

THIRD DIVISION

[G.R. No. 190107, June 06, 2011]

**JAPRL DEVELOPMENT CORP., PETER RAFAEL C. LIMSON AND
JOSE UY AROLLADO, PETITIONERS, VS. SECURITY BANK
CORPORATION, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

JAPRL Development Corporation (JAPRL), a domestic corporation engaged in fabrication, manufacture and distribution of steel products, applied for a credit facility (Letter of Credit/Trust Receipt) in the amount of Fifty Million (P50,000.000) Pesos with Security Bank Corporation (SBC).

The application was approved and the Credit Agreement took effect on July 15, 1996,^[1]

On November 5, 2001, petitioners Peter Rafael C. Limson (Limson) and Jose Uy Arollado (Arollado), JAPRL Chairman and President, respectively, executed a Continuing Suretyship Agreement (CSA)^[2] in favor of SBC wherein they guaranteed the due and full payment and performance of JAPRL's guaranteed obligations under the credit facility.^[3]

In 2002, on JAPRL's proposal, SBC extended the period of settlement of his obligations.

In 2003, JAPRL's financial adviser, MRM Management Incorporated (MRM), convened JAPRL's creditors, SBC included, for the purpose of restructuring JAPRL's existing loan obligations. Copies of JAPRL's financial statements from 1998 to 2001 were given for the creditors to study.

SBC soon discovered material inconsistencies in the financial statements given by MRM vis-a-vis those submitted by JAPRL when it applied for a credit facility, drawing SBC to conclude that JAPRL committed misrepresentation.

As paragraph 10 (c) of the Credit Agreement^[4] provided, if "any representation or warranty, covenant or undertaking embodied [therein] and [in] the Credit Instrument or in any certificate, statement or document submitted to SBC turns out to be untrue or ceases to be true in any material respect, or is violated or not complied with," such will constitute an event of default committed by JAPRL and its sureties.

On the basis of Item 2 of the CSA,^[5] SBC sent a formal letter of demand^[6] dated August; 20, 2003 to petitioners JAPRL. Limson and Arollado for the immediate

payment of Forty Three Million Nine Hundred Twenty Six Thousand and Twenty One Pesos and 41/100 (P43,926,021.41) representing JAPRL's outstanding obligations.

Petitioners failed to comply with SBC's demand, hence, SBC filed on September 1, 2003 a complaint for sum of money with application for issuance of writ of preliminary attachment^[7] before the Regional Trial Court (RTC) of Makati City against JAPRL, Limson and Arollado.

During the hearing on the prayer for the issuance of writ of preliminary attachment on September 16, 2003, SBC's counsel manifested that it received a copy of a Stay Order dated September 8, 2003 issued by the RTC of Quezon City, Branch 90 wherein JAPRL's petition for rehabilitation was lodged. The Makati RTC at once ordered in open court the archiving of SBC's complaint for sum of money until disposition by the Quezon City RTC of JAPRL's petition for rehabilitation.^[8]

When the Makati RTC reduced to writing its open court Order of September 16, 2003, however, it instead declared the dismissal of SBC's complaint without prejudice:

When this case was called for hearing, plaintiffs counsel manifested that they received a Stay Order from Regional Trial Court, Br. 190. Quezon City, relative to the approval of the Rehabilitation Plan filed by defendant JAPRL Dev. Corp. and in view thereof he prayed that the case be archived instead. However, the Court is of the view to have the case dismissed without prejudice so that a disposition be made on the case.

WHEREFORE, let the present case be ordered DISMISSED without prejudice to a refiling or having a claim filed with the appropriate forum.

SO ORDERED.^[9] (underscoring supplied)

On SBC's motion for reconsideration, however, the Makati RTC, by Order of January 9, 2004,^[10] reverted to its oral order of archiving SBC's complaint.

SBC moved to clarify the Makati RTC January 9, 2004 Order, positing that the suspension of the proceedings should only be with respect to JAPRL but not with respect to Limson and Aroilado.^[11] The Makati RTC, by Order of February 25, 2004, maintained its order archiving the complaint against all petitioners herein, however.

SBC filed a motion for reconsideration^[12] of the February 25, 2004 Order, to which Limson and Aroilado separately filed an "Opposition (*Ad Cautelam*)"^[13] wherein they claimed that summons were not served on them, hence, the Makati RTC failed to acquire jurisdiction over their person. At any rate, they raised defenses against SBC's claim that they acted as sureties of JAPRL.

Meanwhile, the proposed rehabilitation plan before the Quezon City RTC was disapproved by Order of May 9, 2005.^[14] On SBC's motion, the Makati RTC thus reinstated SBC's complaint to its docket, by Order of February 27, 2006.^[15]

Petitioners later filed before the Makati RTC a Manifestation (*Ad Cantelam*)^[16] informing that a Stay Order dated March 13, 2006^[17] was issued, this time by the Calamba RTC, Branch 34, in a new petition for rehabilitation filed by JAPRL and its subsidiary, RAPID Forming Corporation, and praying for the archiving of SBC's complaint.

By Order of June 30, 2006,^[18] the Makati RTC again archived SBC's complaint against petitioners. SBC, by Consolidated Motion, moved for the reconsideration of the June 30, 2006 Order, averring that its complaint should not have been archived with respect to sureties Limson and Arollado; and that since the two failed to file their respective Answers within the reglementary period, they should be declared in default.

The Makati RTC denied, by Order of October 2, 2006,^[19] the Consolidated Motion of SBC, prompting SBC to file a petition for certiorari before the Court of Appeals.

By Decision of September 25, 2008,^[20] the appellate court held that Limson and Arollado voluntarily submitted themselves to the jurisdiction of the Makati RTC, despite the qualification that the filing of their respective "Opposition[s] *Ad Cautelam* " and "Manifestation[s] *Ad Cautelam*," was "by way of special appearance" they having sought affirmative relief by praying for the archiving of SBC's complaint.

The Manifestations and Oppositions filed by the individual private respondents to the court *a quo* have the purpose of asking the court to archive the case until the final resolution of either the Petition for Rehabilitation filed by private respondent corporation JAPRL in Quezon City or the subsisting Petition for Rehabilitation filed in Calamba City, Laguna. Clearly, the purpose of those pleadings is to seek for affirmative relief, (*i.e.* Suspending the proceedings in *Civil Case No. 03-1036*) from the said court. By those pleadings asking for affirmative relief, the individual private respondents had voluntarily appeared in court. As expressly stated in *Rule 14, Section 20, of the Rules of Court*, the defendant's voluntary appearance in the action shall be equivalent to service of summons. It is well settled that any form of appearance in court, by the defendant, by his agent authorized to do so. or by attorney, is equivalent to service except where such appearance is precisely to object to the jurisdiction of the court over the person of the defendant, x x x^[21] (*italics in the original; underscoring supplied*)

To the appellate court. SBC's claim against Limson and Arollado in their capacity as sureties could proceed independently of JAPRL's petition for rehabilitation:

xxx [T]he property of the surety cannot be taken into custody by the rehabilitation receiver (SEC) and said surety can be sued separately to enforce his liability as surety for the debts or obligations of the debtor. The debts or obligations for which a surety may be liable include future debts, an amount which may not be known at the time the surety is given.

Aside from that, it is specifically stated under *Rule 4, Section 6 (b) of the Interim Rules of Procedure on Corporate Rehabilitation*, that the issuance of a Stay order will have an effect of:

(b) staying enforcement of all claims whether for money or otherwise and whether such enforcement is by court action otherwise, against the debtor, its guarantors and ***sureties not solidarity liable with the debtor***.^[22] (emphasis and italics in the original; underscoring supplied)

The appellate court denied petitioners' motion for reconsideration by Resolution of October 29, 2009,^[23] hence, the present petition for review on certiorari.^[24]

The petition fails.

A reading of the separate Oppositions *Ad Cautelam* by Limson and Arollado to SBC's Motion for Reconsideration ' shows that they did not challenge the trial court's jurisdiction. Albeit both pleadings contained prefatory statements that the two did not receive summons, they pleaded defenses in their favor, viz:

Limson 's Opposition Ad Cautelam

6. First of all, there is no gainsaying that herein defendant LfMSON as well as defendant AROLLADO are being sued in their alleged capacities as SURETIES, with defendant JAPRL being the DEBTOR. As SURETIES, they are covered by the Stay Order issued by the court hearing the petition for corporate rehabilitation filed by Rapid forming Corp. and defendant JAPRL. The Stay Order directed, among others, the stay of enforcement of ;' ALL CLAIMS, WHETHER FOR MONEY OR OTHERWISE, AND WHETHER SUCH ENFORCEMENT IS BY COURT ACTION OR OTHERWISE, against the petitioner/s, and its/their guarantors and SURETIES not solidarity liable with petitioner's",^[26] x x x (all caps in the original)

Arollado s Opposition (Ad Cautelam)

11. Certainly, the plaintiff cannot unjustly enrich itself and be allowed to recover from both the DEBTOR JAPRL in accordance with the rehabilitation plan, and at the same time from the alleged SURETIES LIMSON and AROLLADO through the present complaint.

12. Moreover, defendant AROLLADO, as surety, can set up against the plaintiff all the defenses which pertain to the principal DEBTOR JAPRL and even those defenses that are inherent in the debt. Likewise, defendant AROLLADO would, in any case, have a right of action for reimbursement against JAPRL. the principal DEBTOR. Additionally, defendant AROLLADO is given the right, **under Article 1222 of the New Civil Code**, to avail himself of all the defenses winch are derived from the nature of the obligation. Since the plaintiff, and even defendants LIMSON and AROLLADO, are temporarily barred from enforcing a claim against JAPRL, there is, therefore, every reason to