335 Phil. 315

THIRD DIVISION

[G.R. No. 112191, February 07, 1997]

FORTUNE MOTORS (PHILS.) CORPORATION AND EDGAR L. RODRIGUEZA,nPETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND FILINVEST CREDIT CORPORATION, RESPONDENTS.
D E C I S I O N

PANGANIBAN, J.:

To fund their acquisition of new vehicles (which are later retailed or resold to the general public), car dealers normally enter into wholesale automotive financing schemes whereby vehicles are delivered by the manufacturer or assembler on the strength of trust receipts or drafts executed by the car dealers, which are backed up by sureties. These trust receipts or drafts are then assigned and/or discounted by the manufacturer to/with financing companies, which assume payment of the vehicles but with the corresponding right to collect such payment from the car dealers and/or the sureties. In this manner, car dealers are able to secure delivery of their stock-in-trade without having to pay cash therefor; manufacturers get paid without any receivables/collection problems; and financing companies earn their margins with the assurance of payment not only from the dealers but also from the sureties. When the vehicles are eventually resold, the car dealers are supposed to pay the financing companies -- and the business goes merrily on. However, in the event the car dealer defaults in paying the financing company, may the surety escape liability on the legal ground that the obligations were incurred subsequent to the execution of the surety contract?

This is the principal legal question raised in this petition for review (under Rule 45 of the Rules of Court) seeking to set aside the Decision[1] of the Court of Appeals (Tenth Division)[2] promulgated on September 30, 1993 in CA G.R. CV No. 09136 which affirmed in toto the decision[3] of the Regional Trial Court of Manila - Branch 11[4] in Civil Case No. 83-21994, the dispositive portion of which reads:

> "WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, by ordering the latter to pay, jointly and severally, the plaintiff the following amounts:
>
> 1. The sum of P1,348,033.89, plus interest thereon at the rate of P922.53 per day starting April 1, 1985 until the said principal amount is fully paid;
>
> 2. The amount of P50,000.00 as attorney's fees and another P50,000.00 as liquidated damages; and
>
> 3. That the defendants, although spared from paying exemplary damages, are further ordered to pay, in solidum, the costs of this suit."

Plaintiff therein was the financing company and the defendants the car dealer and its sureties.

The Facts

On or about August 4, 1981, Joseph L. G. Chua and Petitioner Edgar Lee Rodrigueza ("Petitioner Rodrigueza") each executed an undated "Surety Undertaking"[5] whereunder they "absolutely, unconditionally and solidarily guarantee(d)" to Respondent Filinvest Credit Corporation ("Respondent Filinvest") and its affiliated and subsidiary companies the "full, faithful and prompt performance, payment and discharge of any and all obligations and agreements" of Fortune Motors (Phils.) Corporation ("Petitioner Fortune") "under or with respect to any and all such contracts and any and all other agreements (whether by way of guaranty or otherwise)" of the latter with Filinvest and its affiliated and subsidiary companies "now in force or hereafter made."

The following year or on April[6]5, 1982, Petitioner Fortune, Respondent Filinvest and Canlubang Automotive Resources Corporation ("CARCO") entered into an "Automotive Wholesale Financing Agreement"[7] ("Financing Agreement") under which CARCO will deliver motor vehicles to Fortune for the purpose of resale in the latter's ordinary course of business; Fortune, in turn, will execute trust receipts over said vehicles and accept drafts drawn by CARCO, which will discount the same together with the trust receipts and invoices and assign them in favor of Respondent Filinvest, which will pay the motor vehicles for Fortune. Under the same agreement, Petitioner Fortune, as trustee of the motor vehicles, was to report and remit proceeds of any sale for cash or on terms to Respondent Filinvest immediately without necessity of demand.

Subsequently, several motor vehicles were delivered by CARCO to Fortune, and trust receipts covered by demand drafts and deeds of assignment were executed in favor of Respondent Filinvest. However, when the demand drafts matured, not all the proceeds of the vehicles which Petitioner Fortune had sold were remitted to Respondent Filinvest. Fortune likewise failed to turn over to Filinvest several unsold motor vehicles covered by the trust receipts. Thus, Filinvest through counsel, sent a demand letter[8] dated December 12, 1983 to Fortune for the payment of its unsettled account in the amount of P1,302,811.00. Filinvest sent similar demand letters[9] separately to Chua and Rodrigueza as sureties. Despite said demands, the amount was not paid. Hence, Filinvest filed in the Regional Trial Court of Manila a complaint for a sum of money with preliminary attachment against Fortune, Chua and Rodrigueza.

In an order dated September 26, 1984, the trial court declared that there was no factual issue to be resolved except for the correct balance of defendants' account with Filinvest as agreed upon by the parties during pre-trial.[10] Subsequently, Filinvest presented testimonial and documentary evidence. Defendants (petitioners herein), instead of presenting their evidence, filed a "Motion for Judgment on Demurrer to Evidence"[11]anchored principally on the ground that the Surety Undertakings were null and void because, at the time they were executed, there was no principal obligation existing. The trial court denied the motion and scheduled the case for reception of defendants' evidence. On two scheduled dates, however,

defendants failed to present their evidence, prompting the court to deem them to have waived their right to present evidence. On December 17, 1985, the trial court rendered its decision earlier cited ordering Fortune, Chua and Rodrigueza to pay Filinvest, jointly and severally, the sum of P1,348,033.83 plus interest at the rate of P922.53 per day from April 1, 1985 until fully paid, P50,000.00 in attorney's fees, another P50,000.00 in liquidated damages and costs of suit.

As earlier mentioned, their appeal was dismissed by the Court of Appeals (Tenth Division) which affirmed in toto the trial court's decision. Hence, this recourse.

Issues

Petitioners assign the following errors in the appealed Decision:

> "1. that the Court of Appeals erred in declaring that surety can exist even if there was no existing indebtedness at the time of its execution.
>
> 2. that the Court of Appeals erred when it declared that there was no novation.
>
> 3. that the Court of Appeals erred when it declared, that the evidence was sufficient to prove the amount of the claim."[12]

Petitioners argue that future debts which can be guaranteed under Article 2053 of the Civil Code refer only to "debts existing at the time of the constitution of the guaranty but the amount thereof is unknown," and that a guaranty being an accessory obligation cannot exist without a principal obligation. Petitioners claim that the surety undertakings cannot be made to cover the Financing Agreement executed by Fortune, Filinvest and CARCO since the latter contract was not yet in existence when said surety contracts were entered into.

Petitioners further aver that the Financing Agreement would effect a novation of the surety contracts since it changed the principal terms of the surety contracts and imposed additional and onerous obligations upon the sureties.

Lastly, petitioners claim that no accounting of the payments made by Petitioner Fortune to Respondent Filinvest was done by the latter. Hence, there could be no way by which the sureties can ascertain the correct amount of the balance, if any.

Respondent Filinvest, on the other hand, imputes "estoppel (by pleadings or by judicial admission)" upon petitioners when in their "Motion to Discharge Attachment," they admitted their liability as sureties thus:

"Defendants Chua and Rodrigueza could not have perpetrated fraud because they are only sureties of defendant Fortune Motors x x x;

x x x The defendants (referring to Rodrigueza and Chua) are not parties to the trust receipts agreements since they are ONLY sureties x x x."[13]

In rejecting the arguments of petitioners and in holding that they (Fortune and the sureties) were jointly and solidarily liable to Filinvest, the trial court declared:

> "As to the alleged non-existence of a principal obligation when the surety agreement was signed, it is enought (sic) to state that a guaranty may also be given as security for future debts, the amount of which is not known (Art. 2053, New Civil Code). In the case of NARIC vs. Fojas, L-11517, promulgated April 10, 1958, it was ruled that a bond posted to secure additional credit that the principal debtor had applied for, is not void just because the said bond was signed and filed before the additional credit was extended by the creditor. The obligation of the sureties on future obligations of Fortune is apparent from a proviso under the Surety Undertakings marked Exhs. B and C that the sureties agree with the plaintiff as follows:

In consideration of your entering into an arrangement with the party (Fortune) named above, x x x x by which you may purchase or otherwise require from, and or enter into with obligor x x x trust receipt x x x arising out of wholesale and/or retail transactions by or with obligor, the undersigned x x x absolutely, unconditionally, and solidarily guarantee to you x x x the full, faithful and prompt performance, payment and discharge of any and all obligations x x x of obligor under and with respect to any and all such contracts and any and all agreements (whether by way of guaranty or otherwise) of obligor with you x x x now in force or hereafter made. (Underlinings supplied).

On the matter of novation, this has already been ruled upon when this Court denied defendants' Motion to dismiss on the argument that what happened was really an assignment of credit, and not a novation of contract, which does not require the consent of the debtors. The fact of knowledge is enough. Besides, as explained by the plaintiff, the mother or the principal contract was the Financing Agreement, whereas the trust receipts, the sight drafts, as well as the Deeds of assignment were only collaterals or accidental modifications which do not extinguish the original contract by way of novation. This proposition holds true even if the subsequent agreement would provide for more onerous terms for, at any rate, it is the principal or mother contract that is to be followed. When the changes refer to secondary agreements and not to the object or principal conditions of the contract, there is no novation; such changes will produce modifications of incidental facts, but will not extinguish the original obligation (Tolentino, Commentaries on Jurisprudence of the Civil Code of the Philippines, 1973 Edition, Vol. IV, page 367; cited in plaintiff's Memorandum of September 6, 1985, p. 3).

On the evidence adduced by the plaintiff to show the status of defendants' accounts, which took into consideration payments by defendants made after the filing of the case, it is enough to state that a statement was carefully prepared showing a balance of the principal obligation plus interest totalling P1,348,033.89 as of March 31, 1985 (Exh. M). This accounting has not been traversed nor contradicted by defendants although they had the opportunity to do so. Likewise, there was absolute silence on the part of defendants as to the correctness of the previous statement of account made as of December 16, 1983 (referring to Exh. I), but more important, however, is that defendants received demand letters from the plaintiff stating that, as of December 1983 (Exhs. J, K and L), this total amount of obligation was P1,302,811,00, and yet defendants were not heard to have responded to said demand letters, let alone have taken any exception thereto. There is such a thing as evidence by silence (Sec. 23, Rule 130, Revised Rules of Court)."[14]

The Court of Appeals, affirming the above decision of the trial court, further explained:

> "x x x In the case at bar, the surety undertakings in question unequivocally state that Chua and Rodrigueza 'absolutely, unconditionally and solidarily guarantee' to Filinvest the 'full, faithful and prompt performance, payment and discharge of any and all obligations and agreements' of Fortune 'under or with respect to any and all such contracts and any and all other agreements (whether by way of guaranty or otherwise)' of the latter with Filinvest in force at the time of the execution of the 'Surety Undertakings' or made thereafter. Indeed, if Chua and Rodrigueza did not intend to guarantee all of Fortune's future obligation with Filinvest, then they should have expressly stated in their respective surety undertakings exactly what said surety agreements guaranteed or to which obligations of Fortune the same were intended to apply. For another, if Chua and Rodrigueza truly believed that the surety undertakings they executed should not cover Fortune's obligations under the AWFA, then why did they not inform Filinvest of such fact when the latter sent them the aforementioned demand letters (Exhs. 'K' and 'L') urging them to pay Fortune's liability under the AWFA. Instead, quite uncharacteristic of persons who have just been asked to pay an obligation to which they believe they are not liable, Chua and Rodrigueza elected or chose not to answer said demand letters. Then, too, considering that appellant Chua is the corporate president of Fortune and a signatory to the AWFA, he should have simply had it stated in the AWFA or in a separate document that the 'Surety Undertakings' do not cover Fortune's obligations in the aforementioned AWFA, trust receipts or demand drafts.
>
> Appellants argue that it was unfair for Filinvest to have executed the AWFA only after two (2) years from the date of the 'Surety undertakings' because Chua and Rodrigueza were thereby made to wait for said number of years just to know what kind of obligation they had to guarantee.
>
> The argument cannot hold water. In the first place, the 'Surety Undertakings' did not provide that after a period of time the same will lose its force and effect. In the second place, if Chua and Rodrigueza did not want to guarantee the obligations of Fortune under the AWFA, trust receipts and demand drafts, then why did they not simply terminate the 'Surety Undertakings' by serving ten (10) days written notice to Filinvest as expressly allowed in said surety agreements. It is highly plausible that the reason why the 'Surety Undertakings' were not terminated was because the execution of the same was part of the consideration why Filinvest and CARCO agreed to enter into the AWFA with Fortune."[15]

The Court's Ruling

We affirm the decisions of the trial and appellate courts.