LAW 101

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SUBROGATION VIS-À-VIS ASSIGNMENT OF CREDIT

Sometime in the 1980s, L made fund placements of about $150,000 with the Anglo-Asean Bank – a private bank registered under the laws of the Republic of Vanuatu. Subsequently, L encountered difficulties in recovering not only the interest on his placements but also the principal of the investments he put in said bank.

He sought the advise of reputable banker and investment manager in the person of G. G offered to assume the payment of the Anglo-Asean bank's indebtedness to L subject to certain terms and conditions laid down in a Memorandum of Agreement. One of the whereas clauses pertinently read:

> 'WHEREAS, the parties herein have come to an agreement on the nature, form and extent of their mutual prestations which they now record herein **with the express conformity of the third parties concerned;"**

In essence, G undertook to pay L the amount of $150,000 in Philippine currency at the fixed exchange rate of P21 to US$1 –without interest on or before July 1993 in consideration for the assignment of the Anglo-Asean bank debt plus interest.

Pursuant to their MOA, G executed a PN for P3, 150,000 in favor of L as full settlement of L's money claims from Anglo-Asean Bank.

G then presented to the Anglo-Asean Bank the Memorandum of Agreement for the purpose of collecting L's $150,000 placement. But the Bank never acted on G's claims. Because of his inability to collect from Anglo-Asean, G did not bother to make good on his PN either.

But L thought differently. He believed he had a right to collect on the PN regardless of the outcome of G's recovery efforts. So he sued G.

The Regional Trial Court rendered judgment in favor of L holding G liable under the Memorandum of Agreement and the PN for P3,150,000 plus 12% interest p.a. from July 16, 1993 until the amount is fully paid.

On appeal, the Court of Appeals reversed the RTC's decision. Hence the petition for review to the Supreme Court.

The threshold issue was whether the Memorandum of Agreement was one of assignment of credit or one of conventional subrogation.

An assignment of credit has been defined as the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.

On the other hand, subrogation has been defined as the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts. Conventional subrogation is that which takes place by agreement of parties.

The general tenor of the foregoing definitions of the terms "subrogation" and "assignment of credit" may make it seem that they are one and the same which they are not. A noted expert in civil law notes their distinctions thus:

> "Under our Code, however, conventional subrogation is not identical to assignment of credit. In the former, the debtor's consent is necessary; in the latter it is not required. Subrogation extinguishes the obligation and gives rise to a new one; assignment refers to the same right which passes from one person to another. The nullity of an old obligation may be cured by subrogation, such that a new obligation will be perfectly valid; but the nullity of an obligation is not remedied by the assignment of the creditor's right to another."

Citing the whereas clause which required the conformity of the third parties concerned and the signature space captioned "with our conforme" reserved for the bank, the Supreme Court ruled that the Memorandum of Agreement was one of conventional subrogation. Without the consent of the debtor Anglo-Asean Bank, the Memorandum of Agreement never came into effect.

(Abelardo B. Licaros vs. Antonio P. Gatmaitan, G.R. No. 142838, Aug. 9, 2001)