

**METROPOLITAN BANK AND TRUST COMPANY,
PLAINTIFF-APPELLEE, VS. EFREN I. ARNALDO AND RUBEN NAVEA,
DEFENDANTS, RUBEN NAVEA, DEFENDANT-APPELLANT.**

CV No. 93561, November 15, 2010

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Court of Appeals

The Case

On appeal by Ruben Navea ("Navea") is the Decision[1] dated April 30, 2009 of the Regional Trial Court of Makati City ("RTC")[2] in Civil Case No. 01-1309 for Sum of Money, entitled "Metropolitan Bank and Trust Company, Plaintiff, versus Efren I. Arnaldo and Ruben Navea, Defendants," the dispositive portion of which reads:

"Wherefore, in view of the foregoing considerations, the Court finds both defendants, jointly and severally, liable to pay the plaintiff, it hereby orders them to pay plaintiff the principal sum of P2,740,502.69 with interest at 15.19% per annum from October 16, 2000, until fully paid, plus cost of suit.

Moreover, defendant Navea is obligated to pay plaintiff to the extent of P3,390,000.00 only, inclusive of principal and interest; and in case, defendant Navea pays plaintiff, he is entitled to reimbursement from defendant Arnaldo for whatever amount defendant Navea pays plaintiff under this instant case with legal interest. (Article 2066 of the New Civil Code of the Philippines).

SO ORDERED."[3]

The Facts

This stems from an action for collection of sum of money filed by Metropolitan Bank & Trust Company ("Metrobank") against Efren I. Arnaldo ("Arnaldo") and Navea.

In its Complaint[4] dated July 23, 2001, Metrobank alleged that Arnaldo obtained from the bank two (2) loans in the aggregate amount of Three Million Six Hundred Sixty-Nine Thousand Four Hundred Four pesos and 43/ 100 (P3,669,404.48), as evidenced by two (2) promissory notes both dated December 6, 1999 identified as PN Nos. 477061 205087.2145.000.99 for P1,200,000.00, and 477062 205087.2153.000.99 for P2,469,404.48; as security for said loans, Arnaldo executed a Real Estate Mortgage dated August 15, 1996 for P1,200,000.00; also, a Continuing Surety Agreement between Arnaldo and appellant Navea, which held the latter "directly and solidarily" bound to pay Metrobank "any existing or future loans" that Arnaldo "obtained and may obtain" from the bank[5], was executed.

Metrobank likewise alleged that when Arnaldo defaulted in payment of his loans, it extrajudicially foreclosed his Real Estate Mortgage,[6] and purchased the property, as the highest bidder, for P1,296,180.00. The amount was applied to Arnaldo's total loan obligation less all the expenses incurred during foreclosure, leaving a balance of P3,608,696.52.[7]

Metrobank made demands from Arnaldo and Navea for the payment of said balance, but they remained unheeded. Hence, it filed the complaint for collection of said amount.[8]

In his Answer,[9] Arnaldo admitted the: (1) existence of his loan obligations; (2) execution of the promissory notes; (3) execution of the Real Estate Mortgage; and (4) execution of the Continuing Surety Agreement.[10] However, he denied to have defaulted in the payment of his loan obligations as they still have to fall due in 2004.[11]

Navea, on the other hand, averred in his "Answer with Compulsory Counterclaim and Cross-Claim against Efren Arnaldo"[12] that he had no involvement in the loans Arnaldo obtained from Metrobank,[13] and that he merely affixed his signature to the "blank standard forms" of Metrobank on the assurance of Arnaldo that "his signing them in blank was a mere formality and a mere accommodation with no corresponding obligation or responsibility to pay.[14] Navea likewise alleged that:

"4. * * * The truth of the matter is that: First, the principal obligation is not due and demandable because as clearly stated in the promissory notes as well as with its accompanying document entitled 'Disclosure Statement', the promissory notes are due and payable on November 30, 2004. Second: If ever there was a default, it is not the herein defendant who is in default. Third: The herein defendant did not receive any notice about the foreclosure proceedings taken by the plaintiff against the property of the defendant Efren I. Arnaldo. Fourth: The herein defendant did not receive any letter of demand or any communication of whatever nature, kind and character from the plaintiff, Fifth: the herein defendant could have taken the initiative to protect his rights and interests had it been properly informed of the claims or demands by the plaintiff."[15]

Pre-trial conference was conducted without awaiting the result of service of notice on Arnaldo in view of Navea's cross-claim,¹⁶ and the same was terminated on February 17, 2004, with the following issues submitted for the trial court's resolution:

"1)

Whether or not defendant Navea Shall be held liable on the amount claim[ed} by the plaintiff in the Complaint; and

2)

Whether or not defendant Navea should be reimbursed of whatever he might be ordered to pay the plaintiff by the principal defendant, Efren I. Arnaldo.[17]

Thereafter, trial on the merits ensued.

The Ruling of the RTC

On April 30, 2009, the RTC rendered its assailed Decision, stating thus:

"Resolving the case before us, it is a good guide to adopt the provisions of Article 1933 of the New Civil Code of the Philippines, it states: 'By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simple called a loan or mutuum.' It is undisputed that defendant Arnaldo entered into two contracts of loans, covered by the two subject promissory notes, Exhibit 'A' and 'B' including their sub-markings with a monthly payment of interest due and payable, hence failure on the part of defendant Arnaldo to pay the interest due and payable every month, made the whole obligation due and demandable. Thus, the filing of this Complaint was not premature, the loan obligation to pay has become [sic] due and payable, before the filing of this case on August 21, 2001.

Moreover, Article 1934 of the same Civil Code provides: 'An accepted promise to deliver something by way of

commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract.' Again, it is an admitted fact that the loan transactions were implemented from August 1996 to December 6, 1999 including the restructuring of the loans. Defendant Navea admitted having signed the subject Continuing Surety Agreement Exhibit 'F'; but in blank, (paragraph 3 of his Answer and during the pretrial proceedings). Thus, 'An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof.' (Sec. 4, Rule 129 of the Revised Rules of Court), is applicable in the instant case.

Furthermore, there is no iota of evidence submitted by the non-defaulting defendant to rebut the documentary exhibits, the two (2) promissory notes and the surety agreement. As a matter of fact, the loan transactions were admitted and the signing of the surety agreement. The defense that the loans are not yet due and demandable at the time this complaint was filed is without merit. Thus, this court adopts the ruling of the Supreme Court, it declared: 'As this Court has held, he who alleges a fact has a burden of proving it and a mere allegation is not evidence.' (P.T. Cerna Corp. vs. Court of Appeals, 221 SCRA 19, 25, citing the case of Rodriguez vs. Valencia, 81 Phil. 787).

Finally, the allegation of defendant Navea that he signed the Continuing Surety Agreement in blank is also without merit. Defendant Navea is a branch manager of a prestigious insurance company when he signed the subject Surety Agreement, hence he cannot claim that defendant Navea did not know what he was executing then, otherwise, the pronouncement of the Supreme Court in the case of BA Finance Corporation vs. Intermediate Appellate Court [217 SCRA 261 (January 20, 1993)] shall be applied to him, it said: 'An experienced businessman who signs important legal papers cannot disclaim the consequent liabilities therefore after being a signatory thereon. The explanation purportedly advanced by the private respondent to support his act of signing haphazardly is flimsy and unacceptable.' [Citing the case of People's Financing Corporation vs. Court of Appeals, 192 SCRA 34 (1990)].

On the defense of no notice was sent to defendant Navea, this court hereby adopts the ruling of the Supreme Court in the case of Sps. Mario and Corazon Villalva vs. RCBC Savings Bank (G.R. No. 165661, August 28, 2006), it enumerated when demand is not necessary, as follows:

- When the obligation or the law expressly so declares;
- When from the nature and circumstances of the obligation it appears that the designation of the time when the thing to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- When demand would be useless, as when the obligor has rendered it beyond his power to perform.

The surety agreement provided for waiver 'in giving any notice to, or of making any claim or demand upon the Surety', hence number one stated above is present in the instant case. Moreover, under the surety agreement, it further provides for the 'Surety hereby consents and agrees that the Creditor may at anytime, or from time to time, in its discretion: (1) extend or change the time of payment, and/ or the manner, place or terms of payment of all or any such loans, credits, overdrafts, advances, discounts and/or credit accommodations or any renewal, extension, modification, or amendment thereof;' Thus, the defenses advanced by defendant Navea were untenable. It is noted further, [that] the obligation of defendant Navea under his surety agreement (Exhibit 'F') is that of the surety and not of a guarantor. (Tiu Hiong Guan vs. Metropolitan Bank and Trust Company, G.R. No. 144339, August 9, 2006).

As a final note, the Supreme Court has ruled: 'well-settled that the creditor is allowed to recover the deficiency from the sale of the property. In a number of cases, this Court held that where the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim deficiency from the debtor.' (Cunada vs. Drilon, 432 SCRA 618, 625, citing the case of Statement Investment

House, Inc. vs. Court of Appeals, 217 SCRA 32, 39). Thus, the defense put forward by defendant Arnaldo is quite not tenable.

With regards [sic] to the penalty charge imputed by the plaintiff, this court decided not to grant any penalty charge in favor of the plaintiff based on the pronouncement of the Supreme Court in the case of DBP vs. Court of Appeals, G.R. No. 13755, October 30, 2000, it said: 'Article 1229 of the Civil Code states that "Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable." In *Palmares vs. Court of Appeals*, the Court eliminated altogether the payment of the penalty charge of 3% per month for being excessive and unwarranted under the circumstances.' Thus, it is only the agreed interest rate being considered by this court.

This court is also not inclined to grant plaintiff attorney's fees under the principle of 'it is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.' (*Inter-Asia Investments Industries, Inc. vs. Court of Appeals*, G.R. No. 125778, (June 10, 2003), citing the case of *Central Azucarera de Bais vs. Court of Appeals*, 188 SCRA 328 (1990)).

With regards [sic] to the amount as deficiency claim, the computed amount made by Ms. Dy is the correct and proper amount of principal in the sum of P2,740,502.69 plus interest of 15.19% per annum from October 16, 2000 until fully paid, (page 180 of the rollo)."[18]

and disposed the case as follows:

Wherefore, in view of the foregoing considerations, the Court finds both defendants, jointly and severally, liable to pay the plaintiff, it hereby orders them to pay plaintiff the principal sum of P2,740,502.69 with interest at 15.19% per annum from October 16, 2000 until fully paid, plus cost of suit.

Moreover defendant Navea is obligated to pay plaintiff to the extent of P3,390,000.00 only, inclusive of principal and interest; and in case, defendant Navea pays plaintiff, he is entitled to reimbursement from defendant Arnaldo for whatever amount defendant Navea pays plaintiff under this instant case with legal interest. (Article 2066 of the New Civil Code of the Philippines).

SO ORDERED."[19]

Aggrieved, Navea interposed this appeal.[20]

Issues:

Navea argued in his Brief that the RTC committed reversible errors:

"I. ... IN HOLDING THAT APPELLANT NAVEA WAS LIABLE FOR THE AMOUNTS CLAIMED BY APPELLEE BANK IN CONTRAVENTION OF THE LAW AND JURISPRUDENCE.

II. ... WHEN IT FAILED TO TAKE INTO CONSIDERATION FACTUAL MATTERS THAT WERE RELEVANT TO THE COMPLETE DETERMINATION OF THE ISSUES BEFORE IT.

III. ... WHEN IT FAILED TO AWARD DAMAGES AND ATTORNEY'S FEES TO APPELLANT EVEN IF DEFENDANT-CROSS DEFENDANT NEVER APPEARED IN COURT AND PRESENTED ANY EVIDENCE."[21]

Such are the issues submitted for Our resolution.

OUR RULING

Navea claims that he can only be made liable under the surety agreement he executed for the loan Arnaldo obtained from Metrobank in the amount of P1,200,000.00.[22] He maintains that "what was purported to be the continuing surety agreement" "can only find application as regards the first loan, the one for which the principal debtor [Arnaldo] has secured by a real estate mortgage on August 15, 1996, *** but which the court ignored ***,[23] arguing that in case of a "modificatory" novation, and no consent of the surety was obtained, the latter can only be made liable for the original obligations when the modified obligation becomes more onerous than the first one.[24]

Likewise, Navea claims that with the institution of the present action which "caused him to suffer sleepless nights" and which "greatly affected his good credit standing with financial institutions", an award of damages is in order.[25]

We are not impressed.

The case at bar involves an action for collection of sum of money on account of a loan obtained by Arnaldo from Metrobank, as evidenced by two (2) promissory notes, a loan obligation which was covered by a real state mortgage and a surety agreement executed by Arnaldo and appellant Navea in favor of Metrobank.[26]

Although the two (2) promissory notes were still due on November 30, 2004, Arnaldo's failure to pay the monthly interests due thereon accelerated the maturity of said promissory notes making them "due and payable", thus:

"If default be made in the payment of any installment and/or interest and other charges on this note as and when the same become due and payable or of any obligation which I/we may owe to the Bank ***, or fail in the performance or observance of any agreement or condition resulting in the accelerated maturity of the whole obligation thereunder, or if in the opinion of the Bank, the payment of my/our obligation becomes doubtful for whatever reason then, or at any time after the happening of any such event, the entire principal, interest and other charges due on this note, at the option of the Bank and without notice to me/us shall immediately become due and payable. ****"[27] (emphasis Ours)

So with the Continuing Surety Agreement which Navea executed, viz.:

"NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES, the SURETY, solidarily with the PRINCIPAL, binds himself/itself to the CREDITOR, its successors or assigns, to pay any and all loans, credits, overdrafts, advances, discounts and/or other credit accommodations, or which the PRINCIPAL, as maker, endorser, acceptor, or otherwise may now be indebted of may hereafter become indebted to the CREDITOR, upon all or any instruments under said obligations, either as new, additional, renewal, extension, modification and/or amendment, ***, provided however, that the liability of the SURETY shall not exceed the principal sum of PESOS:

THREE MILLION THREE HUNDRED NINETY THOUSAND (3,390,000.00)

Philippine Currency plus interests thereon at the rate rates stated in the obligation secured thereby, any or all penalties, costs and expenses which may be incurred by the CREDITOR in granting and/or collecting the aforesaid obligations/indebtedness/ instruments, and including those for the custody, maintenance and preservation of the securities given therefor, as maybe incurred by the CREDITOR before or after the date of this Surety Agreement.

Both the PRINCIPAL and the SURETY shall be considered in default when either or both fail to pay an obligation upon maturity or any amortization, with or without demand.***

The SURETY hereby waives notice of acceptance of this SURETY AGREEMENT, and also presentment,

demand, protest and notice of dishonor/non-payment of any and all such instruments, loans, advances, credits or other indebtedness or obligations herein referred to, and promptness in commencing suit against any party thereto or liable thereon, and/or in giving any notice to, or of making claim or demand upon the SURETY.

The liability of the SURETY shall be solidary, direct and immediate and not contingent upon the pursuit by the CREDITOR of whatever remedies it may have against the PRINCIPAL or the securities or liens it may possess and the SURETY will at any time, whether due or not due, pay to the CREDITOR with or without demand upon the PRINCIPAL, any of the loans, indebtedness or other obligations hereby secured. ***." [28] (emphasis Ours)

It is settled that the liability of the surety is determined strictly on the basis of the terms and conditions set out in the surety agreement.[29] From the provisions of the afore-quoted surety agreement, it is clear that Navea held himself solidarily liable with Arnaldo in the payment of the latter's obligations to Metrobank to the extent of Three Million Three Hundred Ninety Thousand pesos (P3,390,000.00), and not merely One Million Two Hundred Thousand pesos (P1,200,000.00),[30] as he likes this Court to believe.

Navea's argument that the "continuing surety agreement" he executed refers only to the "first loan" that Arnaldo obtained from Metrobank,[31] cannot be given credence as again, in the surety agreement he executed, he obligated himself to pay "solidarily with the Principal *** the principal sum of Pesos: Three Million Three Hundred Ninety Thousand (3,390,000.00)***." Even if, arguendo, he affixed his signature on the surety agreement in blank, the undisputed fact remains that he freely and voluntarily signed said "continuing" surety agreement. [32]

In this jurisdiction, a continuing guaranty is one which covers all transactions, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof.[33] This is clear from the undertaking in the surety agreement which Navea signed, thus:

"[T]he SURETY, solidarily with the PRINCIPAL, binds himself/itself to the CREDITOR, its successors or assigns, to pay any and all loans, credits, overdrafts, advances, discounts and/or other credit accommodations, or which the PRINCIPAL, as maker, endorser, acceptor, or otherwise may now be indebted or may hereafter become indebted to the CREDITOR, upon all or any instruments under said obligations, either as new, additional, renewal, extension, modification and/or amendment. ***"[34] (emphasis and underscoring Ours)

While the surety's obligation cannot be extended by implication or enlarged by construction beyond the terms of the agreement entered into, the rule however is-when a surety's obligation is clearly established, the courts will enforce it in the same manner as they do other obligations. It is never the courts' duty to aid the surety to escape liability by technical and hypercritical construction, or a forced and unreasonable one.³⁵ Thus, Navea's liability on the Continuing Surety Agreement, as correctly found by the RTC, stands.

Finally, Navea's argument that he is entitled to damages and attorney's fees is not persuasive. His allegations of "sleepless nights" and effect on "his good credit standing with financial institutions"[36] were not borne by a malicious prosecution,[37] nor justified by those as enumerated in Articles 2219 and 2208 of the Civil Code.

Wherefore, the appeal is Dismissed. The assailed April 30, 2009 Decision of the RTC is hereby Affirmed.

SO ORDERED.

Acosta and Macalino,[*] JJ., concur.

[*] Court of Appeals Reports Annotated, Vol. 49.

[*] Acting Junior Member, per Office Order No 310-10-ABR dated October 22, 2010.

[1] Rollo pages 68-74.

[2] Branch 149, Judge Cesar Untalan.

[3] Rollo, page 74.

[4] Records, pages 1-5.

[5] Records, page 2.

[6] Ibid.

[7] Records, page 3.

[8] Ibid. cf. Exhibits "J" and "K", Records, pages 244-247.

[9] Records, pages 35-37.

[10] Ibid., page 35.

[11] Ibid., page 36.

[12] Ibid., page 59-64.

[13] Records, page 59.

[14] Ibid., page 60.

[15] Ibid.

[16] Ibid., page 105.

[17] Records, page 130.

[18] Rollo, pages 71-74.

[19] Ibid., page 74.

[20] Ibid., pages. 44-64.

[21] Rollo, page 52.

[22] Ibid., page 57.

[23] Rollo, page. 58.

[24] Ibid., citing Paras, Edgardo L., Civil Code of the Philippines, Vol. IV, 1981, p. 386.

[25] Rollo, page 61.

[26] Note 4, *supra*.

[27] See Exhibit "A"; Records page 260.

[28] See Exhibit "F"; Records page 268.

[29] *Tiu Hiong Guan vs. Metropolitan Bank and Trust Company*, G.R. No. 144339, August 9, 2006, citing *Trade and Investment Development Corp. of the Phils, v. Roblett Industrial Construction Corp.*, G.R. No. 139290,

November 11, 2005, 474 SCRA 510, 526, [further citations omitted].

[30] See Rollo, page 57.

[31] Ibid, page 58.

[32] See Huang vs. Court of Appeals, 236 SCRA 420, 427 (1994).

[33] Dino vs. Court of Appeals, 216 SCRA 9, 17 (1992).

[34] Note 27, *supra*.

[35] 74 Am. Jur. 2D Suretyship Sec. 23.

[36] Rollo, p. 61.

[37] Article 2219(8), Civil Code.

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