

FIRST DIVISION

[G.R. No. 74336, April 07, 1997]

**J. ANTONIO AGUENZA, PETITIONER, VS. METROPOLITAN BANK
& TRUST CO., VITALIADO P. ARRIETA, LILIA PEREZ, PATRICIO
PEREZ AND THE INTERMEDIATE APPELLATE COURT,
RESPONDENTS.
D E C I S I O N**

HERMOSISIMA, JR., J.:

Before us is a petition for review on *certiorari* seeking the reversal of the Decision^[1] of the Intermediate Appellate Court (now the Court of Appeals)^[2] finding petitioner J. Antonio Aguenza liable under a continuing surety agreement to pay private respondent Metropolitan Bank & Trust Company (hereafter, Metrobank) a loan jointly obtained by the General Manager and a bookkeeper of Intertrade, a corporation of which petitioner is President and in whose behalf petitioner had, in the past, obtained credit lines.

The following facts are not disputed:

On February 28, 1977, the Board of Directors of Intertrade, through a Board Resolution, authorized and empowered petitioner and private respondent Vitaliado Arrieta, Intertrade's President and Executive Vice-President, respectively, to jointly apply for and open credit lines with private respondent Metrobank. Pursuant to such authority, petitioner and private respondent Arrieta executed several trust receipts from May to June, 1977, the aggregate value of which amounted to P562,443.46, with Intertrade as the entrustee and private respondent Metrobank as the entruster.

On March 14, 1977, petitioner and private respondent Arrieta executed a Continuing Suretyship Agreement whereby both bound themselves jointly and severally with Intertrade to pay private respondent Metrobank whatever obligation Intertrade incurs, but not exceeding the amount of P750,000.00.

In this connection, private respondent Metrobank's Debit Memo to Intertrade dated March 22, 1978 showed full settlement of the letters of credit covered by said trust receipts in the total amount of P562,443.46.

On March 21, 1978, private respondents Arrieta and Lilia P. Perez, a bookkeeper in the employ of Intertrade, obtained a P500,000.00 loan from private respondent Metrobank. Both executed a Promissory Note in favor of said bank in the amount of P500,000.00. Under said note, private respondents Arrieta and Perez promised to pay said amount, jointly and severally, in twenty five (25) equal installments of P20,000.00 each starting on April 20, 1979 with interest of 18.704% per annum, and in case of default, a further 8% per annum.

Private respondents Arrieta and Perez defaulted in the payment of several

installments, thus resulting in the entire obligation becoming due and demandable. In 1979, private respondent Metrobank instituted suit against Intertrade, Vitaliado Arrieta, Lilia Perez and her husband, Patricio Perez, to collect not only the unpaid principal obligation, but also interests, fees and penalties, exemplary damages, as well as attorney's fees and costs of suit.

More than a year after private respondent Metrobank filed its original complaint, it filed an Amended Complaint dated August 30, 1980 for the sole purpose of impleading petitioner as liable for the loan made by private respondents Arrieta and Perez on March 21, 1978, notwithstanding the fact that such liability is being claimed on account of a Continuing Suretyship Agreement dated March 14, 1977 executed by petitioner and private respondent Arrieta specifically to guarantee the credit line applied for by and granted to, Intertrade, through petitioner and private respondent Arrieta who were specially given authority by Intertrade on February 28, 1977 to open credit lines with private respondent Metrobank. The obligations incurred by Intertrade under such credit lines were completely paid as evidenced by private respondent Metrobank's debit memo in the full amount of P562,443.46.

After hearing on the merits, the trial court rendered its decision absolving petitioner from liability and dismissing private respondent Metrobank's complaint against him, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

- 1) Declaring that the Promissory Note dated March 21, 1978, marked as Exhibit A, is the responsibility only of defendant Vitaliado P. Arrieta and Lilia P. Perez, in their personal capacity and to the exclusion of defendant Intertrade and Marketing Co. Inc.;
- 2) Ordering defendants Vitaliado P. Arrieta and Lilia P. Perez to pay, jointly and severally, the plaintiff the sum of P1,062,898.92, due as of September 15, 1982, plus interest, fees and penalties due from that date pursuant to the stipulations in the promissory note until the whole obligations shall have been paid and finally settled;
- 3) Ordering defendants Vitaliado P. Arrieta and Lilia Perez to pay, jointly and severally, the plaintiff the sum of P44,000.00 by way of attorney's fees and other litigation expenses, albeit there is no award for exemplary damages;
- 4) Declaring defendant Patricio Perez, as conjugal partner of defendant Lilia Perez, as jointly and severally liable with her for what the latter is ordered to pay per this Decision;
- 5) Dismissing this case insofar as defendants Intertrade and Marketing Co., Inc. and J. Antonio Aguenza are concerned, although their respective counterclaims against the plaintiff are also ordered dismissed.

Costs of suit shall be paid, jointly and severally, by defendant Vitaliado Arrieta and Lilia Perez.

SO ORDERED."^[3]

Private respondents Arrieta and spouses Perez appealed the foregoing decision to the respondent Court of Appeals.

On February 11, 1986, respondent appellate court promulgated the herein assailed decision, the dispositive portion of which reads:

"WHEREFORE, the appealed decision is SET ASIDE and another one entered ordering Intertrade & Marketing Co., Inc., and J. Antonio Aguenza, jointly and severally:

- 1) to pay the Bank the principal of P440,000.00 plus its interest of 18.704% per annum computed from April 15, 1979 until full payment;
- 2) to pay the Bank the sum equivalent to 8% of P440,000.00 as penalty, computed from July 19, 1978 until full payment;
- 3) to pay the Bank the sum of P15,000.00 as attorney's fees.

The complaint is dismissed as against Lilia Perez, Patricio Perez and Vitaliado P. Arrieta who are absolved from liability.

All counterclaims are dismissed.

Costs against Intertrade and Aguenza, jointly and severally.

SO ORDERED."

In setting aside the decision of the trial court, respondent Court of Appeals ratiocinated such reversal in this wise:

"No dispute exists as to the promissory note and the suretyship agreement. The controversy centers on whether the note was a corporate undertaking and whether the suretyship agreement covered the obligation in the note.

As far as Intertrade is concerned, it seems clear from its answer that the loan evidenced by the note was a corporate liability. Paragraph 1.3 of the answer admits 'x x x defendant's obtention of the loan from the plaintiff x x x'; the affirmative defenses admit default, and invoking the defense of usury, plead adjustment of excessive interest which Intertrade refused to make.

On the basis of this admission, it is no longer in point to discuss, as the appealed decision does, the question of the capacity in which Arrieta and Perez signed the promissory note, Intertrade's admission of its corporate liability being admission also that the signatories signed the note in a representative capacity. The Bank itself gave corroboration with its insistence on Intertrade's liability under the note. x x x

The stated purpose of the note is 'operating capital.' It cannot be contended that the words 'operating capital' refer to the capital

requirements of Perez and Arrieta. In the first place, it was not shown that they were in business for themselves. Besides, Perez was only a bookkeeper of Intertrade with a salary of P800.00 a month x x x Their combined resources would not have been sufficient to justify a business loan of the note's magnitude. From these follows the only logical conclusion: that Arrieta and the Perez spouses are not liable on the note.

The surety agreement presents a different problem.

There is no question that Aguenza signed the agreement x x x Its second paragraph shows, typewritten in bold capitals, that the agreement was executed 'for and in consideration of any existing indebtedness to the Bank of INTERTRADE & MARKETING COMPANY, INC.' Nowhere in its entire text is it shown that its execution was for the benefit of Perez or Arrieta.

Aguenza feigns ignorance of the promissory note and claims his knowledge of it came only when he received summons. This is difficult to believe. As Intertrade's first letter to the Bank x x x shows, the Board of Directors and principal stockholders met to discuss the obligation. Aguenza was at the time president of Intertrade and acting chairman of its board x x x.

Aguenza also argues that the suretyship was executed to enable Intertrade to avail of letters of credit to finance importations, which had all been paid in full, and therefore the agreement was thereby terminated. Again, the agreement shows up the fallacy of this argument. The document is boldly denominated 'CONTINUING SURETYSHIP,' and paragraph VI thereof stipulates it to be a continuing one, 'to remain in force until written notice shall have been received by the Bank that it has been revoked by the surety x x x' In other words, the option to cancel, in writing, was given to the sureties; the evidence does not show any written notice of such cancellation. x x x

And, the argument that the agreement was executed as security for letters of credit that had already been paid is in itself confirmation that the suretyship was meant to benefit Intertrade. The trust receipts x x x and the bills of exchange x x x are all in the name of Intertrade.

The suretyship is both retrospective and prospective in its operation. Its wording covers all obligations of Intertrade existing as of its date as well as those that may exist thereafter. Hence, its coverage extends to the promissory note as well."^[4]

Understandably, petitioner lost no time in bringing this case before us via a petition for review on certiorari on the following grounds:

"THE RESPONDENT COURT ERRED IN REVERSING AND [SETTING] ASIDE THE FINDING OF THE TRIAL COURT THAT THE LOAN OF P500,000.00 PROCURED 21 MARCH 1978 BY RESPONDENTS VITALIADO ARRIETA AND LILIA PEREZ IS NOT A CORPORATE LIABILITY OF RESPONDENT INTERTRADE AND THAT PETITIONER IS NOT LIABLE THEREON UNDER THE 'CONTINUING SURETYSHIP AGREEMENT' DATED