

EMERITA GARON, PETITIONER, VS. PROJECT MOVERS REALTY AND DEVELOPMENT CORPORATION AND STONGHOLD INSURANCE COMPANY, INC., RESPONDENTS.

G.R. NO. 166058. April 03, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) dated May 7, 2004 in CA-G.R. CV No. 69962, and its Resolution[2] dated November 16, 2004. The assailed Decision affirmed with modification the Order[3] dated September 19, 2000 issued by the Regional Trial Court (RTC), Makati City, Branch 56, in Civil Case No. 99-1051.

Antecedents

On December 19, 1997, Project Movers Realty and Development Corporation (PMRDC) obtained a loan from Emerita Garon in the amount of P6,088,783.68. The loan was covered by Promissory Note No. PMRDC-97-12-332[4] to mature on December 19, 1998. The stipulated interest rate, in accordance with the schedule[5] of payment attached to the note, was 36% per annum. To secure the payment of the loan, PMRDC undertook to assign to Garon its leasehold rights over a space at the Monumento Plaza Commercial Complex, covered by Original Certificate of Leasehold Title (OCLT) No. 1108. The parties stipulated that failure to pay the note or any portion thereof, or any interest thereon, shall constitute default, and the entire obligation shall become due and payable without need of demand.

On December 31, 1997, PMRDC obtained another loan from Garon in the amount of US\$189,418.75, at 17% per annum, to mature on December 31, 1998. The transaction was covered by Promissory Note No. PMRDC-D97-12-333.[6] This loan was secured by an assignment of leasehold rights over another space of the Monumento Plaza Commercial Complex covered by OCLT No. 0161.

To secure its obligation to assign the leasehold rights to Garon, PMRDC procured a surety bond[7] from Stronghold Insurance Company, Inc. (SICI). The surety bond was subject to the following conditions:

WHEREAS, this bond is conditioned to guarantee the assignment of Leasehold Rights of the Principal at Monumento Plaza Building in favor of the Obligee over the Certain Original Certificate of Leasehold Title No. 0161 and 0108 (sic).

WHEREAS, the liability of the surety company upon determination under this bond shall in no case exceed the penal sum of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY-FIVE THOUSAND ONE HUNDRED THIRTY-NINE & 85/100 (P12,755,139.85) Only, Philippine Currency.

x x x

Liability of surety on this bond will expire on November 7, 1998 and said bond will be cancelled five days after its expiration, unless surety is notified of any existing obligations thereunder.[8]

When PMRDC defaulted in the payment of its obligations, Garon sent a demand letter[9] dated November 3, 1998, requiring PMRDC to execute and deliver a unilateral Deed of Assignment of its leasehold rights over the commercial spaces covered by OCLT Nos. 1108 and 0161. Garon also sent a formal demand letter[10] dated November 6, 1998 for SICI to comply with its obligation under the surety bond.

In view of PMRDC's and SICI's failure to comply with their respective obligations, Garon filed a Complaint[11] for collection before the RTC of Makati City. The case was raffled to Branch 56, and was docketed as Civil Case No. 99-1051. The complaint contained the following prayer:

WHEREFORE, plaintiff respectfully prays that after hearing on the merits, this Court render[s] judgment in favor of plaintiff and against defendants as follows:

- Ordering defendant PMRDC to pay plaintiff the sums of:

1.1. PESOS: Six Million Eighty-Eight Thousand Seven Hundred Eighty-Three and 68/100 (P6,088,783.68) under PMRDC-97-12-332; and

1.2. DOLLARS: One Hundred Eighty-Nine Thousand Four Hundred Eighteen and 75/100 (US\$189,418.75) under PMRDC-97-12-333.

- Declaring defendant Stronghold solidarily liable, and ordering it to pay plaintiff the sum of PESOS: Twelve Million Seven Hundred Fifty-Five Thousand One Hundred Thirty-Nine and 85/100 (P12,755,139.85) under SICI Bond No. 67831.

- Ordering defendant PMRDC to pay:

3.1. Interest at 36% per annum and a penalty of 3% per month until full payment on the unpaid amount due under PMRDC-97-12-332;

3.2. Interest at 17% per annum and a penalty of 3% per month until full payment on the unpaid amount due under PMRDC-97-12-333;

3.3. Legal interest on the interest accruing at the time of the filing of the complaint conformably with Article 2212 of the New Civil Code.

- On the third cause of action, ordering:

4.1. defendant PMRDC to pay PESOS: Ten Thousand (P10,000.00) as attorney's fees stipulated in PMRDC-97-12-332;

4.2. defendant PMRDC to pay PESOS: Ten Thousand (P10,000.00) as attorney's fees stipulated in PMRDC-97-12-333; and

4.3. defendant Stronghold to pay Attorney's fees in the amount of P200,000.00.

4.4. defendants PMRDC and Stronghold to pay plaintiff such amounts of litigation expenses and costs of suit as may be proven during trial.

Other reliefs just and equitable under the premises are likewise prayed for.[12]

In its Answer,[13] SICI averred, as special and affirmative defenses, that the complaint stated no cause of action and was prematurely filed; its obligation had been extinguished; the liability on the bond had been discharged by the act of plaintiff and by the act of law; and its liability on the bond had prescribed.[14] It likewise contended that at the time plaintiff sent the demand letter, the obligation guaranteed by the bond had not yet matured.[15] It further claimed that it was misled by plaintiff and PMRDC that the bond guaranteed its investment with the project of PMRDC at Monumento Plaza. SICI also asserted that Garon did not exercise the diligence of a good father of a family to avoid or minimize losses since she did not even require the surrender of the OCLTs before

the promissory notes were signed and the loans released. SICI also set up a cross-claim against PMRDC for the payment of any amount it may be ordered to pay to Garon, pursuant to the Indemnity Agreement[16] executed by the latter.[17]

For its part, PMRDC denied that it executed the above-stated promissory notes and alleged instead that they were merely roll-overs of PN No. 97-07-228 and 97-08-260.[18] It also alleged that it had already complied with its undertaking under the promissory notes when it put up a surety bond;[19] and when Garon chose to demand from SICI, she effectively waived the right to claim from it.[20] PMRDC further denied liability on the stipulated interest on the ground that the same is exorbitant and unconscionable.[21] As a counterclaim, PMRDC asked for moral and exemplary damages, as well as for attorney's fees.[22] As and by way of cross-claim against SICI, it likewise demanded the payment of moral damages and attorney's fees.[23]

Garon filed her Reply[24] and a motion[25] to render summary judgment. The RTC granted the motion and ruled as follows:

WHEREFORE, premises considered, this Court hereby renders judgment in favor of plaintiff Mrs. Emerita I. Garon as follows:

- Defendant Project Movers Realty and Development Corporation is hereby directed to pay plaintiff as follows:

On Promissory Note No. PMRDC 97-12-332:

(A) The sum of PESOS: Six Million Eighty-Eight Thousand Seven Hundred Eighty-Three and 68/100 (P6,088,783.68) under PMRDC-97-12-332;

(B) Interest thereon at 36% per annum computed from 19 December 1997 until fully paid.

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

On Promissory Note PMRDC No. 97-12-333:

(A) The peso equivalent of the sum of DOLLARS: One Hundred Eighty-Nine Thousand Four Hundred Eighteen and 75/100 (US\$189,418.75) under PMRDC-97-12-333.

(B) Interest thereon at the stipulated rate of 17% per annum computed from 31 December 1997;

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

- Defendant Stronghold Insurance Company, Inc. is hereby held jointly and solidarily liable to plaintiff Mrs. Garon in the amount of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY FIVE THOUSAND ONE HUNDRED THIRTY NINE AND EIGHTY FIVE CENTAVOS (P12,755,139.85).

- Defendants Project Movers Realty and Development Corporation and Stronghold Insurance Company, Inc. are also ordered to pay plaintiff Mrs. Garon jointly and severally the sum of PESOS: TWO HUNDRED THOUSAND as attorney's fees plus costs of suit.

All other claims and counter-claims of the parties are hereby ordered dismissed.

SO ORDERED.[26]

The RTC found that the assignment of PMRDC's leasehold rights was merely an accessory obligation and not an alternative one; hence, Garon's demand on SICI's obligation on the surety bond could not be considered a waiver of her right to collect from PMRDC. On SICI's contention that her claim was premature, the RTC ruled that the

former's liability arose upon PMRDC's failure to assign the leasehold rights, not on the maturity date of the loan. The court further held that SICI's claim of prescription is without merit because plaintiff made a demand on November 6, 1998, while the surety bond expired on November 7, 1998.

Garon filed a Motion for Execution Pending Appeal,[27] while SICI filed a Motion for Reconsideration.[28] The court denied[29] the motion for reconsideration and granted[30] the motion for execution pending appeal. SICI then filed a special civil action for Certiorari with Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction[31] before the CA, docketed as CA-G.R. SP No. 63334 assailing the order of the court granting execution pending appeal. On February 23, 2001, the CA issued a TRO[32] enjoining petitioner from enforcing the writ of execution pending appeal.

Meanwhile, on October 11, 2000 and February 16, 2001, PMRDC and SICI filed their respective Notices of Appeal[33] which the RTC approved. However, in view of PMRDC's failure to file its appellant's brief, the CA issued a Resolution[34] dismissing its appeal for having been abandoned. The Resolution became final and executory.

On the other hand, in its brief, SICI raised the following errors:

I. THE LOWER COURT PALPABLY COMMITTED GRAVE ERROR IN GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT, DESPITE LACK OF VALID BASIS THEREFOR.

II. THE LOWER COURT LIKewise PALPABLY COMMITTED GRAVE ERROR IN RENDERING THE SUMMARY JUDGMENT HOLDING APPELLANT STRONGHOLD LIABLE UNDER ITS SURETY BOND TO APPELLEE DESPITE LACK OF FACTUAL AND LEGAL BASIS FOR ITS JUDGMENT.[35]

According to SICI, the RTC erroneously rendered summary judgment notwithstanding the genuine issues raised by the parties.[36] It claimed that its obligations under the surety bond never became effective because of PMRDC's failure to assign its leasehold rights. It likewise insisted that when the promissory notes matured, Garon could no longer run after it as its liability under the surety bond had already expired.

On May 7, 2004, the CA affirmed with modification the decision of the RTC. [37] The fallo reads:

WHEREFORE, foregoing considered, the appealed decision is affirmed with the modification that defendant-appellant SICI is not liable to plaintiff-appellee.

No pronouncement as to cost.

SO ORDERED.[38]

In upholding the propriety of the summary judgment rendered by the RTC, the CA declared that no genuine issue was raised since the parties admitted executing the promissory notes and surety bond, and the non-performance of the correlative obligations; the liabilities of the parties were likewise clearly set forth in the contracts. The CA further affirmed the RTC's finding that PMRDC was not relieved of its liability despite the enforcement of Garon's right against SICI; so long as the debt has not been fully paid, SICI is still liable.

The CA found, however, that appellant cannot be held liable because its liability had long expired (on November 7, 1998) prior to the maturity dates of the loans on December 17 and 31, 1998. Thus, at the time PMRDC defaulted, the surety bond had long expired.

Garon, now petitioner, comes before this Court on the sole ground that:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MODIFYING THE TRIAL COURT'S DECISION AND FINDING THAT PROMISSORY NOTES NO. PMRDC 97-12-332 AND PMRDC NO.

97-12-333 MATURED ONLY ON 17 DECEMBER 1998 AND 31 DECEMBER 1998, RESPECTIVELY.[39]

Petitioner avers that it was specifically stated in the promissory notes that failure to pay any of the note or interest thereon shall constitute default, and the entire obligation shall immediately become due and payable. In view of PMRDC's default, the entire obligation became due and demandable. Moreover, the liability of respondent SICI attached the moment PMRDC failed to assign its leasehold rights. Thus, the CA's ruling that respondent cannot be held liable because the notes have not yet matured is utterly incorrect.

For its part, respondent SICI avers that petitioner invoked the alleged acceleration clauses of the promissory notes only before this Court. It likewise argues that the maturity date of the loan is immaterial because the promissory notes were not guaranteed by the surety bond. As such, respondent SICI cannot be made to answer for the payment of the loan.[40]

In her Reply,[41] petitioner asserts that the promissory notes, which explicitly provide for the acceleration of the maturity dates, are all part of the record. Since respondent SICI did not deny the authenticity and due execution of the notes, the contents may be read in evidence in the resolution of the issues. She further states that in view of the admission of respondent SICI that the leasehold rights of PMRDC were never assigned to petitioner, the SICI should be held liable.

Thus, the issue in this case is whether respondent SICI is liable to petitioner under its surety bond.

The present controversy arose from the following contracts: (1) the contracts of loan covered by promissory notes No. PMRDC-97-12-332[42] and PMRDC-D97-12-333[43] dated December 19 and 31, 1997, between petitioner and PMRDC; and (2) the surety bond[44] dated November 7, 1997, between PMRDC and respondent SICI.

In the subject promissory notes, PMRDC undertook to pay the amount of the loan covered by the two notes, as well as to assign its leasehold rights over two spaces in the Monumento Plaza Commercial Complex covered by OCLT Nos. 0161 and 1108, as a security for the loan.

To secure PMRDC's obligation to assign its leasehold rights to petitioner, the former procured the surety bond from respondent SICI subject to the following conditions:

WHEREAS, this bond is conditioned to guarantee the assignment of Leasehold Rights of the Principal at Monumento Plaza Building in favor of the Obligees over the Certain Original Certificate of Leasehold Title No. 0161 and 0108 (sic).

WHEREAS, the liability of the surety company upon determination under this bond shall in no case exceed the penal sum of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY FIVE THOUSAND ONE HUNDRED THIRTY NINE & 85/100 (P12,755,139.85) Only, Philippine Currency.

x x x

Liability of surety on this bond will expire on November 7, 1998 and said bond will be cancelled five days after its expiration, unless surety is notified of any existing obligations thereunder.[45]

Thus, respondent SICI, in turn, undertook to guarantee the assignment of leasehold rights; and bound itself to be liable to petitioner in case of PMRDC's failure to assign the leasehold rights in an amount not exceeding P12,755,139.85. This undertaking, however, was to expire on November 7, 1998.

It must be stressed that the principal obligation guaranteed by the surety bond is the assignment of the leasehold rights of PMRDC to petitioner over the subject spaces. Petitioner made a formal demand on November 3, 1998 for PMRDC to perform the obligation, but the latter defaulted. As such, PMRDC's liability as principal arose. Consequently, respondent's liability as surety likewise arose. Respondent therefore cannot claim that its obligation

arose only upon the maturity of the subject loans. To sustain this contention would mean that respondent cannot be held liable under the surety bond, because if demand is made after the maturity dates of the loans — December 19 and 31, 1998 — it could again assert that its liability had expired on November 7, 1998.

Suretyship arises upon the solidary binding of a person (deemed the surety) with the principal debtor, for the purpose of fulfilling an obligation.[46] A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged as touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.[47] 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.[48]

Notwithstanding the timeliness of the demand on respondent, the latter cannot be held liable in the instant case. Indeed, the liability of respondent arose the moment PMRDC failed to assign its leasehold rights; and the demand on respondent was made prior to the expiration of the surety bond. However, an examination of the terms of the surety bond clearly shows that respondent guaranteed the assignment of the leasehold rights, not the payment of a particular sum of money owed by PMRDC to petitioner. The principal obligation therefore is the assignment of the leasehold right, and the accessory obligation is the surety agreement.

The Court notes, however, that respondent is a stranger to the contract of loan between petitioner and PMRDC; it cannot thus be held liable for an obligation which it did not undertake to perform or at least to guarantee. It is basic that the parties are bound by the terms of their contract which is the law between them. The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. It cannot be extended by implication, beyond the terms of the contract.[49] Contracts have the force of law between the parties who are free to stipulate any matter not contrary to law, morals, good customs, public order or public policy.[50] If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[51]

Since respondent's undertaking under the surety bond was to guarantee the assignment of leasehold rights, the security of the principal debt, its obligation cannot extend to the payment of the principal obligation; to do so would mean going beyond the terms of the contract.

The records show that in her demand letters dated November 3 and 6, 1998, petitioner made formal demands on both PMRDC and respondent for the assignment of PMRDC's leasehold right. However, in her complaint in Civil Case No. 99-1051 where the present case arose, petitioner prayed for the payment of the principal debt, not the assignment of PMRDC's leasehold rights. The pertinent portion of the complaint reads:

WHEREFORE, plaintiff respectfully prays that after hearing on the merits, this court render[s] judgment in favor of plaintiff and against defendants as follows:

- Ordering defendant PMRDC to pay plaintiff the sums of:

x x x

- Declaring defendant Stronghold solidarily liable and ordering it to pay plaintiff the sum of x x x. (Emphasis supplied)[52]

It thus shows that petitioner was enforcing her right to collect the debt, rather than her right to secure it through the assignment of the leasehold right. Respondent is being made solidarily liable for the payment of such debt which obviously is beyond its undertaking under the surety bond.

In sum, respondent's liability on the bond arose from the time PMRDC failed to comply with its obligation to assign its leasehold rights over the subject properties as security for the payment of her debt covered by the

promissory notes, not on the maturity of the loan. However, respondent cannot be held liable to make such payment for the following reasons: (1) its undertaking under the surety bond was merely to guarantee the assignment of PMRDC's leasehold rights and not the payment of the principal obligation; and (2) petitioner, in instituting the instant case, is seeking to enforce her right to collect the principal debt rather than enforce the security.

IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby DENIED. The Decision of the Court of Appeals dated May 7, 2004, and its Resolution dated November 16, 2004, are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; rollo, pp. 23-35.

[2] Rollo, pp. 36-37.

[3] Penned by Judge Nemesio S. Felix, id. at 57-68.

[4] Records, pp. 12-13.

[5] Id. at 13.

[6] Id. at 14-15.

[7] Id. at 16-17.

[8] Id. at 16.

[9] Id. at 18-19.

[10] Id. at 20-21.

[11] Id. at 1-11.

[12] Id. at 8-10.

[13] Id. at 40-47.

[14] Id. at 42.

[15] Id.

[16] Id. at 48.

[17] Id. at 53-54.

[18] Id. at 87.

[19] Id. at 88.

[20] Id.

[21] Id. at 89.

[22] Id. at 89-90.

[23] Id. at 90.

[24] Id. at 96-105.

[25] Id. at 144-162.

[26] Id. at 211-212.

[27] Id. at 213-225.

[28] Id. at 232-237.

[29] Order dated January 23, 2001 (records, p. 273).

[30] Order dated February 8, 2001 (records, pp. 274-277).

[31] Records, pp. 303-317.

[32] Id. at 420-421.

[33] Id. at 238 and 280.

[34] CA rollo, pp. 138-139.

[35] Id. at 67.

[36] Id. at 71.

[37] Supra note 1.

[38] Rollo, p. 35.

[39] Id. at 15.

[40] Id. at 89-95.

[41] Id. at 122-126.

[42] Records, pp. 12-13.

[43] Id. at 14-15.

[44] Id. at 16-17.

[45] Id. at 16.

[46] *Tiu Hiong Guan v. Metropolitan Bank & Trust Company*, G.R. No. 144339, August 9, 2006, citing *Philippine Bank of Communication v. Lim*, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 721.

[47] *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corp.*, G.R. No. 139290, November 11, 2005, 474 SCRA 510, 531, citing *Molino v. SDIC*, 415 Phil 587, 597 (2001).

[48] *Tiu Hiong Guan v. Metropolitan Bank & Trust Company*, supra.; *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, G.R. No. 138145, June 15, 2006, 490 SCRA 560, 580; *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corp.*, supra.

[49] *Tiu Hiong Guan v. Metropolitan Bank & Trust Company*, supra.; *Molino v. SDIC*, supra note 47, at 595; *Rizal Commercial Banking Corporation v. Court of Appeals*, G.R. No. 85396, October 27, 1989, 178 SCRA 739, 744.

[50] *International Finance Corporation v. Imperial Textile Mills, Inc.* G.R. No. 160324, November 15, 2005, 475 SCRA 149, 159.

[51] Civil Code, Art. 1370.

[52] Records, pp. 8-9.

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