397 Phil. 591

SECOND DIVISION

[G.R. No. 128703, October 18, 2000]

TEODORO BAÑAS,[*] C. G. DIZON CONSTRUCTION, INC., AND CENEN DIZON, *PETITIONERS, VS.* ASIA PACIFIC FINANCE CORPORATION,[1] SUBSTITUTED BY INTERNATIONAL CORPORATE BAN NOW KNOWN AS UNION BANK OF THE PHILIPPINES, *RESPONDENT.*

D E C I S I O N

BELLOSILLO, J.:

C. G. DIZON CONSTRUCTION INC. and CENEN DIZON in this petition for review seek the reversal of the 24 July 1996 Decision of the Court of Appeals dismissing their appeal for lack of merit and affirming *in toto* the decision of the trial court holding them liable to Asia Pacific Finance Corporation in the amount of P87,637.50 at 14% interest per annum in addition to attorney's fees and costs of suit, as well as its 21 March 1997 Resolution denying reconsideration thereof.[2]

On 20 March 1981 Asia Pacific Finance Corporation (ASIA PACIFIC for short) filed a complaint for a sum of money with prayer for a writ of replevin against Teodoro Bañas, C. G. Dizon Construction and Cenen Dizon. Sometime in August 1980 Teodoro Bañas executed a *Promissory Note* in favor of C. G. Dizon Construction whereby for value received he promised to pay to the order of C. G. Dizon Construction the sum of P390,000.00 in installments of "P32,500.00 every 25th day of the month starting from September 25, 1980 up to August 25, 1981."[3]

Later, C. G. Dizon Construction endorsed with recourse the *Promissory Note* to ASIA PACIFIC, and to secure payment thereof, C. G. Dizon Construction, through its corporate officers, Cenen Dizon, President, and Juliette B. Dizon, Vice President and Treasurer, executed a *Deed of Chattel Mortgage* covering three (3) heavy equipment units of Caterpillar Bulldozer Crawler Tractors with Model Nos. D8-14A, D8-2U and D8H in favor of ASIA PACIFIC.[4] Moreover, Cenen Dizon executed on 25 August 1980 a *Continuing Undertaking* wherein he bound himself to pay the obligation jointly and severally with C. G. Dizon Construction.[5]

In compliance with the provisions of the *Promissory Note*, C. G. Dizon Construction made the following installment payments to ASIA PACIFIC: P32,500.00 on 25 September 1980, P32,500.00 on 27 October 1980 and P65,000.00 on 27 February 1981, or a total of P130,000.00. Thereafter, however, C. G. Dizon Construction defaulted in the payment of the remaining installments, prompting ASIA PACIFIC to send a *Statement of Account* to Cenen Dizon for the unpaid balance of P267,737.50 inclusive of interests and charges, and P66,909.38 representing attorney's fees. As the demand was unheeded, ASIA PACIFIC sued Teodoro Bañas, C. G. Dizon Construction and Cenen Dizon.

While defendants (herein petitioners) admitted the genuineness and due execution of the *Promissory Note*, the *Deed of Chattel Mortgage* and the *Continuing Undertaking*, they nevertheless maintained that these documents were never intended by the parties to be legal, valid and binding but a mere subterfuge to conceal the loan of P390,000.00 with usurious interests.

Defendants claimed that since ASIA PACIFIC could not directly engage in banking business, it proposed to them a scheme wherein plaintiff ASIA PACIFIC could extend a loan to them without violating banking laws: *first*, Cenen Dizon would secure a promissory note from Teodoro Bañas with a face value of P390,000.00 payable in installments; *second*, ASIA PACIFIC would then make it appear that the promissory note was sold to it by Cenen Dizon with the 14% usurious interest on the loan or P54,000.00 discounted and collected in advance by ASIA PACIFIC; and, *lastly*, Cenen Dizon would provide sufficient collateral to answer for the loan in case of default in payment and execute a continuing guaranty to assure continuous and prompt payment of the loan. Defendants also alleged that out of the loan of P390,000.00 defendants actually received only P329,185.00 after ASIA PACIFIC deducted the discounted interest, service handling charges, insurance premium, registration and notarial fees.

Sometime in October 1980 Cenen Dizon informed ASIA PACIFIC that he would be delayed in meeting his monthly amortization on account of business reverses and promised to pay instead in February 1981. Cenen Dizon made good his promise and tendered payment to ASIA PACIFIC in an amount equivalent to two (2) monthly amortizations. But ASIA PACIFIC attempted to impose a 3% interest for every month of delay, which he flatly refused to pay for being usurious.

Afterwards, ASIA PACIFIC allegedly made a verbal proposal to Cenen Dizon to surrender to it the ownership of the two (2) bulldozer crawler tractors and, in turn, the latter would treat the former's account as closed and the loan fully paid. Cenen Dizon supposedly agreed and accepted the offer. Defendants averred that the value of the bulldozer crawler tractors was more than adequate to cover their obligation to ASIA PACIFIC.

Meanwhile, on 21 April 1981 the trial court issued a writ of replevin against defendant C. G. Dizon Construction for the surrender of the bulldozer crawler tractors subject of the *Deed of Chattel Mortgage*. Of the three (3) bulldozer crawler tractors, only two (2) were actually turned over by defendants - D8-14A and D8-2U - which units were subsequently foreclosed by ASIA PACIFIC to satisfy the obligation. D8-14A was sold for P120,000.00 and D8-2U for P60,000.00 both to ASIA PACIFIC as the highest bidder.

During the pendency of the case, defendant Teodoro Bañas passed away, and on motion of the remaining defendants, the trial court dismissed the case against him. On the other hand, ASIA PACIFIC was substituted as party plaintiff by International Corporate Bank after the disputed *Promissory Note* was assigned and/or transferred by ASIA PACIFIC to International Corporate Bank. Later, International Corporate Bank merged with Union Bank of the Philippines. As the surviving entity after the merger, and having succeeded to all the rights and interests of International Corporate Bank in this case, Union Bank of the Philippines was substituted as a party in lieu of International Corporate Bank.[6]

On 25 September 1992 the Regional Trial Court ruled in favor of ASIA PACIFIC holding the defendants jointly and severally liable for the unpaid balance of the obligation under the *Promissory Note* in the amount of P87,637.50 at 14% interest per annum, and attorney's fees equivalent to 25% of the monetary award.[7]

On 24 July 1996 the Court of Appeals affirmed *in toto* the decision of the trial court thus -

> Defendant-appellants' contention that the instruments were executed merely as a subterfuge to skirt banking laws is an untenable defense. If that were so then they too were parties to the illegal scheme. Why should they now be allowed to take advantage of their own knavery to escape the liabilities that their own chicanery created?
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> Defendant-appellants also want us to believe their story that there was an agreement between them and the plaintiff-appellee that if the former would deliver their 2 bulldozer crawler tractors to the latter, the defendant-appellants' obligation would fully be extinguished. Again, nothing but the word that comes out between the teeth supports such story. Why did they not write down such an important agreement? Is it believable that seasoned businessmen such as the defendant-appellant Cenen G. Dizon and the other officers of the appellant corporation would deliver the bulldozers without a receipt of acquittance from the plaintiff-appellee x x x x In our book, that is not credible.

The pivotal issues raised are: (a) Whether the disputed transaction between petitioners and ASIA PACIFIC violated banking laws, hence, null and void; and (b) Whether the surrender of the bulldozer crawler tractors to respondent resulted in the extinguishment of petitioners' obligation.

On the first issue, petitioners insist that ASIA PACIFIC was organized as an investment house which could not engage in the lending of funds obtained from the public through receipt of deposits. The disputed *Promissory Note*, *Deed of Chattel Mortgage* and *Continuing Undertaking* were not intended to be valid and binding on the parties as they were merely devices to conceal their real intention which was to enter into a contract of loan in violation of banking laws.

We reject the argument. An investment company refers to any issuer which is or holds itself out as being engaged or proposes to engage primarily in the business of investing, reinvesting or trading in *securities*.[8] As defined in Sec. 2, par. (a), of the *Revised Securities Act*,[9] securities "shall include x x x x commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, *endorsed*, sold, transferred or in any manner conveyed to another *with or without recourse*, such as *promissory notes* x x x x" Clearly, the transaction between petitioners and respondent was one involving not a loan but purchase of **receivables at a discount**, well within the purview of "investing, reinvesting or trading in securities" which an investment company, like ASIA PACIFIC, is authorized to perform and does not constitute a violation of the General Banking Act.[10] Moreover, Sec. 2 of the *General Banking Act* provides in part -

> Sec. 2. Only entities duly authorized by the Monetary Board of the Central Bank may engage in the lending of funds obtained from the public through the receipt of deposits of any kind, and all entities

> regularly conducting such operations shall be considered as banking institutions and shall be subject to the provisions of this Act, of the Central Bank Act, and of other pertinent laws (*underscoring supplied*).

Indubitably, what is prohibited by law is for investment companies to lend funds obtained from the public through receipts of deposit, which is a function of banking institutions. But here, the funds supposedly "lent" to petitioners have not been shown to have been obtained from the public by way of deposits, hence, the inapplicability of banking laws.

On petitioners' submission that the true intention of the parties was to enter into a contract of loan, we have examined the *Promissory Note* and failed to discern anything therein that would support such theory. On the contrary, we find the terms and conditions of the instrument clear, free from any ambiguity, and expressive of the real intent and agreement of the parties. We quote the pertinent portions of the *Promissory Note*

> - FOR VALUE RECEIVED, I/We, hereby promise to pay to the order of C.G. Dizon Construction, Inc. the sum of THREE HUNDRED NINETY THOUSAND ONLY (P390,000.00), Philippine Currency in the following manner:
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> P32,500.00 due every 25th of the month starting from September 25, 1980 up to August 25, 1981.
>
> I/We agree that if any of the said installments is not paid as and when it respectively falls due, all the installments covered hereby and not paid as yet shall forthwith become due and payable at the option of the holder of this note with interest at the rate of 14% per annum on each unpaid installment until fully paid.
>
> If any amount due on this note is not paid at its maturity and this note is placed in the hands of an attorney for collection, I/We agree to pay in addition to the aggregate of the principal amount and interest due, a sum equivalent to TEN PERCENT (10%) thereof as Attorney's fees, in case no action is filed, otherwise, the sum will be equivalent to TWENTY FIVE (25%) of the said principal amount and interest due x x x x
>
> Makati, Metro Manila, August 25, 1980.
>
> (Sgd) Teodoro Bañas
>
> **ENDORSED TO ASIA PACIFIC FINANCE CORPORATION WITH RECOURSE, C.G. DIZON CONSTRUCTION, INC.**
>
> By: (Sgd.) Cenen Dizon — President
> (Sgd.) Juliette B. Dizon — VP/Treasurer

Likewise, the *Deed of Chattel Mortgage* and *Continuing Undertaking* were duly acknowledged before a notary public and, as such, have in their favor the presumption of regularity. To contradict them there must be clear, convincing and more than merely preponderant evidence. In the instant case, the records do not show even a preponderance of evidence in favor of petitioners' claim that the Deed