Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FIDELIZA J. AGLIBOT,
Petitioner,

- *versus* -

INGERSOL L. SANTIA,
Respondent.

G.R. No. 185945

Present:

LEONARDO-DE CASTRO, *J.*,
Acting Chairperson,
DEL CASTILLO,*
VILLARAMA, JR.,
PEREZ,** and
REYES, *JJ.*

Promulgated:

DEC 05 2012

x----------x

DECISION

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[1] dated March 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 100021, which reversed the Decision[2] dated April 3, 2007 of

---

* Additional member per Raffle dated November 7, 2012 *vice* Associate Justice Lucas P. Bersamin.

** Acting member per Special Order No. 1385 dated December 4, 2012 *vice* Chief Justice Maria Lourdes P. A. Sereno.

1 Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now also a member of this Court), concurring; *rollo*, pp. 88-94.

2 Id. at 40-44.

the Regional Trial Court (RTC) of Dagupan City, Branch 40, in Criminal Case Nos. 2006-0559-D to 2006-0569-D and entered a new judgment. The *fallo* reads as follows:

> **WHEREFORE**, the instant petition is **GRANTED** and the assailed Joint Decision dated April 3, 2007 of the RTC of Dagupan City, Branch 40, and its Order dated June 12, 2007 are **REVERSED AND SET ASIDE** and a new one is entered ordering private respondent Fideliza J. Aglibot to pay petitioner the total amount of [₱]3,000,000.00 with 12% interest per annum from the filing of the Informations until the finality of this Decision, the sum of which, inclusive of interest, shall be subject thereafter to 12% annual interest until fully paid.
>
> **SO ORDERED**.[3]

On December 23, 2008, the appellate court denied herein petitioner's motion for reconsideration.

Antecedent Facts

Private respondent-complainant Engr. Ingersol L. Santia (Santia) loaned the amount of ₱2,500,000.00 to Pacific Lending & Capital Corporation (PLCC), through its Manager, petitioner Fideliza J. Aglibot (Aglibot). The loan was evidenced by a Promissory Note dated July 1, 2003, issued by Aglibot in behalf of PLCC, payable in one year subject to interest at 24% *per annum*. Allegedly as a guaranty or security for the payment of the note, Aglibot also issued and delivered to Santia eleven (11) post-dated personal checks drawn from her own demand account maintained at Metrobank, Camiling Branch. Aglibot is a major stockholder of PLCC, with headquarters at 27 Casimiro Townhouse, Casimiro Avenue, Zapote, Las Piñas, Metro Manila, where most of the stockholders also reside.[4]

Upon presentment of the aforesaid checks for payment, they were dishonored by the bank for having been drawn against insufficient funds or closed account. Santia thus demanded payment from PLCC and Aglibot of

---

[3] Id. at 93.
[4] Id. at 75-80.

the face value of the checks, but neither of them heeded his demand. Consequently, eleven (11) Informations for violation of Batas Pambansa Bilang 22 (B.P. 22), corresponding to the number of dishonored checks, were filed against Aglibot before the Municipal Trial Court in Cities (MTCC), Dagupan City, Branch 3, docketed as Criminal Case Nos. 47664 to 47674. Each Information, except as to the amount, number and date of the checks, and the reason for the dishonor, uniformly alleged, as follows:

> That sometime in the month of September, 2003 in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **FIDELIZA J. AGLIBOT**, did then and there, willfully, unlawfully and criminally, draw, issue and deliver to one Engr. Ingersol L. Santia, a METROBANK Check No. 0006766, Camiling Tarlac Branch, postdated November 1, 2003, in the amount of **[₱]50,000.00**, Philippine Currency, payable to and in payment of an obligation with the complainant, although the said accused knew full[y] well that she did not have sufficient funds in or credit with the said bank for the payment of such check in full upon its presentment, such [t]hat when the said check was presented to the drawee bank for payment within ninety (90) days from the date thereof, the same was dishonored for reason "DAIF", and returned to the complainant, and despite notice of dishonor, accused failed and/or refused to pay and/or make good the amount of said check within five (5) days banking days [sic], to the damage and prejudice of one Engr. Ingersol L. Santia in the aforesaid amount of [₱]50,000.00 and other consequential damages.[5]

Aglibot, in her counter-affidavit, admitted that she did obtain a loan from Santia, but claimed that she did so in behalf of PLCC; that before granting the loan, Santia demanded and obtained from her a security for the repayment thereof in the form of the aforesaid checks, but with the understanding that upon remittance in cash of the face amount of the checks, Santia would correspondingly return to her each check so paid; but despite having already paid the said checks, Santia refused to return them to her, although he gave her assurance that he would not deposit them; that in breach of his promise, Santia deposited her checks, resulting in their dishonor; that she did not receive any notice of dishonor of the checks; that for want of notice, she could not be held criminally liable under B.P. 22 over the said checks; and that the reason Santia filed the criminal cases against her was because she refused to agree to his demand for higher interest.

---

[5] Id. at 10-11.

On August 18, 2006, the MTCC in its Joint Decision decreed as follows:

> ***WHEREFORE***, in view of the foregoing, the accused, **FIDELIZA J. AGLIBOT**, is hereby **ACQUITTED** of all counts of the crime of violation of the bouncing checks law on reasonable doubt. However, the said accused is ordered to pay the private complainant the sum of **[₱]3,000,000.00** representing the total face value of the eleven checks plus interest of 12% per annum from the filing of the cases on November 2, 2004 until fully paid, attorney's fees of [**₱]30,000.00** as well as the cost of suit.
>
> SO ORDERED.[6]

On appeal, the RTC rendered a Decision dated April 3, 2007 in Criminal Case Nos. 2006-0559-D to 2006-0569-D, which further absolved Aglibot of any civil liability towards Santia, to wit:

> WHEREFORE, premises considered, the Joint Decision of the court *a quo* regarding the civil aspect of these cases is reversed and set aside and a new one is entered dismissing the said civil aspect on the ground of failure to fulfill, a condition precedent of exhausting all means to collect from the principal debtor.
>
> SO ORDERED.[7]

Santia's motion for reconsideration was denied in the RTC's Order dated June 12, 2007.[8] On petition for review to the CA docketed as CA-G.R. SP No. 100021, Santia interposed the following assignment of errors, to wit:

> "In brushing aside the law and jurisprudence on the matter, the Regional Trial Court seriously erred:
>
> 1. In reversing the joint decision of the trial court by dismissing the civil aspect of these cases;
>
> 2. In concluding that it is the Pacific Lending and Capital Corporation and not the private respondent which is principally responsible for the amount of the checks being claimed by the petitioner;

---

6 Id. at 26.
7 Id. at 44.
8 Id. at 90.

> 3. In finding that the petitioner failed to exhaust all available legal remedies against the principal debtor Pacific Lending and Capital Corporation;
>
> 4. In finding that the private respondent is a mere guarantor and not an accommodation party, and thus, cannot be compelled to pay the petitioner unless all legal remedies against the Pacific Lending and Capital Corporation have been exhausted by the petitioner;
>
> 5. In denying the motion for reconsideration filed by the petitioner."[9]

In its now assailed decision, the appellate court rejected the RTC's dismissal of the civil aspect of the aforesaid B.P. 22 cases based on the ground it cited, which is that the "failure to fulfill a condition precedent of exhausting all means to collect from the principal debtor." The appellate court held that since Aglibot's acquittal by the MTCC in Criminal Case Nos. 47664 to 47674 was upon a reasonable doubt[10] on whether the prosecution was able to satisfactorily establish that she did receive a notice of dishonor, a requisite to hold her criminally liable under B.P. 22, her acquittal did not operate to bar Santia's recovery of civil indemnity.

> It is axiomatic that the "extinction of penal action does not carry with it the eradication of civil liability, unless the extinction proceeds from a declaration in the final judgment that the fact from which the civil liability might arise did not exist. Acquittal will not bar a civil action in the following cases: (1) where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; (2) where the court declared the accused's liability is not criminal but only civil in nature[;] and (3) where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted."[11] (Citation omitted)

The CA therefore ordered Aglibot to personally pay Santia ₱3,000,000.00 with interest at 12% *per annum*, from the filing of the Informations until the finality of its decision. Thereafter, the sum due, to be compounded with the accrued interest, will in turn be subject to annual interest of 12% from the finality of its judgment until full payment. It thus

---

9 Id. at 91.
10 Id.
11 Id.

modified the MTCC judgment, which simply imposed a straight interest of 12% *per annum* from the filing of the cases on November 2, 2004 until the ₱3,000,000.00 due is fully paid, plus attorney's fees of ₱30,000.00 and the costs of the suit.

Issue

Now before the Court, Aglibot maintains that it was error for the appellate court to adjudge her personally liable for issuing her own eleven (11) post-dated checks to Santia, since she did so in behalf of her employer, PLCC, the true borrower and beneficiary of the loan. Still maintaining that she was a mere guarantor of the said debt of PLCC when she agreed to issue her own checks, Aglibot insists that Santia failed to exhaust all means to collect the debt from PLCC, the principal debtor, and therefore he cannot now be permitted to go after her subsidiary liability.

Ruling of the Court

The petition is bereft of merit.

Aglibot cannot invoke the benefit of excussion

The RTC in its decision held that, "It is obvious, from the face of the Promissory Note x x x that the accused-appellant signed the same on behalf of PLCC as Manager thereof and nowhere does it appear therein that she signed as an accommodation party."[12] The RTC further ruled that what Aglibot agreed to do by issuing her personal checks was merely to guarantee the indebtedness of PLCC. So now petitioner Aglibot reasserts that as a guarantor she must be accorded the benefit of excussion – prior exhaustion of the property of the debtor – as provided under Article 2058 of the Civil Code, to wit:

---

[12] Id. at 43.

> Art. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

It is settled that the liability of the guarantor is only subsidiary, and all the properties of the principal debtor, the PLCC in this case, must first be exhausted before the guarantor may be held answerable for the debt.[13] Thus, the creditor may hold the guarantor liable only after judgment has been obtained against the principal debtor and the latter is unable to pay, "for obviously the 'exhaustion of the principal's property' — the benefit of which the guarantor claims — cannot even begin to take place before judgment has been obtained."[14] This rule is contained in Article 2062[15] of the Civil Code, which provides that the action brought by the creditor must be filed against the principal debtor alone, except in some instances mentioned in Article 2059[16] when the action may be brought against both the guarantor and the principal debtor.

The Court must, however, reject Aglibot's claim as a mere guarantor of the indebtedness of PLCC to Santia for want of proof, in view of Article 1403(2) of the Civil Code, embodying the Statute of Frauds, which provides:

> Art. 1403. The following contracts are unenforceable, unless they are ratified:
>
> x x x x

---

[13] *Baylon v. Court of Appeals*, 371 Phil. 435, 443 (1999), citing *World Wide Insurance and Surety Co., Inc. v. Jose*, 96 Phil. 45 (1954); *Visayan Surety and Insurance Corp. v. De Laperal*, 69 Phil. 688 (1940).

[14] Id. at 443-444, citing *Viuda de Syquia v. Jacinto*, 60 Phil. 861, 868 (1934).

[15] Art. 2062. In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in Article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in Article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter.

[16] Art. 2059. This excussion shall not take place:
(1) If the guarantor has expressly renounced it;
(2) If he has bound himself solidarily with the debtor;
(3) In case of insolvency of the debtor;
(4) When he has absconded, or cannot be sued within the Philippines unless he has left manager or representative;
(5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation.

> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:
>
> a) An agreement that by its terms is not to be performed within a year from the making thereof;
> b) *A special promise to answer for the debt, default, or miscarriage of another*;
> c) An agreement made in consideration of marriage, other than a mutual promise to marry;
> d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, or such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of purchasers and person on whose account the sale is made, it is a sufficient memorandum;
> e) An agreement for the leasing of a longer period than one year, or for the sale of real property or of an interest therein;
> f) A representation to the credit of a third person. (Italics ours)

Under the above provision, concerning a guaranty agreement, which is a promise to answer for the debt or default of another,[17] the law clearly requires that it, or some note or memorandum thereof, be in writing. Otherwise, it would be unenforceable unless ratified,[18] although under Article 1358[19] of the Civil Code, a contract of guaranty does not have to appear in a public document.[20] Contracts are generally obligatory in whatever form they may have been entered into, provided all the essential

---

[17] Article 2047 of the Civil Code defines it as follows:

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

[18] *Prudential Bank v. Intermediate Appellate Court*, G.R. No. 74886, December 8, 1992, 216 SCRA 257, 275-276.

[19] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person; and

(4) The cession of actions or rights proceeding from an act appearing in a public document. All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

[20] Supra note 18.

requisites for their validity are present, and the Statute of Frauds simply provides the method by which the contracts enumerated in Article 1403(2) may be proved, but it does not declare them invalid just because they are not reduced to writing. Thus, the form required under the Statute is for convenience or evidentiary purposes only.[21]

On the other hand, Article 2055 of the Civil Code also provides that a guaranty is not presumed, but must be express, and cannot extend to more than what is stipulated therein. This is the obvious rationale why a contract of guarantee is unenforceable unless made in writing or evidenced by some writing. For as pointed out by Santia, Aglibot has not shown any proof, such as a contract, a secretary's certificate or a board resolution, nor even a note or memorandum thereof, whereby it was agreed that she would issue her personal checks in behalf of the company to guarantee the payment of its debt to Santia. Certainly, there is nothing shown in the Promissory Note signed by Aglibot herself remotely containing an agreement between her and PLCC resembling her guaranteeing its debt to Santia. And neither is there a showing that PLCC thereafter ratified her act of "guaranteeing" its indebtedness by issuing her own checks to Santia.

Thus did the CA reject the RTC's ruling that Aglibot was a mere guarantor of the indebtedness of PLCC, and as such could not "be compelled to pay [Santia], unless the latter has exhausted all the property of PLCC, and has resorted to all the legal remedies against PLCC x x x."[22]

Aglibot is an accommodation party and therefore liable to Santia

Section 185 of the Negotiable Instruments Law defines a check as "a bill of exchange drawn on a bank payable on demand," while Section 126 of the said law defines a bill of exchange as "an unconditional order in writing

---

[21] *Orduña v. Fuentebella*, G.R. No. 176841, June 29, 2010, 622 SCRA 146, 158; *Municipality of Hagonoy, Bulacan v. Dumdum, Jr.*, G.R. No. 168289, March 22, 2010, 616 SCRA 315.

[22] *Rollo*, p. 92.

addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer."

The appellate court ruled that by issuing her own post-dated checks, Aglibot thereby bound herself personally and solidarily to pay Santia, and dismissed her claim that she issued her said checks in her official capacity as PLCC's manager merely to guarantee the investment of Santia. It noted that she could have issued PLCC's checks, but instead she chose to issue her own checks, drawn against her personal account with Metrobank. It concluded that Aglibot intended to personally assume the repayment of the loan, pointing out that in her Counter-Affidavit, she even admitted that she was personally indebted to Santia, and only raised payment as her defense, a clear admission of her liability for the said loan.

The appellate court refused to give credence to Aglibot's claim that she had an understanding with Santia that the checks would not be presented to the bank for payment, but were to be returned to her once she had made cash payments for their face values on maturity. It noted that Aglibot failed to present any proof that she had indeed paid cash on the above checks as she claimed. This is precisely why Santia decided to deposit the checks in order to obtain payment of his loan.

The facts below present a clear situation where Aglibot, as the manager of PLCC, agreed to accommodate its loan to Santia by issuing her own post-dated checks in payment thereof. She is what the Negotiable Instruments Law calls an accommodation party.[23] Concerning the liability of an accommodation party, Section 29 of the said law provides:

> Sec. 29. *Liability of an accommodation party.* — An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending

---

[23] See *Stelco Marketing Corporation v. Court of Appeals*, G.R. No. 96160, June 17, 1992, 210 SCRA 51, 57 citing Agbayani, COMMERCIAL LAWS OF THE PHILIPPINES, 1975 ed., Vol. I.

> his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

As elaborated in *The Phil. Bank of Commerce v. Aruego*:[24]

> An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another. x x x.[25] (Citation omitted)

The relation between an accommodation party and the party accommodated is, in effect, one of principal and surety — the accommodation party being the surety. It is a settled rule that a surety is bound equally and absolutely with the principal and is deemed an original promisor and debtor from the beginning. The liability is immediate and direct.[26] It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument; nor is it correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.[27]

Moreover, it was held in *Aruego* that unlike in a contract of suretyship, the liability of the accommodation party remains not only primary but also unconditional to a holder for value, such that even if the accommodated party receives an extension of the period for payment without the consent of the accommodation party, the latter is still liable for the whole obligation and such extension does not release him because as far

---

24 102 SCRA 530.

25 Id. at 539-540.

26 *Garcia v. Llamas*, 462 Phil. 779, 794 (2003), citing *Spouses Gardose v. Tarroza*, 352 Phil. 797 (1998), *Palmares v. CA*, 351 Phil. 664 (1998).

27 *Ang Tiong v. Ting*, 130 Phil. 741, 744 (1968).

as a holder for value is concerned, he is a solidary co-debtor.

The mere fact, then, that Aglibot issued her own checks to Santia made her personally liable to the latter on her checks without the need for Santia to first go after PLCC for the payment of its loan.[28] It would have been otherwise had it been shown that Aglibot was a mere guarantor, except that since checks were issued ostensibly in payment for the loan, the provisions of the Negotiable Instruments Law must take primacy in application.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED** and the Decision dated March 18, 2008 of the Court of Appeals in CA-G.R. SP No. 100021 is hereby **AFFIRMED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

---

28 *Sps. Gardose v. Tarroza*, 352 Phil. 797 (1998).

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice