

THIRD DIVISION

[G.R. NO. 166058, April 03, 2007]

**EMERITA GARON, PETITIONER, VS. PROJECT MOVERS REALTY
AND DEVELOPMENT CORPORATION AND STONGHOLD
INSURANCE COMPANY, INC., RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) dated May 7, 2004 in CA-G.R. CV No. 69962, and its Resolution^[2] dated November 16, 2004. The assailed Decision affirmed with modification the Order^[3] dated September 19, 2000 issued by the Regional Trial Court (RTC), Makati City, Branch 56, in Civil Case No. 99-1051.

Antecedents

On December 19, 1997, Project Movers Realty and Development Corporation (PMRDC) obtained a loan from Emerita Garon in the amount of P6,088,783.68. The loan was covered by Promissory Note No. PMRDC-97-12-332^[4] to mature on December 19, 1998. The stipulated interest rate, in accordance with the schedule^[5] of payment attached to the note, was 36% per annum. To secure the payment of the loan, PMRDC undertook to assign to Garon its leasehold rights over a space at the Monumento Plaza Commercial Complex, covered by Original Certificate of Leasehold Title (OCLT) No. 1108. The parties stipulated that failure to pay the note or any portion thereof, or any interest thereon, shall constitute default, and the entire obligation shall become due and payable without need of demand.

On December 31, 1997, PMRDC obtained another loan from Garon in the amount of US\$189,418.75, at 17% per annum, to mature on December 31, 1998. The transaction was covered by Promissory Note No. PMRDC-D97-12-333.^[6] This loan was secured by an assignment of leasehold rights over another space of the Monumento Plaza Commercial Complex covered by OCLT No. 0161.

To secure its obligation to *assign the leasehold rights* to Garon, PMRDC procured a surety bond^[7] from Stronghold Insurance Company, Inc. (SICI). The surety bond was subject to the following conditions:

WHEREAS, this bond is conditioned to guarantee the assignment of Leasehold Rights of the Principal at Monumento Plaza Building in favor of the Obligee over the Certain Original Certificate of Leasehold Title No. 0161 and 0108 (*sic*).

WHEREAS, the liability of the surety company upon determination under

this bond shall in no case exceed the penal sum of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY-FIVE THOUSAND ONE HUNDRED THIRTY-NINE & 85/100 (P12,755,139.85) Only, Philippine Currency.

x x x

Liability of surety on this bond will expire on November 7, 1998 and said bond will be cancelled five days after its expiration, unless surety is notified of any existing obligations thereunder.^[8]

When PMRDC defaulted in the payment of its obligations, Garon sent a demand letter^[9] dated November 3, 1998, requiring PMRDC to execute and deliver a unilateral Deed of Assignment of its leasehold rights over the commercial spaces covered by OCLT Nos. 1108 and 0161. Garon also sent a formal demand letter^[10] dated November 6, 1998 for SICI to comply with its obligation under the surety bond.

In view of PMRDC's and SICI's failure to comply with their respective obligations, Garon filed a Complaint^[11] for collection before the RTC of Makati City. The case was raffled to Branch 56, and was docketed as Civil Case No. 99-1051. The complaint contained the following prayer:

WHEREFORE, plaintiff respectfully prays that after hearing on the merits, this Court render[s] judgment in favor of plaintiff and against defendants as follows:

1. Ordering defendant PMRDC to pay plaintiff the sums of:

1.1. PESOS: Six Million Eighty-Eight Thousand Seven Hundred Eighty-Three and 68/100 (P6,088,783.68) under PMRDC-97-12-332; and

1.2. DOLLARS: One Hundred Eighty-Nine Thousand Four Hundred Eighteen and 75/100 (US\$189,418.75) under PMRDC-97-12-333.

2. Declaring defendant Stronghold solidarily liable, and ordering it to pay plaintiff the sum of PESOS: Twelve Million Seven Hundred Fifty-Five Thousand One Hundred Thirty-Nine and 85/100 (P12,755,139.85) under SICI Bond No. 67831.

3. Ordering defendant PMRDC to pay:

3.1. Interest at 36% per annum and a penalty of 3% per month until full payment on the unpaid amount due under PMRDC-97-12-332;

3.2. Interest at 17% per annum and a penalty of 3% per month until full payment on the unpaid amount due under PMRDC-97-12-333;

3.3. Legal interest on the interest accruing at the time of the filing of the complaint conformably with Article 2212 of the New Civil Code.

4. On the third cause of action, ordering:

4.1. defendant PMRDC to pay PESOS: Ten Thousand (P10,000.00) as attorney's fees stipulated in PMRDC-97-12-332;

4.2. defendant PMRDC to pay PESOS: Ten Thousand (P10,000.00) as attorney's fees stipulated in PMRDC-97-12-333; and

4.3. defendant Stronghold to pay Attorney's fees in the amount of P200,000.00.

4.4. defendants PMRDC and Stronghold to pay plaintiff such amounts of litigation expenses and costs of suit as may be proven during trial.

Other reliefs just and equitable under the premises are likewise prayed for.^[12]

In its Answer,^[13] SICI averred, as special and affirmative defenses, that the complaint stated no cause of action and was prematurely filed; its obligation had been extinguished; the liability on the bond had been discharged by the act of plaintiff and by the act of law; and its liability on the bond had prescribed.^[14] It likewise contended that at the time plaintiff sent the demand letter, the obligation guaranteed by the bond had not yet matured.^[15] It further claimed that it was misled by plaintiff and PMRDC that the bond guaranteed its investment with the project of PMRDC at Monumento Plaza. SICI also asserted that Garon did not exercise the diligence of a good father of a family to avoid or minimize losses since she did not even require the surrender of the OCLTs before the promissory notes were signed and the loans released. SICI also set up a cross-claim against PMRDC for the payment of any amount it may be ordered to pay to Garon, pursuant to the Indemnity Agreement^[16] executed by the latter.^[17]

For its part, PMRDC denied that it executed the above-stated promissory notes and alleged instead that they were merely roll-overs of PN No. 97-07-228 and 97-08-260.^[18] It also alleged that it had already complied with its undertaking under the promissory notes when it put up a surety bond;^[19] and when Garon chose to demand from SICI, she effectively waived the right to claim from it.^[20] PMRDC further denied liability on the stipulated interest on the ground that the same is exorbitant and unconscionable.^[21] As a counterclaim, PMRDC asked for moral and exemplary damages, as well as for attorney's fees.^[22] As and by way of cross-claim against SICI, it likewise demanded the payment of moral damages and attorney's fees.^[23]

Garon filed her Reply^[24] and a motion^[25] to render summary judgment. The RTC granted the motion and ruled as follows:

WHEREFORE, premises considered, this Court hereby renders judgment in favor of plaintiff Mrs. Emerita I. Garon as follows:

1. Defendant Project Movers Realty and Development Corporation is hereby directed to pay plaintiff as follows:

On Promissory Note No. PMRDC 97-12-332:

(A) The sum of PESOS: Six Million Eighty-Eight Thousand Seven Hundred Eighty-Three and 68/100 (P6,088,783.68) under PMRDC-97-12-332;

(B) Interest thereon at 36% per annum computed from 19 December 1997 until fully paid.

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

On Promissory Note PMRDC No. 97-12-333:

(A) The peso equivalent of the sum of DOLLARS: One Hundred Eighty-Nine Thousand Four Hundred Eighteen and 75/100 (US\$189,418.75) under PMRDC-97-12-333.

(B) Interest thereon at the stipulated rate of 17% per annum computed from 31 December 1997;

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

2. Defendant Stronghold Insurance Company, Inc. is hereby held jointly and solidarily liable to plaintiff Mrs. Garon in the amount of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY FIVE THOUSAND ONE HUNDRED THIRTY NINE AND EIGHTY FIVE CENTAVOS (P12,755,139.85).

3. Defendants Project Movers Realty and Development Corporation and Stronghold Insurance Company, Inc. are also ordered to pay plaintiff Mrs. Garon jointly and severally the sum of PESOS: TWO HUNDRED THOUSAND as attorney's fees plus costs of suit.

All other claims and counter-claims of the parties are hereby ordered dismissed.

SO ORDERED. ^[26]

The RTC found that the assignment of PMRDC's leasehold rights was merely an accessory obligation and not an alternative one; hence, Garon's demand on SICI's obligation on the surety bond could not be considered a waiver of her right to collect from PMRDC. On SICI's contention that her claim was premature, the RTC ruled that the former's liability arose upon PMRDC's failure to assign the leasehold rights, not on the maturity date of the loan. The court further held that SICI's claim of prescription is without merit because plaintiff made a demand on November 6,

1998, while the surety bond expired on November 7, 1998.

Garon filed a Motion for Execution Pending Appeal,^[27] while SICI filed a Motion for Reconsideration.^[28] The court denied^[29] the motion for reconsideration and granted^[30] the motion for execution pending appeal. SICI then filed a special civil action for *Certiorari* with Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction^[31] before the CA, docketed as CA-G.R. SP No. 63334 assailing the order of the court granting execution pending appeal. On February 23, 2001, the CA issued a TRO^[32] enjoining petitioner from enforcing the writ of execution pending appeal.

Meanwhile, on October 11, 2000 and February 16, 2001, PMRDC and SICI filed their respective Notices of Appeal^[33] which the RTC approved. However, in view of PMRDC's failure to file its appellant's brief, the CA issued a Resolution^[34] dismissing its appeal for having been abandoned. The Resolution became final and executory.

On the other hand, in its brief, SICI raised the following errors:

I. THE LOWER COURT PALPABLY COMMITTED GRAVE ERROR IN GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT, DESPITE LACK OF VALID BASIS THEREFOR.

II. THE LOWER COURT LIKewise PALPABLY COMMITTED GRAVE ERROR IN RENDERING THE SUMMARY JUDGMENT HOLDING APPELLANT STRONGHOLD LIABLE UNDER ITS SURETY BOND TO APPELLEE DESPITE LACK OF FACTUAL AND LEGAL BASIS FOR ITS JUDGMENT.^[35]

According to SICI, the RTC erroneously rendered summary judgment notwithstanding the genuine issues raised by the parties.^[36] It claimed that its obligations under the surety bond never became effective because of PMRDC's failure to assign its leasehold rights. It likewise insisted that when the promissory notes matured, Garon could no longer run after it as its liability under the surety bond had already expired.

On May 7, 2004, the CA affirmed with modification the decision of the RTC. ^[37] The *fallo* reads:

WHEREFORE, foregoing considered, the appealed decision is affirmed with the modification that defendant-appellant SICI is not liable to plaintiff-appellee.

No pronouncement as to cost.

SO ORDERED.^[38]

In upholding the propriety of the summary judgment rendered by the RTC, the CA declared that no genuine issue was raised since the parties admitted executing the promissory notes and surety bond, and the non-performance of the correlative obligations; the liabilities of the parties were likewise clearly set forth in the contracts. The CA further affirmed the RTC's finding that PMRDC was not relieved of its liability despite the enforcement of Garon's right against SICI; so long as the