

## FIRST DIVISION

[ G.R. No. 161878, June 05, 2013 ]

**PHILWORTH ASIAS, INC., SPOUSES LUISITO AND ELIZABETH MACTAL, AND SPOUSES LUIS AND ELOISA REYES, PETITIONERS, vs. PHILIPPINE COMMERCIAL INTERNATIONAL BANK, RESPONDENT.**

### DECISION

#### **BERSAMIN, J.:**

Parties and their counsel are enjoined to avoid undue and excessive delay in presenting their own evidence. Their failure to obey this injunction surely contributes to the clogging of court dockets and expands the burdens of the entire Judiciary. It may justify a trial court into declaring them to have waived the right to present their evidence. The permissiveness and tolerant attitude of the trial judge should not give them the license to cause undue and excessive delay.

#### **The Case**

On final appeal by defendants is the decision in this collection suit promulgated on October 14, 2002,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the judgment of the Regional Trial Court (RTC), Branch 61, in Makati City pronouncing them liable to respondent for various sums as principal and interest, attorney's fees and costs of suit.

On May 31, 1991, the former Philippine Commercial International Bank (PCIB) sued petitioners in the RTC to recover upon an unpaid debt (Civil Case No. 91-1536),<sup>[2]</sup> alleging that on September 22, 1988, petitioner Philworth Asia, Inc. (Philworth) had borrowed P270,000.00 from PCIB to be paid on or before November 8, 1988 in accordance with a promissory note; that petitioners Spouses Luisito and Elizabeth Mactal (Mactals) and Spouses Luis and Eloisa Reyes (Reyeses) had executed a deed of suretyship binding themselves to pay Philworth's obligations under the promissory note should Philworth refuse to perform its obligation; that Philworth had paid only partially, leaving an unpaid balance of P225,533.33, inclusive of interest and penalty charges; that Philworth had not paid its balance despite repeated demands; and that attempts to collect from the Mactals and Reyeses had likewise failed.

On July 5, 1991, the Reyeses filed their answer with special and affirmative defenses,<sup>[3]</sup> specifically countering that PCIB had no cause of action against them; that Luis Reyes had signed the promissory note as an employee of Philworth, but had not signed the deed of suretyship in November 1988 because he had already resigned from Philworth on October 16, 1988; that Luisito Mactal, the President and General Manager of Philworth, should be the person liable under the deed of suretyship; that PCIB had not made demands upon all the parties; and that PCIB did not exhaust all the available properties of Philworth before bringing the suit also

against them.

In their answer filed on August 20, 1991,<sup>[4]</sup> the Mactals averred that the defendants had substantially paid their obligation, but that PCIB had unreasonably refused to properly account for and credit the payments; that PCIB had been charging exorbitant and unconscionable interest, penalties and other charges; and that if the previous payments were duly credited, the unpaid balance would only be minimal.

The first pre-trial conference, which was set on May 19, 1994, was moved several times afterwards,<sup>[5]</sup> until the parties were notified that the conference would finally be held on April 25, 1995.<sup>[6]</sup> On April 3, 1995, petitioners sought the transfer of the conference of April 25, 1995 to May 2, 1995. They later on further moved for the conference to be held on May 12, 1995.<sup>[7]</sup> But no conference was held on May 12, 1995. Instead, the conference was reset on two later dates, i.e., June 2, 1995 and July 21, 1995.<sup>[8]</sup>

Although petitioners again moved to reset the conference on June 1, 1995,<sup>[9]</sup> the RTC denied petitioners' motion for postponement on June 2, 1995, and declared them as in default because of their non-appearance and allowed PCIB to present evidence *ex parte*.<sup>[10]</sup>

On July 3, 1995, petitioners moved for the reconsideration of the June 2, 1995 order. Over PCIB's vigorous opposition, the RTC magnanimously granted the motion, but directed petitioners to present their evidence on October 24, 1995.

On October 24, 1995, however, the RTC reset the conference on December 5, 1995 because only PCIB's counsel had appeared in court.<sup>[11]</sup>

On October 30, 1995, petitioners requested either to call the hearing set on December 5, 1995 at 11:00 a.m., or to set it at an earlier date – in either case for them to be allowed to cross-examine the witnesses of PCIB.<sup>[12]</sup> Acting on the request of petitioners, the RTC partially granted petitioners' motion on November 23, 1995, and reset the hearing but disallowed the cross-examination of PCIB's witnesses.<sup>[13]</sup>

Yet, on December 5, 1995, PCIB's counsel appeared, while only Luisito Mactal was in court on the side of defendants, and he was without counsel. As an act of fairness, the RTC directed petitioners to submit their statement of accounts, and transferred the hearing to January 9, 1996 and January 11, 1996.<sup>[14]</sup>

In the hearing held on January 11, 1996, petitioners' counsel manifested that he would be presenting Ms. Lilian Garcia, already a witness for PCIB. With that, the RTC issued a subpoena *duces tecum/ad testificandum* for Ms. Garcia, and reset the hearing to February 20, 1996 for the purpose of receiving her testimony.<sup>[15]</sup> On February 20, 1996, Ms. Garcia testified as a witness for petitioners. Her cross-examination was re-scheduled on April 23, 1996.<sup>[16]</sup>

On April 23, 1996, only PCIB's counsel appeared in court. Consequently, the RTC cancelled the hearing and transferred it to July 16, 1996 with the warning that it

would act accordingly should petitioners still fail to continue presenting their evidence.<sup>[17]</sup>

On June 21, 1996, petitioners sought the postponement of the July 16, 1996 hearing. The RTC obliged, and reset the hearing on July 30, 1996 with a reiteration of the warning.<sup>[18]</sup> Ultimately, the July 30, 1996 hearing was also reset to August 2, 1996.

On July 31, 1996, petitioners again moved for the postponement of the August 2, 1996 hearing.<sup>[19]</sup>

On August 2, 1996, petitioners and counsel did not appear in court. Upon the motion of PCIB's counsel, the RTC declared petitioners to have waived their right to present their evidence, and required the parties to submit their memoranda.<sup>[20]</sup>

On October 2, 1996, petitioners moved for the reconsideration of the August 2, 1996 order.<sup>[21]</sup> The RTC set a clarificatory hearing on their motion for reconsideration, but the clarificatory hearing was reset several times for reasons attributable to either or both of the parties. Although the clarificatory hearing was later on finally set on June 19, 1997,<sup>[22]</sup> the RTC benevolently granted petitioners' motion for reconsideration, and set the date for the presentation of petitioners' evidence on July 22, 1997 with the same warning of dire consequences.<sup>[23]</sup> As it turned out, the hearing of July 22, 1997 had to be cancelled and reset to August 15, 1997 after it was established that petitioners had not received the notice for the hearing.

On August 15, 1997, both sides did not appear, forcing the RTC to unilaterally move the hearing to September 9, 1997. Even that hearing was reset to September 18, 1997 due to problems of locating the records.<sup>[24]</sup>

The resetting to September 18, 1997 notwithstanding, PCIB filed its motion to resolve the case and to declare petitioners to have waived their right to present their evidence.<sup>[25]</sup>

On September 15, 1997, the RTC declared petitioners to have waived their right to present evidence, and directed the parties to submit their respective memoranda, after which the case would be deemed submitted for decision.<sup>[26]</sup>

On October 20, 1997, the RTC rendered its decision, disposing:

WHEREFORE, premises above considered, judgment is hereby rendered for plaintiff as against defendants, who are ordered as follows:

FOR DEFENDANT PHILWORTH:

1. To pay plaintiff PCIB the amount of P150,000.00 with interest at the rate of 12% per annum from the date the amount was due on 28 February 1991 until fully paid;

2. To pay plaintiff the amount equivalent to 15% of the total indebtedness for and as attorney's fees; and
3. To pay the costs of the proceedings.

FOR DEFENDANTS MACTAL AND REYES:

In case of default of PHILWORTH to pay the obligation, said defendants MACTAL and REYES, to jointly and solidarily pay the unpaid obligation of PHILWORTH, including costs, and except for attorney's fees which is exacted at 10% of the total indebtedness.

SO ORDERED.<sup>[27]</sup>

Petitioners appealed to the CA, claiming that the RTC had thereby violated their right to substantive and procedural due process mainly due to its decision being solely based on the evidence of PCIB.

On October 14, 2002, the CA affirmed the RTC, ruling thusly:

Defendants-appellants were not deprived of their day in court. They were given by the court a quo more than ample opportunity to be heard and to present evidence in their behalf, but, for reasons known only to them, they opted not to be heard, they chose not to present evidence in support of their defense.

Scrutiny of the records shows that the court a quo has been very lenient in granting the series of motions for postponement filed by the defendants-appellants which have dragged this case for years. The court a quo was even more liberal when after the defendants-appellants have been declared to have waived their right to present their evidence, they were still given another opportunity to present their evidence when the court a quo granted their motion for reconsideration. Hence, defendants-appellants cannot feign that they were denied of their right to due process.

It is basic that as long as a party is given the opportunity to defend his interest in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. Where opportunity to be heard, either through oral argument or through pleadings, is accorded there can be no denial of procedural due process. The most basic tenet of due process is the right to be heard. Where a party had been afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the Bill of Rights.

The court a quo, therefore, has judiciously exercised its discretion when it considered the defendants-appellants to have waived their right to present evidence on their behalf and decided the case based on the evidence presented by the PCIB.