

SOLIDBANK CORPORATION, NOW KNOWN AS METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. GATEWAY ELECTRONICS CORPORATION, JAIME M. HIDALGO AND ISRAEL MADUCDOC, RESPONDENTS.

G.R. No. 164805. April 30, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari[1] assailing the Decision dated June 2, 2004 and the Resolution dated July 29, 2004 of the Court of Appeals in CA-G.R. SP No. 73684.

The Facts

In May and June 1997, Gateway Electronics Corporation (Gateway) obtained from Solidbank Corporation (Solidbank) four (4) foreign currency denominated loans to be used as working capital for its manufacturing operations.[2] The loans were covered by promissory notes[3] (PNs) which provided an interest of eight and 75/100 percent (8.75%), but was allegedly increased to ten percent (10%) per annum, and a penalty of two percent (2%) per month based on the total amount due computed from the date of default until full payment of the total amount due.[4] The particulars of the loans are:

Promissory

Note No.

Date of Loan

Amount of Loan

Date Due

a) PN 97-375

20 May 1997

US\$ 190,000.00

11 Nov. 1998

b) PN 97-408

29 May 1997

US\$ 570,000.00

11 Nov. 1998

c) PN 97-435

09 June 1997

US\$1,150,000.00

04 June 1998

d) PN 97-458
15 June 1997
US\$ 130,000.00
15 June 1998

To secure the loans covered by PN 97-375[5] and PN 97-408,[6] Gateway assigned to Solidbank the proceeds of its Back-end Services Agreement[7] dated June 25, 2000 with Alliance Semiconductor Corporation (Alliance). The following stipulations are common in both PNs:

- This Note or Loan shall be paid from the foreign exchange proceeds of Our/My Letter(s) of Credit, Purchase Order or Sales Contract described as follows: *** Back-end Services Agreement dated 06-25-96 by and between Gateway Electronics Corporation and Alliance Semiconductor Corporation.
- We/I assign, transfer and convey to Solidbank all title and interest to the proceeds of the foregoing Letter(s) of Credit to the extent necessary to satisfy all amounts and obligations due or which may arise under this Note or Loan, and to any extension, renewal, or amendments of this Note or Loan. We/I agree that in case the proceeds of the foregoing Letter(s) of Credit prove insufficient to pay Our/My outstanding liabilities under this Note or Loan, We/I shall continue to be liable for the deficiency.
- We/I irrevocably undertake to course the foreign exchange proceeds of the Letter(s) of Credit directly with Solidbank. Our/My failure to comply with the above would render Us or Me in default of the loan or credit facility without need of demand.[8]

Gateway failed to comply with its loan obligations. By January 31, 2000, Gateway's outstanding debt amounted to US\$1,975,835.58. Solidbank's numerous demands to pay were not heeded by Gateway. Thus, on February 21, 2000, Solidbank filed a Complaint[9] for collection of sum of money against Gateway.

On June 16, 2002, Solidbank filed an Amended Complaint[10] to implead the officers/stockholders of Gateway, namely, Nand K. Prasad, Andrew S. Delos Reyes, Israel F. Maducdoc, Jaime M. Hidalgo and Alejandro S. Calderon - who signed in their personal capacity a Continuing Guaranty[11] to become sureties for any and all existing indebtedness of Gateway to Solidbank. On June 20, 2002, the trial court admitted the amended complaint and impleaded the additional defendants.

Earlier, on October 11, 2000, Solidbank filed a Motion for Production and Inspection of Documents[12] on the basis of an information received from Mr. David Eichler, Chief Financial Officer of Alliance, that Gateway has already received from Alliance the proceeds/payment of the Back-end Services Agreement. The pertinent portions of the motion read:

8. Therefore, plaintiffs request that this Honorable Court issue an Order requiring defendant GEC, through its Treasurer/Chief Financial Officer, Chief Accountant, Comptroller or any such officer, to bring before this Honorable Court for inspection and copying the following documents:
- a) The originals, duplicate originals and copies of all documents pertaining to, arising from, in connection with or involving the Back-end Services Agreement of defendant GEC and Alliance Semiconductors;
 - b) The originals, duplicate originals and copies of all books of account, financial statements, receipts, checks, vouchers, invoices, ledgers and other financial/accounting records and documents pertaining to or evidencing financial and money transactions arising from, in connection with or involving the Back-end Services Agreement of defendant GEC and Alliance Semiconductors; and
 - c) The originals, duplicate originals and copies of all documents from whatever source pertaining to the proceeds/payments received by GEC from Alliance Semiconductors.

d) Documents, as used in this section, means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, notes diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer records, diskettes or print-outs, teletypes, telefax, e-mail, invoices, worksheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures, CD-ROM's), and any electronic, mechanical or electric records or representations (including, without limitation, tapes, cassettes, discs, recordings and computer or computer-related memories).

9. Furthermore, plaintiffs request that said Order to the Treasurer/Chief Financial Officer, Chief Accountant, Comptroller of defendant GEC include the following instructions:

- If the response is that the documents are not in defendant GEC's or the officers' possession or custody, said officer should describe in detail the efforts made to locate said records or documents;
- If the documents are not in defendant GEC's or the officer's possession and control, said officer should identify who has control and the location of said documents or records;
- If the request for production seeks a specific document or itemized category that is not in defendant GEC's or the officer's possession, control or custody, the officer should provide any documents he has that contain all or part of the information contained in the requested document or category;
- If the officer cannot furnish the originals of the documents requested, he should explain in detail the reasons therefore; and
- The officer should identify the source within or outside GEC of each of the documents he produces.[13]

On January 30, 2001, the trial court issued an Order[14] granting the motion for production and inspection of documents, viz.:

WHEREFORE, the defendant GEC is hereby ordered to bring all the records and documents, not privileged, arising from, in connection with and/or involving the Back-end Services Agreement between defendant GEC and Alliance Semiconductor Corporation, particularly to those pertaining to all payments made by Alliance Semiconductor Corporation to GEC pursuant to said Agreement, incorporating the instructions enumerated in par. 9 of the instant motion, for inspection and copying by the plaintiff, the same to be made before the Officer-In-Charge, Office of the Branch Clerk of Court on February 27, 2001 at 9:00 a.m.

SO ORDERED.[15]

Gateway filed a motion to reset the production and inspection of documents to March 29, 2001 in order to give them enough time to gather and collate the documents in their possession. The trial court granted the motion.[16]

On April 30, 2001, Solidbank filed a motion for issuance of a show cause order for Gateway's failure to comply with the January 30, 2001 Order of the trial court.[17] In response, Gateway filed a manifestation that they appeared before the trial court on March 29, 2001 to present the documents in their possession, however, Solidbank's counsel failed to appear on the said date.[18] In the manifestation, Gateway also expressed their willingness to make available for inspection at Gateway's offices any requested document.[19]

On May 31, 2001, the trial court issued an Order setting the production and inspection of documents on June 7, 2001 in the premises of Gateway.[20] It was subsequently moved to July 24, 2001. On the said date, Gateway presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services

Agreement.[21]

Solidbank was not satisfied with the documents produced by Gateway. Thus, on December 13, 2001, Solidbank filed a motion to cite Gateway and its responsible officers in contempt for their refusal to produce the documents subject of the January 30, 2001 Order. In opposition thereto, Gateway claimed that they had complied with the January 30, 2001 Order and that the billings sent to Alliance are the only documents that they have pertaining to the Back-end Services Agreement.[22]

On April 15, 2002, the trial court issued an Order[23] denying the motion to cite Gateway for contempt. However, the trial court chastised Gateway for exerting no diligent efforts to produce the documents evidencing the payments received by Gateway from Alliance in relation to the Back-end Services Agreement, viz.:

Before this Court is a Motion to Cite Defendant GEC In Contempt For Refusing To Produce Documents Pursuant to the Order Dated 30 January 2001 filed by plaintiff dated December 12, 2001, together with defendant GEC's Opposition thereto dated January 14, 2002, as well as plaintiff's Reply dated February 6, 2002 and GEC's Rejoinder dated February 27, 2002.

As Courts are cautioned to utilize the power to punish for contempt on the preservative and not on the vindictive, contempt being drastic and extraordinary in nature (Wicker vs. Arcangel, 252 SCRA 444; Paredes-Garcia vs. CA, 261 SCRA 693), this Court is inclined to DENY the present motion.

However, as no diligent effort was shown to have been exerted by defendant GEC to produce the documents enumerated in the Order dated January 30, 2001, this Court hereby orders, in accordance with Sec. 3(a), Rule 29 of the Rules of Court, that the matters regarding the contents of the documents sought to be produced but which were not otherwise produced by GEC, shall be taken to be established in accordance with plaintiff's claim, but only for the purpose of this action.

SO ORDERED.[24]

Gateway filed a partial motion for reconsideration of the April 15, 2002 Order. However, the same was denied in an Order[25] dated August 27, 2002.

On November 5, 2002, Gateway filed a petition for certiorari[26] before the Court of Appeals (CA) seeking to nullify the Orders of the trial court dated April 15, 2002 and August 27, 2002.

On June 2, 2004, the CA rendered a Decision[27] nullifying the Orders of the trial court dated April 15, 2002 and August 27, 2002. The CA ruled that both the Motion for Production of Documents and the January 30, 2001 Order of the trial court failed to comply with the provisions of Section 1, Rule 27 of the Rules of Court. It further held that the trial court committed grave abuse of discretion in ruling that the matters regarding the contents of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim. The fallo of the Decision reads:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed portion of the Order dated April 15, 2002 and Order dated August 27, 2002, both issued by public respondent, are hereby NULLIFIED and SET ASIDE without prejudice to the filing by private respondent of a new Motion for Production and Inspection of Documents in accordance with the requirements of the Rules.

SO ORDERED.[28]

Solidbank filed a motion for reconsideration of the Decision of the CA. On July 29, 2004, the CA rendered a Resolution[29] denying the same. Thus, this petition.

The Issues

- Whether Solidbank's motion for production and inspection of documents and the Order of the trial court dated January 30, 2001 failed to comply with Section 1, Rule 27 of the Rules of Court; and
- Whether the trial court committed grave abuse of discretion in holding that the matters subject of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim.

The Ruling of the Court

We resolve to deny the petition.

I

Section 1, Rule 27 of the Rules of Court provides:

SECTION 1. Motion for production or inspection; order. - Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party or permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

The aforecited rule provides the mechanics for the production of documents and the inspection of things during the pendency of a case. It also deals with the inspection of sources of evidence other than documents, such as land or other property in the possession or control of the other party.[30] This remedial measure is intended to assist in the administration of justice by facilitating and expediting the preparation of cases for trial and guarding against undesirable surprise and delay; and it is designed to simplify procedure and obtain admissions of facts and evidence, thereby shortening costly and time-consuming trials. It is based on ancient principles of equity. More specifically, the purpose of the statute is to enable a party-litigant to discover material information which, by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny, and to provide a convenient and summary method of obtaining material and competent documentary evidence in the custody or under the control of an adversary. It is a further extension of the concept of pretrial.[31]

The modes of discovery are accorded a broad and liberal treatment.[32] Rule 27 of the Revised Rules of Court permits "fishing" for evidence, the only limitation being that the documents, papers, etc., sought to be produced are not privileged, that they are in the possession of the party ordered to produce them and that they are material to any matter involved in the action.[33] The lament against a fishing expedition no longer precludes a party from prying into the facts underlying his opponent's case. Mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.[34] However, fishing for evidence that is allowed under the rules is not without limitations. In *Security Bank Corporation v. Court of Appeals*, the Court enumerated the requisites in order that a party may compel the other party to produce or allow the inspection of documents or things, viz.:

- (a) The party must file a motion for the production or inspection of documents or things, showing good cause therefor;
- (b) Notice of the motion must be served to all other parties of the case;
- (c) The motion must designate the documents, papers, books, accounts, letters, photographs, objects or tangible

things which the party wishes to be produced and inspected;

(d) Such documents, etc., are not privileged;

(e) Such documents, etc., constitute or contain evidence material to any matter involved in the action, and

(f) Such documents, etc., are in the possession, custody or control of the other party.[35]

In the case at bench, Gateway assigned to Solidbank the proceeds of its Back-end Services Agreement with Alliance in PN Nos. 97-375 and 97-408. By virtue of the assignment, Gateway was obligated to remit to Solidbank all payments received from Alliance under the agreement. In this regard, Solidbank claims that they have received information from the Chief Financial Officer of Alliance that Gateway had already received payments under the agreement. In order to ascertain the veracity of the information, Solidbank availed of the discovery procedure under Rule 27. The purpose of Solidbank's motion is to compel Gateway to produce the documents evidencing payments received from Alliance in connection with the Back-end Services Agreement.

Solidbank was able to show good cause for the production of the documents. It had also shown that the said documents are material or contain evidence relevant to an issue involved in the action. However, Solidbank's motion was fatally defective and must be struck down because of its failure to specify with particularity the documents it required Gateway to produce. Solidbank's motion for production and inspection of documents called for a blanket inspection. Solidbank's request for inspection of "all documents pertaining to, arising from, in connection with or involving the Back-end Services Agreement"[36] was simply too broad and too generalized in scope.

A motion for production and inspection of documents should not demand a roving inspection of a promiscuous mass of documents. The inspection should be limited to those documents designated with sufficient particularity in the motion, such that the adverse party can easily identify the documents he is required to produce.[37]

Furthermore, Solidbank, being the one who asserts that the proceeds of the Back-end Services Agreement were already received by Gateway, has the burden of proof in the instant case. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[38] Throughout the trial, the burden of proof remains with the party upon whom it is imposed,[39] until he shall have discharged the same.

II

The trial court held that as a consequence of Gateway's failure to exert diligent effort in producing the documents subject of the Order dated January 30, 2001, in accordance with Section 3(a), Rule 29[40] of the Rules of Court, the matters regarding the contents of the documents sought to be produced but which were not produced by Gateway, shall be considered as having been established in accordance with Solidbank's claim.

We hold that the trial court committed grave abuse of discretion in issuing the aforesaid Order. It is not fair to penalize Gateway for not complying with the request of Solidbank for the production and inspection of documents, considering that the documents sought were not particularly described. Gateway and its officers can only be held liable for unjust refusal to comply with the modes of discovery if it is shown that the documents sought to be produced were specifically described, material to the action and in the possession, custody or control of Gateway.

Neither can it be said that Gateway did not exert effort in complying with the order for production and inspection

of documents since it presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services Agreement. Good faith effort to produce the required documents must be accorded to Gateway, absent a finding that it acted willfully, in bad faith or was at fault in failing to produce the documents sought to be produced.[41]

One final note. The CA decision nullifying the orders of the trial court was without prejudice to the filing by herein petitioner of a new motion for Production and Inspection of Documents in accordance with the Rules. It would have been in the best interest of the parties, and it would have saved valuable time and effort, if the petitioner simply heeded the advice of the CA.

WHEREFORE, in view of the foregoing, the instant petition is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] RULES OF COURT, Rule 45.

[2] Rollo, pp. 117-136.

[3] Id. at 208-211.

[4] Id. at 9.

[5] Id. at 208.

[6] Id. at 209.

[7] The Back-end Services Agreement is a business venture entered into by Gateway and Alliance wherein Gateway for consideration, agreed to perform services on integrated circuit devices owned by Alliance. It contains provisions on wafer sort, burn-in, test, engineering, marking, assembly, packaging and associated services on integrated circuit devices; rollo, pp. 212-227.

[8] Rollo, pp. 208-209.

[9] Id. at 200-206.

[10] Id. at 117-136.

[11] Id at 312-313.

[12] Id. at 127-132.

[13] Id.

[14] Penned by Judge Renato G. Quilala of the Regional Trial Court of Makati City, Branch 57; rollo, p. 133.

[15] Id.

[16] Id. at 16.

[17] Id.

[18] Id. at 1317.

[19] Id. at 16.

[20] Id. at 17.

[21] Id. at 17; 1318.

[22] Id. at 17.

[23] Id. at 114.

[24] Id. at 114.

[25] Id. at 116.

[26] RULES OF COURT, Rule 65.

[27] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Roberto A. Barrios and Magdangal M. De Leon concurring; rollo, pp. 6- 26.

[28] Rollo, p. 26.

[29] Id. at 28.

[30] Regalado, Florenz D., Remedial Law Compendium, Vol. II, 8[th] ed., p. 650.

[31] 27 C.J.S. Discovery § 71 (2008).

[32] *Rosseau v. Langley*, 7 F.R.D. 170 (1945).

[33] *Supra* note 30.

[34] *Security Bank Corporation v. Court of Appeals*, G.R. No. 135874, January 25, 2000, 323 SCRA 330.

[35] Id.

[36] *Supra* note 12.

[37] In *Archer v. Cornillaud* [41 F.Supp. 435(1941)], an action was filed to recover wages allegedly due from employer under Fair Labor Standards Act of 1938, plaintiff's motion to require defendant to produce and to permit plaintiff to inspect, copy and photograph all records, papers, books, etc., pertaining to nature and extent of defendant's business and his wholesale and retail transactions and interstate and intrastate transactions, and names and addresses of those with whom the transactions were had was too broad. The plaintiff's motion does not ask for designated documents but demands "all records, papers, books," etc. The motion goes far beyond the scope and purpose of the rule on discovery. It is well settled by numerous decisions that the rule was never intended to permit a party to engage in a "fishing expedition" among the books and papers of the adverse party.

In *Dickie v. Austin* [4 N.Y.Civ.Proc.R. 123, 65 How. Pr. 420 (1883)], plaintiff claimed that he was to receive one-third of the gross profits on certain sales made by him for the defendants; that settlements were had from time to time on statements furnished by the defendants, and defendants unlawfully deducted from the plaintiff's share of the profits "certain sums," amounting in the aggregate to \$2,000, for which action was brought; that plaintiff was "unable to name specifically all the books which would be necessary," and desired an inspection of any books which defendants might have relating to the transactions in which plaintiff was interested. Held that, the discovery sought being unusually broad and sweeping, and not such as courts are in the habit of granting in aid of common-law actions for the recovery of a specific sum of money, the application should be refused.

[38] RULES OF COURT, Rule 131, Sec. 1.

[39] *Bautista v. Sarmiento*, No. L-45137, September 23, 1985.

[40] SEC. 3. Other consequences. - If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection copying or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

- (a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;
- (c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and
- (d) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

[41] GOOD-FAITH EFFORT

"We do not, however, completely rest our holding on this factor of `control.' We find instead that the primary dispositive issue is whether Stripling made a good faith effort to obtain the documents over which he may have indicated he had `control' in whatever sense, and whether after making such a good faith effort he was unable to obtain and thus produce them. ... There is no evidence Stripling acted willfully, in bad faith or was at fault in failing to produce the documents which he attempted and was unable to obtain. Since Stripling's noncompliance with the production order was due to his inability, after a good faith effort, to obtain these documents, the district court abused its discretion in dismissing his counterclaim." Federal Practice and Procedure, 8A FPF § 2210, citing *Searock v. Stripling*, C.A. 11[th], 1984, 736 F.2d 650, 654.

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