collecting the same. These credit accommodations are covered by the following promissory notes:

xxx xxx xxx

2.02 Prompt and faithful payment of all the foregoing promissory notes was secured by the following deeds of assignment executed by ASIAKONSTRUKT in favor of PCIBANK:

(a) Deed of Assignment of Receivables/Contract Proceeds dated 20 July 1994... where ASIAKONSTRUKT assigned its receivables from its Contract ... with the National Power Corporation (NPC) in the amount of ....P54,500,000;

(b) Deed of Assignment of Receivables ... dated 28 June 1995 ... where ASIAKONSTRUKT assigned its receivables from its Contract ... with the NPC in the amount of ...P26,281,000.00;

(c) Deed of Assignment of Receivables dated 28 August 1995 ... where ASIAKONSTRUKT assigned its receivables from its Sub-Contract with ABB Power, Inc., in the amount of P43,000,000.00;

(d) Deed of Assignment of Contract Proceeds dated 27 March 1996 ... where ASIAKONSTRUKT assigned its receivables from its contracts with PNOC ... in the aggregate amount of P46,000,000.00; and

(e) Deed of Assignment of Contract Proceeds ... dated 20 February 1997 ... where ASIAKONSTRUKT assigned its receivables from the Ormat Philippines, Inc., in the aggregate amount of US\$3,350,000.00;

2.03 All the foregoing deeds of assignments stipulate, among others, the following terms and conditions:

a) The assignment is for the purpose of securing payment of the principal amount and the interests and bank charges accruing thereon, the costs of collecting the same and all other expenses which PCIBANK may be put in connection with or as an incident of the assignment;

b) That the assignment secures also any extension or renewal of the credit which is the subject thereof as any and all other obligations of ASIAKONSTRUKT of whatever kind and nature as appear in the records of PCIBANK, which ASIAKONSTRUKT accepts as the final and conclusive evidence of such obligations to PCIBANK, ...whether contracted before, during or after the constitution of [the assignment agreement]...;

c) That PCIBANK authorizes ASIAKONSTRUKT, at the latter's expense, to "collect and receive for [PCIBANK] all the Receivables"; and

d) That ASIAKONSTRUKT "shall have no right, and agrees not to use any of the proceeds of any collections, it being agreed by the parties that [ASIAKONSTRUKT] divests itself of all the rights, title and interest in said Receivables and the proceeds of the collection received thereon."

2.04 The promissory notes have remained not fully paid despite their having become due and demandable. Repeated verbal and written demands were made upon ASIAKONSTRUKT, but to no avail. It has failed and refused, and continues to fail and refuse, to pay its outstanding obligations to PCIBANK...;

2.05 As a result of ASIAKONSTRUKT's refusal to pay its outstanding obligations, PCIBANK was constrained to refer the matter - to counsel and thus incur attorney's fees and legal costs.

2.06 The aggregate unpaid obligation of ASIAKONSTRUKT to PCIBANK, as of 31 December 1998, amounts to... US\$4,553,446.06, broken down as follows:

Principal US\$ 4,067,867.23  
Interest US\$ 291,263.27  
Penalties US\$ 194,315.56  
TOTAL US\$ 4,553,446.06

For its second cause of action, PCIBANK alleged in the same complaint as follows:

#### SECOND CAUSE OF ACTION

4.02 ... as a result of the fraudulent acts of ASIAKONSTRUKT, PCIBANK suffered the following damages, all of which ASIAKONSTRUKT must be held to pay PCIBANK:

4.02.1 Exemplary damages, in the interest of public good and purposes of correction, in the amount of not less than ....P50,000.00;

4.02.2 Attorney's fees in the amount of not less than .... P1,800,000.00; and

4.02.3 Costs of suit.

In support of its prayer for a writ of preliminary attachment embodied in the complaint, plaintiff PCIBANK alleges the following:

3.02 ... ASIAKONSTRUKT is guilty of fraud in contracting the debt, in the performance thereof, or both, xxx;

303. PCIBANK agreed to enter into the above-mentioned credit accommodations primarily because of the existence of the deeds of assignment listed above. However, from telephone inquiries made with responsible officers of the National Power Corporation, ABB Power, Inc., PNOC and Ormat Philippines, Inc., PCIBANK was surprised to learn that ASIAKONSTRUKT had long ago collected the contract proceeds, or portions thereof, which were previously assigned to PCIBANK. However, to date, it has yet to turn over these proceeds to PCIBANK. Worse, PCIBANK learned that the contract proceeds were used by ASIAKONSTRUKT for its own purposes " clear evidence of fraud, which has deprived PCIBANK of its security. ASIAKONSTRUKT's unauthorized use of the contract proceeds for its own purposes was subsequently confirmed by Mr. Napoleon Garcia, Vice President for Finance of ASIAKONSTRUKT, in a telephone discussion on 12 January 1999 with Ms. Maricel E. Salaveria of PCIBANK. xxx Needless to say, ASIAKONSTRUKT has fraudulently collected such receivables to the prejudice of PCIBANK.

3.04 ... it is evident that ASIAKONSTRUKT never had any intention of complying with the deeds of assignment. ASIAKONSTRUKT only misled PCIBANK into believing that it had sufficient security to ensure payment of its loan obligations.

3.05 Alternatively, granting, in *argumenti gratia*, that ASIAKONSTRUKT, at the time it executed the foregoing deeds of assignment, really intended to abide by their terms and conditions, it nevertheless committed manifest fraud when it collected the contract proceeds, and instead of remitting them to PCIBANK, used them for its own purposes.

In an order<sup>[4]</sup> dated April 13, 1999, the trial court, after receiving *ex parte* PCIBANK's evidence in support of its prayer for preliminary attachment, directed the issuance of the desired writ, thus:

WHEREFORE, let a writ of preliminary attachment issue against all the property of defendant not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's principal claim of US\$4,553,446.06, representing the alleged unpaid obligation of defendant, inclusive of interest and penalty charges, as of December 31, 1998, which is equivalent to P174,260,380.72, upon plaintiff's filing of a bond in an equal amount to answer for all it may sustain by reason of the attachment if the Court shall finally adjudge that plaintiff was not entitled thereto.

SO ORDERED.

With plaintiff PCIBANK having posted the requisite bond, a writ of preliminary attachment was thereafter issued by the trial court. Per records, defendant ASIAKONSTRUKT did not file any motion for the *quashal* or dissolution of the writ.

Meanwhile, on August 27, 1999, defendant ASIAKONSTRUKT filed its Answer,<sup>[5]</sup> thereunder making admissions and denials. Defendant admits, subject to its defenses, the material allegations of the Complaint as regards its indebtedness to plaintiff PCIBANK and its execution of the various deeds of assignment enumerated therein. It, however, denies, for lack of knowledge sufficient to form a belief as to the truth thereof, the averments in the Complaint that it has not paid, despite demands, its due and demandable obligations, as well as the amounts due the plaintiff as itemized in paragraph 2.06, *supra*, of the Complaint. It likewise denies PCIBANK's allegations in the same Complaint in support of its prayer for a writ of preliminary attachment, particularly its having fraudulently misappropriated for its own use the contract proceeds/receivables under the contracts mentioned in the several deeds of assignments, claiming in this respect that it has still remaining receivables from those contracts.

By way of defenses, defendant pleads in its Answer the alleged "severe financial and currency crisis" which hit the Philippines in July 1997, which adversely affected and ultimately put it out of business. Defendant adds that the deeds of assignments it executed in favor of PCIBANK were standard forms proposed by the bank as pre-condition for the release of the loans and therefore partake of the nature of contracts of adhesion, leaving the defendant to the alternative of "taking it or

leaving it." By way of counterclaim, defendant prayed for an award of P1,000,000.00 as and for attorney's fees and P200,000.00 as litigation expenses.

On January 24, 2000, plaintiff PCIBANK filed a verified *Motion for Summary Judgment*,<sup>[6]</sup> therein contending that the defenses interposed by the defendant are sham and contrived, that the alleged financial crisis pleaded in the Answer is not a fortuitous event that would excuse debtors from their loan obligations, nor is it an exempting circumstance under Article 1262 of the New Civil Code where, as here, the same is attended by bad faith. In the same motion, PCIBANK also asserts that the deeds of assignments executed in its favor are not contracts of adhesion, and even if they were, the same are valid.

To the *Motion for Summary Judgment*, defendant interposed an *Opposition*<sup>[7]</sup> insisting that its Answer tendered or raised genuine and substantial issues of material facts which require full-blown trial, namely:

1. Whether or not defendant received all or part of the proceeds/receivables due from the contracts mentioned in the deeds of assignment at the time the complaint was filed;
2. Granting that defendant received those proceeds/receivables, whether or not defendant fraudulently misappropriated the same;
3. Whether or not defendant is virtually insolvent as a result of the regionwide economic crisis that hit Asia, causing the Philippine peso to depreciate drastically; and
4. Whether the parties dealt with each other on equal footing with respect to the execution of the deeds of assignment as to give the defendant an honest opportunity to reject the onerous terms imposed therein.

Significantly, defendant did not append to its aforementioned *Opposition* any affidavit in support of the alleged genuine issues of material facts mentioned therein.

Before the pending incident (motion for summary judgment) could be resolved by the trial court, plaintiff PCIBANK waived its claim for exemplary damages and agreed to reduce its claim for attorney's fees from P1,800,000.00 to P1,260,000.00, but made it clear that its waiver of exemplary damages and reduction of attorney's fees are subject to the condition that a full and final disposition of the case is obtained via summary judgment.

On May 16, 2000, the trial court, acting favorably on PCIBANK's motion for summary judgment, came out with its **Summary Judgment**,<sup>[8]</sup> the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff:

1. the sum of US\$4,553,446.06, or its equivalent in Philippine currency at the time of payment, with interest thereon at the rate