

THIRD DIVISION

[G.R. NO. 155009, April 12, 2005]

SIMEON M. VALDEZ, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in **CA-G.R. CV No. 24946**, to wit:

1. **Decision dated February 28, 2002^[1]**, affirming an earlier decision of the Regional Trial Court at Manila in an action for sum of money thereat commenced by the herein respondent against petitioner and Creative Texwood Corporation; and
2. **Resolution dated August 23, 2002**, denying petitioner's motion for reconsideration.

The factual milieu:

On January 11, 1978, respondent **China Banking Corporation** (Chinabank), represented by its senior vice-president Gilbert Dee, and **Creative Texwood Corporation** (CREATIVE), represented by its president, herein petitioner **Simeon M. Valdez**, executed a *Credit Agreement* whereunder Chinabank agreed to grant CREATIVE a credit facility in the amount of US\$1,000,000.00 to finance the latter's importation of raw materials, spare parts and supplies for its manufacturing projects.

Simultaneously with the execution of the aforementioned *Credit Agreement*, and in order to assure payment of the credit facility thereunder granted, CREATIVE, again represented by petitioner as its President, executed in favor of Chinabank a *Promissory Note* for the same amount, undertaking to pay said amount one year thenceforth or until January 11, 1979.

On the same date - January 11, 1978 - CREATIVE, as principal and petitioner, as surety, further executed in favor of Chinabank a *Surety Agreement* whereunder petitioner Valdez bound himself unto Chinabank the prompt payment on maturity date of the aforesaid promissory note.

The next day, January 12, 1978, pursuant to said credit agreement, Chinabank drew and issued a check for US\$1,000,000.00 with CREATIVE as payee. Subsequently, CREATIVE indorsed the check back to Chinabank for payment, which the latter did.

On December 15, 1986, following the failure of both CREATIVE and petitioner to

comply with their obligations despite repeated demands, Chinabank filed against both a complaint for a sum of money before the Regional Trial Court at Manila, thereat docketed as **Civil Case No. 86-38740** which was raffled to Branch 35 thereof.

In his separate answer, petitioner, after the usual denial of the material allegations of the complaint, interposed the defense that the subject *Credit Agreement* is fictitious and simulated; that he signed said agreement and *Promissory Note* in his official capacity as president of CREATIVE and not in his personal capacity; and that the *Surety Agreement* attached to the complaint is not the one executed and signed by him because what he signed was a pro-forma document with blank spaces still unfilled.

On July 31, 1987, the trial court dismissed the complaint for failure of plaintiff Chinabank to prosecute for an unreasonable length of time. However, upon Chinabank's motion for reconsideration, the trial court reinstated the complaint, and, on Chinabank's further motion, declared defendant CREATIVE as in default and allowed Chinabank to adduce *ex parte* its evidence against the former. Pre-trial was thereafter set between plaintiff Chinabank and defendant-petitioner.

On May 20, 1988, the trial court, upon Chinabank's motion, declared petitioner as in default for his and his counsel's failure to appear at the scheduled pre-trial. However, upon petitioner's motion, the trial court set aside its default order and set the case anew for pre-trial.

With no amicable settlement having been reached by the parties, trial ensued.

Eventually, in a decision dated November 20, 1989, the trial court rendered judgment for plaintiff Chinabank and against defendants CREATIVE and petitioner, thus:

WHEREFORE, judgment is rendered: (1) ordering defendants Creative Texwood Corporation and Simeon M. Valdez, jointly and severally, to pay to the plaintiff the principal amount of P18,069,674.38, the interest thereon at the rate of ½ per annum computed from December 15, 1986, the date the complaint was filed, until full payment of the principal obligation, another 1 - ½% per month computed also from the same date until full payment of the principal obligation, as penalty, and the amount of P3,613,934.00 for attorney's fees; and (2) ordering defendant Creative Texwood Corporation to pay the plaintiff the amount equivalent to 3% per annum also computed from December 15, 1986, on the amount of the drawdown, as arrangement fee.

SO ORDERED. (Petition, Annex "F"; Rollo, pp. 66-69)

In its decision, the trial court, finding no reason to doubt the authenticity and due execution of the surety agreement, held that petitioner's liability to Chinabank arose from his execution of the same agreement where he warranted unto Chinabank the prompt payment at maturity date of the promissory note. The trial court also debunked petitioner's protestation in his memorandum that his liability under the same surety agreement was extinguished pursuant to Article 2079^[2] of the Civil

Code when Chinabank granted CREATIVE an extension of time for the payment of the loan. Partly says the trial court in its decision:

We do not agree. Defendant Valdez admits in his memorandum that after his co-defendant corporation failed to pay its loan on due date, a demand letter dated July 16, 1979 was sent by the plaintiff to defendant corporation to pay its overdue obligation. This first demand letter was followed by two more demand letters dated November 26, 1979 and May 20, 1981, respectively, both addressed to the said defendant corporation. The mere fact that plaintiff neglected to sue immediately and initiated this court action only on December 15, 1986, does not relieve and discharge defendant Valdez from his liability under the Surety Agreement, because such delay in filing the action does not necessarily imply any change in the efficacy of the contract or liability of the principal debtor. (See Bank of P.I. vs. Albadejo, 53 Phil. 141; Paras, Civil Code, Vol. V, 1982 Ed., pp. 806 & 810)." (Rollo, p. 68)

From the aforementioned decision of the trial court, both Chinabank and petitioner went to the Court of Appeals in **CA-G.R. CV No. 24946**.

For failure of Chinabank to file its brief within the reglementary period, the appellate court declared its appeal abandoned and accordingly dismissed the same. Chinabank's motion for reconsideration proved unavailing

From the appellate court's dismissal of its appeal, Chinabank went to this Court in G.R. No. 97066 via a petition for review on certiorari under Rule 45 of the Rules of Court. In a Resolution dated March 4, 1991,^[3] this Court dismissed Chinabank's petition. Attempt at a reconsideration similarly proved futile, as in fact an Entry of Judgment^[4] was rendered declaring the dismissal of Chinabank's petition final and executory.

Meanwhile, with petitioner Valdez having filed his Brief on time, the Court of Appeals proceeded to resolve his appeal.

And, in a **decision dated February 28, 2002**,^[5] the appellate court dismissed petitioner's appeal and affirmed the appealed decision of the trial court, thus:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit the appealed decision of the Regional Trial Court, Branch 35, Manila, is **AFFIRMED**.

SO ORDERED.

His motion for reconsideration having been denied by the same court in its **Resolution of August 23, 2003**,^[6] petitioner Simeon Valdez is now with us via the present recourse, it being his submissions that:

"I.

THE COURT OF APPEALS ERRED IN ACTING ON PETITIONER'S APPEAL THEN ALREADY MOOT AND ACADEMIC DUE TO THE DISMISSAL OF THE BANK'S APPEAL AND THE ADOPTION OF THE 1997 RULES OF CIVIL