

## SECOND DIVISION

[ G.R. No. 172041, December 18, 2008 ]

**GATEWAY ELECTRONICS CORPORATION AND GERONIMO B.  
DELOS REYES, JR., PETITIONERS, VS. ASIANBANK  
CORPORATION, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

This petition for review under Rule 45 seeks to nullify and set aside the Decision<sup>[1]</sup> dated October 28, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 80734 and its Resolution<sup>[2]</sup> of March 17, 2006 denying petitioners' motion for reconsideration.

#### The Facts

Petitioner Gateway Electronics Corporation (Gateway) is a domestic corporation that used to be engaged in the semi-conductor business. During the period material, petitioner Geronimo B. delos Reyes, Jr. was its president and one Andrew delos Reyes its executive vice-president.

On July 23, 1996, Geronimo and Andrew executed separate but almost identical deeds of suretyship for Gateway in favor of respondent Asianbank Corporation (Asianbank), pertinently providing:

I/We Geronimo B. de los Reyes, Jr. x x x warrant to the ASIANBANK CORPORATION, x x x due and punctual payment by the following individuals/companies/firms, hereinafter called the DEBTOR(S), of such amounts whether due or not, as indicated opposite their respective names, to wit:

<u>NAME OF DEBTOR(S).</u>	<u>AMOUNT OF OBLIGATION</u>
GATEWAY ELECTRONICS CORPORATION	*P10,000,000.00*DOMESTIC BILLS [PURCHASED LINE]
	*US\$3,000,000.00*OMNIBUS CREDIT LINE

owing to the said ASIANBANK CORPORATION, hereafter called the CREDITOR, as evidenced by all notes, drafts, overdrafts and other [credit] obligations of every kind and nature contracted/incurred by said DEBTOR(S) in favor of said CREDITOR.

In case of default by any and/or all of the DEBTOR(S) to pay the whole part of said indebtedness herein secured at maturity, I/WE jointly and severally agree and engage to the CREDITOR, its successors and assigns,

the prompt payment, x x x of such notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with all interests, penalty and other bank charges as may accrue thereon x x x.

I/WE further warrant the due and faithful performance by the DEBTOR(S) of all obligations to be performed under any contracts evidencing indebtedness/obligations and any supplements, amendments, changes or modifications made thereto, including but not limited to, the due and punctual payment by the said DEBTOR(S).

MY/OUR liability on this Deed of Suretyship shall be solidary, direct and immediate and not contingent upon the pursuit by the CREDITOR x x x of whatever remedies it or they may have against the DEBTOR(S) or the securities or liens it or they may possess; and I/WE hereby agree to be and remain bound upon this suretyship, x x x and notwithstanding also that all obligations of the DEBTOR(S) to you outstanding and unpaid at any time may exceed the aggregate principal sum hereinabove stated.<sup>[3]</sup>

Later developments saw Asianbank extending to Gateway several export packing loans in the total aggregate amount of USD 1,700,883.48. This loan package was later consolidated with Dollar Promissory Note (PN) No. FCD-0599-2749<sup>[4]</sup> for the amount of USD 1,700,883.48 and secured by a chattel mortgage over Gateway's equipment for USD 2 million.

Gateway initially made payments on its loan obligations, but eventually defaulted. Upon Gateway's request, Asianbank extended the maturity dates of the loan several times. These extensions bore the conformity of three of Gateway's officers, among them Andrew.

On July 15 and 30, 1999, Gateway issued two Philippine Commercial International Bank checks for the amounts of USD 40,000 and USD 20,000, respectively, as payment for its arrearages and interests for the periods June 30 and July 30, 1999; but both checks were dishonored for insufficiency of funds. Asianbank's demands for payment made upon Gateway and its sureties went unheeded. As of November 23, 1999, Gateway's obligation to Asianbank, inclusive of principal, interest, and penalties, totaled USD 2,235,452.17.

Thus, on December 15, 1999, Asianbank filed with the Regional Trial Court (RTC) in Makati City a complaint for a sum of money against Gateway, Geronimo, and Andrew. The complaint, as later amended, was eventually raffled to Branch 60 of the court and docketed as Civil Case No. 99-2102 entitled *Asian Bank Corporation v. Gateway Electronics Corporation, Geronimo B. De Los Reyes, Jr. and Andrew S. De Los Reyes*.

In its answer to the amended complaint, Gateway traced the cause of its financial difficulties, described the steps it had taken to address its mounting problem, and faulted Asianbank for trying to undermine its efforts toward recovery.

Andrew also filed an answer alleging, among other things, that the deed of suretyship he executed covering the PhP 10 million-Domestic Bills Purchased Line and the USD 3 million-Omnibus Credit Line did not include PN No. FCD-0599-2749,

the payment of which was extended several times without his consent.

Geronimo, on the other hand, alleged that the subject deed of suretyship, assuming the authenticity of his signature on it, was signed without his wife's consent and should, thus, be considered as a mere continuing offer. Like Andrew, Geronimo argued that he ought to be relieved of his liability under the surety agreement inasmuch as he too never consented to the repeated loan maturity date extensions given by Asianbank to Gateway.

After due hearing, the RTC rendered judgment dated October 7, 2003 <sup>[5]</sup> in favor of Gateway, the dispositive portion of which states:

WHEREFORE then, in view of the foregoing, judgment is rendered holding defendants Gateway Electronics Corporation, Geronimo De Los Reyes and Andrew De Los Reyes jointly and severally liable to pay the plaintiff the following:

- a) The sum of \$2,235,452.17 United States Currency with interest to be added on at the prevailing market rate over a given thirty day London Interbank Offered Rate (LIBOR) plus a spread of 5.5358 percent or ten and [45,455/100,000] percent per annum for the first 35 days and every thirty days beginning November 23, 1999 until fully paid;
- b) a penalty charge after November 23, 1999 of two percent (2%) per month until fully paid;
- c) attorney's fees of twenty percent (20%) of the total amount due and unpaid; and
- d) costs of the suit.

SO ORDERED.

Thereafter, Gateway, Geronimo, and Andrew appealed to the CA, their recourse docketed as CA-G.R. CV No. 80734. Following the filing of its and Geronimo's joint appellants' brief, Gateway filed on November 10, 2004 a petition for voluntary insolvency<sup>[6]</sup> with the RTC in Imus, Cavite, Branch 22, docketed as SEC Case No. 037-04, in which Asianbank was listed in the attached Schedule of Obligations as one of the creditors. On March 16, 2005, Metrobank, as successor-in-interest of Asianbank, via a Notice of Creditor's Claim, prayed that it be allowed to participate in the Gateways's creditors' meeting.

In its Decision dated October 28, 2005, the CA affirmed the decision of the Makati City RTC. In time, Gateway and Geronimo interposed a motion for reconsideration. This was followed by a Supplemental Motion for Reconsideration dated January 20, 2006, stating that in SEC Case No. 037-04, the RTC in Imus, Cavite had issued an Order dated December 2, 2004, declaring Gateway insolvent and directing all its creditors to appear before the court on a certain date for the purpose of choosing among themselves the assignee of Gateway's estate which the court's sheriff has meanwhile placed in *custodia legis*.<sup>[7]</sup> Gateway and Geronimo thus prayed that the assailed decision of the Makati City RTC be set aside, the insolvency court having

acquired exclusive jurisdiction over the properties of Gateway by virtue of Section 60 of Act No. 1956, without prejudice to Asianbank pursuing its claim in the insolvency proceedings.

In its March 17, 2006 Resolution, however, the CA denied the motion for reconsideration and its supplement.

Hence, Gateway and Geronimo filed this petition anchored on the following grounds:

#### I

The [CA] erred in disregarding the established rule that an action commenced by a creditor against a judicially declared insolvent for the recovery of his claim should be dismissed and referred to the insolvency court. Where, therefore, as in this case, petitioner GEC [referring to Gateway] has been declared insolvent x x x, respondent Asianbank's claim for the payment of GEC's loans should be ventilated before the insolvency court x x x.

#### II

The [CA] erred in admitting as evidence the Deed of Surety purportedly signed by petitioner GBR [referring to Geronimo] despite the unexplained failure of respondent Asianbank to present the originals of the Deed of Surety during the trial.

#### III

The [CA] erred in holding that the repeated extensions granted by respondent Asianbank to GEC without notice to and the express consent of petitioner GBR did not discharge petitioner GBR from his liabilities as surety GEC in that:

- A. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty.
- B. The [CA] interpreted the supposed Deed of Surety of petitioner GBR as "too comprehensive and all encompassing as to amount to absurdity."
- C. The repeated extensions granted by Asianbank to GEC prevented petitioner GBR from exercising his right of subrogation under Article 2080 of the Civil Code. As such, petitioner GBR should be released from his obligations as surety of GEC. The repeated extensions granted by Asianbank to GEC prevented petitioner GBR from exercising his right of subrogation under Article 2080 of the Civil Code. As such, petitioner GBR should be released from his obligations as surety of GEC.

#### IV

It is a well-settled rule that when a bank deviates from normal banking

practice in a transaction and sustains injury as a result thereof, the bank is deemed to have assumed the risk and no right of payment accrues to the latter against any party to the transaction. By repeatedly extending the period for the payment of GEC's obligations and granting GEC other loans after the suretyship agreement despite GEC's default and in failing to foreclose the chattel mortgage constituted as security for GEC's loan contrary to normal banking practices, Asianbank failed to exercise reasonable caution for its own protection and assumed the risk of non-payment through its own acts, and thus has no right to proceed against petitioner GBR as surety for the payment of GEC's loans.

## V

In *Agcaoili v. GSIS*, this Honorable Court had occasion to state that in determining the precise relief to give, the court will "balance the equities" or the respective interests of the parties and take into account the relative hardship that one relief or another may occasion to them. Upon a balancing of interests of both petitioner GBR and respondent Asianbank, greater and irreparable harm and injury would be suffered by petitioner GBR than respondent Asianbank if the assailed Decision and Resolution of the [CA] would be upheld x x x. This Honorable Court x x x should thus exercise its equity jurisdiction in the instant case to the end that it may render complete justice to both parties and declare petitioner GBR as released and discharged from any liability in respect of respondent Asianbank's claims.<sup>[8]</sup>

### **The Ruling of the Court**

#### **Gateway May Be Discharged from Liability But Not Geronimo**

Gateway, having been declared insolvent, argues that jurisdiction over all claims against all of its properties and assets properly pertains to the insolvency court. Accordingly, Gateway adds, citing Sec. 60 of Act No. 1956,<sup>[9]</sup> as amended, or the *Insolvency Law*, any pending action against its properties and assets must be dismissed, the claimant relegated to the insolvency proceedings for the claimant's relief.

The contention, as formulated, is in a qualified sense meritorious. Under Sec. 18 of Act No. 1956, as couched, the issuance of an order declaring the petitioner insolvent after the insolvency court finds the corresponding petition for insolvency to be meritorious shall stay all pending civil actions against the petitioner's property. For reference, said Sec. 18, setting forth the effects and contents of a voluntary insolvency order,<sup>[10]</sup> pertinently provides:

Section 18. Upon receiving and filing said petition, schedule, and inventory, the court x x x shall make an order declaring the petitioner insolvent, and directing the sheriff of the province or city in which the petition is filed to take possession of, and safely keep, until the appointment of a receiver or assignee, all the deeds, vouchers, books of account, papers, notes, bonds, bills, and securities of the debtor and all his real and personal property, estate and effects x x x. Said order shall further forbid the payment to the creditor of any debts due to him and