

THIRD DIVISION

[G.R. No. 164805, April 30, 2008]

**SOLIDBANK CORPORATION, NOW KNOWN AS METROPOLITAN
BANK AND TRUST COMPANY, PETITIONER, VS. GATEWAY
ELECTRONICS CORPORATION, JAIME M. HIDALGO AND ISRAEL
MADUCDOC, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

Before the Court is a petition for *review on certiorari*^[1] assailing the Decision dated June 2, 2004 and the Resolution dated July 29, 2004 of the Court of Appeals in CA-G.R. SP No. 73684.

The Facts

In May and June 1997, Gateway Electronics Corporation (Gateway) obtained from Solidbank Corporation (Solidbank) four (4) foreign currency denominated loans to be used as working capital for its manufacturing operations.^[2] The loans were covered by promissory notes^[3] (PNs) which provided an interest of eight and 75/100 percent (8.75%), but was allegedly increased to ten percent (10%) per annum, and a penalty of two percent (2%) per month based on the total amount due computed from the date of default until full payment of the total amount due.^[4] The particulars of the loans are:

<u>Promissory_</u> <u>Note No.</u>	<u>Date of Loan</u>	<u>Amount of Loan</u>	<u>Date Due</u>
a) PN 97-375	20 May 1997	US\$ 190,000.00	11 Nov. 1998
b) PN 97-408	29 May 1997	US\$ 570,000.00	11 Nov. 1998
c) PN 97-435	09 June 1997	US\$1,150,000.00	04 June 1998
d) PN 97-458	15 June 1997	US\$ 130,000.00	15 June 1998

To secure the loans covered by PN 97-375^[5] and PN 97-408,^[6] Gateway assigned to Solidbank the proceeds of its Back-end Services Agreement^[7] dated June 25, 2000 with Alliance Semiconductor Corporation (Alliance). The following stipulations are common in both PNs:

3. This Note or Loan shall be paid from the foreign exchange proceeds of Our/My Letter(s) of Credit, Purchase Order or Sales Contract described as follows: *** Back-end Services Agreement dated 06-25-96 by and between Gateway Electronics Corporation and Alliance

Semiconductor Corporation.

4. We/I assign, transfer and convey to Solidbank all title and interest to the proceeds of the foregoing Letter(s) of Credit to the extent necessary to satisfy all amounts and obligations due or which may arise under this Note or Loan, and to any extension, renewal, or amendments of this Note or Loan. We/I agree that in case the proceeds of the foregoing Letter(s) of Credit prove insufficient to pay Our/My outstanding liabilities under this Note or Loan, We/I shall continue to be liable for the deficiency.
5. We/I irrevocably undertake to course the foreign exchange proceeds of the Letter(s) of Credit directly with Solidbank. Our/My failure to comply with the above would render Us or Me in default of the loan or credit facility without need of demand.^[8]

Gateway failed to comply with its loan obligations. By January 31, 2000, Gateway's outstanding debt amounted to US\$1,975,835.58. Solidbank's numerous demands to pay were not heeded by Gateway. Thus, on February 21, 2000, Solidbank filed a Complaint^[9] for collection of sum of money against Gateway.

On June 16, 2002, Solidbank filed an Amended Complaint^[10] to implead the officers/stockholders of Gateway, namely, Nand K. Prasad, Andrew S. Delos Reyes, Israel F. Maducdoc, Jaime M. Hidalgo and Alejandro S. Calderon - who signed in their personal capacity a Continuing Guaranty^[11] to become sureties for any and all existing indebtedness of Gateway to Solidbank. On June 20, 2002, the trial court admitted the amended complaint and impleaded the additional defendants.

Earlier, on October 11, 2000, Solidbank filed a Motion for Production and Inspection of Documents^[12] on the basis of an information received from Mr. David Eichler, Chief Financial Officer of Alliance, that Gateway has already received from Alliance the proceeds/payment of the Back-end Services Agreement. The pertinent portions of the motion read:

8. Therefore, plaintiffs request that this Honorable Court issue an *Order* requiring defendant GEC, through its Treasurer/Chief Financial Officer, Chief Accountant, Comptroller or any such officer, to bring before this Honorable Court for inspection and copying the following documents:

a) The originals, duplicate originals and copies of **all documents** pertaining to, arising from, in connection with or involving the *Back-end Services Agreement* of defendant GEC and Alliance Semiconductors;

b) The originals, duplicate originals and **copies of all books of account, financial statements, receipts, checks, vouchers, invoices, ledgers and other financial/accounting records and documents** pertaining to or evidencing financial and money transactions arising from, in connection with or involving the *Back-end Services Agreement* of defendant GEC and Alliance Semiconductors; and

c) The originals, duplicate originals and copies of all documents from

whatever source pertaining to the proceeds/payments received by GEC from Alliance Semiconductors.

d) Documents, as used in this section, means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, notes diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer records, diskettes or print-outs, teletypes, telefax, e-mail, invoices, worksheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures, CD-ROM's), and any electronic, mechanical or electric records or representations (including, without limitation, tapes, cassettes, discs, recordings and computer or computer-related memories).

9. Furthermore, plaintiffs request that said *Order* to the Treasurer/Chief Financial Officer, Chief Accountant, Comptroller of defendant GEC include the following instructions:

- a. If the response is that the documents are not in defendant GEC's or the officers' possession or custody, said officer should describe in detail the efforts made to locate said records or documents;
- b. If the documents are not in defendant GEC's or the officer's possession and control, said officer should identify who has control and the location of said documents or records;
- c. If the request for production seeks a specific document or itemized category that is not in defendant GEC's or the officer's possession, control or custody, the officer should provide any documents he has that contain all or part of the information contained in the requested document or category;
- d. If the officer cannot furnish the originals of the documents requested, he should explain in detail the reasons therefore; and
- e. The officer should identify the source within or outside GEC of each of the documents he produces.^[13]

On January 30, 2001, the trial court issued an Order^[14] granting the motion for production and inspection of documents, viz.:

WHEREFORE, the defendant GEC is hereby ordered to bring all the records and documents, not privileged, arising from, in connection with and/or involving the Back-end Services Agreement between defendant GEC and Alliance Semiconductor Corporation, particularly to those

pertaining to all payments made by Alliance Semiconductor Corporation to GEC pursuant to said Agreement, incorporating the instructions enumerated in par. 9 of the instant motion, for inspection and copying by the plaintiff, the same to be made before the Officer-In-Charge, Office of the Branch Clerk of Court on February 27, 2001 at 9:00 a.m.

SO ORDERED.^[15]

Gateway filed a motion to reset the production and inspection of documents to March 29, 2001 in order to give them enough time to gather and collate the documents in their possession. The trial court granted the motion.^[16]

On April 30, 2001, Solidbank filed a motion for issuance of a show cause order for Gateway's failure to comply with the January 30, 2001 Order of the trial court.^[17] In response, Gateway filed a manifestation that they appeared before the trial court on March 29, 2001 to present the documents in their possession, however, Solidbank's counsel failed to appear on the said date.^[18] In the manifestation, Gateway also expressed their willingness to make available for inspection at Gateway's offices any requested document.^[19]

On May 31, 2001, the trial court issued an Order setting the production and inspection of documents on June 7, 2001 in the premises of Gateway.^[20] It was subsequently moved to July 24, 2001. On the said date, Gateway presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services Agreement.^[21]

Solidbank was not satisfied with the documents produced by Gateway. Thus, on December 13, 2001, Solidbank filed a motion to cite Gateway and its responsible officers in contempt for their refusal to produce the documents subject of the January 30, 2001 Order. In opposition thereto, Gateway claimed that they had complied with the January 30, 2001 Order and that the billings sent to Alliance are the only documents that they have pertaining to the Back-end Services Agreement.^[22]

On April 15, 2002, the trial court issued an Order^[23] denying the motion to cite Gateway for contempt. However, the trial court chastised Gateway for exerting no diligent efforts to produce the documents evidencing the payments received by Gateway from Alliance in relation to the Back-end Services Agreement, viz.:

Before this Court is a *Motion to Cite Defendant GEC In Contempt For Refusing To Produce Documents Pursuant to the Order Dated 30 January 2001* filed by plaintiff dated December 12, 2001, together with defendant GEC's Opposition thereto dated January 14, 2002, as well as plaintiff's Reply dated February 6, 2002 and GEC's Rejoinder dated February 27, 2002.

As Courts are cautioned to utilize the power to punish for contempt on the preservative and not on the vindictive, contempt being drastic and extraordinary in nature (Wicker vs. Arcangel, 252 SCRA 444; Paredes-Garcia vs. CA, 261 SCRA 693), this Court is inclined to DENY the present motion.

However, as no diligent effort was shown to have been exerted by defendant GEC to produce the documents enumerated in the Order dated January 30, 2001, this Court hereby orders, in accordance with Sec. 3(a), Rule 29 of the Rules of Court, that the matters regarding the contents of the documents sought to be produced but which were not otherwise produced by GEC, shall be taken to be established in accordance with plaintiff's claim, but only for the purpose of this action.

SO ORDERED.^[24]

Gateway filed a partial motion for reconsideration of the April 15, 2002 Order. However, the same was denied in an Order^[25] dated August 27, 2002.

On November 5, 2002, Gateway filed a petition for *certiorari*^[26] before the Court of Appeals (CA) seeking to nullify the Orders of the trial court dated April 15, 2002 and August 27, 2002.

On June 2, 2004, the CA rendered a Decision^[27] nullifying the Orders of the trial court dated April 15, 2002 and August 27, 2002. The CA ruled that both the Motion for Production of Documents and the January 30, 2001 Order of the trial court failed to comply with the provisions of Section 1, Rule 27 of the Rules of Court. It further held that the trial court committed grave abuse of discretion in ruling that the matters regarding the contents of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim. The *fallo* of the Decision reads:

WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, the assailed portion of the Order dated April 15, 2002 and Order dated August 27, 2002, both issued by public respondent, are hereby **NULLIFIED** and **SET ASIDE** without prejudice to the filing by private respondent of a new Motion for Production and Inspection of Documents in accordance with the requirements of the Rules.

SO ORDERED.^[28]

Solidbank filed a motion for reconsideration of the Decision of the CA. On July 29, 2004, the CA rendered a Resolution^[29] denying the same. Thus, this petition.

The Issues

- I. Whether Solidbank's motion for production and inspection of documents and the Order of the trial court dated January 30, 2001 failed to comply with Section 1, Rule 27 of the Rules of Court; and
- II. Whether the trial court committed grave abuse of discretion in holding that the matters subject of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim.