

## RAMON R. OLBES AND RICARDO R. OLBES, PETITIONERS, VS. CHINA BANKING CORPORATION, RESPONDENT

*G.R. NO. 152082. March 10, 2006*

Ponente: GARCIA, J.

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### GARCIA, J.:

Under consideration is this petition for review on certiorari to set aside and reverse that portion of the Decision[1] dated January 31, 2002 of the Court of Appeals (CA) in CA G.R. CV No. 56487 entitled "China Banking Corporation vs. Olbes, Ogilvy & Mather, Inc. (OO&M), Ramon R. Olbes and Ricardo R. Olbes," holding herein petitioners Ramon R. Olbes and Ricardo R. Olbes solidarily liable with OO&M on the loan obligation obtained by the latter from respondent China Banking Corporation.

The CA recites the facts, as follows:

On four occasions in 1989 up to 1990, [herein respondent] China Banking Corporation ..., as lender and [OO&M] ... as borrower entered into loan agreements covered by promissory notes bearing numbers T-227, T-228, T-229, T-230 and T-231 ....

The promissory notes [PNs] contain identical provisions with a few exceptions. The identical provisions material to the present case include the escalation clause found in the 4<sup>th</sup> paragraph of each of the five [PNs], ..., the name of Ramon Olbes with a signature appearing thereon as agent of the borrower corporation, and the name of Ricardo Olbes which was rubber stamped in the first 4 notes as "co-maker".

The material differences, on the other hand, concern the dates of execution ..., the dates of maturity ... [of the notes], the amounts received by [OO&M] on the 5 [PNs] (P200,000.00, P315,000.00, P700,000.00, P100,000.00 and P200,000.00, respectively), and the interest rates thereon per annum (19% for [PN] T-227, 24% for [PN] T-228 and 27% for the 3 others).

To secure the payment of the [PNs], [petitioners] Ramon Olbes and Ricardo Olbes executed on November 12, 1990 in favor of [respondent bank] a suretyship agreement whereby they jointly and severally undertook to pay upon maturity any and all obligations for which the borrower corporation may then or thereafter be indebted to the extent of one million pesos (P1,000,000) plus interests and attorney's fees.

Initial payments on the [PNs] were made by [OO&M] and the Olbeses. Since March 12, 1992, however, no further payments were made by them, and by [respondent bank's] computation, the 5 [PNs] had outstanding balances of P88,000.00, P140,000.00, P407,500.00, P52,400.00, P121,600.00 respectively or a total of P809,500.00 as of that date, exclusive of interests and penalty charges. As demands for payment proved futile, [respondent bank] filed a complaint for collection before the Regional Trial Court (RTC) Branch 7 of Manila on December 2, 1992 against [OO&M] and the Olbeses.

The [OO&M] denied liability on the [PNs], claiming that it had fully met its obligation and that the alleged balance came about due to the unwarranted application ... of the escalation clause provided for in paragraph 4 of each of the notes.

Both Olbeses denied any liability under the suretyship agreement, they claiming that they signed it merely as officers of [OO&M] and that its import was never explained to them by [respondent bank].

Ricardo Olbes also denied liability as co-maker, he claiming .... that he was signing as an officer of [OO&M].

All the defendants denied liability on the penalty charges and attorney's fees .... They thus interposed a counterclaim for attorney's fees. (Underscoring and words in bracket added.)

On September 12, 1998, in Civil Case No. 92-63676, the Regional Trial Court of Manila, Branch 7, on the premise that Ramon Olbes is liable on the promissory notes (PNs) based on the suretyship agreement as is Ricardo Olbes who is furthermore personally liable as co-maker, rendered judgment for respondent bank, as plaintiff a quo, and against OO&M and the Olbeses, as defendants a quo.

Therefrom, herein petitioners and OO&M went on appeal to the CA whereat their recourse was docketed as CA G.R. CV No. 56487.123

On January 31, 2002, the CA rendered the herein assailed Decision affirming that of the trial court, particularly its disposition on the solidary liability of herein petitioners Ramon R. Olbes and Ricardo R. Olbes, with the modification of disallowing the application by the respondent bank of the escalating interest rate on the loan transactions. In full, the dispositive portion of the CA Decision reads:

ACCORDINGLY, judgment is hereby rendered AFFIRMING the appealed decision with MODIFICATION in accordance with the foregoing discussions.

As modified, the judgment reads as follows: Defendant-appellant corporation, as maker of promissory notes Nos. T-227, T-228, T-229 and T-230, defendant-appellant Ricardo Olbes, as co-maker thereof, and appellants Ricardo Olbes and Ramon Olbes as sureties, are hereby ordered to pay plaintiff-appellee jointly and severally:

- On the first cause of action, P88,000.00 representing the unpaid principal of the promissory note No. T-227 (Exhibit "A") plus 19% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;
- On the second cause of action, P140,000.00 representing the unpaid principal of promissory note No. T-228 (Exhibit "B") plus 24% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;
- On the third cause of action, P407,500.00 representing the unpaid principal of promissory note No. T-229 (Exhibit "C") plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates; and;
- On the fourth cause of action, P52,400.00 representing the unpaid principal of promissory note No. T-230 (Exhibit "D") plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;

Defendant-appellant corporation, as maker of promissory note No. T-231, and defendants-appellants Ricardo and Ramon Olbes as sureties thereof, are also hereby ordered to pay jointly and severally plaintiff-appellee; and

- On the fifth cause of action, P121,600.00 representing the unpaid principal of promissory note No. T- 231 plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid corresponding to the amounts included therein by escalating the interest rates.[2]

Inasmuch as the assailed decision sustained their solidary liability with, for the loan obligation of, OO&M, petitioners have interposed the instant recourse, ascribing to the CA the commission of the following errors, viz:

- In holding petitioners liable retroactively for the loan obligations of ... OO&M under the surety agreement.
- In holding petitioner Ricardo Olbes liable on 4 of the subject promissory notes as co-maker based on a mere title of "co-maker" rubber stamped under his name on the said promissory notes despite the absence of any provision showing him to have understood that he was affixing his signature as such.[3]

The petition is without merit.

Petitioners disclaim, at the outset, liability on the PNs on the basis of the suretyship agreement they executed on November 12, 1990 after the execution of the last promissory note on January 23, 1990. To them, their undertaking under the suretyship agreement cannot be made to cover past transactions, such as the five promissory notes in question.

Petitioners' posture is valid to a degree. It bears to point out, however, that the rule on the retrospective application of a suretyship agreement admits of exceptions. The Court referred to one in *Willex Plastic Industries, Corp. vs. CA*.<sup>[4]</sup> There, we held that no liability attaches under a contract of suretyship for defaults occurring before it is entered into unless an intent to be so liable is indicated. Indeed, as we said in an old but still very much applicable case of *Bank of the Philippine Islands vs. Foerster*,<sup>[5]</sup> although a contract of suretyship is ordinarily not to be construed as retrospective, in the end the intention of the parties, as revealed by the evidence, is controlling. Put in another way, the rule that bonds or other contracts of suretyship are ordinarily not to be construed as retrospective must yield to the intention of the contracting parties as revealed by the evidence, and does not interfere with the use of ordinary tests and canons of interpretation which apply in regard to other contracts.<sup>[6]</sup>

The specific suretyship agreement under consideration provides:

For and in consideration of the covenants hereinafter mentioned and of the granting of credits, overdrafts, loans, discounts, trust receipts and such further credit facilities as may from time to time be incurred with the Creditor by the Principal(s), the Surety(ies) hereby jointly and severally undertake, bind themselves and warrant to the said Creditor, its successors or assigns the prompt payment at maturity or on demand, as the case may be, of all overdrafts, promissory notes, discounts, letters of credit, drafts, bills of exchange, promissory notes, etc., without any further endorsements by the Surety(ies), for which the Principal(s) may now be indebted or may hereafter become indebted to the Creditor."<sup>[7]</sup> (Emphasis added.)

As correctly observed by the CA, the "Suretyship Agreement," as couched, expressly covered both current (may now be indebted) and future (may hereafter become indebted) loans of the principal. In net effect, the agreement thus executed by petitioners was intended to secure the payments of the amounts borrowed by and for which OO&M signed the PNs in question.

Not to be overlooked is the fact that the "Suretyship Agreement" expressly contemplated a solidary obligation, providing as it did that "....the surety(ies) hereby jointly and severally undertake, bind themselves and warrant to the said Creditor...." It is a cardinal rule that 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.<sup>[8]</sup> In the present case, there can be no mistaking about petitioners' intent, as sureties, to be jointly and severally obligated with the principal maker of the notes in dispute. As such sureties, Ramon Olbes and Ricardo Olbes are personally liable under the suretyship agreement.

Petitioners next fault the CA for holding petitioner Ricardo Olbes liable as co-maker on four (4) of the subject PNs on the basis of the word "co-maker" rubber-stamped under his name on the said notes despite the absence of any provision indicating that he understood that he was affixing his signature in that capacity.

The Court is far from being convinced.

What the CA wrote on petitioner Ricardo Olbes's posture respecting the rubber-stamping angle reads:

And so is the finding of the court a quo that appellant Ricardo Olbes is personally liable as co-maker of 4 of the 5 promissory notes. Said appellant's denial of personal liability upon the ground that the word "co-maker" was merely stamped and not printed as are the rest of the wordings of the promissory notes and that it was stamped arbitrarily does not persuade. It is presumed that private transactions have been fair and regular (Section 3 (p), Rule 131, Revised Rules of Court). It is also basic in evidence that he who alleges has the burden of proving his allegation. Appellant (i.e. Ricardo Olbes), therefore, had the burden of proving that the word "co-maker" was rubber stamped unfairly, irregularly and arbitrarily. But the record does not support his claim. On the contrary, plaintiff-appellee's witness Jacqueline Azarcon testified, and appellant Ricardo Olbes failed to refute, that the promissory notes were stamped before they were given to appellants for their signature.[9] (Emphasis in the original)

Having affixed his consenting signature in a contract with full knowledge of its terms and conditions, petitioner Ricardo Olbes is precluded from asserting, as he presently does, that he acted under a misapprehension or in ignorance of the legal effect of the contract, or the undertaking he assumed thereunder. He, just like his co-petitioner, Ramon Olbes, does not appear to be unlettered. The trial court in fact described both petitioners as "intelligent men," and top officers of a "corporation which has 200 affiliates worldwide,"[10] Being an experienced businessman, doubtless routinely dealing with commercial papers and documents passing his table, petitioner Ricardo Olbes knew, or at least presumed to know, the import of the documents he executed as co-maker. He cannot be heard on his allegation of not knowing the legal effect of what he was entering into on the pretext that respondent bank failed to inform him about such detail. It cannot be over-emphasized that it behooves every contracting party to learn and know the contents of a document before he signs and delivers it.

If blame has to be assigned, the faulting finger should be pointed at petitioner Ricardo Olbes, who apparently did not undertake the usual due diligence in the pursuit of his business concerns. Had he done so, he would have easily discovered that he was signing the action documents in question either as a surety and/or co-maker. An error so patent and obvious that nobody could have made it, or one which could have been avoided by ordinary prudence, cannot be invoked by the one who made it in order to evade liability, let alone annul a contract.[11]

Lastly, petitioner Ricardo Olbes's lament about the word "co-maker" being stamped, instead of being typed or printed, thus indicating, according him, an insertion or intercalating situation, need not delay us long. Irregular or fraudulent stamping is obviously Ricardo Olbes's thesis. But, as found by the CA, the PNs were stamped before they were presented to Ricardo Olbes for his signature, a reality arguing against the notion of fraudulent dealing on the part of the respondent bank. Apart from this consideration, the appellate court added, no evidence has been adduced to overturn the presumption that private transactions have been fair and regular. Needless to stress, the categorical factual conclusion of the CA ought not to be disturbed in this recourse. For, it is not this Court's function to review, examine, evaluate or weigh anew the probative value of the evidence presented below,[12] save for the most compelling and cogent reasons.[13] The exceptional circumstance does not presently obtain.

WHEREFORE, the instant petition is DENIED, and the assailed CA decision dated January 31, 2002 is AFFIRMED.

Costs against petitioners.

**SO ORDERED.**

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

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[1] Penned by then Associate Justice Conchita Carpio-Morales (now a member of this Court), with Associate Justices Martin S. Villarama, Jr. and Sergio L. Pestaño (Ret.) concurring; Rollo, pp. 32-44.

[2] Id. at 43-44.

[3] Id. at 23.

**[4] 256 SCRA 478 (1996).**

[5] 49 Phil. 843 (1926).

[6] Willex Plastic Industries Corp. vs. CA, supra, pp. 487-488.

[7][7]Id. at 71.

[8] Abella vs. CA, et al., 257 SCRA 482 (2001).

[9] Supra note 1, at p. 42.

[10] Pages 17 and 18 of the RTC Decision; Rollo, pp. 62-63.

[11] Tolentino, Civil Code of the Philippines, Vol. IV, 2001 ed., p. 487.

[12] Phil. Lawin Bus Co. vs. CA, 374 SCRA 332 (2002).

[13]Omandan vs. Court of Appeals, 349 SCRA 484 (2001).

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