

**CARLOS H. REYES AND CA-G.R. CV NO. 94848 BERNARDITA REYES,
PLAINTIFFS-APPELLEES, VS. PHILIPPINE BUSINESS BANK, DOMINGO
CARILLO, JR., ATTY. STEPHEN Z. TAALA AND CONRAD L. ROBLES,...**

Ponente: VILLON, J.

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VILLON, J.:

This is an ordinary appeal under Rule 41, Section 2 (a) of the 1997 Rules of Civil Procedure, as amended, from the decision[1] dated February 26, 2010 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 61, Makati City in Civil Case No. 00-753 for “Collection of Sum of Money and Damages.”

The factual and procedural antecedents of the case are as follows:

On July 21, 1999, appellant Domingo Carillo, Jr. (Carillo) obtained a loan from appellant Philippine Business Bank (PBB) in the amount of P2,000,000.00 (or “subject loan”). In relation thereto, a Promissory Note, denominated as Loan No.-Sac-452-99 was executed by Carillo with appellee Carlos H. Reyes (Carlos) affixing his signature therein as co-maker.[2]

Then, on July 28, 1999, in order to further secure payment of subject loan, Carlos executed two (2) documents denominated Deed of Assignment[3] in favor of PBB, over US\$50,000.00 which was covered by Dollar Time Deposit Account No. 0655[4] in his name. On the same day, PBB issued to Carlos a Credit Advice informing him of the deposit of the net proceeds of subject loan, in the amount of P1,971,700.00, to PBB Account No. 011-01-000019-1, likewise under his name.[5] This amount was also reflected on the Statement of Account of Carlos[6] with the said bank.

On February 17, 2000, PBB, through counsel appellant Atty. Stephen Z. Taala (Atty. Taala), sent Carillo a demand letter as a result of the latter's failure to pay the monthly amortizations on subject loan. Thus:

“Despite repeated reminders, both oral and written, you have failed to settle your outstanding accounts. I hereby formally demand that you pay within ten [10] days from receipt of this letter, the amount of Php 3,223,108.09. Failure on your part to do so will constrain me to take appropriate judicial as well as extra-judicial action in order to protect the interests of my client.

I would like to remind you that MR. CARLOS REYES has stood by you and has even lent his name and property as surety for the faithful performance of your obligations in favor of Philippine Business Bank, Inc. My client therefore has all the right to go after the properties of MR. CARLOS REYES as well in case you fail to pay. I am sure you do not want to put him through all this trouble.”[7]

On even date, PBB likewise sent Carlos a letter asking for his assistance in the settlement of Carillo's loan obligation, to wit:

“I am writing in behalf of my client Philippine Business Bank, Inc. who referred to me the matter of the outstanding obligation of MR. DOMINGO CARILLO JR. in the amount of Php2,000,000.00 which fell due on July 21, 1999. Despite repeated demands, he has failed to make good his promise to pay the same.

In view whereof, I would like to seek your assistance in the collection of the aforesaid amount, considering that you signed your name as co-maker of said obligation. Please refer to attached copy of the promissory note signed by you and Mr. Carillo, Jr.

I have written Mr. Carillo Jr. regarding this matter and have given him ten days from receipt of said letter within which to pay his outstanding obligation. I am afraid that if within the said period he fails to pay, I will be constrained to collect the amount of Php2,000,000.00 from you.”[8]

On April 26, 2000, appellees informed PBB that they would withdraw their money under Dollar Time Deposit No. 0655 upon its maturity on May 22, 2000.[9] However, on May 16, 2000, PBB informed appellees that it was applying their US\$50,000.00 deposit, under the said account, against Carillo's outstanding loan obligation. Thus:

“I regret to inform you that despite repeated reminders and pleas with Mr. Carillo Jr., he has failed to make good on his promise to settle his outstanding obligation. Pursuant to your undertaking as co-maker, Philippine Business Bank, Inc. has no other option but to collect the amount of Php2,000,000.00 from you.

Your deposit account in the amount of \$50,000.00, which you have duly assigned to Philippine Business Bank, Inc., as security for the obligation which you have co-signed with Mr. Carillo, Jr., will thus be applied to the outstanding obligation.”[10]

On June 8, 2000, appellees made a formal demand upon PBB that they be allowed to withdraw their dollar deposit with PBB, to no avail.[11] Thus, appellees instituted the instant case on June 20, 2000.[12] After service of summons, appellants PBB and Atty. Taala filed their answer to the complaint. Carillo and Conrad L. Robles, who were included as defendants in the case below, were declared in default.[13]The case was set for pre-trial on October 22, 2008.[14]

On November 21, 2008, the case was referred to the Philippine Mediation Center (PMC) for the purpose of reaching an amicable settlement.[15] Said mediation, however, proved futile.[16] Hence, pre-trial continued.[17]

On March 2, 2009, the court a quo issued a Pre-Trial Order stating, among others, the following stipulation of facts:

“There being no possibility of an amicable settlement at this point in time notwithstanding herculean efforts by the Court, the parties proceeded with the other mandated aspects of the Pre-Trial and made the following admissions of facts, to wit:

1. The capacity of the parties in this case;
2. That on 21 July 1999, the defendant Philippine Business Bank extended a P2 million loan to defendant Domingo Carillo Jr. secured by a Real Estate Mortgage;
3. That as per condition for the release of the loan proceeds, the defendant Philippine Business bank required defendant Domingo Carillo Jr. to secure a guarantor;
4. That the bank required that the loan be secured by sufficient collaterals;
5. That the plaintiffs obtained three [3] successive loans apropos their dollar deposits;
6. That on 17 February 2000, defendant Atty. Stephen Taala charged plaintiff Carlos Reyes with the burden of collecting the P2 million debt of defendant Domingo Carillo Jr.;
7. That on 26 April 2000, the plaintiffs made known their intention to withdraw their dollar deposits from defendant Philippine Business Bank;
8. That on 16 May 2000, the plaintiffs were surprised when they received a letter from defendant Conrad

Robles making good the threat of defendant Atty. Stephen Taala of collecting the P2 million debt of defendant Domingo Carillo, Jr. by applying their 50 thousand dollar deposit;

9. That when the plaintiffs tried to withdraw their dollar time deposit by presenting all pertinent documents on 22 May 2000, the defendant Philippine Business Bank did not allow it;

x x x x x x x x"[18]

Then, the RTC rendered a decision on February 26, 2010 against appellants, the dispositive portion of which reads:

"WHEREFORE, the foregoing premises duly considered, judgment is hereby rendered ordering the herein defendant Philippine Business Bank [PBB] to PAY the herein plaintiffs Carlos H. Reyes and Bernardita Reyes [Mr. and Ms. Reyes] the sum of FIFTY THOUSAND United State (sic) of America Dollars [US\$50,000.00], or its Philippine Peso equivalent of Two Million One Hundred Twenty-Five Thousand [P2,125,000.00]; as and for actual damages, with interest of one percent 1% per month from May 2000 up to the time it is fully paid.

The instant civil action is hereby DISMISSED as against the defendants Atty. Stephen Z. Taala [Atty. Taala], Conrad C. Robles [Mr. Robles] and Domingo Carillo Jr. [Mr. Carillo] for egregious lack of evidence.

No pronouncement as to moral and exemplary damages, attorney's fees and litigation expenses.

Costs de officio.

SO ORDERED."[19]

Seeking the reversal of the assailed decision, appellants PBB and Atty. Taala ascribe to the court a quo the following errors:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN HOLDING THAT:

a)

PBB AND ATTY. TAALA IMPLICITLY ADMITTED THAT MR. REYES WAS A MERE GUARANTOR.

b)

MR. REYES WAS A MERE GUARANTOR AND NOT A CO-MAKER SUBSIDIARILY LIABLE WITH MR. CARILLO.

c)

THAT THE PLAINTIFFS-APPELLEES ARE THUS ENTITLED TO RECOVER THE US \$50,000 APPLIED BY PBB IN PAYMENT OF MR. CARILLO'S LOAN.[20]

Appellants contend that when PBB required Carillo to secure a "guarantor" as a condition for the release of the proceeds of the subject loan, the same should be understood in its loose or generic sense, and not in the context of the word as defined in Article 2047 of the Civil Code; and that Carlos was actually a surety in the loan transaction, he having signed the Promissory as co-maker and together with Carillo, "jointly and severally" promise to pay PBB the sum of P2,000,000.00. In contrast, appellees maintain that Carlos was a mere guarantor who was denied the benefit of excussion and that such was impliedly admitted by appellants during the pre-trial of the case.

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. If a person binds himself solidarily with the principal debtor, the

contract is called suretyship.[21] A surety is an insurer of the debt; he promises to pay the principal's debt if the principal will not pay.[22] Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. In both contracts, there is a promise to answer for the debt or default of another. However, in this jurisdiction, they may be distinguished thus:

- A surety is usually bound with his principal by the same instrument executed at the same time and on the same consideration. On the other hand, the contract of guaranty is the guarantor's own separate undertaking often supported by a consideration separate from that supporting the contract of the principal; the original contract of his principal is not his contract.
- A surety assumes liability as a regular party to the undertaking; while the liability of a guarantor is conditional depending on the failure of the primary debtor to pay the obligation.
- The obligation of a surety is primary, while that of a guarantor is secondary.
- A surety is an original promisor and debtor from the beginning, while a guarantor is charged on his own undertaking.
- A surety is, ordinarily, held to know every default of his principal; whereas a guarantor is not bound to take notice of the non-performance of his principal.
- Usually, a surety will not be discharged either by the mere indulgence of the creditor to the principal or by want of notice of the default of the principal, no matter how much he may be injured thereby. A guarantor is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.[23]

The appeal is impressed with merit.

When the parties admit the contents of written documents but put in issue whether these documents adequately and correctly express the true intention of the parties, the deciding body is authorized to look beyond these instruments and into the contemporaneous and subsequent actions of the parties in order to determine such intent. Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails, for the intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies, or ambiguities.[24]

In the instant case, Carlos solidarily bound himself with Carillo relative to the latter's loan obligation with PBB. The promissory note which he signed with Carillo as co-maker, to wit:

“FOR VALUE RECEIVED, We/I jointly and severally promise to pay _____ [359] days after date/on demand to PHILIPPINE BUSINESS BANK ['Business Bank'] or its order at Business Bank's offices at Kalookan, Philippines, the sum of *TWO MILLION* [P2,000,000.00], Philippine currency, with interest from the date hereof at the following rate xxx

xxx xxx xxx

(signed)

CARLOS REYES

[Co-Maker]

(signed)

DOMINGO CARILLO JR.

[Maker-Borrower/Assignor],”[25]

clearly establishes that the parties entered into a surety agreement as defined under Article 2047 of the Civil Code.

Thus:

“Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.” (Underscoring supplied).

As provided for in Article 2047, in a surety agreement the surety undertakes to be bound solidarily with the principal debtor.[26] Suretyship, in essence, contains two types of relationship – the principal relationship between the obligor (Carillo) and the obligee (PBB), and the accessory surety relationship between the principal (PBB) and the surety (Carlos). In this arrangement, the obligee accepts the surety’s solidary undertaking to pay if the obligor does not pay.[27] Illustrative at this juncture is *Republic Planters Bank v. Court of Appeals*,[28] viz.:

“Under the Negotiable Instruments Law, persons who write their names on the face of promissory notes are makers and are liable as such. By signing the notes, the maker promises to pay to the order of the payee or any holder according to the tenor thereof. Based on the above provisions of law, there is no denying that private respondent Fermin Canlas is one of the co-makers of the promissory notes. As such, he cannot escape liability arising therefrom.

Where an instrument containing the words 'I promise to pay' is signed by two or more persons, they are deemed to be jointly and severally liable thereon. An instrument which begins with 'I', 'We', or 'Either of us' promise to, pay, when signed by two or more persons, makes them solidarily liable. The fact that the singular pronoun is used indicates that the promise is individual as to each other; meaning that each of the co-signers is deemed to have made an independent singular promise to pay the notes in full.

In the case at bar, the solidary liability of private respondent Fermin Canlas is made clearer and certain, without reason for ambiguity, by the presence of the phrase 'joint and several' as describing the unconditional promise to pay to the order of Republic Planters Bank. A joint and several note is one in which the makers bind themselves both jointly and individually to the payee so that all may be sued together for its enforcement, or the creditor may select one or more as the object of the suit. A joint and several obligation in common law corresponds to a civil law solidary obligation; that is, one of several debtors bound in such wise that each is liable for the entire amount, and not merely for his proportionate share. By making a joint and several promise to pay to the order of Republic Planters Bank, private respondent Fermin Canlas assumed the solidary liability of a debtor and the payee may choose to enforce the notes against him alone or jointly with Yamaguchi and Pinch Manufacturing Corporation as solidary debtors.” (Emphasis Ours)

As surety, Carlos bound himself to pay jointly and severally with Carillo as regards the latter's obligation to PBB. A surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations constituted by the latter.[29] He does not insure the solvency of the debtor, but rather the debt itself.[30]

Furthermore, the primary consideration in determining the true nature of a contract is the intention of the parties. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[31] It must be stressed that Carlos signed to (2) documents denominated Deed of Assignment in favor of PBB, over US\$50,000.00 under his Dollar Time Deposit No. 0655, to serve as additional security for subject loan. The proceeds of the loan were credited to the bank account owned by Carlos[32] – then withdrawn by him immediately after it was so credited.[33] Undoubtedly, Carlos reaped benefits out of this arrangement as a surety. Accordingly, when the outstanding loan obligation of Carillo became due and demandable, PBB may already make a claim directly against Carlos. This is so as he is not entitled to the benefit of excussion or prior exhaustion of the property of the debtor.[34]

It is a familiar doctrine in obligations and contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to, which is the law between them, the only limitation being that these stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy.[35] In *Consolidated Industrial Gases, Inc. v. Alabang Medical Center*,[36] the Supreme Court again applied this principle when it ruled in favor of the sanctity of contracts. Thus:

“It is hornbook doctrine in the law on contracts that the parties are bound by the stipulations, clauses, terms and conditions they have agreed to provided that such stipulations, clauses, terms and conditions are not contrary to law, morals, public order or public policy. In the present case, we find no legal proscription infringed by the terms and conditions of the contracts between AMC and CIGI. As such, the said terms and conditions must be held to be the law between them and the parties are bound to fulfill what has been stipulated.

CIGI cannot be permitted to disregard the binding effect of the contracts it voluntarily assumed by conveniently renouncing its above-mentioned contractual commitments. Otherwise, the sanctity of its contracts with AMC will be defiled.”

In the same vein, the Promissory Note and Deeds of Assignment that Carlos willingly entered into are lawful contracts, by the provisions of which he must be bound. He identified himself as co-maker and used his own dollar deposit with PBB as security for the payment of the subject loan. Likewise, the underlying facts and circumstances show that Carlos benefited from these agreements because the proceeds of the subject loan were in fact deposited in, and subsequently withdrawn by him from his personal bank account. Hence, the inevitable conclusion is that Carlos is solidarily liable with Carillo for the payment of the subject loan which the latter secured from PBB.

Moreover, the Civil Code provides that compensation shall take place when two persons, in their own right, are creditors and debtors of each other.[37] Compensation is a mode of extinguishing to the concurrent amount the obligations of persons who in their own right and as principals are reciprocally debtors and creditors of each other. Legal compensation takes place by operation of law when all the requisites[38] are present, as opposed to conventional compensation which takes place when the parties agree to compensate their mutual obligations even in the absence of some requisites.[39] In the instant case, when Carlos deposited the amount of US\$50,000.00 with PBB, the latter became his debtor. In turn, Carlos became the debtor of PBB when Carillo defaulted in the payment of subject loan. Thus, through legal compensation, the herein parties' respective obligations to each other, to the concurrent amount, are extinguished.

The well-settled rule that factual findings of trial courts deserve respect, sometimes even finality, is based on the postulate that they had the distinct opportunity, not available to the reviewing courts, to hear the testimonies of witnesses and to observe their conduct and demeanor on the stand. But where the factual assessments refer to documents that are available to the scrutiny of appellate courts in the same manner that they were to the lower courts, this reliance does not apply,[40] as in this case.

WHEREFORE, in light of all the foregoing, the decision dated February 26, 2010 of the Regional Trial Court of Makati City in Civil Case No. 00-753 is hereby REVERSED and SET ASIDE. Accordingly, the complaint filed by plaintiffs-appellees Carlos H. Reyes and Bernardita Reyes is hereby ordered DISMISSED.

SO ORDERED.

Macalino, and Corales, JJ., concur.

- [1] Rollo, pp. 17-38; penned by Judge J. Cedrick O. Ruiz.
- [2] Records, p. 588.
- [3] Records, pp. 510 and 583.
- [4] Records, p. 511.
- [5] Records, p. 584.
- [6] Records, p. 585.
- [7] Records, p. 587.
- [8] Records, p. 512.
- [9] Records, p. 513.
- [10] Records, p. 514.
- [11] Records, pp. 516-517.
- [12] Records, pp. 1-4.
- [13] Records, p. 424.
- [14] Records, p. 435.
- [15] Records, pp. 459-460.
- [16] Records, p. 470.
- [17] Records, p. 471.
- [18] Records, p. 482.
- [19] Rollo, pp. 650-651.
- [20] Records, p. 128.
- [21] Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc., G.R. No. 140047, July 13, 2004.
- [22] Chester Babst v. Court of Appeals, G.R. Nos. 99398 & 104625, January 26, 2001.
- [23] Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc., G.R. No. 140047, July 13, 2004.
- [24] Salun-at Marquez v. Eloisa Espejo, G.R. No. 168387, August 25, 2010.
- [25] Records, p. 588.
- [26] Salvador P. Escaño v. Rafael Ortigas, Jr., G.R. No. 151953, June 29, 2007.
- [27] Asset Builders Corporation v. Stronghold Insurance Company, Inc., G.R. No. 187116, October 18, 2010.
- [28] G.R. No. 93073, December 21, 1992.
- [29] Tiu Hiong Guan v. Metropolitan Bank & Trust Co., G.R. No. 144339, August 9, 2006.

- [30] Roberto Totanes v. China Banking Corporation, G.R. No. 179880, January 19, 2009.
- [31] Spouses Exequiel Lopez and Eusebia Lopez v. Spouses Eduardo Lopez and Marcelina R. Lopez, G.R. No. 161925, November 25, 2009.
- [32] Records, p. 205.
- [33] Records, p. 206.
- [34] Fideliza J. Aglibot v. Ingersol L. Santia, G.R. No. 185945, December 05, 2012.
- [35] Prisma Construction and Development Corporation v. Arthur F. Menchavez, G.R. No. 160545, March 9, 2010.
- [36] G.R. No. 181983, November 13, 2013.
- [37] Selwyn F. Lao v. Special Plans, Inc., G.R. No. 164791, June 29, 2010.
- [38] Article 1279. In order that compensation may be proper, it is necessary:
- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
 - (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
 - (3) That the two debts be due;
 - (4) That they be liquidated and demandable;
 - (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.
- [39] Mavest (U.S.A.) Inc. v. Sampaguita Garment Corporation, G.R. No. 127454, September 21, 2005.
- [40] Nora J. Jimenez v. Commission on Ecumenical Mission and Relations of the United Presbyterian Church in the United States of America, G.R. No. 140472, June 10, 2002.

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