

THIRD DIVISION

[G.R. No. 119845, July 05, 1996]

**ANTONIO M. GARCIA, PETITIONER, VS. COURT OF APPEALS AND
SECURITY BANK & TRUST COMPANY, RESPONDENTS.**

DECISION

MELO, J.:

This has reference to a petition for review on *certiorari* of the decision of the Court of Appeals dated August 12, 1994, in CA-G.R. No. 38329 entitled, "Security Bank and Trust Co. plaintiff-appellant vs. Dynetics, Inc., defendant-appellant and Antonio M. Garcia, defendant-appellee," modifying the trial court's judgment dated March 9, 1992, in that said decision of the Court of Appeals held herein petitioner Antonio M. Garcia jointly and severally liable with then defendant-appellant Dynetics, Inc. to plaintiff-appellant Security Bank and Trust Co. for the unpaid obligation under the Export Loan Line in the amount of P24,743,935.35 and a Swap Loan Facility in the deficiency balance of P3,596,758.72, both of which amounts appear to have now ballooned to P2 billion due to interests, penalties, and attorney's fees (pp. 27-28, CA Decision; 175-176, Rollo). Dynetics, Inc. is not a petitioner herein and accepts its liability. The only issue is whether petitioner Garcia is jointly and severally liable with Dynetics, Inc. for such loan.

The relevant facts of the case are as follows:

On November 19, 1980, respondent Security Bank and Trust Co. (SBTC) granted Dynetics, Inc. a short-term EXPORT loan line in the amount of P25 million pursuant to an Advisory Letter-Agreement (Exh. A, A-1). The loan was secured by a deed of assignment with pledge on export letters of credit and/or purchase orders equivalent to 100% of their face value. The said credit line was subsequently renewed on various dates and in various amounts, the last renewal having been made on January 24, 1985 in the increased amount of P26 million evidenced by the Renewal Credit Line Agreement (Exh. B).

Pursuant to said Renewal Credit Line Agreement, Dynetics availed itself of the export loan for the period of February to May 1985 in the total amount of P25,074,906.16, executing and signing for said purpose 34 promissory notes of various dates covering the aforementioned period (Exhs. C to JJ), and trust receipts (pp. 7-8, CA Decision; pp. 155-156, Rollo).

Prior to this 1985 availment, particularly on April 20, 1982, Dynetics obtained another credit accommodation or SWAP loan from SBTC in the amount of \$700,000.00. To secure payment thereof, petitioner Antonio Garcia, with Vicente B. Chuidian, executed an Indemnity Agreement in favor of SBTC on April 26, 1982 (Exh. NN).

It appears that Dynetics did not avail itself of this SWAP loan. Subsequently, however, in 1993, the SWAP loan facility was renewed in the reduced amount of \$500,000.00 and it was this loan which Dynetics availed of in 1985 and concerning which it issued a promissory note (Exh. PP). The SWAP loan was renewed in 1984, this time on a quarterly basis, the last quarterly renewal having been made on April 22, 1985. By this time, SBTC required Dynetics to execute a continuing suretyship undertaking (Exh. OO, OO-1) in accordance with, and in pursuance of, which petitioner Garcia bound himself jointly and severally with Dynetics to pay all the latter's obligations with respondent SBTC. Subsequent thereto, however, and without the consent and knowledge of Garcia, SBTC required Dynetics to execute a chattel mortgage over various pieces of machinery to secure the SWAP loan (Exh. LL).

Dynetics failed to pay the SWAP loan upon its maturity on July 22, 1985, prompting SBTC to foreclose on the chattel mortgage. The mortgaged chattels were sold at public auction on September 15, 1985 to SBTC as highest bidder for the amount of P6,850,861.30. This amount was applied as partial payment of the SWAP loan, leaving a deficiency balance of P3,596,758.72.

Dynetics also defaulted in the payment of the EXPORT loan which amounted to over P464 million, exclusive of attorney's fees and costs, as of June 30, 1989 (Exh. KK).

In view of Dynetics' failure to settle its account with SBTC relative to the EXPORT loan and the deficiency balance of the SWAP loan, despite repeated demands, a complaint was filed in court by SBTC against Dynetics, petitioner Garcia, and his co-surety Vicente Chuidian for recovery of a sum of money.

Dynetics, in its answer, contended that the promissory notes had no consideration; that the names of the executive officers of SBTC were stamped on the blank promissory notes and that the chattel mortgage was not registered, hence it was converted into a pledge, thus barring recovery of the deficiency balance of the obligation after foreclosure, as the principal obligation was extinguished.

Petitioner Garcia, for his part, asserted that no prior or written demand was made by SBTC or its counsel upon any of the defendants prior to the filing of the case in court, that the loans had long been paid and extinguished; and that the chattel mortgage discarded the Indemnity Agreement and the Continuing Suretyship.

After trial, Branch 58 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati, rendered its Judgment on March 9, 1992, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendant Dynetics Incorporated which is hereby ordered:

1) to pay plaintiff the principal sum of P24,743,935.35 as consequence of and in connection with the promissory notes (Exhs. C to JJ), plus accrued interests thereon, compounded quarterly effective from their respective maturity dates until fully paid, and monthly penalty charges of five percent (5%) of the total outstanding obligation and accrued interests

due and unpaid;

2) to pay plaintiff the sum of P3,596,758.72 (or its dollar equivalent of US\$187,550.97) as deficiency balance on the chattel mortgage (Exh. LL); and,

3) to pay plaintiff attorney's fees equivalent to twenty percent (20%) of the aforesated entire amounts due and outstanding, litigation expenses of P250,000.00, plus the costs of suit.

The case against defendant Antonio M. Garcia is hereby DISMISSED, together with said defendant's counterclaim for damages. Plaintiff is however ordered to pay defendant Garcia the amount of P100,000.00 as attorney's fees. Furthermore, the writ of preliminary attachment dated September 8, 1989 insofar only as affecting defendant Garcia's properties is hereby quashed, dissolved and/or lifted.

(p. 11, RTC Decision; p. 193, Rollo.)

SBTC, as well as defendant Dynetics, appealed to the Court of Appeals.

On August 12, 1994, the Court of Appeals rendered its now assailed decision modifying that of the trial court by holding Garcia solidarily liable with Dynetics to SBTC for the unpaid balance under the EXPORT loan and deficiency balance on the SWAP loan, together with interest, attorney's fees, litigation expenses, and costs. Disposed thus respondent court:

WHEREFORE, foregoing premises considered, the judgment of the court a quo is hereby MODIFIED and defendant-appellant Dynetics and defendant-appellee Antonio Garcia are hereby ordered to pay jointly and severally unto plaintiff-appellee SBTC the following:

1.) P24,743,935.35 representing the unpaid principal obligation under the promissory notes sued upon, plus accrued interest, compounded quarterly reckoned from the respective maturity dates of the promissory notes until fully paid, and monthly penalty charges of 5% of the total outstanding obligation;

2.) P3,596,758.72 representing deficiency balance on the chattel mortgage with legal interest from 1 September 1989 (date of filing of complaint); and

3.) Attorney's fees equivalent to 20% of the amounts due and outstanding, and litigation expenses of P100,000.00, plus costs.

The award of attorney's fees in favor of appellee Antonio Garcia is eliminated and the writ of attachment issued by the court a quo over the shares of stock owned by appellee Antonio Garcia in Chemphil. is hereby declared to be valid and subsisting until full satisfaction of the

aforementioned amounts.

(pp. 27-28, CA Decision; pp.175-176, Rollo)

A motion for reconsideration was seasonably filed by Garcia, but the same was denied by respondent court on April 7, 1995.

Hence, the instant petition filed on August 4, 1995, wherein Garcia assigns the following alleged errors:

I

The Court of Appeals erred in holding Garcia liable as surety for the export loans granted by SBTC to Dynetics because the suretyship he assumed was intended only for another loan, the SWAP LOAN facility.

II

The Court of Appeals erred in holding that the chattel mortgage executed by Dynetics on 26 April 1985 to secure the promissory note it issued upon availment of the SWAP LOAN facility (\$500,000.00) did not replace and extinguish the 1983 suretyship undertaking of Garcia for the same obligation.

III

On the assumption that the SBTC claim against Garcia as surety is partly or wholly valid, the Court of Appeals erred in awarding so exorbitant amounts of damages, that is P1,747,359,429.30 as penalty charges (5% monthly of total outstanding obligation or 60% per year on the export loan, excluding those on the swap loan) and P408,652,357.42 as attorney's fees (20% of the amounts due and outstanding) on top of P267,558,663.80 as interest earning on the principal obligation of only P24,743,935.35 as export loan and P3,596,758.72 as SWAP LOAN.

Involved in the case at bar are two loans - an EXPORT loan and a SWAP loan obtained by Dynetics from SBTC, with Garcia as surety in the SWAP loan. The controversy arose when Dynetics failed to pay said loans, giving rise to the issue of whether or not petitioner Garcia as surety is liable jointly and solidarily with Dynetics to SBTC for the unpaid obligations of Dynetics under both the EXPORT loan and the SWAP loan, together with the interests, penalty charges, attorney's fees, litigation expenses, and costs, by virtue of the Indemnity Agreement (Exh. NN) and the Continuing Suretyship (Exh. OO, OO-1). In other words, does the liability of Garcia as surety in the SWAP loan cover or extend to the EXPORT loan?

It is the stand of Garcia that he is not liable as surety to SBTC for the EXPORT loan because the Indemnity Agreement and Continuing Suretyship he executed covered only the SWAP loan, which, however, were later replaced and extinguished by the chattel mortgage executed by Dynetics in favor of SBTC.

On the other hand, SBTC contends that Garcia is liable for both the EXPORT loan and SWAP loan transactions by virtue of the comprehensive provisions of the Indemnity Agreement (Exh. NN) and the Continuing Suretyship (Exh. OO, OO-1) he signed and executed jointly and severally with Dynetics in favor of SBTC.

After a painstaking study of the records before us, we find for petitioner Garcia. We hold that he is not liable for the EXPORT loan. Stated differently, Garcia's liability as surety for the SWAP loan under the Indemnity Agreement and the Continuing Surety, if any at all, does not extend to the EXPORT loan.

In holding Garcia liable for both the EXPORT loan and the SWAP loan, respondent Court of Appeals relied heavily on the provisions of the Indemnity Agreement dated April 26, 1982 executed by Garcia together with Dynetics (Exh. NN) that:

. . . Antonio Garcia . . .

hereby bind(s) himself/themselves jointly and severally with the CLIENT in favor of the BANK for the payment, upon demand and without benefit of excusion, of whatever amount or amounts the CLIENT may be indebted to the BANK under and by virtue of aforesaid credit accommodations including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodations, as well as of the amount or amounts of such other obligations that the CLIENT may owe the BANK, whether direct or indirect, principal or secondary, as appears in the accounts, books, and records of the BANK, plus interest and expenses arising from any agreement or agreements that may have heretofore been made or hereafter executed by and between the parties . . .

(p. 349, Rollo).

At first glance, from the words "as well as of the amount or amounts of such other obligations, . . . that the client may owe the BANK," it would appear that SBTC was also referring to the obligation of Dynetics under the EXPORT loan. But the above quoted phrase, to our mind, and contrary to the claim of SBTC, did not impose on Garcia the obligation to pay the EXPORT loan in addition to the SWAP loan. Particular attention must be paid to the statement appearing on the face of the Indemnity Agreement (Exh. NN) "evidenced by those certain loan documents dated April 20, 1982" (Exh. I-B Garcia). From this statement, it is clear that the Indemnity Agreement refers only to the loan documents of April 20, 1982 which is the SWAP loan. It did not include the EXPORT loan. Hence, petitioner cannot be held answerable for the EXPORT loan.