

EMILIO Y. TAÑEDO, PETITIONER, VS. ALLIED BANKING CORPORATION, RESPONDENT.

G.R. No. 136603. January 18, 2002

Ponente: PARDO, J.

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PARDO, J.:

Appeal via certiorari from the decision of the Court of Appeals[1] reversing the ruling of the trial court and holding petitioner liable solidarily with defendant Cheng Ban Yek Co., Inc. for all items of the money judgment and costs of suit.

The Facts

The facts, as found by the Court of Appeals, are as follows:

“Appeal by both the plaintiff Allied Banking Corporation and the defendant Cheng Ban Yek & Co., Inc. from the Order, as summary judgment, of the Regional Trial Court (Branch XLIV, Manila), the decretal part whereof reads:

“WHEREFORE, and in view of the foregoing considerations, summary judgment is hereby rendered in favor of the plaintiff, Allied Banking Corporation, and against defendant Cheng Ban Yek and Co., Inc. as follows:

“1. On the first cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P2,000,000.00, plus interest thereon at 14% per annum, 2% per annum as service charge, and penalty charge of 1% per month from February 11, 1981 until fully paid;

“2. On the second cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P2,500,000.00, plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1 % per month, from February 3, 1981 until fully paid;

“3. On the third cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P1,000,000.00 plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1 % per month, from February 12, 1981 until fully paid;

“4. On the fourth cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P1,000,000.00 plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1 % per month, from February 12, 1981 until fully paid;

“5. On the fifth cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P1,000,000.00 plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1% per month, from February 12, 1981 until fully paid;

“6. On the sixth cause of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P1,000,000.00 plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1% per month, from February 12, 1981 until fully paid;

“7. On the seventh cause of action:

“ Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum of P1,500,000.00 plus interest thereon at 14% per annum, service charge of 2% per annum, and penalty charge of 1% per month, from February 12, 1981 until fully paid;

“8. On all the causes of action:

“Ordering the defendant Cheng Ban Yek Co., Inc. to pay plaintiff the sum equivalent to 25% of the amount due and demandable as and for attorney’s fees;

“9. Declaring the “Continuing Guaranty” as having been extinguished after plaintiff branded it as a “worthless security” and preferred to avail, as it did avail, of the provisional remedy of attachment; and declaring defendants Alfredo Ching and Emilio Tañedo relieved of their obligation under the said continuing Guaranty; and

“10. Ordering the defendant Cheng Ban Yek Co., Inc. to pay the costs of suit.

“SO ORDERED.”[2]

“The foregoing summary judgment has its roots in a complaint with preliminary attachment filed by plaintiff bank to recover sums of money from defendant corporation on its seven past due promissory notes with principal amounts totaling P10,000,000.00, from defendants Alfredo Ching and Emilio Tañedo under a Continuing Guaranty providing for joint and several liability relative to the said promissory notes. The preliminary attachment sought was granted upon the required bond and was thereafter maintained despite defendant corporation’s efforts to have it discharged.

“The appeal of plaintiff bank is limited to paragraph 9 of the summary judgment (supra, p. 3) which declared defendants Aldredo Ching and Emilio Tañedo as free from any liability under the Continuing Guaranty since their respective liabilities thereunder became extinguished when plaintiff bank in its pleading branded the Continuing Guaranty as “worthless security”.

“On the other hand, defendant corporation’s appeal is an attack on the summary nature of the proceeding adopted by the lower court since, according to defendant corporation, there was a petition for suspension of payment filed by it with the Securities and Exchange Commission which, although dismissed, was duly appealed to the Court of Appeals.

“ x x x

“Defendant corporation’s petition for suspension of payment was dismissed by the Securities and Exchange Commission for lack of quorum. At the creditors’ meeting called and accordingly held to approve the corporation’s petition for suspension of payment, out of outstanding liabilities of P237,718,426.00, only the creditors representing P110,355,607.37 thereof attended. This was far short of the three-fifths quorum unqualifiedly required by law which should have been P142,631,055.60 (Act No. 1956, Sec. 8) x x x .” [3]

On October 16, 1984, the trial court rendered a summary judgment, as quoted above.[4]

Both plaintiff Allied Banking Corporation and the defendant Cheng Ban Yek & Co., Inc. appealed from the summary judgment to the Court of Appeals.[5]

On March 27, 1990, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

“WHEREFORE, the Order appealed from is in part REVERSED and MODIFIED by deleting paragraph 9 from the dispositive portion thereof, and declaring the defendants Alfredo Ching and Emilio Tañedo solidarily liable with defendant Cheng Ban Yek Co., Inc. for all items of the money judgment set forth in paragraphs one (1) to eight (8) inclusive, and paragraph ten (10), of said dispositive portion. The Order is AFFIRMED in its other aspects. No costs in this instance.

“SO ORDERED.”[6]

On April 11, 1990, petitioner Emilio Y. Tañedo filed a motion for reconsideration of the decision, contending that while the case was pending before the Court of Appeals the Allied Bank and Cheng Ban Yek & Co., Inc. agreed to extend the time of payment of the indebtedness, without the consent of petitioner, thereby relieving him of his obligation as guarantor or surety of such obligation.[7]

On November 27, 1998, the Court of Appeals denied the motion for lack of merit.[8]

Hence, this appeal.[9]

The Issues

The basic issues raised are (a) whether the execution by the respondent Bank of the Fourth Amendatory Agreement extinguished petitioner’s obligations as surety, and (b) whether the “continuing guarantee” executed by the petitioner is a contract of (surety) adhesion.[10]

The Court’s Ruling

We find the petition without merit.

Resolving the first issue, we note that the amendatory agreement between the respondent Allied Banking Corporation and Cheng Ban Yek & Co., Inc. extended the maturity of the promissory notes without notice or consent of the petitioner as surety of the obligations. However, the “continuing guarantee” executed by the petitioner provided that he consents and agrees that the bank may, at any time or from time to time extend or change the time of payments and/or the manner, place or terms of payment of all such instruments, loans, advances, credits or other obligations guaranteed by the surety. Hence, the extensions of the loans did not release the surety.[11]

As to the second issue, even if the “continuing guarantee” were considered as one of adhesion, we find the contract of “surety” valid because petitioner was “free to reject it entirely”.[12] Petitioner was a stockholder and officer of Cheng Ban Yek and Co., Inc. and it was common business and banking practice to require “sureties” to guarantee corporate obligations.

The Fallo

IN VIEW WHEREOF, the Court DENIES the petition and AFFIRMS the decision of the Court of Appeals.[13]

No costs in this instance.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., no part.

[1] In CA-G. R. CV No. 04612, promulgated on March 27, 1990, Cui, J., ponente, Kapunan and Torres, Jr., JJ., concurring, Petition for Review, Annex “B”, Rollo, pp. 55-60.

[2] Rollo, pp. 55-57.

[3] Rollo, pp. 55-60, at pp. 55-59.

[4] Original Record, pp. 384-408.

[5] Docketed as CA-G. R. CV No. 04612.

[6] Rollo, pp. 59-60.

[7] Rollo, pp. 61-68.

[8] Rollo, pp. 82-83.

[9] Petition for Review filed on January 29, 1999. Rollo, pp.8-27. On September 27, 1999, we gave due course to the petition (Rollo, pp. 106-107).

[10] Memorandum for the Respondent, Rollo, pp. 137-157, at p. 145.

[11] Security Bank and Trust Company, Inc. v. Cuenca, 341 SCRA 781, 803 (2000), citing *Dino v. Court of Appeals*, 216 SCRA 9 (1992).

[12] *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 597 (1996).

[13] In CA-G. R. CV No. 04612.

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