

WILLEX PLASTIC INDUSTRIES, CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND INTERNATIONAL CORPORATE BANK, RESPONDENTS.

G.R. No. 103066. April 25, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals in C.A.-G.R. CV No. 19094, affirming the decision of the Regional Trial Court of the National Capital Judicial Region, Branch XLV, Manila, which ordered petitioner Willex Plastic Industries Corporation and the Inter-Resin Industrial Corporation, jointly and severally, to pay private respondent International Corporate Bank certain sums of money, and the appellate court's resolution of October 17, 1989 denying petitioner's motion for reconsideration.

The facts are as follows:

Sometime in 1978, Inter-Resin Industrial Corporation opened a letter of credit with the Manila Banking Corporation. To secure payment of the credit accommodation, Inter-Resin Industrial and the Investment and Underwriting Corporation of the Philippines (IUCP) executed two documents, both entitled "Continuing Surety Agreement" and dated December 1, 1978, whereby they bound themselves solidarily to pay Manilabank "obligations of every kind, on which the [Inter-Resin Industrial] may now be indebted or hereafter become indebted to the [Manilabank]." The two agreements (Exhs. J and K) are the same in all respects, except as to the limit of liability of the surety, the first surety agreement being limited to US\$333,830.00, while the second one is limited to US\$334,087.00.

On April 2, 1979, Inter-Resin Industrial, together with Willex Plastic Industries Corp., executed a "Continuing Guaranty" in favor of IUCP whereby "For and in consideration of the sum or sums obtained and/or to be obtained by Inter-Resin Industrial Corporation" from IUCP, Inter-Resin Industrial and Willex Plastic jointly and severally guaranteed "the prompt and punctual payment at maturity of the NOTE/S issued by the DEBTOR/S . . . to the extent of the aggregate principal sum of FIVE MILLION PESOS (P5,000,000.00) Philippine Currency and such interests, charges and penalties as hereafter may be specified."

On January 7, 1981, following demand upon it, IUCP paid to Manilabank the sum of P4,334,280.61 representing Inter-Resin Industrial's outstanding obligation. (Exh. M-1) On February 23 and 24, 1981, Atrium Capital Corp., which in the meantime had succeeded IUCP, demanded from Inter-Resin Industrial and Willex Plastic the payment of what it (IUCP) had paid to Manilabank. As neither one of the sureties paid, Atrium filed this case in the court below against Inter-Resin Industrial and Willex Plastic.

On August 11, 1982, Inter-Resin Industrial paid Interbank, which had in turn succeeded Atrium, the sum of P687,500.00 representing the proceeds of its fire insurance policy for the destruction of its properties.

In its answer, Inter-Resin Industrial admitted that the "Continuing Guaranty" was intended to secure payment to

Atrium of the amount of P4,334,280.61 which the latter had paid to Manilabank. It claimed, however, that it had already fully paid its obligation to Atrium Capital.

On the other hand, Willex Plastic denied the material allegations of the complaint and interposed the following Special Affirmative Defenses:

- (a) Assuming arguendo that main defendant is indebted to plaintiff, the former's liability is extinguished due to the accidental fire that destroyed its premises, which liability is covered by sufficient insurance assigned to plaintiff;
- (b) Again, assuming arguendo, that the main defendant is indebted to plaintiff, its account is now very much lesser than those stated in the complaint because of some payments made by the former;
- (c) The complaint states no cause of action against WILLEX;
- (d) WILLEX is only a guarantor of the principal obligor, and thus, its liability is only secondary to that of the principal;
- (e) Plaintiff failed to exhaust the ultimate remedy in pursuing its claim against the principal obligor;
- (f) Plaintiff has no personality to sue.

On April 29, 1986, Interbank was substituted as plaintiff in the action. The case then proceeded to trial.

On March 4, 1988, the trial court declared Inter-Resin Industrial to have waived the right to present evidence for its failure to appear at the hearing despite due notice. On the other hand, Willex Plastic rested its case without presenting any evidence. Thereafter Interbank and Willex Plastic submitted their respective memoranda.

On April 5, 1988, the trial court rendered judgment, ordering Inter-Resin Industrial and Willex Plastic jointly and severally to pay to Interbank the following amounts:

- (a) P3,646,780.61, representing their indebtedness to the plaintiff, with interest of 17% per annum from August 11, 1982, when Inter-Resin Industrial paid P687,500.00 to the plaintiff, until full payment of the said amount;
- (b) Liquidated damages equivalent to 17% of the amount due; and
- (c) Attorney's fees and expenses of litigation equivalent to 20% of the total amount due.

Inter-Resin Industrial and Willex Plastic appealed to the Court of Appeals. Willex Plastic filed its brief, while Inter-Resin Industrial presented a "Motion to Conduct Hearing and to Receive Evidence to Resolve Factual Issues and to Defer Filing of the Appellant's Brief." After its motion was denied, Inter-Resin Industrial did not file its brief anymore.

On February 22, 1991, the Court of Appeals rendered a decision affirming the ruling of the trial court.

Willex Plastic filed a motion for reconsideration praying that it be allowed to present evidence to show that Inter-Resin Industrial had already paid its obligation to Interbank, but its motion was denied on December 6, 1991:

The motion is denied for lack of merit. We denied defendant-appellant Inter-Resin Industrial's motion for reception of evidence because the situation or situations in which we could exercise the power under B.P. 129 did not exist. Movant here has not presented any argument which would show otherwise.

Hence, this petition by Willex Plastic for the review of the decision of February 22, 1991 and the resolution of December 6, 1991 of the Court of Appeals.

Petitioner raises a number of issues.

[1] The main issue raised is whether under the "Continuing Guaranty" signed on April 2, 1979 petitioner Willex Plastic may be held jointly and severally liable with Inter-Resin Industrial for the amount paid by Interbank to Manilabank.

As already stated, the amount had been paid by Interbank's predecessor-in-interest, Atrium Capital, to Manilabank pursuant to the "Continuing Surety Agreements" made on December 1, 1978. In denying liability to Interbank for the amount, Willex Plastic argues that under the "Continuing Guaranty," its liability is for sums obtained by Inter-Resin Industrial from Interbank, not for sums paid by the latter to Manilabank for the account of Inter-Resin Industrial. In support of this contention Willex Plastic cites the following portion of the "Continuing Guaranty":

For and in consideration of the sums obtained and/or to be obtained by INTER-RESIN INDUSTRIAL CORPORATION, hereinafter referred to as the DEBTOR/S, from you and/or your principal/s as may be evidenced by promissory note/s, checks, bills receivable/s and/or other evidence/s of indebtedness (hereinafter referred to as the NOTE/S), I/We hereby jointly and severally and unconditionally guarantee unto you and/or your principal/s, successor/s and assigns the prompt and punctual payment at maturity of the NOTE/S issued by the DEBTOR/S in your and/or your principal/s, successor/s and assigns favor to the extent of the aggregate principal sum of FIVE MILLION PESOS (P5,000,000.00), Philippine Currency, and such interests, charges and penalties as may hereinafter be specified.

The contention is untenable. What Willex Plastic has overlooked is the fact that evidence aliunde was introduced in the trial court to explain that it was actually to secure payment to Interbank (formerly IUCP) of amounts paid by the latter to Manilabank that the "Continuing Guaranty" was executed. In its complaint below, Interbank's predecessor-in-interest, Atrium Capital, alleged:

5. to secure the guarantee made by plaintiff of the credit accommodation granted to defendant IRIC [Inter-Resin Industrial] by Manilabank, the plaintiff required defendant IRIC [Inter-Resin Industrial] to execute a chattel mortgage in its favor and a Continuing Guaranty which was signed by the other defendant WPIC [Willex Plastic].

In its answer, Inter-Resin Industrial admitted this allegation although it claimed that it had already paid its obligation in its entirety. On the other hand, Willex Plastic, while denying the allegation in question, merely did so "for lack of knowledge or information of the same." But, at the hearing of the case on September 16, 1986, when asked by the trial judge whether Willex Plastic had not filed a crossclaim against Inter-Resin Industrial, Willex Plastic's counsel replied in the negative and manifested that "the plaintiff in this case [Interbank] is the guarantor and my client [Willex Plastic] only signed as a guarantor to the guarantee." [2]

For its part Interbank adduced evidence to show that the "Continuing Guaranty" had been made to guarantee payment of amounts made by it to Manilabank and not of any sums given by it as loan to Inter-Resin Industrial. Interbank's witness testified under cross-examination by counsel for Willex Plastic that Willex "guaranteed the exposure/of whatever exposure of ACP [Atrium Capital] will later be made because of the guarantee to Manila Banking Corporation." [3]

It has been held that explanatory evidence may be received to show the circumstances under which a document has been made and to what debt it relates. [4] At all events, Willex Plastic cannot now claim that its liability is limited to any amount which Interbank, as creditor, might give directly to Inter-Resin Industrial as debtor because, by failing to object to the parol evidence presented, Willex Plastic waived the protection of the parol evidence rule. [5]

Accordingly, the trial court found that it was "to secure the guarantee made by plaintiff of the credit accommodation granted to defendant IRIC [Inter-Resin Industrial] by Manilabank, [that] the plaintiff required defendant IRIC to execute a chattel mortgage in its favor and a Continuing Guaranty which was signed by the defendant Willex Plastic Industries Corporation." [6]

Similarly, the Court of Appeals found it to be an undisputed fact that "to secure the guarantee undertaken by plaintiff-appellee [Interbank] of the credit accommodation granted to Inter-Resin Industrial by Manilabank, plaintiff-appellee required defendant-appellants to sign a Continuing Guaranty." These factual findings of the trial court and of the Court of Appeals are binding on us not only because of the rule that on appeal to the Supreme Court such findings are entitled to great weight and respect but also because our own examination of the record of the trial court confirms these findings of the two courts. [7]

Nor does the record show any other transaction under which Inter-Resin Industrial may have obtained sums of money from Interbank. It can reasonably be assumed that Inter-Resin Industrial and Willex Plastic intended to indemnify Interbank for amounts which it may have paid Manilabank on behalf of Inter-Resin Industrial.

Indeed, in its Petition for Review in this Court, Willex Plastic admitted that it was "to secure the aforesaid guarantee, that INTERBANK required principal debtor IRIC [Inter-Resin Industrial] to execute a chattel mortgage in its favor, and so a 'Continuing Guaranty' was executed on April 2, 1979 by WILLEX PLASTIC INDUSTRIES CORPORATION (WILLEX for brevity) in favor of INTERBANK for and in consideration of the loan obtained by IRIC [Inter-Resin Industrial]."

[2] Willex Plastic argues that the "Continuing Guaranty," being an accessory contract, cannot legally exist because of the absence of a valid principal obligation. [8] Its contention is based on the fact that it is not a party either to the "Continuing Surety Agreement" or to the loan agreement between Manilabank and Inter-Resin Industrial.

Put in another way the consideration necessary to support a surety obligation need not pass directly to the surety, a consideration moving to the principal alone being sufficient. For a "guarantor or surety is bound by the same consideration that makes the contract effective between the principal parties thereto. . . . It is never necessary that a guarantor or surety should receive any part or benefit, if such there be, accruing to his principal." [9] In an analogous case, [10] this Court held:

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, 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.

[3] Willex Plastic contends that the "Continuing Guaranty" cannot be retroactively applied so as to secure the payments made by Interbank under the two "Continuing Surety Agreements." Willex Plastic invokes the ruling in *El Vencedor v. Canlas* [11] and *Diño v. Court of Appeals* [12] in support of its contention that a contract of suretyship or guaranty should be applied prospectively.

The cases cited are, however, distinguishable from the present case. In *El Vencedor v. Canlas* we held that a

contract of suretyship "is not retrospective and no liability attaches for defaults occurring before it is entered into unless an intent to be so liable is indicated." There we found nothing in the contract to show that the parties intended the surety bonds to answer for the debts contracted previous to the execution of the bonds. In contrast, in this case, the parties to the "Continuing Guaranty" clearly provided that the guaranty would cover "sums obtained and/or to be obtained" by Inter-Resin Industrial from Interbank.

On the other hand, in *Diño v. Court of Appeals* the issue was whether the sureties could be held liable for an obligation contracted after the execution of the continuing surety agreement. It was held that by its very nature a continuing suretyship contemplates a future course of dealing. "It is prospective in its operation and is generally intended to provide security with respect to future transactions." By no means, however, was it meant in that case that in all instances a contract of guaranty or suretyship should be prospective in application.

Indeed, as we also held in *Bank of the Philippine Islands v. Foerster*,^[13] although a contract of suretyship is ordinarily not to be construed as retrospective, in the end the intention of the parties as revealed by the evidence is controlling. What was said there

- [14]

applies *mutatis mutandis* to the case at bar:

In our opinion, the appealed judgment is erroneous. It is very true that bonds or other contracts of suretyship are ordinarily not to be construed as retrospective, but that rule must yield to the intention of the contracting parties as revealed by the evidence, and does not interfere with the use of the ordinary tests and canons of interpretation which apply in regard to other contracts.

In the present case the circumstances so clearly indicate that the bond given by Echevarria was intended to cover all of the indebtedness of the Arrocera upon its current account with the plaintiff Bank that we cannot possibly adopt the view of the court below in regard to the effect of the bond.

[4] Willex Plastic says that in any event it cannot be proceeded against without first exhausting all property of Inter-Resin Industrial. Willex Plastic thus claims the benefit of excussion. The Civil Code provides, however:

Art. 2059. This excussion shall not take place:

- (1) If the guarantor has expressly renounced it;
- (2) If he has bound himself solidarily with the debtor;

.....

The pertinent portion of the "Continuing Guaranty" executed by Willex Plastic and Inter-Resin Industrial in favor of IUCP (now Interbank) reads:

If default be made in the payment of the NOTE/s herein guaranteed you and/or your principal/s may directly proceed against Me/Us without first proceeding against and exhausting DEBTOR/s properties in the same manner as if all such liabilities constituted My/Our direct and primary obligations. (*italics supplied*)

This stipulation embodies an express renunciation of the right of excussion. In addition, Willex Plastic bound itself solidarily liable with Inter-Resin Industrial under the same agreement:

For and in consideration of the sums obtained and/or to be obtained by INTER-RESIN INDUSTRIAL CORPORATION, hereinafter referred to as the DEBTOR/S, from you and/or your principal/s as may be evidenced by promissory note/s, checks, bills receivable/s and/or other evidence/s of indebtedness (hereinafter referred to as the NOTE/S), I/We hereby jointly and severally and unconditionally guarantee unto you and/ or

your principal/s, successor/s and assigns the prompt and punctual payment at maturity of the NOTE/S issued by the DEBTOR/S in your and/or your principal/s, successor/s and assigns favor to the extent of the aggregate principal sum of FIVE MILLION PESOS (P5,000,000.00), Philippine Currency, and such interests, charges and penalties as may hereinafter be specified.

[5] Finally it is contended that Inter-Resin Industrial had already paid its indebtedness to Interbank and that Willex Plastic should have been allowed by the Court of Appeals to adduce evidence to prove this. Suffice it to say that Inter-Resin Industrial had been given generous opportunity to present its evidence but it failed to make use of the same. On the other hand, Willex Plastic rested its case without presenting evidence.

The reception of evidence of Inter-Resin Industrial was set on January 29, 1987, but because of its failure to appear on that date, the hearing was reset on March 12, 26 and April 2, 1987.

On March 12, 1987 Inter-Resin Industrial again failed to appear. Upon motion of Willex Plastic, the hearings on March 12 and 26, 1987 were cancelled and "reset for the last time" on April 2 and 30, 1987.

On April 2, 1987, Inter-Resin Industrial again failed to appear. Accordingly the trial court issued the following order:

Considering that, as shown by the records, the Court had exerted every earnest effort to cause the service of notice or subpoena on the defendant Inter-Resin Industrial but to no avail, even with the assistance of the defendant Willex. . . the defendant Inter-Resin Industrial is hereby deemed to have waived the right to present its evidence.

On the other hand, Willex Plastic announced it was resting its case without presenting any evidence.

Upon motion of Inter-Resin Industrial, however, the trial court reconsidered its order and set the hearing anew on July 23, 1987. But Inter-Resin Industrial again moved for the postponement of the hearing to August 11, 1987. The hearing was, therefore, reset on September 8 and 22, 1987 but the hearings were reset on October 13, 1987, this time upon motion of Interbank. To give Interbank time to comment on a motion filed by Inter-Resin Industrial, the reception of evidence for Inter-Resin Industrial was again reset on November 17, 26 and December 11, 1987. However, Inter-Resin Industrial again moved for the postponement of the hearing. Accordingly, the hearing was reset on November 26 and December 11, 1987, with warning that the hearings were intransferrable.

Again, the reception of evidence for Inter-Resin Industrial was reset on January 22, 1988 and February 5, 1988 upon motion of its counsel. As Inter-Resin Industrial still failed to present its evidence, it was declared to have waived its evidence.

To give Inter-Resin Industrial a last opportunity to present its evidence, however, the hearing was postponed to March 4, 1988. Again Inter-Resin Industrial's counsel did not appear. The trial court, therefore, finally declared Inter-Resin Industrial to have waived the right to present its evidence. On the other hand, Willex Plastic, as before, manifested that it was not presenting evidence and requested instead for time to file a memorandum.

There is therefore no basis for the plea made by Willex Plastic that it be given the opportunity of showing that Inter-Resin Industrial has already paid its obligation to Interbank.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED, with costs against the petitioner.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Penned by Justice Luis A. Javellana with Justices Alfredo M. Marigomen and Artemon D. Luna, concurring.

[2] TSN. Sept. 16, 1986, p. 4.

[3] TSN, Oct. 16, 1986, p. 13.

[4] PNB v. Barretto P. Po E. Jap, 53 Phil. 955 (1928).

[5] Talosig v. Vda. de Nieba, 43 SCRA 472 (1972).

[6] RTC Decision, p. 8.

[7] Somodio v. Court of Appeals, 235 SCRA 307 (1994); Borillo v. Court of Appeals, 209 SCRA 130 (1992); Collado v. Intermediate Appellate Court, 206 SCRA 206 (1992); Philippine Commercial and Industrial Bank v. Court of Appeals, 193 SCRA 452 (1991).

[8] Art. 2052 of the Civil Code provides:

A guaranty cannot exist without a valid obligation.

Nevertheless, a guaranty may be constituted to guarantee the performance of a voidable or an unenforceable contract. It may also guarantee a natural obligation.

[9] Severino v. Severino, 56 Phil. 185, 187-88 (1931). Accord, Garcia v. Court of Appeals, 191 SCRA 493 (1990).

[10] Rizal Commercial Banking Corp. v. Arro, 115 SCRA 777, 781-782 (1982).

[11] 44 Phil. 699 (1923).

[12] 216 SCRA 9 (1992).

[13] 49 Phil. 843 (1926).

[14] Supra, note 13 at 848.

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