

PACIONARIA C. BAYLON, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FORMER NINTH DIVISION) AND LEONILA TOMACRUZ, RESPONDENTS.

G.R. No. 109941. August 17, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review by way of certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals[1] dated November 29, 1991 in CA-G.R. CV No. 27779 affirming the decision[2] of the Regional Trial Court of Quezon City, Branch 88, dated June 14, 1990 in Civil Case No. Q-89-2483 and the Resolution of the Court of Appeals dated April 27, 1993 denying petitioner's Motion for Reconsideration.

The pertinent facts, as found by the trial court and affirmed by respondent court, are briefly narrated as follows:

Sometime in 1986, petitioner Pacionaria C. Baylon introduced private respondent Leonila Tomacruz, the co-manager of her husband at PLDT, to Rosita B. Luanzon.[3] Petitioner told private respondent that Luanzon has been engaged in business as a contractor for twenty years and she invited private respondent to lend Luanzon money at a monthly interest rate of five percent (5%), to be used as capital for the latter's business. Private respondent, persuaded by the assurances of petitioner that Luanzon's business was stable and by the high interest rate, agreed to lend Luanzon money in the amount of P150,000. On June 22, 1987, Luanzon issued and signed a promissory note acknowledging receipt of the P150,000 from private respondent and obliging herself to pay the former the said amount on or before August 22, 1987.[4] Petitioner signed the promissory note, affixing her signature under the word "guarantor." Luanzon also issued a postdated Solidbank check no. CA418437 dated August 22, 1987 payable to Leonila Tomacruz in the amount of P150,000.[5] Subsequently, Luanzon replaced this check with another postdated Solidbank check no. 432945 dated December 22, 1987, in favor of the same payee and covering the same amount.[6] Several checks in the amount of P7,500 each were also issued by Luanzon and made payable to private respondent.[7]

Private respondent made a written demand upon petitioner for payment, which petitioner did not heed. Thus, on May 8, 1989, private respondent filed a case for the collection of a sum of money with the Regional Trial Court (RTC) of Quezon City, Branch 88, against Luanzon and petitioner herein, impleading Mariano Baylon, husband of petitioner, as an additional defendant. However, summons was never served upon Luanzon.

In her answer, petitioner denied having guaranteed the payment of the promissory note issued by Luanzon. She claimed that private respondent gave Luanzon the money, not as a loan, but rather as an investment in Art Enterprises and Construction, Inc. - the construction business of Luanzon. Furthermore, petitioner avers that, granting arguendo that there was a loan and petitioner guaranteed the same, private respondent has not exhausted the property of the principal debtor nor has she resorted to all the legal remedies against the principal debtor as required by law. Finally, petitioner claims that there was an extension of the maturity date of the loan without her consent, thus releasing her from her obligation.[8]

After trial on the merits, the lower court ruled in favor of private respondent. In its Decision dated June 14, 1990, it stated that -

The evidence and the testimonies on record clearly established a (sic) fact that the transaction between the plaintiff and defendants was a loan with five percent (5%) monthly interest and not an investment. In fact they all admitted in their testimonies that they are not given any stock certificate but only promissory notes similar to Exhibit "B" wherein it was clearly stated that defendant Luanzon would pay the amount of indebtedness on the date due. Postdated checks were issued simultaneously with the promissory notes to enable the plaintiff and others to withdraw their money on a certain fixed time. This shows that they were never participants in the business transaction of defendant Luanzon but were creditors.

The evidences presented likewise show that plaintiff and others loan their money to defendant Luanzon because of the assurance of the monthly income of five percent (5%) of their money and that they could withdraw it anytime after the due date add to it the fact that their friend, Pacionaria Baylon, expresses her unequivocal guarantee to the payment of the amount loaned.

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WHEREFORE, premises considered, judgment is hereby rendered against the defendants Pacionaria C. Baylon and Mariano Baylon, to pay the plaintiff the sum of P150,000.00, with interest at the legal rate from the filing of this complaint until full payment thereof, to pay the total sum of P21,000.00 as attorney's fees and costs of suit.[9]

On appeal, the trial court's decision was affirmed by the Court of Appeals. Hence, this present case wherein petitioner makes the following assignment of errors -

- RESPONDENT COURT ERRED IN HOLDING THAT THE PRIVATE RESPONDENT TOMACRUZ WAS A CREDITOR OF DEFENDANT LUANZON AND NOT AN INVESTOR IN THE CONSTRUCTION BUSINESS OF ART ENTERPRISES & CONSTRUCTION, INC.
- GRANTING, WITHOUT ADMITTING, THAT PETITIONER-APPELLANT BAYLON WAS A "GUARANTOR" AS APPEARING IN THE NOTE (EXH. "A") THE RESPONDENT COURT ERRED IN RULING THAT PETITIONER-APPELLANT BAYLON IS LIABLE TO THE PRIVATE RESPONDENT BECAUSE THE LATTER HAS NOT TAKEN STEPS TO EXHAUST THE PROPERTY OF THE PRINCIPAL DEBTOR AND HAS NOT RESORTED TO ALL THE LEGAL REMEDIES PROVIDED BY LAW AGAINST THE DEBTOR, DEFENDANT LUANZON.
- GRANTING, WITHOUT ADMITTING THAT PETITIONER-APPELLANT BAYLON WAS A GUARANTOR UNDER THAT NOTE (EXHIBIT "A") DATED JUNE 22, 1987, THE LOWER COURT ERRED IN RESOLVING THAT SHE WAS NOT RELEASED FROM HER GUARANTY BY THE SUBSEQUENT TRANSACTIONS BETWEEN THE RESPONDENT-APPELLANT AND DEFENDANT LUANZON.

At the outset, we note that petitioner's claim that the factual findings of the lower court, which were affirmed by the Court of Appeals, were based on a misapprehension of facts and contradicted by the evidence on records[10] is a bare allegation and devoid of merit. As a rule, the conclusions of fact of the trial court, especially when affirmed by the Court of Appeals, are final and conclusive and cannot be reviewed on appeal by the Supreme Court.[11] Although this rule admits of several exceptions,[12] none of the exceptions are in point in the present case. The factual findings of the respondent court are borne out by the record and are based on substantial evidence.

Petitioner claims that there is no loan to begin with; that private respondent gave Luanzon the amount of P150,000, not as a loan, but rather as an investment in the construction project of the latter.[13] In support of her

claim, petitioner cites the use by private respondent of the words "investment," "dividends," and "commission" in her testimony before the lower court; the fact that private respondent received monthly checks from Luanzon in the amount of P7,500 from July to December, 1987, representing dividends on her investment; and the fact that other employees of the Development Bank of the Philippines made similar investments in Luanzon's construction business.[14]

However, all the circumstances mentioned by petitioner cannot override the clear and unequivocal terms of the June 22, 1987 promissory note whereby Luanzon promised to pay private respondent the amount of P150,000 on or before August 22, 1987. The promissory note states as follows:

June 22, 1987

To Whom It May Concern:

For value received, I hereby promise to pay Mrs. LEONILA TOMACRUZ the amount of ONE HUNDRED FIFTY THOUSAND PESOS ONLY (P150,000.00) on or before August 22, 1987.

The above amount is covered by _____ Check No. _____ dated August 22, 1987.

(signed)

ROSITA B. LUANZON

G U R A R A N T O R :

(signed)

PACIONARIA O. BAYLON

Tel. No. 801-28-00

18 P. Mapa St., DBP Village

Almanza, Las Pinas, M.M.[15]

If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall control.[16] Resort to extrinsic aids and other extraneous sources are not necessary in order to ascertain the parties' intent when there is no ambiguity in the terms of the agreement.[17] Both petitioner and private respondent do not deny the due execution and authenticity of the June 22, 1987 promissory note. All of petitioner's arguments are directed at uncovering the real intention of the parties in executing the promissory note, but no amount of argumentation will change the plain import of the terms thereof, and accordingly, no attempt to read into it any alleged intention of the parties thereto may be justified.[18] The clear terms of the promissory note establish a creditor-debtor relationship between Luanzon and private respondent. The transaction at bench is therefore a loan, not an investment.

It is petitioner's contention that, even though she is held to be a guarantor under the terms of the promissory note, she is not liable because private respondent did not exhaust the property of the principal debtor and has not resorted to all the legal remedies provided by the law against the debtor.[19] Petitioner is invoking the benefit of excussion pursuant to article 2058 of the Civil Code, which provides that -

The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

It is axiomatic that the liability of the guarantor is only subsidiary.[20] All the properties of the principal debtor must first be exhausted before his own is levied upon. Thus, the creditor may hold the guarantor liable only after judgment has been obtained against the principal debtor and the latter is unable to pay, "for obviously the 'exhaustion of the principal's property' - the benefit of which the guarantor claims - cannot even begin to take

place before judgment has been obtained." [21] This rule is embodied in article 2062 of the Civil Code which provides that the action brought by the creditor must be filed against the principal debtor alone, except in some instances when the action may be brought against both the debtor and the principal debtor. [22]

Under the circumstances availing in the present case, we hold that it is premature for this Court to even determine whether or not petitioner is liable as a guarantor and whether she is entitled to the concomitant rights as such, like the benefit of excussion, since the most basic prerequisite is wanting - that is, no judgment was first obtained against the principal debtor Rosita B. Luanzon. It is useless to speak of a guarantor when no debtor has been held liable for the obligation which is allegedly secured by such guarantee. Although the principal debtor Luanzon was impleaded as defendant, there is nothing in the records to show that summons was served upon her. Thus, the trial court never even acquired jurisdiction over the principal debtor. We hold that private respondent must first obtain a judgment against the principal debtor before assuming to run after the alleged guarantor.

IN VIEW OF THE FOREGOING, the petition is granted and the questioned Decision of the Court of Appeals dated November 29, 1991 and Resolution dated April 27, 1993 are SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Ninth Division, composed of Associate Justices Serafin V.C. Guingona (ponente), Luis A. Javellana and Jorge S. Imperial.

[2] Penned by Judge Tirso D.C. Velasco.

[3] Petition, p. 4; Rollo, p. 28.

[4] Exhibit A.

[5] Exhibit B.

[6] Exhibit 15.

[7] Exhibits E, F, G, H, I, J, and K.

[8] Answer, pp. 2-3; Rollo, pp. 26-27.

[9] RTC Records, pp. 128-133.

[10] Petition, p. 9; Rollo, p. 33.

[11] Fortune Motors Phils. Corp. vs. Court of Appeals, 267 SCRA 653 [1997]; Meneses vs. Court of Appeals, 246 SCRA 162 [1995]; Tan Chun Suy vs. Court of Appeals, 229 SCRA 151 [1994].

[12] Commissioner of Internal Revenue vs. Embroidery and Garments Industries, G.R. No. 96262 [1999]; Mangahas vs. Court of Appeals, G.R. No. 95815 [1999]; Diaz vs. Sandiganbayan, G.R. No. 125213 [1999].

[13] Petition, p. 4; Rollo, p. 28.

[14] Petition, pp. 3-9; Rollo, pp. 27-33.

[15] Exhibit A.

[16] Civil Code, Art. 1370; Cebu Shipyard and Engineering Works, Inc. vs. William Lines, Inc. and Prudential

Guarantee and Assurance Company, Inc., G.R. No. 132607 [1999]; Rizal Commercial Banking Corporation vs. Court of Appeals and Lustre, G.R. No. 133107 [1999]; Salvatierra vs. Court of Appeals, 261 SCRA 45 (1996); Abella vs. Court of Appeals, 257 SCRA 482 (1996).

[17] Inter-Asia Services Corp. vs. Court of Appeals, 263 SCRA 408 [1996].

[18] Ascalon vs. Court of Appeals, 158 SCRA 542 [1988]; Pichel vs. Alonzo, 111 SCRA 341 [1982]; San Mauricio Mining Company vs. Ancheta, 105 SCRA 371 [1981].

[19] Petition, p. 9; Rollo, p. 33.

[20] World Wide Ins. and Surety Corp vs. Jose, 96 Phil 45 (1954); Visayan Surety and Ins. Corp. vs. De Laperal, 69 Phil 688 (1940).

[21] Vda. de Syquia vs. Jacinto, 60 Phil 861 (1934).

[22] Civil Code, article 2062 provides -

In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter.

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