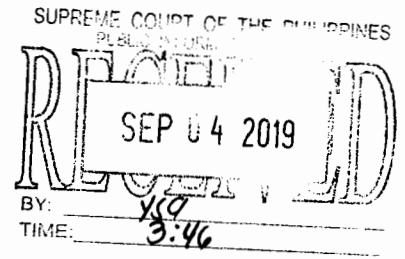




Republic of the Philippines
Supreme Court
 Manila



SECOND DIVISION

**TRADE AND INVESTMENT
 DEVELOPMENT CORPORATION
 OF THE PHILIPPINES also known as
 PHILIPPINE EXPORT-IMPORT
 CREDIT AGENCY,**

Petitioner,

- versus -

PHILIPPINE VETERANS BANK,

Respondent.

x-----*HM Cabalod Perfecto*-----x

G.R. No. 233850

Present:

CARPIO, J., Chairperson,
 PERLAS-BERNABE,
 CAGUIOA,
 J. REYES, JR., and
 LAZARO-JAVIER, JJ.

Promulgated:

01 JUL 2019

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45, in relation to Rule 41, Section 2(c), of the Rules of Court filed by petitioner Trade and Investment Development Corporation (petitioner TIDCORP), also known as Philippine Export-Import Credit Agency (PhilEXIM), assailing the Order² dated August 16, 2017 (assailed Order) issued by the Regional Trial Court of Makati City, Branch 150 (RTC) in Civil Case No. R-MKT-16-02011-CV, which granted respondent Philippine Veterans Bank's (respondent PVB) Motion for Summary Judgment³ dated February 14, 2017.

The Facts and Antecedent Proceedings

As culled from the records of the instant case, the pertinent facts and antecedent proceedings are as follows:

¹ *Rollo*, pp. 19-42.

² *Id.* at 45-51; penned by Presiding Judge Elmo M. Alameda.

³ *Id.* at 165-184.

The instant case stems from a Complaint for Specific Performance⁴ (Complaint) filed on September 22, 2016 before the RTC by respondent PVB against petitioner TIDCORP.

In its Complaint, respondent PVB alleged that on November 23, 2011, PVB, together with other banking institutions (Series A Noteholders), entered into a Five-Year Floating Rate Note Facility Agreement⁵ (NFA) with debtor Philippine Phosphate Fertilizer Corporation (PhilPhos), a PEZA registered domestic corporation situated in Leyte, up to the aggregate amount of ₱5 billion. Under the said NFA, respondent PVB committed the amount of ₱1 billion.

To secure payment of the Series A Notes, petitioner TIDCORP, with the express conformity of PhilPhos, executed a **Guarantee Agreement**⁶ dated November 23, 2011 (Guarantee Agreement) whereby petitioner TIDCORP agreed to guarantee the payment of the guaranty obligation to the extent of ninety (90%) of the outstanding Series A Notes, including interest, on a rolling successive three-month period commencing on the first drawdown date and ending on the maturity date of the Series A Notes.

On November 8, 2013, Typhoon Yolanda made landfall in Central Visayas, which resulted in widespread devastation in the province of Leyte where PhilPhos' manufacturing plant was situated. Due to the damage brought by said typhoon to PhilPhos' manufacturing facilities, it failed to resume its operations.

Thus, on September 17, 2015, PhilPhos filed a Petition for Voluntary Rehabilitation under the Financial Rehabilitation and Insolvency Act of 2010⁷ (FRIA) before the Regional Trial Court of Ormoc City, Branch 12 (Rehabilitation Court). On September 22, 2015, the Rehabilitation Court issued a Commencement Order, which included a **Stay Order**.⁸

On November 5, 2015, or 45 days as provided in the Guarantee Agreement,⁹ respondent PVB filed its Notice of Claim¹⁰ with petitioner TIDCORP, which received the same on November 6, 2015.

In a Letter¹¹ dated November 12, 2015, petitioner TIDCORP declined to give due course to respondent PVB's Notice of Claim, invoking the Stay Order issued by the Rehabilitation Court. Despite several demands¹² made by respondent PVB pursuant to the Guarantee Agreement, petitioner TIDCORP

⁴ Id. at 141-152.

⁵ Id. at 52-102.

⁶ Id. at 103-124.

⁷ Republic Act No. (RA) 10142 or An Act Providing For The Rehabilitation Or Liquidation Of Financially Distressed Enterprises And Individuals.

⁸ *Rollo*, p. 126-128.

⁹ Id. at 113.

¹⁰ Id. at 129-130.

¹¹ Id. at 131-132.

¹² Id. at 133-139.



maintained its position to deny PVB's claim due to the issuance of the said Stay Order.

In its Complaint, respondent PVB asserted that "[t]o secure the payment of the Series A Notes, [petitioner] TIDCORP, with the express conformity of PhilPhos, executed a **Guarantee Agreement** with the Series A Noteholders (except CBC) x x x, whereby, among others, it: (a) **agreed to guarantee payment to the Series A Noteholders to the extent of Ninety (90%) Percent of the Series A Notes and interest**; and (b) **waived the benefit of excussion, x x x.**"¹³

In its Answer with Counterclaim¹⁴ (Answer), petitioner TIDCORP argued that the RTC cannot validly try the case because of the Rehabilitation Court's Stay Order, which enjoined the enforcement of all claims, actions and proceedings against PhilPhos.

In view of the Answer filed by petitioner TIDCORP, respondent PVB filed a Motion for Summary Judgment¹⁵ dated February 14, 2017 (Motion for Summary Judgment). Thereafter, petitioner TIDCORP filed its Comment (On Plaintiff's Motion for Summary Judgment)¹⁶ dated March 6, 2017.

**The Ruling of the RTC on Respondent PVB's
Motion for Summary Judgment**

On August 16, 2017, the RTC issued the assailed Order¹⁷ granting respondent PVB's Motion for Summary Judgment. The dispositive portion of the Order reads:

The facts are clear and undisputed from the pleadings, supporting affidavits, and admissions on file. Thus, a full-blown trial need not be conducted to resolve the merits of this case, hence, the Motion for Summary Judgment is granted. x x x.

SO ORDERED.¹⁸

In sum, the RTC held that, as made manifest in the pleadings, supporting affidavits, and admissions on record, there was no genuine issue as to any material fact posed by petitioner TIDCORP with respect to its liability under the Guarantee Agreement, except as to the amount of damages. Thus, the RTC found that respondent PVB was entitled to a judgment in its favor as a matter of law.

Hence, as petitioner TIDCORP deemed the assailed Order as a final order susceptible of appeal in which pure questions of law are involved, petitioner TIDCORP directly filed the instant Petition before the Court under

¹³ Id. at 143; emphasis supplied.

¹⁴ Id. at 153-164.

¹⁵ Id. at 165-184.

¹⁶ Id. at 185-190.

¹⁷ Id. at 45-51.

¹⁸ Id. at 51.



Rule 45, in relation to Section 2(c), Rule 41 of the Rules of Court. Respondent PVB filed a Motion to Dismiss¹⁹ dated November 8, 2017 (Motion to Dismiss), arguing that petitioner TIDCORP filed the wrong mode of appeal. In a Resolution²⁰ dated September 12, 2018, the Court denied respondent PVB's Motion to Dismiss for lack of merit. On November 5, 2018, respondent PVB filed its Comment.²¹

Issue

The singular issue posited by petitioner TIDCORP for the Court's disposition is whether the RTC erred in granting respondent PVB's Motion for Summary Judgment.

The Court's Ruling

I. Procedural Issue – Correct Mode of Appeal

Before delving into the merits of the instant Petition, the Court first deals with the procedural matter raised by respondent PVB in its Motion to Dismiss.

Respondent PVB argues that the instant Petition should be summarily dismissed because the petitioner allegedly pursued the wrong mode of appeal, maintaining that the assailed Order is a mere interlocutory order and not a final order subject of an appeal under Rule 45.

Respondent PVB's contention is incorrect.

An order or resolution granting a Motion for Summary Judgment which fully determines the rights and obligations of the parties relative to the case and leaves no other issue unresolved, except the amount of damages, is a final judgment.

As explained by the Court in *Ybiernas, et al. v. Tanco-Gabaldon, et al.*,²² when a court, in granting a Motion for Summary Judgment, adjudicates on the merits of the case and declares categorically what the rights and obligations of the parties are and which party is in the right, such order or resolution takes the nature of a final order susceptible to appeal. **In leaving out the determination of the amount of damages, a summary judgment is not removed from the category of final judgments.**²³

In the instant case, it is clear that the assailed Order discussed at length the applicable facts, the governing law, and the arguments put forward by both

¹⁹ Id. at 192-201.

²⁰ Id. at 217.

²¹ Id. at 219-240.

²² 665 Phil. 297 (2011).

²³ Id. at 308-309.



parties, making an extensive assessment of the merits of respondent PVB's Complaint. The RTC then made a definitive adjudication in favor of respondent PVB. As manifestly seen in the assailed Order, the RTC categorically determined what the rights and obligations of the parties are, ruling in no uncertain terms that respondent PVB's Complaint was meritorious and that petitioner TIDCORP should be made liable under the Guarantee Agreement.

Hence, respondent PVB's argument in its Motion to Dismiss is unmeritorious.

Having disposed of the procedural issues, the Court now decides the substantive merits of the instant Petition.

II. *Substantive Issue – The Propriety of the RTC's Summary Judgment*

The solitary matter to be dealt with by the Court is the propriety of the RTC's Order granting respondent PVB's Motion for Summary Judgment.

Summary judgment is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial.²⁴

According to Section 1, Rule 35 of the Rules of Court, a party seeking to recover upon a claim may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his/her favor.

According to Section 3 of the same Rule, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is **no genuine issue as to any material fact** and that **the moving party is entitled to a judgment as a matter of law**.

The term "*genuine issue*" has been defined as **an issue of fact which calls for the presentation of evidence** as distinguished from an issue which is **sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial**.²⁵ The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties before the court.²⁶

In assailing the RTC's decision granting the Motion for Summary Judgment, petitioner TIDCORP, in the main, asserts that respondent PVB is not entitled to judgment as a matter of law and that there are genuine issues on material facts that necessitate trial on the merits, contrary to the findings of the RTC.

²⁴ *Excelsa Industries, Inc. v. Court of Appeals*, 317 Phil. 664, 671 (1995).

²⁵ *Id.*

²⁶ *Id.*



To support this theory, petitioner TIDCORP raises two grounds: (1) the RTC cannot validly hear and decide respondent PVB's Complaint because of the Rehabilitation Court's Stay Order which enjoined the enforcement of all claims, actions and proceedings against PhilPhos; and (2) there is supposedly a contentious material fact that raises a genuine issue in the instant case.

The Court shall discuss these two grounds in *seriatim*.

The Stay Order of the Rehabilitation Court did not divest the RTC's jurisdiction to hear and decide respondent PVB's Complaint.

With respect to the first ground raised by petitioner TIDCORP, the Court holds that the Stay Order issued by the Rehabilitation Court did not preclude the RTC from hearing and deciding respondent PVB's Complaint.

First and foremost, it must be noted that the Stay Order relied upon by petitioner TIDCORP merely ordered the staying and suspension of enforcement of all claims and proceedings against the petitioner PhilPhos and *not* against all the other persons or entities solidarily liable with the debtor. The tenor of the Stay Order itself belies the theory of petitioner TIDCORP. According to the Stay Order, the said order only covers "all claims, actions, or proceedings **against the petitioner [referring to debtor PhilPhos].**"²⁷

Second, Section 18(c) of the FRIA explicitly states that **a stay order shall not apply "to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, x x x."**²⁸

In addition, under Rule 4, Section 6 of A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation, a stay order has the effect of staying enforcement only with respect to claims made against the debtor, its guarantors and persons *not solidarily liable* with the debtor:

Section 6. *Stay Order*.— If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor x x x.**²⁹

In *Situs Dev. Corporation, et al. v. Asiatruster Bank, et al.*,³⁰ the Court held that when a stay order is issued, the rehabilitation court is only empowered to suspend claims against the debtor, its guarantors, and sureties who are *not solidarily liable* with the debtor. Hence, **the making of claims against sureties and other persons solidarily liable with the debtor is not barred by a stay order.**

²⁷ *Rollo*, p. 128; emphasis and underscoring supplied.

²⁸ Emphasis and underscoring supplied.

²⁹ Emphasis and underscoring supplied.

³⁰ 701 Phil. 569, 572-573 (2013).

Thus, the question now redounds to whether the abovementioned provision of the FRIA on the non-application of a stay order with respect to the enforcement of claims against sureties and other persons solidarily liable with the debtor applies to petitioner TIDCORP.

Upon a simple perusal of the Guarantee Agreement, to which petitioner TIDCORP *readily admitted* it is bound, the answer to the aforementioned question becomes a clear and unmistakable yes. **Petitioner TIDCORP indubitably engaged to be solidarily liable with PhilPhos under the Guarantee Agreement.**

The Guarantee Agreement unequivocally states that petitioner TIDCORP waived its right of excussion under Article 2058 of the Civil Code³¹ and that, consequently, the Series A Noteholders can claim under the Guarantee Agreement **DIRECTLY** against petitioner TIDCORP without having to exhaust all the properties of PhilPhos and without need of any prior recourse against PhilPhos:

5.1 ORDINARY GUARANTEE. TIDCORP, with the ISSUER's express conformity, **hereby waives the provision of Article 2058 of the New Civil Code of the Philippines on excussion, as well as presentment, demand, protest or notice of any kind with respect to this Guarantee Agreement.** It is therefore understood that **the SERIES A NOTEHOLDERS can claim under this Guarantee Agreement directly with TIDCORP without the SERIES A NOTEHOLDERS having to exhaust all the properties of the ISSUE and without need of prior recourse to the ISSUER.**³²

Under a normal contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. The guarantor who pays for a debtor, in turn, must be indemnified by the latter. However, **the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor.** This is what is otherwise known as the **benefit of excussion.**³³ Conversely, if this benefit of excussion is waived,³⁴ the guarantor can be directly compelled by the creditor to pay the entire debt even without the exhaustion of the debtor's properties.

In other words, a guarantor who engages to **directly** shoulder the debt of the debtor, waiving the benefit of excussion and the requirement of prior

³¹ Article. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

³² *Rollo*, p. 106; emphasis and underscoring supplied.

³³ *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation*, 505 Phil. 636, 643 (2005).

³⁴ According to Article 2059 of the Civil Code, even in agreements denominated as guarantee contracts, excussion shall not take place:

- (1) If the guarantor has expressly renounced it;
- (2) If he has bound himself solidarily with the debtor;
- (3) In case of insolvency of the debtor;
- (4) When he has absconded, or cannot be sued within the Philippines unless he has left a manager or representative;
- (5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation

presentment, demand, protest or notice of any kind, undoubtedly makes himself/herself solidarily liable to the creditor.

As explained in *Spouses Ong v. Philippine Commercial International Bank*³⁵ (*Spouses Ong*), a surety is one who directly, equally, and absolutely binds himself/herself with the principal debtor for the payment of the debt:

x x x Thus, a creditor can go directly against the surety although the principal debtor is solvent and is able to pay or no prior demand is made on the principal debtor. *A surety is directly, equally and absolutely bound with the principal debtor for the payment of the debt and is deemed as an original promissor and debtor from the beginning.*³⁶

Recognized Civil Law Commentator, former Court of Appeals Justice Eduardo P. Caguioa also explained that one of the hallmarks of a contract of guaranty is its *subsidiary character* – “that the guarantor only answers if the debtor cannot fulfill his obligation; hence the benefit of excussion in favor of the guarantor.”³⁷ Hence, under the Civil Code, “by virtue of [Article 2047, which states that a contract is called a suretyship when a person binds himself solidarily with the principal debtor,] when the guarantor binds himself solidarily with the debtor, the contract ceases to be a guaranty and becomes suretyship.”³⁸ The eminent civilist further explained that what differentiates a surety from a guaranty is that in the former, “a surety is principally liable[,] while a guarantor is [only] secondarily liable.”³⁹

In the instant case, without any shadow of doubt, petitioner TIDCORP had **expressly renounced the benefit of excussion** and in no uncertain terms made itself **directly and principally liable without any qualification** to the Series A Noteholders and **without the need of any prior recourse to PhilPhos.**

In effect, the nature of the guarantee obligation assumed by petitioner TIDCORP under the Guarantee Agreement was transformed into a suretyship. This is the case because the defining characteristic that distinguishes a guarantee from a suretyship is that in the latter, the obligor promises to pay the principal's debt if the principal will not pay, while in the former, the obligor agrees that the creditor, after proceeding against the principal and exhausting all of the principal's properties, may proceed against the obligor.⁴⁰

And yet, petitioner TIDCORP insists that despite the waiver of the benefit of excussion, it is still considered a guarantor because the Guarantee Agreement expressly designates petitioner TIDCORP as an “Ordinary Guarantor.”

The argument fails to convince.

³⁵ 489 Phil. 673 (2005).

³⁶ *Id.* at 677. Emphasis supplied; italics in the original.

³⁷ EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES, Vol. VI, 306 (First ed. 1970).

³⁸ *Id.*; emphasis and underscoring supplied.

³⁹ *Id.* at 309.

⁴⁰ *Palmares v. Court of Appeals*, 351 Phil. 664, 680-681 (1998).

The determination of whether an obligation is a suretyship is not a matter of nomenclature and semantics. That an obligor is designated as a “guarantor” or that the contract is denominated as a “guarantee agreement” does not automatically mean that the obligor is a guarantor or that the contract entered into is a contract of guarantee. As previously held by the Court, even assuming that a party was expressly made liable only as a “guarantor” in an agreement, he/she can be held immediately liable directly and immediately if the benefit of excussion was waived.⁴¹

Petitioner TIDCORP downplays the waiver of the benefit of excussion by making the specious argument that the waiver does not define or characterize a guaranty and that it is supposedly merely one of the effects of a guaranty. But as already explained, the waiver of the benefit of excussion is the crucial factor that differentiates a surety from a guaranty. Otherwise stated, when a person/entity engages that he/she will be directly liable to the creditor as to another debtor’s obligation without the need for the creditor to exhaust the properties of the debtor and to have prior recourse against the latter, then for all intents and purposes, such obligation is in the nature of a suretyship regardless of how the parties labelled the agreement.

As explained in *Spouses Ong*, one of the defining characteristics of a suretyship contract is that the benefit of excussion is not available to the surety as he is principally liable for the payment of the debt:

x x x There is a sea of difference in the rights and liabilities of a guarantor and a surety. *A guarantor insures the solvency of the debtor while a surety is an insurer of the debt itself.* A contract of guaranty gives rise to a *subsidiary obligation on the part of the guarantor.* It is only after the creditor has proceeded against the properties of the principal debtor and the debt remains unsatisfied that a guarantor can be held liable to answer for any unpaid amount. This is the principle of excussion. **In a suretyship contract, however, the benefit of excussion is not available to the surety as he is principally liable for the payment of the debt.** As the surety insures the debt itself, he obligates himself to pay the debt if the principal debtor will not pay, regardless of whether or not the latter is financially capable to fulfill his obligation.⁴²

Petitioner TIDCORP argues that the Court in *JN Development Corporation, et al. v. Philippine Export and Foreign Loan Guarantee Corporation*⁴³ supposedly considered the contract therein a contract of guarantee despite the waiver of the benefit of excussion.

Petitioner TIDCORP’s assertion is not well-taken as the Court made no such pronouncement in the said case. In fact, the Court in the aforementioned case explained that what distinguishes a contract of guaranty is that the “guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor.”⁴⁴ Hence, in a contract where an obligor can be compelled

⁴¹ *Orix Metro Leasing and Finance Corporation v. Cardline, Inc.*, 778 Phil. 280, 290 (2016).

⁴² *Supra* note 35 at 676-677. Emphasis supplied; italics in the original.

⁴³ *Supra* note 33.

⁴⁴ *Id.* at 643.



to pay the creditor even when the latter has not exhausted all the property of the debtor and resorted to all the legal remedies against the debtor, such contract is not in the nature of a contract of guarantee.

In fact, in citing *Philippine Export and Foreign Loan Guarantee Corporation v. VP Eusebio Construction, Inc.*,⁴⁵ petitioner TIDCORP actually further strengthened the argument that it is a surety and not a guaranty.⁴⁶ In the said case, the Court explained that **one of the essential features of a suretyship is when the obligor's obligation is not discharged by the absence of a notice of default of the principal debtor.** In the instant case, the Guarantee Agreement clearly states that **petitioner TIDCORP will be liable to satisfy its obligations under the said agreement despite the absence of "presentment, demand, protest or notice of any kind with respect to this Guarantee Agreement."**⁴⁷

Hence, in accordance with the Guarantee Agreement, which states that respondent PVB can claim DIRECTLY from petitioner TIDCORP without the former having to exhaust all the properties of and without need of prior recourse to PhilPhos, in accordance with Section 18(c) of the FRIA, the issuance of the Stay Order by the Rehabilitation Court clearly did not prevent the RTC from acquiring jurisdiction over respondent PVB's Complaint, as correctly held by the RTC in the assailed Order.

Based on the records of the instant case, there was no genuine issue raised as to a material fact posed by petitioner TIDCORP.

With respect to petitioner TIDCORP's second argument, the Court likewise concurs with the RTC's finding that upon examination of the records of the instant case, there was no genuine issue raised as to a material fact.

There is no "genuine issue" which calls for the presentation of evidence if the issues raised by a party are a sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.⁴⁸ The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties to the court.⁴⁹ In a collection case, where the obligation and the fact of non-fulfillment of the obligation, as well as the execution of the debt instrument, are admitted by the debtor, with the rate of interest and/or amount of damages being the only remaining issue, there is no genuine issue and a summary judgment may be rendered upon proper motion.⁵⁰

In the instant case, as correctly pointed out by the RTC, **petitioner TIDCORP readily admitted that it was bound by the Guarantee Agreement**, which expressly obligated petitioner TIDCORP to guarantee the

⁴⁵ 478 Phil. 269 (2004).

⁴⁶ *Rollo*, p. 37.

⁴⁷ Item No. 5.1, id. at 106.

⁴⁸ *Excelsa Industries, Inc. v. Court of Appeals*, supra note 24.

⁴⁹ Id.

⁵⁰ *Asian Construction and Development Corporation v. Philippine Commercial International Bank*, 522 Phil. 168, 178 (2006); *Garcia v. Llamas*, 462 Phil. 779, 794 (2003).

payment of the Guaranty obligation, which was specifically pegged at 90% of the outstanding Series A Notes. With petitioner TIDCORP admitting that it was “bound by the terms and conditions enumerated in this Guarantee Agreement and such other related documents x x x,”⁵¹ the RTC did not commit any error in holding that respondent PVB was entitled to judgment as a matter of law.

Jurisprudence holds that “the defendant must show that he has a *bona fide* defense to the action, one which he may be able to establish. It must be a plausible ground of defense, something fairly arguable and of a substantial character. This he must show by affidavits or other proof.”⁵²

The RTC was correct in holding that petitioner TIDCORP failed to proffer a plausible ground of defense of a substantial character, considering that in its Answer, the only special and/or affirmative defense raised by petitioner TIDCORP was the argument on the lack of jurisdiction of the RTC in light of the Rehabilitation Court’s Stay Order, which as previously discussed, is an erroneous assertion.

Further, petitioner TIDCORP’s argument on its denial of receiving a Notice of Claim with attachments from respondent PVB in accordance with the Guarantee Agreement is manifestly unmeritorious, considering that its letters dated November 12, 2015⁵³ and January 27, 2016⁵⁴ expressly acknowledged the fact that they received the said Notice of Claim on November 6, 2015. Petitioner TIDCORP is bound by such admissions.

Also telling is the fact that in its correspondence with respondent PVB,⁵⁵ petitioner TIDCORP consistently failed to assail the correctness and completeness of the Notice of Claim. Its denial of respondent PVB’s Notice of Claim was confined merely to its allegation that it was precluded by the Rehabilitation Court’s Stay Order from acting on the claim.

Hence, taking together the fact that petitioner TIDCORP expressly admitted its obligations under the Guarantee Agreement, and that it failed to offer any substantial defense against the claim of respondent PVB, the RTC was not in error in holding that there is no genuine issue as to a material fact extant in the instant case.

For the foregoing reasons, the Court hereby denies the instant Petition for lack of merit.

WHEREFORE, in view of the foregoing, the instant Petition is hereby **DENIED**. The Order dated August 16, 2017 rendered by the Regional Trial Court of Makati City, Branch 150 in Civil Case No. R-MKT-16-02011-CV is **AFFIRMED**.

⁵¹ Item No. 7.1.3, *rollo*, p. 107.

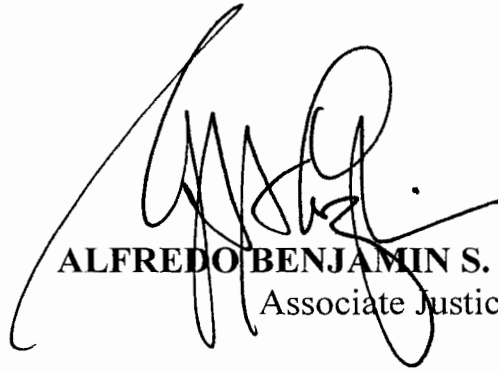
⁵² *Asian Construction and Development Corporation v. Philippine Commercial International Bank*, *supra* note 50 at 180.

⁵³ *Rollo*, pp. 131-132.

⁵⁴ *Id.* at 140.

⁵⁵ Letters dated November 12, 2015 and January 27, 2016, *id.* at 131-132 and 140.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

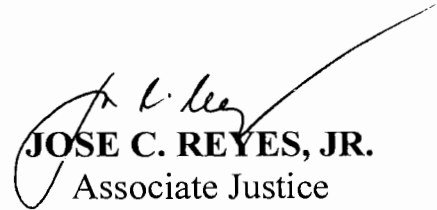
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

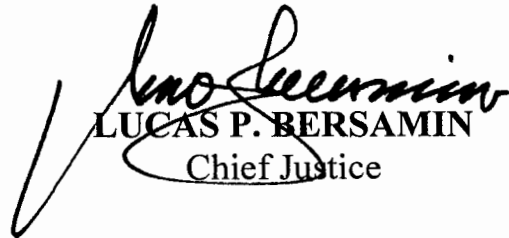
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


LUCAS P. BERSAMIN
Chief Justice

