

## **FIRST DIVISION**

**[ G.R. No. 116996, December 02, 1999 ]**

**ANDRES VILLALON, PETITIONER, VS. COURT OF APPEALS,  
INSULAR BANK OF ASIA AND AMERICA, NOW PHILIPPINE  
COMMERCIAL INTERNATIONAL BANK, RESPONDENTS.**

### **D E C I S I O N**

**KAPUNAN, J.:**

In this petition under Rule 45, petitioner would like this Court to deviate from the general rule that factual findings of the Court of Appeals (CA), affirming those of trial court, are final and conclusive and may not be reviewed on appeal.

The antecedents are as follows:

In June of 1985, Benjamin Gogo, Jr. (hereinafter, Gogo) enticed petitioner to enter into the business of manufacturing door jambs and related wood products for export. Under the proposed partnership scheme, Gogo will act as the industrial partner while petitioner will be the capitalist partner. Based on the project study presented by Gogo to petitioner, the business venture will stand to earn a substantial amount of profit. Because of the profitable business scenario painted by Gogo, along with the fact that Gogo already had a permit to export under the name of his single proprietorship venture, Greenleaf Export, petitioner agreed to the partnership. The partners reduced their agreement into writing and stipulated therein that their joint venture will utilize the existing business name and export permit of Greenleaf Export.

In order to kick-start business, petitioner invested two hundred seven thousand five hundred pesos (P207,500.00) which was deposited by the partners, on 28 June 1985, in a joint current account with the Insular Bank of Asia and America (IBAA), the same bank where Gogo already had his own current account for the revolving funds of Greenleaf Export. In order to insure the smooth flow of funds for their business, petitioner issued to Gogo several signed blank checks. For his part, Gogo, in accordance with the stipulations in their partnership agreement, executed, on 24 August 1985, a "Deed of Assignment of Proceeds" of Letter of Credit No. 25-35298/84. The said letter of credit amounted to forty six thousand five hundred dollars (\$46,500.00) with Green leaf Export as the designated beneficiary.

On 6 September 1985, unbeknownst to petitioner, Gogo applied for and was granted a Packing Credit Line in the amount of fifty thousand pesos (P50,000.00) by IBAA. In order to secure the same, Gogo executed a loan agreement and a promissory note in the amount of fifty thousand pesos (P50,000.00) in favor of IBAA. As further security to the credit line, Gogo executed a Deed of Assignment in favor of IBAA whereby the same letter of credit previously assigned by Gogo to petitioner, Letter of Credit No. 25-35298/84, was also assigned to IBAA. On 17 September 1985, the

letter of credit was partially negotiated in the amount of seven thousand five hundred forty-six dollars (\$7,546.00) which was accordingly released to Gogo after IBAA debited the amount of fifty thousand pesos (P50,000.00) in accordance with the Deed of Assignment in favor of IBAA and as payment for the loan obtained through the Packing Credit Line granted to Gogo. In the afternoon of the same day, Gogo again applied for and was granted a second Packing Credit Line in the amount of fifty thousand pesos (P50,000.00) against the same letter of credit and Deed of Assignment in favor of IBAA. The letter of credit was again re-negotiated in the amount of eight thousand one hundred forty-nine and sixty-eight cents (\$8,149.68) which amount was again released to Gogo after IBAA debited fifty thousand pesos (P50,000.00) pursuant to the Deed of Assignment and as payment for the loan obtained through the second Packing Credit Line. The same letter of credit was again re-negotiated, for the third time and last time, in the amount of five hundred dollars (\$500.00). On 30 September 1985, the letter of credit expired without further negotiations on the remaining amount.

During the course of their business, Gogo made two (2) export shipments of door jambs but no accounting was made thereon by him. Gogo, likewise, failed to account for the business funds left to him by petitioner by way of signed lank checks. Petitioner confronted Gogo about these matters but the latter turned a deaf ear and even threatened the life of petitioner. Moreover, petitioner discovered the negotiations made by Gogo with IBAA on the letter of credit which was previously assigned to him.

On 27 June 1986, petitioner filed a complaint before the Regional Trial Court of Makati, Branch 147, for accounting and damages against Gogo. IBAA was, likewise, impleaded because of petitioner's claim that the said bank and Gogo were conspiring with one another to defraud him. Furthermore, petitioner's action against IBAA was grounded on the claim that he furnished the said bank with a copy of the "Deed of Assignment of Proceeds" of Letter of Credit No. 25-35298/84, as evidenced by an alleged acknowledgment signature made by an unknown IBAA employee. In this regard, petitioner asserted that since the bank was apprised of the assignment made by Gogo in his favor, its should have credited the proceeds of the letter of credit to his favor and not to Gogo.

Two other defendants, Nonito Barangco and Capitol Woods International, were initially impleaded but, upon motion of petitioner, were subsequently dropped from the case. On 14 July 1986, the trial court issued a temporary restraining order whereby the last negotiation on the subject letter of credit, in the amount of five hundred dollars (\$500.00), was held in escrow until the determination of the case.

It should be noted that during the course of this case, IBAA merged with the Philippine Commercial and Industrial Bank with the latter as the surviving bank.

During the initial part of the trial, Gogo and IBAA were declared in default for having failed to appear on the scheduled hearing. Accordingly, petitioner was allowed to present his evidence ex-parte. However, after filing the necessary motion for reconsideration, IBAA was able to have the order of default lifted. No action was taken by Gogo to remedy his having been declared in default. On 20 December 1988, the trial court rendered a "Partial Decision"<sup>[1]</sup> on petitioner's complaint against Gogo. In the said decision, the trial court found in favor of petitioner and against Gogo. The proceedings continued against the remaining defendant, IBAA.

On 18 March 1992, the trial court rendered a decision[2] on the remaining complaint against IBAA, stating:

It is indeed correct that defendant bank is not a party to the Deed of Assignment of Proceeds (Exhibit D) executed by defendant Gogo in favor of the plaintiff. There is also no clear showing that a copy of the said document (Exhibit D) was furnished to the Insular Bank of Asia and America before it granted loans to defendant Gogo on security of the "Deed of Assignment" (Exhibit 4) executed by defendant Gogo in favor of Insular Bank of Asia and America. Anent this point, plaintiff introduced as (sic) alleged initial of an employee of Insular Bank of Asia and America appearing on Exhibit D. However, the same was not properly identified and authenticated by a competent witness. As aptly observed by defendant bank in its memorandum, anybody could have affixed his initial on said document. In view, thereof, the Court finds that defendant bank was not duty bound to deliver the proceeds of the negotiations on the letter (sic) of credit to the plaintiff. It was, therefore, justified in delivering the proceeds thereof to defendant Gogo who after all is the proprietor of Greenleaf Export, the beneficiary of the letter of credit.

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As regards the allegation of conspiracy between defendant Gogo and Insular Bank of Asia and America, the Court believes there is no sufficient basis to sustain such conclusion. The fact that the bank employees have rendered prompt and immediate attention and service to defendant Gogo does not mean that the bank is in conspiracy with defendant Gogo. It merely means that the bank employees render prompt and efficient service to their clients which they are expected to do is (sic) they are to survive in the crowded banking world.

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of defendant bank and against plaintiff, dismissing the complaint as regards defendant bank. Without pronouncement as to costs.

SO ORDERED.[3]

Dissatisfied with the said decision, petitioner seasonably appealed to the CA. On 20 June 1994, the CA affirmed the decision of the trial court, to wit:

WHEREFORE, the decision appealed from being in accordance with law and the evidence, the same is hereby AFFIRMED in full.

SO ORDERED.[4]