

SECOND DIVISION

[G.R. No. 131673, September 10, 2004]

**RUBEN MARTINEZ,^[*] SUBSTITUTED BY HIS HEIRS, MENA
CONSTANTINO MARTINEZ, WILFRIDO C. MARTINEZ, EMMA M.
NAVA, AND EDNA M. SAKHRANI, PETITIONERS, VS. COURT OF
APPEALS AND BPI INTERNATIONAL FINANCE, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals, in CA-G.R. CV No. 43985, modifying the Decision^[2] of the Regional Trial Court of Kalookan City, Branch 122, in Civil Case No. C-10811.

The antecedents are as follows:

Respondent BPI International Finance^[3] is a foreign corporation not doing business in the Philippines, with office address at the Bank of America Tower, 12 Harcourt Road, Central Hongkong. It was a deposit-taking company organized and existing under and by virtue of the laws of Hongkong, and was also engaged in investment banking operations therein.

Cintas Largas, Ltd. (CLL) was also a foreign corporation, established in Hongkong, with a paid-up capital of HK\$10,000. The registered shareholders of the CLL in Hongkong were the Overseas Nominee, Ltd. and Shares Nominee, Ltd., which were mainly nominee shareholders. In Hongkong, the nominee shareholder of CLL was Baker & McKenzie Nominees, Ltd., a leading solicitor firm. However, beneficially, the company was equally owned by Messrs. Ramon Siy, Ricardo Lopa, Wilfrido C. Martinez, and Miguel J. Lacson.^[4] The registered office address of CLL in Hongkong was 22/F, Prince's Building, also the office address of Price Waterhouse & Co., a large accounting firm in Hongkong.

The bulk of the business of the CLL was the importation of molasses from the Philippines, principally from the Mar Tierra Corporation, and the resale thereof in the international market.^[5] However, Mar Tierra Corporation also sold molasses to its customers.^[6] Wilfrido C. Martinez was the president of Mar Tierra Corporation, while its executive vice-president was Blamar Gonzales. The business operations of both the CLL and Mar Tierra Corporation were run by Wilfrido Martinez and Gonzales.

About 42% of the capital stock of Mar Tierra Corporation was owned by RJL Martinez Fishing Corporation (RJL), the leading tuna fishing outfit in the Philippines. Petitioner Ruben Martinez was the president of RJL and a member of the board of directors thereof. The majority stockholders of RJL were Ruben Martinez and his brothers, Jose and Luis Martinez. Sixty-eight (68) percent of the total assets of

Ruben Martinez were in the RJL.

In 1979, respondent BPI International Finance (then AIFL) granted CLL a letter of credit in the amount of US\$3,000,000. Wilfrido Martinez signed the letter agreement with the respondent for the CLL. The respondent and the CLL had made the following arrangements:

Cintas Largas, Ltd. will purchase molasses from the Philippines, mainly from Mar Tierra Corporation, and then sell the molasses to foreign countries. Both the purchase of the molasses from the Philippines and the subsequent sale thereof to foreign customers were effected by means of Letters of Credit. A Letter of Credit would be opened by Cintas Largas, Ltd. in favour of Mar Tierra Corporation or any other seller in the Philippines. Upon the sale of the molasses to foreign buyers, a Letter of Credit would then be opened by such buyers, in favour of Cintas Largas, Ltd. The Letters of Credit were effected through the Letter of Credit Facility of Cintas Largas, Ltd. in plaintiff. The profits of Cintas Largas, Ltd. from these transactions were then deposited in either the deposit account of Cintas Largas, Ltd. with plaintiff or the Money Market Placement Account Nos. 063 and 084, depending upon the instructions of Wilfrido C. Martinez and Blamar C. Gonzales, principally.^[7]

On January 24, 1979, the CLL opened a money market placement with the respondent bearing MMP No. 063, with an initial placement of US\$390,000.^[8] The CLL also opened and maintained a foreign currency account and a deposit account with the respondent. The authorized signatory in both accounts of CLL was Wilfrido C. Martinez. Some instructions also came from Gonzales, to be confirmed by Wilfrido Martinez.^[9] On March 21, 1980, petitioner Ruben Martinez and/or his son Wilfrido C. Martinez and/or Miguel J. Lacson affixed their signatures on the two signature cards furnished by the respondent which became MMP No. 063 and MMP No. 084. On the face of the cards, the signatories became joint account holders of the said money market placements.^[10]

On March 25, 1980, the CLL opened a money market placement account with the respondent bearing MMP No. 084 with an initial placement of US\$68,768.60, transferred from MMP No. 063.^[11] At times, funds in MMP Nos. 063 and 084 were transferred to the CLL's deposit account, and vice versa.

On May 19, 1980, the CLL, through Wilfrido Martinez, and the respondent, through Senen L. Matoto and Michael Sung, Senior Manager of the Money Management Division of the respondent, executed a letter-agreement in which the existing back-to-back credit facility granted to the CLL way back in 1979 was extended up to July 1980, and increased to US\$5,000,000. The credit facility was to be secured as follows:

- SECURITY:
- (i) Back-to-Back L/C – to be secured by an L/C issued, by a bank acceptable to AFHK, in favor of Cintas Largas.
 - (ii) AFHK L/C issued prior to receipt of Backing L/C – to be secured by a 10% margin by way of a hold out on cash deposit with AFHK with interest at LIBOR. The Backing L/C, however,

- shall be opened not later than 120 days after the issuance of AFHK's L/C.
- (iii) JSS of Messrs. Ramon Siy, Wilfrido C. Martinez, Ricardo Lopa and Miguel J. Lacson for both of the above cases.

DOCUMENTATION: Standard AFHK L/C documentation. [12]

The facility was designed to finance the purchases of molasses made by the CLL from the Philippines for re-export. [13]

In compliance with the letter-agreement, Wilfrido C. Martinez, Miguel J. Lacson, Ricardo Lopa, and Ramon Siy executed a continuing suretyship agreement in which they bound and obliged themselves, jointly and severally, with the CLL to pay the latter's obligation under the said credit facility. [14]

As of September 26, 1980, the balance of the deposit account of the CLL with the respondent was US\$1,025,052.06. [15] On the other hand, the balance of the money placement in MMP No. 063, as of September 25, 1980 was US\$312,708.43, [16] while the balance of the money market placement in MMP No. 084 as of September 8, 1980 stood at US\$768,258.24. [17]

On October 10, 1980, Blamar Gonzales, acting for Mar Tierra Corporation, sent to the respondent a telex confirming his telephone conversation with Michael Sung/Bing Matoto requesting the respondent to transfer US\$340,000 to Account No. FCD SA 18402-7, registered in the name of Mar Tierra Corporation, Philippine Banking Corporation, Union Cement Building, Port Area, Manila, as payee, with the following specific instructions: (a) there should be no mention of Wilfrido Martinez or Mar Tierra Corporation; (b) the telex instruction should be signed only by Wilfrido Martinez and sent only through the telex machine of Mar Tierra Corporation; and, (c) the final confirmation of the transfer should be made by telephone call. [18] Gonzales requested the respondent, in the same telex, to confirm its total available account so that instructions on the transfer of the funds to FCD SA 18402-7 could be formalized. [19]

On October 13, 1980, Sung sent a telex to Gonzales informing the latter of the balances of the MMP Nos. 063 and 084 and in the CLL account deposit, with the corresponding maturity dates thereof, thus:

1. DETAIL OF PLACEMENT IN VARIOUS A/C.

MMP – 063

<u>VALUE</u>	<u>MATURITY</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>MATURITY VALUE</u>
<u>DATE</u>	<u>DATE</u>			
25/9/80	28/11/80	12-1/4	USD306,043.48	USD 312,708.43

MMP – 084

25/09/80	28/11/80	12-1/4	USD751,883.88	USD 768,258.24

				USD1080,966.67
				=====

CINTAS LARGAS

<u>VALUE</u> <u>DATE</u>	<u>MATURITY</u> <u>DATE</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>MATURITY VALUE</u>
15/9/80	1 DAY CALL	10-7/8	USD 46,131.26	
25/9/80	1 DAY CALL	11-1/4	USD500,000.00	
(RATE ADJ: TO 12-1/4 VALUE 7/10/80)				
26/9/80	31/10/80	12-1/4	USD420,831.45	USD 425,843.44

2. ACCORDING TO AIDC, O/S OF PESO LOAN IS 10,930,000.00, AND THE HOLDOUT REQUIRED IS 120 PCT

COMPUTATION: PESO 10,930,000.00

	7.89(EXCHANGE RATE)
	1.20(120 PCT)

1,662,357.00	
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3. ACCORDINGLY, THE FUND AVAILABLE IS APPROX. USD340,000.00. PLS REVERT.^[20]

Sung informed Gonzales that the account available was approximately US\$340,000, considering the CLL deposit account and the money market placements.^[21] On October 14, 1980, the respondent received a telex from Wilfrido C. Martinez requesting that the transfer of US\$340,000 from the deposit account of the CLL or any deposit available be effected by telegraphic transfer as soon as possible to their account, payee FCD SA 18402-7, Philippine Banking Corporation, Port Area, Manila.

^[22] On October 21, 1980, Wilfrido Martinez wrote the respondent confirming his request for the transfer of US\$340,000 to "their" account, FCD SA 18402-7, with the Philippine Banking Corporation, through Wells Fargo Bank of New York, Philippine Banking Corporation Account No. FCDU SA No. 003-019205.^[23]

The respondent complied with the request of the CLL, through Wilfrido Martinez and Gonzales, and remitted US\$340,000 as instructed.^[24] However, instead of deducting the amount from the funds in the CLL foreign currency or deposit accounts and/or MMP Nos. 063 and 084, the respondent merely "posted" the US\$340,000 as an account receivable of the CLL since, at that time, the money market placements had not yet matured.^[25] When the money market placements matured, however, the respondent did not collect the US\$340,000 therefrom. Instead, the respondent allowed the CLL and/or Wilfrido C. Martinez to withdraw, up to July 3, 1981, the bulk of the CLL deposit account and MMP Nos. 084 and 063;^[26] hence, it failed to secure reimbursement for the US\$340,000 from the said deposit account and/or money market placements.

In the meantime, problems ensued in the reconciliation of the transactions involving the funds of the CLL, including the MMP Nos. 063 and 084 with the respondent, as well as the receivables of Mar Tierra Corporation. There was also a need to audit the said funds. Sometime in July 1982, conferences were held between the executive committee of Mar Tierra Corporation and some of its officers, including Miguel J.

Lacson, where the means to reduce the administrative expenses and accountants' fees, and the possibility of placing the CLL on an "inactive status" were discussed. [27] The respondent pressured the CLL, Wilfrido Martinez, and Gonzales to pay the US\$340,000 it remitted to Account No. FCD SA 18402-7. [28] Eventually, Wilfrido C. Martinez and Blamar Gonzales engaged the services of the auditing firm, the Jacinto, Belano, Castro & Co., to review the flow of the CLL's funds and the receivables of Mar Tierra Corporation.

On August 16, 1982, the CLL, through its certified public accountant, wrote the respondent requesting the latter to furnish its accountant with a copy of the financial report prepared by its auditors. [29] An audit was, thereafter, conducted by the Jacinto, Belano, Castro & Co., certified public accountants of the CLL and Mar Tierra Corporation. Based on their report, the auditors found that the CLL owed the respondent US\$340,000. [30]

In the meantime, the respondent demanded from the CLL, Wilfrido Martinez, Lacson, Gonzales, and petitioner Ruben Martinez, the payment of the US\$340,000 remitted by it to FCD SA 18402-7, per instructions of Gonzales and Wilfrido Martinez. No remittance was made to the respondent. Petitioner Ruben Martinez denied knowledge of any such remittance, as well as any liability for the amount thereof.

On June 17, 1983, the respondent filed a complaint against the CLL, Wilfrido Martinez, Lacson, Gonzales, and petitioner Ruben Martinez, with the RTC of Kaloocan City for the collection of the principal amount of US\$340,000, with a plea for a writ of preliminary attachment. Two alternative causes of action against the defendants were alleged therein, viz:

FIRST ALTERNATIVE CAUSE OF ACTION

2.1 The allegations contained in the foregoing paragraphs are repleaded herein by reference.

2.2 The remittance by plaintiff of the sum of US\$340,000.00 as previously explained in the foregoing paragraphs was made upon the express instructions of defendants GONZALES and WILFRIDO C. MARTINEZ acting for and in behalf of the defendant CINTAS, defendants GONZALES and WILFRIDO C. MARTINEZ being the duly authorized representatives of defendant CINTAS to transact any and all of its business with plaintiff.

2.3 The remittance of US\$340,000.00 was made under an agreement for plaintiff to advance the said amount and for defendants GONZALES, WILFRIDO C. MARTINEZ and CINTAS to repay plaintiff all such monies so advanced to said defendants or to their order.

2.4 In making said remittance, plaintiff acted as the agent of the foregoing defendants in meeting the latter's liability to the recipient/s of the amount so remitted.

2.5 The remittance of US\$340,000.00 which remains unsettled to date is a just, binding and lawful obligation of the defendants GONZALES,