

PACIFIC BANKING CORPORATION, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND ROBERTO REGALA, JR., RESPONDENTS.

G.R. No. 72275, November 13, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision (pp. 21-31, Rollo) of the Intermediate Appellate Court (now Court of Appeals) in AC-G.R. C.V. No. 02753,[1] which modified the decision of the trial court against herein private respondent Roberto Regala, Jr., one of the defendants in the case for sum of money filed by Pacific Banking Corporation.

The facts of the case as adopted by the respondent appellate court from herein petitioner's brief before said court are as follows:

"On October 24, 1975, defendant Celia Syjuco Regala (hereinafter referred to as Celia Regala for brevity), applied for and obtained from the plaintiff the issuance and use of Pacificard credit card (Exhs. 'A', 'A-1'), under the "Terms and Conditions Governing the Issuance and Use of Pacificard (Exh. 'B' and hereinafter referred to as Terms and Conditions), a copy of which was issued to and received by the said defendant on the date of the application and expressly agreed that the use of the Pacificard is governed by said Terms and Conditions. On the same date, the defendant-appellant Roberto Regala, Jr., spouse of defendant Celia Regala, executed a 'Guarantor's Undertaking' (Exh. 'A-1-a') in favor of the appellee Bank, whereby the latter agreed 'jointly and severally of Celia Aurora Syjuco Regala, to pay the Pacific Banking Corporation upon demand, any and all indebtedness, obligations, charges or liabilities due and incurred by said Celia Aurora Syjuco Regala with the use of the Pacificard, or renewals thereof, issued in her favor by the Pacific Banking Corporation'. It was also agreed that 'any changes of or novation in the terms and conditions in connection with the issuance or use of the Pacificard, or any extension of time to pay such obligations, charges or liabilities shall not in any manner release me/us from responsibility hereunder, it being understood that I fully agree to such charges, novation or extension, and that this understanding is a continuing one and shall subsist and bind me until the liabilities of the said Celia Syjuco Regala have been fully satisfied or paid.'

"Plaintiff-appellee Pacific Banking Corporation has contracted with accredited business establishments to honor purchases of goods and/or services by Pacificard holders and the cost thereof to be advanced by the plaintiff-appellee for the account of the defendant cardholder, and the latter undertook to pay any statements of account rendered by the plaintiff-appellee for the advances thus made within thirty (30) days from the date of the statement, provided that any overdue account shall earn interest at the rate of 14% per annum from date of default.

"The defendant Celia Regala, as such Pacificard holder, had purchased goods and/or services on credit (Exh. 'C', 'C-1' to 'C-112') under her Pacificard, for which the plaintiff advanced the cost amounting to P92,803.98 at the time of the filing of the complaint.

"In view of defendant Celia Regala's failure to settle her account for the purchases made thru the use of the

Pacificard, a written demand (Exh. 'D') was sent to the latter and also to the defendant Roberto Regala, Jr. (Exh. ' ') under his 'Guarantor's Undertaking'.

"A complaint was subsequently filed in Court for defendant's (sic) repeated failure to settle their obligation. Defendant Celia Regala was declared in default for her failure to file her answer within the reglementary period. Defendant-appellant Roberto Regala, Jr., on the other hand, filed his Answer with Counterclaim admitting his execution of the 'Guarantor's Understanding, 'but with the understanding that his liability would be limited to P2,000.00 per month.'

"In view of the solidary nature of the liability of the parties, the presentation of evidence ex-parte as against the defendant Celia Regala was jointly held with the trial of the case as against the defendant Roberto Regala.

"After the presentation of plaintiff's testimonial and documentary evidence, fire struck the City Hall of Manila, including the court where the instant case was pending, as well as all its records.

"Upon plaintiff-appellee's petition for reconstitution, the records of the instant case were duly reconstituted. Thereafter, the case was set for pre-trial conference with respect to the defendant-appellant Roberto Regala on plaintiff-appellee's motion, after furnishing the latter a copy of the same. No opposition thereto having been interposed by defendant-appellant, the trial court set the case for pre-trial conference. Neither did said defendant-appellant nor his counsel appear on the date scheduled by the trial court for said conference despite due notice. Consequently, plaintiff-appellee moved that the defendant-appellant Roberto Regala be declared as in default and that it be allowed to present its evidence ex-parte, which motion was granted. On July 21, 1983, plaintiff-appellee presented its evidence ex-parte. (pp. 23-26, Rollo)

After trial, the court a quo rendered judgment on December 5, 1983, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment for the plaintiff and against the defendants condemning the latter, jointly and severally, to pay said plaintiff the amount of P92,803.98, with interest thereon at 14% per annum, compounded annually, from the time of demand on November 17, 1978 until said principal amount is fully paid; plus 15% of the principal obligation as and for attorney's fees and expense of suit; and the costs.

"The counterclaim of defendant Roberto Regala, Jr. is dismissed for lack of merit.

"SO ORDERED." (pp. 22-23, Rollo)

The defendants appealed from the decision of the court a quo to the Intermediate Appellate Court.

On August 12, 1985, respondent appellate court rendered judgment modifying the decision of the trial court. Private respondent Roberto Regala, Jr. was made liable only to the extent of the monthly credit limit granted to Celia Regala, i.e., at P2,000.00 a month and only for the advances made during the one year period of the card's effectivity counted from October 29, 1975 up to October 29, 1976. The dispositive portion of the decision states:

"WHEREFORE, the Judgment of the trial court dated December 5, 1983 is modified only as to appellant Roberto Regala, Jr., so as to make him liable only for the purchases made by defendant Celia Aurora Syjuco Regala with the use of the Pacificard from October 29, 1975 up to October 29, 1976 up to the amount of P2,000.00 per month only, with interest from the filing of the complaint up to the payment at the rate of 14% per annum without pronouncement as to costs." (p. 32, Rollo)

A motion for reconsideration was filed by Pacific Banking Corporation which the respondent appellate court denied for lack of merit on September 19, 1985 (p. 33, Rollo).

On November 8, 1985, Pacificard filed this petition. The petitioner contends that while the appellate court correctly recognized Celia Regala's obligation to Pacific Banking Corp. for the purchases of goods and services with the use of a Pacificard credit card in the total amount of P92,803.98 with 14% interest per annum, it erred in

limiting private respondent Roberto Regala, Jr.'s liability only for purchases made by Celia Regala with the use of the card from October 29, 1975 up to October 29, 1976 up to the amount of P2,000.00 per month with 14% interest from the filing of the complaint.

There is merit in this petition.

The pertinent portion of the "Guarantor's Undertaking" which private respondent Roberto Regala, Jr. signed in favor of Pacific Banking Corporation provides:

"I/We, the undersigned, hereby agree, jointly and severally with Celia Syjuco Regala to pay the Pacific Banking Corporation upon demand any and all indebtedness, obligations, charges or liabilities due and incurred by said Celia Syjuco Regala with the use of the Pacificard or renewals thereof issued in his favor by the Pacific Banking Corporation. Any changes of or Novation in the terms and conditions in connection with the issuance or use of said Pacificard, or any extension of time to pay such obligations, charges or liabilities shall not in any manner release me/us from the responsibility hereunder, it being understood that the undertaking is a continuing one and shall subsist and bind me/us until all the liabilities of the said Celia Syjuco Regala have been fully satisfied or paid." (p. 12, Rollo)

The undertaking signed by Roberto Regala, Jr. although denominated "Guarantor's Undertaking," was in substance a contract of surety. As distinguished from a contract of guaranty where the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor only in case the latter should fail to do so, in a contract of suretyship, the surety binds himself solidarily with the principal debtor (Art. 2047, Civil Code of the Philippines).

We need not look elsewhere to determine the nature and extent of private respondent Roberto Regala, Jr.'s undertaking. As a surety he bound himself jointly and severally with the debtor Celia Regala "to pay the Pacific Banking Corporation upon demand, any and all indebtedness, obligations, charges or liabilities due and incurred by said Celia Syjuco Regala with the use of Pacificard or renewals thereof issued in (her) favor by Pacific Banking Corporation." This undertaking was also provided as a condition in the issuance of the Pacificard to Celia Regala, thus:

"5. A Pacificard is issued to a Pacificard-holder against the joint and several signature of a third party and as such, the Pacificard-holder and the guarantor assume joint and several liabilities for any and all amount arising out of the use of the Pacificard." (p. 14, Rollo)

The respondent appellate court held that "all the other rights of the guarantor are not thereby lost by the guarantor becoming liable solidarily and therefore a surety." It further ruled that although the surety's liability is like that of a joint and several debtor, it does not make him the debtor but still the guarantor (or the surety), relying on the case of *Government of the Philippines v. Tizon*, G.R. No. L-22108, August 30, 1967, 20 SCRA 1182. Consequently, Article 2054 of the Civil Code providing for a limited liability on the part of the guarantor or debtor still applies.

It is true that under Article 2054 of the Civil Code, "(A) guarantor 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.[2] It is likewise not disputed by the parties that the credit limit granted to Celia Regala was P2,000.00 per month and that Celia Regala succeeded in using the card beyond the original period of its effectivity, October 29, 1979. We do not agree however, that Roberto Jr.'s liability should be limited to that extent. Private respondent Roberto Regala, Jr., as surety of his wife, expressly bound himself up to the extent of the debtor's (Celia) indebtedness likewise expressly waiving any "discharge in case of any change or novation of the terms and conditions in connection with the issuance of the Pacificard credit card." Roberto, in fact, made his commitment as a surety a continuing

one, binding upon himself until all the liabilities of Celia Regala have been fully paid. All these were clear under the "Guarantor's Undertaking" Roberto signed, thus:

"x x x. Any changes of or novation in the terms and conditions in connection with the issuance or use of said Pacificard, or any extension of time to pay such obligations, charges or liabilities shall not in any manner release me/us from the responsibility hereunder, it being understood that the undertaking is a continuing one and shall subsist and bind me/us until all the liabilities of the said Celia Syjuco Regala have been fully satisfied or paid." (p. 12, supra; underscoring supplied)

Private respondent Roberto Regala, Jr. had been made aware by the terms of the undertaking of future changes in the terms and conditions governing the issuance of the credit card to his wife and that notwithstanding, he voluntarily agreed to be bound as a surety. As in guaranty, a surety may secure additional add future debts of the principal debtor the amount of which is not yet known (see Article 2053, supra).

The application by respondent court of the ruling in *Government v. Tizon*, supra is misplaced. It was held in that case that:

"x x x, although the defendants bound themselves in solidum, the liability of the Surety under its bond would arise only if its co-defendants, the principal obligor, should fail to comply with the contract. To paraphrase the ruling in the case of *Municipality of Orion vs. Concha*, the liability of the Surety is 'consequent upon the liability' of Tizon, or 'so dependent on that of the principal debtor' that the Surety 'is considered in law as being the same party as the debtor in relation to whatever is adjudged, touching the obligation of the latter'; or the liabilities of the the two defendants herein 'are so interwoven and dependent as to be inseparable.' Changing the expression, if the defendants are held liable, their liability to pay the plaintiff would be solidary, but the nature of the Surety's undertaking is such that it does not incur liability unless and until the principal debtor is held liable."

A guarantor or surety does not incur liability unless the principal debtor is held liable. It is in this sense that a surety, although solidarily liable with the principal debtor, is different from the debtor. It does not mean, however, that the surety cannot be held liable to the same extent as the principal debtor. The nature and extent of the liabilities of a guarantor or a surety is determined by the clauses in the contract of suretyship (see *PCIB v. CA*, L-34959, March 18, 1988, 159 SCRA 24).

ACCORDINGLY, the petition is GRANTED. The questioned decision of respondent appellate court is SET ASIDE and the decision the trial court is REINSTATED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Feliciano, and Grino-Aquino, JJ., concur.

[1] Entitled "Pacific Banking Corporation, Plaintiff-Appellee versus Celia Aurora Syjuco Regala, et. al., Defendants, versus Roberto Regala, Jr., Defendant-Appellant."

[2] In *Hospicio de San Jose v. Fidelity and Surety, Co.*, G.R. No. 30427, March 11, 1929, Article 2054 of the Civil Code was applied to a contract of surety.

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