

SECOND DIVISION

[G.R. No. 103066, April 25, 1996]

**WILLEX PLASTIC INDUSTRIES, CORPORATION, PETITIONER, VS.
HON. COURT OF APPEALS AND INTERNATIONAL CORPORATE
BANK, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari of the decision^[1] of the Court of Appeals in C.A.-G.R. CV No. 19094, affirming the decision of the Regional Trial Court of the National Capital Judicial Region, Branch XLV, Manila, which ordered petitioner Willex Plastic Industries Corporation and the Inter-Resin Industrial Corporation, jointly and severally, to pay private respondent International Corporate Bank certain sums of money, and the appellate court's resolution of October 17, 1989 denying petitioner's motion for reconsideration.

The facts are as follows:

Sometime in 1978, Inter-Resin Industrial Corporation opened a letter of credit with the Manila Banking Corporation. To secure payment of the credit accommodation, Inter-Resin Industrial and the Investment and Underwriting Corporation of the Philippines (IUCP) executed two documents, both entitled "Continuing Surety Agreement" and dated December 1, 1978, whereby they bound themselves solidarily to pay Manilabank "obligations of every kind, on which the [Inter-Resin Industrial] may now be indebted or hereafter become indebted to the [Manilabank]." The two agreements (Exhs. J and K) are the same in all respects, except as to the limit of liability of the surety, the first surety agreement being limited to US\$333,830.00, while the second one is limited to US\$334,087.00.

On April 2, 1979, Inter-Resin Industrial, together with Willex Plastic Industries Corp., executed a "Continuing Guaranty" in favor of IUCP whereby "For and in consideration of the sum or sums obtained and/or to be obtained by Inter-Resin Industrial Corporation" from IUCP, Inter-Resin Industrial and Willex Plastic jointly and severally guaranteed "the prompt and punctual payment at maturity of the NOTE/S issued by the DEBTOR/S . . . to the extent of the aggregate principal sum of FIVE MILLION PESOS (P5,000,000.00) Philippine Currency and such interests, charges and penalties as hereafter may be specified."

On January 7, 1981, following demand upon it, IUCP paid to Manilabank the sum of P4,334,280.61 representing Inter-Resin Industrial's outstanding obligation. (Exh. M-1) On February 23 and 24, 1981, Atrium Capital Corp., which in the meantime had succeeded IUCP, demanded from Inter-Resin Industrial and Willex Plastic the payment of what it (IUCP) had paid to Manilabank. As neither one of the sureties paid, Atrium filed this case in the court below against Inter-Resin Industrial and

Willex Plastic.

On August 11, 1982, Inter-Resin Industrial paid Interbank, which had in turn succeeded Atrium, the sum of P687,500.00 representing the proceeds of its fire insurance policy for the destruction of its properties.

In its answer, Inter-Resin Industrial admitted that the "Continuing Guaranty" was intended to secure payment to Atrium of the amount of P4,334,280.61 which the latter had paid to Manilabank. It claimed, however, that it had already fully paid its obligation to Atrium Capital.

On the other hand, Willex Plastic denied the material allegations of the complaint and interposed the following Special Affirmative Defenses:

(a) Assuming arguendo that main defendant is indebted to plaintiff, the former's liability is extinguished due to the accidental fire that destroyed its premises, which liability is covered by sufficient insurance assigned to plaintiff;

(b) Again, assuming arguendo, that the main defendant is indebted to plaintiff, its account is now very much lesser than those stated in the complaint because of some payments made by the former;

(c) The complaint states no cause of action against WILLEX;

(d) WILLEX is only a guarantor of the principal obligor, and thus, its liability is only secondary to that of the principal;

(e) Plaintiff failed to exhaust the ultimate remedy in pursuing its claim against the principal obligor;

(f) Plaintiff has no personality to sue.

On April 29, 1986, Interbank was substituted as plaintiff in the action. The case then proceeded to trial.

On March 4, 1988, the trial court declared Inter-Resin Industrial to have waived the right to present evidence for its failure to appear at the hearing despite due notice. On the other hand, Willex Plastic rested its case without presenting any evidence. Thereafter Interbank and Willex Plastic submitted their respective memoranda.

On April 5, 1988, the trial court rendered judgment, ordering Inter-Resin Industrial and Willex Plastic jointly and severally to pay to Interbank the following amounts:

(a) P3,646,780.61, representing their indebtedness to the plaintiff, with interest of 17% per annum from August 11, 1982, when Inter-Resin Industrial paid P687,500.00 to the plaintiff, until full payment of the said amount;

(b) Liquidated damages equivalent to 17% of the amount due; and

(c) Attorney's fees and expenses of litigation equivalent to 20% of the total amount due.

Inter-Resin Industrial and Willex Plastic appealed to the Court of Appeals. Willex Plastic filed its brief, while Inter-Resin Industrial presented a "Motion to Conduct Hearing and to Receive Evidence to Resolve Factual Issues and to Defer Filing of the Appellant's Brief." After its motion was denied, Inter-Resin Industrial did not file its brief anymore.

On February 22, 1991, the Court of Appeals rendered a decision affirming the ruling of the trial court.

Willex Plastic filed a motion for reconsideration praying that it be allowed to present evidence to show that Inter-Resin Industrial had already paid its obligation to Interbank, but its motion was denied on December 6, 1991:

The motion is denied for lack of merit. We denied defendant-appellant Inter-Resin Industrial's motion for reception of evidence because the situation or situations in which we could exercise the power under B.P. 129 did not exist. Movant here has not presented any argument which would show otherwise.

Hence, this petition by Willex Plastic for the review of the decision of February 22, 1991 and the resolution of December 6, 1991 of the Court of Appeals.

Petitioner raises a number of issues.

[1] The main issue raised is whether under the "Continuing Guaranty" signed on April 2, 1979 petitioner Willex Plastic may be held jointly and severally liable with Inter-Resin Industrial for the amount paid by Interbank to Manilabank.

As already stated, the amount had been paid by Interbank's predecessor-in-interest, Atrium Capital, to Manilabank pursuant to the "Continuing Surety Agreements" made on December 1, 1978. In denying liability to Interbank for the amount, Willex Plastic argues that under the "Continuing Guaranty," its liability is for sums obtained by Inter-Resin Industrial from Interbank, not for sums paid by the latter to Manilabank for the account of Inter-Resin Industrial. In support of this contention Willex Plastic cites the following portion of the "Continuing Guaranty":

For and in consideration of the sums obtained and/or to be obtained by INTER-RESIN INDUSTRIAL CORPORATION, hereinafter referred to as the DEBTOR/S, from you and/or your principal/s as may be evidenced by promissory note/s, checks, bills receivable/s and/or other evidence/s of indebtedness (hereinafter referred to as the NOTE/S), I/We hereby jointly and severally and unconditionally guarantee unto you and/or your principal/s, successor/s and assigns the prompt and punctual payment at maturity of the NOTE/S issued by the DEBTOR/S in your and/or your principal/s, successor/s and assigns favor to the extent of the aggregate

principal sum of FIVE MILLION PESOS (P5,000,000.00), Philippine Currency, and such interests, charges and penalties as may hereinafter be specified.

The contention is untenable. What Willex Plastic has overlooked is the fact that evidence aliunde was introduced in the trial court to explain that it was actually to secure payment to Interbank (formerly IUCP) of amounts paid by the latter to Manilabank that the "Continuing Guaranty" was executed. In its complaint below, Interbank's predecessor-in-interest, Atrium Capital, alleged:

5. to secure the guarantee made by plaintiff of the credit accommodation granted to defendant IRIC [Inter-Resin Industrial] by Manilabank, the plaintiff required defendant IRIC [Inter-Resin Industrial] to execute a chattel mortgage in its favor and a Continuing Guaranty which was signed by the other defendant WPIC [Willex Plastic].

In its answer, Inter-Resin Industrial admitted this allegation although it claimed that it had already paid its obligation in its entirety. On the other hand, Willex Plastic, while denying the allegation in question, merely did so "for lack of knowledge or information of the same." But, at the hearing of the case on September 16, 1986, when asked by the trial judge whether Willex Plastic had not filed a crossclaim against Inter-Resin Industrial, Willex Plastic's counsel replied in the negative and manifested that "the plaintiff in this case [Interbank] is the guarantor and my client [Willex Plastic] only signed as a guarantor to the guarantee."^[2]

For its part Interbank adduced evidence to show that the "Continuing Guaranty" had been made to guarantee payment of amounts made by it to Manilabank and not of any sums given by it as loan to Inter-Resin Industrial. Interbank's witness testified under cross-examination by counsel for Willex Plastic that Willex "guaranteed the exposure/of whatever exposure of ACP [Atrium Capital] will later be made because of the guarantee to Manila Banking Corporation."^[3]

It has been held that explanatory evidence may be received to show the circumstances under which a document has been made and to what debt it relates.^[4] At all events, Willex Plastic cannot now claim that its liability is limited to any amount which Interbank, as creditor, might give directly to Inter-Resin Industrial as debtor because, by failing to object to the parol evidence presented, Willex Plastic waived the protection of the parol evidence rule.^[5]

Accordingly, the trial court found that it was "to secure the guarantee made by plaintiff of the credit accommodation granted to defendant IRIC [Inter-Resin Industrial] by Manilabank, [that] the plaintiff required defendant IRIC to execute a chattel mortgage in its favor and a Continuing Guaranty which was signed by the defendant Willex Plastic Industries Corporation."^[6]

Similarly, the Court of Appeals found it to be an undisputed fact that "to secure the guarantee undertaken by plaintiff-appellee [Interbank] of the credit accommodation granted to Inter-Resin Industrial by Manilabank, plaintiff-appellee required defendant-appellants to sign a Continuing Guaranty." These factual findings of the