

FIRST DIVISION

[G.R. No. 185945, December 05, 2012]

**FIDELIZA J. AGLIBOT, PETITIONER, VS. INGERSOL L. SANTIA,
RESPONDENT.**

D E C I S I O N

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 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 [P]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 P2,500,000.00 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 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 **[P]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 **[P]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.

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 **[P]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 **[P]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;
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 P3,000,000.00 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 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 P3,000,000.00 due is fully paid, plus attorney's fees of P30,000.00 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:

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

(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;