

SIMEON M. VALDEZ, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

G.R. NO. 155009. April 12, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in CA-G.R. CV No. 24946, to wit:

- Decision dated February 28, 2002[1], affirming an earlier decision of the Regional Trial Court at Manila in an action for sum of money thereat commenced by the herein respondent against petitioner and Creative Texwood Corporation; and
- Resolution dated August 23, 2002, denying petitioner's motion for reconsideration.

The factual milieu:

On January 11, 1978, respondent China Banking Corporation (Chinabank), represented by its senior vice-president Gilbert Dee, and Creative Texwood Corporation (CREATIVE), represented by its president, herein petitioner Simeon M. Valdez, executed a Credit Agreement whereunder Chinabank agreed to grant CREATIVE a credit facility in the amount of US\$1,000,000.00 to finance the latter's importation of raw materials, spare parts and supplies for its manufacturing projects.

Simultaneously with the execution of the aforementioned Credit Agreement, and in order to assure payment of the credit facility thereunder granted, CREATIVE, again represented by petitioner as its President, executed in favor of Chinabank a Promissory Note for the same amount, undertaking to pay said amount one year thenceforth or until January 11, 1979.

On the same date - January 11, 1978 - CREATIVE, as principal and petitioner, as surety, further executed in favor of Chinabank a Surety Agreement whereunder petitioner Valdez bound himself unto Chinabank the prompt payment on maturity date of the aforesaid promissory note.

The next day, January 12, 1978, pursuant to said credit agreement, Chinabank drew and issued a check for US\$1,000,000.00 with CREATIVE as payee. Subsequently, CREATIVE indorsed the check back to Chinabank for payment, which the latter did.

On December 15, 1986, following the failure of both CREATIVE and petitioner to comply with their obligations despite repeated demands, Chinabank filed against both a complaint for a sum of money before the Regional Trial Court at Manila, thereat docketed as Civil Case No. 86-38740 which was raffled to Branch 35 thereof.

In his separate answer, petitioner, after the usual denial of the material allegations of the complaint, interposed the defense that the subject Credit Agreement is fictitious and simulated; that he signed said agreement and Promissory Note in his official capacity as president of CREATIVE and not in his personal capacity; and that the

Surety Agreement attached to the complaint is not the one executed and signed by him because what he signed was a pro-forma document with blank spaces still unfilled.

On July 31, 1987, the trial court dismissed the complaint for failure of plaintiff Chinabank to prosecute for an unreasonable length of time. However, upon Chinabank's motion for reconsideration, the trial court reinstated the complaint, and, on Chinabank's further motion, declared defendant CREATIVE as in default and allowed Chinabank to adduce ex parte its evidence against the former. Pre-trial was thereafter set between plaintiff Chinabank and defendant-petitioner.

On May 20, 1988, the trial court, upon Chinabank's motion, declared petitioner as in default for his and his counsel's failure to appear at the scheduled pre-trial. However, upon petitioner's motion, the trial court set aside its default order and set the case anew for pre-trial.

With no amicable settlement having been reached by the parties, trial ensued.

Eventually, in a decision dated November 20, 1989, the trial court rendered judgment for plaintiff Chinabank and against defendants CREATIVE and petitioner, thus:

WHEREFORE, judgment is rendered: (1) ordering defendants Creative Texwood Corporation and Simeon M. Valdez, jointly and severally, to pay to the plaintiff the principal amount of P18,069,674.38, the interest thereon at the rate of $\frac{1}{2}$ per annum computed from December 15, 1986, the date the complaint was filed, until full payment of the principal obligation, another 1 - $\frac{1}{2}$ % per month computed also from the same date until full payment of the principal obligation, as penalty, and the amount of P3,613,934.00 for attorney's fees; and (2) ordering defendant Creative Texwood Corporation to pay the plaintiff the amount equivalent to 3% per annum also computed from December 15, 1986, on the amount of the drawdown, as arrangement fee.

SO ORDERED. (Petition, Annex "F"; Rollo, pp. 66-69)

In its decision, the trial court, finding no reason to doubt the authenticity and due execution of the surety agreement, held that petitioner's liability to Chinabank arose from his execution of the same agreement where he warranted unto Chinabank the prompt payment at maturity date of the promissory note. The trial court also debunked petitioner's protestation in his memorandum that his liability under the same surety agreement was extinguished pursuant to Article 2079[2] of the Civil Code when Chinabank granted CREATIVE an extension of time for the payment of the loan. Partly says the trial court in its decision:

We do not agree. Defendant Valdez admits in his memorandum that after his co-defendant corporation failed to pay its loan on due date, a demand letter dated July 16, 1979 was sent by the plaintiff to defendant corporation to pay its overdue obligation. This first demand letter was followed by two more demand letters dated November 26, 1979 and May 20, 1981, respectively, both addressed to the said defendant corporation. The mere fact that plaintiff neglected to sue immediately and initiated this court action only on December 15, 1986, does not relieve and discharge defendant Valdez from his liability under the Surety Agreement, because such delay in filing the action does not necessarily imply any change in the efficacy of the contract or liability of the principal debtor. (See *Bank of P.I. vs. Albadejo*, 53 Phil. 141; *Paras*, Civil Code, Vol. V, 1982 Ed., pp. 806 & 810)." (Rollo, p. 68)

From the aforementioned decision of the trial court, both Chinabank and petitioner went to the Court of Appeals in CA-G.R. CV No. 24946.

For failure of Chinabank to file its brief within the reglementary period, the appellate court declared its appeal abandoned and accordingly dismissed the same. Chinabank's motion for reconsideration proved unavailing

From the appellate court's dismissal of its appeal, Chinabank went to this Court in G.R. No. 97066 via a petition

for review on certiorari under Rule 45 of the Rules of Court. In a Resolution dated March 4, 1991,[3] this Court dismissed Chinabank's petition. Attempt at a reconsideration similarly proved futile, as in fact an Entry of Judgment[4] was rendered declaring the dismissal of Chinabank's petition final and executory.

Meanwhile, with petitioner Valdez having filed his Brief on time, the Court of Appeals proceeded to resolve his appeal.

And, in a decision dated February 28, 2002,[5] the appellate court dismissed petitioner's appeal and affirmed the appealed decision of the trial court, thus:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit the appealed decision of the Regional Trial Court, Branch 35, Manila, is AFFIRMED.

SO ORDERED.

His motion for reconsideration having been denied by the same court in its Resolution of August 23, 2003,[6] petitioner Simeon Valdez is now with us via the present recourse, it being his submissions that:

"I.

THE COURT OF APPEALS ERRED IN ACTING ON PETITIONER'S APPEAL THEN ALREADY MOOT AND ACADEMIC DUE TO THE DISMISSAL OF THE BANK'S APPEAL AND THE ADOPTION OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

THE COURT OF APPEALS ERRED IN RENDERING THE QUESTIONED DECISION AND RESOLUTION WHICH ARE ALREADY UNENFORCEABLE BY EXECUTION DUE TO PRESCRIPTION.

III.

THE COURT OF APPEALS ERRED IN SETTING ASIDE PETITIONER'S FAILURE TO ASSIGN LACK OF CONSIDERATION AS AN ERROR CONSIDERING THE RESULTING UNJUST ENRICHMENT.

IV.

THERE WAS AN ERROR IN MAKING PETITIONER LIABLE AS THERE WAS NO SHOWING THAT THE BANK GOT HIS CONSENT IN THE EXTENSION OF THE ONE-YEAR LOAN PERIOD.

V.

THE QUESTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE AGAINST THE RULE OF FINALITY OF JUDGMENT AND PUBLIC POLICY".

We DENY.

It is petitioner's thesis that the decision of the trial court which he and respondent Chinabank appealed to the Court of Appeals in CA G.R. CV No. 24946 was vacated when Chinabank's similar appeal therefrom was dismissed with finality.

Petitioner's argument lacks legal moorings.

Under Section 9 (3) of Batas Pambansa Blg. 129, as amended, the Court of Appeals has exclusive appellate jurisdiction over final judgments or decisions of regional trial courts. Here, there is no issue at all that petitioner had perfected his appeal from the decision of the trial court. The well-settled rule is that jurisdiction, once

acquired, continues until the case is finally terminated.[7] Since petitioner invoked the authority of the Court of Appeals when he filed his appellant's brief in that court, that same court can resolve petitioner's appeal regardless of the dismissal of that of his adversary's.

Petitioner claims failure on the part of respondent Chinabank to establish that the credit agreement between it and CREATIVE is supported by a consideration. According to petitioner, a credit line was created under the said Credit Agreement which "fixed the loan limit that may be availed of by [Creative] to cover a series of transactions encountered in importation of its raw materials, spare parts and supplies", while Chinabank's complaint before the trial court did not contain any "allegation on any drawdown from the subject credit line by [Creative]". Upon this premise, petitioner argues that Chinabank is practically with no cause of action at all. To petitioner, Chinabank has to present evidence of importation by CREATIVE, like shipping documents, which is necessary to establish drawdowns on the US\$1,000,000.00 credit facility. Unfortunately, so petitioner adds, respondent Chinabank did not present any such document.

We are not persuaded.

As aptly noted by the appellate court, it is already too late in the day for petitioner to raise an issue on the alleged deficiency of allegations in Chinabank's complaint to bolster his theory of lack of alleged consideration for the parties' credit agreement.

Under Rule 9, Section 1, of the Rules of Court, defenses which were not raised in the answer are deemed waived. Petitioner never pleaded in his answer the defense he presently invokes, namely, the alleged lack of consideration for the subject credit agreement. His newly minted defense of lack of consideration must therefore be struck down, the time for interposing the same having been already passe.

In any event, absence of consideration is the least persuasive argument petitioner could proffer, if at all he could, colliding as it does with the very allegations in his answer, particularly paragraphs 9 and 14 thereof, to wit:

"9. That while answering defendant did affix his signature to Annex 'C' [surety agreement] as co-obligor, he did so merely to accommodate his co-defendant corporation who actually received the proceeds thereof and if ever the co-defendant corporation has been unable to pay its obligation to the plaintiff the same was due to the acts and/or omissions of co-defendant corporation".

"14. Defendants have already made a substantial payment on the said account but which plaintiff in bad faith did not properly applied and credited to defendants' account." (Emphasis supplied).

With his foregoing admissions, we are simply at a loss to understand how petitioner could now turn his back from his answer and insist on his preposterous claim of lack of consideration.

Petitioner additionally posits that "there was no showing as to when the principal got a drawdown or drawdowns for US\$875,468.72", and that "[T]he US\$1,000,000.00 was definitely not the loan under litigation, but there must have been another drawdown or other drawdowns. The drawdown or drawdowns cannot be presumed to have been made within the period guaranteed by the petitioner". To petitioner's mind, the inconsistency between the amount demanded by Chinabank in its complaint, which is US\$875,468.72, and the amount of the promissory note, which is for US\$1,000,000.00, is an indication that Chinabank had granted CREATIVE an extension of the loan. Prescinding therefrom, petitioner insists that he could not be liable to Chinabank because he did not consent to the extension for the repayment of the original loan of US\$1,000,000.00.

Petitioner's argument cannot hold water.

As it is, petitioner is attempting to create a new issue of fact at this late stage of the proceedings. A perusal of his

answer fails to yield any indication of his intent to craft an issue based on the inconsistency between the amount appearing in the promissory note and that demanded by Chinabank. To allow petitioner to pursue such a defense would undermine basic considerations of due process. Points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory not ventilated before the trial court.[8]

The Court is the neutral administrator of justice, not the corrector of unsound business judgments. Having freely assumed the obligations of a surety, petitioner cannot now evade those obligations by raising factual issues not proper in this Court. Under Rule 45 of the Rules of Court, this Court's main preoccupation is to resolve questions of law not issues of facts.

WHEREFORE, the petition is DENIED, and the assailed decision and resolution of the Court of Appeals AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with former Associate Justice, now a member of this Court, Justice Romeo J. Callejo, Sr. and Associate Justice Perlita J. Tria-Tirona, concurring.

[2] ART. 2079. An extension to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein.

[3] Rollo, p. 86.

[4] Rollo, p. 89.

[5] Rollo, pp. 22-31.

[6] Rollo, pp. 33-37.

[7] Tinitigan vs. Tinitigan, 100 SCRA 619, 634.

[8] Philippine Ports Authority vs. City of Iloilo, 406 SCRA 88, 93. [2003].

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