

INTERNATIONAL FINANCE CORPORATION, PETITIONER, VS. IMPERIAL TEXTILE MILLS, INC., RESPONDENT.

G.R. NO. 160324. November 15, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The terms of a contract govern the rights and obligations of the contracting parties. When the obligor undertakes to be "jointly and severally" liable, it means that the obligation is solidary. If solidary liability was instituted to "guarantee" a principal obligation, the law deems the contract to be one of suretyship.

The creditor in the present Petition was able to show convincingly that, although denominated as a "Guarantee Agreement," the Contract was actually a surety. Notwithstanding the use of the words "guarantee" and "guarantor," the subject Contract was indeed a surety, because its terms were clear and left no doubt as to the intention of the parties.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision[2] and September 30, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 58471. The challenged Decision disposed as follows:

"WHEREFORE, the appeal is PARTIALLY GRANTED. The decision of the trial court is MODIFIED to read as follows:

"1. Philippine Polyamide Industrial Corporation is ORDERED to pay [Petitioner] International Finance Corporation, the following amounts:

'(a)

US\$2,833,967.00 with accrued interests as provided in the Loan Agreement;

'(b)

Interest of 12% per annum on accrued interest, which shall be counted from the date of filing of the instant action up to the actual payment;

'(c)

P73,340.00 as attorney's fees;

'(d)

Costs of suit.'

"2. The guarantor Imperial Textile Mills, Inc. together with Grandtex is HELD secondarily liable to pay the amount herein adjudged to [Petitioner] International Finance Corporation." [4]

The assailed Resolution denied both parties' respective Motions for Reconsideration.

The Facts

The facts are narrated by the appellate court as follows:

"On December 17, 1974, [Petitioner] International Finance Corporation (IFC) and [Respondent] Philippine Polyamide Industrial Corporation (PPIC) entered into a loan agreement wherein IFC extended to PPIC a loan of US\$7,000,000.00, payable in sixteen (16) semi-annual installments of US\$437,500.00 each, beginning June 1, 1977 to December 1, 1984, with interest at the rate of 10% per annum on the principal amount of the loan advanced and outstanding from time to time. The interest shall be paid in US dollars semi-annually on June 1 and December 1 in each year and interest for any period less than a year shall accrue and be pro-rated on the basis of a 360-day year of twelve 30-day months.

"On December 17, 1974, a 'Guarantee Agreement' was executed with x x x Imperial Textile Mills, Inc. (ITM), Grand Textile Manufacturing Corporation (Grandtex) and IFC as parties thereto. ITM and Grandtex agreed to guarantee PPIC's obligations under the loan agreement.

"PPIC paid the installments due on June 1, 1977, December 1, 1977 and June 1, 1978. The payments due on December 1, 1978, June 1, 1979 and December 1, 1979 were rescheduled as requested by PPIC. Despite the rescheduling of the installment payments, however, PPIC defaulted. Hence, on April 1, 1985, IFC served a written notice of default to PPIC demanding the latter to pay the outstanding principal loan and all its accrued interests. Despite such notice, PPIC failed to pay the loan and its interests.

"By virtue of PPIC's failure to pay, IFC, together with DBP, applied for the extrajudicial foreclosure of mortgages on the real estate, buildings, machinery, equipment plant and all improvements owned by PPIC, located at Calamba, Laguna, with the regional sheriff of Calamba, Laguna. On July 30, 1985, the deputy sheriff of Calamba, Laguna issued a notice of extrajudicial sale. IFC and DBP were the only bidders during the auction sale. IFC's bid was for P99,269,100.00 which was equivalent to US\$5,250,000.00 (at the prevailing exchange rate of P18.9084 = US\$1.00). The outstanding loan, however, amounted to US\$8,083,967.00 thus leaving a balance of US\$2,833,967.00. PPIC failed to pay the remaining balance.

"Consequently, IFC demanded ITM and Grandtex, as guarantors of PPIC, to pay the outstanding balance. However, despite the demand made by IFC, the outstanding balance remained unpaid.

"Thereafter, on May 20, 1988, IFC filed a complaint with the RTC of Manila against PPIC and ITM for the payment of the outstanding balance plus interests and attorney's fees.

"The trial court held PPIC liable for the payment of the outstanding loan plus interests. It also ordered PPIC to pay IFC its claimed attorney's fees. However, the trial court relieved ITM of its obligation as guarantor. Hence, the trial court dismissed IFC's complaint against ITM.

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"Thus, apropos the decision dismissing the complaint against ITM, IFC appealed [to the CA]." [5]

Ruling of the Court of Appeals

The CA reversed the Decision of the trial court, insofar as the latter exonerated ITM from any obligation to IFC. According to the appellate court, ITM bound itself under the "Guarantee Agreement" to pay PPIC's obligation

upon default.[6] ITM was not discharged from its obligation as guarantor when PPIC mortgaged the latter's properties to IFC.[7] The CA, however, held that ITM's liability as a guarantor would arise only if and when PPIC could not pay. Since PPIC's inability to comply with its obligation was not sufficiently established, ITM could not immediately be made to assume the liability.[8]

The September 30, 2003 Resolution of the CA denied reconsideration.[9] Hence, this Petition.[10]

The Issues

Petitioner states the issues in this wise:

"I.

Whether or not ITM and Grandtex[11] are sureties and therefore, jointly and severally liable with PPIC, for the payment of the loan.

"II.

Whether or not the Petition raises a question of law.

"III.

Whether or not the Petition raises a theory not raised in the lower court."[12]

The main issue is whether ITM is a surety, and thus solidarily liable with PPIC for the payment of the loan.

The Court's Ruling

The Petition is meritorious.

Main Issue: Liability of Respondent Under the Guarantee Agreement

The present controversy arose from the following Contracts: (1) the Loan Agreement dated December 17, 1974, between IFC and PPIC;[13] and (2) the Guarantee Agreement dated December 17, 1974, between ITM and Grandtex, on the one hand, and IFC on the other.[14]

IFC claims that, under the Guarantee Agreement, ITM bound itself as a surety to PPIC's obligations proceeding from the Loan Agreement.[15] For its part, ITM asserts that, by the terms of the Guarantee Agreement, it was merely a guarantor[16] and not a surety. Moreover, any ambiguity in the Agreement should be construed against IFC -- the party that drafted it.[17]

Language of the Contract

The premise of the Guarantee Agreement is found in its preambular clause, which reads:

"Whereas,

"(A)

By an Agreement of even date herewith between IFC and PHILIPPINE POLYAMIDE INDUSTRIAL CORPORATION (herein called the Company), which agreement is herein called the Loan Agreement, IFC agrees to extend to the Company a loan (herein called the Loan) of seven million dollars (\$7,000,000) on the

terms therein set forth, including a provision that all or part of the Loan may be disbursed in a currency other than dollars, but only on condition that the Guarantors agree to guarantee the obligations of the Company in respect of the Loan as hereinafter provided.

"(B)

The Guarantors, in order to induce IFC to enter into the Loan Agreement, and in consideration of IFC entering into said Agreement, have agreed so to guarantee such obligations of the Company."^[18]

The obligations of the guarantors are meticulously expressed in the following provision:

"Section 2.01. The Guarantors jointly and severally, irrevocably, absolutely and unconditionally guarantee, as primary obligors and not as sureties merely, the due and punctual payment of the principal of, and interest and commitment charge on, the Loan, and the principal of, and interest on, the Notes, whether at stated maturity or upon prematuring, all as set forth in the Loan Agreement and in the Notes."^[19]

The Agreement uses "guarantee" and "guarantors," prompting ITM to base its argument on those words.^[20] This Court is not convinced that the use of the two words limits the Contract to a mere guaranty. The specific stipulations in the Contract show otherwise.

Solidary Liability Agreed to by ITM

While referring to ITM as a guarantor, the Agreement specifically stated that the corporation was "jointly and severally" liable. To put emphasis on the nature of that liability, the Contract further stated that ITM was a primary obligor, not a mere surety. Those stipulations meant only one thing: that at bottom, and to all legal intents and purposes, it was a surety.

Indubitably therefore, ITM bound itself to be solidarily^[21] liable with PPIC for the latter's obligations under the Loan Agreement with IFC. ITM thereby brought itself to the level of PPIC and could not be deemed merely secondarily liable.

Initially, ITM was a stranger to the Loan Agreement between PPIC and IFC. ITM's liability commenced only when it guaranteed PPIC's obligation. It became a surety when it bound itself solidarily with the principal obligor. Thus, the applicable law is as follows:

"Article 2047. By guaranty, a person, called the guarantor binds himself to the creditor to fulfill the obligation of the principal in case the latter should fail to do so.

"If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract shall be called suretyship."^[22]

The aforementioned provisions refer to Articles 1207 to 1222 of the Civil Code on "Joint and Solidary Obligations." Relevant to this case is Article 1216, which states:

"The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

Pursuant to this provision, petitioner (as creditor) was justified in taking action directly against respondent.

No Ambiguity in the Undertaking

The Court does not find any ambiguity in the provisions of the Guarantee Agreement. When qualified by the term

"jointly and severally," the use of the word "guarantor" to refer to a "surety" does not violate the law.[23] As Article 2047 provides, a suretyship is created when a guarantor binds itself solidarily with the principal obligor. Likewise, the phrase in the Agreement -- "as primary obligor and not merely as surety" -- stresses that ITM is being placed on the same level as PPIC. Those words emphasize the nature of their liability, which the law characterizes as a suretyship.

The use of the word "guarantee" does not ipso facto make the contract one of guaranty.[24] This Court has recognized that the word is frequently employed in business transactions to describe the intention to be bound by a primary or an independent obligation.[25] The very terms of a contract govern the obligations of the parties or the extent of the obligor's liability. Thus, this Court has ruled in favor of suretyship, even though contracts were denominated as a "Guarantor's Undertaking" [26] or a "Continuing Guaranty." [27]

Contracts have the force of law between the parties,[28] who are free to stipulate any matter not contrary to law, morals, good customs, public order or public policy.[29] None of these circumstances are present, much less alleged by respondent. Hence, this Court cannot give a different meaning to the plain language of the Guarantee Agreement.

Indeed, the finding of solidary liability is in line with the premise provided in the "Whereas" clause of the Guarantee Agreement. The execution of the Agreement was a condition precedent for the approval of PPIC's loan from IFC. Consistent with the position of IFC as creditor was its requirement of a higher degree of liability from ITM in case PPIC committed a breach. ITM agreed with the stipulation in Section 2.01 and is now estopped from feigning ignorance of its solidary liability. The literal meaning of the stipulations control when the terms of the contract are clear and there is no doubt as to the intention of the parties.[30]

We note that the CA denied solidary liability, on the theory that the parties would not have executed a Guarantee Agreement if they had intended to name ITM as a primary obligor.[31] The appellate court opined that ITM's undertaking was collateral to and distinct from the Loan Agreement. On this point, the Court stresses that a suretyship is merely an accessory or a collateral to a principal obligation.[32] 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.[33] 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.[34]

ITM's Liability as Surety

With the present finding that ITM is a surety, it is clear that the CA erred in declaring the former secondarily liable.[35] A surety is considered in law to be on the same footing as the principal debtor in relation to whatever is adjudged against the latter.[36] Evidently, the dispositive portion of the assailed Decision should be modified to require ITM to pay the amount adjudged in favor of IFC.

Peripheral Issues

In addition to the main issue, ITM raised procedural infirmities allegedly justifying the denial of the present Petition. Before the trial court and the CA, IFC had allegedly instituted different arguments that effectively changed the corporation's theory on appeal, in violation of this Court's previous pronouncements.[37] ITM further claims that the main issue in the present case is a question of fact that is not cognizable by this Court.[38]

These contentions deserve little consideration.

Alleged Change of Theory on Appeal

Petitioner's arguments before the trial court (that ITM was a "primary obligor") and before the CA (that ITM was

a "surety") were related and intertwined in the action to enforce the solidary liability of ITM under the Guarantee Agreement. We emphasize that the terms "primary obligor" and "surety" were premised on the same stipulations in Section 2.01 of the Agreement. Besides, both terms had the same legal consequences. There was therefore effectively no change of theory on appeal. At any rate, ITM failed to show to this Court a disparity between IFC's allegations in the trial court and those in the CA. Bare allegations without proof deserve no credence.

Review of Factual Findings Necessary

As to the issue that only questions of law may be raised in a Petition for Review,[39] the Court has recognized exceptions,[40] one of which applies to the present case. The assailed Decision was based on a misapprehension of facts,[41] which particularly related to certain stipulations in the Guarantee Agreement -- stipulations that had not been disputed by the parties. This circumstance compelled the Court to review the Contract firsthand and to make its own findings and conclusions accordingly.

WHEREFORE, the Petition is hereby GRANTED, and the assailed Decision and Resolution MODIFIED in the sense that Imperial Textile Mills, Inc. is declared a surety to Philippine Polyamide Industrial Corporation. ITM is ORDERED to pay International Finance Corporation the same amounts adjudged against PPIC in the assailed Decision. No costs.

SO ORDERED.

Corona, Carpio-Morales, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

[**]The Petition included Philippine Polyamide Industrial Corporation (PPIC) as a respondent. Petitioner subsequently manifested that it had no knowledge of PPIC's present address; and that it received no pleading from any lawyer purporting to act for the corporation, which moreover failed to appeal the trial court's Decision to the CA (Compliance and Manifestation; rollo, pp. 147-148). Consequently, this Court considered the case against PPIC as closed (Resolution dated February 28, 2005).

[1] Rollo, pp. 3-17.

[2] Id., pp. 27-41. Special Fifteenth Division. Penned by Justice Oswaldo D. Agcaoili (Division chairperson), with the concurrence of Justices Jose L. Sabio Jr. and Josefina Guevara-Salonga (members).

[3] Id., p. 43.

[4] Id., pp. 40-41.

[5] Id., pp. 28-31.

[6] Assailed Decision, p. 9; rollo, p. 35.

[7] Id., pp. 11 & 37.

[8] Id., pp. 14-14 & 40-41.

[9] Special Former Fifteenth Division. The Resolution was penned by Justice Jose L. Sabio Jr. (acting chairperson) with the concurrence of Justices Josefina Guevara-Salonga and Rosalinda Asuncion-Vicente (in lieu of Justice Oswaldo D. Agcaoili).

[10] The case was deemed submitted for decision on November 2, 2004, upon this Court's receipt of petitioner's

Memorandum signed by Attys. Alfredo Benjamin S. Caguioa and Cesar E. Santamaria Jr. Respondent's Memorandum, signed by Atty. Ma. Cecilia P. Subido, was received by this Court on September 27, 2004.

Respondent also filed a Petition for Review to challenge the CA Decision, which held it secondarily liable to IFC. The case was docketed as GR No. 160299 and raffled to the First Division of this Court. In a Resolution dated February 2, 2004, the Petition was denied for failure to show sufficiently that the CA had committed a reversible error.

[11] The Court will no longer address the liability of Grandtex, which is not a party to this Petition.

[12] Petitioner's Memorandum, p. 9; rollo, p. 133.

[13] Rollo, pp. 44-72.

[14] Id., pp. 73-77.

[15] Petitioner's Memorandum, p. 9; rollo, p. 133.

[16] Respondent's Memorandum, p. 5; rollo, p. 112.

[17] Id., pp. 8 & 115.

[18] Id., pp. 2 & 74.

[19] Ibid. Emphasis ours.

[20] Respondent's Memorandum, p. 7; rollo, p. 114.

[21] The term "jointly and severally" connotes a solidary obligation. *Sharruf v. Tayabas Land Co.*, 37 Phil. 655, 657, February 15, 1918.

In a solidary obligation, the creditor may proceed against any one of the debtors for the fulfillment of the obligation. Art. 1216 of the Civil Code.

[22] Civil Code.

[23] Art. 1375 of the Civil Code provides that "[w]ords which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract."

[24] *E. Zobel, Inc. v. Court of Appeals*, 352 Phil. 608, 618, May 6, 1998.

[25] Ibid.

[26] *Pacific Banking Corporation v. Intermediate Appellate Court*, 203 SCRA 496, November 13, 1991.

[27] *E. Zobel, Inc. v. Court of Appeals*; *supra*, p. 615.

[28] Art. 1159 of the Civil Code.

[29] Art. 1409, *id.*

[30] Art. 1370, *id.*

[31] Assailed Decision, p. 9; rollo, p. 35.

[32] *Philippine Bank of Communications v. Lim*, GR No. 158138, April 12, 2005; *Garcia v. Court of Appeals*, 191 SCRA 493, 495, November 20, 1990.

[33] Philippine Bank of Communications v. Lim, *supra*; Molino v. Security Diners International Corporation, 415 Phil. 587, 597, August 16, 2001; Agra v. Philippine National Bank, 368 Phil. 829, 846, June 21, 1999.

[34] Molino v. Security Diners International Corporation, *supra*; Agra v. Philippine National Bank, *supra*; Garcia v. Court of Appeals, *supra*.

[35] Assailed Decision, p. 15; rollo, p. 41.

[36] Molino v. Security Diners International Corporation, *supra*, p. 597; Philippine National Bank v. Pineda, 197 SCRA 1, 11, May 13, 1991. See also Government of the Republic of the Philippines v. Tizon, 127 Phil. 607, 614, August 30, 1967.

[37] Respondent's Memorandum, p. 9; rollo, p. 116.

[38] *Id.*, pp. 4 & 11.

[39] §1of Rule 45 of the Rules of Court.

[40] Fuentes v. Court of Appeals, 268 SCRA 703, 708-709, February 26, 1997; Metro Concast Steel Corporation v. Manila Electric Company, 361 SCRA 35, July 11, 2001; Pamplona Plantation Company, Inc. v. Tinghil, 450 SCRA 421, February 3, 2005.

The exceptions include the following conditions: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court goes beyond the issues of the case when making its findings, and the findings are contrary to the admissions of both the appellant and the appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions made without citing the specific evidence on which they are based; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence, but the findings are contradicted by the evidence on record.

[41] Swagman Hotels and Travel, Inc. v. Court of Appeals, GR No. 161135, April 8, 2005; Magellan Capital Management Corporation v. Zosa, 355 SCRA 157, 168, March 26, 2001; De la Cruz v. Sosing, 94 Phil. 26, 28, November 27, 1953.

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