

FIRST DIVISION

[G.R. No. 142381, October 15, 2003]

**PHILIPPINE BLOOMING MILLS, INC., AND ALFREDO CHING,
PETITIONERS, VS. COURT OF APPEALS AND TRADERS ROYAL
BANK, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on *certiorari* [1] to annul the Decision [2] dated 16 July 1999 of the Court of Appeals in CA-G.R. CV No. 39690, as well as its Resolution dated 17 February 2000 denying the motion for reconsideration. The Court of Appeals affirmed with modification the Decision [3] dated 31 August 1992 rendered by Branch 113 of the Regional Trial Court of Pasay City ("trial court"). The trial court's Decision declared petitioner Alfredo Ching ("Ching") liable to respondent Traders Royal Bank ("TRB") for the payment of the credit accommodations extended to Philippine Blooming Mills, Inc. ("PBM").

Antecedent Facts

This case stems from an action to compel Ching to pay TRB the following amounts:

1. P959,611.96 under Letter of Credit No. 479 AD covered by Trust Receipt No. 106; [4]
2. P1,191,137.13 under Letter of Credit No. 563 AD covered by Trust Receipt No. 113; [5] and
3. P3,500,000 under the trust loan covered by a notarized Promissory Note. [6]

Ching was the Senior Vice President of PBM. In his personal capacity and not as a corporate officer, Ching signed a Deed of Suretyship dated 21 July 1977 binding himself as follows:

xxx as primary obligor(s) and not as mere guarantor(s), hereby warrant to the TRADERS ROYAL BANK, its successors and assigns, the due and punctual payment by the following individuals and/or companies/firms, hereinafter called the DEBTOR(S), of such amounts whether due or not, as indicated opposite their respective names, to wit:

NAME OF DEBTOR(S)

AMOUNT OF OBLIGATION

PHIL. BLOOMING MILLS CORP.

TEN MILLION PESOS

(P 10,000,000.00)

owing to said TRADERS ROYAL BANK, 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 or 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, without demand or notice from said CREDITOR, 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 and all expenses which may be incurred by the latter in collecting any or all such instruments.

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

I/WE hereby expressly waive notice of acceptance of this suretyship, and also presentment, demand, protest and notice of dishonor of any and all such instruments, loans, advances, credits, or other indebtedness or obligations hereinbefore referred to.

MY/OUR liability on this Deed of Suretyship shall be **solidary, direct and immediate and not contingent** upon the pursuit by the CREDITOR, its successors or assigns, 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, irrespective of the existence, value or condition of any collateral, and notwithstanding also that all obligations of the DEBTOR(S) to you outstanding and unpaid at any time may exceed the aggregate principal sum herein above stated.

In the event of judicial proceedings, I/WE hereby expressly agree to pay the creditor for and as attorney's fees a sum equivalent to TEN PER CENTUM (10%) of the total indebtedness (principal and interest) then unpaid, exclusive of all costs or expenses for collection allowed by law.

[7] (Emphasis supplied)

On 24 March and 6 August 1980, TRB granted PBM letters of credit on application of Ching in his capacity as Senior Vice President of PBM. Ching later accomplished and delivered to TRB trust receipts, which acknowledged receipt in trust for TRB of the merchandise subject of the letters of credit. Under the trust receipts, PBM had the right to sell the merchandise for cash with the obligation to turn over the entire proceeds of the sale to TRB as payment of PBM's indebtedness. Letter of Credit No. 479 AD, covered by Trust Receipt No. 106, has a face value of US\$591,043, while Letter of Credit No. 563 AD, covered by Trust Receipt No. 113, has a face value of

US\$155,460.34.

Ching further executed an Undertaking for each trust receipt, which uniformly provided that:

x x x

6. All obligations of the undersigned under the agreement of trusts shall bear interest at the rate of ___ per centum (___%) per annum from the date due until paid.
7. [I]n consideration of the Trust Receipt, ***the undersigned hereby jointly and severally undertake and agree to pay on demand on the said BANK***, all sums and amounts of money which said BANK may call upon them to pay arising out of, pertaining to, and/or in any manner connected with this receipt. In case it is necessary to collect the draft covered by the Trust Receipt by or through an attorney-at-law, the undersigned hereby further agree(s) to pay an additional of 10% of the total amount due on the draft as attorney's fees, exclusive of all costs, fees and other expenses of collection but shall in no case be less than P200.00" [8] (Emphasis supplied)

On 27 April 1981, PBM obtained a P3,500,000 trust loan from TRB. Ching signed as co-maker in the notarized Promissory Note evidencing this trust loan. The Promissory Note reads:

FOR VALUE RECEIVED THIRTY (30) DAYS after date, I/We, jointly and severally, promise to pay the TRADERS ROYAL BANK or order, at its Office in 4th Floor, Kanlaon Towers Bldg., Roxas Blvd., Pasay City, the sum of Pesos: THREE MILLION FIVE HUNDRED THOUSAND ONLY (P3,500,000.00), Philippine Currency, with the interest rate of Eighteen Percent (18%) per annum until fully paid.

In case of non-payment of this note at maturity, I/We, jointly and severally, agree to pay an additional amount equivalent to two per cent (2%) of the principal sum per annum, as penalty and collection charges in the form of liquidated damages until fully paid, and the further sum of ten percent (10%) thereof in full, without any deduction, as and for attorney's fees whether actually incurred or not, exclusive of costs and other judicial/extrajudicial expenses; moreover, I/We jointly and severally, further empower and authorize the TRADERS ROYAL BANK at its option, and without notice to set off or to apply to the payment of this note any and all funds, which may be in its hands on deposit or otherwise belonging to anyone or all of us, and to hold as security therefor any real or personal property which may be in its possession or control by virtue of any other contract. [9] (Emphasis supplied)

PBM defaulted in its payment of Trust Receipt No. 106 (Letter of Credit No. 479 AD) for P959,611.96, and of Trust Receipt No. 113 (Letter of Credit No. 563 AD) for P1,191,137.13. PBM also defaulted on its P3,500,000 trust loan.

On 1 April 1982, PBM and Ching filed a petition for suspension of payments with the Securities and Exchange Commission ("SEC"), docketed as SEC Case No. 2250. [10] The petition sought to suspend payment of PBM's obligations and prayed that the SEC allow PBM to continue its normal business operations free from the interference of its creditors. One of the listed creditors of PBM was TRB. [11]

On 9 July 1982, the SEC placed all of PBM's assets, liabilities, and obligations under the rehabilitation receivership of Kalaw, Escaler and Associates. [12]

On 13 May 1983, ten months after the SEC placed PBM under rehabilitation receivership, TRB filed with the trial court a complaint for collection against PBM and Ching. TRB asked the trial court to order defendants to pay solidarily the following amounts:

- (1) P6,612,132.74 exclusive of interests, penalties, and bank charges [representing its indebtedness arising from the letters of credit issued to its various suppliers];
- (2) P4,831,361.11, exclusive of interests, penalties, and other bank charges [due and owing from the trust loan of 27 April 1981 evidenced by a promissory note];
- (3) P783,300.00 exclusive of interests, penalties, and other bank charges [due and owing from the money market loan of 1 April 1981 evidenced by a promissory note];
- (4) To order defendant Ching to pay P10,000,000.00 under the Deed of Suretyship in the event plaintiff can not recover the full amount of PBM's indebtedness from the latter;
- (5) The sum equivalent to 10% of the total sum due as and for attorney's fees;
- (6) Such other amounts that may be proven by the plaintiff during the trial, by way of damages and expenses for litigation. [13]

On 25 May 1983, TRB moved to withdraw the complaint against PBM on the ground that the SEC had already placed PBM under receivership. [14] The trial court thus dismissed the complaint against PBM. [15]

On 23 June 1983, PBM and Ching also moved to dismiss the complaint on the ground that the trial court had no jurisdiction over the subject matter of the case. PBM and Ching invoked the assumption of jurisdiction by the SEC over all of PBM's assets and liabilities. [16]

TRB filed an opposition to the Motion to Dismiss. TRB argued that (1) Ching is being sued in his personal capacity as a surety for PBM; (2) the SEC decision declaring PBM in suspension of payments is not binding on TRB; and (3) Presidential Decree No. 1758 ("PD No. 1758"), [17] which Ching relied on to support his assertion that all claims against PBM are suspended, does not apply to Ching as the decree regulates corporate activities only. [18]

In its order dated 15 August 1983, [19] the trial court denied the motion to dismiss with respect to Ching and affirmed its dismissal of the case with respect to PBM. The trial court stressed that TRB was holding Ching liable under the Deed of Suretyship.

As Ching's obligation was solidary, the trial court ruled that TRB could proceed against Ching as surety upon default of the principal debtor PBM. The trial court also held that PD No. 1758 applied only to corporations, partnerships and associations and not to individuals.

Upon the trial court's denial of his Motion for Reconsideration, Ching filed a Petition for Certiorari and Prohibition [20] before the Court of Appeals. The appellate court granted Ching's petition and ordered the dismissal of the case. The appellate court ruled that the SEC assumed jurisdiction over Ching and PBM to the exclusion of courts or tribunals of coordinate rank.

TRB assailed the Court of Appeals' Decision [21] before this Court. In ***Traders Royal Bank v. Court of Appeals***, [22] this Court upheld TRB and ruled that Ching was merely a nominal party in SEC Case No. 2250. Creditors may sue individual sureties of debtor corporations, like Ching, in a separate proceeding before regular courts despite the pendency of a case before the SEC involving the debtor corporation.

In his Answer dated 6 November 1989, Ching denied liability as surety and accommodation co-maker of PBM. He claimed that the SEC had already issued a decision [23] approving a revised rehabilitation plan for PBM's creditors, and that PBM obtained the credit accommodations for corporate purposes that did not redound to his personal benefit. He further claimed that even as a surety, he has the right to the defenses personal to PBM. Thus, his liability as surety would attach only if, after the implementation of payments scheduled under the rehabilitation plan, there would remain a balance of PBM's debt to TRB. [24] Although Ching admitted PBM's availment of the credit accommodations, he did not show any proof of payment by PBM or by him.

TRB admitted certain partial payments on the PBM account made by PBM itself and by the SEC-appointed receiver. [25] Thus, the trial court had to resolve the following remaining issues:

1. How much exactly is the corporate defendant's outstanding obligation to the plaintiff?
2. Is defendant Alfredo Ching personally answerable, and for exactly how much? [26]

TRB presented Mr. Lauro Francisco, loan officer of the Remedial Management Department of TRB, and Ms. Carla Pecson, manager of the International Department of TRB, as witnesses. Both witnesses testified to the following:

1. The existence of a Deed of Suretyship dated 21 July 1977 executed by Ching for PBM's liabilities to TRB up to P10,000,000; [27]
2. The application of PBM and grant by TRB on 13 March 1980 of Letter of Credit No. 479 AD for US\$591,043, and the actual availment by PBM of the full proceeds of the credit accommodation; [28]
3. The application of PBM and grant by TRB on 6 August 1980 of Letter of Credit No. 563 AD for US\$156,000, and the actual availment by PBM of the full