

## THIRD DIVISION

[ G.R. No. 157309, March 28, 2008 ]

**MARLOU L. VELASQUEZ, PETITIONER, V.S. SOLIDBANK CORPORATION, RESPONDENT.**

### DECISION

**REYES, R.T., J.:**

PARTIES may not impugn the effectivity of a contract, after much benefit has been gained to the prejudice of another. They are bound by the obligations they expressly set out to do. Before Us is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) which affirmed with modification that of the Regional Trial Court (RTC) in Cebu City,<sup>[2]</sup> holding petitioner Marlou Velasquez liable under his letter of undertaking to respondent Solidbank Corporation.

#### The Facts

Petitioner is engaged in the export business operating under the name Wilderness Trading. Respondent is a domestic banking corporation organized under Philippine laws.

The case arose out of a business transaction for the sale of dried sea cucumber for export to South Korea between Wilderness Trading, as seller, and Goldwell Trading of Pusan, South Korea, as buyer. To facilitate payment of the products, Goldwell Trading opened a letter of credit in favor of Wilderness Trading in the amount of US\$87,500.00 <sup>[3]</sup> with the Bank of Seoul, Pusan, Korea.

On November 12, 1992, petitioner applied for credit accommodation with respondent bank for pre-shipment financing. The credit accommodation was granted. Petitioner was successful in his first two export transactions both drawn on the letter of credit. The third export shipment, however, yielded a different result.

On February 22, 1993, petitioner submitted to respondent the necessary documents for his third shipment. Wanting to be paid the value of the shipment in advance, petitioner negotiated for a documentary sight draft to be drawn on the letter of credit, chargeable to the account of Bank of Seoul. The sight draft represented the value of the shipment in the amount of US\$59,640.00.<sup>[4]</sup>

As a condition for the issuance of the sight draft, petitioner executed a letter of undertaking in favor of respondent. Under the terms of the letter of undertaking, petitioner promised that the draft will be accepted and paid by Bank of Seoul according to its tenor. Petitioner also held himself liable if the sight draft was not accepted. The letter of undertaking provided:

SOLIDBANKCORPORATION Feb. 22, 1993

32 Borromeo Street  
Cebu City

Gentlemen:      Re: PURCHASE OF ONE DOC.  
                         SIGHT DRAFT DRAWN UNDER  
                         LC#M2073210NS00040      FOR  
                         US\$59,640.00      UNDER      OUR  
                         CEBP93/102.

In consideration of your negotiating the above described draft(s), we hereby warrant that the above referred to draft(s) and accompanying documents are genuine and accurately represent the facts stated therein and that the draft(s) will be accepted and paid in accordance with its/their tenor. We further undertake and agree, jointly and severally, to hold you free and harmless from and to defend all actions, claims and demands whatsoever, and to pay on demand all damages, actual or compensatory, including attorney's fees, in case of suit, at least equal to \_\_\_% of the amount due, which you may suffer arising by reason of or on account of your negotiating the above draft(s) because of the following discrepancies or reasons or any other discrepancy or reason whatever:

- 1) B/L MARKED "SAID TO CONTAIN" "SHIPPER'S LOAD, STOWAGE COUNT."
- 2) LATE SHIPMENT.
- 3) QUANTITY SHIPPED @ US\$14.00 OVERDRAWN BY 0.06 TON.
- 4) NO INSPECTION CERTIFICATE PRESENTED.

We hereby undertake to pay on demand the full amount of the draft(s) or any unpaid balance of the draft(s), with interest at the prevailing rate of today from the date of negotiation, plus all charges and expenses whatsoever incurred in connection therewith. You shall neither be obligated to contest or dispute any refusal to accept or to pay the whole or any part of the above draft(s) nor to proceed in anyway against the drawee thereof, the issuing bank, or against any indorser thereof before making a demand on us for the payment of the whole or any unpaid balance of the draft(s).<sup>[5]</sup> (Emphasis added)

By virtue of the letter of undertaking, respondent advanced the value of the shipment which, at the current rate of exchange at that time was P1,495,115.16, less bank charges, to petitioner. Respondent then sent all the documents pertinent to the export transaction to the Bank of Seoul. Respondent failed to collect on the sight draft as it was dishonored by non-acceptance by the Bank of Seoul. The reasons given for the dishonor were late shipment, forged inspection certificate, and absence of countersignature of the negotiating bank on the inspection certificate.<sup>[6]</sup> Goldwell Trading likewise issued a stop payment order on the sight draft because most of the bags of dried sea cucumber exported by petitioner contained soil. Due to the dishonor of the sight draft and the stop payment order, respondent demanded restitution of the sum advanced.<sup>[7]</sup> Petitioner failed to heed the demand. On June 3, 1993, respondent filed a complaint for recovery of sum of money<sup>[8]</sup> with the RTC in

Cebu City. In his answer, petitioner alleged that his liability under the sight draft was extinguished when respondent failed to protest its non-acceptance, as required under the Negotiable Instruments Law (NIL). He also alleged that the letter of undertaking is not binding because it is a superfluous document, and that he did not violate any of the provisions of the letter of credit.<sup>[9]</sup>

### **RTC and CA Dispositions**

On September 25, 1996, the RTC rendered judgment<sup>[10]</sup> in favor of respondent with the following fallo:

IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the defendant:

- (1) to pay the plaintiff the principal sum of P1,495, 115.16 plus interest at 20% per annum counted from February 22, 1993 up to the time the entire amount shall have been fully paid;
  - (2) to pay attorney's fees equivalent to 10% of the total amount due the plaintiff; and
- to pay the costs.

SO ORDERED.<sup>[11]</sup>

The RTC ratiocinated:

This court is not convinced with the defendant's argument that because of plaintiff's failure to protest the dishonor of the sight draft, his liability is extinguished because *his liability remains under the letter of undertaking which he signed and without which plaintiff would not have advanced or credited to him the amount.*

Section 152 of the Negotiable Instruments Law under which defendant claims extinguishment of his liability to plaintiff is not a bar to the filing of other appropriate remedies which the aggrieved party may pursue to vindicate his rights and in this instant case, plaintiff wants his right vindicated by virtue of the letter of undertaking which defendant signed. *By the letter of undertaking, defendant bound himself to pay on demand all damages including attorney's fees which plaintiff may suffer arising by reason of or on account of negotiating the above draft* because of the following discrepancies or any other discrepancy or reasons whatsoever and further to pay on demand full amount of any unpaid balance with interest at the prevailing rate. *He should be bound to the fulfillment of what he expressly obligated himself to do and perform in the letter of undertaking* without which, plaintiff would not have advance (sic) and credited to him the amount in the draft. He should not enrich himself at the expense of plaintiff.<sup>[12]</sup> (Emphasis added)

Disagreeing, petitioner elevated the matter to the CA. On June 27, 2002, the CA affirmed with modification the RTC decision, disposing as follows:

WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED with MODIFICATION. Defendant-appellant Marlou L. Velasquez is hereby ordered to pay plaintiff-appellee Solidbank Corporation, the following: (1) the principal amount of One Million Four Hundred Ninety-Five Thousand One Hundred Fifteen and Sixteen Centavos (P1,495,115.16) plus interest at twelve percent (12%) per annum from February 22, 1993 until fully paid, (2) attorney's fees equivalent to five percent (5%) of the total amount due, and (3) costs of the suit.

SO ORDERED.<sup>[13]</sup>

In ruling against petitioner, the CA opined:

The fact that said draft was dishonored and not paid by the Bank of Seoul-Korea, (sic) it is incumbent upon defendant-appellant Velasquez to comply with his obligation under the Letter of Undertaking. He cannot be allowed to impugn the contract of undertaking he entered into by saying that it was a superfluous document, and therefore, not binding on him. *The contract of undertaking is the law between them, and must be enforced accordingly.* This is in accord with Article 1159 of the New Civil Code, which provides that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." *And parties to a contract are bound to the fulfillment of what has expressly been stipulated therein, regardless of the fact that it turn (sic) out to be financially disadvantageous.*<sup>[14]</sup>

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The fact that Defendant-appellant benefited from the advance payment made by Plaintiff appellee, (sic) it is incumbent upon him to return what he received because the purpose of the advance payment was not attained and/or realized, as the sight draft was not paid accordingly, otherwise, it will result to unjust enrichment on the part of Defendant-appellant at the expense of Plaintiff- appellee, in violation of Articles 19 and 22 of the New Civil Code. The doctrine of unjust enrichment and restitution simply means that "the exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others."<sup>[15]</sup> (Emphasis added)

Petitioner moved for reconsideration<sup>[16]</sup> but his motion was denied.<sup>[17]</sup> Hence, the present recourse.

### **Issues**

Petitioner raises twin issues for Our consideration, to wit:

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE, NOT HERETOFORE DETERMINED BY THIS HONORABLE COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, IN THAT: