

FIRST DIVISION

[G.R. No. 133491, October 13, 1999]

ALEXANDER G. ASUNCION, PETITIONER, VS. EDUARDO B. EVANGELISTA AND COURT OF APPEALS, RESPONDENTS.

DECISION

PUNO, J.:

This is a petition for review of the Decision of the respondent Court of Appeals^[1] rescinding the Memorandum of Agreement of the parties and assessing against the petitioner damages in the amount of P32,644,420.55.

These are the relevant facts.

Since 1970, private respondent has been operating a piggery on his landholdings in Barangay Loma de Gato, Marilao, Bulacan.^[2] Until 1980, he operated the piggery under the trade name Embassy Farms as a single proprietorship.^[3] In October 1981, private respondent, his wife, Epifania C. Evangelista, and three (3) others, namely, Angel L. Santos, Jr., Amando C. Martin and Teofilo J. Mesina, organized Embassy Farms, Inc. and registered it with the Securities and Exchange Commission.^[4]

Private respondent was the majority stockholder of the corporation, with ninety percent (90%) of the shares in his name. He also served as its president and chief executive officer. Its principal office was established at the piggery facility that had been existing on the landholdings of private respondent in Barangay Loma de Gato, Marilao, Bulacan, consisting of about 104,447 sq. m.^[5]

On September 9, 1980, private respondent borrowed five hundred thousand pesos (P500,000.00) from Paluwagan ng Bayan Savings and Loan Association to use as working capital for Embassy Farms. He executed a real estate mortgage on three of his properties in Barangay Loma de Gato, Marilao, Bulacan as security for the loan.^[6]

On November 4, 1981, private respondent mortgaged ten (10) titles more in favor of PAIC Savings and Mortgage Bank, formerly First Summa Savings and Mortgage Bank, as security for a loan he obtained from it in the amount of one million seven hundred twelve thousand pesos (P1,712,000.00).^[7]

On February 16, 1982, private respondent obtained another loan in the amount of eight hundred forty four thousand six hundred twenty five and seventy eight centavos (P844,625.78) from Mercator Finance Corporation. The loan was secured by a real estate mortgage^[8] on five (5) other landholdings of private respondent, all situated in Bulacan. Private respondent obtained these personal loans to provide himself working capital to run the farm and sustain its operations. His aggregate debt exposure totaled three million fifty six thousand six hundred twenty five and seventy eight centavos (P3,056,625.78).

Private respondent defaulted in his loan payments. Of the PAIC loan that should have been paid on an equal quarterly amortization basis for three (3) years from October 31, 1981, eight (8) quarterly amortizations totaling one million five hundred one thousand nine hundred eighty eight and eight centavos (P1,501,988.08) fell due by January 12, 1984. Against this overdue amount, only two hundred eighty thousand seven hundred forty eight and fifty one centavos (P280,748.51) was remitted by private respondent.^[9]

By June 1984, private respondent's aggregate debt had ballooned to almost six million pesos (P6,000,000.00)^[10] in overdue principal payments, interests, penalties and other financial charges.

On August 2, 1984, petitioner and private respondent executed a Memorandum of Agreement containing the following terms and conditions:

“MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

"This Memorandum of Agreement made and executed this ____ day of July, 1984, here in _____, Metro Manila, by and between -

"ALEXANDER G. ASUNCION, of legal age, Filipino, married to Perlita Asuncion, and resident of No. 7 A. Lake Street, San Juan, Metro Manila, hereinafter referred to as AGA;

"- and -

"EDUARDO B. EVANGELISTA, of legal age, Filipino, married to Epifania C. Evangelista, and resident of No. 113 R. Terona Street, BF Homes, Paranaque, Metro Manila, hereinafter referred to as EBE.

"WITNESSETH:

"WHEREAS, EBE is the registered and absolute owner of nineteen (19) parcels of agricultural lands with an aggregate area of 104,447 square meters more or less, all situated in LOMA DE GATO, Marilao, Bulacan, hereinbelow enumerated by the covering certificates of title and the corresponding area as follows:

"x x x

"WHEREAS, EBE is likewise the controlling interest of 90% to 100% of the paid-in equity of EMBASSY FARMS, INC., which corporation is the registered owner of a piggery, situated in the above enumerated real properties, with stocks, equipment and facilities as shown in the inventory thereof as of July 4, 1984, hereto attached as Schedule "A" and made an integral part hereof;

"WHEREAS, EBE has personal loans with the institutions herein below enumerated correspondingly with the amount of indebtedness, inclusive of interest, up to June 30, 1984:

"a) PAIC BANK	P2,758,968.49
"b) PALUWAGAN SAVINGS BANK	
1. CB-IBRD -	P558,110.44
2. Comm'l loan -	<u>P835,863.76</u> 1,393,974.20
"c) MERCATOR FINANCE CORP.	<u>1,846,012.96</u>
	TOTAL
	P5,998,955.65

"WHEREAS, EBE has offered to AGA and the latter has accepted the transfer to him by EBE, of the whole of EBE's controlling interest in EMBASSY FARMS, INC. as well as all of his above enumerated parcels of real property together with any and all improvements thereon subject to the following terms and conditions:

"NOW, THEREFORE, for and in consideration of the foregoing, the parties herein agree as follows:

"1) That EBE hereby cedes, transfers and conveys unto AGA all of his above enumerated parcels of real property together with any and all improvements thereon, and in connection with such transfer, hereby undertakes to execute, sign and deliver any and all documents appropriate for the same, either in favor of AGA or his nominees;

"2) That EBE hereby likewise cedes, transfers and conveys in a manner absolute and irrevocable any and all of his shares [of] stocks in the aforesaid EMBASSY FARMS, INC., outstanding [in] his name in the books of incorporation, as well as any and all rights, interests and participation in the said corporation by reason of such shares [of] stocks or otherwise, EBE shall, within a reasonable time, from signing hereof, cause to be so transferred to AGA or his nominee such shares of stocks in said corporation as are held on record by 3rd parties, until the total of such shares so transferred shall constitute 90% of the paid-in equity of said corporation;

"3) That upon signing hereof, AGA shall pay EBE the sum of P1,000,000.00 and the further amount of P500,000.00 within a period of 90 days from and after such signing;

- "4) That AGA shall upon signing hereof, make available, as and for operating expenses of the farm or piggery the sum of P300,000.00 to be followed by amount of P300,000.00 within 30 days from such signing and 60 days thereafter, the amount of P150,000.00;
- "5) AGA shall assume all of the aforestated obligations of EBE with the institution aforementioned and in connection therewith, he shall make available for payment to PALUWAGAN SAVINGS BANK, upon signing of this 'MEMORANDUM OF AGREEMENT', the amount of P100,000.00, representing 50% of the amount required by the said bank for the restructuring of the aforestated loan of EBE therewith;
- "6) That also upon signing of these presents, AGA shall make available for payment to MERCATOR FINANCE CORPORATION the amount of P100,000.00 representing 50% of the amount required by the latter for restructuring of the aforesaid obligation to it of EBE;
- "7) That upon signing of this agreement, EBE shall make available for payment to PALUWAGAN SAVINGS BANK the amount of P100,000.00 and the same amount to MERCATOR FINANCE CORPORATION corresponding to the other halves of the aforestated amount called for by the said institution in the preceding paragraphs 5 and 6 hereof;
- "8) That upon signing hereof, EBE shall cause the turn-over to AGA of the effective control and management of the aforesaid piggery, from EMBASSY FARMS, over which EBE hereby warrants to have effective control up to and until such turnover to AGA;
- "9) EBE hereby warrants not only free and marketable titles to the shares (of) stock of EMBASSY FARMS, INC. that he transfers hereby but also effective control, amounting to ownership of the other shares of stock of such corporation which are outstanding in the books of said corporation in the name of 3rd parties, which shares of stock he could always dispose of therefore [sic] any time and in any manner he may deem proper;
- "10) EBE shall secure supplier's credit and feed ingredients, veterinary supplies, etc. up to P500,000.00 and over a period of three (3) months in order to be able to augment the effective operation of the farm;
- "11) Within 90 days from signing of this agreement, AGA shall make available for the farm P250,000.00, payable to him within one year from and after the grant of the same, with stated interest of 24% per annum, the proceeds of which to be utilized exclusively for the operation of the farm;
- "12) That within a reasonable time from signing of this agreement, AGA shall organize and register a corporation (hereafter referred to as new corporation) with authorized capital stock of exactly P10,000,000.00 with P1,000,000.00 worth of paid-in shares of stock thereof, to be allocated or assigned to EBE [sic] said corporation shall, upon its registration take over all the rights and liabilities of AGA hereunder saving the one stipulated in paragraph no. ___ hereof;
- "13) On or before November 1984, AGA shall pay EBE P144,941.88 plus interest at 24% per annum in payment of the feed ingredients, mixed feeds and veterinary supplies mentioned in Schedule "A" which EBE makes available to aforesaid piggery. He shall likewise reimburse to EBE on or before January 1985, the amount of P200,000.00 with interest at 24% per annum representing advances of the latter to PALUWAGAN SAVINGS BANK and MERCATOR FINANCE CORPORATION pursuant to paragraph 7 above;
- "14) That in connection with the aforesaid P1,000,000.00 worth of shares [of] stock in the new corporation, stipulated above to be allocated or assigned to EBE, the parties hereby agree that within eighteen (18) months from and after such assignment or allotment, AGA shall acquire, at par, from EBE 50% thereof, with reservation to acquire the other 50% within a period of 30 months after such allotment, with premium of 50% of par value, if the commitments or targets mentioned in paragraph 17 herein shall have been met;

"15) That for the operation of the farm or piggery, the parties hereby agree that EBE shall serve as President and Chief Executive thereof, at a stated monthly salary of P15,000.00; Alberto M. Ladores as General Manager at P10,000.00 a month, V. Gregorio as Comptroller at P3,500.00 a month;

"16) The parties herein likewise agree to pay, when able, compensation to the following the amounts correspondingly indicated. Thus -

- a) V.S. Abadia - Chairperson of the Board at P 10,000.00
- b) A.G. Asuncion
- c) V.M. de Vera
- d) E. Ll. Umali

"17) Being senior operating officers of the farm, EBE and A.M. Ladores, shall submit to AGA, their respective position charter plans and programs for the farm for the next three (3) years, within 30 to 45 days after signing hereof, substantially in the form hereto attached as Schedule "B";

"18) That within the next three (3) months, an Agribusiness Management Company which includes a feedmilling operations shall be established. The officers thereof shall be Alexander G. Asuncion as Chairman, Vicente M. de Vera as Vice-Chairman, Edgardo Ll. Umali as Treasurer, Eduardo B. Evangelista as President and General Manager, and Alberto M. Ladores as Executive Vice-President. This management company shall be contracted for providing the over-all management of EMBASSY FARMS. EDUARDO B. EVANGELISTA and ALBERTO M. LADORES will have shares in the company and shall form the executive management team of said company, for which they will be remunerated in terms of salary and profit sharing.

"IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this 2nd day of August, 1984.

(Sgd.)

(Sgd.)

ALEXANDER G. ASUNCION
EVANGELISTA

EDUARDO B.

SIGNED IN THE PRESENCE OF:

(Sgd.)

(Sgd.)

VIOLETA S. ABADIA
LADORES

ALBERTO M.

x x x".^[11]

Upon the execution of the Memorandum of Agreement, petitioner paid private respondent one million pesos (P1,000,000.00) in compliance with paragraph 3 thereof. Although this was unreceipted, private respondent admitted receiving the same when he testified in open court.^[12]

In further compliance with paragraph 3, petitioner paid to private respondent the amount of five hundred thousand pesos (P500,000.00) within a ninety-day (90) period in four (4) disbursements, to wit:

Date of Payment	Actual Recipient Amount Paid of the Money	Voucher No.
Aug. 15, 1984	P100,000.00	3468 ^[13] Victoria Gregorio (for private respondent)
Aug. 23, 1984	P100,000.00	3504 ^[14] Victoria Gregorio

respondent)		(for private
Aug. 29, 1984	P100,000.00	3547 ^[15] Victoria Gregorio
respondent)		(for private
Sept. 26, 1984 Respondent	<u>P200,000.00</u>	3765 ^[16] Private
	Total	
P500,000.00		

In compliance with paragraph 4 of the Memorandum of Agreement, petitioner paid private respondent three hundred thousand pesos (P300,000.00),^[17] upon its signing on August 2, 1984.

The second installment, in the like amount of three hundred thousand pesos (P300,000.00) which became due between August 2, 1984 and September 2, 1984, was supposed to be remitted by petitioner to private respondent for the purpose of financing the operations of the piggery pursuant to the Memorandum. Instead, petitioner agreed to pay to PAIC Savings & Mortgage Bank the following amounts, to wit:

Date of Payment	Actual Recipient Amount Paid of the Money	Voucher No.
Aug. 8, 3224 ^[18] Bank	P200,000.00 ^[19]	PAIC Savings & 1984 Mortgage
Aug. 27, 3310 ^[20] Mortgage Bank	P100,000.00 ^[21]	PAIC Savings and 1984

in order to facilitate the restructuring of private respondent's loans with said bank. It is significant to note that under the Memorandum of Agreement, petitioner agreed to shoulder only the loan restructuring fees required by Paluwagan ng Bayan Savings and Loan Association Bank and Mercator Finance Corporation.^[22] Nonetheless, petitioner made the above payment in view of the letter of PAIC Savings & Mortgage Bank dated July 6, 1984 approving private respondent's request for the restructuring of his loan.

A third installment in the amount of one hundred fifty thousand pesos (P150,000.00) which was due between September 2, 1984 and November 2, 1984 was paid by petitioner to private respondent in the following tranches:

Date of Payment	Actual Recipient Amount Paid of the Money	Voucher No.
Sept. 19, 1984 Gregorio	P 20,000.00	DV No. 3707 ^[23] Victoria
Farms)		(for Embassy
Sept. 26, 1984 Respondent	P 30,000.00	DV No. 3770 ^[24] Private
Oct. 16, 1984 Respondent	P100,000.00	DV No. 3878 ^[25] Private

Aside from paying the aforesaid amount of three hundred thousand pesos (P300,000.00) to PAIC Savings & Mortgage Bank in compliance with paragraph 5 of the Memorandum of Agreement requiring petitioner to assume the loan obligations of private respondent, petitioner also paid four hundred thousand pesos (P400,000.00) in favor of Paluwagan ng Bayan Savings and Loan Association for the restructuring of