

## FIRST DIVISION

**[ G.R. No. 146511, September 05, 2007 ]**

**TOMAS ANG, PETITIONER, VS. ASSOCIATED BANK AND  
ANTONIO ANG ENG LIONG, RESPONDENTS.**

### D E C I S I O N

**AZCUNA, J.:**

This petition for *certiorari* under Rule 45 of the Rules on Civil Procedure seeks to review the October 9, 2000 Decision<sup>[1]</sup> and December 26, 2000 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 53413 which reversed and set aside the January 5, 1996 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 20,299-90, dismissing the complaint filed by respondents for collection of a sum of money.

On August 28, 1990, respondent Associated Bank (formerly Associated Banking Corporation and now known as United Overseas Bank Philippines) filed a collection suit against Antonio Ang Eng Liong and petitioner Tomas Ang for the two (2) promissory notes that they executed as principal debtor and co-maker, respectively.

In the Complaint,<sup>[4]</sup> respondent Bank alleged that on October 3 and 9, 1978, the defendants obtained a loan of P50,000, evidenced by a promissory note bearing PN-No. DVO-78-382, and P30,000, evidenced by a promissory note bearing PN-No. DVO-78-390. As agreed, the loan would be payable, jointly and severally, on January 31, 1979 and December 8, 1978, respectively. In addition, subsequent amendments<sup>[5]</sup> to the promissory notes as well as the disclosure statements<sup>[6]</sup> stipulated that the loan would earn 14% interest rate per annum, 2% service charge per annum, 1% penalty charge per month from due date until fully paid, and attorney's fees equivalent to 20% of the outstanding obligation.

Despite repeated demands for payment, the latest of which were on September 13, 1988 and September 9, 1986, on Antonio Ang Eng Liong and Tomas Ang, respectively, respondent Bank claimed that the defendants failed and refused to settle their obligation, resulting in a total indebtedness of P539,638.96 as of July 31, 1990, broken down as follows:

|                     | PN-No. DVO-78-382   | PN-No. DVO-78-390  |
|---------------------|---|--|
| Outstanding Balance | P50,000.00  | P30,000.00   |
| Add                 | Past due charges for 4,199 days (from 01-31-79 to 07-31-90) | Past due charges for 4,253 days (from 12-8-78 to 07-31-90) |
| 14% Interest        | P203,538.98   | P125,334.41  |

|                    |             |             |
|--------------------|-------------|-------------|
| 2% Service Charge  | P11,663.89  | P7,088.34   |
| 12% Overdue Charge | P69,983.34  | P42,530.00  |
| Total              | P285,186.21 | P174,952.75 |
| Less: Charges paid | P500.00     | None        |
| Amount Due         | P334,686.21 | P204,952.75 |

In his Answer,<sup>[7]</sup> Antonio Ang Eng Liong only admitted to have secured a loan amounting to P80,000. He pleaded though that the bank "be ordered to submit a more reasonable computation" considering that there had been "no correct and reasonable statement of account" sent to him by the bank, which was allegedly collecting excessive interest, penalty charges, and attorney's fees despite knowledge that his business was destroyed by fire, hence, he had no source of income for several years.

For his part, petitioner Tomas Ang filed an Answer with Counterclaim and Cross-claim.<sup>[8]</sup> He interposed the affirmative defenses that: the bank is not the real party in interest as it is not the holder of the promissory notes, much less a holder for value or a holder in due course; the bank knew that he did not receive any valuable consideration for affixing his signatures on the notes but merely lent his name as an accommodation party; he accepted the promissory notes in blank, with only the printed provisions and the signature of Antonio Ang Eng Liong appearing therein; it was the bank which completed the notes upon the orders, instructions, or representations of his co-defendant; PN-No. DVO-78-382 was completed in excess of or contrary to the authority given by him to his co-defendant who represented that he would only borrow P30,000 from the bank; his signature in PN-No. DVO-78-390 was procured through fraudulent means when his co-defendant claimed that his first loan did not push through; the promissory notes did not indicate in what capacity he was intended to be bound; the bank granted his co-defendant successive extensions of time within which to pay, without his (Tomas Ang) knowledge and consent; the bank imposed new and additional stipulations on interest, penalties, services charges and attorney's fees more onerous than the terms of the notes, without his knowledge and consent, in the absence of legal and factual basis and in violation of the Usury Law; the bank caused the inclusion in the promissory notes of stipulations such as waiver of presentment for payment and notice of dishonor which are against public policy; and the notes had been impaired since they were never presented for payment and demands were made only several years after they fell due when his co-defendant could no longer pay them.

Regarding his counterclaim, Tomas Ang argued that by reason of the bank's acts or omissions, it should be held liable for the amount of P50,000 for attorney's fees and expenses of litigation. Furthermore, on his cross-claim against Antonio Ang Eng Liong, he averred that he should be reimbursed by his co-defendant any and all sums that he may be adjudged liable to pay, plus P30,000, P20,000 and P50,000 for moral and exemplary damages, and attorney's fees, respectively.

In its Reply,<sup>[9]</sup> respondent Bank countered that it is the real party in interest and is the holder of the notes since the Associated Banking Corporation and Associated Citizens Bank are its predecessors-in-interest. The fact that Tomas Ang never

received any moneys in consideration of the two (2) loans and that such was known to the bank are immaterial because, as an accommodation maker, he is considered as a solidary debtor who is primarily liable for the payment of the promissory notes. Citing Section 29 of the Negotiable Instruments Law (NIL), the bank posited that absence or failure of consideration is not a matter of defense; neither is the fact that the holder knew him to be only an accommodation party.

Respondent Bank likewise retorted that the promissory notes were completely filled up at the time of their delivery. Assuming that such was not the case, Sec. 14 of the NIL provides that the bank has the *prima facie* authority to complete the blank form. Moreover, it is presumed that one who has signed as a maker acted with care and had signed the document with full knowledge of its content. The bank noted that Tomas Ang is a prominent businessman in Davao City who has been engaged in the auto parts business for several years, hence, certainly he is not so naive as to sign the notes without knowing or bothering to verify the amounts of the loans covered by them. Further, he is already in estoppel since despite receipt of several demand letters there was not a single protest raised by him that he signed for only one note in the amount of P30,000.

It was denied by the bank that there were extensions of time for payment accorded to Antonio Ang Eng Liong. Granting that such were the case, it said that the same would not relieve Tomas Ang from liability as he would still be liable for the whole obligation less the share of his co-debtor who received the extended term.

The bank also asserted that there were no additional or new stipulations imposed other than those agreed upon. The penalty charge, service charge, and attorney's fees were reflected in the amendments to the promissory notes and disclosure statements. Reference to the Usury Law was misplaced as usury is legally non-existent; at present, interest can be charged depending on the agreement of the lender and the borrower.

Lastly, the bank contended that the provisions on presentment for payment and notice of dishonor were expressly waived by Tomas Ang and that such waiver is not against public policy pursuant to Sections 82 (c) and 109 of the NIL. In fact, there is even no necessity therefor since being a solidary debtor he is absolutely required to pay and primarily liable on both promissory notes.

On October 19, 1990, the trial court issued a preliminary pre-trial order directing the parties to submit their respective pre-trial guide.<sup>[10]</sup> When Antonio Ang Eng Liong failed to submit his brief, the bank filed an *ex-parte* motion to declare him in default.<sup>[11]</sup> Per Order of November 23, 1990, the court granted the motion and set the *ex-parte* hearing for the presentation of the bank's evidence.<sup>[12]</sup> Despite Tomas Ang's motion<sup>[13]</sup> to modify the Order so as to exclude or cancel the *ex-parte* hearing based on then Sec. 4, Rule 18 of the old Rules of Court (now Sec. 3[c.], Rule 9 of the Revised Rules on Civil Procedure), the hearing nonetheless proceeded.<sup>[14]</sup>

Eventually, a decision<sup>[15]</sup> was rendered by the trial court on February 21, 1991. For his supposed bad faith and obstinate refusal despite several demands from the bank, Antonio Ang Eng Liong was ordered to pay the principal amount of P80,000 plus 14% interest per annum and 2% service charge per annum. The overdue

penalty charge and attorney's fees were, however, reduced for being excessive, thus:

WHEREFORE, judgment is rendered against defendant Antonio Ang Eng Liong and in favor of plaintiff, ordering the former to pay the latter:

On the first cause of action:

- 1) the amount of P50,000.00 representing the principal obligation with 14% interest per annum from June 27, 1983 with 2% service charge and 6% overdue penalty charges per annum until fully paid;
- 2) P11,663.89 as accrued service charge; and
- 3) P34,991.67 as accrued overdue penalty charge.

On the second cause of action:

- 1) the amount of P50,000.00 (sic) representing the principal account with 14% interest from June 27, 1983 with 2% service charge and 6% overdue penalty charges per annum until fully paid;
- 2) P7,088.34 representing accrued service charge;
- 3) P21,265.00 as accrued overdue penalty charge;
- 4) the amount of P10,000.00 as attorney's fees; and
- 5) the amount of P620.00 as litigation expenses and to pay the costs.

SO ORDERED.<sup>[16]</sup>

The decision became final and executory as no appeal was taken therefrom. Upon the bank's *ex-parte* motion, the court accordingly issued a writ of execution on April 5, 1991.<sup>[17]</sup>

Thereafter, on June 3, 1991, the court set the pre-trial conference between the bank and Tomas Ang,<sup>[18]</sup> who, in turn, filed a Motion to Dismiss<sup>[19]</sup> on the ground of lack of jurisdiction over the case in view of the alleged finality of the February 21, 1991 Decision. He contended that Sec. 4, Rule 18 of the old Rules sanctions only one judgment in case of several defendants, one of whom is declared in default. Moreover, in his Supplemental Motion to Dismiss,<sup>[20]</sup> Tomas Ang maintained that he is released from his obligation as a solidary guarantor and accommodation party because, by the bank's actions, he is now precluded from asserting his cross-claim against Antonio Ang Eng Liong, upon whom a final and executory judgment had already been issued.

The court denied the motion as well as the motion for reconsideration thereon.<sup>[21]</sup> Tomas Ang subsequently filed a petition for *certiorari* and prohibition before this Court, which, however, resolved to refer the same to the Court of Appeals.<sup>[22]</sup> In accordance with the prayer of Tomas Ang, the appellate court promulgated its

Decision on January 29, 1992 in CA G.R. SP No. 26332, which annulled and set aside the portion of the Order dated November 23, 1990 setting the *ex-parte* presentation of the bank's evidence against Antonio Ang Eng Liong, the Decision dated February 21, 1991 rendered against him based on such evidence, and the Writ of Execution issued on April 5, 1991.<sup>[23]</sup>

Trial then ensued between the bank and Tomas Ang. Upon the latter's motion during the pre-trial conference, Antonio Ang Eng Liong was again declared in default for his failure to answer the cross-claim within the reglementary period.<sup>[24]</sup>

When Tomas Ang was about to present evidence in his behalf, he filed a Motion for Production of Documents,<sup>[25]</sup> reasoning:

x x x

2. That corroborative to, and/or preparatory or incident to his testimony[,], there is [a] need for him to examine original records in the custody and possession of plaintiff, viz:

- a. original Promissory Note (PN for brevity) # DVO-78-382 dated October 3, 1978[;]
- b. original of Disclosure Statement in reference to PN # DVO-78-382;
- c. original of PN # DVO-78-390 dated October 9, 1978;
- d. original of Disclosure Statement in reference to PN # DVO-78-390;
- e. Statement or Record of Account with the Associated Banking Corporation or its successor, of Antonio Ang in CA No. 470 (cf. Exh. O) including bank records, withdrawal slips, notices, other papers and relevant dates relative to the overdraft of Antonio Eng Liong in CA No. 470;
- f. Loan Applications of Antonio Ang Eng Liong or borrower relative to PN Nos. DVO-78-382 and DVO-78-390 (*supra*);
- g. Other supporting papers and documents submitted by Antonio Ang Eng Liong relative to his loan application vis-à-vis PN. Nos. DVO-78-382 and DVO-78-390 such as financial statements, income tax returns, etc. as required by the Central Bank or bank rules and regulations.

3. That the above matters are very material to the defenses of defendant Tomas Ang, viz:

-the bank is not a holder in due course when it accepted the [PNs] in blank.

-The real borrower is Antonio Ang Eng Liong which fact is known to the bank.