

RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS, PHILIPPINE BLOOMING MILLS, INC. AND ALFREDO CHING, RESPONDENTS.

G.R. No. 85396. October 27, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Will a Securities and Exchange Commission (SEC) Order suspending, during the pendency of a rehabilitation proceeding, payment of all claims against the principal debtor bar or preclude the creditor from recovering from the surety? Respondents Philippine Blooming Mills (PBM) and its Surety, Alfredo Ching, answer in the affirmative; petitioner Bank in the negative.

The facts:

On 4 May 1979, Alfredo Ching signed a 'Comprehensive Surety Agreement' with Rizal Commercial Banking Corporation (RCBC), binding himself to jointly and severally guarantee the prompt payment of all PBM obligations owing RCBC in the aggregate sum of Forty Million (P40,000,000.00) Pesos.

Between 8 September to 30 October 1980, PBM filed several applications for letters of credit with RCBC. Through said applications, PBM obligated itself, among other things, to pay on demand for all draft(s) drawn under or purporting to be drawn under the credits. Everything being in order, RCBC opened the corresponding letters of credit and imported various goods for PBM's account. In due time the imported goods arrived and were released, in trust, to PBM who acknowledged receipt thereof through various trust receipts. All in all, PBM's obligations stood at P7,982,649.08.

Less than a year later, or on 7 August 1981, RCBC filed a Complaint for collection of said sum against respondents PBM and Alfredo Ching with the then Court of First Instance of Pasig, docketed as CV-42333. Upon filing of a bond satisfactory to the Court, a Writ of Preliminary Attachment was issued against the assets and properties of respondents PBM and Ching on the same day. By way of special and affirmative defenses they alleged that "although the trust receipts stipulate due dates, the true intent and agreement of the parties was that the maturity dates of the trust receipts were to be extended at the end of the stipulated dates, as had been the customary practice of RCBC with PBM."

On 23 September 1981, PBM and Ching moved to discharge the attachment, which RCBC opposed. On 4 December 1981 the Court issued an Order lifting the attachment upon their filing of a satisfactory counter-bond.

Meanwhile, on 1 April 1982, PBM filed a Petition for Suspension of Payments with the Securities and Exchange Commission, docketed as SEC Case No. 2250, seeking at the same time its rehabilitation.

In an injunctive Order, dated 6 July 1982, all actions for claims against PBM pending before any Court or tribunal, in whatever stage the same may have been, were ordered suspended by the SEC in order to give the Commission the opportunity to pass upon the feasibility of any rehabilitation plans. And on 26 April 1988, SEC

approved the revised rehabilitation plan and ordered its implementation.

On 14 October 1982, RCBC pursued its claims with the Trial Court and filed, unopposed, a Motion for Summary Judgment in CV-42333, a motion for extension to file said opposition having been earlier withdrawn. RCBC contended that respondents PBM and Ching had not denied their indebtedness to RCBC and, therefore, no genuine issue was raised in the pleadings.

On 25 November 1982, the CFI rendered such summary judgment* in RCBC's favor, declaring:

"WHEREFORE, judgment is hereby rendered against the defendants (PBM and Ching) in favor of plaintiff (RCBC) ordering defendants to pay plaintiff jointly and severally the following:

"a) P7,982,649.08 inclusive of interest, service charges and penalties as of August 7, 1981 on account of their liability in solidum arising from the trust receipts and comprehensive surety agreements plus such other additional amount by way of interest, service charges and penalties from August 7, 1981 until fully paid; and

"b) P10,000.00 as attorney's fees.

"With costs against the defendants.

"SO ORDERED" (p. 192, Original Record).

On appeal, respondent Court of Appeals,* ruling that it was precipitate and improper for the lower Court to have continued with the proceedings despite the SEC Order of suspension, set aside the lower Court Decision and ordered it to hold in abeyance the determination of the merits invoked in CV-42333 pending the outcome of SEC Case No. 2250. On 6 October 1988, the Appellate Court denied RCBC's Motion for Reconsideration.

Hence, this Petition for Review, to which we gave due course on 31 May 1989, and required the filing of Memoranda by the parties, the last of which was submitted on 27 July 1989.

RCBC takes the position that the SEC injunctive Order pertains and affects only PBM, the corporation under rehabilitation, and that its right, as creditor, to proceed against respondent Ching, as Surety, is not affected by said Order. In fine, RCBC avers that to hold the injunctive Order applicable to both respondents PBM and Ching is to deprive RCBC of its right to proceed against the Surety based on the latter's separate and independent undertaking.

PBM and Ching counter that the liabilities incurred by PBM were corporate in character and, hence, as a corporate officer, Alfredo Ching cannot be held liable therefor; that the pendency of SEC Case No. 2250 and the rendition of an Order therein on 26 April 1988 implementing respondent PBM's rehabilitation plan must necessarily benefit the Surety, inasmuch as payment of PBM obligations must be made pursuant to that plan; and that the liability of the Surety can not be more than what would remain after payment of all the obligations of the principal. Moreover, they continue, it is usual for majority stockholders to act as co-signors with their respective corporations where promissory notes, collaterals or guaranty or security agreements are involved. Respondent Ching's action may, it is claimed, be classified as a corporate act.

Under the attendant facts and circumstances, we answer the question earlier posed in the negative.

Where an obligation expressly states a solidary liability, the concurrence of two or more creditors or two or more debtors in one and the same obligation implies that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation (Article 1207, Civil Code). The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously (Article 1216, Civil Code).

That there exists a Comprehensive Surety Agreement between RCBC and respondent Ching is admitted. There is

no escaping the attendant liability that binds respondent Ching, as Surety. He is charged as an original promisor by virtue of his primary obligation under the Suretyship Agreement. That Agreement is bare of words imputing to respondent Ching any liability other than that of a Surety who binds himself to insure a debt in his personal capacity, lacking consideration therefor notwithstanding (p. 94, Original Record). That respondent Ching acted for and on behalf of respondent PBM as part of its usual corporate procedure is not supported by the evidence nor the pleadings on record, nor the Agreement itself. We can not give any additional meaning to the plain language of the subject agreement. It is basic that the parties are bound by the terms of their contract, which is the law between them. As held in *Zenith Insurance Corporation vs Court of Appeals* (No. L-57957, 29 December 1982, 119 SCRA 485), the extent of a surety's liability is determined only by the clause of the contract of suretyship. It cannot be extended by implication, beyond the terms of the contract. Conversely, liability therefor may not be restricted unless expressly so stated.

Neither can respondent Ching seek refuge behind the SEC injunctive Order. Under Section 3 of P.D. 902-A, as amended by P.D. 1758, the Commission is given absolute jurisdiction, supervision and control only over corporations or associations, which are grantees of a primary franchise and/or a license or permit issued by the government to operate in the Philippines. The SEC injunctive Order can not effect a suspension of payment of respondent Surety's due and demandable obligation, it being clear therefrom that the rehabilitation receivers were limited "to tak(ing) custody and control over all the existing assets and property of PBM." Nothing in said Order puts respondent Ching within its scope.

To further avoid payment of their obligation, PBM and Ching allege a customary extension given by petitioner in PBM's favor, which, it is averred, must necessarily benefit the Surety. Suffice it to say that the summary judgment made by the lower Court offers an acceptable explanation finding respondents' obligation as matured and demandable. Thus:

"The trust receipts from No. 2042 to 2100 in the schedule (pages 2 and 3, complaint) shows that the maturity dates thereof vary from May 12, 1981 at the latest and February 19, 1981 at the earliest. The alleged agreement to extend, granting its existence, obviously would have had a much earlier date than the maturity dates of the trust receipts and considering that the instant case was brought on August 7, 1981, there should have been, to say the least, representation made prior to the maturity dates or at least on the dates of maturity thereof. But it has not even been alleged by defendants that such representations were made by defendants. It is too far fetched to rule that the Court will grant an extension of time to pay, when no such extension has ever been requested by defendants. The obligation, therefore, is covered by Article 1193 of the Civil Code and hence, demandable when the day comes" (pp. 199-200, Original Record).

The lower Court correctly found the case to be without any genuine issue of fact and ripe for summary judgment. Respondents' bare allegation of customary extensions is not corroborated by any documentary evidence but remains plain self-serving assertions.

In fine, the SEC injunctive Order is of no effect as far as the respondent Surety, Alfredo Ching, is concerned. He can be sued separately to enforce his liability as Surety for PBM (*Traders Royal Bank vs. Court of Appeals, et al.* G.R. No. 78412, September 26, 1989).

WHEREFORE, the Decision of the Court of Appeals, dated 30 June 1988, and its Resolution denying reconsideration thereof, dated 6 October 1988, are SET ASIDE. The judgment of the lower Court is hereby REINSTATED and made executory as far as respondent, Alfredo Ching, is concerned.

Costs against private respondents, Philippine Blooming Mills and Alfredo Ching.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Floreliana Castro-Bartolome.

* Composed of Justices Rodolfo A. Nocon (Chairman), Ricardo L. Pronove, Jr. and Bonifacio A. Cacdac, Jr. (ponente).

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