

FRANCISCO LAVIDES, PETITIONER, VS. PROCOPIO ELEAZAR, ET AL., RESPONDENTS.

G.R. No. 11007. November 28, 1959

Ponente: BENGZON, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11007/>

BENGZON, C.J.:

Review of a decision of the Court of Appeals. During the Japanese occupation, Coconut Central Co., Inc. and Francisco Lavidès executed the following promissory note:

"For value received, we, the undersigned, jointly and severally promised to pay Messrs. Ponciano A. Bernardo and Procopio Eleazar, their heirs and assigns, the sum of twenty-five thousand pesos (P25,000.00) upon their demand, subject to the following conditions :

- That this loan shall be payable and collectible on demand to the option of the said Messrs. Bernardo and Eleazar within the period of time between ninety (90) days after the ratification of the Treaty of Peace ending the present war between the United States of America and Japan, and one (1) year after the said ratification;
- That the said amount of twenty-five thousand pesos (P25,000.00) shall not bear interest until the time demand for payment of same is made, and shall be payable in current legal tender at the time of payment;
- The demand for payment shall be made on Francisco Lavidès when and only when the Coconut Central Co., Inc. fails to meet the full obligation of twenty-five thousand pesos (P25,000.00) upon the demand of Messrs. Bernardo and Eleazar."

It is admitted that the loan consisted of P100,000.00, Japanese military notes, which were mostly used to redeem mortgages on the property of the Coconut Central Co. in favor of Tomas B. Morato (P41,075.58) and of National Warehousing Corporation (P48,356.32).

On September 25, 1944, the parties executed a so-called "confidential memorandum" (to express the real intent and purpose of the loan) in one portion of which they "agreed that the claim for payment shall first be made against the Coconut Central Co., Inc., but if the said corporation cannot meet this obligation in full upon demand because of the destruction of its assets by this war or in any other cause, Hon. Francisco Lavidès has agreed to settle the obligation from his own personal resources pledging his real properties for this purpose."

On December 1, 1953, Procopio Eleazar. and the heirs of Ponciano Bernardo demanded, from the Coconut Central, payment of the above note within 15 days, but the corporation failed to comply. So on February 6, 1954, they required payment from Francisco Lavidès; and upon his failure to pay, they instituted this action against both in the Rizal court of first instance.

Lavidès set up several defenses: (a) the contract was leonine—for P10,000.00 Japanese currency, plaintiffs would receive P25,000.00 Philippine money; (b) the agreement was that he would pay only when the corporation should have no properties, but the latter has properties; and (c) he had requested plaintiffs to take possession of the factory of the corporation with all its buildings and improvements, but plaintiffs declined to accept it. He also set

up some counter-claims.

After trial, the court rendered judgment ordering defendants to pay jointly and severally the sum of P25,000.00 with interest of 6% from the presentation of the complaint, plus costs, and dismissing the counterclaims. On appeal, the Court of Appeals affirmed, with the modification that Lavidès shall have, as a mere guarantor, the benefit of exhaustion of the debtor's property.

Where upon Lavidès presented this appeal by certiorari.

It was error says the petitioner to make him liable because his obligation was conditional, and arose only upon destruction of the properties of the corporation, which the plaintiffs have failed to prove; in fact, the corporation has assets. Petitioner points out that in the confidential memorandum, he agreed to pay "if the said corporation cannot meet this obligation * * * because of the destruction of its assets by this war or in any other cause" which means destruction of assets by war or by any other cause."

In other words, petitioner contends he is not liable except in case of destruction of assets by war or by any other cause. Observe that the confidential memorandum does not read "by any, other cause." It reads "in any other cause."

It is apparent from the confidential memorandum that the parties attempted to explain the real intent and purpose of the loan and the nature of Lavidès' responsibility. In so doing, they made it clear that he was a simple guarantor—not a solidary co-debtor or solidary guarantor; The interpretation adopted by the Court of Appeals accorded with such purpose. The interpretation urged upon us by petitioner would practically exempt him from liability from the very beginning because as the properties of the corporation were real properties, they would never be destroyed (the land at least). It might even convert him into an insurer of the properties—not a guarantor of the debt.[1]

Construing the memorandum in relation to the note, and giving effect to the obvious intention of the parties to make Lavidès a guarantor, it should be read as imposing liability upon him when the corporation fails to pay because of destruction of its assets or because of any other cause. Stated otherwise, Lavidès becomes liable when the corporation cannot meet the obligation for having lost its assets or for any other reason. Such construction accords with the secondary liability of a guarantor, which he admittedly is.

Another point raised, is the failure of the plaintiffs to demand payment "within the period between ninety (90) days after the ratification of the Treaty of Peace ending the present war between the United States of America and Japan, and one year after the said ratification." This failure is admitted. The demand was made more than one year after the expiration of such period. However, as the Court of Appeals held, mere delay of the creditor in proceeding against the principal debtor does not release the guarantor.[2] Furthermore, the period was fixed principally to determine the kind of currency in which repayment shall be made. And this guarantor does not show any prejudice suffered by him on account of such delay, nor of any alteration of currency values after the lapse of the period described.

It appears that "after liberation, Messrs. Eleazar Bernardo went to see Mr. Lavidès at his office in Pasay City on several occasions and on one of them Lavidès asked the former to take delivery of the factory and other properties of the Coconut Central Co., Inc. which were still intact because they were neither bombed nor burned and offered to secure the corresponding resolution from the Coconut Central Co., Inc. to that effect; that Mr. Eleazar told him that they were going to think it over and on their subsequent visits they informed Mr. Lavidès that it would entail on them much expense if they took delivery of the assets of said corporation and hence they declined the offer."

Petitioner insists that for such remissness and negligence of plaintiffs, the defendant Lavidès should not be made

to suffer. The refusal to take the assets seemed to be justified. At any rate, they are still available, and will surely be exhausted before recovery from Lavides may be enforced.

A new provision in the New Civil Code (Art. 2058) is cited to the effect that the creditor must resort to all legal remedies against the debtor before he can compel the guarantor to pay. Whatever may be the effect of this provision in the circumstances of the instant lawsuit, it should be enough to remember that as this contract was entered into in 1944 the former Civil Code, not the new one, governs. At any rate the decision gives petitioner the benefit of excussion, which may amount to the same thing, the properties of the debtor being still available.

The foregoing, incidentally answers petitioner's claim that the action should have been filed against the debtor first, in accordance with Art. 2062 of the New Civil Code. The Civil Code which was the law in 1944, provided that "the creditor may sue the guarantor jointly with the principal debtor". Besides, this issue was not tendered in the court of first instance.

Wherefore, finding no reversible error, we hereby affirm the judgment under review. No costs in this instance, the appellee having filed no brief.

Padilla, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

[1] A guarantor agrees to pay in case the debtor fails to pay (Art. 1822, Civil Code)—not when the debtor loses his property.

[2] Banco Español vs. Donaldson Sim, 5 Phil., 418; Bank of P. I. vs. Albaladejo, 53 Phil., 141; Radio Corporation vs. Roa, 62 Phil.,

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.