

**PEOPLES BANK AND TRUST COMPANY, PLAINTIFF-APPELLEE, VS.
JOSE MARIA TAMBUNTING, MARIA PAZ TAMBUNTING, AND
FRANCISCO D. SANTANA, DEFENDANTS, FRANCISCO D. SANTANA,
DEFENDANT-APPELL...**

G.R. No. L-29666. October 29, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

Appellant Francisco D. Santana was sued by plaintiff, now appellee, Peoples Bank & Trust Company, along with the other defendants, Jose Maria Tambunting and Maria Paz Tambunting, his son-in-law and his daughter, for the recovery of the sum of money due in an overdraft agreement, with the Tambunting couple as principal debtors and appellant as surety. The judgment went against him notwithstanding his plea based on Article 2080 of the Civil Code, releasing guarantors, even if they be solidary, if by some act of the creditor subrogation is thereby precluded.[1] The lower court, presided by the then Judge, now Justice of the Court of Appeals, Jose N. Leuterio, in a well-written decision, found such a defense untenable as in what was characterized by the lower court as the "contract of absolute guaranty", appellant had waived his rights to the benefit conferred by such a provision. In this appeal, he would vigorously contend that what was thus agreed to by him was bereft of a binding force. The law in its wisdom does not lend its approval to such an ill-disguised attempt to turn one's back to an obligation arising from a valid contract. We have to affirm.

The decision, now on appeal, after stating the nature of the action which as noted is for the recovery of a sum of money due on an overdraft agreement set forth the undisputed facts thus: "On September 9, 1963, plaintiff and defendants executed a contract denominated 'overdraft agreement and pledge' wherein the plaintiff granted to the spouses Jose Maria Tambunting and Maria Paz Tambunting an overdraft from time to time on their current account with the plaintiff bank not to exceed P200,000.00, with interest at the rate of 9% per annum until September 10, 1964, * * *, the proceeds of which were to be used by the Tambuntings in their logging operations. Defendant Francisco D. Santana, as guarantor, and the spouses Tambuntings, conveyed to the bank shares of capital stock of the International Sports Development Corporation as collateral security for the payment of any and all indebtedness incurred or arising from the overdraft, and all extensions, renewals, amendments or applications thereof. On the same day, defendant Francisco D. Santana executed a document denominated as absolute guaranty in which, in consideration of the 'overdraft agreement and pledge', he bound himself to the bank, jointly and severally, with the Tambunting spouses for the full and prompt payment of all the indebtedness incurred or to be incurred by said spouses on account of the overdraft line. On July 24, 1964, Jose Maria Tambunting wrote to the plaintiff bank [a] letter, * * *, requesting renewal of the overdraft agreement. Plaintiff bank, in a letter dated September 21, 1964, * * * granted the Tambunting spouses an extension of the overdraft line for six (6) months from September 10, 1964, but reducing the overdraft line to P185,000.00 with the understanding that other terms and conditions of the overdraft agreement would be in full force and effect. Before the expiration of the six (6) months period, or on March 5, 1965, Jose Maria Tambunting asked for another

renewal of the overdraft line for another year, * * *. Apparently, this letter was granted by the plaintiff on March 15, 1965, for in another letter of Jose Maria Tambunting to the bank, * * * the defendant, on March 29, 1965, assured the bank that he would comply with the requirements of the plaintiff. In a letter dated May 11, 1965, * * * of the bank to Tambunting, the Manager of the Credit Department advised Jose Maria Tambunting that the Board of Directors of the plaintiff bank approved his request for an extension of the overdraft line in the amount of P185,000.00 for another year, or until March 10, 1965, but with interest at the rate of 10% per annum; that in the same meeting, the Board also approved the release of the pledge of 135 shares of stocks of the Inter-national Sports Development Corporation. The defendants failed to pay the indebtedness on the date due and demand for payment was made upon Francisco Santana and Tambunting as per letters dated December 14, 1965, January 24, 1966 and March 4, 1966, * * *. As of December 27, 1966, the total amount due from the defendants, including interests, was P219,165.18, * * *." [2] The decision went on to state: "The Tambunting spouses failed to answer the complaint and were declared in default. The defendant Santana does not dispute the indebtedness. However, it is his contention that he had been released from the guaranty for several reasons. Defendant Santana contends that he was released from his obligation on the overdraft line because the plaintiff had extended the time of payment and released to the Tambuntings without his consent, the 135 shares of stocks of the International Sports Development Corporation which had been pledged to the bank to secure the overdraft line. It is argued that, in accordance with Article 2080 of the New Civil Code, 'The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages and preferences of the latter.'" [3]

Why such a contention was held devoid of merit was explained in such decision thus: "The contract of absolute guaranty, * * *, expressly authorized the plaintiff bank to extend the time of payment and to release or surrender any security or part thereof held by it without notice to, or the consent of, Santana. He had consented in advance to the release of the guaranty which the bank might make, Santana cannot now complain that the release of the pledge was without his consent, and that it deprived him of the right to be subrogated to the rights of the creditor. The waiver is not contrary to law, nor is it contrary to public policy. The law does not prohibit the debtor-guarantor from agreeing in advance and without notice to the release of any security which had been given to assure payment of the obligation. The waiver is not contrary to public policy, because the right is purely personal, and does not affect public interest nor does it violate any public policy. Neither does the return of the shares of stocks novate the original contract for the obligation remains the same; and if it is a novation, it is a novation made with the consent of Santana. Moreover, the pledge is merely an accessory obligation, and its release does not vary the terms of the principal obligation." [4]

The appealed decision speaks for itself. It cannot, as was made plain in the opening paragraph of this opinion, be overturned.

1. It is thus obvious that the contract of absolute guaranty executed by appellant Santana is the measure of his rights and duties. As it is with him, so it is with the plaintiff bank. What was therein stipulated had to be complied with by both parties. Nor could appellant have any valid cause for complaint. He had given his word; he must live up to it. Once the validity of its terms is conceded, he cannot be indulged in his unilateral determination to disregard his commitment. A promise to which the law accords binding force must be fulfilled. It is as simple as that. So the Civil Code explicitly requires: "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." [5]

2. It could have been different if there were no such contract of absolute guaranty to which appellant was a party under the aforesaid Article 2080. He would have been freed from the obligation as a result of plaintiff releasing to the Tambuntings without his consent the 135 shares of the Inter-national Sports Development Corporation

pledged to plaintiff bank to secure the overdraft line. For thereby subrogation became meaningless. Such a provision is intended for the benefit of a surety. That was a right he could avail of. He is not precluded however from waiving it. That was what appellant did precisely when he agreed to the contract of absolute guaranty. Again the law is clear. A right may be waived unless it would be contrary to law, public order, public policy, morals or good customs.[6] There is no occasion here for the exceptions coming into play. It has been traditional in the Philippines for parents to extend all available aid and assistance to their children. That is a custom of long standing. Nor is there anything offensive to morals by an assumption of contingent liability as thus worded. The law has not been thwarted. Neither is public order nor public policy disregarded. The lower court was right therefore in yielding full assent to the waiver in question.[7] The vigor with which counsel for appellant impugned the lower court decision cannot therefore be attended with success. It can stand its ground notwithstanding such a sustained and spirited attack.

WHEREFORE, the decision of October 30, 1967, as modified on January 8, 1968, is affirmed. With costs against appellant Francisco D. Santana.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Article 2080 of the Civil Code reads as follows: "The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preference's of the latter."

[2] Decision, Record on Appeal, pp. 25-27.

[3] Ibid, pp. 27-28.

[4] Ibid, pp. 28-29.

[5] Article 1159 of the Civil Code. Cf. *Inducil v. De los Santos*, G.R. No. L-21060, May 30, 1966, 17 SCRA 332; *Server v. Car*, G.R. No. L-22676, Nov. 23, 1966, 18 SCRA 728; *Makati Development Corp. v. Empire Insurance Co.*, G.R. No. L-21780, June 30, 1967, 20 SCRA 557; *National Marketing Corp. v. Atlas Trading Development Corp.*, G.R. No. L-21979, Sept. 29, 1967, 21 SCRA 359; *Phoenix Assurance Co., Ltd. v. United States Lines*, G.R. No. L-24033, Feb. 22, 1968, 22 SCRA 674; *Tidewater Oil Co. v. Dionisio*, G.R. No. L-25888, Oct. 29, 1968, 25 SCRA 867; *Permanent Concrete Products v. Teodoro*, G.R. No. L-29766, Nov. 29, 1968, 26 SCRA 332; *Mackay Radio and Tele-graph Co. v. Rich*, G.R. No. L-22608, June 30, 1969, 28 SCRA 699; *Lazo v. Republic Surety and Insurance Co., Inc.*, G.R. No. L-27365, Jan. 30, 1970, 31 SCRA 329. The present article is a restatement of Art. 1091 of the former Civil Code. It was applied according to its literal terms in the following cases: *Co-Tiongco v. To Jamco*, 3 Phil. 210 (1904); *Borromeo v. Franco*, 5 Phil. 49 (1905); *Alcan-tara v. Alinea*, 8 Phil. 111 (1907); *Hijos de I. de la Rama v. inventor*, 12 Phil. 44 (1908); *Cia General de Tabacos v. Obed*, 13 Phil. 391 (1909); *Ollendorff v. Abrahamson*, 38 Phil. 585 (1918); *Hanlon v. Haussermann*, 41 Phil. 276 (1920); *Roño v. Gomez*, 83 Phil. 890 (1949); *Bueno v. Ambrosio*, 87 Phil. 225 (1950).

[6] Article 6 of the Civil Code reads in full: "Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."

[7] Cf. *Manila Railroad Co. v. Rafferty*, 40 Phil. 224 (1919); *Sing Juco v. Cuaycong*, 46 Phil. 81 (1924); *Hamano v. Papa*, 54 Phil. 264 (1930); *Jayme v. Bacolod-Murcia Milling Co., Inc.*, 54 Phil. 308 (1930); *Kapisanan Banahaw, Inc. v. Dejarme*, 55 Phil. 338 (1930); *Central Azucarera de Tarlac v. De Leon*, 56 Phil. 169 (1931); *Medina v. Phil. National Bank*, 56 Phil. 651 (1932); *Phil. National Bank v. Uy Teng Piao*, 57 Phil. 337 (1932); *Pampang Bus Co. v. Enriquez*, 66 Phil. 645 (1938); *Riosa v. Stilianopulos*, 67 Phil. 422 (1939); *Fernandez v.*

Sebido, 70 Phil. 151 (1940); Negros Ice and Cold Storage Co. v. Public Service Commission, 90 Phil. 138 (1951); Barrios v. Go Thong & Co., G.R. No. L-17192, March 30, 1963, 7 SCRA 535; Vda. de Zabaljaurregui v. Luzon Surety Co., G.R. No. L-16251, Aug. 31, 1963, 8 SCRA 740; Yepes v. Samar Express Transit, G.R. No. L-19815, May 19, 1966, 17 SCRA 91; Hernaez v. Kao, G.R. No. L-22370, May 27, 1966, 17 SCRA 296; Sadong v. GSIS, G.R. No. L-23448, Oct. 28, 1966, 18 SCRA 491; San Miguel Corp. v. Cruz, G.R. No. L-27828, Feb. 27, 1970, 31 SCRA 819; Central Cooperative Exchange v. Tibe, G.R. No. L-27972, June 30, 1970, 33 SCRA 593.

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