

THIRD DIVISION

[G.R. No. 151932, August 19, 2009]

**HENRY CHING TIU, CHRISTOPHER HALIN GO, AND GEORGE CO,
PETITIONERS, VS. PHILIPPINE BANK OF COMMUNICATIONS,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision^[1] dated September 28, 2001, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 57732, dismissing the petition and affirming the assailed Orders of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 21 in Civil Case No. 99-352, dated December 14, 1999 and January 11, 2000.

The factual and procedural antecedents are as follows:

In June 1993, Asian Water Resources, Inc. (AWRI), represented by herein petitioners, applied for a real estate loan with the Philippine Bank of Communications (PBCOM) to fund its purified water distribution business. In support of the loan application, petitioners submitted a Board Resolution^[2] dated June 7, 1993. The loan was guaranteed by collateral over the property covered by Transfer Certificate of Title No. T-13020.^[3] The loan was eventually approved.^[4]

In August 1996, AWRI applied for a bigger loan from PBCOM for additional capitalization using the same Board Resolution, but without any additional real estate collateral. Considering that the proposed additional loan was unsecured, PBCOM required all the members of the Board of Directors of AWRI to become sureties. Thus, on August 16, 1996, a Surety Agreement^[5] was executed by its Directors and acknowledged by a notary public on the same date. All copies of the Surety Agreement, except two, were kept by PBCOM. Of the two copies kept by the notary public, one copy was retained for his notarial file and the other was sent to the Records Management and Archives Office, through the Office of the RTC Clerk of Court.^[6]

Thereafter, on December 16, 1998, AWRI informed the bank of its desire to surrender and/or assign in its favor, all the present properties of the former to apply as *dacion en pago* for AWRI's existing loan obligation to the bank.^[7] On January 11, 1999, PBCOM sent a reply denying the request. On May 12, 1999, PBCOM sent a letter to petitioners demanding full payment of its obligation to the bank.^[8]

Its demands having remained unheeded, PBCOM instructed its counsel to file a complaint for collection against petitioners. The case was docketed as Civil Case No.

On July 3, 1999, petitioners filed their Answer. It alleged, among other things, that they were not personally liable on the promissory notes, because they signed the Surety Agreement in their capacities as officers of AWRI. They claimed that the Surety Agreement attached to the complaint as Annexes "A" to "A-2"^[9] were falsified, considering that when they signed the same, the words "In his personal capacity" did not yet appear in the document and were merely intercalated thereon without their knowledge and consent.^[10]

In support of their allegations, petitioners attached to their Answer a certified photocopy of the Surety Agreement issued on March 25, 1999 by the Records Management and Archives Office in Davao City,^[11] showing that the words "In his personal capacity" were not found at the foot of page two of the document where their signatures appeared.^[12]

Because of this development, PBCOM's counsel searched for and retrieved the file copy of the Surety Agreement. The notarial copy showed that the words "In his personal capacity" did not appear on page two of the Surety Agreement.^[13]

Petitioners' counsel then asked PBCOM to explain the alteration appearing on the agreement. PBCOM subsequently discovered that the insertion was ordered by the bank auditor. It alleged that when the Surety Agreement was inspected by the bank auditor, he called the attention of the loans clerk, Kenneth Cabahug, as to why the words "In his personal capacity" were not indicated under the signature of each surety, in accordance with bank standard operating procedures. The auditor then ordered Mr. Cabahug to type the words "In his personal capacity" below the second signatures of petitioners. However, the notary public was never informed of the insertion.^[14] Mr. Cabahug subsequently executed an affidavit^[15] attesting to the circumstances why the insertion was made.

PBCOM then filed a Reply and Answer to Counterclaim with Motion for Leave of Court to Substitute Annex "A" of the Complaint,^[16] wherein it attached the duplicate original copy retrieved from the file of the notary public. PBCOM also admitted its mistake in making the insertion and explained that it was made without the knowledge and consent of the notary public. PBCOM maintained that the insertion was not a falsification, but was made only to speak the truth of the parties' intentions. PBCOM also contended that petitioners were already primarily liable on the Surety Agreement whether or not the insertion was made, having admitted in their pleadings that they voluntarily executed and signed the Surety Agreement in the original form. PBCOM, invoking a liberal application of the Rules, emphasized that the motion incorporated in the pleading can be treated as a motion for leave of court to amend and admit the amended complaint pursuant to Section 3, Rule 10 of the Rules of Court.

On December 14, 1999, the RTC issued an Order^[17] allowing the substitution of the altered document with the original Surety Agreement, the pertinent portion of which reads:

August 16, 1996 attached as Annexes "A" to "A-2" of the reply and answer Resolving the Motion to Substitute Annexes "A" to "A-2" of the complaint and the opposition thereto by the defendant, this Court, in the interest of justice, hereby allows the substitution of said Annexes "A" to "A-2" of the complaint with the duplicate original of notarial copy of the Agreement dated to counter-claim.

SO ORDERED.

Petitioners filed a motion for reconsideration,^[18] but it was denied in the Order^[19] dated January 11, 2000, to wit:

Resolving the motion for reconsideration and the opposition thereto, the Court finds the motion substantially a reiteration of the opposition to plaintiff's motion.

Additionally, the instant motion for reconsideration treats on evidentiary matter which can be properly ventilated in the trial proper, hence, there is no cogent reason to disturb the Court's order of December 14, 1999.

SO ORDERED.

Aggrieved, petitioners sought recourse before the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 57732.

Petitioners claimed that the RTC acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in denying their motion for reconsideration and in allowing PBCOM to substitute the altered copy of the Surety Agreement with the duplicate original notarial copy thereof considering that the latter's cause of action was solely and principally founded on the falsified document marked as Annexes "A" to "A-2."^[20]

On September 28, 2001, the CA rendered a Decision dismissing the petition for lack of merit, the decretal portion of which reads:

WHEREFORE, foregoing considered, the instant petition is hereby **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of merit. The assailed Orders dated December 14, 1999 and January 11, 2000 of the Regional Trial Court of Cagayan de Oro City, Branch 21, are hereby **AFFIRMED in toto**.

SO ORDERED.^[21]

Hence, the petition assigning the following errors:

The COURT committed a reversible error in affirming in toto the order of the lower court allowing the substitution of the falsified document by relying on the provision of section 3, rule 10 of the rules of Court.

II

Acting as the court on the petition for certiorari, the court committed a reversible error having no jurisdiction to rule on the obligation of the petitioners based on the falsified document

III

The court erred in giving credence to the allegation of respondent bank that from August 15 to December 9, 1997 asian water resources inc. obtained several availments of *new bigger and additional loans totalling p2,030,000.00* evidenced by 4 promissory notes marked as annexes "B," "B-1," "B-2" and "B-3."

IV

The court failed to consider the misapplication of the principle of equity committed by the lower court in ordering the substitution of the falsified document.^[22]

Petitioners argue that the CA committed a reversible error in affirming the Order of the RTC allowing the substitution of the document by relying on Section 3, Rule 10 of the Rules of Court. Petitioners assert that the Rules do not allow the withdrawal and substitution of a "falsified document" once discovered by the opposing party.

Petitioners maintain that PBCOM's cause of action was solely and principally founded on the alleged "falsified document" originally marked as

Annexes "A" to "A-2." Thus, the "withdrawal" of the document results in the automatic withdrawal of the whole complaint on the ground that there is no more cause of action to be maintained or enforced by plaintiff against petitioners. Also, petitioners argue that if the substitution will be allowed, their defenses that were anchored on Annexes "A" to "A-2" would be gravely affected. Moreover, considering that the said document was already removed, withdrawn, and disregarded by the RTC, the withdrawal and substitution of the document would prevent petitioners from introducing the falsified documents during the trial as part of their evidence.^[23]

Petitioners submit that the RTC misapplied the principle of equity when it allowed PBCOM to substitute the document with the original agreement. Petitioners also claim that the remedy of appeal after the termination of the case in the RTC would become ineffective and inadequate if the Order of the RTC allowing the "withdrawal"

and "substitution" of the document would not be nullified, because the falsified document would no longer be found in the records of the case during the appeal.^[24]

Petitioners contend that the CA went beyond the issue raised before it when it interpreted the provisions of the Surety Agreement, particularly paragraph 4 thereof, and then ruled on the obligations of the parties based on the document. Petitioners posit that the CA prematurely ruled on petitioners' obligations, considering that their obligations should be determined during trial on the merits, after the parties have been given the opportunity to present their evidence in support of their respective claims. Petitioners stress that the CA went into the merit of the case when it gave credence to the statement of fact of PBCOM that *"From August 15 to December 9, 1997, Asian Water Resources, Inc. obtained several availments on its additional loans totalling P2,030,000.00 as evidenced by 4 promissory notes marked as Annexes B, B-1, B-2, and B-3.* Thus, the conclusion of the CA in declaring the petitioners liable as sureties violated their right to due process.^[25]

For its part, PBCOM argues that since the complaint is based on an actionable document, *i.e.*, the surety agreement, the original or a copy thereof should be attached to the pleading as an exhibit, which shall be deemed part of the pleading. Considering that the surety agreement is annexed to the complaint, it is an integral part thereof and its substitution with another copy is in the nature of a substantial amendment, which is allowed by the Rules, but with prior leave of court.

Moreover, PBCOM alleges that since the Rules provides that substantial amendments may be made upon leave of court, the authority of the RTC to allow the amendment is discretionary. Thus, the CA correctly held that the act of granting the said substitution was within the clear and proper discretion of the RTC.

The petition is without merit.

As to the substitution of the earlier surety agreement that was annexed to the complaint with the original thereof, this Court finds that the RTC did not err in allowing the substitution.

The pertinent rule on actionable documents is found in Section 7, Rule 8 of the Rules of Court, which provides that when the cause of action is anchored on a document, its substance must be set forth, and the original or a copy thereof "shall" be attached to the pleading as an exhibit and deemed a part thereof, to wit:

Section 7. Action or defense based on document. - Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

With respect to PBCOM's right to amend its complaint, including the documents annexed thereto, after petitioners have filed their answer, Section 3, Rule 10 of the Rules of Court specifically allows amendment by leave of court. The said Section