DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. TRADERS ROYAL BANK and PRIVATIZATION AND MANAGEMENT OFFICE (VICE ASSET PRIVATIZATION TRUST), RESPONDENTS.

G.R. No. 171982. August 18, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 19 December 2003 Decision[2] and the 16 March 2006 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 42965.

The Facts

In 1980, Phil-Asia Food Industries Corporation (Phil-Asia) obtained a loan accommodation from Traders Royal Bank (TRB) in the form of four letters of credit with a total amount of P92,290,845.58. The loan was used for the importation of machineries and equipment for the establishment of a soya beans processing plant. In a letter dated 30 April 1980, Development Bank of the Philippines (DBP) issued a guaranty in favor of TRB to answer for the cost of the importation covered by the letters of credit to the extent of $8,015,447.13.

Phil-Asia and DBP made partial payments on the loan covered by the letters of credit, leaving a balance of P8,432,381.78. When Phil-Asia and DBP failed to pay the balance despite demands, TRB filed with the trial court a complaint to collect the unpaid balance of the letters of credit against Phil-Asia and DBP. The Asset Privatization Trust (APT)[4], now the Privatization and Management Office (PMO)[5], was later impleaded as defendant because it allegedly acquired the distressed accounts of DBP, which includes that of Phil-Asia.

DBP claimed that it was not liable for the importation from the supplier Emi Disc Corporation since its guaranty covers only importation from Archer Daniels Midland Corporation. DBP alleged that the change in supplier was without its consent and thus, not covered by its guaranty. DBP also alleged that there was overpayment of the loan covered by the letters of credit.

For its part, Phil-Asia likewise alleged that there was in fact overpayment since the total amount of the letters of credit was only P92,290,845.58, whereas the payments of Phil-Asia and DBP totaled P100,395,434.10, resulting in an overpayment of P8,104,588.52. Furthermore, Phil-Asia averred that its obligation had been extinguished by novation.

TRB denied that there was overpayment. TRB explained that the amount applied to the principal credited to Phil-Asia was reduced or adjusted because some payments made by DBP were erroneously credited to Phil-Asia. Besides, as stated in the adjusted Statement of Account, there were some payments which were erroneously reflected as principal payments which should have been applied to outstanding and unpaid interests.

On the other hand, APT maintained that it did not assume the obligations incurred or might have been incurred by DBP with Phil-Asia's creditors.

On 13 May 1993, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, defendant Phil-Asia Food Industries Corporation and Development Bank of the Philippines are ordered to pay, jointly and severally, to plaintiff Traders Royal Bank the sum of P8,432,381.78, together with interest thereon at six percent (6%) per annum from September 19, 1986, until the amount is fully paid, plus attorney's fees equivalent to ten percent (10%) of the said unpaid balance. The said defendants are also required to pay the costs of the suit.
>
> The complaint is dismissed with respect to defendant Asset Privatization Trust.
>
> The counterclaims and cross-claims of defendants Phil-Asia Food Industries Corporation, Development Bank of the Philippines and Asset Privatization Trust, for lack of merit, are also dismissed.
>
> SO ORDERED.[6]

Both TRB and DBP appealed the trial court's decision. The Court of Appeals affirmed the trial court's decision with modification. The dispositive portion of the 19 December 2003 Decision of the Court of Appeals reads:

> WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATIONS (i) that the amount [of] P8,432,381.78 awarded in favor of plaintiff shall bear interest at the rate of 12% per annum from the filing of the complaint until fully paid and (ii) that cross-defendant Phil-Asia Food Industries Corporation is ordered to indemnify cross-claimant Development Bank of the Philippines for whatever amount the latter may be compelled to pay plaintiff under this decision plus interest thereon at the rate of 12% per annum from the date of such payment until full indemnification.[7]

Both DBP and TRB moved for reconsideration, which the Court of Appeals denied in its Resolution dated 16 March 2006.

The Ruling of the Court of Appeals

The Court of Appeals held that DBP's act of paying TRB's letters of credit covering the importation from Emi Disc Corporation constituted implied approval and ratification of the change of supplier from Archer Daniels Midland Corporation to Emi Disc Corporation. Thus, DBP is still liable under its guaranty. Citing Articles 2066 and 2067 of the Civil Code, [8]the Court of Appeals ruled that as guarantor of Phil-Asia's obligations to TRB under the letters of credit, DBP is entitled to indemnity from Phil-Asia.

Contrary to the claims of DBP and Phil-Asia that there was overpayment, the Court of Appeals found that out of Phil-Asia's P92,290,845.58 loan accommodation from TRB, the payments of DBP and Phil-Asia only totaled P83,858,463.80, thus, leaving a balance of P8,432,381.78. Furthermore, the Court of Appeals ruled that since there was no evidence of any stipulation on the rate of interest, a 12% interest rate per annum should apply from the filing of the complaint until full payment of the obligation.

As regards APT, the Court of Appeals held that no evidence was presented to show that the obligations of DBP and Phil-Asia under the letters of credit were transferred to or assumed by APT.

The Issues

Petitioner submits the following issues:

- WHETHER THE IMPORTATION OF MACHINERIES COVERED BY THE SUBJECT LETTERS OF

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> CREDIT ARE COVERED BY THE DBP GUARANTEE.
>
> - WHETHER THE LETTERS OF CREDIT SUBJECT TO RESPONDENT TRADERS ROYAL BANK'S CLAIM HAVE BEEN PAID.
>
> - ASSUMING THAT DBP CAN BE HELD LIABLE FOR RESPONDENT TRADERS ROYAL BANK'S CLAIM, WHETHER THE PRIVATIZATION AND MANAGEMENT OFFICE SHOULD BE MADE TO PAY FOR THE SAME.[9]

The Ruling of the Court

The petition has no merit.

The issues presented in this case involve questions of fact which are not reviewable in a petition for review under Rule 45. The Court is not a trier of facts. Section 1 of Rule 45 provides that "[t]he petition shall raise only questions of law which must be distinctly set forth."

A question of fact exists when the doubt centers on the truth or falsity of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts.[10]There is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses.[11] However, if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence, the question is one of law.[12]

All the issues raised by petitioner require a review of the factual findings of the Court of Appeals and the evidence presented.

On the first issue, both the trial court and the appellate court found that DBP was duly informed by TRB of the change of supplier from Archer Daniels Midland Corporation to Emi Disc Corporation. DBP did not object to the change of supplier and even paid TRB's letters of credit covering the importation from Emi Disc Corporation. We agree with the conclusion of the Court of Appeals that such acts of DBP clearly indicate its acquiescence or approval of the amendment on the letters of credit as regards the change of supplier. Thus, the importation from EMI Disc Corporation is still covered by the DBP guaranty.

The resolution of the second issue of whether the letters of credit have already been fully paid likewise requires evaluation of the evidence and review of the factual findings of the appellate court. In this case, the Court of Appeals concurred with the findings of the trial court that based on the evidence presented, the total amount availed of by Phil-Asia with respect to the letters of credit has not yet been paid in full. The Court of Appeals stated:

> In its letter dated October 13, 1983, DBP questioned TRB's statement of account as of September 5, 1983 concerning the alleged reduction of Phil-Asia's total payment from P55,799,351.81 to P40,880,523.81. The "discrepancy," however, had been adequately explained in TRB's adjusted statement x x x
>
> It does not appear that DBP had made further complaint despite receipt of TRB's letter dated October 20, 1983 and adjusted statement.
>
> As a rule, he who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment (Audion Electric Co., Inc. vs. NLRC, 308 SCRA 430). Appellant has failed its burden.
>
> The application of payments (Exh. 13-A [DBP]) exposes the fallacy of DBP's claim that it had fully paid - and even overpaid - TRB. It clearly shows that the payments of DBP and Phil-Asia totaled P83,858,463.80.

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> Deducting said amount from Phil-Asia's availment on the LCs in the sum of P92,290,845.58, there remains a balance of P8,432,381.78, which represents its outstanding obligation.[13]

Similarly, the third issue involves a question of fact. The determination of whether the PMO should be liable requires the examination of evidence, particularly the deed of transfer which allegedly shows that APT assumed the liability of DBP and Phil-Asia under the letters of credit. The trial court ruled that there was no sufficient evidence to hold that APT (now PMO) assumed the liability of DBP and Phil-Asia relative to the letters of credit. In the same manner, the Court of Appeals found that:

> DBP likewise contends that APT should have been held liable for the obligations of DBP and Phil-Asia to TRB under the LCs because APT assumed the same pursuant to Proclamation No. 50 and [the] deed of transfer executed between DBP and the national government. However, no evidence was presented to substantiate DBP's allegation. Neither the deed of transfer nor Annex "B" thereof shows that the obligations of DBP and Phil-Asia under the LC's were transferred to, and assumed by, APT.[14]

Indeed, the party who alleges an affirmative defense,[15] or claims that there is subrogation, has the burden of proof to establish the same.[16] DBP failed to prove its claim that APT should be held liable.[17]

In this case, the Court of Appeals concurred with the factual findings of the trial court. Factual findings of the trial court which are adopted and confirmed by the Court of Appeals are final and conclusive on the Court unless the findings are not supported by the evidence on record.[18]We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals.

The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again.[19]Nevertheless, in several cases,[20] the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. However, petitioner failed to show that this case falls under any of the exceptions.

WHEREFORE, we DENY the petition. We AFFIRM the 19 December 2003 Decision and the 16 March 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 42965.

SO ORDERED.

Peralta, Del Castillo,[*] Abad, and Mendoza, JJ., concur.

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[*] Designated additional member per Raffle dated 16 August 2010.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

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[2] Rollo, pp. 9-17. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ruben T. Reyes and Noel G. Tijam, concurring.

[3] Id. at 19-20.

[4] The APT was created under Proclamation No. 50 ("Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets thereof, and Creating the Committee on Privatization and the Asset Privatization Trust"), issued by then President Corazon C. Aquino on 8 December 1986.

[5] The APT has been replaced by the Privatization Management Office (PMO), created under Executive Order No. 323 on 6 December 2000 by then President Joseph E. Estrada.

[6] Rollo, pp. 70-71.

[7] Id. at 16-17.

[8] Articles 2066 and 2067 of the Civil Code read:

Art. 2066. The guarantor who pays for debtor must be indemnified by the latter.

The indemnity comprises:

(1) The total amount of the debt;
(2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;
(3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;
(4) Damages, if they are due.

Art. 2067. The guarantor who pays is subrogated virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

[9] Rollo, p. 123.

[10] Yokohama Tire Philippines, Inc. v. Yokohama Employees Union, G.R. No. 163532, 12 March 2010.

[11] Microsoft Corp. v. Maxicorp, Inc., 481 Phil. 550 (2004).

[12] Pagsibingan v. People, G.R. No. 163868, 4 June 2009, 588 SCRA 249.

[13] Rollo, pp. 13-15.

[14] Id. at 15.

[15] U-Bix Corporation v. Bandiola, G.R. No. 157168, 26 June 2007, 525 SCRA 566.

[16] Ledonio v. Capitol Development Corporation, G.R. No. 149040, 4 July 2007, 526 SCRA 379.

[17] Section 1, Rule 131 of the Rules of Court provides that "[b]urden of proof is the duty of a party to present evidence on the fats in issue necessary to establish his claim or defense by the amount of evidence required by law."

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[18] People v. Fabian, G.R. No. 181040, 15 March 2010; People v. Lopez, G.R. No. 181441, 14 November 2008, 571 SCRA 252; Materrco, Inc. v. First Landlink Asia Development Corporation, G.R. No. 175687, 28 November 2007, 539 SCRA 226.

[19] Republic v. Regional Trial Court, Br. 18, Roxas City, Capiz, G.R. No. 172931, 18 June 2009, 589 SCRA 552.

[20] Teofisto Oño v. Vicente N. Lim, G.R. No. 154270, 9 March 2010; Heirs of Jose Lim v. Juliet Villa Lim, G.R. No. 172690, 3 March 2010; Narvaez v. Narciso, G.R. No. 165907, 27 July 2009, 594 SCRA 60; Triumph International (Phils.), Inc. v. Apostol, G.R., 164423, 16 June 2009, 589 SCRA 185, citing Almendrala v. Ngo, G.R. No. 142408, 30 September 2005, 471 SCRA 311.

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