

## FIRST DIVISION

[ G. R. No. 130972, January 23, 2002 ]

**PHILIPPINE LAWIN BUS, CO., MASTER TOURS & TRAVEL CORP.,  
MARCIANO TAN, ISIDRO TAN, ESTEBAN TAN AND HENRY TAN,  
PETITIONERS, VS. COURT OF APPEALS AND ADVANCE CAPITAL  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

The case is a petition for review *via* certiorari of the decision of the Court of Appeals, [1] reversing that of the trial court [2] and sentencing petitioners as follows:

"WHEREFORE, the appealed decision should be, as it is hereby REVERSED and SET ASIDE. In lieu thereof, a new one is hereby rendered ordering the defendants-appellees to pay, jointly and solidarily, in favor of plaintiff-appellant Advance Capital Corporation, the following amounts:

"1. P16,484,994.42, the principal obligation under the two promissory note Nos. 003 and 00037 plus interest and penalties;

"2. P100,000.00 for loss of goodwill and good reputation;

"3. An amount equivalent to 10% of the collectible amount, plus P50,000, as acceptance fee and P500 per appearance, as and for attorney's fees: and

"4. P100,000 as litigation expenses.

"Costs shall be taxed against defendant-appellees.

"SO ORDERED." [3]

#### The Facts

The facts, as found by the Court of Appeals, are as follows:

"On 7 August 1990 plaintiff Advance Capital Corporation, a licensed lending investor, extended a loan to defendant Philippine Lawin Bus Company (hereafter referred to as LAWIN), in the amount of P8,000,000.00 payable within a period of one (1) year, as evidenced by a Credit Agreement (Exhibits "B" to "B-4-B"). The defendant, through Marciano Tan, its Executive Vice President, executed Promissory Note No. 003, for the amount of P8,000,000.00 (Exhs. "C" to "C-1").

"To guarantee payment of the loan, defendant Lawin executed in favor of plaintiff the following documents: (1) A Deed of Chattel Mortgage wherein 9 units of buses were constituted as collaterals (Exhibits "F" to "F-7"); (2) A joint and several UNDERTAKING of defendant Master Tours and Travel Corporation dated 07 August 1990, signed by Isidro Tan and Marciano Tan (Exhs. "H" to "H-1"); and (3) A joint and several UNDERTAKING dated 21 August 1990, executed and signed by Esteban, Isidro, Marciano and Henry, all surnamed Tan (Exhs. "I" to "I-6").

"Out of the P8,000,000.00 loan, P1,800,000.00 was paid. Thus, on 02 November 1990, defendant Bus Company was able to avail an additional loan of P2,000,000.00 for one (1) month under Promissory Note 00028 (Exhs. "J"-"J-1").

"Defendant LAWIN failed to pay the aforementioned promissory note and the same was renewed on 03 December 1990 to become due on or before 01 February 1991, under Promissory Note 00037 (Exh. "K").

"On 15 May 1991 for failure to pay the two promissory notes, defendant LAWIN was granted a loan re-structuring for two (2) months to mature on 31 July 1991.

"Despite the restructuring, defendant LAWIN failed to pay. Thus, plaintiff foreclosed the mortgaged buses and as the sole bidder thereof, the amount of P2,000,000.00 was accepted by the deputy sheriff conducting the sale and credited to the account of defendant LAWIN.

"Thereafter, on 27 May 1992, identical demand letters were sent to the defendants to pay their obligation (Exhs. "X" to "CC"). Despite repeated demands, the defendants failed to pay their indebtedness which totaled of P16,484,992.42 as of 31 July 1992 (Exhs. "DD"-"DD-1").

"Thus, the suit for sum of money, wherein the plaintiff prays that defendants solidarily pay plaintiff as of July 31, 1992 the sum of (a) P16,484,994.12 as principal obligation under the two promissory notes Nos. 003 and 00037, plus interests and penalties: (b) P300,000.00 for loss of good will and good business reputation: (c) attorney's fees amounting to P100,000.00 as acceptance fee and a sum equivalent to 10% of the collectible amount, and P500.00 as appearance fee; (d) P200,000.00 as litigation expenses; (e) exemplary damages in an amount to be awarded at the court's discretion; and (f) the costs.

"On 04 September 1993, a writ of preliminary injunction was issued with respect to movable and immovable properties of the defendants.

"In answer to the complaint, defendants-appellees assert by way of special and affirmative defense, that there was already an arrangement as to the full settlement of the loan obligation by way of:

"17.A. Sale of the nine (9) units passenger buses the proceeds of which will be credited against the loan amount as full payment thereof; or in

the alternative.

"17.B. Plaintiff will shoulder and bear the cost of rehabilitating the buses, with the amount thereof to be included in the total obligation of defendant Lawin and the bus operated, with the earnings thereof to be applied to the loan obligation of defendant Lawin." (p. 4 Answer; p. 166, rec.)

"Defendants further assert that the foreclosure sale was in violation of the aforequoted arrangement and prayed for the nullification of the same and the dismissal of the complaint."<sup>[4]</sup>

On 28 June 1995, the trial court rendered a decision dismissing the complaint, as follows:

"WHEREFORE, judgment is rendered as follows:

"1. Dismissing the complaint for lack of merit;

"2. Declaring the foreclosure and auction sale null and void;

"3. Declaring the obligation or indebtedness of defendants EXTINGUISHED;

"4. Declaring the writ of attachment issued in this case null and void and, therefore, is hereby declared dissolved; and

"5. Ordering the Sheriff of this Branch or whoever is in possession, to return all the personal properties attached in this case to the owner/s thereof within one (1) week from the finality of this decision;

"6. Dismissing defendant's counterclaim for lack of sufficient merit.

"No pronouncement as to costs.

"SO ORDERED."<sup>[5]</sup>

In time, respondent Advance Capital Corporation appealed from the decision to the Court of Appeals.<sup>[6]</sup>

On 30 September 1997, the Court of Appeals promulgated a decision reversing that of the trial court, the dispositive portion of which is set out in the opening paragraph of this decision.

Hence, this appeal.<sup>[7]</sup>

### The Issue

The issue raised is whether there was *dacion en pago* between the parties upon the surrender or transfer of the mortgaged buses to the respondent.<sup>[8]</sup>

### The Court's Ruling