

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
HON. JOSE P. ARRO, JUDGE OF THE COURT OF FIRST INSTANCE OF
DAVAO, AND RESIDORO CHUA, RESPONDENTS.**

G.R. No. L-49401. July 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari to annul the orders of respondent judge dated October 6, 1978 and November 7, 1978 in Civil Case No. 11-154 of the Court of First Instance of Davao, which granted the motion filed by private respondent to dismiss the complaint of petitioner for a sum of money, on the ground that the complaint states no cause of action as against private respondent.

After the petition had been filed, petitioner, on December 14, 1978 mailed a manifestation and motion requesting the special civil action for certiorari be treated as a petition for review.[1] Said manifestation and motion was noted in the resolution of January 10, 1979.[2]

It appears that on October 19, 1976 Residoro Chua and Enrique Go, Sr. executed a comprehensive surety agreement[3] to guaranty, among others, any existing indebtedness of Davao Agricultural Industries Corporation (referred to therein as Borrower, and as Daicor in this decision), and/or to induce the bank at any time or from time to time thereafter, to make loans or advances or to extend credit in other manner to, or at the request, or for the account of the Borrower, either with or without security, and/or to purchase on discount, or to make any loans or advances evidenced or secured by any notes, bills, receivables, drafts, acceptances, checks or other evidences of indebtedness (all hereinafter called "instruments") upon which the Borrower is or may become liable, provided that the liability shall not exceed at any one time the aggregate principal sum of P100,000.00.

On April 29, 1977 a promissory note[4] in the amount of P100,000.00 was issued in favor of petitioner payable on June 13, 1977. Said note was signed by Enrique Go, Sr. in his personal capacity and in behalf of Daicor. The promissory note was not fully paid despite repeated demands; hence, on June 30, 1978, petitioner filed a complaint for a sum of money against Daicor, Enrique Go, Sr. and Residoro Chua. A motion to dismiss dated September 23, 1978 was filed by respondent Residoro Chua on the ground that the complaint states no cause of action as against him.[5] It was alleged in the motion that he can not be held liable under the promissory note because it was only Enrique Go, Sr. who signed the same in behalf of Daicor and in his own personal capacity.

In an opposition dated September 26, 1978[6] petitioner alleged that by virtue of the execution of the comprehensive surety agreement, private respondent is liable because said agreement covers not merely the promissory note subject of the complaint, but is continuing; and it encompasses every other indebtedness the Borrower may, from time to time incur with petitioner bank.

On October 6, 1978 respondent court rendered a decision granting private respondent's motion to dismiss the complaint.[7] Petitioner filed a motion for reconsideration dated October 12, 1978 and on November 7, 1978 respondent court issued an order denying the said motion.[8]

The sole issue resolved by respondent court was the interpretation of the comprehensive surety agreement, particularly in reference to the indebtedness evidenced by the promissory note involved in the instant case, said comprehensive surety agreement having been signed by Enrique Go, Sr. and private respondent, binding themselves as solidary debtors of said corporation not only to existing obligations but to future ones. Respondent court said that corollary to that agreement must be another instrument evidencing the obligation in a form of a promissory note or any other evidence of indebtedness without which the said agreement serves no purpose; that since the promissory note, which is primarily the basis of the cause of action of petitioner, is not signed by private respondent, the latter can not be liable thereon.

Contesting the aforecited decision and order of respondent judge, the present petition was filed before this Court assigning the following as errors committed by respondent court:

1. That the respondent court erred in dismissing the complaint against Chua simply on the reasons that 'Chua is not a signatory to the promissory note' of April 29, 1977, or that Chua could not be held liable on the note under the provisions of the comprehensive surety agreement of October 29, 1976; and/or
2. That the respondent court erred in interpreting the provisions of the Comprehensive Surety Agreement towards the conclusion that respondent Chua is not liable on the promissory note because said note is not conformable to the Comprehensive Surety Agreement; and/or
- "3. That the respondent court erred in ordering that there is no cause of action against respondent Chua in the petitioner's complaint."

The main issue involved in this case is whether private respondent is liable to pay the obligation evidenced by the promissory note dated April 29, 1977 which he did not sign, in the light of the provisions of the comprehensive surety agreement which petitioner and private respondent had earlier executed on October 19, 1976.

We find for the petitioner. The comprehensive surety agreement was jointly executed by Residoro Chua and Enrique Go, Sr., President and General Manager, respectively of Daicor, on October 19, 1976 to cover existing as well as future obligations which Daicor may incur with the petitioner bank, subject only to the proviso that their liability shall not exceed at any one time the aggregate principal sum of P100,000.00. Thus, paragraph 1 of the agreement provides:

"For and in consideration of any existing indebtedness to you of Davao Agricultural Industries Corporation with principal place of business and postal address at 530 J. P. Cabaguio Ave., Davao City (hereinafter called the "Borrower), and/or in order to induce, you, in your discretion, at any time or from time to time hereafter, to make loans or advances or to extend credit in any other manner to, or at the request or for the account of the Borrower, either with or without security, and/or to purchase or discount or to make any loans or advances evidenced or secured by any notes, bills, receivables, drafts, acceptances, checks or other instruments or evidences of indebtedness (all hereinafter called "instruments") upon which the Borrower is or may become liable as maker, endorser, acceptor, or otherwise) the undersigned agrees to guarantee, and does hereby guarantee in joint and several capacity, the punctual payment at maturity to you of any and all such instruments, loans, advances, credits and/or other obligations herein before referred to, and also any and all other indebtedness of every kind which is now or may hereafter become due or owing to you by the Borrower, together with any and all expenses which may be incurred by you in collecting all such instruments or other indebtedness or obligations hereinbefore referred to x x x, provided, however, that the liability of the undersigned shall not exceed at any one time the aggregate principal sum of P100,000.00 x x x."

The agreement was executed obviously to induce petitioner to grant any application for a loan Daicor may desire to obtain from petitioner bank. The guaranty is a continuing one which shall remain in full force and effect until the bank is notified of its termination.

"This is a continuing guaranty and shall remain in full force and effect until written notice shall have been received by you that it has been revoked by the undersigned, x x x."[9]

At the time the loan of P100,000.00 was obtained from petitioner by Daicor, for the purpose of having an additional capital for buying and selling coco-shell charcoal and importation of activated carbon,[10] the comprehensive surety agreement was admittedly in full force and effect. The loan was, therefore, covered by the said agreement, and private respondent, even if he did not sign the promissory note, is liable by virtue of the surety agreement. The only condition that would make him liable thereunder is that the Borrower "is or may become liable as maker, endorser, acceptor or otherwise". There is no doubt that Daicor is liable on the promissory note evidencing the indebtedness.

The surety agreement which was earlier signed by Enrique Go, Sr. and private respondent, is an accessory obligation, it being dependent upon a principal one which, in this case is the loan obtained by Daicor as evidenced by a promissory note. What obviously induced petitioner bank to grant the loan was the surety agreement whereby Go and Chua bound themselves solidarily to guaranty the punctual payment of the loan at maturity. By terms that are unequivocal, it can be clearly seen that the surety agreement was executed to guarantee future debts which Daicor may incur with petitioner, as is legally allowable under the Civil Code. Thus -

"Article 2053. - A guaranty may also be given as security for future debts, the amount of which is not yet known; there can be no claim against the guarantor until the debt is liquidated. A conditional obligation may also be secured."

In view of the foregoing, the decision (which should have been a mere "order"), dismissing the complaint is reversed and set aside. The case is remanded to the court of origin with instructions to set aside the motion to dismiss, and to require defendant Residoro Chua to answer the complaint, after which the case shall proceed as pro-vided by the Rules of Court. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] p. 45, Rollo.

[2] p. 54, Rollo.

[3] p. 67, Rollo.

[4] p. 68, Rollo.

[5] Annex B, Petition, p. 17, Rollo.

[6] Annex C, Petition, p. 19, Rollo.

[7] Annex E, Petition, p. 23, Rollo.

[8] Annex H, Petition, p. 39, Rollo.

[9] Par. 6, Comprehensive Surety Agreement, p. 67, Rollo.

[10] p. 68, Rollo.

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