

**METROPOLITAN BANK & TRUST COMPANY,
PLAINTIFF-APPELLEE, VS. ASTRO STEEL MANUFACTURING, CO.,
INC., MANUEL GO KIAN AN, SORIANO GO KIAN HUA &
FLORENCIO GO KIAN TIU, DEFENDANTS-APPEL...**

Ponente: REYES, JR., A. J.

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REYES, JR., A. J.:

In this ordinary appeal, defendants-appellants Astro Manufacturing Co., Manuel Go Kian-An, Soriano Go, Kian Hua and Florencio Go Kian Tiu seek the reversal of the 15 July 2005 Decision of the Makati Regional Trial Court, Branch 64, in Civil Case No. 99-159, the fallo of which reads:

“WHEREFORE, in view of the foregoing, this Court finds the defendants Astro Steel Manufacturing Co., Inc., Manuel Go Kian An, Soriano Go Kian Hua and Florencio Go Kian Tiu jointly and severally liable to plaintiff Metropolitan Bank and Trust Company, and defendants are ordered to pay plaintiff the following:

- P8,745,554.92 inclusive of the interest and penalty charges as of September 16, 1998, plus 12% interest per annum from the date of filing of the complaint until full payment is made.
- The sum equivalent to ten percent (10%) of the amount of the award as and by way of attorney’s fees; and
- The Cost of suit.

SO ORDERED.” (Records, p. 532)

As correctly culled by the trial court, the antecedent facts of the case are as follows:

“xxx xxx xxx.

This is a complaint for collection of sum of money filed by plaintiff Metropolitan Bank & Trust Company (plaintiff Bank) on January 25, 1999 against defendants Astro Steel Manufacturing Co., Inc., (ASTRO STEEL) Manuel Go Kian An, Soriano Go Kian Hua and Florencio Go Kian Tiu.

The complaint proceeds from the claim of plaintiff that defendants have an unpaid obligation to plaintiff as evidenced by Promissory Notes No.39956 BD-Bdo-58/98, and 159948 BD-Bdo-80/98 (Exhibits ‘A’ and ‘B’). The individual defendants are jointly and solidarily liable with defendant ASTRO pursuant to the continuing Surety Agreements signed by them in favor of plaintiff Bank (Exhibits ‘C’ and ‘D’) which secured the loan obligations of ASTRO. Plaintiff prays that judgment be rendered in favor of plaintiff and against defendants ordering them jointly and severally pay the following amounts:a.) The sum of EIGHT MILLION SEVEN HUNDRED FORTY FIVE THOUSAND FIVE HUNDRED FIFTY FOUR PESOS AND 92/100 (P8,745,554.92), as of September 15, 1998, broken down as follows:

xxx xxx xxx.

- plus the stipulated interest, penalty and other bank charges from September 16, 1998 until fully paid.
- b.) The sum equivalent to ten percent (10%) of the total amount due under the two (2) Causes of Action as and

by way of attorney's fees; and

c.) The costs of suit and expenses litigation.

In their Answer which they filed on March 10, 1999 they admit that Astro Steel obtained for its account, two (2) loans in the amount of P6,000,000.00 and P1,500,000.00 covered by two (2) promissory notes (Exhibits 'A' and 'B') aforementioned. However, the individual defendants executed the continuing Surety Agreements (Exhibits 'C' and 'D') merely as accommodation guarantor, as in fact, no valuable consideration was received by them from plaintiff.

Defendants also aver that the filing of complaint was premature as there was no prior demand; and that the money claims plaintiff sought to recover are 'terribly unconscionable and unreasonable and inaccurate as there were payments made by defendant Astro Steel.

For their part defendants pray that judgment be rendered in their favor and against plaintiff by:

'1. dismissing the complaint;

2. Ordering the plaintiff to pay defendants their actual, moral and exemplary damages, including attorney's fees and costs of litigation in such amounts as this Honorable Court may award.'

xxx." (Records, pp. 523-525)

After trial, the court a quo made the following findings of facts: (1) Defendants-appellants failed to pay their loan obligations as evidenced by two (2) Promissory Notes: PN No. 39956 BD-Bdo-58/98 and PN No. 159948 BD-Bdo-80/98 in the amount of Six Million Pesos (P6,000,000.00) and One Million Five Hundred Thousand Pesos (P1,500,000.00), respectively;[1] (2) That as of 15 May, 1999, the total obligation amounted to P10,841,675.17 inclusive of interest and penalties as of said date and exclusive of attorney's fees and cost of litigation;[2] (3) Plaintiff-appellee, thru counsel, sent demand letters for the payment of defendants-appellants' outstanding obligation;[3] (4) the liability of each defendant-appellant rests upon the application of the Continuing Surety Agreements signed by them in favor of plaintiff-appellee on 20 October 1994 and 11 December 1995.[4]

Based on these actual findings, the court a quo disposed the case in favor of the plaintiff-appellee when it issued the herein assailed decision, the fallo of which was quoted at the outset.

Thus, the present appeal, defendants-appellants raising the following assignment of errors, viz.:

I.

THE TRIAL COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT DESPITE FAILURE OF THE HEREIN PLAINTIFF-APPELLEE TO PROVE THAT IT HAS CAUSE OR CAUSES OF ACTION AGAINST HEREIN DEFENDANTS-APPELLANTS;

II.

THE TRIAL COURT A QUO ERRED IN RULING THAT DEFENDANTS-APPELLANTS MANUEL GO KIAN-AN, SORIANO GO KIAN HUA AND FLORENCIO GO KIAN TIU ARE PERSONALLY LIABLE TO PLAINTIFF-APPELLEE AS SURETY;

III.

THE TRIAL COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT DESPITE THE APPARENT ABSENCE OF AUTHORITY BY ATTY. EDMUNDO SAN JUAN TO SIGN THE VERIFICATION AND CERTIFICATION ON NO-FORUM SHOPPING AT THE TIME OF THE FILING OF THE COMPLAINT.

The appeal is without merit.

Anent the first and second assigned errors, defendants-appellants argued that the alleged Surety Agreement dated 20 October 1994 and 11 December 1995 were made security to the Promissory Notes dated 14 January 1998 and 20 January 1998. As the Promissory Notes were inexistent at the time the Surety Agreements were executed, plaintiff-appellee has no cause of action against them.

We disagree.

Defendants-appellants conveniently failed to state the nature of the Surety Agreement – that it is a CONTINUING SECURITY AGREEMENT, the relevant portion of which provides:

“... 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, of 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, and also to make or cause any all such payments to be made strictly in accordance with the terms and provisions of any agreement or instrument.”

The continuing Surety Agreement was extended by the plaintiff-appellee because there is evidence that defendant-appellant Astro has been a bank client since the 1980's and the individual defendants have been the sureties of the latter. There were promissory notes (PNs) taken out by defendant-appellant Astro. Some have been paid, some were carried over to another PN. The PNs subject matter of this case are the outstanding obligations of defendant-appellant Astro to plaintiff-appellee. The continuing Suretyship Agreements executed in 1995 were meant to secure the loans of defendant-appellant Astro and other loans which may be taken after their execution. This is borne by the clear provision of the Continuing Surety Agreements aforequoted. Thus, the assertion of defendants-appellants that the continuing Surety Agreements (Exhibits “C” and “D”) executed in 1994 and 1995 could not be taken as having secured defendant-appellant Astro's obligation contracted in 1998, is bereft of merit.”[5]

In explaining the nature of a Continuing Surety Agreement, the Supreme Court in *Dino vs. Court of Appeals* 216 SCRA 9 [1992], succinctly ruled, to wit:

“xxx xxx xxx.

Under the Civil Code, a guaranty may be given to secure even future debts, the amount of which may not be known at the time the guaranty is executed (Article 2053, Civil Code; see *Rizal Commercial Banking Corp., vs. Arro*, 115 SCRA 777 [1982]). This is the basis of contracts denominated as a continuing guaranty is one or suretyship. A continuing guaranty is one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked. It is prospective in its operation and is generally intended to provide security with respect to future transactions certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable (38 C.J.S. 1142). Otherwise stated, 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 of termination thereof (38 C.J.S. 1206). A guaranty shall be constructed as continuing when by the terms thereof it is evident to the principal debtor to be used from time to time either indefinitely or until a certain period; especially if the right to recall the guaranty states that the same is to secure advances to be made “from time to time” the guaranty will be constructed to be a continuing one (*Id.*, 1209).

xxx.” (Emphasis supplied)

In the case at bar, it bears noting that the subject Surety Agreement signed by the individual defendants-appellants

provides in part:

“This instrument is intended to be a complete and perfect indemnity to the creditor for any indebtedness or liability of any kind owing by the PRINCIPAL to the CREDITOR, from time to time, and to be valid and continuous without further notice to the SURETY, and may be revoked only after FORTY EIGHT (48) HOURS written notice to the CREDITOR, but such revocation shall not operate to relieve the surety responsibility for obligations incurred by the PRINCIPAL prior to such revocation. Unless revoked as above-provided, the liability of the SURETY shall be CONTINUING for all new or additional obligation as provided elsewhere in this any kind by the CREDITOR in the premises shall in any event affect or impair this SURETY AGREEMENT, nor shall the same be affected by any change which may arise by reason of the death of SURETY, or any of partner(s) of the SURETY, or of the PRINCIPAL or by the accession to such PARTNERSHIP by any one or more new parties.”

As to the issue that the continuing Surety Agreement had no consideration, the Court finds the rebuttal of the court a quo illuminating, thus, we quote with approval:

“xxx xxx xxx

Said contention should be disregarded in view of the pronouncement in WILLEX PLASTIC INDUSTRIES CORP., VS. HON. COURT OF APPEALS AND INTERNATIONAL CORPORATE BANK (265 SCRA 478 [1996]). In this said case, the Supreme Court, citing Severino vs. Severino, 65, Phil. 185 [1931] and Garcia vs. Court of Appeals, 191 SCRA 493 [1990], held: ‘Put in another way the consideration necessary to support a surety obligation need to pass directly to the surety, a consideration moving to the principal alone being sufficient. For a guarantor or surety is bound by the same consideration that makes the contract effective between the principal parties thereto... It is never necessary that a guarantor or surety should receive any part or benefit, if such there be, accruing to his principal.’

In sum, plaintiff-appellee had clearly established its cause of action against the defendants-appellants - that is, breach of contract. It is settled in this jurisdiction that the contract is the law between the parties. This is affirmed by Article 1159 of the New Civil Code, to wit:

“Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith”.

Anent the third assigned error, suffice it to state that this issue was never raised before the court a quo. But, well-settled is the rule that issue, not raised below, cannot be raised for the first time on appeal (Heirs of Uriarte vs. Court of Appeals, 284 SCRA 511 [1998]).”

WHEREFORE, premises considered, the appeal is DISMISSED for utter lack of merit.

SO ORDERED.

Abdulwahid and Punzalan-Castillo, JJ., concur.

[1] Records, pp. 7-8.

[2] Records, p. 292.

[3] Records, pp. 290-291; 293-296.

[4] Records, pp. 288-289.

[5] Rollo, p. 59.

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