

FIRST DIVISION

[G.R. No. 197624, July 23, 2018]

**ABACUS CAPITAL AND INVESTMENT CORPORATION,
PETITIONER, VS. DR. ERNESTO G. TABUJARA, RESPONDENT.**

DECISION

TIJAM, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the Decision^[2] dated July 19, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93250 which reversed the Decision^[3] dated January 16, 2009 of the Regional Trial Court (RTC) of Pasig City, Branch 153. Contrary to the RTC's findings, the CA held petitioner Abacus Capital and Investment Corporation (Abacus) liable to respondent Dr. Ernesto G. Tabujara (Tabujara) for the amount of his investment with interest and damages.

The Antecedents

Abacus is an investment house engaged in activities related to dealing in securities and other commercial papers.^[4] On July 6, 2000, Tabujara engaged Abacus as his lending agent for purposes of investing his money in the principal amount of P3,000,000.00. Abacus, in turn, lent the P3,000,000.00 to Investors Financial Services Corporation (IFSC, formerly CIPI Leasing and Finance Corporation) with a term of 32 days.^[5] To confirm the money placement, Abacus issued to Tabujara a "Confirmation of Investment" slip stating as follows:^[6]

Loan Agreement No. 0003

Borrower CIPI Leasing & Finance Corporation

Value 07/06/00

Date

Maturity 08/07/00

Date

Term 32 days

Principal 3,000,000.00

Amount

Interest 9.150000%

Rate

Interest 24,400.00

Amount

Maturity 3,024,400.00

Amount

However, on July 24, 2000 or shortly after Tabujara placed his investment, IFSC filed with the Securities and Exchange Commission (SEC) a Petition for Declaration of Suspension of Payments. This petition was granted by the SEC and consequently, all

actions for claims against IFSC were immediately suspended.^[7]

Learning of this development, Tabujara gave notice to Abacus and IFSC that he is opting to pre-terminate his money placement. Upon maturity of the loan on August 7, 2000, Tabujara did not receive either the interest amount or the principal.^[8]

Meantime, IFSC's Petition for Declaration of Suspension of Payments was raffled to a regular court and was subsequently treated as a petition for rehabilitation.^[9] Pursuant to IFSC's rehabilitation plan, Tabujara received interest payments from Abacus for the period January 1, 2001 to December 31, 2001.^[10] The interest due, however, ceased to be paid come January 2002, prompting Tabujara to file his complaint *a quo* against Abacus and IFSC for collection of sum of money with damages.^[11] In its Complaint,^[12] Tabujara alleged, among others, that his investment was co-mingled with the monies of other investors to support the credit line facility in the amount of P700,000,000.00 which Abacus issued in favor of IFSC.

The complaint as against IFSC was dismissed on the ground of lack of jurisdiction while the same proceeded against Abacus.

By way of defense, Abacus insisted that Tabujara directly transacted with IFSC and that its involvement therein was limited only to acting as collecting and paying agent for Tabujara.^[13]

The RTC found that Abacus never guaranteed nor secured the obligations of IFSC which is the actual and real borrower of Tabujara's money and against which the latter has a cause of action.^[14] Nevertheless, since IFSC is under rehabilitation, the RTC held that the latter's assets are held in trust for the equal benefit of the creditors and Tabujara should not be paid ahead of the others.^[15]

In disposal, the RTC Decision^[16] dated January 16, 2009 held:

WHEREFORE, foregoing premises considered, the instant case as against [Abacus] is hereby **DISMISSED**.

SO ORDERED.^[17]

With the dismissal of its complaint, Tabujara interposed his appeal before the CA and argued that the RTC erred in finding that sole liability for re-payment of his money placement belongs to IFSC.

In reversing the RTC's decision, the CA reasoned that the transaction in this case was a money market transaction dealing with short-term credit instruments where lenders and borrowers do not deal directly with each other but through a middle man. The CA found that Abacus did not only act as a middle man pursuant to its function as an investment house, but as the "fund supplier" for the credit line facility it extended to IFSC. Further, the CA held that Abacus is guilty of fraud in handling Tabujara's money placement, having loaned the same to IFSC despite the latter's financial woes.^[18]

Thus, the CA Decision^[19] dated July 19, 2011 held:

WHEREFORE, the instant appeal is **GRANTED**. The assailed Decision of the RTC, Branch 153, Pasig City, dated January 16, 2009, is hereby **ANNULLED** and **SET ASIDE**, and a new one entered ordering [ABACUS] to pay [TABUJARA] the principal amount of his investment, P3,000,000.00, with interest at the stipulated rate of 9.15% *per annum* from January 29, 2002 until finality of judgment, and interest on interest at the legal rate of 12% from May 8, 2002 until finality of judgment. The total amount due shall earn interest at 12% *per annum* from the finality of the judgment until full payment thereof. Further, [Abacus] is ordered to pay moral damages in the amount of P100,000.00, as well as the costs of suit.

SO ORDERED.^[20]

The Issues

Abacus seeks a review of the CA's ruling through the instant petition arguing in the main that Tabujara has no cause of action against it as the actual and real borrower is IFSC.

Ruling of the Court

We deny the petition.

An investment house is defined under Presidential Decree No. 129^[21] as an entity engaged in underwriting of securities of other corporations. In turn, "underwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation; while "securities" is therein defined as written evidences of ownership, interest, or participation, in an enterprise, or written evidences of indebtedness of a person or enterprise. Republic Act No. 8799 or the Securities Regulation Code defines securities as shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes: (a) Shares of stocks, bonds, debentures, notes evidences of indebtedness, asset-backed securities; (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certifies of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments (f) Proprietary or non-proprietary membership certificates in corporations; and (g) Other instruments as may m the future be determined by the Commission.

Purportedly in keeping with its nature as an investment house, Abacus claims to have facilitated Tabujara's purchase of debt instruments issued by IFSC. According to Abacus, it merely purchased a unit of participation in Loan Agreement No. 0003 issued by IFSC for Tabujara's account, using the latter's money in the amount of P3,000,000.00. As it turns out, Abacus had an existing Loan Agreement with IFSC whereby it agreed to grant the latter a credit line facility in the amount of P700,000,000.00. By testimonial evidence, it was established that the moneys used to fund the P700,000,000.00 credit line facility were gathered from various sources.

^[22]