

RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS. TEODORO G. BERNARDINO, RESPONDENT.

G.R. No. 183947. September 21, 2016

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

This is a Petition for Review on Certiorari[1] assailing the Decision dated June 10, 2008[2] and the Resolution dated July 22, 2008[3] of the Court of Appeals (CA) in CA-G.R. CV No. 88745. The assailed Decision and Resolution affirmed the Decision dated June 30, 2006[4] of the Regional Trial Court, Branch 59, Makati City in Civil Case No. 98-1851, which declared the comprehensive surety agreements between Rizal Commercial Banking Corporation (RCBC) and Teodoro G. Bernardino (Bernardino) unenforceable and having no effect for the reason that the subrogation agreement, a condition precedent, was not executed.

The Facts

In 1995, Marcopper Mining Corporation (MMC) obtained an unsecured bridge loan from RCBC in the amount of US\$13.7 Million to finance the acquisition of twelve (12) Rig Mining Trucks and one (1) Demag Excavator Shovel. Payment of the bridge loan was supposed to be sourced from the proceeds of a long term loan MMC was seeking from Export-Import Bank (EXIM Bank). EXIM Bank, however, failed to approve the long term loan due to a tailing spill in MMC's mining area in Marinduque which caused the stoppage of MMC's operations.[5]

Concerned that the short term loan it extended to MMC was unsecured, RCBC negotiated with MMC to provide collateral or security. MMC yielded to RCBC's request and decided to mortgage twelve (12) units of Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel covered by a Deed of Chattel Mortgage dated April 23, 1996.[6] Additionally, MMC pledged shares of stocks covered by Deeds of Pledge dated August 29, 1996[7] and September 9, 1997.[8] RCBC later expressed interest in substituting these collaterals with MMC's residential property in Forbes Park (Forbes Park property), which was mortgaged with the Asian Development Bank (ADB).[9]

In a letter dated July 1, 1997[10] to RCBC, MMC proposed two (2) options for the payment of its loan, to wit:

1)

Initiate a foreclosure on the mortgaged assets, thereby realizing a maximum cash proceeds of about \$11.6 Million. The balance will have to be relegated to the rank of unsecured obligations whose repayment will solely depend on the timing and extent of cash proceeds to be generated from the disposal of the company's assets, or

2)

Accept our proposal which calls for the involvement of [MMC's] major shareholders.

The company may request the involvement of our major shareholders who could ensure a definite repayment

plan for the principal exposure of \$13.7 Million. Said repayment plan will consist of the following components:

a)

Implementation of the assignment of the Forbes Park property for the previously agreed amount of P235 Million;

b)

Payment of the amount of P71 Million, being the peso equivalent of the difference between \$11.6 Million and \$8.9 Million (dollar equivalent of P235 Million) over a period of one (1) year on a quarterly basis, plus interest; and

c)

Payment of the balance of P55.4 Million (being the peso equivalent of the difference between the entire principal obligation of \$13.7 Million and \$11.6 Million which is the sum of Items a) and b) above), over a period of two (2) years payable quarterly.[11]

In the same letter, MMC encouraged RCBC to choose the second option, thus:

We believe that Option 2 above guarantees your full recovery of our principal obligation to you. Since our major shareholders have already indicated their willingness to support this repayment scheme, may we request you to accept this option for immediate implementation.[12]

On July 3, 1997, representatives of MMC and RCBC met: to discuss the details of MMC's proposals. RCBC was represented by its former vice-presidents Filadelfo Rojas (Rojas), Felisa Banzon (Banzon), Susan Santos (Santos), and Arty. Merlyn Dueñas (Arty. Dueñas). RCBC representatives signified their intention to choose Option 2, but raised a concern on the issue of accrued interest.[13] MMC also informed them that Placer Dome, a major stockholder of MMC which, as a guarantor, subsequently acquired the mortgage on the Forbes Park property, would only agree to let go of the Forbes Park property if RCBC would release in its favor the mining equipment mortgaged to RCBC.[14] It was also discussed that another condition for the second option was for a stockholder of MMC to act as a surety for two (2) promissory notes intended to be executed between the parties.[15]

In a letter dated July 8, 1997,[16] MMC made some revisions of the second option in view of RCBC's concern regarding accrued interest, to wit:

1)

The principal amount was to be revised, from the original principal of \$13.7 million to \$14,327 million, which includes interest that has been capitalized;

2)

Implementation of the assignment of the Forbes Park property for the agreed amount of P235 million, equivalent to about \$8,901,515;

3)

Payment of the amount of \$2,698,485 over a period of one (1) year payable quarterly plus interest; and

4)

Payment of the balance of \$2,727,000 over a period of two (2) years, payable quarterly, without interest.

RCBC, through Rojas and Santos, signed its conformity to the July 8, 1997 letter.[17]

On August 1, 1997, MMC forwarded four (4) documents to RCBC for signature.[18] The cover letter reads:

In connection with the transfer of our Forbes Park Property in your favor, we are transmitting to you herewith the following documents:

- Deed of Assignment dated August 1, 1997, for BIR purposes;
- Deed of Partial Release from Mortgage signed by the Attorney-in-Fact of MR Holdings Limited releasing from their mortgage the above-mentioned property; and
- Copy of Secretary's Certificate of a resolution passed by the Board of Directors of MR Holdings Limited appointing as Attorney-in-Fact, Arty. Alma D. Fernandez-Mallonga. The original of said Secretary's Certificate is with Arty. Mallonga and will be presented to the Register of Deeds when required[;]
- Deed of Release from Mortgage to be signed by RCBC involving the release from your mortgage six (6) units Rig Tracks and one (1) unit Demag Shovel.

Kindly note that the release of the above-mentioned property by MR Holdings Limited from their mortgage was made on the condition that a substitution thereof with other unencumbered and free assets and properties of the mortgagor under a second Addendum Mortgage be effected. Inasmuch as our only free and unencumbered assets will be those that will be released by you under the Deed of Release from Mortgage mentioned under Item No. 4 above, may we therefore request that your authorized signatories sign as soon as possible the said Deed of Release from Mortgage.[19]

RCBC only signed the Deed of Assignment of the Forbes Park property and returned the Deed of Release from Mortgage of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel unsigned.[20]

In a letter dated August 22, 1997,[21] MMC sent RCBC the surety agreements duly executed by Bernardino, together with the two (2) promissory notes covering the remaining obligation of MMC after effecting partial payment through the assignment of the Forbes Park property to RCBC. Non-Negotiable Promissory Note No. 21-3697[22] was for the amount of US\$2,698,485.00 payable within one year with interest at 9% per annum and a first quarterly due date of November 24, 1997, while Non-Negotiable Promissory Note No. 21-3797[23] was for the amount of US\$2,727,000.00 payable within two years without interest and a first quarterly due date of November 24, 1997.[24] The parties signed the promissory notes on August 26, 1997.[25]

In a letter dated September 12, 1997,[26] MMC, through Banzon, acknowledged the transfer of ownership of the Forbes Park property to RCBC. She, however, informed MMC that the bank could still not commit to an approval of MMC's request for the release of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel because it was still working on some details of the request.

In a letter dated November 24, 1997,[27] MMC requested RCBC to immediately release from mortgage the mining equipment. MMC reminded RCBC that MR Holdings, Ltd., the successor-in-interest of the ADB, agreed to release the Forbes Park property from its mortgage only upon the assurance that RCBC will also release the mining equipment from their mortgage and turn them over to MR Holdings, Ltd. MMC also informed RCBC that it likewise committed to mortgage the shares of stocks subject of the Deeds of Pledge with MR Holdings, Ltd.

In a letter dated December 17, 1997,[28] RCBC informed MMC that the release from mortgage of the six (6) units of the Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel, as well as the release from pledge of the club shares, have been approved by its Executive Committee subject to the condition that payment for the first amortization be made by MMC.[29]

MMC failed to settle the obligations which fell due on November 24, 1997, February 23, 1998 and May 25, 1998.[30] Final demand was sent to MMC on July 1, 1998, declaring the whole obligation under the promissory notes due and payable and giving it five (5) days from receipt to settle the whole obligation of US\$5,726,660.28. Demand was also made on Bernardino, as surety for MMC, to pay the amount plus P20,685,872.25 as penalty.[31]

On July 31, 1998, Bernardino instituted a Complaint[32] for specific performance, and for the declaration of nullity or unenforceability of surety agreements against RCBC. It was docketed as Civil Case No. 98-185 and filed before Branch 59 of the Regional Trial Court (RTC) of Makati City. Bernardino prayed that judgment be rendered declaring the surety agreements between him and RCBC null and void and/or unenforceable, and that RCBC be held liable for damages.[33]

In its Answer with Compulsory Counterclaims,[34] RCBC alleged that contrary to Bernardino's assertion, the parties did not agree to execute an agreement on Bernardino's subrogation rights and a release of mortgage and pledge over MMC's properties. As its counterclaims, RCBC prayed that Bernardino be declared jointly and severally liable with MMC to pay RCBC the principal amount due under the promissory notes, including the interest and stipulated penalty therein, as well as attorney's fees and damages.[35]

The Ruling of the Trial Court

Before resolving the complaint, the RTC, Branch 59, Makati City pointed out that a separate complaint for specific performance docketed as Civil Case No. 98-1661 was filed by MMC against RCBC before the RTC, Branch 57, Makati City. In that case, the issue involved was whether RCBC may be ordered to execute a Deed of Partial Release of Mortgage. The RTC, Branch 57, Makati City ruled in favor of MMC. On appeal, the CA affirmed the RTC Decision. Considering that the issue had been passed upon in Civil Case No. 98-1661, which was then on appeal before us, the RTC, Branch 59 limited the issue before it to the validity of the surety agreements executed by Bernardino.[36]

Ruling in favor of Bernardino, the RTC, Branch 59, Makati City held that he was able to establish his claim by preponderance of evidence. It ruled that the subrogation agreement was a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Since there was no subrogation agreement, the comprehensive surety agreements are unenforceable and have no effect. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff, declaring that for RCBC's unjust refusal to execute the necessary subrogation agreement which is a condition precedent before plaintiff may be held liable under the comprehensive surety agreements, the same are declared unenforceable and of no effect.

Defendant is also ordered to pay plaintiff the following sums:

- 1) P100,000.00 as moral damages;
- 2) P100,000.00 as nominal and exemplary damages;
- 3) P957,540.94 as attorney's fees;
- 4) P44,519.03 as litigation expenses; and
- 5) Costs of suit against herein defendant.

SO ORDERED.[37]

The Ruling of the Court of Appeals

The CA denied RCBC's appeal and affirmed the RTC Decision. The CA agreed with the trial court that MMC

was led to believe that RCBC agreed to execute a subrogation agreement in favor of Bernardino and to effect a release of the mortgage and pledge.

The CA also denied RCBC's motion for reconsideration in a Resolution dated July 22, 2008.[38] Hence, this petition, which raises the main issue of whether RCBC and Bernardino agreed that a subrogation agreement be executed as a condition precedent before Bernardino can be held liable under the surety agreements.

RCBC maintains that in affirming the Decision of the RTC, the CA, in grave error of law, blatantly disregarded:

1)

Article 1403 of the Civil Code on what constitutes unenforceable contracts. Nowhere in the complaint nor in the evidence on record can one find any claim that the essential elements needed for a contract to be considered unenforceable are missing;

2)

The principle that in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's;

3)

The principle that inconsistencies as to minor details and peripheral matters do not affect the credibility of witnesses nor the probative weight of their testimonies. While RCBC's witnesses may not have recalled certain details that took place long before they were called to testify, they were clear on the threshold legal and factual issues in this case;

4)

The hornbook rule on mutuality and interpretation of contracts that when the terms of the agreement, as expressed in such, language, are clear, they are to be understood literally, just as they appear on the face thereof. Bernardino failed to prove exceptional circumstances when parol evidence can be received. He did not adduce any documentary evidence to establish his self-serving contention that RCBC agreed to the release of a certain mortgage and to the execution of any subrogation agreement. On the contrary, there is clear evidence on record negating this alleged agreement;

5)

Section 28, Rule 130 of the Rules of Court, or the res inter alios acta rule, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. The CA unduly relied on, and unfairly imputed acts of third parties against RCBC to establish the supposed intention, state of mind and undertaking of RCBC; and

6)

The settled rule that any person who seeks to be awarded damages due to acts of another has the burden of proving that the latter acted in bad faith or with ill motive. The CA made no finding of any specific act committed by RCBC that may constitute bad faith, much less one that could overcome the presumption of good faith.[39]

Our Ruling

The petition is impressed with merit.

We clarify at the outset that the only issue We shall resolve here is whether there was a condition precedent, a

subrogation agreement, to the surety agreements Bernardino executed in favor of RCBC. The issue on whether RCBC had agreed to a release of the six (6) Rig Haul Trucks, one (1) Demag Hydraulic Excavator Shovel, and shares of stock in favor of MMC has already been settled in *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation*.^[40]

As a rule, we are not a trier of facts. Our jurisdiction in a Rule 45 petition is limited to the review of pure questions of law.^[41] Factual findings of the lower court, especially when affirmed by the appellate court, are usually binding to us.^[42] However, this rule admits of certain exceptions,^[43] three of which apply in this case: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; and 3) when the judgment is based on a misapprehension of facts. As such, we find it warranted to depart from the general rule and re-examine the facts of the case.

Bernardino failed to establish the existence of a subrogation agreement, that operates as a condition precedent to the surety agreement.

It is a basic rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.^[44] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts.^[45]

As plaintiff in the court a quo, therefore, it was imperative upon Bernardino to prove the allegations in his complaint. The burden of proof will not vest on RCBC the obligation to prove that the subrogation agreement was not a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Bernardino, however, was unable to discharge this burden. He was unable to establish his cause of action through preponderance of evidence which is the degree of proof required in civil cases.^[46]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence."^[47] Preponderance of evidence is a phrase which, in the last analysis, means probability to truth.^[48] It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition.^[49]

Here, Bernardino asserted that the surety agreements he signed in favor of RCBC were ineffectual because the subrogation agreement, which the parties had allegedly agreed to execute as a condition precedent, were not executed.

Both the RTC and the CA gave credence to the testimonies of Bernardino and his witness, Nestor Escalante (Escalante). True, findings by the trial court as to the credibility of witnesses are accorded the greatest respect, and even finality by the appellate courts, since the former is in a better position to observe their demeanor as well as their deportment and manner of testifying during the trial.^[50] In this case, however, the RTC and the CA overlooked certain significant facts in the testimonies of Bernardino's witnesses.

Bernardino harped on the testimony of Atty. Dueñas that the parties indeed agreed to execute a subrogation agreement. But Atty. Dueñas' testimony is far from being corroborative to the testimonies of Bernardino and Escalante. On the contrary, it is unreliable and inconclusive for being unclear and ambiguous. We quote the pertinent testimony in full:

A:

Subrogation of what rights?

ATTY. PEÑA:

Q:

Of bank's rights in case of this surety over all.

A:

They could not have agreed upon that.

No, Sir.

There was.

On the subrogation itself, there is an agreement.

Q:

So, there was no agreement on that[?]

A:

No, Sir.[51]

The RTC and the CA are also one in saying that the testimony of Rojas was evasive and vacillating, and thus, unworthy of credence. We disagree. Although Rojas could not recall some details of the meetings, We find these details innocuous and merely incidental. Rojas cannot be expected to remember every single detail of the meeting with perfect recall.[52] Far from adversely affecting his credibility, his failure to recall every minute detail of what transpired even fortifies it. We have held that the failure of a witness to recall each and every detail of an occurrence may even serve to strengthen rather than weaken his credibility because it erases any suspicion of a coached or rehearsed testimony.[53] What is clear from the testimony of Rojas is that the surety agreement was discussed and he was of the opinion, from the bank's perspective, that such security was not enough. Nowhere did he state or admit that the parties agreed to, much less discussed, a subrogation agreement as a condition precedent to the surety agreement.

In the same vein, Atty. Dueñas' testimony shows that in a series of meetings, the parties discussed a possible "arrangement on the transfer of the collateral" once Bernardino is called to pay the obligation.[54] Atty. Dueñas testified that Bernardino proposed "that collateral be given him." [55] While this may pertain to the subrogation agreement Bernardino is claiming, what is glaringly absent from the discussions is the final agreement reached by the parties. For an offer to be binding, the acceptance must be absolute and must not qualify the terms of the offer.[56] Where there is only a proposal and a counter-proposal that did not add up to a final arrangement, there is no meeting of the minds between the parties.[57] Thus, the surety agreements remain unconditional and their validity stands.

More importantly, the terms of the surety agreements are clear. When the terms of a contract are clear and unambiguous, they are to be read in their literal sense. When there is no ambiguity in the language of a contract, there is no room for construction, only compliance.[58] As we held in *Bautista v. Court of Appeals*: [59]

The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or

rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[60] (Citation omitted; emphasis ours.)

The surety agreements do not include or refer to the execution of a subrogation agreement as a condition precedent before Bernardino could be held liable. Bernardino cannot now come to court asking for the enforcement of an agreement which clearly does not appear in the written contract between him and RCBC.

The parol evidence rule, in general, restricts the evidence to the surety agreements between MMC and RCBC. The first paragraph of Section 9, Rule 130 of the Revised Rules on Evidence provides:

Sec. 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

X X X

Under this rule, when the parties have reduced their agreement into writing, they are deemed to have intended the written agreement to be the sole repository and memorial of everything that they have agreed upon. All their prior and contemporaneous agreements are deemed to be merged in the written document so that, as between them and their successors-in-interest, such writing becomes exclusive evidence of its terms and any verbal agreement which tends to vary, alter or modify it is not admissible.[61] Whatever is not found in the writing is understood to have been waived and abandoned.[62] This must be so because an oral testimony on an alleged prior or contemporaneous agreement, such as the subrogation agreement subject of Bernardino's testimony in this case, comes from a party who has an interest in the outcome of the case and depends exclusively on human memory. Thus, it is not as reliable as written documentary evidence. Spoken words could be notoriously undesirable unlike a written contract which speaks of a uniform language.[63]

Be that as it may, the rule prohibiting the presentation of parol evidence is not absolute. A party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading any of the following:

(a)

An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b)

The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c)

The validity of the written agreement; or

(d)

The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.[64]

In his Complaint, however, Bernardino did not plead any exception to the application of the parol evidence rule. All that he pleaded was the alleged collateral agreement with which RCBC must first comply.[65] We have uniformly held that it is only where a party puts in issue in his pleadings the failure of the written agreement to express the true intent of the parties that the party may present evidence to modify, explain or add to the terms of

the written agreement.[66] The failure of Bernardino, therefore, should have rendered the parol evidence inadmissible. However, no timely objection or protest was made against its admission and RCBC, against whom it was presented, cross-examined the witnesses who testified. Failure to object to the parol evidence constitutes a waiver to its inadmissibility.[67]

Nevertheless, while admissibility of evidence is an affair of logic and law, determined as it is by its relevance and competence, the weight to be given to such evidence, once admitted, still depends on judicial evaluation.[68] Contrary to the findings of the lower courts, we hold that the parol evidence fails to prove the existence of an alleged subrogation agreement between the parties.

Firstly, the correspondence exchanged by the parties show that no agreement on the execution of the subrogation agreement was reached. Bernardino claims that discussions about the subrogation agreement were held on a July 3, 1997 meeting, yet, when the surety agreements were transmitted to RCBC on August 22, 1997,[69] he had already duly executed them with nary a colatilla, an addendum, or a disclaimer, about a subrogation agreement. In its letter dated November 24, 1997,[70] MMC merely reminded RCBC that its restructured loan is covered by a surety issued by Bernardino, in addition to the other mortgaged equipment. These letters also show that MMC was only concerned with the release of the mining equipment and shares of stocks, but not with the execution of a subrogation agreement. What is even telling is that in the November 24, 1997 letter, MMC stated that the surety is in addition to the other collaterals mortgaged with RCBC. This refutes Bernardino's argument that these collaterals were meant to be retained by RCBC for his ultimate benefit after he pays the obligation of MMC and is subrogated to all the rights of RCBC as a creditor.

Secondly, significant parts in the testimonies of Rojas and Atty. Dueñas, as earlier discussed, bolster RCBC's argument that there was no meeting of the minds between the parties that a subrogation agreement needs to be executed first before Bernardino can be held liable under the surety agreements.

Lastly, the exception to the parol evidence rule on the ground that the agreement fails to express the true intent of the parties obtains only where the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument.[71] As we have earlier pointed out, the surety agreements are clear and unambiguous. The contractual intention of the parties to bind Bernardino solidarily with MMC is readily understood from a reading of the surety agreements.

As surety, Bernardino is principally and solidarily liable for the obligations arising from the promissory notes.

In *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation*, [72] We reversed the lower courts and found that MMC failed to prove that the parties agreed for RCBC to execute a partial release of mortgage and pledge upon assignment to it of the Forbes Park property.[73] We also ruled favorably on the counterclaims of RCBC, with respect to the principal amount of MMC's promissory notes, the interest, penalties, and attorney's fees stipulated therein.[74] We then directed MMC to pay the amounts expressly stipulated in Non-Negotiable Promissory Notes No. 21-3697 and 21-3797. The complete fallo of our Decision reads as follows:

WHEREFORE, the petition is GRANTED. The assailed Decision dated June 6, 2005 and the Resolution dated December 8, 2005 of the Court of Appeals in CA-G.R. CV No. 77594 are REVERSED and SET ASIDE. Marcopper is directed to pay RCBC the following amounts expressly stipulated in the Non-Negotiable Promissory NoteNos. 21-3697 and 21-3797:

- US\$5,425,485.00 as the total principal amount due under Non-Negotiable Promissory Note Nos. 21-3697 and 21-3797, including the interest due on US\$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% per annum until fully paid.

- Penalty equivalent to 36% per annum of the amount due and unpaid under Non-Negotiable Promissory Note

Nos. 21-3697 and 21-3797 until fully paid; and

- Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied. It may, however, exercise its rights, in accordance with law, to foreclose on the properties covered. No pronouncement as to costs.

SO ORDERED.[75]

The obligation of MMC having been settled in the above decision, which has already attained finality when We denied MMC's Motion for Reconsideration in our Resolution dated October 30, 2009,[76] Bernardino, as surety, has also become liable for MMC's obligation to RCBC or to its successors-in-interest[77] under the promissory notes.

Article 2047 of the Civil Code provides:

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

If a person binds himself solidarity with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case, the contract; is called a suretyship.

Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal.[78] The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute;[79] in other words, he is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.[80]

Bernardino cannot now renege on his obligation to pay the promissory notes under the claim that there was a previous agreement between the parties for RCBC to execute a subrogation agreement before Bernardino could be held liable under the surety agreements. We stress that the right to subrogation of a paying surety is by operation of law. Article 2067 of the Civil Code provides in part that the guarantor who, pays is subrogated to all the rights which the creditor had against the debtor. Although Article 2067 explicitly pertains to guarantors, the right to subrogation extends as well to sureties.[81]

Similarly, under Article 2071 of the Civil Code, a remedy available to a guarantor (or surety),[82] even before having paid, is to demand a security from the principal debtor that shall protect the guarantor (or surety) from any proceedings by the creditor and the danger of insolvency of the debtor in certain cases. Thus:

Article 2071. The guarantor, even before having paid, may proceed against the principal debtor:

(1)

When he is sued for the payment;

(2)

In case of insolvency of the principal debtor;

(3)

When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period

has expired;

(4)

When the debt has become demandable, by reason of the expiration of the period for payment;

(5)

After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;

(6)

If there are reasonable grounds to fear that the principal debtor intends to abscond;

(7)

If the principal debtor is in imminent danger of becoming insolvent.

x x x

It is clear, therefore, that whatever right to a security Bernardino may have can only be demanded from MMC and not from RCBC.

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED. The Decision dated June 10, 2008 and the Resolution dated July 22, 2008 affirming the RTC Decision dated June 30, 2006 are SET ASIDE. Teodoro G. Bernardino is hereby declared jointly and severally liable with MMC to pay RCBC or its successors-in-interest the following:

- US\$5,425,485.00 as the principal amount due under Non-Negotiable Promissory Notes No. 21-3697 and 21-3797, including the interest due on US\$2,698,845.00 under Non-Negotiable Promissory Note No. 21-3697 at the rate of 9% per annum until fully paid;
- The stipulated penalty at the rate of 36% per annum of the amount due under Non-Negotiable Promissory Notes No. 21-3697 and 21- 3797 until fully paid; and
- Attorney's fees equivalent to 20% of the total amount due.

RCBC's claims for moral and exemplary damages are denied for lack of merit.

SO ORDERED.

Brion,[*] Peralta, (Acting Chairperson), Bersamin,**] and Reyes, JJ., concur.

October 26, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 21, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 26, 2016 at 1:35 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated as additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated September 19, 2016.

[**] Designated as additional Member in lieu of Associate Justice Jose Portugal Perez per Raffle dated September 19, 2016.

[1] Rollo, pp. 13-76.

[2] Id. at 78-118. Panned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a Member of the Court) and Arturo G. Tayag concurring.

[3] Id. at 120.

[4] Id. at 459-486.

[5] Id. at 79.

[6] Id. at 252-255.

[7] Id. at 879-880.

[8] Id. at 877-878.

[9] Id. at 79-80.

[10] Id. at 140-143.

[11] Id. at 141-142.

[12] Id. at 142.

[13] Id. at 81.

[14] Id. at 82-83.

[15] Id. at 83.

[16] Id. at 144-145.

[17] Id. at 145.

[18] Id. at 83.

[19] Id. at 266.

[20] Id. at 85.

[21] Id. at 164.

[22] Id. at 165-166.

- [23] Id. at 167-168.
- [24] Id. at 25.
- [25] Id. at 165 and 167.
- [26] Id. at 169.
- [27] Id. at 170-171.
- [28] Id. at 173.
- [29] Id. at 172-173.
- [30] Id. at 175.
- [31] Id. at 174-176.
- [32] Id. at 177-183.
- [33] Id. at 182.
- [34] Records, pp. 44-68.
- [35] Id. at 67-68.
- [36] Rollo, pp. 468-470.
- [37] Id. at 486.
- [38] Id. at 120.
- [39] Id. at 17-19.
- [40] G.R. No. 170738, September 12, 2008, 565 SCRA 125. Penned by Associate Justice Leonardo A. Quisumbing.
- [41] Land Bank of the Philippines v. Yatco Agricultural Enterprises, G.R. No. 172551, January 15, 2014, 713 SCRA 370, 378-379.
- [42] Suliman v. People, G.R. No. 190970, November 24, 2014, 741 SCRA 477, 487.
- [43] Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.
- [44] MOF Company, Inc. v. Shin Yang Brokerage Corporation, G.R. No. 172822, December 18, 2009, 608 SCRA 521, 533, citing Acabal v. Acabal, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 569.
- [45] Bank of the Philippine Islands v. Royeca, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 215.
- [46] RULES OF COURT, Rule 133, Sec. 1.
- [47] Magdiwang Realty Corporation v. The Manila Banking Corporation, G.R. No. 195592, September 5, 2012, 680 SCRA 251, 265.
- [48] Chua v. Westmont Bank, G.R. No. 182650, February 27, 2012, 667 SCRA 56, 68.
- [49] Eulogio v. Apeles, G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

- [50] Domingo v. Domingo, G.R. No. 150897, April 11, 2005, 455 SCRA 230, 238.
- [51] Rollo, p. 1624.
- [52] Rivera v. People, G.R. No. 138553, June 30, 2005, 462 SCRA 350, 359-360.
- [53] Id.
- [54] Rollo, p. 1636.
- [55] Id. at 1635.
- [56] Manila Metal Container Corporation v. Philippine National Bank, G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465.
- [57] Rizal Commercial Banking Corporation v. Marcopper Mining Corporation, G.R. No. 170738, October 30, 2009, 604 SCRA 719, 735.
- [58] Insular Life Assurance Company, Ltd., v. Asset Builders Corporation, G.R. No. 147410, February 5, 2004, 422 SCRA 148, 165, citing Leaño v. Court of Appeals, G.R. No. 129018, November 15, 2001, 369 SCRA 36.
- [59] G.R. No. 123655, January 19, 2000, 322 SCRA 365.
- [60] Bautista v. Court of Appeals, supra at 376.
- [61] Allied Banking Corporation v. Cheng Yong, G.R. Nos. 151040 & 154109, October 5, 2005, 472 SCRA 101, 111.
- [62] Edrada v. Ramos, G.R. No. 154413, August 31, 2005, 468 SCRA 597, 604.
- [63] Ortáñez v. Court of Appeals, G.R. No. 107372, January 23, 1997, 266 SCRA 561, 565.
- [64] RULES OF COURT, Rule 130, Sec. 9.
- [65] See Ortáñez v. Court of Appeals, supra note 63.
- [66] Sabio v. International Corporate Bank, Inc., G.R. No. 132709, September 4, 2001, 364 SCRA 385, 405.
- [67] Reyes v. Court of Appeals, G.R. No. 147758, June 26, 2002, 383 SCRA 471, 479-480.
- [68] Peñalber v. Ramos, G.R. No. 178645, January 30, 2009, 577 SCRA 509, 529-530.
- [69] Rollo, pp. 164-166.
- [70] Id. at 170-171.
- [71] Ortáñez v. Court of Appeals, supra note 63 at 566.
- [72] Supra note 40.
- [73] Id. at 141.
- [74] Id. at 137.
- [75] Id. at 144-145.
- [76] Rizal Commercial Banking corporation v. Marcopper Mining Corporation, G.R. No. 170738, October 30, 2009, 604 SCRA 719.

[77] In its Compliance dated February 24, 2016, RCBC, through its counsel, manifested that MMC's outstanding obligation was sold as a non-performing loan to a special purpose vehicle, Philippine Investment One (SPV-AMC), Inc. (Rollo, pp. 1779-1789). In a letter dated August 10, 2006 and which was attached to Bernardino's Compliance dated February 10, 2016, MMC did not object to the sale of its loan to SPV-AMC, Inc. SPV-AMC, Inc., however, opted not to substitute RCBC in this case. Hence, RCBC continued to litigate the case on its behalf in accordance with Section 19, Rule 3 of the Rules of Court. (Id. at 1785-1791)

[78] *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495.

[79] Id. at 495-496.

[80] Id. at 496 citing *Miner's Merchants Bank v. Gidley*, 144 SE 2d 711 (1965).

[81] *Escaño v. Ortigas, Jr.*, G.R. No. 151953, June 29, 2007, 526 SCRA 26, 46.

[82] *Autocorp Group v. Intra Strata Assurance Corporation*, G.R. No. 166662, June 27, 2008, 556 SCRA 250, 257.

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