Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALLIED BANKING CORPORATION (now PHILIPPINE NATIONAL BANK), Petitioner,	**G.R. No. 225199**
	Present:
- versus	CARPIO, *J.*, *Chairperson,* PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, *JJ.*
EDUARDO DE GUZMAN, SR., in his capacity as surety to the various credit accommodations granted to YESON INTERNATIONAL PHILIPPINES, INC., Respondent.	**Promulgated:** 09 JUL 2018

x----------x

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated November 9, 2015 and the Resolution[2] dated June 23, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR. CV No. 103347, which affirmed the Decision[3] dated January 28, 2013 of the Regional Trial Court (*RTC*) of Makati City, in Civil Case No. 97-915 dismissing petitioner's complaint for lack of merit.

The antecedent facts are as follows:

On February 14, 1990, respondent Eduardo De Guzman, Sr., along with Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, all of whom were incorporators of Yeson International Philippines, Inc., executed a Continuing

---

1 Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 74-92.

2 *Id.* at. 93-94.

3 Penned by Judge Rommel O. Baybay; *id.* at 226-237.

Guaranty/Comprehensive Surety wherein they bound themselves, jointly and severally, to pay any and all obligations, including all accrued interest and charges, attorney's fees, and costs of litigation, obtained by the company from petitioner Allied Banking Corporation (now Philippine National Bank) (*PNB*). The agreement provides that "this is a continuing guaranty and shall remain in full force and effect until written notice shall have been received by you (*PNB*) that it has been revoked by the undersigned." In 1992, the company, through its Import/Export Manager, Elizabeth Sy, and Bong Il Kim, executed six (6) trust receipts, in the amounts of US$141,012.00, US$16,462.68, US$19,365.07, US$59,597.56, US$27,485.26, and JPYen 2,875,000.00, to facilitate the acquisition and/or purchase of several merchandise from its suppliers. On April 30, 1993, after the company's obligation became past due, the same was repackaged and consolidated. Consequently, it executed a Promissory Note in the amount of P12,500.00. Thereafter, PNB required the company's directors to execute another contract of suretyship to secure the repackaged loan. Thus, the incorporators Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, together with Antonio Katigbak, executed a new Continuing Guaranty/Comprehensive Surety dated June 23, 1993. De Guzman, however, had no participation thereon.[4]

On April 29, 1997, PNB filed a Complaint for Sum of Money before the Regional Trial Court (*RTC*) of Makati City against De Guzman, Dong Hee Kim, Chul Ho Shin, Bong Il Kim, and Antonio Katigbak *(Katigbak)*, as sureties of the company, contending that said company failed to pay its outstanding loan of ₱7,335,809.99 and to return ₱5,349,149.71 arising from the six (6) trust receipts, plus interests and penalties, despite demand. In their Answer filed by their counsel Atty. Jonathan M. Polines, the defendants admitted the company's indebtedness but pointed out that in 1996, due to financial difficulties, it was constrained to file a Petition for Suspension of Payments and Appointment of a Management Committee or Rehabilitation Receiver before the Securities and Exchange Committee (*SEC*), which suspended all claims against it.[5]

In a Decision dated August 14, 2008, the RTC initially found all defendants liable as sureties and ordered them to pay the indebtedness of the company, plus interest and penalty charges. De Guzman, together with Dong Hee Kim, Chul Ho Shin, Bong Il Kim, filed a Notice of Appeal. On October 21, 2008, however, De Guzman, assisted by a new counsel, filed a Motion for Leave (1) To Withdraw Notice of Appeal and (2) To File Motion for New Trial alleging that he had no knowledge of the complaint and that summons was never personally served on his person, the jurisdiction over the same being obtained by the court by his alleged voluntary appearance when he filed responsive pleadings through Atty. Polines. But De Guzman never engaged his services nor did he authorize him to file any pleadings on his behalf. De Guzman alleged that it was only when a messenger came to

---

4 *Id.* at 76-78.
5 *Id.* at 78-80.

his office in July 2000 asking him to sign a special power of attorney appointing Atty. Polines as his representative that he learned of the case. He was forced to sign the same because he was told that he would already be declared in default if he refused. Moreover, apart from being difficult to get in touch with, said Atty. Polines even filed a notice of appeal without De Guzman's consent. Thus, due to the fact that De Guzman was denied his day in court, he prayed to be allowed to withdraw said notice of appeal and in lieu thereof, admit the attached motion for new trial.[6]

In the interest of substantial justice, the RTC issued an Order dated January 9, 2009, granted De Guzman's motion, set aside the August 14, 2008 Decision, and set the case for reception of evidence. Thereafter, De Guzman presented two (2) witnesses, namely, himself and Elizabeth Sy, the former Import/Export Manager of the company. On the one hand, De Guzman admitted to signing the first surety agreement dated February 14, 1991, during which time, he was still a stockholder and director of the company as an accommodation to his friends, Dong Hee Kim, Chul Ho Shin, Bong Il Kim, Korean nationals, who needed a Filipino businessman to establish their business. But later that same year, Bong Il Kim acceded to his request and informed him that he was no longer a board member nor a shareholder of the company, having been replaced by Katigbak. Immediately thereafter, De Guzman exercised his right to revoke his obligation as surety by sending a letter dated September 4, 1991 to PNB. Because of said revocation, De Guzman asserts that PNB can no longer hold him liable as surety for the six (6) trust receipts, the earliest of which was executed on November 7, 1991, or any other obligation after the revocation. In support thereof, De Guzman presented an original copy of the letter wherein he revoked his participation in the first surety agreement, which he sent to PNB by registered mail. Unfortunately, De Guzman could not obtain a certification from the Muntinlupa Post Office as to the delivery of the said letter because all records of dispatches for the year 1991 were already disposed by said office due to the fact that De Guzman's request in 2010 has already passed their retention period. On the other hand, Elizabeth Sy testified that when the company failed to pay its obligation to PNB, it applied that the same be repackaged and consolidated into a single obligation. As a result thereof, and of the fact that De Guzman was no longer a shareholder of the company, the first surety agreement was superseded and PNB required the execution of the second surety agreement, but this time, without De Guzman's participation.[7]

In a Decision dated January 28, 2013, the RTC affirmed its August 14, 2008 Decision, finding Dong Hee Kim, Chul Ho Shin, Bong Il Kim liable as sureties but dismissed the same as against Katigbak, who proved that his signature was a forgery, and as against De Guzman, who proved to the court's satisfaction that before the execution of the second surety

---

6 *Id.* at 80-82.

7 *Id.* at 82-84.

agreement in June 23, 1993, he already revoked the first surety agreement through his September 4, 1991 letter.

On November 9, 2015, the CA affirmed the trial court's ruling finding no cogent reason to reverse the same. According to the appellate court, De Guzman was able to establish that he had revoked his participation in the first surety agreement by presenting an original copy of the September 4, 1991 letter of revocation and the register receipt evidencing that he sent the same via registered mail. Besides, there was no reason nor logic for De Guzman to remain as surety for the corporation when he was no longer a stockholder of the same, and thus, is no longer in a position to ensure payment of the obligation. Moreover, Elizabeth Sy's testimony sufficiently supported the fact that the second surety agreement superseded the first one, that PNB was well aware of the revocation for it would not have required the execution of a new surety agreement otherwise.[8]

Furthermore, the CA held that there is no need for the postmaster to certify that the registry notices were issued or sent to the addressee and that the latter received the same for the absence of a certification would only mean that the presumption that a letter duly directed and mailed was received in regular course of the mail would not apply. De Guzman was still able to establish, to the court's satisfaction, that he sent a letter of revocation to PNB. Moreover, the CA rejected PNB's contention that the trial court should not have considered the pieces of evidence presented by De Guzman on his belated claim of revocation since the same were never raised in the Motion to Dismiss or in the Answer. It was the lack of vigilance on the part of PNB that made the presentation of said evidence possible for as the records show, PNB failed to timely object to the presentation of the same at the trial. After De Guzman testified that he sent a letter of revocation, PNB proceeded to lengthily and exhaustively cross-examine him. Thus, the trial court considered his defenses in accordance with Section 5, Rule 10 of the Rules of Court, which provides that when issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.[9]

On August 15, 2016, PNB filed the instant petition invoking several arguments. *First*, it faults the CA for concluding that since De Guzman is no longer a stockholder of the corporation, he can no longer be held liable under the surety agreement. This is because as the first surety agreement states, De Guzman voluntarily executed the same in his personal capacity, regardless of his status as stockholder or director of the company. *Second*, PNB claims that the RTC and the CA should not have considered Elizabeth Sy's testimony for the execution of the second surety agreement does not mean that the first had been superseded. This is due to the fact that under the rules on evidence, a party is only allowed to add to the terms of an

---

8 *Id.* at 87-90.
9 *Id.* at 90-91.

agreement if he has put in issue in his pleading the additional matters presented by the additional evidence. Here, De Guzman did not put said matters in his pleadings which consist only of a Motion for Leave (1) To Withdraw Notice of Appeal and (2) To File Motion for New Trial with the Motion for New Trial itself. *Third*, contrary to the findings of the RTC and the CA, PNB insists that De Guzman failed to prove, by preponderance of evidence, that he sent the notice of revocation and that the same was actually received by PNB. Thus, while the PNB is mindful that the Court is not a trier of facts, the findings of the RTC and the CA are not binding as they are not based on the evidence on record. *Finally*, PNB asserts that the courts below should not have allowed De Guzman to present evidence to show revocation when said defense was never raised in his pleadings.[10]

The petition is devoid of merit.

In essence, the issue invoked before the Court is basically the appreciation and determination of the factual matter of whether it was sufficiently proven that the first surety agreement was, indeed, revoked. Time and again, the Court has ruled that in petitions for review on *certiorari* under Rule 45, only questions of law may be raised before this Court as We are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court, especially when affirmed by the CA, are final and conclusive, and cannot be reviewed on appeal. It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[11]

Petitioner insists, however, that the Court must relax the application of said general rule and apply the exception thereto, namely, that the lower courts' findings were not supported by the evidence on record, or were based on a misapprehension of facts, or that certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion. Unfortunately, the Court does not find merit in petitioner's contention for a cursory review of the findings of the RTC and CA reveals that the same were duly supported by the evidence presented by the parties.

On the basis of Section 3(v),[12] Rule 131, of the 1997 Rules of Court, the Court has consistently ruled that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in

---

10 *Id.* at 51-69.

11 *Mangahas, et al. v. Court of Appeals, et al.*, 588 Phil. 61, 77 (2008).

12 Sec. 3. *Disputable presumptions.* The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxxx

(v) That a letter duly directed and mailed was received in the regular course of the mail;

the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed.[13] In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[14] citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[15] the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative, to wit:

> On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, *viz.*:
>
> > Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
> >
> > > The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).
> >
> > **x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized**

---

13 *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 793 (2006).

14 652 Phil. 172, 181-182 (2010). (Emphasis supplied)

15 *Supra* note 13, at 793-794.

> **representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
>
> x x x.
>
> **The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the PAN, but failed**. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. It merely accepted the letter of Metro Star's chairman dated April 29, 2002, that stated that he had received the FAN dated April 3, 2002, but not the PAN; that he was willing to pay the tax as computed by the CIR; and that he just wanted to clarify some matters with the hope of lessening its tax liability.

Similarly, in *Mangahas v. CA*,[16] the Court has given importance to the presentation of the original registry receipt to prove the fact of mailing, even ruling that the same would have constituted the best evidence thereof. In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First*, it is undisputed that his letter of revocation was properly addressed to PNB. *Second*, in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.

Unfortunately for PNB, moreover, it failed to overcome said presumption. The Court had consistently ruled that when a document is shown to have been properly addressed and actually mailed, there arises a presumption that the same was duly received by the addressee, and it becomes the burden of the latter to prove otherwise.[17] Here, PNB's bare, self-serving denial, and nothing more, does little to persuade. To the Court, PNB's mere denial cannot prevail over the records presented by De Guzman such as the letter of revocation, registry receipt, and certification, which

---

16 *Supra* note 11.

17 *Palecpec, Jr. v. Hon. Davis, etc.*, 555 Phil. 675, 694-695 (2007); *Lapulapu Foundation, Inc. v. Court of Appeals*, 466 Phil. 53, 60 (2004).

constitute documentary evidence enjoying the presumption that, absent clear and convincing evidence to the contrary, these were duly received in the regular course of mail. Thus, in view of PNB's failure to discharge its burden to overcome the presumption by sufficient evidence, the courts below correctly found that De Guzman had, indeed, already revoked the first surety agreement. Consequently, PNB cannot hold De Guzman liable for the obligations of the company thereunder, nor any other obligation thereafter.

Neither can PNB save his cause by asserting the procedural issue that the RTC and the CA should not have allowed De Guzman to present additional evidence for under the rules on evidence, a party is only allowed to add to the terms of an agreement if he has put in issue in his pleading the additional matters presented by the additional evidence. Since the matter of revocation was never raised in his pleadings, the courts below should not have considered the same. As the appellate court held, PNB failed to timely object to the presentation of said evidence at the trial. It noted that after De Guzman testified that he sent a letter of revocation, PNB proceeded to lengthily and exhaustively cross-examine him. Thus, by PNB's implied consent, said matter is treated in all respects as if it had been raised in his pleadings in accordance with Section 5, [18] Rule 10 of the Rules of Court.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated November 9, 2015 and Resolution dated June 23, 2016 of the Court of Appeals in CA-G.R. CR. CV No. 103347 are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

[18] Section 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. x x x.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES JR.
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act
No. 296, The Judiciary Act of
1948, as amended