

PHILIPPINE BANK OF, COMMUNICATIONS, PETITIONER, VS. ELENA LIM, RAMON CALDERON, AND TRI-ORO INTERNATIONAL TRADING & MANUFACTURING CORPORATION, RESPONDENTS.

G.R. NO. 158138. April 12, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A restrictive stipulation on the venue of actions contained in a promissory note applies to the surety agreement supporting it, because the nature of the two contracts and the factual circumstances surrounding their execution are intertwined or interconnected. The surety agreement is merely an accessory to the principal loan agreement embodied in the promissory note. Hence, the enforcement of the former depends upon the latter.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the April 29, 2003 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 69786. The challenged Decision disposed as follows:

"WHEREFORE, based on the foregoing, the instant petition is hereby GRANTED. The assailed Orders dated June 9, 2000 and January 9, 2002 are hereby ANNULLED and SET ASIDE. Civil Case No. 99-94976 is hereby ordered DISMISSED without prejudice to the filing thereof in the venue exclusively stipulated by the parties."[3]

The Facts

The facts are related by the CA as follows:

"On September 3, 1999, the Philippine Bank of Communications (hereinafter '[petitioner']') filed a complaint against [Respondents Elena Lim, Ramon Calderon and Tri-Oro International Trading & Manufacturing Corporation ("Tri-Oro" for brevity)] with the Regional Trial Court of Manila for the collection of a deficiency amounting to P4,014,297.23 exclusive of interest. [Petitioner] alleged therein that [respondents] obtained a loan from it and executed a continuing surety agreement dated November 16, 1995 in favor of [petitioner] for all loans, credits, etc., that were extended or may be extended in the future to [respondents]. [Petitioner] granted a renewal of said loan upon [respondent's] request, the most recent being on January 21, 1998 as evidenced by Promissory Note Renewal BD-Variable No. 8298021001 in the amount of P3,000,000.00. It was expressly stipulated therein that the venue for any legal action that may arise out of said promissory note shall be Makati City, "to the exclusion of all other courts" x x x. [Respondents allegedly] failed to pay said obligation upon maturity. Thus, [petitioner] foreclosed the real estate mortgage executed by [respondents] valued at P1,081,600.00 leaving a deficiency balance of P4,014,297.23 as of August 31, 1999.

"[Respondents] moved to dismiss the complaint on the ground of improper venue, invoking the stipulation contained in the last paragraph of the promissory note with respect to the restrictive/exclusive venue. [The trial court] denied said motion asseverating that [petitioner] ha[d] separate causes of action arising from the promissory note and the continuing surety agreement. Thus, [under] Rule 4, Section 2, of the 1997 Rules of

Civil Procedure, as amended, x x x venue was properly laid in Manila. [The trial court] supported [its] order with cases where venue was held to be merely permissive. A motion for reconsideration of said order was likewise denied." [4]

Ruling of the Court of Appeals

On appeal, the CA ruled that respondents' alleged debt was based on the Promissory Note, which had provided an exclusionary stipulation on venue "to the exclusion of all other courts." [5] The parties' Surety Agreement, though silent as to venue, was an accessory contract that should have been interpreted in consonance with the Promissory Note. [6]

Hence, this Petition. [7] The Issue

Petitioner raises the following issue for our consideration:

"Whether or not the Honorable Court of Appeals had decided the issue of venue in a way not in accord with law and applicable decisions of this Honorable Court and had thereby departed from the accepted and usual course of judicial proceedings, as to call for this Honorable Supreme Court's power of supervision and appellate review." [8]

The Court's Ruling

The Petition is unmeritorious.

Sole Issue:

Venue

At the outset, this Court observes that petitioner took liberties with the stipulated facts to suit its allegations in the present Petition. In its Complaint, petitioner bank averred that respondents had entered into the Surety Agreement (SA) to guarantee existing and future credit facilities, and that they had executed the Promissory Note (PN) to document their loan. [9] Now, the bank is claiming that Tri-Oro issued the PN on which the other respondents should be made liable as sureties. [10]

This strategy is obviously intended to disconnect the SA from the PN and to support the claim of petitioner that the stipulation on venue does not apply to the SA. However, as will be discussed below, the cause of action to recover on the basis of the SA is inseparable from that which is based on the PN.

Rule on Venue

Section 2 of Rule 4 of the Rules of Court provides that personal actions [11] must be commenced and tried (1) in the place where the plaintiff resides, or (2) where the defendant resides, or (3) in case of non-resident defendants, where they may be found, at the choice of the plaintiff. [12] This rule on venue does not apply when the law specifically provides otherwise, or when -- before the filing of the action -- the contracting parties agree in writing on the exclusive venue thereof. [13] Venue is not jurisdictional and may be waived by the parties. [14]

A stipulation as to venue does not preclude the filing of the action in other places, unless qualifying or restrictive words are used in the agreement. [15]

In the instant case, the stipulation on the exclusivity of the venue as stated in the PN is not at issue. What petitioner claims is that there was no restriction on the venue, because none was stipulated in the SA on which petitioner had allegedly based its suit. [16] Accordingly, the action on the SA may be filed in Manila, petitioner's place of residence.

Petitioner adds that its Complaint filed in the trial court had two causes of action: the first was founded on a

breach of the PN; and the second, on a violation of the SA.[17] Consequently, it was allegedly correct to join the causes of action and to file the case in Manila, per Section 5 of Rule 2 of the Rules of Court, which reads:[18]

"Section 5. Joinder of Causes of Action. -A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

x x x x x x x x

(c) Where the causes of action are between the same parties but pertain to different venue or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of the said court and venue lies therein."[19]

Surety Agreement

Suretyship arises upon the solidary binding of a person -- deemed the surety -- with the principal debtor, for the purpose of fulfilling an obligation.[20] The prestation is not an original and direct obligation for the performance of the surety's own act, but merely accessory or collateral to the obligation contracted by the principal.[21] Although the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.[22]

In enforcing a surety contract, the "complementary-contracts-construed-together" doctrine finds application.[23] According to this principle, an accessory contract must be read in its entirety and together with the principal agreement.[24] This principle is used in construing contractual stipulations in order to arrive at their true meaning; certain stipulations cannot be segregated and then made to control.[25] This no-segregation principle is based on Article 1374 of the Civil Code, which we quote:

"Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly."

The aforementioned doctrine is applicable to the present case. Incapable of standing by itself, the SA can be enforced only in conjunction with the PN. The latter documents the debt that is sought to be collected in the action against the sureties.

The factual milieu of the present case shows that the SA was entered into to facilitate existing and future loan agreements. Petitioner approved the loan covered by the PN, partly because of the SA that assured the payment of the principal obligation. The circumstances that related to the issuance of the PN and the SA are so intertwined that neither one could be separated from the other. It makes no sense to argue that the parties to the SA were not bound by the stipulations in the PN.

Notably, the PN was a contract of adhesion that petitioner required the principal debtor to execute as a condition of the approval of the loan. It was made in the form and language prepared by the bank. By inserting the provision that Makati City would be "the venue for any legal action [that] may arise out of [the] Promissory Note,"[26] petitioner also restricted the venue of actions against the sureties. The legal action against the sureties arose not only from the SA, but also from the PN.

Cause of Action

Petitioner correctly argues that there are two causes of action contained in its Complaint. A cause of action is a party's act or omission that violates the rights of the other.[27] Only one suit may be commenced for a single cause of action.[28] If two or more suits are instituted on the basis of the same cause of action, only one case should remain and the others must be dismissed.[29]

As against Tri-Oro International Trading & Manufacturing Corporation, petitioner's cause of action is the alleged failure to pay the debt in violation of the PN; as against Elena Lim and Ramon Calderon, in violation of the SA.

Because of the variance between the causes of action, petitioner could have filed separate actions against respondents to recover the debt, on condition that it could not recover twice from the same cause. It could have proceeded against only one or all of them,[30] as full payment by any one of them would have extinguished the obligation.[31] By the same token, respondents could have been joined as defendants in one suit, because petitioner's alleged right of relief arose from the same transaction or series of transactions that had common questions of fact.[32] To avoid a multiplicity of suits, joinder of parties is encouraged by the law.

The cause of action, however, does not affect the venue of the action. The vital issue in the present case is whether the action against the sureties is covered by the restriction on venue stipulated in the PN. As earlier stated, the answer is in the affirmative. Since the cases pertaining to both causes of action are restricted to Makati City as the proper venue, petitioner cannot rely on Section 5 of Rule 2 of the Rules of Court.

Liberal Construction

Petitioner's final plea for liberality in applying the rules on venue must be rejected. As earlier discussed, the PN was a contract of adhesion. Ambiguities therein are to be construed against the party that prepared the contract.[33] On the same principle, petitioner can no longer disavow the stipulation on venue, considering that it drafted the Surety Agreement. Besides, this alleged technicality caused no miscarriage of substantial justice, as petitioner may refile the case.[34] The inconveniences brought about by its failure to observe the rules on venue sprang from its own acts. Hence, it cannot blame the courts or anyone else for the resulting delay in the adjudication of the merits of its cause.

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED.

Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 15-25.

[2] Id., pp. 32-36. Sixteenth Division. Penned by Justice Juan Q. Enriquez Jr., with the concurrence of Justices Rodrigo V. Cosico (Division chairman) and Hakim S. Abdulwahid.

[3] Id., p. 35.

[4] Id., pp. 2 & 33.

[5] Id., pp. 3 & 34.

[6] Id., pp. 4 & 35.

[7] The case was deemed submitted for decision on July 15, 2004, upon this Court's receipt of respondents' Memorandum, signed by Atty. Sam Norman G. Fuentes. Petitioner's Memorandum, signed by Attys. Eric C. Santos and Rodel R. Grimaldo, was received by this Court on July 13, 2004.

[8] Petitioner's Memorandum, p. 5; rollo, p. 173; original in upper case.

[9] Petitioner's Complaint, p. 2; rollo, p. 50.

[10] Petition, p. 3; rollo, p. 17.

There was, however, no indication that Tri-Oro had executed the Promissory Note. Petitioner failed to explain how the former became the maker of the Note, which was executed by Ellen Lim Ong (who, according to the Complaint is Elena Lim). See Promissory Note, p. 2; rollo, p. 41; petitioner's Complaint, p. 1; rollo, p. 49.

[11] One brought for the recovery of personal property, for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury. (*Hernandez v. Development Bank of the Philippines*, 71 SCRA 290, 292, June 18, 1976). As opposed to a real action, which pertain to actions affecting title to or possession of real property, or any interest therein. A real action should be filed in the area where the real property involved, or a portion thereof, is situated. §1, Rule 4, Rules of Court.

[12] §2, *id.*

[13] §4, *id.*

[14] *Rudolf Lietz Holdings, Inc. v. Register of Deeds*, 344 SCRA 680, 685, November 15, 2000; *Philippine Banking Corporation v. Tensuan*, 230 SCRA 413, 417, February 28, 1994. See *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 347 SCRA 542, 557, December 8, 2000.

[15] *Unimasters Conglomeration, Inc. v. Court of Appeals*, 335 Phil. 415, 437, February 7, 1997; *Philippine Banking Corporation v. Tensuan*, *supra*, p. 420.

[16] Petitioner's Memorandum, p. 6; rollo, p. 174.

[17] *Id.*, pp. 7 & 175.

[18] *Id.*, pp. 8 & 176.

[19] Under this condition, if one cause of action falls within the jurisdiction of a second-level court (Regional Trial Court) and the other falls within the jurisdiction of a first-level court (e.g. Metropolitan Trial Court), the joinder may be allowed in the former. If the causes of action have different venues, the cases may be joined in any of the courts of proper venue. *Feria & Noche*, *Civil Procedure Annotated*, Vol. 1 (2001), pp. 219-220.

[20] Art. 2047, Civil Code.

[21] *Garcia v. Court of Appeals*, 191 SCRA 493, 495, November 20, 1990.

[22] *Philippine Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc.*, GR No. 140047, July 13, 2004; *Tolentino*, *Civil Code of the Philippines*, Vol. V (1992), p. 501.

[23] *Rigor v. Consolidated Orix Leasing and Finance Corp.*, 436 Phil. 243, 252, August 20, 2002; *Southeast Asia Shipping Corporation v. Seagull Maritime Corp.*, 414 SCRA 419, 428, October 24, 2003; *Velasquez v. Court of Appeals*, 368 Phil. 865, 870, June 30, 1999.

[24] *Ibid.* We note, however, that the provisions in the principal contract are not always controlling. When its provision on venue is in conflict with that in the accessory contract, but the former is shown to be an error, the latter governs. Thus, in *Rigor v. Consolidated Orix Leasing and Finance Corp.*, the Court applied the stipulation to the accessory contract (a chattel mortgage) in determining the proper venue, because the stipulation on venue in the principal contract was merely an error, and the circumstances showed that the accessory contract should govern.

[25] *National Power Corporation v. Court of Appeals*, 229 Phil. 529, 535, November 14, 1986.

[26] Promissory Note, p. 1; rollo, p. 40.

[27] §2, Rule 2, Rules of Court.

[28] §3, Id.

[29] §4, Id.

[30] Art. 1216, Civil Code. Under Art. 2047, provisions on solidary obligations apply to suretyship.

[31] Arts. 1217 & 1231, Civil Code.

[32] §6, Rule 3, Rules of Court.

[33] Philamcare Health Systems, Inc. v. Court of Appeals, 429 Phil. 82, 93, March 18, 2002; Orient Air Services and Hotel Representatives v. Court of Appeals, 197 SCRA 645, 654, May 29, 1991; Angeles v. Calasanz, 135 SCRA 323, 334, March 18, 1985.

[34] The refiling of the same action or claim is barred only by dismissals due to (a) res judicata, (b) prescription, (c) extinguishment of a claim or demand, and (d) unenforceability under the Statute of Frauds. §5, Rule 16, Rules of Court.

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