

SECOND DIVISION

[G.R. No. 186196, August 15, 2018]

BENEDICTO V. YUJUICO^[*], PETITIONER, V. FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), SUBSTITUTED BY PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.^[], RESPONDENT.**

RESOLUTION

CAGUIOA, J:

This is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision^[2] of the Court of Appeals^[3] (CA) dated January 23, 2009 in CA-G.R. CV No. 87836. The CA Decision partially granted the appeal and affirmed with modification the Decision^[4] dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City (RTC) in Civil Case No. 97-2522.

Facts and Antecedent Proceedings

The CA Decision narrates the following antecedent facts of the case:

On May 14, 1993, appellant then Far East Bank and Trust Company (appellant bank, for brevity) approved the renewal of appellee GTI Sportswear Corporation's Omnibus Credit Line (OCL) with a total amount of P35,000,000.00. The credit line was available in the form of letters of credit, trust receipts, margin loan, export packing credit line, bills purchase line and export bills purchase line. This was secured by a Comprehensive Surety Agreement executed by appellee Benedicto V. Yujuico in his personal capacity. He was also the president of appellee GTI.

Sometime in May 1995, negotiations were undertaken to settle appellee GTI's trust receipt obligation under the OCL. During these negotiations, appellee GTI made known to appellant bank its request for the conversion of its peso loan to US dollar-denominated loan. An exchange of communications concerning the conversion transpired but no definite agreement on the said conversion was put into writing.

On June 26, 1995, appellee Yujuico, in behalf of appellee GTI and in his personal capacity as surety, and appellant's First Vice President Ricardo G. Lazatin, in behalf of appellant bank, signed a Loan Restructuring Agreement (LRA), the subject of which was appellee GTI's outstanding balance on its Omnibus Credit Line in the amount of P25,208,874.84^[5] as of May 31, 1995. The agreement expressly stated that the restructured loan continues to be secured by the Comprehensive Surety

Agreement previously executed by appellee Yujuico in favor of appellant bank.

After the signing of the restructuring agreement, appellee GTI, reiterated its request for the re-denomination of its loan obligation to US dollars. Appellant bank, however, denied the request and informed appellees that the conversion was not deemed workable in view of the following considerations: appellant bank requires long-term FCDU loans to be fully collateralized and appellee GTI, as borrower, must have adequate FCDU placements with appellant bank as well as maintain substantial deposit ADB levels.

In a letter dated September 22, 1997, appellant bank demanded that appellee GTI update all its unpaid amortizations on the outstanding restructured loan with a principal balance of P11,376,666.25 not later than September 30, 1997 and to settle all its other past due obligations to avert any legal action.

On October 29, 1997, appellees filed against appellant bank a Complaint for Specific Performance with Preliminary Injunction with the Regional Trial Court of Makati City. Appellees alleged that during the signing of the loan restructuring agreement, they were assured by the officers of appellant bank, namely: Paul Regondola and Jacqueline Fernandez, that after a few payments on its obligation, appellee GTI's peso loan would be converted to US dollars. Also, sometime in October 1996, Paul Regondola confirmed by phone that the conversion of appellee GTI's loan from peso to US Dollars had been approved by appellant bank. This prompted appellee GTI's financial consultant Bermundo to send appellant bank a letter dated October 31, 1996 acknowledging appellant bank's alleged confirmation of the approval of the conversion of the restructured loan. This letter was not denied by appellant bank until December 18, 1996 when it informed appellees that the conversion of the restructured loan to US dollars was not deemed workable because of certain considerations. These considerations, however, were not conveyed to appellees beforehand.

Appellees averred further that under the US dollar-denominated loan, appellee GTI would be paying lower interest and would save the total amount of P2,844,228.00.

Hence, appellees prayed that appellant bank be directed to convert GTI's loan to US dollars retroactively effective October 1, 1996 and that appellant bank be directed to pay appellees P2,844,228.00 representing savings that could have accrued in favor of appellees in terms of the difference in interest payments. They also prayed for exemplary damages and attorney's fees.

In an Answer dated December 4, 1997, appellant bank denied that it made assurances to appellees that it would approve the latter's request for conversion of the peso loan to US dollar. Appellant bank informed appellees that the request for conversion would be considered depending on appellee's performance on the restructuring agreement and their compliance with the requisites set by appellant bank. Sometime in

October 1996, Regondola informed appellee GTI's financial consultant, Pablito Bermundo, that the request was approved in principle, subject to some conditions which appellant bank imposes before approving similar requests for conversion. Appellee GTI, however, was not able to comply with the requirements resulting in the denial of their request for conversion. Hence, appellant bank prayed that the complaint be dismissed.

By way of counterclaim, appellant bank prayed that appellees be ordered to jointly and severally pay their obligations under the loan restructuring agreement amounting to P15,798,642.39 as well as appellees' other obligations under the Export Packing Credit Facility in the amount of P2,333,531.11 and Trust Receipt Agreements in the amount of P1,922,646.60.

In a Decision dated October 6, 2004, the court *a quo* ruled that appellant bank indeed agreed to convert to US dollar appellee GTI's peso loan obligation. The conversion also resulted in the novation of appellee GTI's loan obligation. As a result, appellee Yujuico was accordingly released from his obligations as surety pursuant to Article 1215 of the New Civil Code in conjunction with paragraph 1 of Article 1291 of the same Code. In addition, the court *a quo* dismissed without prejudice appellant bank's counterclaims for failure to pay the required filing fees. x x x

x x x x

[The dispositive portion of the RTC Decision dated October 6, 2004 states:

PREMISES CONSIDERED, judgment is rendered in favor of the plaintiffs and against the defendant Bank of the Philippine Island (sic), directing the latter to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of plaintiff GTI from Philippine Peso loan account into a US Dollar denominated loan obligation; and finding the original Omnibus Credit Line entered into by plaintiff GTI with defendant BPI to have been novated, the Comprehensive Surety Agreement executed by plaintiff Yujuico covering said loan is deemed extinguished and the latter is released from his obligation as surety.

The compulsory counterclaims of the defendant which are actually permissive counterclaims are not admitted and are therefore DISMISSED without prejudice for failure of the defendant to pay the required filing fees.

SO ORDERED.^[6]

Appellant bank then filed a Motion for Reconsideration. x x x

[In the Motion for Reconsideration^[7] dated November 2, 2004, appellant bank manifested that:

x x x Anent the first ground, defendant hereby manifests its acceptance of and willingness to abide by the decision of the [RTC]. As mandated by the [RTC], defendant BPI acknowledges and confirms its obligation to convert the restructured Omnibus Line of plaintiff GTI Sportswear from a peso account into a US Dollar denominated loan obligation. In support thereof, defendant attaches herewith and makes an integral part hereof as Annex "A" the Statement of Account^[8] of the plaintiffs under the restructured Omnibus Line as of October 31, 2004. The Statement of Account reflects defendant's computation of the outstanding obligation of the plaintiffs on the basis of a peso-dollar rate of exchange at [\$1] = P26.30, then the prevailing rate[.]

x x x With the submission of the foregoing computation, plaintiffs should now be directed to pay defendant under the restructured Omnibus Line the amount of US\$1,132,795.31 plus the stipulated interests and penalty charges thereon from October 31, 20^[0]4 until the same is fully paid in US dollar currency[.]^[9]

The appellant bank raised as second ground, the correctness of the release of Yujuico from his obligation as a surety of the loan obtained by appellee GTI and took the position that there was no novation.^[10] As third ground, appellant bank argued that its permissive counterclaim against plaintiffs should not have been dismissed for failure to pay the required docket fees.^[11]

The motion for reconsideration was denied in an Order dated March 4, 2005.

Aggrieved, appellant bank filed [an] appeal [before the CA].^[12]

In a Decision^[13] dated January 23, 2009, the CA partially granted the appeal. The CA no longer delved on the issue of whether or not the parties perfected a contract on the conversion of the restructured loan to US dollars in view of appellant bank's acknowledgment and confirmation of its obligation to convert the restructured loan to US dollars in its Motion for Reconsideration dated November 2, 2004.^[14] The lone issue left for determination as far as the CA was concerned was whether or not the conversion of the peso-denominated loan is tantamount to novation warranting the extinguishment of appellee Yujuico's obligations as a surety.^[15] On the said issue, the CA ruled that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI Sportswear Corporation (GTI) and appellant bank were not novated and appellee Yujuico remained to be liable as a surety under the Comprehensive Surety Agreement.^[16]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant appeal is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City is **AFFIRMED WITH MODIFICATION** in that the Omnibus Credit Line and the Loan Restructuring Agreement

between appellee GTI and appellant were not novated and appellee Yujuico remains to be liable as surety under the Comprehensive Surety Agreement.

SO ORDERED.^[17]

Hence, the present Rule 45 Petition dated March 12, 2009 filed by petitioner Benedicto V. Yujuico (Yujuico). GTI, petitioner Yujuico's co-plaintiff before the RTC and co-appellee before the CA, did not join as co-petitioner in the Petition. Respondent Far East Bank and Trust Company (now Bank of the Philippine Islands), substituted by Philippine Asset Investment (SPV-AMC), Inc. (PAI) filed a Comment^[18] dated December 7, 2009. Petitioner Yujuico filed a Reply^[19] dated May 20, 2010. Pursuant to the Court's Resolution^[20] dated January 15, 2014, which granted the Motion for Substitution^[21] filed by Philippine Investment One (SPV-AMC), Inc. (PIO) as the assignee of all the rights, title and interest over the Non-Performing Loan of GTI of the assignor PAI by virtue of the Deed of Assignment^[22] dated May 11, 2007 executed by PAI and PIO^[23], PIO (respondent) was allowed to substitute for PAI as new party respondent in this case.

Issues

Petitioner Yujuico raises the following issues in the Petition:

1. whether the CA has legal basis to resolve and declare that there was no novation between GTI and respondent;
2. whether the CA has legal basis to resolve and declare that petitioner Yujuico remains liable as surety of the obligation of GTI; and
3. whether the CA has legal basis to entertain the appeal as respondent had already performed a partial execution of the Decision of the RTC which prevents and/or precludes respondent from questioning and/or appealing the judgment/Decision of the RTC.^[24]

The Court's Ruling

Petitioner Yujuico fails to convince the Court that the CA erred. His Petition is not meritorious.

The third issue will be resolved first because it directly impacts on the other two issues.

Petitioner Yujuico takes the position that pursuant to the leading case of *Verches v. Rios*^[25] (*Verches*), "in x x x converting the restructured Omnibus Credit Line/loan of GTI Sportswear Corporation from Philippine Peso to United States Dollar denominated [respondent] has clearly and definitely partially executed the judgment/decision of the Trial Court and/or has voluntarily acquiesced or ratified partially the execution of the judgment/decision of the Trial Court."^[26]

Petitioner Yujuico entirely misses the import of the Court's ruling in *Verches*, which is extensively reproduced below: