

LAPULAPU FOUNDATION, INC. AND ELIAS Q. TAN, PETITIONERS, VS. COURT OF APPEALS (SEVENTEENTH DIVISION) AND ALLIED BANKING CORP., RESPONDENTS.

G.R. No. 126006. January 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petition for review on certiorari filed by the Lapulapu Foundation, Inc. and Elias Q. Tan seeking to reverse and set aside the Decision[1] dated June 26, 1996 of the Court of Appeals (CA) in CA-G.R. CV No. 37162 ordering the petitioners, jointly and solidarily, to pay the respondent Allied Banking Corporation the amount of P493,566.61 plus interests and other charges. Likewise, sought to be reversed and set aside is the appellate court's Resolution dated August 19, 1996 denying the petitioners' motion for reconsideration.

The case stemmed from the following facts:

Sometime in 1977, petitioner Elias Q. Tan, then President of the co-petitioner Lapulapu Foundation, Inc., obtained four loans from the respondent Allied Banking Corporation covered by four promissory notes in the amounts of P100,000 each. The details of the promissory notes are as follows:

P/N No. Date of P/N Maturity Date Amount as of 1/23/79

BD No. 504 Nov. 7, 1977 Feb. 5, 1978 P123,377.76

BD No. 621 Nov. 28, 1977 Mar. 28, 1978 P123,411.10

BD No. 716 Dec. 12, 1977 Apr. 11, 1978 P122,322.21

BD No. 839 Jan. 5, 1978 May 5, 1978 P120,455.54[2]

As of January 23, 1979, the entire obligation amounted to P493,566.61 and despite demands made on them by the respondent Bank, the petitioners failed to pay the same. The respondent Bank was constrained to file with the Regional Trial Court of Cebu City, Branch 15, a complaint seeking payment by the petitioners, jointly and solidarily, of the sum of P493,566.61 representing their loan obligation, exclusive of interests, penalty charges, attorney's fees and costs.

In its answer to the complaint, the petitioner Foundation denied incurring indebtedness from the respondent Bank alleging that the loans were obtained by petitioner Tan in his personal capacity, for his own use and benefit and on the strength of the personal information he furnished the respondent Bank. The petitioner Foundation maintained that it never authorized petitioner Tan to co-sign in his capacity as its President any promissory note and that the respondent Bank fully knew that the loans contracted were made in petitioner Tan's personal capacity and for his own use and that the petitioner Foundation never benefited, directly or indirectly, therefrom. The petitioner

Foundation then interposed a cross-claim against petitioner Tan alleging that he, having exceeded his authority, should be solely liable for said loans, and a counterclaim against the respondent Bank for damages and attorney's fees.

For his part, petitioner Tan admitted that he contracted the loans from the respondent Bank in his personal capacity. The parties, however, agreed that the loans were to be paid from the proceeds of petitioner Tan's shares of common stocks in the Lapulapu Industries Corporation, a real estate firm. The loans were covered by promissory notes which were automatically renewable ("rolled-over") every year at an amount including unpaid interests, until such time as petitioner Tan was able to pay the same from the proceeds of his aforesaid shares.

According to petitioner Tan, the respondent Bank's employee required him to affix two signatures on every promissory note, assuring him that the loan documents would be filled out in accordance with their agreement. However, after he signed and delivered the loan documents to the respondent Bank, these were filled out in a manner not in accord with their agreement, such that the petitioner Foundation was included as party thereto. Further, prior to its filing of the complaint, the respondent Bank made no demand on him.

After due trial, the court a quo rendered judgment the dispositive portion of which reads:

WHEREFORE, in view of the foregoing evidences [sic], arguments and considerations, this court hereby finds the preponderance of evidence in favor of the plaintiff and hereby renders judgment as follows:

"1. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc. [the petitioners herein] to pay jointly and solidarily to the plaintiff Allied Banking Corporation [the respondent herein] the amount of P493,566.61 as principal obligation for the four promissory notes, including all other charges included in the same, with interest at 14% per annum, computed from January 24, 1979, until the same are fully paid, plus 2% service charges and 1% monthly penalty charges.

"2. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc., to pay jointly and solidarily, attorney's fees in the equivalent amount of 25% of the total amount due from the defendants on the promissory notes, including all charges;

"3. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc., to pay jointly and solidarily litigation expenses of P1,000.00 plus costs of the suit." [3]

On appeal, the CA affirmed with modification the judgment of the court a quo by deleting the award of attorney's fees in favor of the respondent Bank for being without basis.

The appellate court disbelieved petitioner Tan's claim that the loans were his personal loans as the promissory notes evidencing them showed upon their faces that these were obligations of the petitioner Foundation, as contracted by petitioner Tan himself in his "official and personal character." Applying the parole evidence rule, the CA likewise rejected petitioner Tan's assertion that there was an unwritten agreement between him and the respondent Bank that he would pay the loans from the proceeds of his shares of stocks in the Lapulapu Industries Corp.

Further, the CA found that demand had been made by the respondent Bank on the petitioners prior to the filing of the complaint a quo. It noted that the two letters of demand dated January 3, 1979[4] and January 30, 1979[5] asking settlement of the obligation were sent by the respondent Bank. These were received by the petitioners as shown by the registry return cards[6] presented during trial in the court a quo.

Finally, like the court a quo, the CA applied the doctrine of piercing the veil of corporate entity in holding the petitioners jointly and solidarily liable. The evidence showed that petitioner Tan had represented himself as the President of the petitioner Foundation, opened savings and current accounts in its behalf, and signed the loan

documents for and in behalf of the latter. The CA, likewise, found that the petitioner Foundation had allowed petitioner Tan to act as though he had the authority to contract the loans in its behalf. On the other hand, petitioner Tan could not escape liability as he had used the petitioner Foundation for his benefit.

Aggrieved, the petitioners now come to the Court alleging that:

- THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE LOANS SUBJECT MATTER OF THE INSTANT PETITION ARE ALREADY DUE AND DEMANDABLE DESPITE ABSENCE OF PRIOR DEMAND.
- THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE PAROL EVIDENCE RULE AND THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY AS BASIS FOR ADJUDGING JOINT AND SOLIDARY LIABILITY ON THE PART OF PETITIONERS ELIAS Q. TAN AND LAPULAPU FOUNDATION, INC.[7]

The petitioners assail the appellate court's finding that the loans had become due and demandable in view of the two demand letters sent to them by the respondent Bank. The petitioners insist that there was no prior demand as they vigorously deny receiving those letters. According to petitioner Tan, the signatures on the registry return cards were not his.

The petitioners' denial of receipt of the demand letters was rightfully given scant consideration by the CA as it held:

Exhibits "R" and "S" are two letters of demand, respectively dated January 3, 1979 and January 30, 1979, asking settlement of the obligations covered by the promissory notes. The first letter was written by Ben Tio Peng Seng, Vice-President of the bank, and addressed to Lapulapu Foundation, Inc., attention of Mr. Elias Q. Tan, President, while the second was a final demand written by the appellee's counsel, addressed to both defendants-appellants, and giving them five (5) days from receipt within which to settle or judicial action would be instituted against them. Both letters were duly received by the defendants, as shown by the registry return cards, marked as Exhibits "R-2" and "S-1," respectively. The allegation of Tan that he does not know who signed the said registry return receipts merits scant consideration, for there is no showing that the addresses thereon were wrong. Hence, the disputable presumption "that a letter duly directed and mailed was received in the regular course of mail" (per par. V, Section 3, Rule 131 of the Revised Rules on Evidence) still holds.[8]

There is no dispute that the promissory notes had already matured. However, the petitioners insist that the loans had not become due and demandable as they deny receipt of the respondent Bank's demand letters. When presented the registry return cards during the trial, petitioner Tan claimed that he did not recognize the signatures thereon. The petitioners' allegation and denial are self-serving. They cannot prevail over the registry return cards which constitute documentary evidence and which enjoy the presumption that, absent clear and convincing evidence to the contrary, these were regularly issued by the postal officials in the performance of their official duty and that they acted in good faith.[9] Further, as the CA correctly opined, mails are presumed to have been properly delivered and received by the addressee "in the regular course of the mail." [10] As the CA noted, there is no showing that the addresses on the registry return cards were wrong. It is the petitioners' burden to overcome the presumptions by sufficient evidence, and other than their barefaced denial, the petitioners failed to support their claim that they did not receive the demand letters; therefore, no prior demand was made on them by the respondent Bank.

Having established that the loans had become due and demandable, the Court shall now resolve the issue of whether the CA correctly held the petitioners jointly and solidarily liable therefor.

In disclaiming any liability for the loans, the petitioner Foundation maintains that these were contracted by petitioner Tan in his personal capacity and that it did not benefit therefrom. On the other hand, while admitting that the loans were his personal obligation, petitioner Tan avers that he had an unwritten agreement with the respondent Bank that these loans would be renewed on a year-to-year basis and paid from the proceeds of his shares of stock in the Lapulapu Industries Corp.

These contentions are untenable.

The Court particularly finds as incredulous petitioner Tan's allegation that he was made to sign blank loan documents and that the phrase "IN MY OFFICIAL/PERSONAL CAPACITY" was superimposed by the respondent Bank's employee despite petitioner Tan's protestation. The Court is hard pressed to believe that a businessman of petitioner Tan's stature could have been so careless as to sign blank loan documents.

In contrast, as found by the CA, the promissory notes[11] clearly showed upon their faces that they are the obligation of the petitioner Foundation, as contracted by petitioner Tan "in his official and personal capacity." [12] Moreover, the application for credit accommodation,[13] the signature cards of the two accounts in the name of petitioner Foundation,[14] as well as New Current Account Record,[15] all accompanying the promissory notes, were signed by petitioner Tan for and in the name of the petitioner Foundation.[16] These documentary evidence unequivocally and categorically establish that the loans were solidarily contracted by the petitioner Foundation and petitioner Tan.

As a corollary, the parol evidence rule likewise constrains this Court to reject petitioner Tan's claim regarding the purported unwritten agreement between him and the respondent Bank on the payment of the obligation. Section 9, Rule 130 of the Revised Rules of Court provides that "[w]hen the terms of an agreement have been reduced to writing, it is to be considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement." [17]

In this case, the promissory notes are the law between the petitioners and the respondent Bank. These promissory notes contained maturity dates as follows: February 5, 1978, March 28, 1978, April 11, 1978 and May 5, 1978, respectively. That these notes were to be paid on these dates is clear and explicit. Nowhere was it stated therein that they would be renewed on a year-to-year basis or "rolled-over" annually until paid from the proceeds of petitioner Tan's shares in the Lapulapu Industries Corp. Accordingly, this purported unwritten agreement could not be made to vary or contradict the terms and conditions in the promissory notes.

Evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract.[18] While parol evidence is admissible to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in writing, unless there has been fraud or mistake.[19] No such allegation had been made by the petitioners in this case.

Finally, the appellate court did not err in holding the petitioners jointly and solidarily liable as it applied the doctrine of piercing the veil of corporate entity. The petitioner Foundation asserts that it has a personality separate and distinct from that of its President, petitioner Tan, and that it cannot be held solidarily liable for the loans of the latter.

The Court agrees with the CA that the petitioners cannot hide behind the corporate veil under the following circumstances:

The evidence shows that Tan has been representing himself as the President of Lapulapu Foundation, Inc. He opened a savings account and a current account in the names of the corporation, and signed the application

form as well as the necessary specimen signature cards (Exhibits “A,” “B” and “C”) twice, for himself and for the foundation. He submitted a notarized Secretary’s Certificate (Exhibit “G”) from the corporation, attesting that he has been authorized, inter alia, to sign for and in behalf of the Lapulapu Foundation any and all checks, drafts or other orders with respect to the bank; to transact business with the Bank, negotiate loans, agreements, obligations, promissory notes and other commercial documents; and to initially obtain a loan for P100,000.00 from any bank (Exhibits “G-1” and “G-2”). Under these circumstances, the defendant corporation is liable for the transactions entered into by Tan on its behalf.[20]

Per its Secretary’s Certificate, the petitioner Foundation had given its President, petitioner Tan, ostensible and apparent authority to inter alia deal with the respondent Bank. Accordingly, the petitioner Foundation is estopped from questioning petitioner Tan’s authority to obtain the subject loans from the respondent Bank. It is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent’s authority.[21]

In fine, there is no cogent reason to deviate from the CA’s ruling that the petitioners are jointly and solidarily liable for the loans contracted with the respondent Bank.

WHEREFORE, premises considered, the petition is DENIED and the Decision dated June 26, 1996 and Resolution dated August 19, 1996 of the Court of Appeals in CA-G.R. CV No. 37162 are AFFIRMED in toto.

SO ORDERED.

Puno, (Chairman) Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Quirino D. Abad Santos and Artemio G. Tuquero concurring.

[2] Rollo, p. 24.

[3] Id. at 25.

[4] Exhibit “R.”

[5] Exhibit “S.”

[6] Exhibits “R-2” and “S-1.”

[7] Rollo, p. 14.

[8] Id. at 30.

[9] *Gold Line Transit, Inc. v. Ramos*, 363 SCRA 262 (2001).

[10] Section 3(V), Rule 131 of the Revised Rules of Court.

[11] Exhibits “H” to “L.”

[12] Rollo, p. 26.

[13] Exhibit “D.”

[14] Exhibits “A” and “B.”

[15] Exhibit “C.”

[16] Ibid.

[17] The provision reads in full:

Sec. 9. Evidence of written agreements. – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleadings:

(a)

An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b)

The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c)

The validity of the written agreement; or

(d)

The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

The term “agreement” includes wills.

[18] MC Engineering v. CA, 380 SCRA 116 (2002).

[19] Ibid.

[20] Rollo, p. 31. (Underscoring ours.)

[21] Soler v. Court of Appeals, 358 SCRA 57 (2001).

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