SUPREME COURT
FIRST DIVISION

FRANCISCO DE ASIS & CO., INC., FRANCISCO DE ASIS and LEOCADIO DE ASIS,
***Petitioners*,**

-versus-

G.R. No. L-61549
May 27, 1985

THE COURT OF APPEALS, and MERCEDES PRIETO DELGADO,
***Respondents*.**
x----------x

D E C I S I O N

RELOVA, *J.*:

In this Petition for Review on *Certiorari*, petitioners seek to reverse and/or modify the Decision, dated July 30, 1981, of respondent Court of Appeals affirming the Decision of the trial court, as well as the Resolution, dated August 20, 1982, denying the Motion for Reconsideration.

The facts of the case as aptly synthesized and adopted in toto by the respondent appellate court are as follows:

"Defendant Francisco de Asis & Co., Inc. was organized sometime in 1967 with Francisco de Asis as its president and Leocadio de Asis as one of the members of the Board of Directors. As a stock brokerage company, it did business in the Makati Stock Exchange wherein one becomes a member upon the execution of an undertaking by at least 2 members of its Board of Directors who own 95% of the stocks to answer solidarily for the corporation liabilities of the member company. Leocadio de Asis and Francisco de Asis who owned 95% of the outstanding capital stock of the Francisco de Asis & Co., Inc. executed a joint and several undertaking on July 25, 1967 wherein they jointly and severally warrant the equitable payment of all valid and legitimate corporate liabilities of Francisco de Asis & Co., Inc. in connection with its membership in the Makati Stock Exchange (Exhibits A, A-1, and A-2).

"Sometime in June, 1970 the defendant company thru its president Francisco de Asis approached Mrs. Mercedes P. Delgado for assistance to secure a loan in the amount of P200,000.00 from the Resource & Finance Corporation. Since Francisco de Asis was a good friend and his father Leocadio de Asis was solvent and answerable in a joint and solidarily undertaking of the company, she agreed to raise the amount of P200,000.00 as requested. She was able to secure P100,000.00 from the Resource and Finance Corporation for which she executed a promissory note (Exhibit F) and the amount of P100,000.00 from her brother Benito Prieto, Jr. With this amount, she deposited it in the Bank of Asia, Makati Branch in favor of Francisco de Asis & Co., Inc. under current account of 2-001, in accordance with the instructions of its President Francisco de Asis (Exhibit B). Thereafter, on or about August, 1973 Francisco de Asis informed her that he had P100,000.00 to be made as partial payment of their loan and suggested that she invest it by buying shares of Philex Mining. To this suggestion, she agreed. Unfortunately, this supposed partial payment which was to be invested in shares of Philex was not carried out because Francisco de Asis & Co., Inc. was suspended by the Makati Stock Exchange from trading. As a result, there was a rush of claims against the company resulting in its collapse. She called up Mr. Asis to settle the loan and she was

assured of settlement as Mr. Leocadio de Asis is solvent and answerable for the debts of the company. Mr. de Asis even sent her a cable assuring her that the loan would be settled (Exhibits C and C-1). This loan she extended to Francisco de Asis & Co., Inc. remained unpaid. On the other hand, she had been paying on her own the loan with the Resource & Finance Corp. as well as with her brother Benito Prieto, Jr. She is married but separated from her husband.

"On the part of the defendants only Leocadio de Asis testified. His testimony substantially established that he is a lawyer and had fully understood the effects and circumstances of executing the joint and several undertaking, Exhibit A, which was made in accommodation to his son Francisco de Asis. He was a nominal stockholder of the Francisco de Asis & Co., Inc. of which 97% of the subscribed capital belong to his son Francisco while the remaining 3% was subscribed by him. This joint and several undertaking, Exhibit A, was to answer for obligation in favor of the Makati Stock Exchange in connection with the operation of said exchange and not in favor of any other party (Exhibit I). He was compelled to execute this joint and several undertaking which in his opinion is null and void especially considering that a nominal stock member like himself will be held liable because no license will be issued unless this condition is first satisfied. He was an original Director of the defendant corporation and at one time chairman of the board for a short period. He ceased to be an officer of this corporation sometime in 1970. He had no direct participation in the management of the corporation to attend the board meetings. The corporation had never passed any resolution authorizing Francisco de Asis to secure a loan of P200,000.00 from Mercedes P. Delgado. As a matter of fact, he had no knowledge of this transaction except when the instant suit was filed. (pp. 34-37, Record on Appeal)." (pages 30-32, Rollo).

Petitioners raised the same assignments of errors presented and passed upon by the appellate court that the latter erred (1) in declaring that the obligation sued upon was corporate loan of Francisco de Asis and Co., Inc. and not a personal loan of Francisco de Asis with the private respondent; and (2) in holding petitioner

Leocadio de Asis liable, jointly and severally, with petitioners Francisco de Asis and Francisco de Asis & Co., Inc. under the "Joint and Several Undertakings."

WE do not agree.

The records are negative of any evidence which would show that the corporate nature of the transaction alleged in paragraphs 4 and 8 of the complaint which read:

> "4. Sometime in June of 1970, defendant, Francisco de Asis approached plaintiff, who was a good friend, and informed her that he was in need of P200,000.00 because the stock brokerage firm bearing his name, defendant Francisco de Asis and Co., Inc. was encountering cash flow problems;
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> "8. On July 2, 1970, plaintiff deposited the P200,000.00 to the bank account of defendant corporation at the Bank of Asia, Makati Branch". (pages 32-33, Rollo).

have been denied and proved to be false. Thus, We are in affirmance of the findings of respondent appellate court that —

> "The necessity and urgency for the loan of P200,000.00 was not to meet the personal need of Francisco de Asis as there is no showing that he was in financial difficulties but to resolve the cash flow problems of Francisco de Asis and Co., Inc. for which plaintiff-appellee deposited the amount of P200,000.00 on July 2, 1970 in the current account of defendant corporation at the Makati Branch of the Bank of Asia. Neither would the absence of the usual documents, i.e., promissory notes and/or real estate or chattel mortgages, negate the existence of the loan. Considering the relationship between the parties, being very good friends, plaintiff-appellee dispensed with the customary documentation in her desire to bail out a friend from the difficulties that his corporation is facing, 97% of the capital stock of which he owned. But the loan of P200,000.00 is not totally without any document. The deposit slip (Exhibit "B") of the Bank of Asia showing the deposit of P200,000.00 on July 2, 1970, in Current Account No. 2-0017 of defendant corporation

> indicates the receipt of said amount. And the record is bereft of any evidence disclosing that said funds were used other than for corporate purposes."
>
> "If the transaction contemplated by the parties herein is that of a personal loan to Francisco de Asis, then plaintiff could have simply written out a check in the latter's name or deposited the amount of the loan in his personal account." (page 33, Rollo).

The claim of the corporation that it had not authorized Francisco de Asis to obtain loan for the company from the private respondent is belied by the fact that upon deposit of the sum of P200,000.00 in its current account, it had retained and disbursed the said amount. And, assuming that it had not really authorized Francisco de Asis to borrow money from private respondent, the company is still obliged to return the same under Article 2154 of the Civil Code which provides:

> "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

Relative to the argument that Francisco and Leocadio de Asis' liability under their "Joint and Several Undertaking" is limited to the obligation of the corporation in connection with its membership at the Makati Stock Exchange, their liability is spelled out by Exhibit "A" as follows:

> "NOW, THEREFORE, for and in consideration of the foregoing premises, the Owners hereby jointly and severally warrant the equitable payment of all valid and legitimate corporate liabilities of the Francisco de Asis & Co., Inc. in connection with its membership at the Makati Stock Exchange Exhibit "A" (page 33, Rollo).

The execution of the foregoing instrument is a requirement for membership in the Makati Stock Exchange. Subdivision 2, Section 1 of Article XIII of the Constitution of the Makati Stock Exchange clearly states:

> "That stockholders owning at least 95% of the outstanding capital stock of the applicant corporation shall execute a public instrument making themselves jointly and severally liable without limitation for all the transactions and dealings of said corporation and a copy of said document shall be filed with the Commission; provided, however, that if the 95% outstanding capital stock is owned by only one person, another stockholder shall be required to execute with him the said public instrument or guaranty." (page 34, Rollo), (Italics supplied).

And, as pointed out by respondent appellate court, "Leocadio and Francisco de Asis knowingly and voluntarily executed and signed the Joint and Several Undertaking, Exhibit 'A'". More so, in the case of Leocadio de Asis who is a lawyer and, therefore, knew the legal import and far-reaching consequences of the document he signed.

ACCORDINGLY, for lack of merit, the Petition is hereby **DISMISSED.**

SO ORDERED.

Gutierrez, Jr., Dela Fuente and Alampay, *JJ.*, concur.
Melencio-Herrera, *J.*, I concur since the borrowed amount was deposited for the account of the corporation and the latter had retained and disbursed the same.
Teehankee, *C.J., (Chairman)*, took no part.
Plana, *J.*, on official leave.