

RODOLFO P. VELASQUEZ, PETITIONER, VS. COURT OF APPEALS, AND PHILIPPINE COMMERCIAL INTERNATIONAL BANK, INC., RESPONDENTS.

G.R. No. 124049. June 30, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for review on certiorari prays for reversal of the Decision of the Court of Appeals promulgated 28 September 1995 which affirmed the summary judgment of 20 June 1990 of the Regional Trial Court of Makati City, a default judgment against petitioner, and its 19 February 1996 Resolution denying petitioner's motion for reconsideration.

The case arose from a complaint for a sum of money with preliminary attachment filed with the Regional Trial Court of Makati City by private respondent Philippine Commercial International Bank (PCIB) against petitioner Rodolfo P. Velasquez together with Mariano N. Canilao Jr., Inigo A. Nebrida, Cesar R. Dean and Artemio L. Raymundo.[1]

Sometime in December 1994 the Pick-up Fresh Farms, Inc. (PUFFI), of which petitioner Velasquez was an officer and stockholder, filed an application for a loan of P7,500,000.00 with PCIB under the government's Guarantee Fund for Small and Medium Enterprises (GFSME).[2] On 16 April 1985 the parties executed the corresponding loan agreement. As security for the loan, promissory notes numbered TL 121231 and TL 121258 for the amounts of P4,000,000.00 and P3,500,000.00, respectively, were signed by Inigo A. Nebrida and Mariano N. Canilao, Jr. as officers of and for both PUFFI and Aircon and Refrigeration Industries, Inc. (ARII).[3] A chattel mortgage was also executed by ARII over its equipment and machineries in favor of PCIB. Petitioner along with Nebrida and Canilao, Jr. also executed deeds of suretyship in favor of PCIB. Separate deeds of suretyship were further executed by Cesar R. Dean and Artemio L. Raymundo.[4]

When PUFFI defaulted in the payment of its obligations PCIB foreclosed the chattel mortgage. The proceeds of the sale amounted to P678,000.00.[5] Thus, PCIB filed an action to recover the remaining balance of the entire obligation including interests, penalties and other charges. Exemplary damages and attorney's fees of 25% of the total amount due were also sought. On 9 October 1989 a writ of preliminary attachment was granted by the trial court.[6]

Petitioner and Canilao filed their joint answer with counterclaim denying personal liability and interposing the defense of novation. At the pre-trial on 11 April 1989 petitioner and counsel failed to appear despite due notice. On 11 April 1989, upon motion of PCIB, petitioner was declared as in default and the trial court granted the motion for summary judgment as against Canilao.[7] Both PCIB and Canilao submitted their respective position papers. Petitioner, who was still in default as he did not move to lift the order of default, adopted Canilao's position paper through an ex parte manifestation.[8] On 8 November 1989 an ex parte hearing was conducted as against petitioner.[9]

On 20 June 1990 the trial court rendered a summary judgment in favor of PCIB holding petitioner and Canilao solidarily liable to pay P7,227,624.48 plus annual interest of 17%, and P700,000.00 as attorney's fees and the costs of suit. The case was dismissed without prejudice with regard to the other defendants as they were not properly served with summons.[10]

On 31 July 1990 petitioner filed a motion for reconsideration praying that the order of default be lifted and that the summary judgment be set aside.[11] On 13 September 1991 the trial court denied the motion for lack of merit.[12] On appeal, the Court of Appeals on 28 September 1995 affirmed in toto the RTC judgment.[13] Petitioner's motion for reconsideration was thereafter denied. Hence this petition which maintains that the appellate court committed reversible error in sustaining or affirming the summary judgment despite the existence of genuine triable issues of facts and in refusing to set aside the default order against petitioner.

We are not persuaded. Petitioner, in raising the first error, invokes our ruling in *Viajar v. Estenzo*[14] that a party who moves for a summary proceeding has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.

While this rule is true in the summary proceedings under Rule 34 of the Revised Rules of Court, it does not apply to summary proceedings under Rule 35. A different rationale operates in the latter for it arises out of facts already established or admitted during the pre-trial held beforehand, unlike in the former where the judge merely relies on the merits of the movant's allegations.[15] Rule 34 pertains to a judgment on the pleadings while Rule 35 relates to a summary judgment which was the holding in this case.

Petitioner further insists that there are triable issues of fact raised in his answer, namely: (a) the denial of personal liability on his part in the deed of suretyship since he signed thereon as an officer of ARII; (b) PCIB's acceptance of royalties coming from the Franchise Agreement between PUFFI and Arturo Rosales who novated the loan agreement between PUFFI and PCIB; and, (c) the propriety of payment of the entire debt. According to petitioner, the fact that the addresses stated under the names of petitioner and fellow surety signors were those of ARII implies that they signed as officers of the corporation, otherwise, their personal addresses would have been used. Petitioner further avers that any ambiguity in the contract should be decided against PCIB under the contract of adhesion doctrine.

A mere perusal of the deed of suretyship readily shows petitioner's personal liability under the loan contract, hence, proper for summary judgment. Moreover, the more appropriate doctrine in this case is that of the "complementary contracts construed together" doctrine which we enunciated in *National Power Corporation v. CA*[16]-

The surety bond must be read in its entirety and together with the contract between the NPC and the contractors. The provisions must be construed together to arrive at their true meaning. Certain stipulations cannot be segregated and then made to control.

That the "complementary contracts construed together" doctrine applies in this case finds support in the principle that the surety contract is merely an accessory contract and must be interpreted with its principal contract, which in this case was the loan agreement. This doctrine closely adheres to the spirit of Art. 1374 of the Civil Code which states that -

Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

Applying the "complementary contracts construed together" doctrine leaves no doubt that it was the intention of

the parties that petitioner would be personally liable in the deed of suretyship because the loan agreement, among others, provided[17]-

Article 3. LOAN SECURITY. - x x x 3.4 Suretyship. - To further secure the obligations of the BORROWER to the LENDER, Messrs. Nebrida, Raymundo, Canilao, Dean and Velasquez and Aircon and Refrigeration Ind. Inc. shall each execute a suretyship agreement in favor of the LENDER in form and substance acceptable to the LENDER.

It would have been a different matter had petitioner properly contested the deed of suretyship under Sec. 8, Rule 8, of the Rules of Court. But he did not. The omission, as properly noted by the trial court, was fatal for it resulted in petitioner's admission of the due execution and genuineness of the contract. The admission effectively eliminated any defense relating to the authenticity and due execution of the document, e.g., that the document was spurious, counterfeit, or of different import on its face as the one executed by the parties; or that the signatures appearing thereon were forgeries; or that the signatures were unauthorized.[18]

Petitioner also claims that PCIB's acceptance of royalty fees which were the fruits of the Franchising Agreement between PUFFI and Arturo Rosales[19] constituted a novation of the loan agreement and deeds of suretyship, therefore, a genuine issue of fact.

This contention is untenable. Extinctive novation has these requisites: (a) the existence of a previous valid obligation; (b) the agreement of all the parties to the new contract; (c) the extinguishment of the old obligation or contract; and, (d) the validity of the new one. Thus, novation is effected only when a new contract has extinguished an earlier contract between the same parties.[20] Necessarily, there is no novation when the new contract is not between the same parties as in the old contract.

The franchise agreement was only between PUFFI and Rosales. PCIB was never mentioned therein; neither was there any reference to the subject loan agreement. What PCIB simply did was to accept royalty payments out of the franchise - an act which was already beyond the scope of the franchise agreement but which was not in conflict with the payment arrangement in the loan agreement. Our ruling in *Magdalena Estates Inc. v. Rodriguez* is instructive, to wit[21]-

An obligation to pay a sum of money is not novated, in a new instrument wherein the old is ratified, by changing only the terms of payment and adding other obligations not incompatible with the old one, or wherein the old contract is merely supplemented by the new one. The mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility, does not constitute a novation, and the creditor can still enforce the obligation against the original debtor.

As regards the defense of overpayment, since it is being raised for the first time we need not discuss it for it is deemed waived pursuant to Sec. 2, Rule 9, of the Rules of Court.

At this point, it must be stressed that insofar as petitioner is concerned, the RTC decision was not a summary judgment but a judgment by default as hearing was held *ex parte* against him. Even so, the RTC decision is still without grave abuse of discretion. Thus, the CA could not be in error in upholding it despite claims by petitioner that the default order should have been set aside because he could not be bound by the negligence of his counsel.

Petitioner attempts to avoid any personal blame by claiming that a special power of attorney in favor of his lawyer was drawn up because he could not attend the pre-trial due to previous commitments abroad. The lawyer, however, failed to attend thereby prejudicing his interests. However, the findings of the Court of Appeals, as fully substantiated by the records, showed that the lawyer was not the only one negligent, thus[22]-

Velasquez appears to have appointed his counsel, Atty. Rodolfo Vega, as his attorney-in-fact to represent him at the pre-trial but the said lawyer failed to appear, hence Velasquez was declared as in default. The records show that the Order of April 11, 1984 declaring him as in default was sent to his counsel and was received by the latter as early as May 10, 1989. No steps were taken to have the said Order lifted or reconsidered. This is binding on Velasquez who is himself guilty of negligence when, after executing the special power of attorney in favor of his lawyer, he left for abroad and apparently paid no further attention to his case until he received the decision. There is therefore no fraud, accident, mistake or excusable negligence which will warrant a lifting of the Order of Default.

As a general rule, a client is bound by the mistakes of his counsel;^[23] more so by the result of his own negligence.

WHEREFORE, the petition is DENIED. The Decision of 28 September 1995 of the Court of Appeals affirming the 20 June 1990 judgment of the RTC- Br. 61, Makati City, ordering petitioner Rodolfo P. Velasquez and Mariano N. Canilao, Jr. to solidarily pay respondent Philippine Commercial and Industrial Bank (PCIB) the amount of P7,227,624.48 with annual interest of 17% and attorney's fees of P700,000.00 plus costs of suit as well as its Resolution of 19 February 1995 denying reconsideration, is AFFIRMED.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Raffled to RTC-Br. 51, Makati City.

[2] RTC Records, pp. 13-14.

[3] Id., pp. 27-30.

[4] Id., pp. 31-36.

[5] Id., p. 135.

[6] Id., pp. 182-183.

[7] Id., p. 357.

[8] Id. p. 577.

[9] TSN, 8 November 1989, pp. 1-34.

[10] Decision penned by Judge Fernando V. Gorospe, Jr.; RTC Records, pp. 602-605.

[11] Id., pp. 614-625.

[12] Id., pp. 774-775.

[13] CA (17th Division) Decision penned by Justice Salome Montoya and concurred in by Justices Godardo Jacinto and Portia Hormachuelos; Rollo, pp. 28-41.

[14] No. L-43882, 30 April 1979, 89 SCRA 684, 697.

[15] Libudan v. Gil, No. L-21163, 17 May 1972, 45 SCRA 17.

[16] No. L-43706, 14 November 1986, 145 SCRA 533.

[17]RTC Records, p. 20.

[18] Kalilid Wood Industries Corporation v. Intermediate Appellate Court, G.R. No. 75502, 12 November 1987, 155 SCRA 594.

[19]See Note 16, pp. 517-521.

[20]Uraca v. Court of Appeals, G.R. No. 115158, 5 September 1997, 278 SCRA 702.

[21]No. L-18411, 17 December 1966, 18 SCRA 967.

[22] Rollo, p. 41.

[23] Villa Rhecar Bus v. De la Cruz, G.R. No. 78936, 7 January 1988, 157 SCRA 13.

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