W. Caroline Trading Co. v. Leonard, 16 ROP 110 (2009)

WESTERN CAROLINE TRADING CO.,
Appellant,

v.

SHELLA LEONARD AND DUANE HIDEO,
Appellees.

CIVIL APPEAL NO. 07-042
(Civil Action 04-230)

Supreme Court, Appellate Division
Republic of Palau

Decided: January 9, 2009[1]
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Counsel for Appellant: David F. Shadel

Counsel for Appellee: Clara Kalscheur

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Court, LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Appellant Western Caroline Trading Company ("WCTC" or "Appellant") appeals a default judgment in its favor, arguing first that the court erred substantively in rendering a judgment that was less than the amount owed to it, and second that the trial court denied it due process of law in rendering the judgment without first holding a hearing. Appellees, Duane Hideo and Shella Leonard ("Appellees"), argue that the trial court's judgment was within its discretion, and that no due process right was violated by the court's exercise of this discretion. The trial court entered a default judgment against Appellees, but significantly reduced the amount sought in Appellant's motion for default judgment. The court reasoned that the attorney fees requested were not reasonable, and the full amount sought in principal was not proven on the record. In addition, the court exercised its discretion in entering the order without first conducting a hearing. After reviewing the record, the law and the parties' briefs, we affirm in part and reverse in part, the findings of the trial court.

[1]The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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BACKGROUND

In October and November, 2001, thirty-two employees of the State of Ngchesar agreed to participate in a group loan from Appellant. The group was known as a "muzing." Each member of the muzing took out a line of credit with Appellant for a certain monetary value. The total amount borrowed was $25,000. While each member of the group was responsible for his or her own loan, the members were each supposed to sign a promissory note agreeing to be jointly and severally liable for the total $25,000 upon default. However, only five promissory notes were entered into evidence, and every one of them was signed by an individual member agreeing only to his or her share of the loan repayment. There were no promissory notes in the record in which an individual member agreed to be jointly and severally liable for the entire $25,000. However, Appellee Duane Hideo signed a document agreeing to be guarantor for the entire $25,000, in the event that individuals defaulted on their repayments.

After several individuals defaulted on their repayments, Appellant filed a complaint with the court on August 2, 2004. The original complaint was filed against six members of the muzing: Clifford Ebas, Lordesta Eldebechel, Rosemary Eldebechel, Alonzo Hideo, Shella Leonard and Augusto Ngiraitpang. Appellant sought individual judgments against each of the six members, as well as a judgment that each be p.112 liable jointly and severally for the debts of the other five defendants. Lastly, the complaint sought a judgment against Duane Hideo for the total amount of debts owed by the individual six defendants, as guarantor.

Attached to the complaint were six promissory notes signed by the six individual debtors, agreeing to pay back the individual loan amounts they sought from Plaintiff. Also attached was a guaranty signed by Duane Hideo for the principal amounts owed by each individual, up to $4,000, and for the $25,000 total loan, including interest thereon. In August, 2005, Plaintiff submitted an affidavit of its accounting clerk, Omera Misa. The affidavit stated that all six individual defendants had defaulted on their loan repayments, for the amounts referred to in the complaint.

In September, 2005, Alonzo Hideo and Augusto Ngiraitpang signed stipulations and judgments were entered against them. Appellant does not challenge these judgments on appeal. In 2005, Clifford Ebas passed away, and the court entered an order dismissing the case against him, as there was no motion to substitute a party in his stead. In November, 2006, the court dismissed without prejudice the actions against Rosemary Eldebechel and Lordesta Eldebechel, for failure to prosecute. [2] Finally, in August, 2007, the court issued its judgment against Duane Hideo and Shella Leonard. It is this last judgment that Appellant challenges.

The trial court found that Appellant failed to present evidence that the individual defendants, specifically Shella Leonard, agreed to be jointly and severally liable for one

[2]Neither of these two defendants filed an answer to the complaint, nor did they make any appearances before the court. Appellant, however, failed to take the steps necessary to achieve a judgment against them, and thus the court dismissed the complaint against the two defendants without prejudice for failure to prosecute. Appellant maintains that they fled the country, but does not challenge the court's dismissal of the complaint against them.

another's debts. Thus, the court found her liable only for her own debts owing to Appellant. In addition, the court found that Duane Hideo did not have any individual debts, but that because he was guarantor for the entire muzing, he was jointly liable for Leonard's debt. In deciding the amount of damages, the court awarded Plaintiff Leonard's remaining unpaid principal of $450. However, the court reduced the award of attorney fees from the $1,334.75 requested to $182.14. The court found that the work performed by Plaintiff's attorney was minimal, not complex, and that his fees should be split between all seven defendants. Thus, the court found that $1,334.75 in fees for one defendant was unreasonable. Appellant does not challenge this determination of attorney fees, but rather the trial court's failure to find Duane Hideo jointly and severally liable for the debts of all six defendants, totaling $4,392.46 in principal, instead of only Leonard's debts, totaling $450 in principal.

STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 p.113 ROP 63, 65 (2002). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). However, when a trial court determination is discretionary, it is reviewed for an abuse of discretion. *Ngoriakl v. Gulibert*, Civil App. No. 07-051, slip op. at 3 (Dec. 12, 2008). Under this standard, a trial court's decision will not be overturned unless it was "arbitrary, capricious, or manifestly unreasonable," or because it "stemmed from an improper motive." *Id*. (citing *W. Caroline Trading Co. v. Philip*, 13 ROP 28, 30 (2005)). Appellant's challenge to the court's discretionary procedure is reviewed for an abuse of discretion. Its challenge to the amount of damages awarded is reviewed *de novo*.

DISCUSSION

A. Procedural Due Process

Appellant first argues that it was denied due process of law by the trial court's issuance of a judgment without first holding a hearing, pursuant to ROP Rule of Civil Procedure 55(b)(2). It asserts that the court acted *sua sponte* in rendering its judgment, against the evidence, without notice to Plaintiff that there would not be a hearing. Appellant cites to authority supporting the notion that courts should not act *sua sponte*, on their own motions. Appellant also cites authority in which trial courts have *sua sponte* set aside or amended judgments and made judgments without giving defendants an opportunity to be heard. It contends that it had a right, pursuant to Rule 55(b)(2) to a hearing, because the trial court was obviously in need of further evidence before it could render a judgment.

Appellees oppose this position, arguing that Rule 55 is discretionary, and that Appellant had no right to a hearing. Because the court had discretion as to whether or not to hold a hearing, the standard of review applicable for this court is an abuse of discretion. Appellees argue that the trial court did not need any further evidence in order to render its judgment, and thus did not abuse its discretion in failing to hold a hearing. In addition, Appellees contend that the trial court gave Appellant notice and an opportunity to be heard because Appellant was permitted to present as much evidence as it needed to prove its case with the complaint and its attached exhibits. We agree with Appellees and find that the trial court did not abuse its discretion in rendering

judgment without first holding a hearing.

> Rule 55(b)(2) states, in relevant part:
>
> *[I]f*, in order to enable the court to enter judgment . . . , it is necessary to take an account or determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court *may* conduct such hearings or order such references as it deems necessary and proper. (*emphasis added*).

Where a statute uses the word "may," it indicates a court's discretion. *Eller v. ROP*, 10 ROP 122, 128 (2003). Thus, Appellees are correct that the statute merely allows the court to hold a hearing; it does not require the court to do so. p.114 The cases cited by Appellant are not on point with this case. The trial court's action in rendering judgment without a hearing was not a *sua sponte* act. Rather, the court was presented with a motion for default judgment, and it granted that motion. The authority cited regarding notice and an opportunity to be heard is misplaced for two reasons: 1) the plaintiff, and not the defendant, is claiming that he was denied notice here; and 2) the trial court was not *sua sponte* amending or vacating a judgment, but rather acting on a motion for default judgment, which it was asked to do by Plaintiff.

These distinctions are critical, because, as established by ROP Rule of Civil Procedure 55(b)(2), hearings are not mandatory. There was thus no notice required. Plaintiff filed the complaint, knowing that it may not be granted a hearing. It was Plaintiff's burden to prove all essential elements of the default judgment with exhibits attached to the complaint or to its motion for default judgment. Presumably, this is why it attached to the complaint the promissory notes and the signatures of all defendants, and why it later submitted the affidavit of Omera Misa in 2005. Plaintiff had an opportunity to be heard when it filed its action and its subsequent motion for default judgment. Due Process does not require more than that, particularly with a discretionary statute. Thus, the trial court acted neither arbitrarily, nor capriciously in rendering judgment without first conducting a hearing.

B. Conclusions of Law on the Amount of Judgment

Appellant next argues that the judgment amount awarded was incorrect based on the evidence presented in the complaint and the motion for default judgment. It appeals only the judgment against Duane Hideo, as guarantor for the muzing. Appellant contends that Hideo should have been held jointly liable for the debts of all six muzing members against whom the lawsuit was originally filed. The trial court held him jointly liable only for the debts owed by Shella Leonard, despite the evidence presented that Hideo was guarantor for the entire muzing's debts. Appellees argue that the trial court was correct in finding Hideo liable only for the debt of Leonard because Appellant's motion for default judgment only asked for judgment against Hideo and Leonard, not the other members of the muzing. We agree with Appellant, and find that Hideo should have been held jointly liable for the debts of all muzing members against whom the original complaint was filed.

There is no case law or statute in the Republic of Palau that addresses whether a debtor must be an active party to a suit in order to attach liability to a guarantor. Likewise, the Restatement does not address this issue. However, there is a long history of case law in the United States that provides guidance to this Court. Suits for guaranty are governed by the contract upon which they rest. 38 AM. JUR. 2D, *Guaranty* at § 109 (1999) (citing *Niederer v. Ferreira*, 189 Cal. App. 3d 1485 (2d Dist. 1987)). If the guaranty is absolute, meaning it is subject to no condition other than the default of the debtor, the guarantor is primarily liable for the debt and the creditor may commence proceedings against the guarantor immediately upon the default. *Id*. at § 105 (citing *Texas Water Supply Corp. v. R.F.C.*, 204 F.2d 190 (5th Cir. 1953). If, conversely, the guaranty is conditioned upon the creditor attempting p.115 collection from the debtor without success, the creditor must generally bring suit against the debtor first before seeking a judgment against the guarantor. *Id*. at § 106 (citing *Conn. Gen. Life Ins. Co. v. Punia* , 884 F. Supp. 148 (D.N.J. 1995)). However, where a creditor has shown adequate efforts in pursuing the debtor, the creditor generally does not need to join the debtor as a party to the action. *Id*. at § 113 (citing *Cox v. Lerman* , 949 S.W.2d 527 (Tex. App. Houston 14th Dist. 1997)).

The guaranty contract in the current matter appears to be an absolute guaranty. Hideo agreed to guaranty "the payment of such sums of money and any interest or service charge accruing in connection therewith . . . as are now, or at any time hereafter may be, owing to creditor." Response Br. at Ex. 9. Appellant, therefore, need not have filed action against the debtors before proceeding separately against Hideo. Moreover, it need not have even joined the debtors to the action in order to obtain a judgment against Hideo, who was the primary guarantor of the debts upon default. It is thus immaterial that the actions against Clifford Ebas, Rosemary Eldebechel, Lordesta Eldebechel, Alonzo Hideo and Augusto Ngiraitpang were dismissed or disposed of before judgment was entered as to Duane Hideo. Appellant was entitled to judgment against Hideo as guarantor for any proven debts of any of the members of the muzing, regardless of whether any of them were parties to the action.

The issue becomes, therefore, whether Appellant presented enough evidence to the court that the six individual defendants each defaulted on their loan repayments, triggering the guaranty. As none of the defendants presented any evidence before judgment was entered, the court had to review only the exhibits attached to the complaint and motion. The exhibits show that each of the six defendants signed a promissory note agreeing to pay back certain sums of money within certain time increments. The affidavit of Omera Misa is the only evidence that each defendant defaulted on these payments. Because the affidavit is uncontested, it appears to be sufficient proof that the defendants defaulted. Therefore, the evidence presented by Appellant to the trial court is sufficient to show that the defendants were in default, and therefore that the guaranty became active upon those defaults.

The trial court should have entered judgment against Hideo as guarantor, to be jointly liable for the proven debts of the six individuals. The purpose of a guarantor is to ensure that a creditor is paid when efforts against the debtors have been futile. Defendants dying and fleeing the country are precisely the situations, it seems, that give rise to the need for guarantors in the first place. Therefore, we reverse the trial court's conclusions of law as to the amount of the

judgment against Hideo and direct the trial court to award appropriate damages to Appellant. Hideo should only be held jointly liable for the outstanding in principal for all six individual defendants, plus interest thereon.[3]
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CONCLUSION

We **AFFIRM** the trial court's discretionary decision to render judgment without first holding a hearing. Furthermore, we **REVERSE** the trial court's amount of judgment against Appellee Duane Hideo and **DIRECT** the trial court to enter judgment against him for the entire outstanding balance of all six original defendants' debts, plus interest thereon.

[3]The total principal, as of the 2005 Misa Affidavit, was $4,036.60. However, it has been some time since the 2005 judgments and it is possible that some of this principal has been paid as of the date of this Opinion.