

**PHILIPPINE INTERNATIONAL TRADING CORPORATION,
PETITIONER, V. THRESHOLD PACIFIC CORPORATION AND EDGAR
REY A. CUALES, RESPONDENTS.**

G.R. No. 209119. October 03, 2018

Ponente: LEONARDO-DE CASTRO, CJ.

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LEONARDO-DE CASTRO, CJ.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated November 23, 2012 and Resolution[2] dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 97458.

This case stemmed from a Complaint[3] for Sum of Money filed by petitioner Philippine International Trading Corporation (PITC) against respondents Threshold Pacific Corporation (TPC) and Edgar Rey A. Cuales (Cuales) docketed as Civil Case No. 94-2266 before the Regional Trial Court (RTC), Branch 139, Makati City.

Petitioner PITC is a government-owned and controlled corporation created under Presidential Decree No. 252,[4] as amended later on by Presidential Decree No. 1071,[5] to engage in or handle foreign procurement, marketing, and distribution for Philippine and third country enterprises. More particularly, Section 5 of Presidential Decree No. 1071 provides:

Sec. 5. Purposes of the Corporation.— The Corporation is hereby authorized:

- (a) To engage in or handle for Philippine and third country enterprises through methods, systems, devices and facilities intended to achieve economies of scale and better terms of trade for Philippine business, both foreign procurement as well as foreign marketing and distribution;
- (b) To arrange for or established comprehensive facilities for handling all phases of warehousing and to develop and operate physical facilities for the collection, processing and distribution of cargoes and other commodities;
- (c) To obtain or arrange more comprehensive protection for activities undertaken or commodities dealt with by monitoring or coordinating risk insurance services for existing institutions or supplementing the same;
- (d) To employ, utilize, monitor trade promotion services, facilities and activities being undertaken by government or private agencies;
- (e) To promote or organize, whenever warranted, production enterprises and industrial establishment and to collaborate or associate in joint venture with any person, association, company, or entity, whether domestic or foreign, in the fields of production, marketing, procurement, and such other related business;
- (f) To provide technical, advisory investigatory, consultancy and management services with respect to any or all of the functions, activities and operations of the corporation; and,
- (g) In general, to undertake such activities as would be appropriate to an institution created for the purposes of

international trading.

On the other hand, respondent TPC is a domestic corporation, and respondent Cuales is its Managing Director.

Factual Antecedents

The present controversy involves three key instruments executed between PITC and TPC, viz.: (a) the Import Financing Agreement (IFA)[6] dated July 5, 1993; (b) the 1[st] Addendum to the IFA[7] (1[st] Addendum) dated July 6, 1993; and the 2[nd] Addendum to the IFA[8] (2[nd] Addendum) dated November 4, 1993 (hereinafter collectively referred to as the Loan).

A. IFA dated July 5, 1993

The parties, PITC, represented by its President, Jose Luis U. Yulo, Jr. (Yulo), and TPC, represented by its Managing Director, respondent Cuales, executed the IFA whereby PITC agreed to assist TPC financially in the amount of P50,000,000.00 for the latter's importation of urea fertilizers. The salient portions of the agreement are reproduced below:

WHEREAS, the BORROWER has applied for a financial accommodation/assistance from PITC for the purpose of financing its importation of urea fertilizer (the "fertilizer") for resale on credit terms to the Allied Sugarcane Planters Association, Inc. (ASPAI), an association of sugarcane planters with postal address located at BMMC Compound, Bacolod City;

WHEREAS, PITC is able and willing to provide such financial accommodation to the BORROWER subject to the terms and conditions hereinbelow set forth;

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinbelow contained, the parties agree as follows:

I.

THE LOAN:

PITC consents and agrees to provide financial assistance (the "loan") to the BORROWER in the amount of PESOS: FIFTY MILLION (50,000,000.00), Philippine currency, for the sole purpose of financing the BORROWER's importation of urea fertilizer less PITC's commission of US\$3 per metric ton and bank's opening and other charges.

II.

DISBURSEMENT

PITC shall open the necessary letter of credit in favor of the BORROWER's fertilizer supplier upon receipt by the PITC of the following:

i)

A true copy of the Sales Contract between the BORROWER and ASPAI covering the sale of the urea fertilizer, subject of this import financing agreement and the Deed of Assignment of ASPAI's sugar/molasses

quedans for CY 1993-1994 issued by the milling company, Noah's Ark Holding Company (hereinafter referred to as "Noah's Ark"), duly endorsed in favor of the BORROWER;

ii)

Originals of Original and/or Transfer Certificates of Title, the appraised value of which shall not be less than P60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.

iii)

Post-dated checks issued by ASPAI in favor of PITC as per the following:

Date

Amount

October 1, 1993
November 1, 1993
December 1, 1993
January 1, 1994

P14,000,000.00
13,062,500.00
12,875,000.00
12,687,500.00

TOTAL

P52,625,000.00

iv)

Secretary's Certificate of Threshold Pacific Corporation's Board Resolution authorizing the BORROWER to: (a) enter into this Agreement which shall include the names of the authorized signatory/ies to all papers, notes and documents which shall be necessary to effect the provisions of this Agreement and (b) endorse in favor of PITC the sugar/molasses quedans for the CY 1993-1994 assigned by ASPAI in favor of the BORROWER.

v)

Secretary's Certificate of ASPAI's Board Resolution authorizing ASPAI: (a) to enter into a Sales Contract with

BORROWER for the purchase of fertilizer (subject of this agreement) on credit terms which shall include the names of the authorized signatory/ies to all paper, notes and documents necessary for this purpose; (b) to issue post-dated checks in favor of PITC to cover/secure the obligations of the BORROWER hereunder and (c) to execute a Deed of Assignment of their sugar/molasses quedans for CY 1993-1994 in favor of BORROWER or their nominee up to a value of P50,000,000.00.

III.

INTEREST

The BORROWER shall pay interest on the principal of the loan at the rate of one and one-half (1.5%) percent a month computed from the date the fertilizer is received by ASPAI. If for any reason ASPAI fails to take hold of the fertilizers within the period agreed upon in the Sales Contract, interests shall be computed 15 days after date when written demand is made by PITC for the payment of the principal loan.

Any and all amounts due and unpaid as per the repayment schedule herein provided shall cause the imposition of an additional penalty interest of 2% a month computed from date the same is due until full payment is made.

x x x x

IV. REPAYMENT

The principal loan including interests and other charges shall be due and demandable without need of demand in accordance with the following schedule:

INSTALLMENT

DATE

AMOUNT DUE
(incl. Of interests)

First
Second
Third
Fourth

October 1, 1993
November 1, 1993
December 1, 1993

January 1, 1994

P14,000,000.00

13,062,500.00

12,875,000.00

12,687,500.00

TOTAL

P52,625,000.00

It is expressly agreed that the BORROWER shall have no right to delay, suspend or forego any payments due hereunder for any reason whatsoever including but not limited to those relating to the quality/quantity or specifications of the fertilizers imported and financed through this Agreement.

The BORROWER's liability for payment shall subsist until full payment is received by PITC, regardless of the securities/collaterals herein offered.

V.

LOAN SECURITY/COLLATERALS

To secure the payment of the principal on the loan including all interest and charges thereon, the BORROWER agrees and binds itself to provide the following securities/collaterals in favor of PITC:

x x x x

b)

Post-dated checks issued by ASPA (sic) in favor of PITC in the amounts and in accordance with the schedules provided for in Paragraph IV hereof.

c)

Originals of Original and/or Transfer Certificates of Title, with appraised value of not less P60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.

d)

BORROWER's written assignment/endorsement of the sugar/molasses quedans for CY 1993-1994 issued by Noah's Ark duly assigned by ASPAI in favor of BORROWER. Such assignment/endorsement in favor of PITC must have the written conformity of Noah's Ark.

x x x x

VIII.

EVENTS OF DEFAULT

The following events shall constitute the BORROWER in default and shall render the entire loan obligation or any part hereof including interests and charges and all other amounts payable immediately due and demandable without need of demand or notice of any kind, all of which are hereby waived by the BORROWER:

a)

BORROWER fails to comply with any of the terms of the Trust Receipt issued in favor of PITC;

b)

Any one or all of the post-dated checks issued by ASPA (sic) in favor of PITC should bounce/or returned for any reason whatsoever;

x x x x

f)

BORROWER fails to perform any of the terms and conditions of this Agreement and/or fails to repay the loan and accruing interests as per the agreed schedules;

IX.

ATTORNEY'S FEES

Should PITC be constrained to resort to court litigation to enforce or safeguard its rights and interest under this Agreement, the BORROWER shall be liable to PITC for attorney's fees in an amount equal to 25% of the total sum claimed in the Complaint, exclusive of other damages and expenses of litigation and the costs which shall in no case be less than P25,000.00.[9] (Emphasis Supplied)

B. 1[st] Addendum dated July 6, 1993

Due to exigent circumstances, i.e., as a result of ASPAI members' urgent fertilizer requirements vis-a-vis the delay in the importation of fertilizers, PITC and TPC amended the IFA through a document denominated as the "1[st] Addendum."

In said 1[st] Addendum, PITC agreed to disburse the first tranche of the subject loan, in the amount of P5,876,498.63, to enable TPC to purchase the fertilizers from the domestic market for resale to ASPAI members. Specifically, the parties stipulated as follows:

WHEREAS, the importation of the said fertilizer has been delayed;

WHEREAS, it is necessary that an initial delivery of urea fertilizer be sourced locally due to the urgent need therefore of the sugar planters of ASPAI which requirement must be met before the end of June, 1993 (sic);

x x x x

I.

PARTIAL DISBURSEMENT OF LOAN

PITC consents and agrees to disburse the first PESOS: SIX MILLION (PESOS 6,000,000.00), PHILIPPINE CURRENCY, of the LOAN, subject of the AGREEMENT, to the BORROWER for the sole purpose of financing the BORROWER'S domestic purchase of urea fertilizer, said amount to be part of the total loan granted to the BORROWER under the aforesaid AGREEMENT less of PITC's commission of US\$3 per metric ton and bank's opening and other charges.

x x x x

II.

CONDITION PRECEDENT

PITC shall open the necessary letter of credit in favor of the BORROWER'S fertilizer supplier, up to the amount herein agreed, upon receipt by PITC of the following:

1.

Real Estate Mortgage together with original titles to the real properties agreed to as collaterals for the loan (as per Par. V of the AGREEMENT);

2.

Certification from Registry of Deeds where the real properties are registered to the effect that there are no existing liens or encumbrances on the said properties.

III.

INTEGRATED DOCUMENT

All other terms and conditions of the AGREEMENT, except insofar as the same are amended/modified hereby, shall remain binding and subsisting.[10]

Thus, on July 9, 1993, PITC opened a Land Bank of the Philippines (LandBank) Letter of Credit[11] in favor of La Filipina Uy Gongco Corp., a local fertilizer supplier. The letter of credit amounted to P5,273,325.00, net of the following: (1) LandBank bank charges amounting to P31,640.03 and (2) storage and delivery charges incurred by PITC amounting to P571,533.60. As a result, TPC was able to purchase the required fertilizers and sell these to ASPAI on credit.[12]

Meanwhile, on August 6, 1993, respondent TPC, as the assignor, executed a Deed of Assignment in favor of petitioner PITC pursuant to the IFA, viz.:

WHEREAS, the ASSIGNOR is the ASSIGNEE of the sugar and molasses quedans of the Allied Sugar Planters Association, Inc. (ASPAI) for the crop year 1993-1994 up to the amount of PESOS: FIFTY-SEVEN MILLION (P57,000,000.00), hereinafter referred to as the "quedans";

WHEREAS, as a condition precedent to the grant of financial assistance to the ASSIGNOR for the importation of urea fertilizer for ASPAI, subject of an Import Financing Agreement executed by the parties hereto on 9 July 1993 (the "Agreement"), PITC has required and ASSIGNOR has irrevocably agreed to further assign to PITC all its rights, interests, claims and benefits over the aforesaid Quedans;

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

- ASSIGNOR hereby unconditionally and irrevocably assigns, transfers, and conveys, as it does hereby assign, transfer and convey to PITC all its rights, claims and interests over the sugar and molasses quedans of ASPAI for the crop year, to commence October 1993 and to end June 1994 on planters share, to be issued by the sugar miller, NOAH'S ARK SUGAR HOLDINGS up to the aggregate value of PESOS: FIFTY-SEVEN MILLION (P57,000,000.00), (the "Quedans") in consideration for the urea fertilizer import financing extended/granted by PITC under the Agreement.[13] (Emphasis supplied.)

C. 2[nd] Addendum dated November 4, 1993

As a result of further delay in the shipment of the imported fertilizers, the parties further amended the IFA in order to meet ASPAI's urgent request for additional fertilizer. This subsequent amendment to the IFA was denominated as the 2nd Addendum, which provided as follows:

WHEREAS, on July 6, 1993, the parties hereto executed a 1[st] Addendum to the Import Financing Agreement (the "1[st] Addendum") by virtue of which PITC agreed to a first partial disbursement of the Loan in the amount of P6,000,000.00 to enable the BORROWER to purchase approx. 20,000 bags of urea fertilizer, badly needed by the sugar planters association (ASPAI) availing of the said fertilizers to meet planting schedules, from domestic sources due to delays in the shipment of imported urea fertilizer; WHEREAS, ASPAI has once again requested for the immediate delivery by BORROWER of additional 800 metric tons of fertilizer (minimum) to meet their demands for the planting season valued at approx. P5,000,000.00;

WHEREAS, in view of the urgent need for the fertilizers by ASPAI and the concomitant delay in the shipment/delivery of the imported fertilizers, it is necessary for BORROWER to supply (sic) said fertilizers from domestic sources and request PITC for a 2nd partial release of the loan in the amount of P5,000,000.00 to cover the costs of the same and PITC has agreed to the said request on condition that this will be the last time for BORROWER to source said fertilizers from domestic suppliers utilizing the Loan herein granted by PITC;

x x x x

I.

2[ND] PARTIAL DISBURSEMENT OF THE LOAN:

PITC consents and agrees to disburse the second PESOS: FIVE MILLION (P5,000,000.00), PHILIPPINE CURRENCY, of the Loan, subject of the AGREEMENT, to the BORROWER for the sole purpose of financing the BORROWER'S domestic purchase of fertilizer, said amount to form part of the total Loan granted to BORROWER under the AGREEMENT, less PITC's commission of US\$3.00 per metric ton and bank charges or fees that may be incurred with respect to the second partial disbursement of the Loan.

x x x x

III.

CONDITIONS PRECEDENT

PITC shall disburse the amounts herein agreed only upon receipt by PITC of the following:

x x x x

2.

Duly signed and registered Real Estate Mortgages in favor of PITC over the said real properties/collaterals

agreed to as security for the repayment of the 1[st] and 2[nd] partial disbursements of the Loan;

x x x x

4.

Owner's Original Transfer Certificate of Title to the real properties mortgaged in favor of the PITC hereunder[.][14]

On this occasion, instead of opening another letter of credit, PITC issued a check[15] in the amount of P5,000,000.00 directly payable to TPC for the aforementioned amount. Upon receipt of the proceeds, TPC issued a promissory note[16] undertaking "to pay solidarily to the order of [PITC]" the principal amount on April 15, 1994.

On July 7, 1994, claiming that TPC failed to pay the outstanding loan obligation, PITC filed a Complaint[17] for Sum of Money before the RTC, alleging as follows:

10.

When deposited by PITC, all the post-dated checks issued by ASPAI returned for various reasons such as "Drawn Against Insufficient Funds" (DAIF) or "Account Closed". In addition, a partial replacement check issued by ASPAI in the amount of P1,000,000.00 dated May 27, 1994 (for the November 30, 1993 check which previously returned (sic) for reasons: DAIF) likewise returned for reasons: "Account Closed." Despite all the demand letters and notices sent by PITC to ASPAI for the full cash settlement of these returned checks, as well as demand letters to TPC for the payment of all its obligations to PITC under the FINANCING AGREEMENT, the 1[st] ADDENDUM and the 2[nd] ADDENDUM, including the amounts covered by these returned checks, ASPAI failed and refused and continues to fail and refuse to make good the face value of these checks while TPC failed and refused and continues to fail and refuse to make full payment of all its obligations to PITC.

x x x x

11.

Furthermore, TPC to date has failed to submit to PITC the conforme of NOAH's ARK to the DEED OF ASSIGNMENT (Annex "B") to enable PITC to acquire/obtain the sugar and molasses quedans 1993-1994 of ASPAI, as per the express provisions of terms of the FINANCING AGREEMENT, resulting in PITC's inability to realize any sums thereunder either through sale or assignment, and consequently, any partial or full settlement of the Loan disbursed to TPC.

12.

TPC is liable to PITC for the sum of PESOS: THIRTEEN MILLION ONE HUNDRED NINETY-FOUR THOUSAND FIVE HUNDRED FIFTEEN AND 43/100 (P13,194,515.43) under the express provisions of Section (b), Article VIII (Events of Default) of the Financing Agreement x x x.[18]

In its Answer with Counterclaim,[19] TPC and Cuales denied liability in the subject transactions and raised the following defenses:

1.

Plaintiff has no cause of action against defendants.

2.

There is an intrinsic ambiguity, mistake and/or imperfection in the IFA, and its First and Second Addendum.

3.

The IFA, and its First and Second Addendum (sic), fail to express the true intent and agreement of the parties thereto.

4.

The real intent and agreement of the parties (Plaintiff, defendants and ASPAI) is that the urea fertilizer is to be purchased by plaintiff for distribution and sale to ASPAI. Defendant's participation is merely to ensure that the urea fertilizer be delivered to ASPAI.

5.

Thus, defendants are in effect merely an agent of plaintiff, with regards to the sale of urea fertilizers to ASPAI x x x.[20]

In support of their defenses, respondents enumerated acts tending to show that the parties executed the loan agreement with the view that TPC shall act merely as ASPAI's agent. The RTC summarized said acts as follows:

In support of their allegations, defendant TPC alleged in their Memorandum dated 19 October 2009 that the contemporaneous and subsequent acts of plaintiff and ASPAI will readily show that ASPAI is the real client of plaintiff and that defendant TPC is only an agent of plaintiff, to wit: (1) plaintiff required ASPAI to issue postdated checks for the purchase of fertilizers; (2) ASPAI was also required by plaintiff to execute Real Estate Mortgages in favor of plaintiff with a total appraised value of P11,290,000.00; (3) the expenses relative to the deliveries of the subject urea fertilizer to ASPAI for the first tranche such as handling, warehousing, arrastre, trucking and supervision were paid/reimbursed by plaintiff to defendant TPC; (4) the Land Bank of the Philippines Advice of Letter of Credit Amendment No. 93030-D dated 09 July 1993 was opened by plaintiff PITC for the first tranche of the loan of ASPAI directly in favor of the supplier La Filipina Uy Gongco Corporation and consigned to ASPAI without the participation whatsoever of defendants; (5) ASPAI acknowledged receipt from defendant TPC the sum of P4,900,000.00 representing the second tranche of the fertilizer credit availment while the balance was returned by defendant TPC to plaintiff; (6) liquidation and receipts pertaining to purchase of urea fertilizer were regularly made and submitted by ASPAI to plaintiff; (7) plaintiff sent demand letters to ASPAI demanding the making good of the postdated checks it issued in favour of plaintiff; (8) plaintiff filed criminal complaints for estafa and violation of B.P. 22 against ASPAI officers, Santiago Ruiz and Cris Bretaña for the collection of the face values of the postdated checks which ASPAI issued in favor of plaintiff; (9) plaintiff released the loans despite the non-submission by defendant TPC of the assignment/endorsement of the sugar/molasses quotas for CY 1993-1994 and (10) no importation was ever

made and all the purchases of urea fertilizer were sourced locally by ASPAI.[21]

Regional Trial Court Decision

In its Decision dated April 182011, the RTC found TPC and Cuales liable to PITC, viz:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- (a) ORDERING defendant Threshold Pacific Corporation to pay plaintiff Philippine International Trading Corporation the amount of P5,876,498.63 for the first tranche of the loan with interest thereon at the rate of 1.5% per month and penalty charge of 2% per month to be reckoned from 27 June 1994;
- (b) ORDERING defendants Threshold Pacific Corporation and Edgar Rey Cuales to SOLIDARILY pay plaintiff Philippine International Trading Corporation PhP4,900,000.00 the second tranche of the loan with interest at the rate of 18% per annum and 2% penalty charge per month to be reckoned from 27 June 1994;
- (c) ORDERING defendants Threshold Pacific Corporation and Edgar Rey Cuales to SOLIDARILY pay plaintiff Philippine International Trading Corporation the amount of P200,000.00 as and by way of attorney's fees; and
- (d) Costs of the suit.[22]

In ruling against TPC and Cuales, the RTC found that: First, an accommodation party assumes the obligation in favor of a third party and precisely binds himself to pay the obligation when it becomes due. TPC and Cuales became directly liable for the obligation to pay the loan regardless of their actual personal interest in the obligation or receipt of any benefit therefrom. Second, as TPC's Managing Director, certainly, Cuales had the educational background and commercial knowledge to fully comprehend the effects of entering the loan agreement in behalf of TPC. Third, TPC and Cuales did not present sufficient evidence to show that they were mere agents of ASPAI. Verily, ASPAI executed real estate mortgages and issued post-dated checks to secure the payment of the IFA loan. However, ASPAI's provision of security and collaterals for the IFA does not automatically make TPC and Cuales its mere agents.[23]

Aggrieved, TPC and Cuales elevated the case to the Court of Appeals.

The Court of Appeals Decision

In its assailed Decision, the Court of Appeals reversed the RTC Decision and ruled in favor of TPC and Cuales, viz:

WHEREFORE, the appeal is GRANTED. The Decision dated 18 April 2011 of the Regional Trial Court of Makati City, Branch 139, in Civil Case No. 94-2266, is REVERSED and SET ASIDE and a new one is entered dismissing for lack of merit PITC's complaint against defendants- appellants TPC and Cuales.[24]

The Court of Appeals held that TPC and Cuales sufficiently proved that the IFA and its addendums were simulated and did not reflect the true intention of the parties. It considered PITC and ASPAI's acts contemporaneous and subsequent to the aforementioned loan documents: (i) PITC required ASPAI, not TPC, to issue the required post-dated checks and execute real estate mortgages to secure the loan; (ii) PITC reimbursed TPC for storage and delivery expenses incurred in relation to the fertilizers' handling, warehousing, arrastre, trucking and supervision; (iii) pursuant to the 1[st] Addendum, PITC opened a LandBank Letter of Credit amounting to P5,723,325.00 directly in favor of La Filipina Uy Gongco Corp, with ASPAI as its consignee. TPC was not a party to this transaction; (iv) as to the 2[nd] Addendum's partial disbursement amounting to P5,000,000.00, ASPAI acknowledged the receipt of P4,900,000.00 of the loan proceeds, while TPC returned the balance of P100,000.00 to PITC; (v) ASPAI liquidated costs in relation fertilizer purchases and submitted receipts

thereon to PITC; (vi) upon dishonor of its post-dated checks, PITC sent demand letters to ASPAI, not to TPC; (vii) due to the checks' dishonor, PITC filed criminal complaints for estafa and violation of Batas Pambansa Blg. 22 against ASPAI's officers; (viii) the IFA conditioned the release of loan proceeds upon, among others, TPC's submission of Noah's Ark Sugar Holdings (Noah's Ark)'s written conforme endorsing the assignment of ASPAI's quedans to PITC. However, PITC proceeded to make partial disbursements of the loan despite TPC's failure to submit Noah's Ark's endorsement; and (ix) the parties executed the IFA to facilitate the importation of urea fertilizer. However, pursuant to the two addendums, instead of importing fertilizers, ASPAI purchased them directly from local suppliers.[25]

From these circumstances, the Court of Appeals concluded that TPC and Cuales were mere agents of ASPAI and should not be held liable for their principal's default in the loan payments.[26]

PITC subsequent motion for reconsideration was denied; hence, the present petition.

The Issues

Petitioner PITC comes before the Court raising the following issues:

A.

WHETHER OR NOT THE TRANSACTION WAS INDEED BETWEEN PITC AND TPC.

B.

WHETHER OR NOT THE IMPORT FINANCING AGREEMENT THE PARTIES EXECUTED ON 5 JULY 1993 AND ITS ADDENDA ARE SIMULATED.

C.

WHETHER OR NOT PITC IS ENTITLED TO ATTORNEY'S FEES.[27]

Petitioner PITC mainly argues that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the parties, the literal meaning of its stipulations shall control." The IFA and its addendums are clear and leave no room for further interpretation.[28]

In addition, petitioner PITC insists that the IFA and its addendums are not simulated. TPC, as represented by Cuales, knew its liability under the loan. They never sought for the instruments' reformation. Thus, by signing the instruments, Cuales is legally presumed to have exercised vigilance over TPC's affairs and voluntarily and intelligently agreed to be bound by them.[29]

Finally, petitioner PITC avers that it is entitled to attorney's fees. Paragraph X of the IFA clearly provided that TPC, as borrower, shall be liable for attorney's equal to 25% of the total sum claimed in case petitioner PITC is constrained to enforce its contractual rights under the IFA via court litigation.

The Court's Ruling

The petition is meritorious.

It is undisputed that TPC and Cuales entered into and executed the IFA and its addendums with PITC. What is at issue then is the true nature of TPC's liability under the loan agreement, as embodied in the IFA and its addendums.

The settled rule is that the contracting parties have the autonomy to establish such terms and conditions as they deem fit, provided these are not contrary to law, morals, good customs, public order, or public policy.[30] Once

there is a meeting of the minds between the parties,[31] the contract constitutes the law between them.[32] Thus, in resolving disputes involving contractual obligations, the Court's utmost duty is to interpret the contract and uphold the parties' intention.[33]

Loan agreement does not expressly stipulate an agency between petitioner PITC and respondent TPC

A plain reading of the loan's stipulations reveals the following:

- (i) TPC, as the borrower, applied for financial accommodation from PITC to fund for its importation of urea fertilizers;
- (ii) Upon importation, TPC will sell these fertilizers to ASPAI;
- (iii) The principal amount of P50 million shall be payable in four instalments, plus interests and penalties, if applicable;
- (iv) To secure the payment of the principal, TPC agreed to provide PITC, among others:
 - (a) post-dated checks issued by ASPAI and payable to PITC, which checks shall be further secured by certificates of title of properties with the total appraised value of not less than 60 million; and
 - (b) sugar quedans issued by Noah's Ark, assigned by ASPAI to TPC, and, with Noah's Ark written conformity, endorsed by TPC in favor of PITC.

(v) In case any one of the post-dated checks issued as security fails to clear for whatever reason, entire obligation is immediately due and demandable; and

(vi) Attorney's fees shall be 25% of the total sum claimed in the Complaint, exclusive of other damages, expenses, and costs of litigation.

The primary rule in interpreting contracts is that when an agreement is clear and unequivocal on its face, the courts are bound to respect and uphold its tenor based on the stipulations' express language.[34] This is supported by the Rules of Evidence, where only the instrument may be presented to prove the terms and conditions of a written agreement. Extraneous evidence is generally inadmissible.[35]

From the above-enumerated loan provisions, therefore, it is clear that there is no express stipulation constituting TPC as ASPAI's agent.

Respondents TPC and Cuales failed to present parole evidence to prove that the agreements do not express the true intentions of the parties

A party shall nonetheless be allowed to prove an agreement's terms and conditions through evidence other than the written contract itself when he specifically avers in his pleading that such written instrument does not express the true intent and agreement of the parties.[36]

Here, respondents TPC and Cuales mainly argue that the above-enumerated stipulations contained in the loan documents do not express the parties' real intention: that ASPAI is petitioner PITC's actual client and respondent TPC is merely ASPAI's agent. This allegation places the present case within the exception of the parole evidence rule.

Thus, the Court may look beyond the four corners of the loan and consider even the parties' contemporaneous and subsequent acts to determine their true intention.[37] When the party successfully establishes a disparity between the words on the face of an agreement deviate and the parties' actual intention, the courts shall uphold the latter.[38]

As discussed above, evidence aliunde is admissible in the present case. However, respondents TPC and Cuales still bear the burden of proving their claim by the amount of evidence as required by the Rules.[39]

Loan transactions such as in the present controversy are presumed fair, regular,[40] and done observing the ordinary course of business.[41] A party may only overcome these presumptions by a preponderance of evidence. Furthermore, loans embodied in notarized documents, such as the IFA and its Addendums, enjoy the presumptions of authenticity, genuineness, and regular execution, which may only be overcome by clear and convincing evidence.[42]

To prove their claim, respondent Cuales testified that the parties' real intention is for PITC to purchase urea fertilizer and subsequently sell the same to ASPAI; that TPC was involved as ASPAI's agent merely to ensure the delivery of fertilizers to the latter; that ASPAI, not TPC, provided PITC with the required collaterals, as shown in post-dated checks and real estate mortgage documents executed by ASPAI; that TPC was not a party to the LandBank Letter of Credit dated July 9, 1993 issued by PITC directly in favor of ASPAI's local fertilizer supplier; that TPC merely paid for storage and delivery expenses incurred in relation to the fertilizers' handling, warehousing, arrastre, trucking and supervision, which PITC subsequently reimbursed; that ASPAI acknowledged receipt of proceeds amounting to P4,900,000.00 as stated in the 2nd Addendum, TPC received only the balance of P100,000.00; and that PITC directly went after ASPAI for the payment of the loan obligation, as evidenced by its demand letter and criminal complaint filed against ASPAI.

In ruling that the loan was simulated and not reflective of the parties' actual intention, the appellate court considered respondent Cuales' testimony as sufficient evidence of contemporaneous and subsequent acts showing that TPC was merely ASPAI's agent.

We disagree.

In general, an agency may be express or implied.[43] However, an agent must possess a special power of attorney if he intends to borrow money[44] in his principal's behalf, to bind him as a guarantor or surety,[45] or to create or convey real rights over immovable property,[46] including real estate mortgages. While the special power of attorney may be either oral or written, the authority given must be express.[47] In other words, there must be "a clear mandate from the principal specifically authorizing the performance of the act,"[48] not merely overt acts from which an agency may be inferred. Consequently, the agent's "authority must be duly established by competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given." [49]

In the present case, respondents TPC and Cuales' allegations substantially rely on the latter's own testimony. Certainly, as signatory in and TPC's representative to the loan transaction, Cuales shall endeavor to exonerate himself and TPC from the liabilities thereunder. We cannot give much weight to his bare allegations and testimony inasmuch as these obviously serve respondents' own interests.[50] Respondents offer no proof to justify denial of liability other than his own account and recollection of the transaction. In Our mind, respondents' disavowal of liability is "negative and self-serving evidence that has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[51]

Furthermore, while respondents TPC and Cuales raised the subject agreement's ambiguity as an issue, they did not assail the loan instruments' genuineness and due execution. In fact, in their Answer, they admitted that respondent Cuales entered into the IFA and its addendums in his official capacity as respondent TPC's Managing Director. Thus, these loan instruments best represent the parties' actual intent and agreement. Respondent Cuales's oral testimony, as it is purely composed of his personal recollections, is not as reliable as written or documentary evidence.[52]

Verily, respondents TPC and Cuales also presented documentary evidence i.e., ASPAI's postdated checks and real estate mortgages executed to secure the loan, reimbursements made by PITC to TPC for storage and delivery expenses incurred by the latter, LandBank Letter of Credit issued directly in the name of ASPAI's supplier, ASPAI's certification acknowledging its receipt of the loan proceeds, receipts of fertilizer purchases submitted by ASPAI to PITC, PITC demand letters directly sent to ASPAI, criminal complaint for the violation of Batas Pambansa Blg. 22 filed by PITC against ASPAI to show that ASPAI is the real client and TPC is merely its agent. However, none of these demonstrate an express and direct order from ASPAI authorizing respondents TPC and Cuales to enter into the loan. For the purpose of borrowing money, the agent's authority must be direct, categorical, and cannot be lightly implied.

After careful examination, the totality of respondents TPC and Cuales' evidence is not preponderant to sufficiently dispute the legal presumptions of fairness, regularity, and observance of the ordinary course of business accorded to loan transactions. All the more, their evidence is not clear and convincing to successfully overcome the prima facie presumptions of authenticity, genuineness, and regular execution of notarized documents.[53]

These supposed acts contemporaneous and subsequent to the loan do not outweigh the loan instruments' express language: that respondent Cuales, as its representative, executed the loan and bound respondent TPC as the debtor-borrower. Thus, respondent TPC shall be liable to pay petitioner PITC, the creditor,[54] the principal loan plus interests and other charges[55] when these become due.

Respondents TPC and Cuales cannot now abandon an obligation they voluntarily undertook, which is clearly evidenced by respondent Cuales' signature on the loan documents.

PITC is entitled to attorney's fees

We agree with petitioner PITC that it is entitled to the payment of attorney's fees based on Paragraph IX of the IFA.

Parties are free to stipulate in their agreement the recovery and payment of attorney's fees. Contractual attorney's fees are in the nature of liquidated damages.[56] However, courts, in the exercise of discretion, may temper the amount of attorney's fees if found unreasonable.

The trial court in this case found that the attorney's fees provided in the IFA were unreasonable and immoderate. Thus, it limited the amount from 25% of the total sum claimed by PITC to a fixed amount of P200,000.00. We shall not disturb the RTC's ruling inasmuch as PITC no longer contests the reduced amount.

WHEREFORE, the petition is hereby GRANTED. The Decision dated November 23, 2012 and Resolution dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 97458 are hereby REVERSED and SET ASIDE.

SO ORDERED.

Del Castillo, Jardeleza, and Tijam, JJ., concur.
Bersamin, J., on official business.

[1] Rollo, pp. 30-49; penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez concurring.

[2] Id. at 65-66.

[3] Id. at 99-108.

[4] "AUTHORIZING THE CREATION OF A PHILIPPINE INTERNATIONAL TRADING CORPORATION, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "The Philippine International Trading Corporation Law," signed into law on July 21, 1973.

[5] "REVISING THE CHARTER OF THE PHILIPPINE INTERNATIONAL TRADING CORPORATION," otherwise known as "The Revised Charter of the Philippine International Trading Corporation," signed into law on January 25, 1977.

[6] Rollo, pp. 68-74.

[7] Id. at 80-83.

[8] Id. at 90-93.

[9] Id. at 68-72.

[10] Id. at 80-81.

[11] Id. at 85.

[12] Id. at 33.

[13] Id. at 76-77.

[14] Id. at 90-92.

[15] Id. at 95.

[16] Id. at 97-98. Dated November 25, 1993.

[17] Id. at 99-114.

[18] Id. at 104-105.

[19] Id. at 116-125.

[20] Id. at 120-121.

[21] Id. at 59-60.

[22] Id. at 62-63.

[23] Id. at 60, citing *Co v. Admiral United Savings Bank*, 574 Phil. 609, 614 (2008).

[24] Id. at 48.

[25] Id. at 43-45.

[26] Id. at 45.

[27] Id. at 8.

[28] Id. at 12-15, citing *Adriatico Consortium, Inc. v. Land Bank of the Philippines*, 623 Phil. 1027, 1040 (2009) and *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 388 (2009).

[29] Rollo, pp. 14-17.

[30] CIVIL CODE, Article 1306.

[31] *Id.*, Article 1305.

[32] *Id.*, Article 1159 provides, "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Also see *Catungal v. Rodriguez*, 661 Phil. 484 (2011).

[33] See *Clemente v. Court of Appeals*, 771 Phil. 113 (2015).

[34] CIVIL CODE, Article 1370 provides, "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."

[35] RULES OF COURT, Rule 130, Section 9 provides, "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. However, 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: x x x; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto[.]"

[36] *Id.*

[37] CIVIL CODE, Article 1371.

[38] *Id.*, Article 1370 further provides, "If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former."

[39] RULES OF COURT, Rule 131, Section 1.

[40] *Id.*, Rule 131, Section 3(p).

[41] *Id.*, Rule 131, Section 3(q).

[42] *Quintos v. Development Bank of the Philippines*, 766 Phil. 601, 643 (2015) cf. RULES OF COURT, Rule 132, Section 30.

[43] CIVIL CODE, Article 1869 provides, "Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority."

[44] *Id.*, Article 1878(7).

[45] *Id.*, Article 1878(11).

[46] *Id.*, Article 1878(12).

[47] *Lim Pin v. Liao Tan*, 200 Phil. 685, 693 (1982), citing *Strong v. Repide*, 6 Phil. 680 (1906).

[48] *Lim Pin v. Liao Tan*, *id.*

[49] *Patrimonio v. Gutierrez*, 735 Phil. 146, 155 (2014).

[50] *Quintos v. Development Bank of the Philippines*, *supra* note 42.

[51] *Reyes v. Century Canning Corporation*, 626 Phil. 470, 482 (2010).

[52] *Peñalosa v. Santos*, 416 Phil. 12, 28 (2001).

[53] *Quintos v. Development Bank of the Philippines*, *supra* note 42.

[54] CIVIL CODE, Article 1953.

[55] Paragraph IV, IFA.

[56] See *Lim v. Security Bank Corporation*, 729 Phil. 345, 354 (2014); *Asian Construction and Development Corporation v. Cathay Pacific Steel Corporation*, 636 Phil. 127 (2010); *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, 546 Phil. 12, 20-21 (2007); *Barons Marketing Corporation v. Court of Appeals*, 349 Phil. 769, 780 (1998).

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