

STAR TWO (SPV-AMC), INC., PETITIONER, VS. HOWARD KO, MIN MIN SEE KO, JIMMY ONG, AND GRACE NG ONG, RESPONDENTS.

G.R. No. 185454. March 23, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated October 15, 2008 and Resolution[2] dated November 13, 2008 in CA-G.R. SP No. 101417.

The facts of the case, as found by the CA, are as follows:

Jianshe Motorcycle Industries Philippines Corporation (Jianshe) obtained various credit facilities or loan accommodations from Rizal Commercial Banking Corporation (RCBC) from 2003-2004 to finance its importation of motorcycles, motorcycle parts, motorcycle accessories, and other related goods. To secure the goods imported by Jianshe, RCBC required it to execute trust receipts over these goods. Moreover, to secure payment of all existing and future obligations of Jianshe to RCBC, respondents Howard Ko, Jimmy Ong, Min Min See Ko, and Grace Ng Ong executed a Comprehensive Surety Agreement[3] dated September 3, 2002, with a limited liability of P50 M.[4]

Despite demand, Jianshe failed to pay its obligations. RCBC thus filed a Complaint[5] for Specific Performance with Prayer for a Writ of Preliminary Attachment against Jianshe as principal and respondents as sureties, before the Regional Trial Court (RTC) of Makati City on December 27, 2005. The case was raffled to Branch 132 and docketed as Civil Case No. 05-1146.[6]

In an Order[7] dated January 11, 2006, the RTC directed the issuance of a writ of preliminary attachment against all the properties of Jianshe and respondents as may be sufficient to satisfy RCBC's principal claim of P25,636,339.40 conditioned upon the filing of the required bond. The corresponding writ of preliminary attachment was thereafter issued.

On February 6, 2006, Howard Ko and Min Min See Ko filed a Motion to Discharge Preliminary Attachment[8] for having been improperly or irregularly issued. RCBC, however, opposed the motion.[9] On March 17, 2006, Howard Ko filed a Motion to Dismiss[10] on the ground that RCBC's claim had already been paid, waived, abandoned, or otherwise extinguished. Min Min See Ko adopted Howard Ko's motion.

On June 15, 2006, the RTC ordered the immediate discharge of the attachment issued against Howard Ko and Min Min See Ko, but denied Howard Ko's Motion to Dismiss.[11]

Unsatisfied, Howard Ko and RCBC filed their respective Motions for Reconsideration. Howard Ko likewise filed a Motion to Set Case for Hearing for Reception of Evidence.[12]

In an Order[13] dated December 13, 2006, the RTC granted Howard Ko's motion and accordingly dismissed the

case against respondents, leaving Jianshe as the only defendant. In dismissing the case, the trial court stated that there was sufficient evidence to prove that Howard Ko paid an amount more than the limit provided under the Comprehensive Surety Agreement.[14]

Aggrieved by the dismissal of the case against respondents, RCBC filed a Motion for Partial Reconsideration.[15] It likewise filed a Manifestation/Substitution of Parties,[16] considering that it had sold, transferred, and assigned all its rights and interests in the present case to petitioner Star Two (SPV-AMC), Inc.

On August 31, 2007, the RTC denied RCBC's motion for reconsideration, but granted the inclusion of petitioner as plaintiff in substitution of RCBC.[17]

Petitioner thus elevated the matter to the CA through a petition for certiorari under Rule 65 of the Rules of Court.[18] On October 15, 2008, the CA rendered the assailed Decision[19] denying petitioner's petition. The CA also denied its motion for reconsideration on November 13, 2008. Hence, this petition raising the following errors:

THE HONORABLE COURT [OF] APPEALS GRAVELY ERRED IN DISMISSING THE PETITION AND AFFIRMING THE DECISION OF THE TRIAL COURT, CONSIDERING THAT:

- 1) THE TRIAL COURT ARBITRARILY AND WHIMSICALLY CONSIDERED AND RELIED ON DOCUMENTS WHICH WERE NOT DULY IDENTIFIED BY TESTIMONY OR OFFERED IN EVIDENCE;
- 2) IT HAS NOT BEEN ESTABLISHED THAT RESPONDENT HOWARD KO, AS SURETY OF JIANSHE, HAS PAID AMOUNTS OVER THE P50 MILLION CAP UNDER THE COMPREHENSIVE SURETY AGREEMENT; AND
- 3) SUPPOSED PAYMENTS OF HOWARD KO, AS STATED IN THE DECISION OF THE TRIAL COURT, ONLY AMOUNT TO P46,539,134.42, WHICH IS STILL BELOW THE P50 MILLION CAP UNDER THE COMPREHENSIVE SURETY AGREEMENT.[20]

The petition is without merit.

At the outset, we settle the procedural question raised by petitioner on the admissibility of the documentary evidence presented by respondents in support of the dismissal of the case against them. It is petitioner's postulation that the trial court should not have relied on the documents presented by respondents as they were not formally offered in evidence.

We do not agree.

Indeed, courts cannot consider evidence which has not been formally offered because parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[21]

This rule, however, admits of an exception, provided that the evidence has been identified by testimony duly recorded and that it has been incorporated in the records of the case.[22]

In this case, the subject pieces of evidence were presented in support of respondents' motion for reconsideration of the denial of their motion to dismiss. A hearing was set for the reception of their evidence, but petitioner failed to attend the same. The pieces of evidence were thus identified, marked in evidence, and incorporated in the records of the case. Clearly, the trial court correctly admitted and considered the evidence of respondents warranting the dismissal of their case.

Now on the substantive aspect.

Respondents acted as sureties under the Comprehensive Surety Agreement to secure the obligations of Jianshe to RCBC. A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[23] The surety agreement is an accessory contract; and the surety becomes directly, primarily, and equally bound with the principal as the original promissor although the former possesses no direct or personal interest over the latter's obligations and does not receive any benefit therefrom.[24]

Pursuant to Article 2054 of the Civil Code that "a guarantor [or surety] may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions," respondents limited their liability to P50 M, which is less than Jianshe's liability to RCBC. Howard Ko complied with his obligations and made payments to RCBC through the following modes:

First mode of payment: certificates of time deposit of Howard Ko and Howard Ko and/or Harry Ko which were admitted by RCBC as applied for the payment of Jianshe's obligation.

Second mode of payment: official receipts and trust receipt debit advices which were debited from Howard Ko's current account (1-155-13110-1) and savings account (1-155-30805-9) and applied as payment to Jianshe's obligation.

Third mode of payment: certificates of time deposit of Howard Ko which were withdrawn upon maturity and deposited to Jianshe's RCBC Savings Account No. 1-166-30810-6. Thereafter, the said amounts were debited by RCBC as payment to several trust receipts issued to [Jianshe].

Fourth mode of payment: certificates of time deposit of Harry Ko and Liu Guo Xuan which were admitted as payment by RCBC. The proceeds of these CTDs were borrowed by Howard Ko from Harry Ko and Liu Guo Xuan to be applied as payment for Jianshe's obligations.[25]

These modes of payment were adequately explained by respondents and supported by documentary evidence. We quote with approval the CA's observations in this wise:

The evidence in favor of the [respondents] consisted of no less than RCBC documents showing that said bank debited from their various accounts the amounts which Jianshe owed RCBC under the trust receipts. In the subject petition, the petitioner has not claimed that these evidence were fabricated. It cannot say that, if present at the hearing or, if there would be another hearing, it could prove that the RCBC documents were false. It cannot because those were genuine RCBC documents.

All it can say is that these were payments for "a different credit line" or different "trust receipts" secured by the Comprehensive Surety Agreement which remains unpaid.

Petitioner, however, could not even allege the specific "different credit line" or other trust receipt. In the absence thereof, it could only mean that the payments were for the Jianshe accounts.

Granting arguendo that the receipts and trust debit advices were for "a different credit line" or different "trust receipts," it is immaterial as the [respondents], as sureties, have already exceeded their liability cap of P50 M.

Petitioner further argues that [respondent] Howard Ko's claim of overpayment is incredible because he would not have paid the alleged amount of P89,656,002.67 as surety when his liability as such was only P50 M. In this regard, suffice it to state that not all payments were direct as some were debited by RCBC from the accounts of [Howard Ko]. So, he would not have known of the amounts he had paid in favor of Jianshe at the time they were debited by RCBC.[26]

The Court notes that the pieces of evidence presented by respondents were documents, such as official receipts,

trust debit advices, and passbooks, issued by no less than petitioner itself. Payments were made by respondents through the active participation of RCBC, primarily by debiting the subject amounts from respondents' accounts with the bank. Admittedly, it was Jianshe, as the principal, which owed RCBC. Nowhere in petitioner's pleadings was it claimed that respondents also owed the bank aside from their obligation as surety to secure the principal obligation of Jianshe. Undoubtedly, the debited amounts from Howard Ko's accounts were made to satisfy his obligation as surety. Petitioner cannot now claim that the payments were made by Jianshe as principal and not by respondents as sureties simply because the receipts were issued in the name of Jianshe. As aptly observed by the CA, the issuance of the receipts in the name of Jianshe was done only to indicate that it was the principal obligor. The issuance of the receipts does not erase the fact that various amounts were debited from the accounts of Howard Ko, and certificates of time deposit in the name of Howard Ko were applied as payment for Jianshe's obligations.

In view of the foregoing, the CA did not err in sustaining the dismissal of the case against respondents as the claim or demand set forth in the complaint has been paid or otherwise extinguished.

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit. The Court of Appeals Decision dated October 15, 2008 and Resolution dated November 13, 2008 in CA-G.R. SP No. 101417 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Bersamin,[*] and Abad, JJ., concur.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated September 15, 2010.

[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Andres B. Reyes, Jr. and Seginando E. Villon, concurring; rollo, pp. 29-55.

[2] Id. at 57.

[3] Id. at 59-60.

[4] Id. at 29-30.

[5] Id. at 63-76.

[6] Id. at 29.

[7] Id. at 62.

[8] Id. at 103-112.

[9] Id. at 113-123.

[10] Id. at 137-145.

[11] Id. at 211-215.

[12] Id. at 248-257.

[13] Id. at 279-280.

[14] Id. at 31.

[15] Id. at 281-301.

[16] Id. at 362-365.

[17] Id. at 366.

[18] Id. at 367-398.

[19] Supra note 1.

[20] Rollo, p. 10.

[21] Heirs of Roque F. Tabuena v. Land Bank of the Philippines, G.R. No. 180557, September 26, 2008, 566 SCRA 557, 564.

[22] Id.; Ramos v. Dizon, G.R. No. 137247, August 7, 2006, 498 SCRA 17, 31; Mato v. CA, 320 Phil. 344, 350 (1995).

[23] Id. at 369.

[24] Intra-Strata Assurance Corporation v. Republic, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 369.

[25] Rollo, pp. 42-43.

[26] Rollo, p. 50.

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