

SECOND DIVISION

[G.R. NO. 155099, August 31, 2005]

SECURITY BANK CORPORATION, PETITIONER, VS. JUDGE MANUEL D. VICTORIO, REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 141; THE TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, AND THE MAR FISHING COMPANY, INC., RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66879, dismissing the petition for prohibition and mandamus of the Security Bank and Trust Company, later renamed Security Bank Corporation (SBC), for the nullification of the Order of the Regional Trial Court (RTC) of Makati City, Branch 141, dated March 15, 2001, denying the bank's motion for the suspension of Civil Case No. 99-1581 on the ground of a prejudicial question relating to the issues raised in Civil Case No. 17563 pending in Branch 141 of the said RTC.

The Antecedents

On February 3, 1983, the MAR Fishing Company, Inc. (MFCI), obtained a US\$2-million loan from the PISO Development Bank (PISO Bank) to finance its importation of a fishing vessel to be used in its fishing activities under the PISO's re-lending credit line from the Asian Development Bank. Under the Loan Agreement executed by the MFCI, it was obliged to pay the loan in 10 years, from the date of PISO Bank's approval of the loan with a two-year grace period.^[2]

On July 19, 1983, SBC and MFCI executed a Standby Credit Line Agreement, in which SBC extended an irrevocable Standby Credit Line in favor of the PISO Bank for the account of MFCI in an amount covering 50% of the PISO Bank loan or up to the principal amount of the peso equivalent of US\$1 million, plus the interests, fees and charges due on the loan. PISO Bank conformed to the agreement, under which MFCI was allowed to draw from the said fund the payment of its maturing obligations to PISO Bank. However, upon PISO Bank's declaration that the entire obligation of the MFCI is due and payable, the former could withdraw the entire amount of the account. The parties also agreed that SBC shall be subrogated to all the credits under the promissory note/s or any other instrument evidencing MFCI's obligation to PISO Bank, and to all the credits of the said bank appertaining thereto.

^[3] The parties further agreed that:

3. The BANK agrees that the LENDER may draw on the Line, in accordance with the provisions hereinbelow, any and all amounts due from the BORROWER to the LENDER under the terms of the Loan

Agreement up to the extent of the SECURED AMOUNT. Provided, that the BANK shall not be obliged to release such drawings unless the LENDER shall have delivered in favor of the BANK a promissory note(s) in the form hereto attached as Annex "A" covering the amount of said drawing(s) executed by the LENDER for and on behalf of the BORROWER in accordance with the Power of Attorney executed by the BORROWER in favor of the LENDER dated July 14, 1983. The said promissory note(s) shall be apart and distinct from the Note(s) executed by the BORROWER in favor of the LENDER as evidence of the Loan.

...

7. The BANK hereby undertakes that drawing(s) under the Line in compliance with the terms hereof will be honored immediately upon delivery by the LENDER of (1) its duly signed statement and certification in duplicate that the amount drawn represents payment due from and unpaid by the BORROWER under the terms of the Loan Agreement and the Notes; and (2) the appropriate Note(s) or any other instrument evidencing the obligations of the BORROWER to the LENDER. Such required documents shall be presented at the principal office of the BANK within five (5) banking days after due date of the obligations subject to the Loan Agreement and the pertinent Note(s) without prejudice to whatever grace period the LENDER may give to the BORROWER.

...

11. It is understood, however, that an availment of the LENDER of the Line shall be subject to the conditions of paragraphs 3 & 7 hereof. Further, the BORROWER binds itself to pay interest on the amount availed of from the BANK on the prevailing money market rate of interest at the time of availment corresponding to the term and maturity of such availment as may be imposed by the BANK upon the BORROWER, and agrees to reimburse the BANK on demand for all reasonable expenses incurred by the BANK in connection with the operation and enforcement of this Agreement.^[4]

To secure the payment of its drawdowns under the Standby Credit Facility, MFCI executed on August 8, 1983 a "First Preferred Mortgage on Vessel" in favor of SBC over its vessel "Southward Ho" (formerly "Sand Piper"), as described in the Certificate of Ownership issued by the Philippine Coast Guard.^[5] Under the said deed, in the event that an action would be filed in court for the enforcement of any right under the contract, the SBC would be entitled, as of right, to the appointment of a receiver of the vessel, and to any revenue, earnings, rent income and other income.^[6]

MFCI failed to pay its loan account to the PISO Bank. On August 11, 1987, the PISO Bank filed a Complaint against SBC with the RTC of Makati City, docketed as Civil Case No. 175634. The case was raffled to Branch 147 of the court. PISO Bank alleged, *inter alia*, the following:

1.8. Pursuant to the Standby Credit Line, PISO BANK, on 25 June 1987 sent a demand letter dated 24 June 1987 to SECURITY BANK. In said

letter, PISO BANK informed SECURITY BANK that MAR FISHING defaulted in the payment of the amortizations due on the Loan in the total amount of TWENTY-TWO MILLION THREE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED SIXTY-TWO AND 36/100 (P22,380,862.36), including interests, fees, and other charges, as of 15 May 1987. Consequently, in said letter PISO BANK demanded that SECURITY BANK pay PISO BANK fifty percent (50%) of the said amount, or ELEVEN MILLION ONE HUNDRED NINETY THOUSAND FOUR HUNDRED THIRTY-ONE AND 18/100 PESOS (P11,190,431.18), representing SECURITY BANK's obligation under the Standby Credit Line. Attached to said letter were all the documents required to call the line under the terms of the Standby Credit Line. However, SECURITY BANK, despite its obligation under the Standby Credit Line to pay PISO BANK "immediately" upon call, refused to honor its obligation under the Standby Credit Line.^[7]

PISO Bank prayed that, after due hearing, judgment be rendered in its favor, as follows:

(a) Ordering SECURITY BANK to pay the amount of at least ELEVEN MILLION ONE HUNDRED NINETY THOUSAND FOUR HUNDRED THIRTY-ONE AND 18/100 PESOS (P11,190,431.18) plus the amortizations, fees, stipulated interest, penalties and charges that may accrue after 15 May 1987;

(b) Ordering SECURITY BANK to pay exemplary damages in such amount as may be deemed reasonable by the Honorable Court; and

(c) Ordering SECURITY BANK to pay PISO BANK attorney's fees equivalent to twenty-five percent (25%) of the total amount due plus litigation expenses and costs of suit.

PISO BANK likewise prays for such other relief, just and equitable under the premises.^[8]

In its Answer, SBC denied any liability to PISO Bank, and alleged, by way of special and affirmative defenses, that the latter failed to comply with paragraphs 3 and 7 of the Standby Credit Line Agreement; even after it became aware that MFCI was undergoing financial distress as far back as 1985, it breached the mandatory conditions under the said agreement, thus, placing the defendant in jeopardy of not being reimbursed for the MFCI's drawdowns. As a consequence, PISO Bank should be deemed and declared to have waived its right under the said agreement. SBC further alleged that the plaintiff and MFCI entered into a secret agreement, whereby the stipulated 14.5% interest per annum on its promissory note was increased to 23% per annum, and that the plaintiff received or collected interests on the promissory note at such rate.

As an alternative defense, the defendant alleged that since the Standby Credit Line Agreement was based on the peso equivalent of the US dollar, it should only be liable, if at all, for no more than P6,496,066.66.

SBC incorporated in its Answer, a Third-Party Complaint against MFCI, in which it prayed that it be appointed as receiver over the *Southward Ho* and over its profit,

income and other receivables from the operations thereof. It also alleged that in the remote event that the trial court should hold it liable to PISO Bank, then, as third-party plaintiff, it would be entitled to "subrogation, and/or indemnification and/or reimbursement against the third-party defendant for the latter's failure to pay its obligation under the Loan Agreement, to the amount adjudged against the third-party plaintiff plus attorney's fees, litigation expenses and costs with indemnification which may be paid partially by the foreclosure of the property mortgaged."^[9]

SBC prayed that judgment be rendered in its favor and against the plaintiff and the third-party defendant, as follows:

WHEREFORE, it is respectfully prayed that:

1. The Complaint be dismissed for being totally unmeritorious;
2. After hearing on the counterclaim, to render judgment ordering plaintiff to pay defendant:
 - (a) P1,000,000 as damages to its goodwill and prestige;
 - (b) Exemplary damages in an amount left to the sound discretion of this Honorable Court;
 - (c) P40,000 as attorney's fees;
 - (d) Expenses of litigation as shall be proven at the trial;
 - and
 - (e) The costs of this suit;
3. In the event that judgment be rendered ordering the defendant third-party plaintiff to pay plaintiff any amount claimed in the latter's complaint, to render judgment simultaneously ordering the third-party defendant to pay third-party plaintiff whatever amount is adjudged to be paid by the third-party plaintiff to the plaintiff, plus attorney's fees, litigation expenses and costs;
4. In default of such payment by the third-party defendant, that the above-described mortgaged property be sold and the proceeds of the sale be applied to the partial payment of the amounts due to the third-party plaintiff from the third-party defendant;
5. During the pendency of this case, that the third-party plaintiff be appointed as the receiver of the mortgaged property as well as to the earnings, rents, issues, profits and other income thereof with such other powers as this Honorable Court may confer;
6. For execution for the deficiency which will remain unpaid after applying the proceeds of said sale.

Defendant Third-Party Plaintiff prays for such other and further relief, general and special, as it may appear entitled to, in law and in equity.^[10]

In its Answer to the third-party complaint, MFCI alleged, *inter alia*, that (a) the mortgage contract executed by it and the third-party plaintiff was not the proper subject of the third-party complaint as it was not in respect of SBC's complaint, nor

did it arise from the same transaction subject of the original complaint; and (b) assuming that SBC as third-party plaintiff was entitled to subrogation and/or reimbursement, its liability to was limited to those amounts or expenses secured by it under the Loan Agreement and Standby Credit Line Agreement; (c) the third-party complaint was premature as there had been as yet no judgment against it based on the Loan Agreement.^[11] MFCI prayed that judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed:

1. The Third-Party Complaint be dismissed for lack of merit;
2. After hearing on the counterclaim, judgment be rendered against Third-Party Plaintiff to pay Third-Party Defendant the sum of P50,000.00, as and by way of attorney's fees, as well as cost of suit.^[12]

In a separate transaction, the MFCI obtained loans from Export Credit Corporation of Canada (EDC) in August, 1981, guaranteed by the Philippine Export and Foreign Loan Guarantee Corporation (PHILGUARANTEE), covered by LG No. 81-383F and 385F. PHILGUARANTEE later became the Trade and Investment Development Corporation of the Philippines (TIDCORPP). Because of financial difficulties, the MFCI failed to pay its loan accounts to PHILGUARANTEE and proposed a restructuring of the loan; PHILGUARANTEE agreed, provided that MFCI execute an Indemnity Agreement in its favor to secure it from damages and/or liabilities that may arise. MFCI complied and executed said Indemnity Agreement on November 10, 1987.^[13]

On July 29, 1988, the MFCI and the SBC executed a Sinking Fund Agreement with the following terms:

1. The Borrower undertakes to course export receipts of at least US\$8.3 million thru the Lender and hereby irrevocably authorizes the Lender to set aside five percent (5%) of the peso proceeds from the Borrower's export receipts.
2. A minimum amount of P5,000,000.00 shall be accumulated from the 5% export deduction within one and one-fourth (1¼) years from the drawdown date of the US\$1.0 million Term Loan. The export deductions shall be for a minimum amount/year counting from the date of release of the Term Loan as follows:

Before Nov. 30, 1988	- - -P2,500,000.00
Before Feb. 28, 1989	- - - <u>P2,500,000.00</u>
By Feb. 2, 1989	- - - - -P5,000,000.00

3. The deduction shall be increased to 10% during peak season for fishing.
4. The Sinking Fund shall earn interest at the same rate being paid by the Lender on savings deposit.