

**AGRO CONGLOMERATES, INC. AND MARIO SORIANO, PETITIONERS,
VS. THE HON. COURT OF APPEALS AND REGENT SAVINGS AND LOAN
BANK, INC., RESPONDENTS.**

G.R. No. 117660. December 18, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review challenging the decision[1] dated October 17, 1994 of the Court of Appeals in CA-G.R. No. 32933, which affirmed in toto the judgment of the Manila Regional Trial Court, Branch 27, in consolidated Cases Nos. 86-37374, 86-37388, 86-37543.

This petition springs from three complaints for sums of money filed by respondent bank against herein petitioners. In the decision of the Court of Appeals, petitioners were ordered to pay respondent bank, as follows:

Wherefore, judgment is hereby rendered in favor of plaintiff and against defendants, as follows:

1)

In Civil Case No. 86-37374, defendants [petitioners, herein] are ordered jointly and severally, to pay to plaintiff the amount of P78,212.29, together with interest and service charge thereon, at the rates of 14% and 3% per annum, respectively, computed from November 10, 1982, until fully paid, plus stipulated penalty on unpaid principal at the rate of 6% per annum, computed from November 10, 1982, plus 15% as liquidated damage plus 10% of the total amount due, as attorney's fees, plus costs;

2)

In Civil Case No. 86-37388, defendant is ordered to pay plaintiff the amount of P632,911.39, together with interest and service charge thereon at the rate of 14% and 3% per annum, respectively, computed from January 15, 1983, until fully paid, plus stipulated penalty on unpaid principal at the rate of 6% per annum, computed from January 15, 1983, plus liquidated damages equivalent to 15% of the total amount due, plus attorney's fees equivalent to 10% of the total amount due, plus costs; and

3)

In Civil Case No. 86-37543, defendant is ordered to pay plaintiff, on the first cause of action, the amount of P510,000.00, together with interest and service charge thereon, at the rates of 14% and 2% per annum, respectively, computed from March 13, 1983, until fully paid, plus a penalty of 6% per annum, based on the outstanding principal of the loan, computed from March 13, 1983, until fully paid; and on the second cause of action, the amount of P494,936.71, together with interest and service charge thereon at the rates of 14% and 2%, per annum, respectively, computed from March 30, 1983, until fully paid, plus a penalty charge of 6% per annum, based on the unpaid principal, computed from March 30, 1983, until fully paid, plus (on both causes of

action) an amount equal to 15% of the total amounts due, as liquidated damages, plus attorney's fees equal to 10% of the total amounts due, plus costs.[2]

Based on the records, the following are the factual antecedents.

On July 17, 1982, petitioner Agro Conglomerates, Inc. as vendor, sold two parcels of land to Wonderland Food Industries, Inc. In their Memorandum of Agreement,[3] the parties covenanted that the purchase price of Five Million (P5,000,000.00) Pesos would be settled by the vendee, under the following terms and conditions: (1) One Million (P1,000,000.00) Pesos shall be paid in cash upon the signing of the agreement; (2) Two Million (P2,000,000.00) Pesos worth of common shares of stock of the Wonderland Food Industries, Inc.; and (3) The balance of P2,000,000.00 shall be paid in four equal installments, the first installment falling due, 180 days after the signing of the agreement and every six months thereafter, with an interest rate of 18% per annum, to be advanced by the vendee upon the signing of the agreement.

On July 19, 1982, the vendor, the vendee, and the respondent bank Regent Savings & Loan Bank (formerly Summa Savings & Loan Association), executed an Addendum[4] to the previous Memorandum of Agreement. The new arrangement pertained to the revision of settlement of the initial payments of P1,000,000.00 and prepaid interest of P360,000.00 (18% of P2,000,000.00) as follows:

Whereas, the parties have agreed to qualify the stipulated terms for the payment of the said ONE MILLION THREE HUNDRED SIXTY THOUSAND (P1,360,000.00) PESOS.

WHEREFORE, in consideration of the mutual covenant and agreement of the parties, they do further covenant and agree as follows:

- That the VENDEE instead of paying the amount of ONE MILLION THREE HUNDRED SIXTY THOUSAND (P1,360,000.00) PESOS in cash, hereby authorizes the VENDOR to obtain a loan from Summa Savings and Loan Association with office address at Valenzuela, Metro Manila, being represented herein by its President, Mr. Jaime Cariño and referred to hereafter as Financier; in the amount of ONE MILLION THREE HUNDRED SIXTY THOUSAND (P1,360,000.00) PESOS, plus interest thereon at such rate as the VENDEE and the Financier may agree, which amount shall cover the ONE MILLION (P1,000,000.00) PESOS cash which was agreed to be paid upon signing of the Memorandum of Agreement, plus 18% interest on the balance of two million pesos stipulated upon in Item No. 1(c) of the said agreement; provided however, that said loan shall be made for and in the name of the VENDOR.

- The VENDEE also agrees that the full amount of ONE MILLION THREE HUNDRED SIXTY THOUSAND (P1,360,000.00) PESOS be paid directly to the VENDOR; however, the VENDEE hereby undertakes to pay the full amount of the said loan to the Financier on such terms and conditions agreed upon by the Financier and the VENDOR, it being understood that while the loan will be secured from and in the name of the VENDOR, the VENDEE will be the one liable to pay the entire proceeds thereof including interest and other charges.[5]

This addendum was not notarized.

Consequently, petitioner Mario Soriano signed as maker several promissory notes,[6] payable to the respondent bank. Thereafter, the bank released the proceeds of the loan to petitioners. However, petitioners failed to meet their obligations as they fell due. During that time, the bank was experiencing financial turmoil and was under the supervision of the Central Bank. Central Bank examiner and liquidator Cordula de Jesus, endorsed the subject promissory notes to the bank's counsel for collection. The bank gave petitioners opportunity to settle their account by extending payment due dates. Mario Soriano manifested his intention to re-structure the loan, yet did not show up nor submit his formal written request.

Respondent bank filed three separate complaints before the Regional Trial Court of Manila for Collection of Sums

of money. The corresponding case histories are illustrated in the table below:

Date of Loan	Amount	Payment Due Date	Payment Extension Dates
Civil Case 86-37374	August 12, 1982		
P 78,212.29			
Nov. 10, 1982			
Feb. 8, 1983	May 9, 1983	Aug. 7, 1983	
Civil Case 86-37388	July 19, 1982		
P 632,911.39			
Jan. 15, 1983			
May 16, 1983	Aug. 14, 1983		
Civil Case 86-37543	September 14, 1982		
October 1, 1982			
P 510,000.00			
P 494,936.71			
March 13, 1983			
March 30, 1983			
June 11, 1983	Sept. 9, 1983		
June 28, 1983	Sept. 26, 1983		

In their answer, petitioners interposed the defense of novation and insisted there was a valid substitution of debtor. They alleged that the addendum specifically states that although the promissory notes were in their names, Wonderland shall be responsible for the payment thereof.

The trial court held that petitioners are liable, to wit:

The evidences, however, disclose that Wonderland did not comply with its obligation under said 'Addendum' (Exh. 'S') as the agreement to turn over the farmland to it, did not materialize (57 tsn, May 29, 1990), and there was, actually no sale of the land (58 tsn, *ibid*). Hence, Wonderland is not answerable. And since the loans obtained under the four promissory notes (Exhs. 'A', 'C', 'G', and 'E') have not been paid, despite opportunities given by plaintiff to defendants to make payments, it stands to reason that defendants are liable to pay their obligations thereunder to plaintiff. In fact, defendants failed to file a third-party complaint against Wonderland, which shows the weakness of its stand that Wonderland is answerable to make said payments.[7]

Petitioners appealed to the Court of Appeals. The trial court's decision was affirmed by the appellate court.

Hence, this recourse, wherein petitioners raise the sole issue of:

WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE ADDENDUM, SIGNED BY THE PETITIONERS, RESPONDENT BANK AND WONDERLAND INC., CONSTITUTES A NOVATION OF THE CONTRACT BY SUBSTITUTION OF DEBTOR, WHICH EXEMPTS THE PETITIONERS FROM ANY LIABILITY OVER THE PROMISSORY NOTES.

Revealed by the facts on record, the conflict among the parties started from a contract of sale of a farmland between petitioners and Wonderland Food Industries, Inc. As found by the trial court, no such sale materialized.

A contract of sale is a reciprocal transaction. The obligation or promise of each party is the cause or consideration for the obligation or promise by the other. The vendee is obliged to pay the price, while the vendor must deliver actual possession of the land. In the instant case the original plan was that the initial payments would be paid in cash. Subsequently, the parties (with the participation of respondent bank) executed an addendum providing instead, that the petitioners would secure a loan in the name of Agro Conglomerates Inc. for the total amount of the initial payments, while the settlement of said loan would be assumed by Wonderland. Thereafter, petitioner Soriano signed several promissory notes and received the proceeds in behalf of petitioner-company.

By this time, we note a subsidiary contract of suretyship had taken effect since petitioners signed the promissory notes as maker and accommodation party for the benefit of Wonderland. Petitioners became liable as accommodation party. An accommodation party is a person who has signed the instrument as maker, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person and is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew (the signatory) to be an accommodation party.[8] He has the right, after paying the holder, to obtain reimbursement from the party accommodated, since the relation between them has in effect become one of principal and surety, the accommodation party being the surety.[9] Suretyship is defined as the relation which exists where one person has undertaken an obligation and another person is also under the obligation or other duty to the obligee, who is entitled to but one performance, and as between the two who are bound, one rather than the other should perform.[10] The surety's liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.[11] And the creditor may proceed against any one of the solidary debtors.[12]

We do not give credence to petitioners' assertion that, as provided by the addendum, their obligation to pay the promissory notes was novated by "substitution" of a new debtor, Wonderland. Contrary to petitioners' contention, the attendant facts herein do not make a case of novation.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[13] In order that a novation can take place, the concurrence of the following requisites[14] are indispensable:

- 1) There must be a previous valid obligation;
- 2) There must be an agreement of the parties concerned to a new contract;
- 3) There must be the extinguishment of the old contract; and
- 4) There must be the validity of the new contract.

In the instant case, the first requisite for a valid novation is lacking. There was no novation by "substitution" of debtor because there was no prior obligation which was substituted by a new contract. It will be noted that the promissory notes, which bound the petitioners to pay, were executed after the addendum. The addendum modified the contract of sale, not the stipulations in the promissory notes which pertain to the surety contract. At this instance, Wonderland apparently assured the payment of future debts to be incurred by the petitioners. Consequently, only a contract of surety arose. It was wrong for petitioners to presume a novation had taken place. The well-settled rule is that novation is never presumed,[15] it must be clearly and unequivocally shown.[16]

As it turned out, the contract of surety between Wonderland and the petitioners was extinguished by the rescission of the contract of sale of the farmland. With the rescission, there was confusion or merger in the persons of the principal obligor and the surety, namely the petitioners herein. The addendum which was dependent thereon likewise lost its efficacy.

It is true that the basic and fundamental rule in the interpretation of contract is that, if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning shall control. However, in order to judge the intention of the parties, their contemporaneous and subsequent acts should be considered.[17]

The contract of sale between Wonderland and petitioners did not materialize. But it was admitted that petitioners received the proceeds of the promissory notes obtained from respondent bank.

Sec. 22 of the Civil Code provides:

Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Petitioners had no legal or just ground to retain the proceeds of the loan at the expense of private respondent. Neither could petitioners excuse themselves and hold Wonderland still liable to pay the loan upon the rescission of their sales contract. If petitioners sustained damages as a result of the rescission, they should have impleaded Wonderland and asked damages. The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[18] But respondent appellate court did not err in holding that petitioners are duty-bound under the law to pay the claims of respondent bank from whom they had obtained the loan proceeds.

WHEREFORE, the petition is DENIED for lack of merit. The assailed decision of the Court of Appeals dated October 17, 1994 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 49-55.

[2] Id. at 68 - 70.

[3] Id. at 71 - 73.

[4] Id. at 74 - 75.

[5] Id. at 74 only.

[6] Records, pp. 159, 162, 167, 171.

[7] Rollo, p. 68.

[8] The Negotiable Instruments Law, Section 29.

[9] People vs. Maniego, 148 SCRA 30, 35 (1987); Philippine National Bank vs. Maza and Mecnas, 48 Phil. 207 (1925).

[10] 74 Am Jur 2d, Suretyship, Sec. 1.

[11] Garcia, Jr. vs. Court of Appeals, 191 SCRA 493, 496 (1990).

[12] Civil Code of the Philippines, Art. 1216.

[13] Ajax Marketing & Development Corporation vs. Court of Appeals, 248 SCRA 222, 226 (1995); citing FRANCISCO, V. J. Civil Code of the Philippines Annotated and Commented, Bk IV Part 1, p. 676, citing 8 Manresa 417; De Cortes vs. Venturanza, 79 SCRA 709, 722-723 (1977).

[14] Reyes vs. Court of Appeals 264 SCRA 35, 43 (1996).

[15] Ajax Marketing and Development Corporation vs. Court of Appeals, 248 SCRA 222, 227 (1995); Goñi vs. Court of Appeals 144 SCRA 222, (1986).

[16] Mercantile Insurance Co., Inc., vs. Court of Appeals, 196 SCRA 197, 204 (1991).

[17] Manila Surety & Fidelity Co., Inc. vs. Court of Appeals, 191 SCRA 805, 812 (1990); citing Mercantile Insurance Co., Inc. vs. Felipe Ysmael, Jr. & Co. Inc., 169 SCRA 66, 74 (1989); Sy vs. Court of Appeals, 131 SCRA 116 (1984); GSIS vs. Court of Appeals, et al., 145 SCRA 311 (1986).

[18] Revised Rules of Court, Civil Procedure, Sec. 9, Rule 3, par. 3.

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