585 Phil. 537

THIRD DIVISION

[G.R. No. 173526, August 28, 2008]

BENJAMIN BITANGA, PETITIONER, VS. PYRAMID CONSTRUCTION ENGINEERING CORPORATION, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45[1] of the Revised Rules of Court are: (1) the Decision[2] dated 11 April 2006 of the Court of Appeals in CA-G.R. CV No. 78007 which affirmed with modification the partial Decision[3] dated 29 November 2002 of the Regional Trial Court (RTC), Branch 96, of Quezon City, in Civil Case No. Q-01-45041, granting the motion for summary judgment filed by respondent Pyramid Construction and Engineering Corporation and declaring petitioner Benjamin Bitanga and his wife, Marilyn Bitanga (Marilyn), solidarily liable to pay P6,000,000.000 to respondent; and (2) the Resolution[4] dated 5 July 2006 of the appellate court in the same case denying petitioner's Motion for Reconsideration.

The generative facts are:

On 6 September 2001, respondent filed with the RTC a Complaint for specific performance and damages with application for the issuance of a writ of preliminary attachment against the petitioner and Marilyn. The Complaint was docketed as Civil Case No. Q-01-45041.

Respondent alleged in its Complaint that on 26 March 1997, it entered into an agreement with Macrogen Realty, of which petitioner is the President, to construct for the latter the Shoppers Gold Building, located at Dr. A. Santos Avenue corner Palayag Road, Sucat, Parañaque City. Respondent commenced civil, structural, and architectural works on the construction project by May 1997. However, Macrogen Realty failed to settle respondent's progress billings. Petitioner, through his representatives and agents, assured respondent that the outstanding account of Macrogen Realty would be paid, and requested respondent to continue working on the construction project. Relying on the assurances made by petitioner, who was no less than the President of Macrogen Realty, respondent continued the construction project.

In August 1998, respondent suspended work on the construction project since the conditions that it imposed for the continuation thereof, including payment of unsettled accounts, had not been complied with by Macrogen Realty. On 1 September 1999, respondent instituted with the Construction Industry Arbitration Commission (CIAC) a case for arbitration against Macrogen Realty seeking payment by the latter of its unpaid billings and project costs. Petitioner, through counsel, then conveyed to respondent his purported willingness to amicably settle the arbitration

case. On 17 April 2000, before the arbitration case could be set for trial, respondent and Macrogen Realty entered into a Compromise Agreement,[5] with petitioner acting as signatory for and in behalf of Macrogen Realty. Under the Compromise Agreement, Macrogen Realty agreed to pay respondent the total amount of P6,000,000.00 in six equal monthly installments, with each installment to be delivered on the 15th day of the month, beginning 15 June 2000. Macrogen Realty also agreed that if it would default in the payment of two successive monthly installments, immediate execution could issue against it for the unpaid balance, without need of judgment or decree from any court or tribunal. Petitioner guaranteed the obligations of Macrogen Realty under the Compromise Agreement by executing a Contract of Guaranty[6] in favor of respondent, by virtue of which he irrevocably and unconditionally guaranteed the full and complete payment of the principal amount of liability of Macrogen Realty in the sum of P6,000,000.00. Upon joint motion of respondent and Macrogen Realty, the CIAC approved the Compromise Agreement on 25 April 2000.[7]

However, contrary to petitioner's assurances, Macrogen Realty failed and refused to pay all the monthly installments agreed upon in the Compromise Agreement. Hence, on 7 September 2000, respondent moved for the issuance of a writ of execution[8] against Macrogen Realty, which CIAC granted.

On 29 November 2000, the sheriff[9] filed a return stating that he was unable to locate any property of Macrogen Realty, except its bank deposit of P20,242.33, with the Planters Bank, Buendia Branch.

Respondent then made, on 3 January 2001, a written demand[10] on petitioner, as guarantor of Macrogen Realty, to pay the P6,000,000.00, or to point out available properties of the Macrogen Realty within the Philippines sufficient to cover the obligation guaranteed. It also made verbal demands on petitioner. Yet, respondent's demands were left unheeded.

Thus, according to respondent, petitioner's obligation as guarantor was already due and demandable. As to Marilyn's liability, respondent contended that Macrogen Realty was owned and controlled by petitioner and Marilyn and/or by corporations owned and controlled by them. Macrogen Realty is 99% owned by the Asian Appraisal Holdings, Inc. (AAHI), which in turn is 99% owned by Marilyn. Since the completion of the construction project would have redounded to the benefit of both petitioner and Marilyn and/or their corporations; and considering, moreover, Marilyn's enormous interest in AAHI, the corporation which controls Macrogen Realty, Marilyn cannot be unaware of the obligations incurred by Macrogen Realty and/or petitioner in the course of the business operations of the said corporation.

Respondent prayed in its Complaint that the RTC, after hearing, render a judgment ordering petitioner and Marilyn to comply with their obligation under the Contract of Guaranty by paying respondent the amount of P6,000,000.000 (less the bank deposit of Macrogen Realty with Planter's Bank in the amount of P20,242.23) and P400,000.000 for attorneys fees and expenses of litigation. Respondent also sought the issuance of a writ of preliminary attachment as security for the satisfaction of any judgment that may be recovered in the case in its favor.

Marilyn filed a Motion to Dismiss,[11] asserting that respondent had no cause of action against her, since she did not co-sign the Contract of Guaranty with her husband; nor was she a party to the Compromise Agreement between respondent and Macrogen Realty. She had no part at all in the execution of the said contracts. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of another corporation is not by itself a sufficient ground for disregarding the separate personality of the latter corporation. Respondent misread Section 4, Rule 3 of the Revised Rules of Court.

The RTC denied Marilyn's Motion to Dismiss for lack of merit, and in its Order dated 24 January 2002 decreed that:

> The Motion To Dismiss Complaint Against Defendant Marilyn Andal Bitanga filed on November 12, 2001 is denied for lack of merit considering that Sec. 4, Rule 3, of the Rules of Court (1997) specifically provides, as follows:
>
> > "SEC. 4. Spouses as parties. - Husband and wife shall sue or be sued jointly, except as provided by law."
>
> and that this case does not come within the exception.[12]

Petitioner filed with the RTC on 12 November 2001, his Answer[13] to respondent's Complaint averring therein that he never made representations to respondent that Macrogen Realty would faithfully comply with its obligations under the Compromise Agreement. He did not offer to guarantee the obligations of Macrogen Realty to entice respondent to enter into the Compromise Agreement but that, on the contrary, it was respondent that required Macrogen Realty to offer some form of security for its obligations before agreeing to the compromise. Petitioner further alleged that his wife Marilyn was not aware of the obligations that he assumed under both the Compromise Agreement and the Contract of Guaranty as he did not inform her about said contracts, nor did he secure her consent thereto at the time of their execution.

As a special and affirmative defense, petitioner argued that the benefit of excussion was still available to him as a guarantor since he had set it up prior to any judgment against him. According to petitioner, respondent failed to exhaust all legal remedies to collect from Macrogen Realty the amount due under the Compromise Agreement, considering that Macrogen Realty still had uncollected credits which were more than enough to pay for the same. Given these premise, petitioner could not be held liable as guarantor. Consequently, petitioner presented his counterclaim for damages.

At the pre-trial held on 5 September 2002, the parties submitted the following issues for the resolution of the RTC:

> (1) whether the defendants were liable under the contract of guarantee dated April 17, 2000 entered into between Benjamin Bitanga and the plaintiff;
>
> (2) whether defendant wife Marilyn Bitanga is liable in this action;

(3) whether the defendants are entitled to the benefit of excussion, the plaintiff on the one hand claiming that it gave due notice to the guarantor, Benjamin Bitanga, and the defendants contending that no proper notice was received by Benjamin Bitanga;

(4) if damages are due, which party is liable; and

(5) whether the benefit of excussion can still be invoked by the defendant guarantor even after the notice has been allegedly sent by the plaintiff although proper receipt is denied.[14]

On 20 September 2002, prior to the trial proper, respondent filed a Motion for Summary Judgment.[15] Respondent alleged therein that it was entitled to a summary judgment on account of petitioner's admission during the pre-trial of the genuineness and due execution of the Contract of Guaranty. The contention of petitioner and Marilyn that they were entitled to the benefit of excussion was not a genuine issue. Respondent had already exhausted all legal remedies to collect from Macrogen Realty, but its efforts proved unsuccessful. Given that the inability of Macrogen Realty as debtor to pay the amount of its debt was already proven by the return of the writ of execution to CIAC unsatisfied, the liability of petitioner as guarantor already arose.[16] In any event, petitioner and Marilyn were deemed to have forfeited their right to avail themselves of the benefit of excussion because they failed to comply with Article 2060[17] of the Civil Code when petitioner ignored respondent's demand letter dated 3 January 2001 for payment of the amount he guaranteed.[18] The duty to collect the supposed receivables of Macrogen Realty from its creditors could not be imposed on respondent, since petitioner and Marilyn never informed respondent about such uncollected credits even after receipt of the demand letter for payment. The allegation of petitioner and Marilyn that they could not respond to respondent's demand letter since they did not receive the same was unsubstantiated and insufficient to raise a genuine issue of fact which could defeat respondent's Motion for Summary Judgment. The claim that Marilyn never participated in the transactions that culminated in petitioner's execution of the Contract of Guaranty was nothing more than a sham.

In opposing respondent's foregoing Motion for Summary Judgment, petitioner and Marilyn countered that there were genuinely disputed facts that would require trial on the merits. They appended thereto an affidavit executed by petitioner, in which he declared that his spouse Marilyn could not be held personally liable under the Contract of Guaranty or the Compromise Agreement, nor should her share in the conjugal partnership be made answerable for the guaranty petitioner assumed, because his undertaking of the guaranty did not in any way redound to the benefit of their family. As guarantor, petitioner was entitled to the benefit of excussion, and he did not waive his right thereto. He never received the respondent's demand letter dated 3 January 2001, as Ms. Dette Ramos, the person who received it, was not an employee of Macrogen Realty nor was she authorized to receive the letter on his behalf. As a guarantor, petitioner could resort to the benefit of excussion at any time before judgment was rendered against him.[19] Petitioner reiterated that Macrogen Realty had uncollected credits which were more than sufficient to satisfy the claim of respondent.

On 29 November 2002, the RTC rendered a partial Decision, the dispositive portion of which provides:

> WHEREFORE, summary judgment is rendered ordering defendants SPOUSES BENJAMIN BITANGA and MARILYN ANDAL BITANGA to pay the [herein respondent], jointly and severally, the amount of P6,000,000.00, less P20,242.23 (representing the amount garnished bank deposit of MACROGEN in the Planters Bank, Buendia Branch); and the costs of suit.
>
> Within 10 days from receipt of this partial decision, the [respondent] shall inform the Court whether it shall still pursue the rest of the claims against the defendants. Otherwise, such claims shall be considered waived.[20]

Petitioner and Marilyn filed a Motion for Reconsideration of the afore-quoted Decision, which the RTC denied in an Order dated 26 January 2003.[21]

In time, petitioner and Marilyn filed an appeal with the Court of Appeals, docketed as CA-G.R. CV 78007. In its Decision dated 11 April 2006, the appellate court held:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, MODIFIED to the effect that defendant-appellant Marilyn Bitanga is adjudged not liable, whether solidarily or otherwise, with her husband the defendant-appellant Benjamin Bitanga, under the compromise agreement or the contract of guaranty. No costs in this instance.[22]

In holding that Marilyn Bitanga was not liable, the Court of Appeals cited *Ramos v. Court of Appeals*,[23] in which it was declared that a contract cannot be enforced against one who is not a party to it. The Court of Appeals stated further that the substantial ownership of shares in Macrogen Realty by Marilyn Bitanga was not enough basis to hold her liable.

The Court of Appeals, in its Resolution dated 5 July 2006, denied petitioner's Motion for Reconsideration[24] of its earlier Decision.

Petitioner is now before us *via* the present Petition with the following assignment of errors:

I

> THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE VALIDITY OF THE PARTIAL SUMMARY JUDGMENT BY THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 96, DESPITE THE CLEAR EXISTENCE OF DISPUTED GENUINE AND MATERIAL FACTS OF THE CASE THAT SHOULD HAVE REQUIRED A TRIAL ON THE MERITS.

II

> THE COURT OF APPEALS GRAVELY ERRED IN NOT UPHOLDING THE RIGHT OF PETITIONER BENJAMIN M. BITANGA AS A MERE GUARANTOR