

FIRST DIVISION

[G.R. No. 150931, July 16, 2008]

**DR. CECILIA DE LOS SANTOS, PETITIONER, VS. DR. PRISCILA
BAUTISTA VIBAR, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari^[1] assailing the Decision^[2] dated 29 June 2001 and Resolution^[3] dated 21 November 2001 of the Court of Appeals in CA-G.R. CV No. 66605.

The Facts

Petitioner Cecilia de los Santos (Cecilia) and respondent Priscila Bautista Vibar (Priscila) were former co-workers in the Medical Department of the Social Security System. They were close and trusted friends for 33 years.

Sometime in 1994, Cecilia introduced Jose de Leon (de Leon) to Priscila. De Leon needed money and borrowed P100,000 from Priscila. De Leon issued a promissory note dated 2 June 1994 and bound himself to pay the loan three months from date with a monthly interest rate of 3%.^[4] Cecilia signed as a guarantor of de Leon's loan.

On 28 June 1995, de Leon asked Priscila for another loan. Together with Cecilia and Avelina Conte, de Leon went to Priscila's house. Priscila and her sister, Atty. Josefina Bautista (Atty. Bautista), were present in the same gathering. After some discussion, they all agreed that the outstanding P100,000 loan together with the accrued interest would be deducted from the new loan of P500,000.^[5]

De Leon signed a typewritten promissory note, which he brought with him, acknowledging the debt of P500,000 payable within 12 months from 28 August 1995, at a fixed monthly interest rate of 3% and a penalty of 2% per month in case of default.^[6] Then, Cecilia signed as a witness under the phrase "signed in the presence of." However, Atty. Bautista brought up the need for Cecilia to sign as guarantor. Thereupon, de Leon, in his own handwriting, inserted the word "guarantor" besides Cecilia's name, as Cecilia nodded her head to what de Leon was doing. De Leon also added the phrase, "as security for this loan this TCT No. T-47375, Registry of Baguio City, is being submitted by way of mortgage."

On maturity date, de Leon failed to pay any of the monthly installments. Priscila made several verbal demands on de Leon for payment but to no avail. Priscila's

counsel then sent de Leon a demand letter dated 17 July 1996 asking for payment of the principal loan with interest and penalties.^[7] De Leon failed to respond. On 4 September 1996, Priscila's counsel again sent a demand letter not only to de Leon as principal debtor, but also to Cecilia.^[8] Cecilia was being made to answer for de Leon's debt as the latter's guarantor. Cecilia then remitted to Priscila P15,000 to pay one month's interest on the loan.^[9] However, this was the only payment Cecilia made to Priscila as Cecilia claimed she had no money to pay the full amount of the loan.

After several failed attempts to collect the loan, Priscila filed with the Registry of Deeds of Baguio City an adverse claim on the property registered under TCT No. T-47375. However, the Register of Deeds denied the registration of Priscila's claim on several grounds:^[10]

(a) the issue involved is a money claim which does not fall within Section 70 of Presidential Decree No. 1529;^[11]

(b) the annexes were not marked;

(c) the family names of Jose and Evangeline, registered owners, do not tally with those on the title;^[12] and

(d) there is no statement that there is no other provision in the Property Registration Decree for registering the same.

On 20 November 1996, Priscila filed an action for recovery of money with the Regional Trial Court of Quezon City, Branch 100, against de Leon and Cecilia.^[13] De Leon did not file an answer and the trial court declared him in default. Cecilia, on the other hand, filed an answer denying that she signed as guarantor of de Leon's loan.

On 26 November 1999, the trial court ruled in favor of Cecilia and dismissed the complaint for insufficiency of evidence.^[14] On 12 January 2000, Priscila filed a Motion for Reconsideration on the grounds that the trial court erred in (a) dismissing the complaint against de Leon despite his being declared in default; and (b) finding that Cecilia was not a guarantor of de Leon's loan.

In an Order dated 8 February 2000,^[15] the trial court modified its decision and ruled that de Leon acted fraudulently or in bad faith in refusing to pay his debt to Priscila. However, the trial court affirmed its decision dismissing the complaint against Cecilia. The trial court ruled that there was no express consent given by Cecilia binding her as guarantor. The dispositive portion of the Order provides:

WHEREFORE, in view of the foregoing, the Decision of the Court dated November 26, 1999, is hereby amended as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff Dra. Priscila Vibar and against defendant Jose de Leon, and hereby orders the latter to pay the plaintiff the following amounts:

(1) P500,000.00 representing the total amount of the loan extended with

interest at 3% per month and penalty of 2% per month (due to default) from July 17, 1996 until the obligation is fully paid;

(2) P30,000.00 representing moral damages;

(3) P20,000.00 representing attorney's fees; and

(4) costs of suit.

Further, the Court hereby DISMISSES the instant complaint against defendant Dra. Cecilia de los Santos for insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.

Priscila filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 66605.

The Ruling of the Court of Appeals

On 29 June 2001, the appellate court affirmed the trial court's ruling against de Leon but modified the same with respect to Cecilia.^[16] The appellate court declared Cecilia as guarantor of de Leon's loan. The relevant portions of the Decision state:

x x x The conduct of defendant-appellee de los Santos during the signing, however, belies her intention to act merely as a witness. It cannot be gainsaid that she did not react when she heard Atty. Bautista's protest about her signing the promissory note in the capacity only of a witness and not as a guarantor. Neither did defendant-appellee de los Santos object when defendant-appellee de Leon got back the promissory note and wrote the word "guarantor" after her signature in full view of all those present, including defendant-appellee de los Santos. In fact, said appellee nodded, signifying approval, when defendant-appellee de Leon placed the word "guarantor" after her signature on the promissory note.

x x x x

In this factual milieu, if defendant-appellee de los Santos intended only to sign as a witness, she should have reacted when the word "guarantor" was written on the note in her presence. She should have expressed her strong and firm objections to such imposition of liability. But defendant-appellee de los Santos kept mum. Such silence can lead to no other conclusion that she has impliedly given her consent to be the guarantor of de Leon's loan.

Moreover, defendant-appellee de los Santos is estopped from claiming otherwise. Estoppel *in pais* arises x x x.

Moreover, one can imply from defendant-appellee de los Santos' letter dated May 5, 1996 addressed to the Register of Deeds, City of Baguio that defendant-appellee de los Santos agreed to be bound as guarantor x x x.

It is significant to note that she made no statement therein repudiating her having signed the same in the capacity of a guarantor, contrary to what she now claims in her defense. Her failure to correct or refute such statement reinforces the claim that indeed she guaranteed payment of the loan in question, and that writing was to her interest considering her liabilities under the note as guarantor.

x x x Thus, defendant-appellee de los Santos can be compelled to pay plaintiff-appellant Vibar the judgment debt if it remains unsatisfied after execution is enforced against the properties of the principal debtor, defendant-appellee Jose de Leon. x x x

Cecilia filed a Motion for Reconsideration which the appellate court denied in a Resolution dated 21 November 2001.^[17]

Hence, this petition.

The Issue

The main issue for resolution is whether Cecilia is liable as guarantor of de Leon's loan from Priscila.

Cecilia contends that she is not liable as guarantor. Her behavior, as when she allegedly "kept mum" or "nodded her head and smiled," was not an implied consent as guarantor. She insists that the law is clear that a guaranty is not presumed and that there must be a concrete positive act of acceptance or consent to the guaranty. Thus, without such knowledge or consent, there is no estoppel *in pais*.

Priscila, on the other hand, maintains that from the totality of Cecilia's acts, she consented to be bound as guarantor of de Leon's loan. Her nod of approval and non-objection to the insertion of the word "guarantor" at the signing of the second promissory note show that she agreed to be a guarantor, just like in the first promissory note. Even after discovering that the loan was unpaid and already overdue, Cecilia did not contest that she was a guarantor and even paid partially to Priscila. Instead, Cecilia claimed she had no money to pay the entire loan. It was only after the case was filed that Cecilia challenged the insertions in the promissory note. Hence, Priscila insists that Cecilia is estopped from denying that she is a guarantor.

The Court's Ruling

The issue before us is a question of fact, the determination of which is beyond this Court's power of review for it is not a trier of facts.^[18] However, there are instances when questions of fact may be reviewed by this Court, as when the findings of the Court of Appeals are contrary to those of the trial court.^[19] In the present case, the trial court and the Court of Appeals made conflicting findings of fact. Thus, a review of such factual findings is in order.

Here, the controversy centers on whether there exists a contract of guaranty to hold Cecilia liable for the loan of de Leon, the principal debtor. The trial court found that