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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

ABACUS CAPITAL AND
INVESTMENT CORPORATION,
Petitioner,

G.R. No. 197624

Present:

LEONARDO-DE CASTRO, J.,*
Acting Chairperson,
DEL CASTILLO,
JARDELEZA,
TIJAM, and
GESMUNDO, JJ.**

- versus -

Promulgated:

DR. ERNESTO G. TABUJARA,
Respondent.

JUL 23 2018

[Signature]

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DECISION

TIJAM, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Decision² dated July 19, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93250 which reversed the Decision³ 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.

* Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

**Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

¹ *Rollo*, pp. 8-39.

² Penned by Associate Justice Ramon M. Bato, Jr., concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino; id. at 43-59.

³ Rendered by Judge Briccio C. Ygaña; id. at 60-70.

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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 ₱3,000,000.00. Abacus, in turn, lent the ₱3,000,000.00 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 Date	07/06/00
Maturity Date	08/07/00
Term	32 days
Principal Amount	3,000,000.00
Interest Rate	9.150000%
Interest Amount	24,400.00
Maturity Amount	3,024,400.00

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

⁴ Id. at 221-222.

⁵ Id. at 43-44.

⁶ Id. at 44.

⁷ Id. at 64.

⁸ Id. at 44 and 61.

⁹ Id. at 64.

¹⁰ Id. at 65.

¹¹ Id. at 45.

¹² Id. at 95-103.

of other investors to support the credit line facility in the amount of ₱700,000,000.00 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 Decision¹⁶ 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

¹³ Id. at 64.

¹⁴ Id. at 68.

¹⁵ Id. at 70.

¹⁶ Id. at 60-70.

¹⁷ Id. at 70.

¹⁸ Id. at 55.

Thus, the CA Decision¹⁹ 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, ₱3,000,000.00, 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 ₱100,000.00, 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. 129²¹ 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 nonproprietary membership certificates

¹⁹ Id. at 43-59.

²⁰ Id. at 58.

²¹ GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF INVESTMENT HOUSES, February 15, 1973.

in corporations; and (g) Other instruments as may in 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 ₱3,000,000.00. 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 ₱700,000,000.00. By testimonial evidence, it was established that the moneys used to fund the ₱700,000,000.00 credit line facility were gathered from various sources.²²

That Tabujara's investment in the amount of ₱3,000,000.00 was used as part of the pool of funds made available to IFSC is confirmed by the facts that it is Abacus, and not Tabujara, which was actually regarded as IFSC's creditor in the rehabilitation plan and that Abacus even proposed to assign all its rights and privileges in accordance with the rehabilitation plan to its "funders" in proportion to their participation. As such, in a letter²³ dated November 6, 2000, Abacus proposed passing on and assigning to Tabujara all the proceeds and rights which it has under the rehabilitation plan in proportion to Tabujara's principal participation in the amount of ₱3,000,000.00. In other words, it was really Abacus who was the creditor entitled to the proceeds of IFSC's rehabilitation plan – thus necessitating the assignment by Abacus of said proceeds to the actual source of funds, Tabujara included.

Further, as aptly observed by the CA, the transaction herein involved is *akin* to money market placements. *Perez v. CA, et al.*²⁴ explains the nature of a money market transaction as follows:

As defined by Lawrence Smith, "the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market." It involves "commercial papers" which are instruments "evidencing indebtedness of any person or entity . . . which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse." The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the "fund users" and the "fund suppliers." The money market is an "impersonal market", free from personal considerations. "The market mechanism is intended to provide quick mobility of money and securities."

²² *Rollo*, pp. 50-53.

²³ *Id.* at 54.

²⁴ 212 Phil. 587 (1984).

The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor.²⁵

Stating that a money market placement partakes of the nature of loan, *Sesbreno v. CA*²⁶ elucidates:

In money market placement, the investor is a lender who loans his money to a borrower through a middleman or dealer. Petitioner here loaned his money to a borrower through Philfinance. When the latter failed to deliver back petitioner's placement with the corresponding interest earned at the maturity date, the liability incurred by Philfinance was a civil one. As such, petitioner could have instituted against Philfinance before the ordinary courts a simple action for recovery of the amount he had invested and he could have prayed therein for damages. x x x.²⁷ (Citations omitted)

In this case, Tabujara as the investor is the lender or the “funder” who loaned his ₱3,000,000.00 to IFSC through Abacus. Thus, when the loaned amount was not paid together with the contracted interest, Tabajura may recover from Abacus the amount so invested together with damages.

Finally, We find no reason to delete the CA's award for moral damages as it was established that Tabujara, in his twilight years, suffered mental anguish and serious anxiety over the mishandling of his investment which represented his savings and retirement benefits. Indeed, “[i]f there is any party that needs the equalizing protection of the law in money market transactions, it is the members of the general public who place their savings in such market for the purpose of generating interest revenues.”²⁸

In accordance, however, with *Nacar v. Gallery Frames, et al.*,²⁹ the legal rate of interest on the interest is modified from 12% to 6% beginning July 1, 2013 until finality of this judgment and the total amount due shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until full payment.

²⁵ Id. at 596-597.

²⁶ 310 Phil. 671 (1995).

²⁷ Id. at 682.

²⁸ *Sesbreño v. Court of Appeals*, 294 Phil. 445, 468 (1993).

²⁹ 716 Phil. 267 (2013).

WHEREFORE, the petition is **DENIED**. The Decision dated July 19, 2011 of the Court of Appeals in CA-G.R. CV No. 93250 is **AFFIRMED with MODIFICATION** that petitioner Abacus Capital and Investment Corporation is ordered to pay respondent Dr. Ernesto G. Tabujara the principal amount of his investment of ₱3,000,000.00 with interest at the rate of 9.1500% *per annum* from date of demand, January 29, 2002 until finality of this Decision, and interest on interest at the rate of twelve percent (12%) *per annum* from May 8, 2002 until June 30, 2013 and thereafter, at the rate of six percent (6%) *per annum* until finality of this Decision. The total amount due shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.

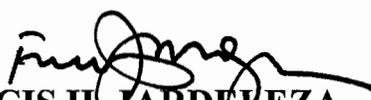
SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

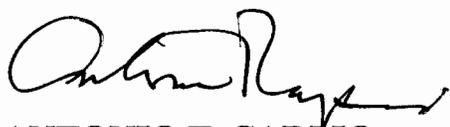
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARIPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)