TIU HIONG GUAN, LUISA DE VERA TIU, JUANITO RELLERA AND PURITA RELLERA, PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.

G.R. NO. 144339. August 09, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review[1] by Tiu Hiong Guan, Luisa de Vera Tiu, Juanito Rellera, and Purita Rellera, assailing the Decision and Resolution of the Court of Appeals dated May 23, 2000 and August 11, 2000, respectively, in CA-G.R. CV No. 57571 entitled "Metropolitan Bank & Trust Co. v. Tiu Hiong Guan, et al."

The facts[2] of the case are as follows:

Sometime in October 1990, petitioners applied for a continuing credit facility for and in behalf of themselves and their corporation, Sunta Rubberized Industrial Corporation (Sunta), and executed in their personal and official capacities a Continuing Surety Agreement.

In the said Agreement, petitioners jointly and severally obligated themselves to pay all loans and credit accommodations that they and Sunta may incur, supposedly not exceeding three million pesos. It was further stipulated therein that, in case of default in the payment thereof, notwithstanding Sunta's dissolution, failure in business, insolvency, and the filing of a petition for bankruptcy or suspension of payments in the proceeding related thereto, the whole obligation shall become due and payable without benefit of demand or notice of payment.

On July 9, 1990, petitioners opened an irrevocable Commercial Letter of Credit (LC) for the purchase of raw materials amounting to P480,000 in favor of Sunta. These materials were delivered and custody thereof transferred to Sunta, after which a Trust Receipt Agreement was jointly and severally executed by petitioners in their personal capacities.

On August 18, 1990, Sunta and petitioners also in their personal capacities obtained a loan of P350,000.

After maturity of the obligation, there was both failure of payment and compliance with the surety and trust receipt agreements, sight draft, and promissory note.

The total unpaid obligation as of February 15, 1993 was P1,571,972.86. Prayed for by respondent in its complaint a quo were the payments of P741,599.64, with interest and penalties on the promissory note, per Order dated June 9, 1993; P830,373.20, with interest and penalties as stipulated in the Trust Receipt Agreement; and attorney's fees.

In their Answer, petitioners admitted execution of the Continuing Surety Agreement not in their personal capacities but as officers of Sunta. It was also asserted therein that none of them personally benefited from the loan transaction, while two of them signed the LC as mere officers of Sunta.

The failure of Sunta to pay its obligation was attributed to both force majeure – when fire "gutted down" its

factory buildings, equipment, machinery, raw materials and finished products – and the Order dated April 20, 1993 by the Securities and Exchange Commission (SEC) in SEC Case No. 4240 suspending all actions for claims against Sunta that are pending before any court or tribunal.

It was contended that the real party-in-interest as far as the actionable documents herein were concerned was Sunta, not petitioners who merely acted as its agents and as guarantors of its obligation. Therefore, petitioners should not be compelled to pay the obligations of Sunta, because Sunta is solvent and its assets have not yet been exhausted.

Petitioners further argued that, although Sunta had possession of the finished products later destroyed by fire, respondent still retained its ownership over them. As mere agents carrying out the orders of their principal, petitioners claimed that they could not be held responsible for the loss of property, unless there was negligence, deceit, fraud, or excess of authority. Hence, the said loss should fall upon its owner.

In its Decision dated May 28, 1997, the Regional Trial Court (RTC) of Manila, Branch 51, ruled in favor of respondent in the following manner:

> IN VIEW OF THE FOREGOING, this Court believes and so [holds] that the [respondent] has established the preponderant proof to support its position as against [petitioners'] claim that they are not jointly and severally liable with SUNTA.
>
> WHEREFORE, judgment is hereby rendered in favor of the [respondent] and against the [petitioners], ordering the [petitioners] jointly and severally to pay [respondent]:
>
> - The sum of P741,599.64 as of February 15, 1993 with interest at 28.792% per annum and penalty charges of 18% per annum until fully paid representing the amount due on the promissory note;
>
> - The sum of P830,373.20 as of February 15, 1993 with interest at the current rate [and] with penalty charges of 12% per annum until fully paid representing the value or proceeds of the amount held in trust as stipulated;
>
> - [A]ttorney's fees in the amount equivalent to 10% of the amount due from the [petitioners]; and
>
> - The costs of suit.
>
> [Petitioners'] counterclaim is hereby dismissed for lack of merit.
>
> SO ORDERED.[3]

Petitioners went on appeal asking for reversal of the RTC Decision. The Court of Appeals rendered its assailed Decision, the dispositive portion of which reads:

> THE FOREGOING CONSIDERED, the appealed Decision is hereby AFFIRMED.
>
> SO ORDERED.[4]

As stated, reconsideration was denied.

Hence, this petition positing:

> WHETHER PETITIONERS CAN BE HELD LIABLE FOR THE UNPAID LOAN DUE AND OWING RESPONDENT.

Petitioners should be held liable for their unpaid obligation of P1,571,972.86 as of February 15, 1993, with penalties, interest, attorney's fees, and costs of suit, based on both the non-negotiable Promissory Note and Continuing Surety Agreement they executed.

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Under the Promissory Note, petitioners Tiu Hiong Guan and Juanito Rellera promised to pay respondent jointly and severally the single-payment loan of P350,000 at 28.92% interest per annum, binding themselves in both their personal and official capacities. In case of default inter alia in the payment of any installment, interest, or charges, it is stipulated that the entire principal, as well as the interest and charges, shall become due and payable at the option of and without notice by respondent. A penalty charge of 18% per annum and attorney's fees of 10% were also agreed upon therein.

The Continuing Surety Agreement clearly states that the liability of all petitioners, as sureties, shall be solidary with Sunta, as their principal, for all of the latter's loans, credits, overdrafts, advances, discounts and/or other credit accommodations not exceeding P3,000,000. In case of default inter alia in the payment of any obligation upon maturity or any amortization thereof, it is similarly stipulated that all instruments, indebtedness, or other obligations thereby secured shall become due and payable by the sureties, at the option of and without demand or notice by respondent. In fact, their liability is expressly stated to be direct and immediate, not contingent upon the pursuit by respondent of whatever remedies it may have against Sunta. All parties therein have agreed that the sureties shall at any time pay respondent, with or without demand upon Sunta, any of the loans, indebtedness, or other obligations secured, whether due or not. Any notice given by respondent to any of the sureties shall be sufficient notice to all.

From these two documents, the liability of petitioners is joint and several in both their personal and official capacities. They are not mere guarantors, but sureties. They do not insure the solvency of the debtor, but rather the debt itself. They obligate themselves "to pay the debt if the principal debtor will not pay, regardless of whether or not the latter is financially capable to fulfill his obligation."[5]

"Time and again, x x x the liability of a surety is determined strictly on the basis of the terms and conditions set out in the surety agreement."[6] Solidary liability is one of its primary characteristics.[7] "The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously."[8] Thus, respondent may proceed against Sunta alone or some or all of petitioners herein.

"Suretyship arises upon the solidary binding of a person — deemed the surety — with the principal debtor, for the purpose of fulfilling an obligation."[9] "[A] suretyship is merely an accessory x x x to a principal obligation. Although a surety contract is secondary to the principal obligation, the liability of the surety is direct, primary and absolute; or equivalent to that of a regular party to the undertaking. A surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations constituted by the latter."[10] Petitioners are considered "as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable."[11]

It is irrelevant that none of petitioners personally benefited from the loan transaction between Sunta and respondent. The failure to pay attributable to either force majeure or the SEC Order does not veer away from the fact of liability as sureties. Even though ownership over the goods remains with respondent, the loss thereof has nothing to do with the loan that petitioners bound themselves to be solidarily liable with respondent. The Trust Receipt Agreement between them is a mere collateral agreement independent of the Continuing Surety Agreement, the purpose of which is to serve as additional security for the loan.[12] "[P]arties are bound by the terms of their contract, which is the law between them."[13]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 57571, dated May 23, 2000 and August 11, 2000, respectively, are hereby AFFIRMED.

Costs against petitioners.

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SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 9-18.

[3] Rollo, p. 9; records, pp. 365-366; RTC Decision, pp. 9-10.

[4] Rollo, p. 17; CA Decision, p. 9.

[5] Ong v. Philippine Commercial Industrial Bank, G.R. No. 160466, January 17, 2005, 448 SCRA 705, 709.

[6] Trade & Investment Development Corp. of the Phils. v. Roblett Industrial Construction Corp., G.R. No. 139290, November 11, 2005, 474 SCRA 510, 526, citing Pacific Banking Corp. v. IAC, G.R. No. 72275, November 13, 1991, 203 SCRA 496, 503; Rizal Commercial Banking Corp. v. CA, G.R. No. 85396, October 27, 1989, 178 SCRA 739, 744; and Luzon Surety Company, Inc. v. Quebrar, G.R. No. 40517, January 31, 1984, 127 SCRA 295, 300.

[7] Landl & Co. (Phil.) Inc. v. Metropolitan Bank & Trust Co., G.R. No. 159622, July 30, 2004, 435 SCRA 639, 653.

[8] CIVIL CODE, Art. 1216.

[9] Philippine Bank of Communication v. Lim, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 721, citing the CIVIL CODE, Art. 2047.

[10] International Finance Corp. v. Imperial Textile Mills, Inc., G.R. No. 160324, November 15, 2005, 475 SCRA 149, 160-161, citing Philippine Bank of Communications v. Lim, supra at 721-722; Molino v. Security Diners International Corp., 415 Phil. 587, 597 (2001); Agra v. Philippine National Bank, 368 Phil. 829, 846 (1999); and Garcia, Jr. v. CA, G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495-496.

[11] Molino v. Security Diners International Corp., supra.

[12] Landl & Co. (Phil.) Inc. v. Metropolitan Bank & Trust Co., supra note 7, at 646.

[13] Rizal Commercial Banking Corp. v. CA, supra note 6.

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