

THIRD DIVISION

[G.R. NO. 160324, November 15, 2005]

**INTERNATIONAL FINANCE CORPORATION, PETITIONER, VS.
IMPERIAL TEXTILE MILLS, INC., ** RESPONDENT.**

DECISION

PANGANIBAN, J.:

The terms of a contract govern the rights and obligations of the contracting parties. When the obligor undertakes to be "jointly and severally" liable, it means that the obligation is solidary. If solidary liability was instituted to "guarantee" a principal obligation, the law deems the contract to be one of suretyship.

The creditor in the present Petition was able to show convincingly that, although denominated as a "Guarantee Agreement," the Contract was actually a surety. Notwithstanding the use of the words "guarantee" and "guarantor," the subject Contract was indeed a surety, because its terms were clear and left no doubt as to the intention of the parties.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision^[2] and September 30, 2003 Resolution^[3] of the Court of Appeals (CA) in CA-GR CV No. 58471. The challenged Decision disposed as follows:

"WHEREFORE, the appeal is **PARTIALLY GRANTED**. The decision of the trial court is **MODIFIED** to read as follows:

"1. Philippine Polyamide Industrial Corporation is **ORDERED** to pay [Petitioner] International Finance Corporation, the following amounts:

- '(a) US\$2,833,967.00 with accrued interests as provided in the Loan Agreement;
- '(b) Interest of 12% per annum on accrued interest, which shall be counted from the date of filing of the instant action up to the actual payment;
- '(c) P73,340.00 as attorney's fees;
- '(d) Costs of suit.'

"2. The guarantor Imperial Textile Mills, Inc. together with Grandtex is **HELD** secondarily liable to pay the amount herein adjudged to [Petitioner] International Finance Corporation."^[4]

The assailed Resolution denied both parties' respective Motions for Reconsideration.

The Facts

The facts are narrated by the appellate court as follows:

"On December 17, 1974, [Petitioner] International Finance Corporation (IFC) and [Respondent] Philippine Polyamide Industrial Corporation (PPIC) entered into a loan agreement wherein IFC extended to PPIC a loan of US\$7,000,000.00, payable in sixteen (16) semi-annual installments of US\$437,500.00 each, beginning June 1, 1977 to December 1, 1984, with interest at the rate of 10% per annum on the principal amount of the loan advanced and outstanding from time to time. The interest shall be paid in US dollars semi-annually on June 1 and December 1 in each year and interest for any period less than a year shall accrue and be pro-rated on the basis of a 360-day year of twelve 30-day months.

"On December 17, 1974, a 'Guarantee Agreement' was executed with x x x Imperial Textile Mills, Inc. (ITM), Grand Textile Manufacturing Corporation (Grandtex) and IFC as parties thereto. ITM and Grandtex agreed to guarantee PPIC's obligations under the loan agreement.

"PPIC paid the installments due on June 1, 1977, December 1, 1977 and June 1, 1978. The payments due on December 1, 1978, June 1, 1979 and December 1, 1979 were rescheduled as requested by PPIC. Despite the rescheduling of the installment payments, however, PPIC defaulted. Hence, on April 1, 1985, IFC served a written notice of default to PPIC demanding the latter to pay the outstanding principal loan and all its accrued interests. Despite such notice, PPIC failed to pay the loan and its interests.

"By virtue of PPIC's failure to pay, IFC, together with DBP, applied for the extrajudicial foreclosure of mortgages on the real estate, buildings, machinery, equipment plant and all improvements owned by PPIC, located at Calamba, Laguna, with the regional sheriff of Calamba, Laguna. On July 30, 1985, the deputy sheriff of Calamba, Laguna issued a notice of extrajudicial sale. IFC and DBP were the only bidders during the auction sale. IFC's bid was for P99,269,100.00 which was equivalent to US\$5,250,000.00 (at the prevailing exchange rate of P18.9084 = US\$1.00). The outstanding loan, however, amounted to US\$8,083,967.00 thus leaving a balance of US\$2,833,967.00. PPIC failed to pay the remaining balance.

"Consequently, IFC demanded ITM and Grandtex, as guarantors of PPIC, to pay the outstanding balance. However, despite the demand made by IFC, the outstanding balance remained unpaid.

"Thereafter, on May 20, 1988, IFC filed a complaint with the RTC of Manila against PPIC and ITM for the payment of the outstanding balance plus interests and attorney's fees.

"The trial court held PPIC liable for the payment of the outstanding loan plus interests. It also ordered PPIC to pay IFC its claimed attorney's fees. However, the trial court relieved ITM of its obligation as guarantor. Hence, the trial court dismissed IFC's complaint against ITM.

x x x

x x x

x x x

"Thus, apropos the decision dismissing the complaint against ITM, IFC appealed [to the CA]."^[5]

Ruling of the Court of Appeals

The CA reversed the Decision of the trial court, insofar as the latter exonerated ITM from any obligation to IFC. According to the appellate court, ITM bound itself under the "Guarantee Agreement" to pay PPIC's obligation upon default.^[6] ITM was not discharged from its obligation as guarantor when PPIC mortgaged the latter's properties to IFC.^[7] The CA, however, held that ITM's liability as a guarantor would arise only if and when PPIC could not pay. Since PPIC's inability to comply with its obligation was not sufficiently established, ITM could not immediately be made to assume the liability.^[8]

The September 30, 2003 Resolution of the CA denied reconsideration.^[9] Hence, this Petition.^[10]

The Issues

Petitioner states the issues in this wise:

- "I. Whether or not ITM and Grandtex^[11] are sureties and therefore, jointly and severally liable with PPIC, for the payment of the loan.
- "II. Whether or not the Petition raises a question of law.
- "III. Whether or not the Petition raises a theory not raised in the lower court."^[12]

The main issue is whether ITM is a surety, and thus solidarily liable with PPIC for the payment of the loan.

The Court's Ruling

The Petition is meritorious.

Main Issue: **Liability of Respondent Under** **the Guarantee Agreement**

The present controversy arose from the following Contracts: (1) the Loan Agreement dated December 17, 1974, between IFC and PPIC;^[13] and (2) the Guarantee Agreement dated December 17, 1974, between ITM and Grandtex, on

the one hand, and IFC on the other.^[14]

IFC claims that, under the Guarantee Agreement, ITM bound itself as a surety to PPIC's obligations proceeding from the Loan Agreement.^[15] For its part, ITM asserts that, by the terms of the Guarantee Agreement, it was merely a guarantor^[16] and not a surety. Moreover, any ambiguity in the Agreement should be construed against IFC -- the party that drafted it.^[17]

Language of the Contract

The premise of the Guarantee Agreement is found in its preambular clause, which reads:

"Whereas,

"(A) By an Agreement of even date herewith between IFC and PHILIPPINE POLYAMIDE INDUSTRIAL CORPORATION (herein called the Company), which agreement is herein called the Loan Agreement, IFC agrees to extend to the Company a loan (herein called the Loan) of seven million dollars (\$7,000,000) on the terms therein set forth, including a provision that all or part of the Loan may be disbursed in a currency other than dollars, but only on condition that the Guarantors agree to guarantee the obligations of the Company in respect of the Loan as hereinafter provided.

"(B) The Guarantors, in order to induce IFC to enter into the Loan Agreement, and in consideration of IFC entering into said Agreement, have agreed so to guarantee such obligations of the Company."^[18]

The *obligations* of the guarantors are meticulously expressed in the following provision:

"Section 2.01. The Guarantors *jointly and severally*, irrevocably, absolutely and unconditionally guarantee, as *primary obligors and not as sureties merely*, the due and punctual payment of the principal of, and interest and commitment charge on, the Loan, and the principal of, and interest on, the Notes, whether at stated maturity or upon prematuring, all as set forth in the Loan Agreement and in the Notes."^[19]

The Agreement uses "guarantee" and "guarantors," prompting ITM to base its argument on those words.^[20] This Court is not convinced that the use of the two words limits the Contract to a mere guaranty. The specific stipulations in the Contract show otherwise.

Solidary Liability Agreed to by ITM

While referring to ITM as a guarantor, the Agreement specifically stated that the

corporation was "jointly and severally" liable. To put emphasis on the nature of that liability, the Contract further stated that ITM was a primary obligor, not a *mere* surety. Those stipulations meant only one thing: that *at bottom*, and to all legal intents and purposes, it was a surety.

Indubitably therefore, ITM bound itself to be solidarily^[21] liable with PPIC for the latter's obligations under the Loan Agreement with IFC. ITM thereby brought itself to the level of PPIC and could not be deemed merely secondarily liable.

Initially, ITM was a stranger to the Loan Agreement between PPIC and IFC. ITM's liability commenced only when it guaranteed PPIC's obligation. It became a surety when it bound itself solidarily with the principal obligor. Thus, the applicable law is as follows:

"Article 2047. By guaranty, a person, called the guarantor binds himself to the creditor to fulfill the obligation of the principal in case the latter should fail to do so.

"If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed.

In such case the contract shall be called suretyship."^[22]

The aforementioned provisions refer to Articles 1207 to 1222 of the Civil Code on "Joint and Solidary Obligations." Relevant to this case is Article 1216, which states:

"The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

Pursuant to this provision, petitioner (as creditor) was justified in taking action directly against respondent.

No Ambiguity in the Undertaking

The Court does not find any ambiguity in the provisions of the Guarantee Agreement. When qualified by the term "jointly and severally," the use of the word "guarantor" to refer to a "surety" does not violate the law.^[23] As Article 2047 provides, a suretyship is created when a guarantor binds itself solidarily with the principal obligor. Likewise, the phrase in the Agreement -- "as primary obligor and not merely as surety" -- stresses that ITM is being placed on the same level as PPIC. Those words emphasize the nature of their liability, which the law characterizes as a suretyship.

The use of the word "guarantee" does not *ipso facto* make the contract one of guaranty.^[24] This Court has recognized that the word is frequently employed in business transactions to describe the intention to be bound by a primary or an independent obligation.^[25] The very terms of a contract govern the obligations of the parties or the extent of the obligor's liability. Thus, this Court has ruled in favor of suretyship, even though contracts were denominated as a "Guarantor's