

PRUDENTIAL BANK, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, PHILIPPINE RAYON MILLS INC. AND ANACLETO R. CHI, RESPONDENTS.*G.R. No. 74886. December 03, 1992*

Ponente: DAVIDE, JR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-74886/>**DAVIDE, JR, J.:**

Petitioner seeks to review and set aside the decision^[1] of public respondent Intermediate Appellate Court (now Court of Appeals), dated 10 March 1986, in AC-G.R. No. 66733 which affirmed in toto the 15 June 1978 decision of Branch 9 (Quezon City) of the then Court of First Instance (now Regional Trial Court) of Rizal in Civil Case No. Q-19312. The latter involved an action instituted by the petitioner for the recovery of a sum of money representing the amount paid by it to the Nissho Company Ltd. of Japan for textile machinery imported by the defendant, now private respondent, Philippine Rayon Mills, Inc. (hereinafter Philippine Rayon), represented by co-defendant Anacleto R. Chi.

The facts which gave rise to the instant controversy are summarized by the public respondent as follows:

"On August 8, 1962, defendant-appellant Philippine Rayon Mills, Inc. entered into a contract with Nissho Co., Ltd. of Japan for the importation of textile machineries under a five-year deferred payment plan (Exhibit B, Plaintiff's Folder of Exhibits, p. 2). To effect payment for said machineries, the defendant-appellant applied for a commercial letter of credit with the Prudential Bank and Trust Company in favor of Nissho. By virtue of said application, the Prudential Bank opened Letter of Credit No. DPP-63762 for \$128,548.78 (Exhibit A, *Ibid.*, p. 1). Against this letter of credit, drafts were drawn and issued by Nissho (Exhibits X, X-1 to X-11, *Ibid.*, pp. 65, 66 to 76), which were all paid by the Prudential Bank through its correspondent in Japan, the Bank of Tokyo, Ltd. As indicated on their faces, two of these drafts (Exhibits X and X-1, *Ibid.*, pp. 65-66) were accepted by the defendant-appellant through its president, Anacleto R. Chi, while the others were not (Exhibits X-2 to X-11, *Ibid.*, pp. 66 to 76).

Upon the arrival of the machineries, the Prudential Bank indorsed the shipping documents to the defendant-appellant which accepted delivery of the same. To enable the defendant-appellant to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President (sic) of defendant-appellant company (Exhibit C, *Ibid.*, p. 13).

At the back of the trust receipt is a printed form to be accomplished by two sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the defendant-appellant fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. The defendant-appellant was able to take delivery of the textile machineries and installed the same at its factory site at 69 Obudan Street, Quezon City.

Sometime in 1967, the defendant-appellant ceased business operation (sic). On December 29, 1969, defendant-appellant's factory was leased by Yupangco Cotton Mills for an annual rental of P200,000.00 (Exhibit I, *Ibid.*, p. 22). The lease was renewed on January 3, 1973 (Exhibit J, *Ibid.*, p. 26). On January 5, 1974,

all the textile machineries in the defendant-appellant's factory were sold to AIC Development Corporation for P300,000.00 (Exhibit K, Ibid., p. 29).

The obligation of the defendant-appellant arising from the letter of credit and the trust receipt remained unpaid and unliquidated. Repeated formal demands (Exhibits U, V, and W, Ibid., pp. 62, 63, 64) for the payment of the said trust receipt yielded no result. Hence, the present action for the collection of the principal amount of P956,384.95 was filed on October 3, 1974 against the defendant-appellant and Anacleto R. Chi. In their respective answers, the defendants interposed identical special defenses, viz., the complaint states no cause of action; if there is, the same has prescribed; and the plaintiff is guilty of laches."^[2]

On 15 June 1978, the trial court rendered its decision the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered sentencing the defendant Philippine Rayon Mills, Inc. to pay plaintiff the sum of P153,645.22, the amounts due under Exhibits "X" & "X-1", with interest at 6% per annum beginning September 15, 1974 until fully paid.

Insofar as the amounts involved in drafts Exhs. "X" (sic) to "X-11", inclusive, the same not having been accepted by defendant Philippine Rayon Mills, Inc., plaintiff's cause of action thereon has not accrued, hence, the instant case is premature.

Insofar as defendant Anacleto R. Chi is concerned, the case is dismissed. Plaintiff is ordered to pay defendant Anacleto R. Chi the sum of P20,000.00 as attorney's fees.

With costs against defendant Philippine Rayon Mills, Inc.

SO ORDERED."^[3]

Petitioner appealed the decision to the then Intermediate Appellate Court. In urging the said court to reverse or modify the decision, petitioner alleged in its Brief that the trial court erred in (a) disregarding its right to reimbursement from the private respondents for the entire unpaid balance of the imported machines, the total amount of which was paid to the Nissho Company Ltd., thereby violating the principle of the third party payor's right to reimbursement provided for in the second paragraph of Article 1236 of the Civil Code and under the rule against unjust enrichment; (b) refusing to hold Anacleto R. Chi, as the responsible officer of defendant corporation, liable under Section 13 of P.D. No. 115 for the entire unpaid balance of the imported machines covered by the bank's trust receipt (Exhibit "C"); (c) finding that the solidary guaranty clause signed by Anacleto R. Chi is not a guaranty at all; (d) controverting the judicial admissions of Anacleto R. Chi that he is at least a simple guarantor of the said trust receipt obligation; (e) contravening, based on the assumption that Chi is a simple guarantor, Articles 2059, 2060 and 2062 of the Civil Code and the related evidence and jurisprudence which provide that such liability had already attached; (f) contravening the judicial admissions of Philippine Rayon with respect to its liability to pay the petitioner the amounts involved in the drafts (Exhibits "X", "X-1" to "X-11"); and (g) interpreting "sight" drafts as Rollo, requiring acceptance by Philippine Rayon before the latter could be held liable thereon.^[4]

In its decision, public respondent sustained the trial court in all respects. As to the first and last assigned errors, it ruled that the provision on unjust enrichment, Article 2142 of the Civil Code, applies only if there is no express contract between the parties and there is a clear showing that the payment is justified. In the instant case, the relationship existing between the petitioner and Philippine Rayon is governed by specific contracts, namely the application for letters of credit, the promissory note, the drafts and the trust receipt. With respect to the last ten (10) drafts (Exhibits "X-2" to "X-11") which had not been presented to and were not accepted by Philippine Rayon, petitioner was not justified in unilaterally paying the amounts stated therein. The public respondent did not agree with the petitioner's claim that the drafts were sight drafts which did not require presentment for acceptance

to Philippine Rayon because paragraph 8 of the trust receipt presupposes prior acceptance of the drafts. Since the ten (10) drafts were not presented and accepted, no valid demand for payment can be made.

Public respondent also disagreed with the petitioner's contention that private respondent Chi is solidarily liable with Philippine Rayon pursuant to Section 13 of P.D. No. 115 and based on his signature on the solidary guaranty clause at the dorsal side of the trust receipt. As to the first contention, the public respondent ruled that the civil liability provided for in said Section 13 attaches only after conviction. As to the second, it expressed misgivings as to whether Chi's signature on the trust receipt made the latter automatically liable thereon because the so-called solidary guaranty clause at the dorsal portion of the trust receipt is to be signed not by one (1) person alone, but by two (2) persons; the last sentence of the same is incomplete and unsigned by witnesses; and it is not acknowledged before a notary public. Besides, even granting that it was executed and acknowledged before a notary public, Chi cannot be held liable therefore because the records fail to show that petitioner had either exhausted the properties of Philippine Rayon or had resorted to all legal remedies as required in Article 2058 of the Civil Code. As provided for under Articles 2052 and 2054 of the Civil Code, the obligation of a guarantor is merely accessory and subsidiary, respectively. Chi's liability would therefore arise only when the principal debtor fails to comply with his obligation.[5]

Its motion to reconsider the decision having been denied by the public respondent in its Resolution of 11 June 1986,[6] petitioner filed the instant petition on 31 July 1986 submitting the following legal issues:

"I. WHETHER OR NOT THE RESPONDENT APPELLATE COURT GRIEVOUSLY ERRED IN DENYING PETITIONER'S CLAIM FOR FULL REIMBURSEMENT AGAINST THE PRIVATE RESPONDENTS FOR THE PAYMENT PETITIONER MADE TO NISSHO CO. LTD. FOR THE BENEFIT OF PRIVATE RESPONDENT UNDER ART. 1283 OF THE NEW CIVIL CODE OF THE PHILIPPINES AND UNDER THE GENERAL PRINCIPLE AGAINST UNJUST ENRICHMENT;

II. WHETHER OR NOT RESPONDENT CHI IS SOLIDARILY LIABLE UNDER THE TRUST RECEIPT (EXH. C);

III. WHETHER OR NOT ON THE BASIS OF THE JUDICIAL ADMISSIONS OF RESPONDENT CHI HE IS LIABLE THEREON AND TO WHAT EXTENT;

IV. WHETHER OR NOT RESPONDENT CHI IS MERELY A SIMPLE GUARANTOR; AND IF SO, HAS HIS LIABILITY AS SUCH ALREADY ATTACHED;

V. WHETHER OR NOT AS THE SIGNATORY AND RESPONSIBLE OFFICER OF RESPONDENT PHIL. RAYON RESPONDENT CHI IS PERSONALLY LIABLE PURSUANT TO THE PROVISION OF SECTION 13, P.D. 115;

VI. WHETHER OR NOT RESPONDENT PHIL. RAYON IS LIABLE TO THE PETITIONER UNDER THE TRUST RECEIPT (EXH. C);

VIII. WHETHER OR NOT ON THE BASIS OF THE JUDICIAL ADMISSIONS RESPONDENT PHIL. RAYON IS LIABLE TO THE PETITIONER UNDER THE DRAFTS (EXHS. X, X-1 TO X-11) AND TO WHAT EXTENT;

VIII. WHETHER OR NOT SIGHT DRAFTS REQUIRE PRIOR ACCEPTANCE FROM RESPONDENT PHIL. RAYON BEFORE THE LATTER BECOMES LIABLE TO PETITIONER."[7]

In the Resolution of 12 March 1990,[8] this Court gave due course to the petition after the filing of the Comment thereto by private respondent Anacleto Chi and of the Reply to the latter by the petitioner; both parties were also required to submit their respective memoranda which they subsequently complied with.

As We see it, the issues may be reduced as follows:

1. Whether presentment for acceptance of the drafts was indispensable to make Philippine Rayon liable thereon;
2. Whether Philippine Rayon is liable on the basis of the trust receipt;
3. Whether private respondent Chi is jointly and severally liable with Philippine Rayon for the obligation sought to be enforced and if not, whether he may be considered a guarantor; in the latter situation, whether the case should have been dismissed on the ground of lack of cause of action as there was no prior exhaustion of Philippine Rayon's properties.

Both the trial court and the public respondent ruled that Philippine Rayon could be held liable for the two (2) drafts, Exhibits "X" and "X-1", because only these appear to have been accepted by the latter after due presentment. The liability for the remaining ten (10) drafts (Exhibits "X-2" to "X-11" inclusive) did not arise because the same were not presented for acceptance. In short, both courts concluded that acceptance of the drafts by Philippine Rayon was indispensable to make the latter liable thereon. We are unable to agree with this proposition. The transaction in the case at bar stemmed from Philippine Rayon's application for a commercial letter of credit with the petitioner in the amount of \$128,548.78 to cover the former's contract to purchase and import loom and textile machinery from Nissho Company, Ltd. of Japan under a five-year deferred payment plan. Petitioner approved the application. As correctly ruled by the trial court in its Order of 6 March 1975:[9]

"x x x By virtue of said Application and Agreement for Commercial Letter of Credit, plaintiff bank[10] was under obligation to pay through its correspondent bank in Japan the drafts that Nisso (sic) Company, Ltd., periodically drew against said letter of credit from 1963 to 1968, pursuant to plaintiff's contract with the defendant Philippine Rayon Mills, Inc. In turn, defendant Philippine Rayon Mills, Inc., was obligated to pay plaintiff bank the amounts of the drafts drawn by Nisso (sic) Company, Ltd. against said plaintiff bank together with any accruing commercial charges, interest, etc. pursuant to the terms and conditions stipulated in the Application and Agreement of Commercial Letter of Credit Annex "A"."

A letter of credit is defined as an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit.[11] Through a letter of credit, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon.[12] In the instant case then, the drawee was necessarily the herein petitioner. It was to the latter that the drafts were presented for payment. In fact, there was no need for acceptance as the issued drafts are sight drafts. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law (NIL).[13] The said section reads:

"SEC. 143. When presentment for acceptance must be made. -- Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable."

Obviously then, sight drafts do not require presentment for acceptance.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer;[14] this may be

done in writing by the drawee in the bill itself, or in a separate instrument.[15]

The parties herein agree, and the trial court explicitly ruled, that the subject drafts are sight drafts. Said the latter:

"x x x In the instant case the drafts being at sight, they are supposed to be payable upon acceptance unless plaintiff bank has given the Philippine Rayon Mills Inc. time within which to pay the same. The first two drafts (Annexes C & D, Exh. X & X-1) were duly accepted as indicated on their face (sic), and upon such acceptance should, have been paid forthwith. These two drafts were not paid and although Philippine Rayon Mills ought to have paid the same, the fact remains that until now they are still unpaid.[16]

Corollarily, they are, pursuant to Section 7 of the NIL, payable on demand. Section 7 provides:

"SEC. 7. When payable on demand. -- An instrument is payable on demand -?

(a) When so it is expressed to be payable on demand, or at sight, or on presentation; or

(b) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand." (underscoring supplied)

Paragraph 8 of the Trust Receipt which reads: "My/our liability for payment at maturity of any accepted draft, bill of exchange or indebtedness shall not be extinguished or modified"[17] does not, contrary to the holding of the public respondent, contemplate prior acceptance by Philippine Rayon, but by the petitioner. Acceptance, however, was not even necessary in the first place because the drafts which were eventually issued were sight drafts. And even if these were not sight drafts, thereby necessitating acceptance, it would be the petitioner -- and not Philippine Rayon -- which had to accept the same for the latter was not the drawee. Presentment for acceptance is defined as the production of a bill of exchange to a drawee for acceptance.[18] The trial court and the public respondent, therefore, erred in ruling that presentment for acceptance was an indispensable requisite for Philippine Rayon's liability on the drafts to attach. Contrary to both courts' pronouncements, Philippine Rayon immediately became liable thereon upon petitioner's payment thereof. Such is the essence of the letter of credit issued by the petitioner. A different conclusion would violate the principle upon which commercial letters of credit are founded because in such a case, both the beneficiary and the issuer, Nissho Company Ltd. and the petitioner, respectively, would be placed at the mercy of Philippine Rayon even if the latter had already received the imported machinery and the petitioner had fully paid for it. The typical setting and purpose of a letter of credit are described in *Hibernia Bank and Trust Co. vs. J. Aron & CO., Inc.*,[19] thus:

1. "Commercial letters of credit have come into general use in international sales transactions where much time necessarily elapses between the sale and the receipt by a purchaser of the merchandise, during which interval great price changes may occur. Buyers and sellers struggle for the advantage of position. The seller is desirous of being paid as surely and as soon as possible, realizing that the vendee at a distant point has it in his power to reject on trivial grounds merchandise on arrival, and cause considerable hardship to the shipper. Letters of credit meet this condition by affording celerity and certainty of payment. Their purpose is to insure to a seller payment of a definite amount upon presentation of documents. The bank deals only with documents. It has nothing to do with the quality of the merchandise. Disputes as to the merchandise shipped may arise and be litigated later between vendor and vendee, but they may not impede acceptance of drafts and payment by the issuing bank when the proper documents are presented."

The trial court and the public respondent likewise erred in disregarding the trust receipt and in not holding that Philippine Rayon was liable thereon. In *People vs. Yu Chai Ho*,[20] this Court explains the nature of a trust receipt by quoting *In re Dunlap Carpet Co.*,[21] thus:

"By this arrangement a banker advances money to an intending importer, and thereby lends the aid of capital, of credit, or of business facilities and agencies abroad, to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means; and therefore it is of the first importance that the fundamental factor in the transaction, the banker's advance of money and credit, should receive the amplest protection. Accordingly, in order to secure that the banker shall be repaid at the critical point -- that is, when the imported goods finally reach the hands of the intended vendee -- the banker takes the full title to the goods at the very beginning; he takes it as soon as the goods are bought and settled for by his payments or acceptances in the foreign country, and he continues to hold that title as his indispensable security until the goods are sold in the United States and the vendee is called upon to pay for them. This security is not an ordinary pledge by the importer to the banker, for the importer has never owned the goods, and moreover he is not able to deliver the possession; but the security is the complete title vested originally in the bankers, and this characteristic of the transaction has again and again been recognized and protected by the courts. Of course, the title is at bottom a security title, as it has sometimes been called, and the banker is always under the obligation to reconvey; but only after his advances have been fully repaid and after the importer has fulfilled the other terms of the contract."

As further stated in *National Bank vs. Viuda e Hijos de Angel Jose*,^[22] trust receipts:

"x x x [I]n a certain manner, x x x partake of the nature of a conditional sale as provided by the Chattel Mortgage Law, that is, the importer becomes absolute owner of the imported merchandise as soon as he has paid its price. The ownership of the merchandise continues to be vested in the owner thereof or in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale should be turned over to him by the importer or by his representative or successor in interest."

Under P.D. No. 115, otherwise known as the Trust Receipts Law, which took effect on 29 January 1973, a trust receipt transaction is defined as "any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called the 'trust receipt' wherein the trustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any one of the following: x x x."

It is alleged in the complaint that private respondents "not only have presumably put said machinery to good use and have profited by its operation and/or disposition but very recent information that (sic) reached plaintiff bank that defendants already sold the machinery covered by the trust receipt to Yupangco Cotton Mills," and that "as trustees of the property covered by the trust receipt, x x x and therefore acting in fiduciary (sic) capacity, defendants have willfully violated their duty to account for the whereabouts of the machinery covered by the trust receipt or for the proceeds of any lease, sale or other disposition of the same that they may have made, notwithstanding demands therefore; defendants have fraudulently misapplied or converted to their own use any money realized from the lease, sale, and other disposition of said machinery."^[23] While there is no specific prayer for the delivery to the petitioner by Philippine Rayon of the proceeds of the sale of the machinery covered by the trust receipt, such relief is covered by the general prayer for "such further and other relief as may be just and equitable on the premises."^[24] And although it is true that the petitioner commenced a criminal action for the violation of the Trust Receipts Law, no legal obstacle prevented it from enforcing the civil liability arising out of

the trust receipt in a separate civil action. Under Section 13 of the Trust Receipts Law, the failure of an entrustee to turn over the proceeds of the sale of goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article 315, paragraph 1(b) of the Revised Penal Code.[25] Under Article 33 of the Civil Code, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party in cases of defamation, fraud and physical injuries. Estafa falls under fraud.

We also conclude, for the reason hereinafter discussed, and not for that adduced by the public respondent, that private respondent Chi's signature in the dorsal portion of the trust receipt did not bind him solidarily with Philippine Rayon. The statement at the dorsal portion of the said trust receipt, which petitioner describes as a "solidary guaranty clause", reads:

"In consideration of the PRUDENTIAL BANK AND TRUST COMPANY complying with the foregoing, we jointly and severally agree and undertake to pay on demand to the PRUDENTIAL BANK AND TRUST COMPANY all sums of money which the said PRUDENTIAL BANK AND TRUST COMPANY may call upon us to pay arising out of or pertaining to, and/or in any event connected with the default of and/or non-fulfillment in any respect of the undertaking of the aforesaid:

PHILIPPINE RAYON MILLS, INC.

We further agree that the PRUDENTIAL BANK AND TRUST COMPANY does not have to take any steps or exhaust its remedy against aforesaid:

before making demand on me/us.

(Sgd.) Anacleto R. Chi

ANACLETO R. CHI"[26]

Petitioner insists that by virtue of the clear wording of the statement, specifically the clause "x x x we jointly and severally agree and undertake x x x," and the concluding sentence on exhaustion, Chi's liability therein is solidary.

In holding otherwise, the public respondent ratiocinates as follows:

"With respect to the second argument, we have our misgivings as to whether the mere signature of defendant-appellee Chi of (sic) the guaranty agreement, Exhibit "C-1", will make it an actionable document. It should be noted that Exhibit "C-1" was prepared and printed by the plaintiff-appellant. A perusal of Exhibit "C-1" shows, that it was to be signed and executed by two persons. It was signed only by defendant-appellee Chi. Exhibit "C-1" was to be witnessed by two persons, but no one signed in that capacity. The last sentence of the guaranty clause is incomplete. Furthermore, the plaintiff-appellant also failed to have the purported guarantee clause acknowledged before a notary public. All these show that the alleged guaranty provision was disregarded and, therefore, not consummated.

But granting arguendo that the guaranty provision in Exhibit "C-1" was fully executed and acknowledged still defendant-appellee Chi cannot be held liable thereunder because the records show that the plaintiff-appellant had neither exhausted the property of the defendant-appellant nor had it resorted to all legal remedies against the said defendant-appellant as provided in Article 2058 of the Civil Code. The obligation of a guarantor is merely accessory under Article 2052 of the Civil Code and subsidiary under Article 2054 of the Civil Code. Therefore, the liability of the defendant-appellee arises only when the principal debtor fails to comply with his obligation."[27]

Our own reading of the questioned solidary guaranty clause yields no other conclusion than that the obligation of Chi is only that of a guarantor. This is further bolstered by the last sentence which speaks of waiver of exhaustion, which, nevertheless, is ineffective in this case because the space therein for the party whose property may not be exhausted was not filled up. Under Article 2058 of the Civil Code, the defense of exhaustion (excussion) may be raised by a guarantor before he may be held liable for the obligation. Petitioner likewise admits that the questioned provision is a solidary guaranty clause, thereby clearly distinguishing it from a contract of surety. It, however, described the guaranty as solidary between the guarantors; this would have been correct if two (2) guarantors had signed it. The clause "we jointly and severally agree and undertake" refers to the undertaking of the two (2) parties who are to sign it or to the liability existing between themselves. It does not refer to the undertaking between either one or both of them on the one hand and the petitioner on the other with respect to the liability described under the trust receipt. Elsewise stated, their liability is not divisible as between them, i.e., it can be enforced to its full extent against any one of them.

Furthermore, any doubt as to the import or true intent of the solidary guaranty clause should be resolved against the petitioner. The trust receipt, together with the questioned solidary guaranty clause, is on a form drafted and prepared solely by the petitioner; Chi's participation therein is limited to the affixing of his signature thereon. It is, therefore, a contract of adhesion[28] as such, it must be strictly construed against the party responsible for its preparation.[29]

Neither can We agree with the reasoning of the public respondent that this solidary guaranty clause was effectively disregarded simply because it was not signed and witnessed by two (2) persons and acknowledged before a notary public. While indeed, the clause ought to have been signed by two (2) guarantors, the fact that it was only Chi who signed the same did not make his act an idle ceremony or render the clause totally meaningless. By his signing, Chi became the sole guarantor. The attestation by witnesses and the acknowledgement before a notary public are not required by law to make a party liable on the instrument. The rule is that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present; however, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that it be proved in a certain way, that requirement is absolute and indispensable.[30] With respect to a guaranty,[31] which is a promise to answer for the debt or default of another, the law merely requires that it, or some note or memorandum thereof, be in writing. Otherwise, it would be unenforceable unless ratified.[32] While the acknowledgement of a surety before a notary public is required to make the same a public document, under Article 1358 of the Civil Code, a contract of guaranty does not have to appear in a public document.

And now to the other ground relied upon by the petitioner as basis for the solidary liability of Chi, namely the criminal proceedings against the latter for the violation of P.D. No. 115. Petitioner claims that because of the said criminal-proceedings, Chi would be answerable for the civil liability arising therefrom pursuant to Section 13 of P.D. No. 115. Public respondent rejected this claim because such civil liability presupposes prior conviction as can be gleaned from the phrase "without prejudice to the civil liability arising from the criminal offense." Both are wrong. The said section reads:

"SEC. 13. Penalty Clause. -- The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein

responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense."

A close examination of the quoted provision reveals that it is the last sentence which provides for the correct solution. It is clear that if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense. The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the Revised Penal Code. The reason for this is obvious: corporations, partnerships, associations and other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liability arising from the criminal offense. This is the import of the clause "without prejudice to the civil liabilities arising from the criminal offense." And, as We stated earlier, since that violation of a trust receipt constitutes fraud under Article 33 of the Civil Code, petitioner was acting well within its rights in filing an independent civil action to enforce the civil liability arising therefrom against Philippine Rayon.

The remaining issue to be resolved concerns the propriety of the dismissal of the case against private respondent Chi. The trial court based the dismissal, and the respondent Court its affirmance thereof, on the theory that Chi is not liable on the trust receipt in any capacity -- either as surety or as guarantor -- because his signature at the dorsal portion thereof was useless; and even if he could be bound by such signature as a simple guarantor, he cannot, pursuant to Article 2058 of the Civil Code, be compelled to pay until after petitioner has exhausted and resorted to all legal remedies against the principal debtor, Philippine Rayon. The records fail to show that petitioner had done so.[33] Reliance is thus placed on Article 2058 of the Civil Code which provides:

"ART. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor."

Simply stated, there is as yet no cause of action against Chi.

We are not persuaded. Excussion is not a condition sine qua non for the institution of an action against a guarantor. In *Southern Motors, Inc. vs. Barbosa*,[34] this Court stated:

"4. Although an ordinary Personal guarantor -- not a mortgagor or pledgor -- may demand the aforementioned exhaustion, the creditor may, prior thereto, secure a judgment against said guarantor, who shall be entitled, however, to a deferment of the execution of said judgment against him until after the properties of the principal debtor shall have been exhausted to satisfy the obligation involved in the case."

There was then nothing procedurally objectionable in impleading private respondent Chi as a co-defendant in Civil Case No. Q-19312 before the trial court. As a matter of fact, Section 6, Rule 3 of the Rules of Court on permissive joinder of parties explicitly allows it. It reads:

"SEC. 6. Permissive joinder of parties. -- All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest."

This is the equity rule relating to multifariousness. It is based on trial convenience and is designed to permit the joinder of plaintiffs or defendants whenever there is a common question of law or fact. It will save the parties unnecessary work, trouble and expense.[35]

However, Chi's liability is limited to the principal obligation in the trust receipt plus all the accessories thereof including judicial costs; with respect to the latter, he shall only be liable for those costs incurred after being judicially required to pay.[36] Interest and damages, being accessories of the principal obligation, should also be paid; these, however, shall run only from the date of the filing of the complaint. Attorney's fees may even be allowed in appropriate cases.[37]

In the instant case, the attorney's fees to be paid by Chi cannot be the same as that to be paid by Philippine Rayon since it is only the trust receipt that is covered by the guaranty and not the full extent of the latter's liability. All things considered, he can be held liable for the sum of P10,000.00 as attorney's fees in favor of the petitioner.

Thus, the trial court committed grave abuse of discretion in dismissing the complaint as against private respondent Chi and condemning petitioner to pay him P20,000.00 as attorney's fees.

In the light of the foregoing, it would no longer be necessary to discuss the other issues raised by the petitioner.

WHEREFORE, the instant Petition is hereby GRANTED. The appealed Decision of 10 March 1986 of the public respondent in AC-G.R. CV No. 66733 and, necessarily, that of Branch 9 (Quezon City) of the then Court of First Instance of Rizal in Civil Case No. Q-19312 are hereby REVERSED and SET ASIDE and another is hereby entered:

1. Declaring private respondent Philippine Rayon Mills, Inc. liable on the twelve drafts in question (Exhibits "X", "X-1" to "X-11", inclusive) and on the trust receipt (Exhibit "C"), and ordering it to pay petitioner: (a) the amounts due thereon in the total sum of P956,384.95 as of 15 September 1974, with interest thereon at six percent (6%) per annum from 16 September 1974 until it is fully paid, less whatever may have been applied thereto by virtue of foreclosure of mortgages, if any; (b) a sum equal to ten percent (10%) of the aforesaid amount as attorney's fees; and (c) the costs.
2. Declaring private respondent Anacleto R. Chi secondarily liable on the trust receipt and ordering him to pay the face value thereof, with interest at the legal rate, commencing from the date of the filing of the complaint in Civil Case No. Q-19312 until the same is fully paid as well as the costs and attorney's fees in the sum of P10,000.00 if the writ of execution for the enforcement of the above awards against Philippine Rayon Mills, Inc. is returned unsatisfied.

Costs against private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 39-47; per Associate Justice Crisolito Pascual, concurred in by Associate Justices Jose C. Campos, Jr. and Serafin E. Camilon.

[2] Rollo, 39-41.

[3] Rollo, 81-83.

[4] Brief for Appellant, 1-4; Rollo, 85 et seq.

[5] Rollo, 45-46.

[6] Id., 48.

[7] Rollo, 16.

[8] Id., 131.

[9] Record on Appeal, 123.

[10] Herein petitioner.

[11] Black's Law Dictionary, Fifth ed., 813; DAVIDSON, KNOWLES, FORSYTHE AND JESPERSEN, Business Law, Principles and Cases, 1984 ed., 390.

[12] ROSE, Money and Capital Markets, 1983 ed., 692.

[13] Act. No. 2031.

[14] Section 132, NIL.

[15] Sections 133 and 134, Id.

[16] Rollo, 66.

[17] Id., 17.

[18] AGBAYANI, A.F., Commercial Laws of the Philippines, 1987 ed., vol. 1, 409, citing Windham Bank vs. Norton, 22 Conn. 213, 56 Am. Dec. 397.

[19] 134 Misc. 18, 21-22, 233 N.Y.S. 486, 490-491, cited in Johnston vs. State Bank, 195 N.W. 2d 126, 130-131 (Iowa 1972), and excerpted in CORMAN, Commercial Law, Cases and Materials, 1976 ed., 622.

[20] 53 Phil. 874, 876-877 [1928]; see also, Samo vs. People, 115 Phil. 346 [1962].

[21] 206 Fed., 726.

[22] 63 Phil. 814, 821 [1936].

[23] Record on Appeal, 6-7.

[24] Id., 9.

[25] Even before P.D. No. 115, these acts covered by Section 1 were already considered as estafa; see People vs. Yu Cha Ho, supra.; Samo vs. People, supra.; Robles vs. Court of Appeals, 199 SCRA 195 [1991].

[26] Record on Appeal, 43.

[27] Rollo, 45-46.

[28] Sweet Lines, Inc. vs. Teves, 83 SCRA 361 [1978]; Angeles vs. Calasanz, 135 SCRA 323 [1985].

[29] Western Guaranty Corp. vs. Court of Appeals, 187 SCRA 652 [1990]; BPI Credit Corp. vs. Court of Appeals, 204 SCRA 601 [1991].

[30] Article 1356, Civil Code.

[31] Article 2047 of the Civil Code defines it as follows:

"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."

[32] Article 1403 (2)(b), Civil Code.

[33] Rollo, 75.

[34] 99 Phil. 263, 268 [1956].

[35] FRANCISCO, V.J., The Revised Rules of Court, vol. I 1973 ed., 258.

[36] Second paragraph, Article 2055, Civil Code; see National Marketing Corp. vs. Marquez, 26 SCRA 722 [1969]; Republic vs. Pal-Fox Lumber Co., Inc., 43 SCRA 365 [1972].

[37] Plaridel Surety & Insurance Co., Inc. vs. P.L. Galang Machinery Co., Inc., 100 Phil. 679 [1957]; Philippine National Bank vs. Luzon Surety Co., Inc., 68 SCRA 207 [1975].

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