

SECOND DIVISION

[G.R. NO. 117913, February 01, 2002]

**CHARLES LEE, CHUA SIOK SUY, MARIANO SIO, ALFONSO YAP,
RICHARD VELASCO AND ALFONSO CO, PETITIONERS, VS. COURT
OF APPEALS AND PHILIPPINE BANK OF COMMUNICATIONS,
RESPONDENTS.**

[G.R. NO. 117914. February 1, 2002]

**MICO METALS CORPORATION, PETITIONER, VS. COURT OF
APPEALS AND PHILIPPINE BANK OF COMMUNICATIONS,
RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is the joint and consolidated petition for review of the Decision^[1] dated June 15, 1994 of the Court of Appeals in CA-G.R. CV No. 27480 entitled, "Philippine Bank of Communications vs. Mico Metals Corporation, Charles Lee, Chua Siok Suy, Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co," which reversed the decision of the Regional Trial Court (RTC) of Manila, Branch 55 dismissing the complaint for a sum of money filed by private respondent Philippine Bank of Communications against herein petitioners, Mico Metals Corporation (MICO, for brevity), Charles Lee, Chua Siok Suy,^[2] Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co.^[3] The dispositive portion of the said Decision of the Court of Appeals, reads:

WHEREFORE, the decision of the Regional Trial Court is hereby reversed and in lieu thereof, a new one is entered:

- a) Ordering the defendants-appellees jointly and severally to pay plaintiff PBCom the sum of Five million four hundred fifty-one thousand six hundred sixty-three pesos and ninety centavos (P5,451,663.90) representing defendants-appellees unpaid obligations arising from ordinary loans granted by the plaintiff plus legal interest until fully paid.
- b) Ordering defendants-appellees jointly and severally to pay PBCom the sum of Four hundred sixty-one thousand six hundred pesos and sixty-six centavos (P46 1,600.66) representing defendants-appellees unpaid obligations arising from their letters of credit and trust receipt transactions with plaintiff PBCom plus legal interest until fully paid.

- c) Ordering defendants-appellees jointly and severally to pay PBCom the sum of P50,000.00 as attorney's fees.

No pronouncement as to costs.

The facts of the case are as follows:

On March 2, 1979, Charles Lee, as President of MICO wrote private respondent Philippine Bank of Communications (PBCom) requesting for a grant of a discounting loan/credit line in the sum of Three Million Pesos (P3,000,000.00) for the purpose of carrying out MICO's line of business as well as to maintain its volume of business.

On the same day, Charles Lee requested for another discounting loan/credit line of Three Million Pesos (P3,000,000.00) from PBCom for the purpose of opening letters of credit and trust receipts.

In connection with the requests for discounting loan/credit lines, PBCom was furnished by MICO the following resolution which was adopted unanimously by MICO's Board of Directors:

RESOLVED, that the President, Mr. Charles Lee, and the Vice-President and General Manager, Mr. Mariano A. Sio, singly or jointly, be and they are duly authorized and empowered for and in behalf of this Corporation to apply for, negotiate and secure the approval of commercial loans and other banking facilities and accommodations, such as, but not limited to discount loans, letters of credit, trust receipts, lines for marginal deposits on foreign and domestic letters of credit, negotiate out-of-town checks, etc. from the Philippine Bank of Communications, 216 Juan Luna, Manila in such sums as they shall deem advantageous, the principal of all of which shall not exceed the total amount of TEN MILLION PESOS (P10,000,000.00), Philippine Currency, plus any interests that may be agreed upon with said Bank in such loans and other credit lines of the same kind and such further terms and conditions as may, upon granting of said loans and other banking facilities, be imposed by the Bank; and to make, execute, sign and deliver any contracts of mortgage, pledge or sale of one, some or all of the properties of the Company, or any other agreements or documents of whatever nature or kind, including the signing, indorsing, cashing, negotiation and execution of promissory notes, checks, money orders or other negotiable instruments, which may be necessary and proper in connection with said loans and other banking facilities, or with their amendments, renewals and extensions of payment of the whole or any part thereof. [4]

On March 26, 1979, MICO availed of the first loan of One Million Pesos (P1,000,000.00) from PBCom. Upon maturity of the loan, MICO caused the same to be renewed, the last renewal of which was made on May 21, 1982 under Promissory Note BNA No. 26218. [5]

Another loan of One Million Pesos (P1,000,000.00) was availed of by MICO from PBCom which was likewise later on renewed, the last renewal of which was made on May 21, 1982 under Promissory Note BNA No. 26219. [6] To complete MICO's

avilment of Three Million Pesos (P3,000,000.00) discounting loan/credit line with PBCom, MICO availed of another loan from PBCom in the sum of One Million Pesos (P1,000,000.00) on May 24, 1979. As in previous loans, this was rolled over or renewed, the last renewal of which was made on May 25, 1982 under Promissory Note BNA No. 26253.^[7]

As security for the loans, MICO through its Vice-President and General Manager, Mariano Sio, executed on May 16, 1979 a Deed of Real Estate Mortgage over its properties situated in Pasig, Metro Manila covered by Transfer Certificates of Title (TCT) Nos. 11248 and 11250.

On March 26, 1979 Charles Lee, Chua Siok Suy, Mariano Sio, Alfonso Yap and Richard Velasco, in their personal capacities executed a Surety Agreement^[8] in favor of PBCom whereby the petitioners jointly and severally, guaranteed the prompt payment on due dates or at maturity of overdrafts, promissory notes, discounts, drafts, letters of credit, bills of exchange, trust receipts, and other obligations of every kind and nature, for which MICO may be held accountable by PBCom. It was provided, however, that the liability of the sureties shall not at any one time exceed the principal amount of Three Million Pesos (P3,000,000.00) plus interest, costs, losses, charges and expenses including attorney's fees incurred by PBCom in connection therewith.

On July 14, 1980, petitioner Charles Lee, in his capacity as president of MICO, wrote PBCom and applied for an additional loan in the sum of Four Million Pesos (P4,000,000.00). The loan was intended for the expansion and modernization of the company's machineries. Upon approval of the said application for loan, MICO availed of the additional loan of Four Million Pesos (P4,000,000.00) as evidenced by Promissory Note TA No. 094.^[9]

As per agreement, the proceeds of all the loan availments were credited to MICO's current checking account with PBCom. To induce the PBCom to increase the credit line of MICO, Charles Lee, Chua Siok Suy, Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co (hereinafter referred to as petitioners-sureties), executed another surety agreement^[10] in favor of PBCom on July 28, 1980, whereby they jointly and severally guaranteed the prompt payment on due dates or at maturity of overdrafts, promissory notes, discounts, drafts, letters of credit, bills of exchange, trust receipts and all other obligations of any kind and nature for which MICO may be held accountable by PBCom. It was provided, however, that their liability shall not at any one time exceed the sum of Seven Million Five Hundred Thousand Pesos (P7,500,000.00) including interest, costs, charges, expenses and attorney's fees incurred by MICO in connection therewith.

On July 29, 1980, MICO furnished PBCom with a notarized certification issued by its corporate secretary, Atty. P.B. Barrera, that Chua Siok Suy was duly authorized by the Board of Directors to negotiate on behalf of MICO for loans and other credit availments from PBCom. Indicated in the certification was the following resolution unanimously approved by the Board of Directors:

RESOLVED, AS IT IS HEREBY RESOLVED, That Mr. Chua Siok Suy be, as he is hereby authorized and empowered, on behalf of MICO METALS CORPORATION from time to time, to borrow money and obtain other

credit facilities, with or without security, from the PHILIPPINE BANK OF COMMUNICATIONS in such amount(s) and under such terms and conditions as he may determine, with full power and authority to execute, sign and deliver such contracts, instruments and papers in connection therewith, including real estate and chattel mortgages, pledges and assignments over the properties of the Corporation; and to renew and/or extend and/or roll-over and/or reavail of the credit facilities granted thereunder, either for lesser or for greater amount(s), the intention being that such credit facilities and all securities of whatever kind given as collaterals therefor shall be a continuing security.

RESOLVED FURTHER, That said bank is hereby authorized, empowered and directed to rely on the authority given hereunder, the same to continue in full force and effect until written notice of its revocation shall be received by said Bank.^[11]

On July 2, 1981, MICO filed with PBCom an application for a domestic letter of credit in the sum of Three Hundred Forty-Eight Thousand Pesos (P348,000.00).^[12] The corresponding irrevocable letter of credit was approved and opened under LC No. L-16060.^[13] Thereafter, the domestic letter of credit was negotiated and accepted by MICO as evidenced by the corresponding bank draft issued for the purpose.^[14] After the supplier of the merchandise was paid, a trust receipt upon MICO's own initiative, was executed in favor of PBCom.^[15]

On September 14, 1981, MICO applied for another domestic letter of credit with PBCom in the sum of Two Hundred Ninety Thousand Pesos (P290,000.00).^[16] The corresponding irrevocable letter of credit was issued on September 22, 1981 under LC No. L-16334.^[17] After the beneficiary of the said letter of credit was paid by PBCom for the price of the merchandise, the goods were delivered to MICO which executed a corresponding trust receipt^[18] in favor of PBCom.

On November 10, 1981, MICO applied for authority to open a foreign letter of credit in favor of Ta Jih Enterprises Co., Ltd.,^[19] and thus, the corresponding letter of credit^[20] was then issued by PBCom with a cable sent to the beneficiary, Ta Jih Enterprises Co., Ltd. advising that said beneficiary may draw funds from the account of PBCom in its correspondent bank's New York Office.^[21] PBCom also informed its corresponding bank in Taiwan, the Irving Trust Company, of the approved letter of credit. The correspondent bank acknowledged PBCom's advice through a confirmation letter^[22] and by debiting from PBCom's account with the said correspondent bank the sum of Eleven Thousand Nine Hundred Sixty US Dollars (\$11,960.00).^[23] As in past transactions, MICO executed in favor of PBCom a corresponding trust receipt.^[24]

On January 4, 1982, MICO applied, for authority to open a foreign letter of credit in the sum of One Thousand Nine Hundred US Dollars (\$1,900.00), with PBCom.^[25] Upon approval, the corresponding letter of credit denominated as LC No. 62293^[26] was issued whereupon PBCom advised its correspondent bank and MICO^[27] of the same. Negotiation and proper acceptance of the letter of credit were then made by

MICO. Again, a corresponding trust receipt^[28] was executed by MICO in favor of PBCom.

In all the transactions involving foreign letters of credit, PBCom turned over to MICO the necessary documents such as the bills of lading and commercial invoices to enable the latter to withdraw the goods from the port of Manila.

On May 21, 1982 MICO obtained from PBCom another loan in the sum of Three Hundred Seventy-Seven Thousand Pesos (P377,000.00) covered by Promissory Note BA No. 7458.^[29]

Upon maturity of all credit availments obtained by MICO from PBCom, the latter made a demand for payment.^[30] For failure of petitioner MICO to pay the obligations incurred despite repeated demands, private respondent PBCom extrajudicially foreclosed MICO's real estate mortgage and sold the said mortgaged properties in a public auction sale held on November 23, 1982. Private respondent PBCom which emerged as the highest bidder in the auction sale, applied the proceeds of the purchase price at public auction of Three Million Pesos (P3,000,000.00) to the expenses of the foreclosure, interest and charges and part of the principal of the loans, leaving an unpaid balance of Five Million Four Hundred Forty-One Thousand Six Hundred Sixty-Three Pesos and Ninety Centavos (P5,441,663.90) exclusive of penalty and interest charges. Aside from the unpaid balance of Five Million Four Hundred Forty-One Thousand Six Hundred Sixty- Three Pesos and Ninety Centavos (P5,441,663.90), MICO likewise had another standing obligation in the sum of Four Hundred Sixty-One Thousand Six Hundred Pesos and Six Centavos (P461,600.06) representing its trust receipts liabilities to private respondent. PBCom then demanded the settlement of the aforesaid obligations from herein petitioners-sureties who, however, refused to acknowledge their obligations to PBCom under the surety agreements. Hence, PBCom filed a complaint with prayer for writ of preliminary attachment before the Regional Trial Court of Manila, which was raffled to Branch 55, alleging that MICO was no longer in operation and had no properties to answer for its obligations. PBCom further alleged that petitioner Charles Lee has disposed or concealed his properties with intent to defraud his creditors. Except for MICO and Charles Lee, the sheriff of the RTC failed to serve the summons on herein petitioners-sureties since they were all reportedly abroad at the time. An alias summons was later issued but the sheriff was not able to serve the same to petitioners Alfonso Co and Chua Siok Suy who was already sickly at the time and reportedly in Taiwan where he later died.

Petitioners (MICO and herein petitioners-sureties) denied all the allegations of the complaint filed by respondent PBCom, and alleged that: a) MICO was not granted the alleged loans and neither did it receive the proceeds of the aforesaid loans; b) Chua Siok Suy was never granted any valid Board Resolution to sign for and in behalf of MICO; c) PBCom acted in bad faith in granting the alleged loans and in releasing the proceeds thereof; d) petitioners were never advised of the alleged grant of loans and the subsequent releases therefor, if any; e) since no loan was ever released to or received by MICO, the corresponding real estate mortgage and the surety agreements signed concededly by the petitioners-sureties are null and void.

The trial court gave credence to the testimonies of herein petitioners and dismissed