414 Phil. 857

THIRD DIVISION

[G.R. No. 142838, August 09, 2001]

ABELARDO B. LICAROS, PETITIONER, VS. ANTONIO P. GATMAITAN, RESPONDENT.

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition seeks to reverse and set aside the Decision[1] dated February 10, 2000 of the Court of Appeals and its Resolution[2] dated April 7, 2000 denying petitioner's Motion for Reconsideration thereto. The appellate court decision reversed the Decision[3] dated November 11, 1997 of the Regional Trial Court of Makati, Branch 145 in Civil Case No. 96-1211.

The facts of the case, as stated in the Decision of the Court of Appeals dated February 10, 2000, are as follows:

> "The Anglo-Asean Bank and Trust Limited (Anglo-Asean, for brevity), is a private bank registered and organized to do business under the laws of the Republic of Vanuatu but not in the Philippines. Its business consists primarily in receiving fund placements by way of deposits from institutions and individual investors from different parts of the world and thereafter investing such deposits in money market placements and potentially profitable capital ventures in Hongkong, Europe and the United States for the purpose of maximizing the returns on those investments.
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> Enticed by the lucrative prospects of doing business with Anglo-Asean, Abelardo Licaros, a Filipino businessman, decided to make a fund placement with said bank sometime in the 1980's. As it turned out, the grim outcome of Licaros' foray in overseas fund investment was not exactly what he envisioned it to be. More particularly, Licaros, after having invested in Anglo-Asean, encountered tremendous and unexplained difficulties in retrieving, not only the interest or profits, but even the very investments he had put in Anglo-Asean.
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> Confronted with the dire prospect of not getting back any of his investments, Licaros then decided to seek the counsel of Antonio P. Gatmaitan, a reputable banker and investment manager who had been extending managerial, financial and investment consultancy services to various firms and corporations both here and abroad. To Licaros' relief, Gatmaitan was only too willing enough to help. Gatmaitan voluntarily offered to assume the payment of Anglo-Asean's indebtedness to Licaros subject to certain terms and conditions. In order to effectuate and formalize the parties' respective commitments, the two executed a notarized MEMORANDUM OF AGREEMENT on July 29, 1988 (Exh. "B"; also Exhibit "1"), the full text of which reads:

'Memorandum of Agreement

KNOW ALL MEN BY THESE PRESENTS:

This MEMORANDUM OF AGREEMENT made and executed this 29th day of July 1988, at Makati by and between:

ABELARDO B. LICAROS, Filipino, of legal age and holding office at Concepcion Building, Intramuros, Manila hereinafter referred to as THE PARTY OF THE FIRST PART,

and

ANTONIO P. GATMAITAN, Filipino, of legal age and residing at 7 Mangyan St., La Vista, hereinafter referred to as the PARTY OF THE SECOND PART,

WITNESSETH THAT:

WHEREAS, ANGLO-ASEAN BANK & TRUST, a company incorporated by the Republic of Vanuatu, hereinafter referred to as the OFFSHORE BANK, is indebted to the PARTY OF THE FIRST PART in the amount of US dollars; ONE HUNDRED FIFTY THOUSAND ONLY (US$150,000) which debt is now due and demandable.

WHEREAS, the PARTY OF THE FIRST PART has encountered difficulties in securing full settlement of the said indebtedness from the OFFSHORE BANK and has sought a business arrangement with the PARTY OF THE SECOND PART regarding his claims;

WHEREAS, the PARTY OF THE SECOND PART, with his own resources and due to his association with the OFFSHORE BANK, has offered to the PARTY OF THE FIRST PART to assume the payment of the aforesaid indebtedness, upon certain terms and conditions, which offer, the PARTY OF THE FIRST PART has accepted;

WHEREAS, the parties herein have come to an agreement on the nature, form and extent of their mutual prestations which they now record herein with the express conformity of the third parties concerned;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants stipulated herein, the PARTY OF THE FIRST PART and the PARTY OF THE SECOND PART have agreed, as they do hereby agree, as follows:

1. The PARTY OF THE SECOND PART hereby undertakes to pay the PARTY OF THE FIRST PART the amount of US DOLLARS ONE HUNDRED FIFTY THOUSAND ((US$150,000) payable in Philippine Currency at the fixed exchange rate of Philippine Pesos 21 to US$1 without interest on or before July 15, 1993.

For this purpose, the PARTY OF THE SECOND PART shall execute and deliver a non negotiable promissory note, bearing the aforesaid material consideration in favor of the PARTY OF THE FIRST PART upon execution of this MEMORANDUM OF AGREEMENT, which promissory note shall form part as ANNEX A hereof.

2. For and in consideration of the obligation of the PARTY OF THE SECOND PART, the PARTY OF THE FIRST does hereby;

a. Sell, assign, transfer and set over unto the PARTY OF THE SECOND PART that certain debt now due and owing to the PARTY OF THE FIRST PART by the OFFSHORE BANK, to the amount of US Dollars One Hundred Fifty Thousand plus interest due and accruing thereon;

b. Grant the PARTY OF THE SECOND PART the full power and authority, for his own use and benefit, but at his own cost and expense, to demand, collect, receive, compound, compromise and give acquittance for the same or any part thereof, and in the

name of the PARTY OF THE FIRST PART, to prosecute, and withdraw any suit or proceedings therefor;

c. Agree and stipulate that the debt assigned herein is justly owing and due to the PARTY OF THE FIRST PART from the said OFFSHORE BANK, and that the PARTY OF THE FIRST PART has not done and will not cause anything to be done to diminish or discharge said debt, or to delay or prevent the PARTY OF THE SECOND PART from collecting the same; and;

d. At the request of the PARTY OF SECOND PART and the latter's own cost and expense, to execute and do all such further acts and deeds as shall be reasonably necessary for proving said debt and to more effectually enable the PARTY OF THE SECOND PART to recover the same in accordance with the true intent and meaning of the arrangements herein.

IN WITNESS WHEREOF, the parties have caused this MEMORANDUM OF AGREEMENT to be signed on the date and place first written above.

Sgd.
ABELARDO B. LICAROS
PARTY OF THE FIRST PART

Sgd.
ANTONIO P. GATMAITAN
PARTY OF THE FIRST PART

WITH OUR CONFORME:
ANGLO-ASEAN BANK & TRUST
BY: (Unsigned)

SIGNED IN THE PRESENCE OF:
Sgd. (illegible)

_____ _____

Conformably with his undertaking under paragraph 1 of the aforequoted agreement, Gatmaitan executed in favor of Licaros a **NON-NEGOTIABLE PROMISSORY NOTE WITH ASSIGNMENT OF CASH DIVIDENDS** (Exhs. "A"; also Exh. "2"), which promissory note, appended as Annex "A" to the same Memorandum of Agreement, states in full, thus

"*NON-NEGOTIABLE PROMISSORY NOTE*
WITH ASSIGNMENT OF CASH DIVIDENDS

This promissory note is Annex A of the Memorandum of Agreement executed between Abelardo B. Licaros and Antonio P. Gatmaitan, on _____ 1988 at Makati, Philippines and is an integral part of said Memorandum of Agreement.

P3,150,000.

On or before July 15, 1993, I promise to pay to Abelardo B. Licaros the sum of Philippine Pesos 3,150,000 (P3,150,000) without interest as material consideration for the full settlement of his money claims from ANGLO-ASEAN BANK, referred to in the Memorandum of Agreement as the *'OFFSHORE BANK'.*

As security for the payment of this Promissory Note, I hereby ASSIGN, CEDE and TRANSFER, Seventy Percent (70%) of ALL CASH DIVIDENDS, that may be due or owing to me as the registered owner of _____ (_____) shares of stock in the Prudential Life Realty, Inc.

This assignment shall likewise include SEVENTY PERCENT (70%) of cash dividends that may be declared by Prudential Life Realty, Inc. and due or owing to Prudential Life Plan,

Inc., of which I am a stockholder, to the extent of or in proportion to my aforesaid shareholding in Prudential Life Plan, Inc., the latter being the holding company of Prudential Life Realty, Inc.

In the event that I decide to sell or transfer my aforesaid shares in either or both the Prudential Life Plan, Inc. or Prudential Life Realty, Inc. and the Promissory Note remains unpaid or outstanding, I hereby give Mr. Abelardo B. Licaros the first option to buy the said shares.

Manila, Philippines
July _____, 1988

(SGD.)

Antonio P. Gatmaitan

7

Mangyan St., La Vista, QC

Signed in the Presence of
(SGD.)

_____ _____

Francisco A. Alba
President, Prudential Life Plan, Inc.".

Thereafter, Gatmaitan presented to Anglo-Asean the Memorandum of Agreement earlier executed by him and Licaros for the purpose of collecting the latter's placement thereat of U.S.$150,000.00. Albeit the officers of Anglo-Asean allegedly committed themselves to "look into [this matter]", no formal response was ever made by said bank to either Licaros or Gatmaitan. To date, Anglo-Asean has not acted on Gatmaitan's monetary claims.

Evidently, because of his inability to collect from Anglo-Asean, Gatmaitan did not bother anymore to make good his promise to pay Licaros the amount stated in his promissory note (Exh. "A"; also Exh. 2"). Licaros, however, thought differently. He felt that he had a right to collect on the basis of the promissory note regardless of the outcome of Gatmaitan's recovery efforts. Thus, in July 1996, Licaros, thru counsel, addressed successive demand letters to Gatmaitan (Exhs. "C" and "D"), demanding payment of the latter's obligations under the promissory note. Gatmaitan, however, did not accede to these demands.

Hence, on August 1, 1996, in the Regional Trial Court at Makati, Licaros filed the complaint in this case. In his complaint, docketed in the court below as Civil Case No. 96-1211, Licaros prayed for a judgment ordering Gatmaitan to pay him the following:

'a) Principal Obligation in the amount of Three Million Five Hundred Thousand Pesos (P3,500,000.00);

b) Legal interest thereon at the rate of six (6%) percent per annum from July 16, 1993 when the amount became due until the obligation is fully paid;

c) Twenty percent (20%) of the amount due as reasonable attorney's fees;

d) Costs of the suit.'"[4]

After trial on the merits, the court a quo rendered judgment in favor of petitioner Licaros and found respondent Gatmaitan liable under the Memorandum of Agreement and Promissory Note for P3,150,000.00 plus 12% interest per annum from July 16, 1993 until the amount is fully paid. Respondent was likewise ordered to pay attorney's fees of P200,000.00.[5]

Respondent Gatmaitan appealed the trial court's decision to the Court of Appeals. In a decision promulgated on February 10, 2000, the appellate court reversed the decision of the trial court and held that respondent Gatmaitan did not at any point become obligated to pay to petitioner Licaros the amount stated in the promissory note. In a Resolution dated April 7, 2000, the Court of Appeals denied petitioner's Motion for Reconsideration of its February 10, 2000 Decision.

Hence this petition for review on certiorari where petitioner prays for the reversal of the February 10, 2000 Decision of the Court of Appeals and the reinstatement of the November 11, 1997 decision of the Regional Trial Court.

The threshold issue for the determination of this Court is whether the Memorandum of Agreement between petitioner and respondent is one of assignment of credit or one of conventional subrogation. This matter is determinative of whether or not respondent became liable to petitioner under the promissory note considering that its efficacy is dependent on the Memorandum of Agreement, the note being merely an annex to the said memorandum.[6]

An assignment of credit has been defined as the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.[7]

On the other hand, subrogation has been defined as the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts. Conventional subrogation is that which takes place by agreement of parties.[8]

The general tenor of the foregoing definitions of the terms "subrogation" and "assignment of credit" may make it seem that they are one and the same which they are not. A noted expert in civil law notes their distinctions thus:

> "Under our Code, however, conventional subrogation is not identical to assignment of credit. In the former, the debtor's consent is necessary; in the latter it is not required. Subrogation extinguishes the obligation and gives rise to a new one; assignment refers to the same right which passes from one person to another. The nullity of an old obligation may be cured by subrogation, such that a new obligation will be perfectly valid; but the nullity of an obligation is not remedied by the assignment of the creditor's right to another."[9]

For our purposes, the crucial distinction deals with the necessity of the consent of the debtor in the original transaction. In an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects.[10] What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him as the assignment takes effect only from the time he has knowledge thereof.[11] A creditor may, therefore,