# GOLDENROD, INCORPORATED AND SONIA G. MATHAY, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND PATHFINDER HOLDINGS (PHILIPPINES), INC.,RESPONDENTS.

*G.R. No. 127232. September 28, 2001*

Ponente: DE LEON, JR., J.

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**DE LEON, JR., J.:**

Before us is a petition for review of the Decision[1] dated July 29, 1996 and Resolution[2] dated November 15, 1996 of the Court of Appeals[3] affirming with modification the Decision[4] dated March 18, 1993 of the Regional Trial Court, Branch 132, Makati City.

The facts are as follows:

Petitioner Goldenrod, Inc. is a corporation engaged in real estate development. Co-petitioner Sonia G. Mathay is the president of Goldenrod, Inc. while the private respondent, Pathfinder Holdings (Phils.), Inc., is a corporation engaged in investment of acquired real properties, shares, and other properties.

On June 30, 1988, respondent loaned the amount of Seventy-Six Million Pesos (P76,000,000.00) to petitioner Goldenrod, Inc. As evidence of the loan, petitioner Goldenrod, Inc. executed a promissory note with maturity date on September 28, 1988. It stated that "in case of non-payment of the loan on maturity date, interest shall be charged on the outstanding balance thereof at the rate of your cost of funds plus 1.75% per annum. `Your cost of funds' should be your cost of borrowing the funds being loaned to the undersigned (Goldenrod) inclusive of interests and all fees and charges." Together with the promissory note, a document denominated as "Joint and Several Guarantee" was executed by co-petitioner Mathay, as surety, to secure the payment of the loan to the private respondent.

On September 28, 1988, petitioner Goldenrod, Inc. failed to pay its debt to the respondent. About seven (7) months thereafter, or on April 27, 1989, petitioner Goldenrod, Inc. offered to settle its account. The respondent prepared a statement of account of the total indebtedness together with the interests and charges of petitioner Goldenrod, Inc. The computation amounted to Ninety-Five Million Sixty-Nine Thousand Six Hundred Nine Pesos (P95,069,609.00). Petitioner Goldenrod, Inc. paid the amount of Eighty-Five Million Pesos (P85,000,000.00) in two (2) checks - one for Eighty Million Pesos (P80,000,000.00) and the other for Five Million Pesos (P5,000,000.00) - evidenced by two (2) vouchers duly received by the respondent.

On the same day that petitioner Goldenrod, Inc. paid the Eighty-Five Million Pesos (P85,000,000.00), it executed the two (2) promissory notes in controversy in favor of the respondent, namely, Promissory Note No. G1-89-100 for Five Million Pesos (P5,000,000.00) with maturity date on July 26, 1989, and Promissory Note No. G1-89-101 also for Five Million Pesos (P5,000,000.00) with maturity date on October 24, 1989. As security for the said two (2) promissory notes, petitioner Goldenrod, Inc. through co-petitioner Mathay, executed on the same date a real estate mortgage contract over parcels of land covered by Transfer Certificate of Title Nos. T-5138, T-5139, T-5140 and T-5141. However, the real estate mortgage contract was not notarized.

When the maturity dates stated in the two (2) promissory notes arrived, petitioner Goldenrod, Inc. failed to pay the total amount of Ten Million Pesos (P10,000,000.00.) notwithstanding several follow-ups and written demand by the respondent. The demand letter dated April 1, 1991 states that as of March 31, 1991 the obligation together with accrued interest and liquidated damages amounted to Thirty Million Six Hundred Sixty-Seven Thousand Eight Hundred Thirty-Three Pesos and Thirty-Three Centavos (P30,667,833.33).

On April 1, 1991, the respondent filed Civil Case No. 91-1050, which is a complaint for the judicial foreclosure of the said real estate mortgage in view of the petitioners' failure to pay the principal amount of Ten Million Pesos (P10,000,000.00) plus accrued interest thereon and liquidated damages despite maturity of the covering promissory notes.

On March 18, 1993, the trial court rendered judgment in favor of the respondent, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering defendants to pay plaintiff jointly and severally (1) the amount of P30,667,833.33; (2) 5% of the total amount due as attorney's fees; and (3) the costs of suit.
>
> On the other hand, the prayer for the judicial foreclosure of the mortgage is hereby denied.
>
> SO ORDERED.

Both parties filed an appeal from the said Decision of the trial court. Petitioners questioned their liability to pay the amount in the promissory notes together with the interests and charges. Meanwhile, the respondent appealed the decision of the trial court insofar as it ruled that the mortgage contract was not perfected and in ordering the petitioners to pay Thirty Million Six Hundred Sixty-Seven Thousand Eight Hundred Thirty-Three Pesos and Thirty-Three Centavos (P30,667,833.33) and five percent (5%) attorney's fees instead of Thirty-Nine Million Five Hundred Fifteen Thousand Pesos (P39,515,000.00) and ten percent (10%) attorney's fees.

On July 29, 1996, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the appealed decision is AFFIRMED with the modification as regards the award of attorney's fees which is 10% of the total amount due. Costs against defendants-appellants.

Hence, this petition.

There are two (2) issues for resolution in this case. The first issue is whether petitioner Goldenrod, Inc. can be held liable for the amounts stated in the promissory notes in question. To resolve the same, it is necessary to determine whether the loan for Seventy-Six Million Pesos (P76,000,000.00) together with its interest and charges has been fully paid when respondent accepted from petitioner Goldenrod, Inc. the amount of Eighty-Five Million Pesos (P85,000,000.00). Supposing respondent is found to be liable for the amounts in the promissory notes, the second issue is whether co-petitioner Mathay can be held solidarily liable with petitioner Goldenrod, Inc.

Anent the first issue, petitioners disclaim liability for the amount stated in the two (2) promissory notes on the ground that the same were issued in contemplation of a new and separate loan that did not materialize. According to the petitioners, the Seventy-Six Million Pesos (P76,000,000.00) loan together with its interests and charges have been paid when petitioner Goldenrod, Inc. tendered the amount of Eighty-Five Million Pesos (P85,000,000.00) in two (2) checks as full payment for the entire debt. The check voucher for Eighty Thousand Pesos (P80,000.00) which was duly received by the respondent stated that said amount was a "(F)ull payment of the loan granted in favor of Goldenrod, Inc. xxx." The petitioners therefore argue that the entire loan has been extinguished upon receipt by the respondent of partial payment without any protest or objection despite knowledge of its incompleteness, pursuant to Article 1235[5] of the New Civil Code.


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We do not find merit in petitioners' contention on this issue.

Section 1 of Rule 45 of the 1997 Rules of Civil Procedure provides that "(T)he petition (for review) shall raise only questions of law which must be distinctly set forth." In consonance with this provision, we have ruled that factual findings of the Court of Appeals are conclusive on the parties and not reviewable by this Court - and they carry even more weight when the Court of Appeals affirms the factual findings of the trial court. As such, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[6]

We are not prepared to deviate from this rule for the reason that the courts a quo have sufficient factual basis in ruling that the promissory notes worth Ten Million Pesos (P10,000,000.00) were issued to cover payment of the balance of the original debt.

Atty. Cezar Suñaz, the private respondent's former vice-president for corporate affairs, testified that the total indebtedness stated in the statement of account is Ninety-Five Million Sixty-Nine Thousand Six Hundred Nine Pesos (P95,069,609.00). In payment thereof, petitioner Goldenrod, Inc. issued two (2) checks worth Eighty-Five Million Pesos (P85,000,000.00) and two (2) promissory notes worth Ten Million Pesos (P10,000,000.00) all in the same day. The payment amounted to Ninety-Five Million Pesos (P95,000,000.00). The remaining Sixty-Nine Thousand Six Hundred Nine Pesos (P69,609.00) was deemed condoned. Clarifying the statement in the check voucher that the Eighty Million Pesos (P80,000,000.00) was "full payment" of the entire obligation, Atty. Suñaz testified that the term "full payment" indicated in the voucher meant the receipt of the two (2) checks for Eighty-Five Million Pesos (P85,000,000.00) and the two (2) promissory notes worth Ten Million Pesos (P10,000,000.00).

The courts a quo gave more credence to this testimony than petitioner Mathay's testimony that the Ten Million Pesos (P10,000,000.00) was issued as a separate and distinct loan which did not materialize due to the encumbrances in the title of the properties being offered as mortgage security thereof. According to the trial court, the promissory notes worth Ten Million Pesos (P10,000,000.00) were meant to cover part of the total indebtedness amounting to Ninety-Five Million Sixty-Nine Thousand Six Hundred Nine Pesos (P95,069,609.00) for the reason that adding the same to the checks received would give a total of Ninety-Five Million Pesos (P95,000,000.00) which is approximately the total amount of the debt.[7] The appellate court affirmed the same finding inasmuch as the promissory notes were given on the same day that the checks worth Eighty-Five Million Pesos (P85,000,000.00) were handed to the respondent.[8] For the same reasons propounded by the courts a quo, we hold that the promissory notes worth Ten Million Pesos (P10,000,000.00) were in fact meant to cover the balance on the loan, and not a separate and new debt.

With respect to the second issue, petitioner Mathay disputes the ruling of the courts a quo in ruling that she was solidarily liable with petitioner Goldenrod, Inc. for the non-payment of the balance of the debt. According to petitioner Mathay, she only agreed to be a guarantor when she executed the contract denominated as "Joint and Several Guarantee". As a guarantor, she has the benefit of excussion before being held liable on the principal obligation. She argues that the joint and several liability indicated in the said contract refers to the tie between her and her husband (who, however, did not sign the same) and not to the tie between her and the principal debtor, petitioner Goldenrod, Inc.

Article 2047 and 2058 of the New Civil Code respectively provide that:

> 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.
>
> Article 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies of the debtor.

We now determine whether the contract in the case at bar denominated as a "Joint and Several Guarantee" was a suretyship or a guaranty contract. In order to find out the party to whom the solidary liability pertains, let us look at provisions 1, 6 and 7 of the said contract which read as follows:

> 1.
>
> In consideration of your giving a loan of SEVENTY SIX MILLION PESOS (P76,000,000.00), Philippine Currency, to GOLDENROD, INC., a corporation existing under and by virtue of the laws of the Philippines, with principal office at No. 30 Madison corner Polk Street, Greenhills, San Juan, Metro Manila (hereinafter called "the Principal"), we the undersigned jointly and severally HEREBY agree to pay and satisfy to you on demand all and every sum and sums of money which are now or shall at any time be remaining due and unpaid to you together with all interest, discount commission and other charges including legal charges occasioned by or incident to this or any other security held by or offered to you for the same indebtedness or by or to the enforcement of any such security. PROVIDED ALWAYS that the total liability ultimately enforceable against me/us jointly and severally under this guarantee shall not exceed the sum of SEVENTY SIX MILLION PESOS (P76,000,000.00), Philippine Currency, and penalty thereon in case of default at the rate of your cost of funds plus 1.75% p.a.
>
> xxx xxx xxx
>
> 6.
>
> Although my/our joint and several ultimate liability hereunder cannot exceed the limit hereinbefore mentioned, yet this present guarantee shall be construed and take effect as a guarantee of the whole and every part of the principal moneys and interest owing and to become owing as aforesaid xxx.
>
> 7.
>
> Any security now or hereafter held by or for me/us or any of us from the Principal in respect of the liability of me/us or any of us shall be held in trust for you and as security for my/our joint and several liability hereunder.[9] (italics supplied)
>
> xxx xxx xxx

At the end of the contract bore two (2) spaces for the signatures of Ismael A. Mathay, Jr. and Sonia G. Mathay. Only the space for petitioner Mathay was signed.[10] It can be gleaned that the contract was a security agreement executed by supposedly two (2) guarantors - petitioner Mathay and her husband - to secure the debt of petitioner Goldenrod, Inc. to respondent Pathfinder Holdings (Phils.), Inc. However, inasmuch as only petitioner Mathay signed the same, she remained to be the lone surety for the debt of petitioner Goldenrod, Inc.

In Rubio v. Court of Appeals[11] this Court found a similar undertaking by a married couple who bound themselves solidarily liable with the buyer for the payment of the balance of the price for the sale of shares of stock. The agreement provided that the seller agrees to the buyer's request for deferment of payment under the following condition: "(c) In consideration of this extension granted to Robert O. Philipps & Sons, Inc. (buyer), Robert O. Phillips himself and his wife, Magdalena Ysmael Philipps (guarantors), jointly and severally

guaranteed all the installments and other obligations of Robert O. Phillips & Sons, Inc. under the original contract of sale dated April 13, 1963."[12] Interpreting the said provision, this Court ruled that:

> It should be remembered that on June 23, 1964, Philipps and Sons and the Phillips spouses entered into an agreement wherein, in consideration of the extension granted to Phillips and Sons in the payment of the latter's outstanding debt to the petitioner, the Phillips spouses "xxx jointly and severally guaranteed all the installments and other obligations of Robert O. Philipps & Sons, Inc. under the signed contract of sale dated April 13, 1963." Phillips and Sons was not able to pay the petitioner as covenanted in the agreement.
>
> The agreement was not assailed in any of the cases involving the petitioner Phillips and Sons and the Phillips spouses. Both parties admit the veracity of the agreement. The agreement serves as the law between the parties. The full enforcement of the agreement's provisions necessarily is in order. We rule that per agreement, the Phillips spouses are jointly and severally liable to the petitioner for the outstanding debt of Phillips and Sons with interest therein from April 30, 1964 until fully paid.[13]

In a similar fashion, the "Joint and Several Guarantee" signed by petitioner Sonia G. Mathay serves as the law between the parties. There is no room for a contrary interpretation. Consequently, private respondent Pathfinder Holdings (Phils.), Inc. properly included her as a co-defendant of Goldenrod, Inc. inasmuch as she was in fact acting as the surety of the latter when she signed the said security contract. As a surety, she is solidarily liable with her co-petitioner Goldenrod, Inc. for the payment of the balance of the debt to the private respondent Pathfinder Holdings (Phils.), Inc.

Reference to provisions nos. 6 and 7 of the said "Joint and Several Guarantee," clearly gives the nature of the liability of petitioner Sonia G. Mathay. Considering that in the subject security contract there is only one surety who signed it, namely petitioner Sonia G. Mathay, it simply means that the said petitioner is jointly and severally liable with the principal debtor, Goldenrod, Inc. In other words, that security contract is the best evidence of the solidary obligation of petitioner Sonia G. Mathay to private respondent Pathfinder Holdings (Phils.), Inc.

WHEREFORE, the petition is DENIED and the assailed Decision of the Court of Appeals is hereby AFFIRMED. With costs against the petitioners.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Associate Justice Corona Ibay-Somera and concurred in by Associate Justices Jorge S. Imperial and Celia Lipana-Reyes; Rollo, pp. 38-52.

[2] Rollo, p. 54.

[3] Ninth Division.

[4] Rollo, pp. 55-58.

[5] Article 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

[6] Romago Electric Co., Inc. v. Court of Appeals, 333 SCRA 291, 301 (2000); Borromeo v. Sun, 317 SCRA 176, 182 (1999).

[7] Rollo, p. 58.


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[8] Rollo, p. 46.

[9] Rollo, pp. 59-60.

[10] Rollo, p. 61.

**[11] 141 SCRA 488 (1986).**

[12] Id., p. 497.

[13] Id., p. 512.


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