

**J. ANTONIO AGUENZA, PETITIONER, VS. METROPOLITAN BANK
& TRUST CO., VITALIADO P. ARRIETA, LILIA PEREZ, PATRICIO
PEREZ AND THE INTERMEDIATE APPELLATE COURT,
RESPONDENTS.**

G.R. No. 74336. April 07, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us is a petition for review on certiorari seeking the reversal of the Decision[1] of the Intermediate Appellate Court (now the Court of Appeals)[2] finding petitioner J. Antonio Aguenza liable under a continuing surety agreement to pay private respondent Metropolitan Bank & Trust Company (hereafter, Metrobank) a loan jointly obtained by the General Manager and a bookkeeper of Intertrade, a corporation of which petitioner is President and in whose behalf petitioner had, in the past, obtained credit lines.

The following facts are not disputed:

On February 28, 1977, the Board of Directors of Intertrade, through a Board Resolution, authorized and empowered petitioner and private respondent Vitaliado Arrieta, Intertrade's President and Executive Vice-President, respectively, to jointly apply for and open credit lines with private respondent Metrobank. Pursuant to such authority, petitioner and private respondent Arrieta executed several trust receipts from May to June, 1977, the aggregate value of which amounted to P562,443.46, with Intertrade as the entrustee and private respondent Metrobank as the entruster.

On March 14, 1977, petitioner and private respondent Arrieta executed a Continuing Suretyship Agreement whereby both bound themselves jointly and severally with Intertrade to pay private respondent Metrobank whatever obligation Intertrade incurs, but not exceeding the amount of P750,000.00.

In this connection, private respondent Metrobank's Debit Memo to Intertrade dated March 22, 1978 showed full settlement of the letters of credit covered by said trust receipts in the total amount of P562,443.46.

On March 21, 1978, private respondents Arrieta and Lilia P. Perez, a bookkeeper in the employ of Intertrade, obtained a P500,000.00 loan from private respondent Metrobank. Both executed a Promissory Note in favor of said bank in the amount of P500,000.00. Under said note, private respondents Arrieta and Perez promised to pay said amount, jointly and severally, in twenty five (25) equal installments of P20,000.00 each starting on April 20, 1979 with interest of 18.704% per annum, and in case of default, a further 8% per annum.

Private respondents Arrieta and Perez defaulted in the payment of several installments, thus resulting in the entire obligation becoming due and demandable. In 1979, private respondent Metrobank instituted suit against Intertrade, Vitaliado Arrieta, Lilia Perez and her husband, Patricio Perez, to collect not only the unpaid principal obligation, but also interests, fees and penalties, exemplary damages, as well as attorney's fees and costs of suit.

More than a year after private respondent Metrobank filed its original complaint, it filed an Amended Complaint dated August 30, 1980 for the sole purpose of impleading petitioner as liable for the loan made by private respondents Arrieta and Perez on March 21, 1978, notwithstanding the fact that such liability is being claimed on account of a Continuing Suretyship Agreement dated March 14, 1977 executed by petitioner and private respondent Arrieta specifically to guarantee the credit line applied for by and granted to, Intertrade, through petitioner and private respondent Arrieta who were specially given authority by Intertrade on February 28, 1977 to open credit lines with private respondent Metrobank. The obligations incurred by Intertrade under such credit lines were completely paid as evidenced by private respondent Metrobank's debit memo in the full amount of P562,443.46.

After hearing on the merits, the trial court rendered its decision absolving petitioner from liability and dismissing private respondent Metrobank's complaint against him, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

- 1) Declaring that the Promissory Note dated March 21, 1978, marked as Exhibit A, is the responsibility only of defendant Vitaliadio P. Arrieta and Lilia P. Perez, in their personal capacity and to the exclusion of defendant Intertrade and Marketing Co. Inc.;
- 2) Ordering defendants Vitaliadio P. Arrieta and Lilia P. Perez to pay, jointly and severally, the plaintiff the sum of P1,062,898.92, due as of September 15, 1982, plus interest, fees and penalties due from that date pursuant to the stipulations in the promissory note until the whole obligations shall have been paid and finally settled;
- 3) Ordering defendants Vitaliadio P. Arrieta and Lilia Perez to pay, jointly and severally, the plaintiff the sum of P44,000.00 by way of attorney's fees and other litigation expenses, albeit there is no award for exemplary damages;
- 4) Declaring defendant Patricio Perez, as conjugal partner of defendant Lilia Perez, as jointly and severally liable with her for what the latter is ordered to pay per this Decision;
- 5) Dismissing this case insofar as defendants Intertrade and Marketing Co., Inc. and J. Antonio Aguenza are concerned, although their respective counterclaims against the plaintiff are also ordered dismissed.

Costs of suit shall be paid, jointly and severally, by defendant Vitaliadio Arrieta and Lilia Perez.

SO ORDERED."[3]

Private respondents Arrieta and spouses Perez appealed the foregoing decision to the respondent Court of Appeals.

On February 11, 1986, respondent appellate court promulgated the herein assailed decision, the dispositive portion of which reads:

"WHEREFORE, the appealed decision is SET ASIDE and another one entered ordering Intertrade & Marketing Co., Inc., and J. Antonio Aguenza, jointly and severally:

- 1) to pay the Bank the principal of P440,000.00 plus its interest of 18.704% per annum computed from April 15, 1979 until full payment;
- 2) to pay the Bank the sum equivalent to 8% of P440,000.00 as penalty, computed from July 19, 1978 until full payment;
- 3) to pay the Bank the sum of P15,000.00 as attorney's fees.

The complaint is dismissed as against Lilia Perez, Patricio Perez and Vitaliado P. Arrieta who are absolved from liability.

All counterclaims are dismissed.

Costs against Intertrade and Aguenza, jointly and severally.

SO ORDERED."

In setting aside the decision of the trial court, respondent Court of Appeals ratiocinated such reversal in this wise:

"No dispute exists as to the promissory note and the suretyship agreement. The controversy centers on whether the note was a corporate undertaking and whether the suretyship agreement covered the obligation in the note.

As far as Intertrade is concerned, it seems clear from its answer that the loan evidenced by the note was a corporate liability. Paragraph 1.3 of the answer admits 'x x x defendant's obtention of the loan from the plaintiff x x x'; the affirmative defenses admit default, and invoking the defense of usury, plead adjustment of excessive interest which Intertrade refused to make.

On the basis of this admission, it is no longer in point to discuss, as the appealed decision does, the question of the capacity in which Arrieta and Perez signed the promissory note, Intertrade's admission of its corporate liability being admission also that the signatories signed the note in a representative capacity. The Bank itself gave corroboration with its insistence on Intertrade's liability under the note. x x x

The stated purpose of the note is 'operating capital.' It cannot be contended that the words 'operating capital' refer to the capital requirements of Perez and Arrieta. In the first place, it was not shown that they were in business for themselves. Besides, Perez was only a bookkeeper of Intertrade with a salary of P800.00 a month x x x Their combined resources would not have been sufficient to justify a business loan of the note's magnitude. From these follows the only logical conclusion: that Arrieta and the Perez spouses are not liable on the note.

The surety agreement presents a different problem.

There is no question that Aguenza signed the agreement x x x Its second paragraph shows, typewritten in bold capitals, that the agreement was executed 'for and in consideration of any existing indebtedness to the Bank of INTERTRADE & MARKETING COMPANY, INC.' Nowhere in its entire text is it shown that its execution was for the benefit of Perez or Arrieta.

Aguenza feigns ignorance of the promissory note and claims his knowledge of it came only when he received summons. This is difficult to believe. As Intertrade's first letter to the Bank x x x shows, the Board of Directors and principal stockholders met to discuss the obligation. Aguenza was at the time president of Intertrade and acting chairman of its board x x x.

Aguenza also argues that the suretyship was executed to enable Intertrade to avail of letters of credit to finance importations, which had all been paid in full, and therefore the agreement was thereby terminated. Again, the agreement shows up the fallacy of this argument. The document is boldly denominated 'CONTINUING SURETYSHIP,' and paragraph VI thereof stipulates it to be a continuing one, 'to remain in force until written notice shall have been received by the Bank that it has been revoked by the surety x x x' In other words, the option to cancel, in writing, was given to the sureties; the evidence does not show any written notice of such cancellation. x x x

And, the argument that the agreement was executed as security for letters of credit that had already been paid is in itself confirmation that the suretyship was meant to benefit Intertrade. The trust receipts x x x and the bills of exchange x x x are all in the name of Intertrade.

The suretyship is both retrospective and prospective in its operation. Its wording covers all obligations of Intertrade existing as of its date as well as those that may exist thereafter. Hence, its coverage extends to the promissory note as well."[4]

Understandably, petitioner lost no time in bringing this case before us via a petition for review on certiorari on the following grounds:

"THE RESPONDENT COURT ERRED IN REVERSING AND [SETTING] ASIDE THE FINDING OF THE TRIAL COURT THAT THE LOAN OF P500,000.00 PROCURED 21 MARCH 1978 BY RESPONDENTS VITALIADO ARRIETA AND LILIA PEREZ IS NOT A CORPORATE LIABILITY OF RESPONDENT INTERTRADE AND THAT PETITIONER IS NOT LIABLE THEREON UNDER THE 'CONTINUING SURETYSHIP AGREEMENT' DATED 4 MARCH 1977.

THE CONCLUSION OF THE RESPONDENT COURT THAT THE LOAN OF P500,000.00 PROCURED 21 MARCH 1978 BY RESPONDENT VITALIADO ARRIETA AND LILIA PEREZ IS A CORPORATE LIABILITY OF RESPONDENT INTERTRADE AND CONSEQUENTLY RENDERING PETITIONER LIABLE IN HIS PERSONAL CAPACITY AS A SURETY UNDER THE 'CONTINUING SURETYSHIP' OF 4 MARCH 1977, IS GROSSLY ERRONEOUS AND PREMISED ON A MISAPPREHENSION OF FACTS.

THE CONCLUSIONS AND CONSTRUCTION REACHED BY RESPONDENT COURT FROM THE FACTS AND EVIDENCE OF RECORD, ARE INCORRECT RESULTING IN AN ERRONEOUS DECISION GRAVELY PREJUDICIAL TO THE SUBSTANTIAL RIGHTS OF PETITIONER."[5]

The petition has merit.

The principal reason for respondent appellate court's reversal of the trial court's absolution of petitioner is its finding that the loan made by private respondent Arrieta and Lilia Perez were admitted by Intertrade to be its own obligation.

After a careful scrutiny of the records, however, we find and we so rule that there is neither factual nor legal basis for such a finding by respondent Appellate Court.

First, the general rule that "the allegations, statements, or admissions contained in a pleading are conclusive as against the pleader"[6] is not an absolute and inflexible rule[7] and is subject to exceptions. Rule 129, Section 4, of the Rules of Evidence, provides:

"Section 4. Judicial admissions. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." (Underlining supplied)

In other words, an admission in a pleading on which a party goes to trial may be contradicted by showing that it was made by improvidence or mistake or that no such admission was made, i.e., "not in the sense in which the admission was made to appear or the admission was taken out of context." [8]

In the case at bench, we find that the respondent Court of Appeals committed an error in appreciating the "Answer" filed by the lawyer of Intertrade as an admission of corporate liability for the subject loan. A careful study of the responsive pleading filed by Atty. Francisco Pangilinan, counsel for Intertrade, would reveal that there was neither express nor implied admission of corporate liability warranting the application of the general rule. Thus, the alleged judicial admission may be contradicted and controverted because it was taken out of context and no admission was made at all.

In any event, assuming arguendo that the responsive pleading did contain the aforesaid admission of corporate

liability, the same may not still be given effect at all. As correctly found by the trial court, the alleged admission made in the answer by the counsel for Intertrade was "without any enabling act or attendant ratification of corporate act,"[9] as would authorize or even ratify such admission. In the absence of such ratification or authority, such admission does not bind the corporation.

Second, the respondent appellate court likewise adjudged Intertrade liable because of the two letters emanating from the office of Mr. Arrieta which the respondent court considered "as indicating the corporate liability of the corporation." [10] These documents and admissions cannot have the effect of a ratification of an unauthorized act. As we elucidated in the case of *Vicente v. Geraldez*, [11] "ratification can never be made on the part of the corporation by the same persons who wrongfully assume the power to make the contract, but the ratification must be by the officer as governing body having authority to make such contract." In other words, the unauthorized act of respondent Arrieta can only be ratified by the action of the Board of Directors and/or petitioner Aguenza jointly with private respondent Arrieta.

We must emphasize that Intertrade has a distinct personality separate from its members. The corporation transacts its business only through its officers or agents. Whatever authority these officers or agents may have is derived from the Board of Directors or other governing body unless conferred by the charter of the corporation. An officer's power as an agent of the corporation must be sought from the statute, charter, the by-laws, as in a delegation of authority to such officer, or the acts of the Board of Directors formally expressed or implied from a habit or custom of doing business. [12]

Thirdly, we note that the only document to evidence the subject transaction was the promissory note dated March 21, 1978 signed by private respondents Arrieta and Lilia Perez. There is no indication in said document as to what capacity the two signatories had in affixing their signatures thereon.

It is noted that the subject transaction is a loan contract for P500,000.00 under terms and conditions which are stringent, if not onerous. The power to borrow money is one of those cases where even a special power of attorney is required. [13] In the instant case, there is invariably a need of an enabling act of the corporation to be approved by its Board of Directors. As found by the trial court, the records of this case is bereft of any evidence that Intertrade through its Board of Directors, conferred upon Arrieta and Lilia Perez the authority to contract a loan with Metrobank and execute the promissory note as a security therefor. Neither a board resolution nor a stockholder's resolution was presented by Metrobank to show that Arrieta and Lilia Perez were empowered by Intertrade to execute the promissory note. [14]

The respondents may argue that the actuation of Arrieta and Lilia Perez was in accordance with the ordinary course of business usages and practices of Intertrade. However, this contention is devoid of merit because the prevailing practice in Intertrade was to explicitly authorize an officer to contract loans in behalf of the corporation. This is evidenced by the fact that previous to the controversy, the Intertrade Board of Directors, through a board resolution, jointly empowered and authorized petitioner and respondent Arrieta to negotiate, apply for, and open credit lines with Metrobank. [15] The participation of these two was mandated to be joint and not separate and individual.

In the case at bench, only respondent Arrieta, together with a bookkeeper of the corporation, signed the promissory notes, without the participation and approval of petitioner Aguenza. Moreover, the enabling corporate act on this particular transaction has not been obtained. Neither has it been shown that any provision of the charter or any other act of the Board of Directors exists to confer power on the Executive Vice President acting alone and without the concurrence of its President, to execute the disputed document. [16]

Thus, proceeding from the premise that the subject loan was not the responsibility of Intertrade, it follows that the

undertaking of Arrieta and the bookkeeper was not an undertaking covered by the Continuing Suretyship Agreement. The rule is that a contract of surety is never presumed; it must be express and cannot extend to more than what is stipulated.[17] It is strictly construed against the creditor, every doubt being resolved against enlarging the liability of the surety.

The present obligation incurred in subject contract of loan, as secured by the Arrieta and Perez promissory note, is not the obligation of the corporation and petitioner Aguenza, but the individual and personal obligation of private respondents Arrieta and Lilia Perez.

WHEREFORE, the petition is GRANTED, and the questioned decision of the Court of Appeals[18] dated February 11, 1986 is REVERSED and SET ASIDE. The judgment of the trial court dated February 29, 1984 is hereby REINSTATED.

No Costs.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Penned by Associate Justice Serafin E. Camilon and concurred in by Associate Justices Crisolito Pascual, Jose C. Campos, Jr. and Desiderio P. Jurado and promulgated on February 11, 1986 in AC-G.R. CV No. 04371 (Civil Case No. 124433, Regional Trial Court-NCJR-Manila), Rollo, pp. 56-61.

[2] Second Civil Cases Division.

[3] Decision of the Trial Court dated February 28, 1984, as quoted in the Memorandum of Petitioner dated July 15, 1988, p. 9, Rollo, p. 131.

[4] Decision of the Court of Appeals (formerly Intermediate Appellate Court) in AC-G.R. CV No. 14371 dated February 11, 1986, pp. 3-5, Rollo, pp. 58-60.

[5] Memorandum of Petitioner dated July 15, 1988, pp. 10-11, Rollo, pp.132-133.

[6] Cunanan v. Amparo, 80 Phil. 227 [1948].

[7] Gardner v. Court of Appeals, 131 SCRA 585 [1984], citing Granada v. Philippine National Bank, 18 SCRA 1 [1966].

[8] Evidence of Francisco, 2nd edition [1994], p. 36.

[9] Decision of the Trial Court dated February 28, 1984, as quoted in the Petition dated June 16, 1986, p. 9, Rollo, p.37.

[10] Decision of the Court of Appeals (formerly Intermediate Appellate Court) in AC-G.R. CV No. 04371 dated February 11, 1986, pp. 3-4, Rollo, pp. 58-59.

[11] 52 SCRA 210 [1973].

[12] Boyer-Roxas v. Court of Appeals, 211 SCRA 470 [1992], citing Western Agro Industrial Corporation v. Court of Appeals, 188 SCRA 709 [1990] and Vicente v. Geraldez, 52 SCRA 210 [1973].

[13] Art. 1878, New Civil Code.

[14] Decision of the Trial Court dated February 28, 1984, as quoted in the Petition dated June 16, 1986, p.9, Rollo, p.37.

[15] Quoted from the Petition dated June 16, 1986, pp. 16-17, Rollo, pp.44-45.

[16] Decision of the Trial Court dated February 28, 1984, quoted in the Petition dated June 16, 1986, p. 9, Rollo, p. 37.

[17] Article 2055, New Civil Code; Traders Insurance & Surety Co. vs. Dy Eng Giok, et al., 104 Phil. 806 [1958].

[18] Formerly Intermediate Appellate Court.

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