



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

METRO CONCAST STEEL CORPORATION, SPOUSES JOSE S. DYCHIAO AND TIU OH YAN, SPOUSES GUILLERMO AND MERCEDES DYCHIAO, AND SPOUSES VICENTE AND FILOMENA DYCHIAO,
 Petitioners,

G.R. No. 177921

Present:

CARPIO, J., Chairperson,
 VELASCO, JR.,*
 BRION,
 PEREZ, and
 PERLAS-BERNABE, JJ.

- versus -

Promulgated:
DEC 04 2013 *HM Cabalag Perjepto*

ALLIED BANK CORPORATION,
 Respondent.

X-----X

RESOLUTION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated February 12, 2007 and the Resolution³ dated May 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86896 which reversed and set aside the Decision⁴ dated January 17, 2006 of the Regional Trial Court of Makati City, Branch 57 (RTC) in Civil Case No. 00-1563, thereby ordering petitioners Metro Concast Steel Corporation (Metro Concast), Spouses Jose S. Dychiao and Tiu Oh Yan, Spouses Guillermo and Mercedes Dychiao, and Spouses Vicente and Filomena Dychiao (individual petitioners) to solidarily pay respondent Allied Bank Corporation (Allied Bank) the aggregate amount of ₱51,064,094.28, with applicable interests and penalty charges.

* Designated Additional Member per Raffle dated November 20, 2013.
¹ *Rollo*, pp. 8-29.
² *Id.* at 133-142. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. Del Castillo (now Supreme Court Associate Justice) and Lucenito N. Tagle, concurring.
³ *Id.* at 155.
⁴ *Id.* at 70-74. Penned by Judge Reinato G. Quilala.

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The Facts

On various dates and for different amounts, Metro Concast, a corporation duly organized and existing under and by virtue of Philippine laws and engaged in the business of manufacturing steel,⁵ through its officers, herein individual petitioners, obtained several loans from Allied Bank. These loan transactions were covered by a promissory note and separate letters of credit/trust receipts, the details of which are as follows:

Date	Document	Amount
December 13, 1996	Promissory Note No. 96-21301 ⁶	₱ 2,000,000.00
November 7, 1995	Trust Receipt No. 96-202365 ⁷	₱ 608,603.04
May 13, 1996	Trust Receipt No. 96-960522 ⁸	₱ 3,753,777.40
May 24, 1996	Trust Receipt No. 96-960524 ⁹	₱ 4,602,648.08
March 21, 1997	Trust Receipt No. 97-204724 ¹⁰	₱ 7,289,757.79
June 7, 1996	Trust Receipt No. 96-203280 ¹¹	₱17,340,360.73
July 26, 1995	Trust Receipt No. 95-201943 ¹²	₱ 670,709.24
August 31, 1995	Trust Receipt No. 95-202053 ¹³	₱ 313,797.41
November 16, 1995	Trust Receipt No. 96-202439 ¹⁴	₱13,015,109.87
July 3, 1996	Trust Receipt No. 96-203552 ¹⁵	₱ 401,608.89
June 20, 1995	Trust Receipt No. 95-201710 ¹⁶	₱ 750,089.25
December 13, 1995	Trust Receipt No. 96-379089 ¹⁷	₱ 92,919.00
December 13, 1995	Trust Receipt No. 96/202581 ¹⁸	₱ 224,713.58

⁵ Records, Complaint, p. 1; See also Amended Answer dated November 11, 2004, p. 386-392.

⁶ Id. at 28-29.

⁷ Letter of Credit (LC) No. MDO1376390 in the amount of US\$23,140.80 in favor of Tianjin Metals and Minerals Import and Export Corporation for the shipment of 77.136 metric tons of fire bricks; id. at 30-34.

⁸ LC No. MDO2103583 in the amount of P5,005,036.53 in favor of National Steel Corporation for the purchase of 575.490 metric tons of prime quality billets; id. at 35-39.

⁹ LC No. MDO2103613 in the amount of P6,136,864.11 in favor of National Steel Corporation for the purchase and importation of 705.630 metric tons of prime quality billets; id. at 40-45.

¹⁰ LC No. MDO1410105 in the amount of US\$272,000.00 in favor of United Energy International Ltd. for the purchase of 1,000 metric tons of wire rods; id. at 46-50.

¹¹ LC No. MDO1391194 in the amount of US\$690,000.00 in favor of Vanomet AG for the purchase and shipment of 2,500 metric tons of prime newly produced hot rolled steel wire rods; id. at 51-55.

¹² LC No. MDO1369733 in the amount of US\$27,270.00 in favor of Tianjin Machinery Import and Export Corporation for the purchase of 18 metric tons of artificial graphite electrodes HP; id. at 56-60.

¹³ LC No. MDO1371720 in the amount of US\$12,210.00 in favor of Redland Minerals Burnt Product Sales for the purchase of 66 metric tons deadburned dolomite in Dolofrit 180 quality; id. at 10-11 and 61-64.

¹⁴ LC No. MDO1377205 in the amount of US\$465,000.00 in favor of Balli Trading Ltd. for the purchase and shipment of 1,500 metric tons of prime newly produced wire rods; id. at 65-69.

¹⁵ LC No. MDO1393154 in the amount of US\$15,270.30 in favor of China Shougang International Trade and Engineering Corporation for the purchase of 12 pieces of finishing roll and 6 pieces intermediate roll; id. at 12-13 and 70-73.

¹⁶ LC No. MDO1367587 in the amount of US\$29,175.00 in favor of Hitachi Metals Singapore Pte., Ltd. for the purchase of 5 pieces of roughing rolls for 2nd stand; id. at 74-76A.

¹⁷ LC No. MDO1379089 in the amount of US\$11,700.00 in favor of RAMI Ceramic Industries (1991) Ltd. for the purchase and shipment of 500 pieces of RAMI top refractories for continuous casting machine; id. at 77-80.

¹⁸ LC No. MDO1379089 in the amount of US\$11,700.00 in favour of RAMI Ceramic Industries for the purchase of 364 pieces of RAMI top refractories for continuous casting machine flogate type; id. at 81-84.

The interest rate under Promissory Note No. 96-21301 was pegged at 15.25% per annum (p.a.), with penalty charge of 3% per month in case of default; while the twelve (12) trust receipts uniformly provided for an interest rate of 14% p.a. and 1% penalty charge. By way of security, the individual petitioners executed several Continuing Guaranty/Comprehensive Surety Agreements¹⁹ in favor of Allied Bank.

Petitioners failed to settle their obligations under the aforementioned promissory note and trust receipts, hence, Allied Bank, through counsel, sent them demand letters,²⁰ all dated December 10, 1998, seeking payment of the total amount of ₱51,064,093.62, but to no avail. Thus, Allied Bank was prompted to file a complaint for collection of sum of money²¹ (subject complaint) against petitioners before the RTC, docketed as Civil Case No. 00-1563.

In their second²² Amended Answer,²³ petitioners admitted their indebtedness to Allied Bank but denied liability for the interests and penalties charged, claiming to have paid the total sum of ₱65,073,055.73 by way of interest charges for the period covering 1992 to 1997.²⁴ They also alleged that the economic reverses suffered by the Philippine economy in 1998 as well as the devaluation of the peso against the US dollar contributed greatly to the downfall of the steel industry, directly affecting the business of Metro Concast and eventually leading to its cessation. Hence, in order to settle their debts with Allied Bank, petitioners offered the sale of Metro Concast's remaining assets, consisting of machineries and equipment, to Allied Bank, which the latter, however, refused. Instead, Allied Bank advised them to sell the equipment and apply the proceeds of the sale to their outstanding obligations. Accordingly, petitioners offered the equipment for sale, but since there were no takers, the equipment was reduced into ferro scrap or scrap metal over the years.

In 2002, Peakstar Oil Corporation (Peakstar), represented by one Crisanta Camiling (Camiling), expressed interest in buying the scrap metal. During the negotiations with Peakstar, petitioners claimed that Atty. Peter Saw (Atty. Saw), a member of Allied Bank's legal department, acted as the latter's agent. Eventually, with the **alleged** conformity of Allied Bank, through Atty. Saw, a Memorandum of Agreement²⁵ dated November 8, 2002 (MoA) was drawn between Metro Concast, represented by petitioner Jose Dychiao, and Peakstar, through Camiling, under which Peakstar obligated itself to purchase the scrap metal for a total consideration of ₱34,000,000.00, payable as follows: (a) ₱4,000,000.00 by way of earnest money –

¹⁹ Id. at 85-89.

²⁰ Id. at 422-431.

²¹ Id. at 1-27.

²² Admitted per Order dated December 28, 2004; id. at 406.

²³ Id. at 386-392.

²⁴ Id. at 387.

²⁵ Id. at 393-394.

₱2,000,000.00 to be paid in cash and the other ₱2,000,000.00 to be paid in two (2) post-dated checks of ₱1,000,000.00 each;²⁶ and (b) the balance of ₱30,000,000.00 to be paid in ten (10) monthly installments of ₱3,000,000.00, secured by bank guarantees from Bankwise, Inc. (Bankwise) in the form of separate post-dated checks.²⁷

Unfortunately, Peakstar reneged on all its obligations under the MoA. In this regard, petitioners asseverated that: (a) their failure to pay their outstanding loan obligations to Allied Bank must be considered as *force majeure*; and (b) since Allied Bank was the party that accepted the terms and conditions of payment proposed by Peakstar, petitioners must therefore be deemed to have settled their obligations to Allied Bank. To bolster their defense, petitioner Jose Dychiao (Jose Dychiao) testified²⁸ during trial that it was Atty. Saw himself who drafted the MoA and subsequently received²⁹ the ₱2,000,000.00 cash and the two (2) Bankwise post-dated checks worth ₱1,000,000.00 each from Camiling. However, Atty. Saw turned over only the two (2) checks and ₱1,500,000.00 in cash to the wife of Jose Dychiao.³⁰

Claiming that the subject complaint was falsely and maliciously filed, petitioners prayed for the award of moral damages in the amount of ₱20,000,000.00 in favor of Metro Concast and at least ₱25,000,000.00 for each individual petitioner, ₱25,000,000.00 as exemplary damages, ₱1,000,000.00 as attorney's fees, ₱500,000.00 for other litigation expenses, including costs of suit.

The RTC Ruling

After trial on the merits, the RTC, in a Decision³¹ dated January 17, 2006, dismissed the subject complaint, holding that the "causes of action sued upon had been paid or otherwise extinguished." It ruled that since Allied Bank was duly represented by its agent, Atty. Saw, in all the negotiations and transactions with Peakstar – considering that Atty. Saw (a) drafted the MoA, (b) accepted the bank guarantee issued by Bankwise, and (c) was apprised of developments regarding the sale and disposition of the scrap metal – then it stands to reason that the MoA between Metro Concast and Peakstar was binding upon said bank.

The CA Ruling

Allied Bank appealed to the CA which, in a Decision³² dated February 12, 2007, reversed and set aside the ruling of the RTC, ratiocinating that

²⁶ Item No. 2 of MoA; id. at 393.

²⁷ Item No. 3 of MoA; id.

²⁸ Records, TSN, June 23, 2005, pp. 629, 632-633.

²⁹ Id. at 639; See also Exh. "10," p. 455.

³⁰ Id. at 633-634.

³¹ Id. at 70-74.

³² Id. at 133-142.

there was “no legal basis in fact and in law to declare that when Bankwise reneged its guarantee under the [MoA], herein [petitioners] should be deemed to be discharged from their obligations lawfully incurred in favor of [Allied Bank].”³³ The CA examined the MoA executed between Metro Concast, as seller of the ferro scrap, and Peakstar, as the buyer thereof, and found that the same did not indicate that Allied Bank intervened or was a party thereto. It also pointed out the fact that the post-dated checks pursuant to the MoA were issued in favor of Jose Dychiao.

Likewise, the CA found no sufficient evidence on record showing that Atty. Saw was duly and legally authorized to act for and on behalf of Allied Bank, opining that the RTC was “indulging in hypothesis and speculation”³⁴ when it made a contrary pronouncement. While Atty. Saw received the earnest money from Peakstar, the receipt was signed by him on behalf of Jose Dychiao.³⁵ It also added that “[i]n the final analysis, the aforesaid checks and receipts were signed by [Atty.] Saw either as representative of [petitioners] or as partner of the latter’s legal counsel, and not in anyway as representative of [Allied Bank].”³⁶

Consequently, the CA granted the appeal and directed petitioners to solidarily pay Allied Bank their corresponding obligations under the aforementioned promissory note and trust receipts, plus interests, penalty charges and attorney’s fees.

Petitioners sought reconsideration³⁷ which was, however, denied in a Resolution³⁸ dated May 10, 2007. Hence, this petition.

The Issue Before the Court

At the core of the present controversy is the sole issue of whether or not the loan obligations incurred by the petitioners under the subject promissory note and various trust receipts have already been extinguished.

The Court’s Ruling

Article 1231 of the Civil Code states that obligations are extinguished either by payment or performance, the loss of the thing due, the condonation or remission of the debt, the confusion or merger of the rights of creditor and debtor, compensation or novation.

³³ *Rollo*, p. 138.

³⁴ *Id.*

³⁵ Records, p. 455.

³⁶ *Rollo*, p. 138.

³⁷ *Id.* at 144-153.

³⁸ *Id.* at 155.

In the present case, petitioners essentially argue that their loan obligations to Allied Bank had already been extinguished due to Peakstar's failure to perform its own obligations to Metro Concast pursuant to the MoA. Petitioners classify Peakstar's default as a form of *force majeure* in the sense that they have, beyond their control, lost the funds they expected to have received from the Peakstar (due to the MoA) which they would, in turn, use to pay their own loan obligations to Allied Bank. They further state that Allied Bank was equally bound by Metro Concast's MoA with Peakstar since its agent, Atty. Saw, actively represented it during the negotiations and execution of the said agreement.

Petitioners' arguments are untenable.

At the outset, the Court must dispel the notion that the MoA would have any relevance to the performance of petitioners' obligations to Allied Bank. The MoA is a sale of assets contract, while petitioners' obligations to Allied Bank arose from various loan transactions. Absent any showing that the terms and conditions of the latter transactions have been, in any way, modified or novated by the terms and conditions in the MoA, said contracts should be treated separately and distinctly from each other, such that the existence, performance or breach of one would not depend on the existence, performance or breach of the other. In the foregoing respect, the issue on whether or not Allied Bank expressed its conformity to the assets sale transaction between Metro Concast and Peakstar (as evidenced by the MoA) is actually irrelevant to the issues related to petitioners' loan obligations to the bank. Besides, as the CA pointed out, the fact of Allied Bank's representation has not been proven in this case and hence, cannot be deemed as a sustainable defense to exculpate petitioners from their loan obligations to Allied Bank.

Now, anent petitioners' reliance on *force majeure*, suffice it to state that Peakstar's breach of its obligations to Metro Concast arising from the MoA cannot be classified as a fortuitous event under jurisprudential formulation. As discussed in *Sicam v. Jorge*:³⁹

Fortuitous events by definition are extraordinary events not foreseeable or avoidable. It is therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed but **it must be one impossible to foresee or to avoid**. The mere difficulty to foresee the happening is not impossibility to foresee the same.

To constitute a fortuitous event, the following elements must concur: (a) the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must **be independent of human will**; (b) it must be impossible to foresee the event that constitutes the *caso fortuito* or, if it can be foreseen, it must be impossible

³⁹ 556 Phil. 278 (2007).

to avoid; (c) **the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner**; and, (d) the obligor must be free from any participation in the aggravation of the injury or loss.⁴⁰ (Emphases supplied)

While it may be argued that Peakstar's breach of the MoA was unforeseen by petitioners, the same is clearly not "impossible" to foresee or even an event which is "independent of human will." Neither has it been shown that said occurrence rendered it impossible for petitioners to pay their loan obligations to Allied Bank and thus, negates the former's *force majeure* theory altogether. In any case, as earlier stated, the performance or breach of the MoA bears no relation to the performance or breach of the subject loan transactions, they being separate and distinct sources of obligation. The fact of the matter is that petitioners' loan obligations to Allied Bank remain subsisting for the basic reason that the former has not been able to prove that the same had already been paid⁴¹ or, in any way, extinguished. In this regard, petitioners' liability, as adjudged by the CA, must perforce stand. Considering, however, that Allied Bank's extra-judicial demand on petitioners appears to have been made only on December 10, 1998, the computation of the applicable interests and penalty charges should be reckoned only from such date.

WHEREFORE, the petition is **DENIED**. The Decision dated February 12, 2007 and Resolution dated May 10, 2007 of the Court of Appeals in CA-G.R. CV No. 86896 are hereby **AFFIRMED** with **MODIFICATION** reckoning the applicable interests and penalty charges from the date of the extrajudicial demand or on December 10, 1998. The rest of the appellate court's dispositions stand.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁴⁰ Id. at 291.

⁴¹ It is well to note that the party who alleges the affirmative defense of payment has the burden of proving it. As held in the case of *Bank of the Phil. Islands v. Sps. Royeca* (581 Phil. 188, 195 [2008]):


As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.

WE CONCUR:



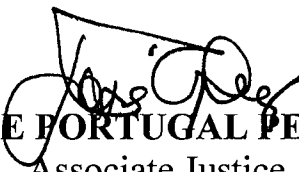
ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



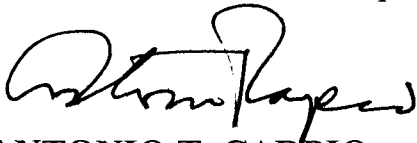
ARTURO D. BRION
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

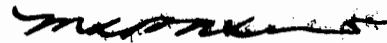
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice