505 Phil. 636

SECOND DIVISION

[G.R. NO. 151060, August 31, 2005]

JN DEVELOPMENT CORPORATION, AND SPS. RODRIGO AND LEONOR STA. ANA, PETITIONERS, VS. PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, RESPONDENT.

[G.R. NO. 151311]

NARCISO V. CRUZ, PETITIONER, VS. PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, RESPONDENT.

D E C I S I O N

TINGA, J.:

Before us are consolidated petitions questioning the *Decision*[1] of the Court of Appeals (CA) in CA-G.R. CV No. 61318, entitled *Philippine Export and Foreign Loan Guarantee Corporation v. JN Development Corporation, et al.*, which reversed the *Decision* of the Regional Trial Court (RTC) of Makati, Branch 60.

On 13 December 1979, petitioner JN Development Corporation ("JN") and Traders Royal Bank (TRB) entered into an agreement whereby TRB would extend to JN an Export Packing Credit Line for Two Million Pesos (P2,000,000.00). The loan was covered by several securities, including a real estate mortgage[2] and a letter of guarantee from respondent Philippine Export and Foreign Loan Guarantee Corporation ("PhilGuarantee"), now Trade and Investment Development Corporation of the Philippines, covering seventy percent (70%) of the credit line.[3] With PhilGuarantee issuing a guarantee in favor of TRB,[4] JN, petitioner spouses Rodrigo and Leonor Sta. Ana[5] and petitioner Narciso Cruz[6] executed a *Deed of Undertaking*[7] (Undertaking) to assure repayment to PhilGuarantee.

It appears that JN failed to pay the loan to TRB upon its maturity; thus, on 8 October 1980 TRB requested PhilGuarantee to make good its guarantee.[8] PhilGuarantee informed JN about the call made by TRB, and inquired about the action of JN to settle the loan.[9] Having received no response from JN, on 10 March 1981 PhilGuarantee paid TRB Nine Hundred Thirty Four Thousand Eight Hundred Twenty Four Pesos and Thirty Four Centavos (P934,824.34).[10] Subsequently, PhilGuarantee made several demands on JN, but the latter failed to pay. On 30 May 1983, JN, through Rodrigo Sta. Ana, proposed to settle the obligation "by way of development and sale" of the mortgaged property.[11] PhilGuarantee, however, rejected the proposal.

PhilGuarantee thus filed a *Complaint*[12] for collection of money and damages against herein petitioners.

In its *Decision* dated 20 August 1998, the RTC dismissed PhilGuarantee's *Complaint* as well as the counterclaim of petitioners. It ruled that petitioners are not liable to reimburse PhilGuarantee what it had paid to TRB. Crucial to this holding was the court's finding that TRB was able to foreclose the real estate mortgage executed by JN, thus extinguishing petitioners' obligation.[13] Moreover, there was no showing that after the said foreclosure, TRB had demanded from JN any deficiency or the payment of the difference between the proceeds of the foreclosure sale and the actual loan.[14] In addition, the RTC held that since PhilGuarantee's guarantee was good for only one year from 17 December 1979, or until 17 December 1980, and since it was not renewed after the expiry of said period, PhilGuarantee had no more legal duty to pay TRB on 10 March 1981.[15] The RTC likewise ruled that Cruz cannot be held liable under the Undertaking since he was not the one who signed the document, in line with its finding that his signature found in the records is totally different from the signature on the Undertaking.[16]

According to the RTC, the failure of TRB to sue JN for the recovery of the loan precludes PhilGuarantee from seeking recoupment from the spouses Sta. Ana and Cruz what it paid to TRB. Thus, PhilGuarantee's payment to TRB amounts to a waiver of its right under Art. 2058 of the Civil Code.[17]

Aggrieved by the RTC *Decision*, PhilGuarantee appealed to the CA. The appellate court reversed the RTC and ordered petitioners to pay PhilGuarantee Nine Hundred Thirty Four Thousand Six Hundred Twenty Four Pesos and Thirty Four Centavos (P934,624.34), plus service charge and interest.[18]

In reaching its denouement, the CA held that the RTC's finding that the loan was extinguished by virtue of the foreclosure sale of the mortgaged property had no factual support,[19] and that such finding is negated by Rodrigo Sta. Ana's testimony that JN did not receive any notice of foreclosure from PhilGuarantee or from TRB. [20] Moreover, Sta. Ana even offered the same mortgaged property to PhilGuarantee to settle its obligations with the latter.[21]

The CA also ruled that JN's obligation had become due and demandable within the one-year period of effectivity of the guarantee; thus, PhilGuarantee's payment to TRB conformed with its guarantee, although the payment itself was effected one year after the maturity date of the loan.[22] Contrary to the trial court's finding, the CA ruled that the contract of guarantee was not extinguished by the alleged lack of evidence on PhilGuarantee's consent to the extensions granted by TRB to JN.[23] Interpreting Art. 2058 of the Civil Code,[24] the appellate court explained that while the provision states that the guarantor cannot be compelled to pay unless the properties of the debtor are exhausted, the guarantor is not precluded from waiving the benefit of excussion and paying the obligation altogether.[25]

Finally, the CA found that Narciso Cruz was unable to prove the alleged forgery of his signature in the Undertaking, the evidence presented not being sufficient to overcome the presumption of regularity of the Undertaking which is a notarized document. [26]

Petitioners sought reconsideration of the *Decision* and prayed for the admission of documents evidencing the foreclosure of the real estate mortgage, but the motion for reconsideration was denied by the CA for lack of merit. The CA ruled that the documentary evidence presented by petitioners cannot be considered as newly discovered evidence, it being already in existence while the case was pending before the trial court, the very forum before which it should have been presented. Besides, a foreclosure sale *per se* is not proof of petitioners' payment of the loan to PhilGuarantee, the CA added.[27]

So now before the Court are the separate petitions for review of the CA *Decision*. JN and the spouses Sta. Ana, petitioners in G.R. No. 151060, posit that the CA erred in interpreting Articles 2079, 2058, and 2059 of the Civil Code in its *Decision*.[28] Meanwhile, petitioner Narciso Cruz in G.R. No. 151311 claims that the CA erred when it held that petitioners are liable to PhilGuarantee despite its payment after the expiration of its contract of guarantee and the lack of PhilGuarantee's consent to the extensions granted by TRB to JN. Moreover, Cruz questions the reversal of the ruling of the trial court anent his liability as a signatory to the Undertaking.[29]

On the other hand, PhilGuarantee maintains that the date of default, not the actual date of payment, determines the liability of the guarantor and that having paid TRB when the loan became due, it should be indemnified by petitioners.[30] It argues that, contrary to petitioners' claim, there could be no waiver of its right to excussion more explicit than its act of payment to TRB very directly.[31] Besides, the right to excussion is for the benefit of the guarantor and is not a defense for the debtor to raise and use to evade liability.[32] Finally, PhilGuarantee maintains that there is no sufficient evidence proving the alleged forgery of Cruz's signature on the Undertaking, which is a notarized document and as such must be accorded the presumption of regularity.[33]

The Court finds for PhilGuarantee.

Under a contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.[34] The guarantor who pays for a debtor, in turn, must be indemnified by the latter.[35] However, the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor.[36] This is what is otherwise known as the benefit of excussion.

It is clear that excussion may only be invoked after legal remedies against the principal debtor have been expanded. Thus, it was held that the creditor must first obtain a judgment against the principal debtor before assuming to run after the alleged guarantor, "for obviously the 'exhaustion of the principal's property' cannot even begin to take place before judgment has been obtained."[37] The law imposes conditions precedent for the invocation of the defense. Thus, in order that the guarantor may make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment and point out to the creditor available property of the debtor within the Philippines sufficient to cover the amount of the debt.[38]

While a guarantor enjoys the benefit of excussion, nothing prevents him from paying the obligation once demand is made on him. Excussion, after all, is a right granted to him by law and as such he may opt to make use of it or waive it. PhilGuarantee's waiver of the right of excussion cannot prevent it from demanding reimbursement from petitioners. The law clearly requires the debtor to indemnify the guarantor what the latter has paid.[39]

Petitioners' claim that PhilGuarantee had no more obligation to pay TRB because of the alleged expiration of the contract of guarantee is untenable. The guarantee, dated17 December 1979, states:

> In the event of default by JNDC and as a consequence thereof, PHILGUARANTEE is made to pay its obligation arising under the aforesaid guarantee PHILGUARANTEE shall pay the BANK the amount of P1.4 million or 70% of the total obligation unpaid...
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> . . . .
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> This guarantee shall be valid for a period of one (1) year from date hereof but may be renewed upon payment by JNDC of the guarantee fee at the same rate of 1.5% per annum.[40]

The guarantee was only up to 17 December 1980. JN's obligation with TRB fell due on 30 June 1980, and demand on PhilGuarantee was made by TRB on 08 October 1980. That payment was actually made only on 10 March 1981 does not take it out of the terms of the guarantee. What is controlling is that default and demand on PhilGuarantee had taken place while the guarantee was still in force.

There is likewise no merit in petitioners' claim that PhilGuarantee's failure to give its express consent to the alleged extensions granted by TRB to JN had extinguished the guarantee. The requirement that the guarantor should consent to any extension granted by the creditor to the debtor under Art. 2079 is for the benefit of the guarantor. As such, it is likewise waivable by the guarantor. Thus, even assuming that extensions were indeed granted by TRB to JN, PhilGuarantee could have opted to waive the need for consent to such extensions. Indeed, a guarantor is not precluded from waiving his right to be notified of or to give his consent to extensions obtained by the debtor. Such waiver is not contrary to public policy as it is purely personal and does not affect public interest.[41] In the instant case, PhilGuarantee's waiver can be inferred from its actual payment to TRB after the latter's demand, despite JN's failure to pay the renewal/guarantee fee as indicated in the guarantee.[42]

For the above reasons, there is no basis for petitioner's claim that PhilGuarantee was a mere volunteer payor and had no legal obligation to pay TRB. The law does not prohibit the payment by a guarantor on his own volition, heedless of the benefit of excussion. In fact, it recognizes the right of a guarantor to recover what it has paid, even if payment was made before the debt becomes due,[43] or if made without notice to the debtor,[44] subject of course to some conditions.

Petitioners' invocation of our ruling in *Willex Plastic Industries, Corp. v. Court of Appeals*[45] is misplaced, if not irrelevant. In the said case, the guarantor claimed

that it could not be proceeded against without first exhausting all of the properties of the debtor. The Court, finding that there was an express renunciation of the benefit of excussion in the contract of guarantee, ruled against the guarantor.

The cited case finds no application in the case *a quo*. PhilGuarantee is not invoking the benefit of excussion. It cannot be overemphasized that excussion is a right granted to the guarantor and, therefore, only he may invoke it at his discretion.

The benefit of excussion, as well as the requirement of consent to extensions of payment, is a protective device pertaining to and conferred on the guarantor. These may be invoked by the guarantor against the creditor as defenses to bar the unwarranted enforcement of the guarantee. However, PhilGuarantee did not avail of these defenses when it paid its obligation according to the tenor of the guarantee once demand was made on it. What is peculiar in the instant case is that petitioners, the principal debtors themselves, are muddling the issues and raising the same defenses against the guarantor, which only the guarantor may invoke against the creditor, to avoid payment of their own obligation to the guarantor. The Court cannot countenance their self-seeking desire to be exonerated from the duty to reimburse PhilGuarantee after it had paid TRB on their behalf and to unjustly enrich themselves at the expense of PhilGuarantee.

Petitioners assert that TRB's alleged foreclosure of the real estate mortgage over the land executed as security for the loan agreement had extinguished PhilGuarantee's obligation; thus, PhilGuarantee's recourse should be directed against TRB, as per the *pari-passu* provision[46] in the contract of guarantee.[47] We disagree.

The foreclosure was made on 27 August 1993, "after the case was submitted for decision in 1992 and before the issuance of the decision of the court *a quo* in 1998".[48] Thus, foreclosure was resorted to by TRB against JN when they both had become aware that PhilGuarantee had already paid TRB and that there was a pending case filed by PhilGuarantee against petitioners. This matter was not raised and proved in the trial court, nor in the appeal before the CA, but raised for the first time in petitioners' motion for reconsideration in the CA. In their appellants' Brief, petitioners claimed that "there was no need for the defendant-appellee JNDC to present any evidence before the lower court to show that indeed foreclosure of the REM took place."[49] As properly held by the CA,

> ... Firstly, the documents evidencing foreclosure of mortgage cannot be considered as newly discovered evidence. The said documents were already subsisting and should have been presented during the trial of the case. The alleged foreclosure sale was made on August 23, 1993 ... while the decision was rendered by the trial court on August 20, 1998 about five (5) years thereafter. These documents were likewise not submitted by the defendants-appellees when they submitted their appellees' Brief to this Court. Thus, these cannot be considered as newly discovered evidence but are more correctly ascribed as suppressed forgotten evidence' Secondly, the alleged foreclosure sale is not proof of payment of the loan by defendant-appellees to the plaintiffs-appellants.[50]

Besides, the complaint *a quo* was filed by PhilGuarantee as guarantor for JN, and its cause of action was premised on its payment of JN's obligation after the latter's default. PhilGuarantee was well within its rights to demand reimbursement for such