

**ANTONIO R. AGRA, CAYETANO FERRERIA, NAPOLEON M. GAMO
AND VICENTE O. NOVALES, PETITIONERS, VS. PHILIPPINE
NATIONAL BANK, RESPONDENT.**

G.R. No. 133317. June 29, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Laches is a recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, as a rule, abate a collection suit filed within the prescriptive period mandated by the Civil Code.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the November 26, 1997 Decision of the Court of Appeals,[1] which disposed as follows:

"IN VIEW OF THE FOREGOING, the decision of the lower court is hereby AFFIRMED, with the modification that the award of attorney's fees is hereby DELETED and the twelve percent (12%) interest on the P2,500,000.00 the defendant-appellants are to pay PNB should start from August 30, 1976, the date when the complaint was filed."[2]

The decretal portion of the aforementioned trial court ruling reads:

"WHEREFORE, in view of the foregoing, in the interest of justice, judgment is rendered in favor of the plaintiff ordering all the sureties jointly and severally, to pay PNB as follows:

- a) the amount of P2,500,000.00 plus twelve per centum (12%) accrued interest from August 1, 1976;
- b) ten percent (10%) of the total amount due as attorney's fees and cost of the suit.

SO ORDERED."

Also assailed by petitioners is the April 2, 1998 Resolution of the Court of Appeals, which denied their Motion for Reconsideration.[3]

The Facts

The facts are summarized by the Court of Appeals (CA) in this wise:[4]

"On August 30, 1976, an action for collection of a sum of money was filed by the Philippine National Bank (PNB, for brevity) against Fil-Eastern Wood Industries, Inc. (Fil-Eastern, for short) in its capacity as principal debtor and against Cayetano Ferreria, Pedro Atienza, Vicente O. Novales, Antonio R. Agra, and Napoleon M. Gamu in their capacity as sureties.

"In its complaint, plaintiff PNB alleged that on July 17, 1967 Fil-Eastern was granted a loan in the amount of [t]wo [m]illion [f]ive [h]undred [t]housand [p]esos (P2,500,000.00) with interest at twelve percent (12%) per annum. Drawings from said demand loan were made on different dates as evidenced by several promissory

notes and were credited to the account of Fil-Eastern. To secure the payment of the said loan Fil-Eastern as principal and sureties Ferreria, Atienza, Novales, Agra, and Gamo executed a Surety Agreement whereby the sureties, jointly and severally with the principal, guaranteed and warranted to PNB, its successors or assigns, prompt payment of subject obligation including notes, drafts, bills of exchange, overdrafts and other obligations of every kind, on which Fil-Eastern was indebted or may thereafter become indebted to PNB. It was further alleged that as of May 31, 1976 the total indebtedness of Fil-Eastern and its sureties on subject loan amounted to [f]ive [m]illion [t]wo [h]undred [n]inety-[s]even [t]housand, [n]ine [h]undred [s]eventy-[s]ix [p]esos and [s]eventeen [c]entavos (P5,297,976.17), excluding attorney's fees. Notwithstanding repeated demands, the defendants refused and failed to pay their loans.

"The defendants (herein sureties) filed separate answers (pp. 49, 68, 205, 208 and 231). Collating these, We drew the following: All of them claimed that they only signed the Surety Agreement with the understanding that the same was a mere formality required of the officers of the corporation. They did not in any way or manner receive a single cent from the proceeds of said loan and/or derive any profit therefrom. Neither did they receive any consideration valuable or otherwise, from defendant Fil-Eastern. They further claim that the loan in question was negotiated and approved under highly irregular, anomalous and suspicious circumstances to the point that the Surety Agreement executed thereafter is invalid, null and void and without force and effect. The extension of time of payment of the loan in question released and discharged the answering defendants from any liability under the Surety Agreement. The Surety Agreement is null and void from the beginning due to a defect in the consent of the defendants and that their liabilities under the Surety Agreement, if any, has been extinguished by novation. The cause of action of the complainant is barred by laches and estoppel in that the plaintiff with full knowledge of the deteriorating financial condition of Fil-Eastern did not take steps to collect from said defendant corporation while still solvent. They also maintained that if anyone is liable for the payment of said loan, it is Felipe Ysmael, Jr. and not them or it is only Fil-Eastern and the controlling officers who profited and made use of the proceeds of the loan. Defendant Agra likewise said that he was made to sign the Surety Agreement and he did it because of the moral influence and pressure exerted upon him by Felipe Ysmael, Jr. (their employer at the time of signing), thereby arousing strong fears of losing a much needed employment to support his family should he refuse to sign as Surety.

"In the order of the trial court dated October 30, 1978, defendant Fil-Eastern was declared in default for its failure to answer the complaint within the reglementary period and the case was scheduled for pre-trial conference. The individual defendants with the court's approval thereafter filed an amended third-party complaint against Felipe Ysmael, Jr.

"The amended third-party complaint alleged that at the time of execution of the alleged Surety Agreement subject matter of the principal complaint, third-party plaintiffs were but employees of Ysmael Steel Manufacturing Co., owned by third-party-defendant. Third-party-plaintiffs were in no financial position to act as sureties to a P2.5 million loan. They became incorporators of original defendant Fil-Eastern because of fear of losing their employment brought about by the tremendous pressure and moral influence exerted upon them by their employer-third-party-defendant. They signed the Surety Agreement upon the order of the third-party-defendant. In signing the said document, the third-party-plaintiffs were assured by the third-party-defendant that they had nothing to fear and worry about because the latter will assume all liabilities as well as profits therefrom and that the loan subject of the Surety Agreement was with the prior approval and blessing of a high government official. They were likewise assured that the surety agreement was but a formality and that because of such pressure, influence as well as assurances, third-party-plaintiffs signed the Surety Agreement.

"Third-party-defendant Felipe Ysmael, Jr. in his answer alleged that the Surety Agreement was freely and voluntarily signed and executed by third-party-plaintiffs without any intimidation, undue, improper or fraudulent representations. Further, granting arguendo that the consent of third-party plaintiffs in signing said Surety Agreement was vitiated with intimidation, undue influence or fraudulent representation on the part of

third-party-defendant, said Surety Agreement is only voidable and therefore binding unless annulled by a proper action in court. The third-party-plaintiffs did not file the proper court action for the annulment of said agreement. They are now barred from filing an action for annulment of said agreement, the prescriptive period therefor being only four (4) years from the time the defect of the consent had ceased, and from the discovery of the all[e]ged fraud. In addition, third-party plaintiffs had ratified said agreement which they signed in July 1967 by signing their names on and execution of several promissory thereafter.

"At the pre-trial conference held on March 21, 1980, the parties failed to agree on a possible amicable settlement hence the case was set for trial on the merits. On July 5, 1984, during the pendency of the trial, third-party defendant Felipe Ysmael, Jr. died. He was substituted by his legal heirs Patrick Ysmael and Jeanne Ysmael as third-party defendants. Defendant Pedro Atienza died on January 4, 1987. It appearing that he has no legal heirs, the case against him was dismissed."

After trial, the regional trial court (RTC) ruled against herein petitioners. On appeal, the CA modified the RTC ruling by deleting the award of attorney's fees. Hence, this recourse to this Court.

Ruling of the Court of Appeals

In ruling that petitioners were liable under the surety agreement, the Court of Appeals rejected their defense of laches. It held that "the lapse of seven years and eight months from December 31, 1968 until the judicial demand on August 30, 1976 cannot be considered as unreasonable delay which would necessitate the application of laches. The action filed by the plaintiff has not yet prescribed. It is well within the ten-year prescriptive period provided for by law wherein actions based on written contracts can be instituted." [5]

The Court of Appeals also noted that the "prescriptive period did not begin to run from December 31, 1968 as [herein petitioners] presupposed. It was only from the time of the judicial demand on August 30, 1976 that the cause of action accrued. Thus, [private respondent] was well within the prescriptive period of ten years when it instituted the case in court." The Court of Appeals further ruled that "placing the blame on [PNB] for its failure to immediately pounce upon its debtors the moment the loan matured is grossly unfair for xxx demand upon the sureties to pay is not necessary."

The appellate court also held that petitioners proved only the first of the following four essential elements of laches: "(1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred."

Issues

In their Memorandum, petitioners raise the following issues:[6]

"1. WHETHER OR NOT THE CLAIM OF THE PNB AGAINST THE PETITIONERS IS ALREADY BARRED BY THE EQUITABLE DEFENSE OF LACHES?

"2. WHETHER OR NOT THE RESPECTIVE CONJUGAL PARTNERSHIPS OF THE PETITIONERS COULD BE HELD LIABLE FOR ANY LIABILITY OF THE PETITIONERS UNDER THE SURETY AGREEMENT IN FAVOR OF THE PNB?"

Under the first issue, petitioners submit four other questions:

"1-a WHETHER OR NOT THE EQUITABLE DEFENSE OF LACHES APPLIES INDEPENDENTLY OF PRESCRIPTION?

"1-b WHETHER OR NOT THE CAUSE OF ACTION OF THE PNB AGAINST THE PETITIONERS ACCRUED ONLY FROM THE TIME OF THE JUDICIAL DEMAND ON AUGUST 30, 1976?

"1-c WHETHER OR NOT THE FOUR (4) WELL-SETTLED ELEMENTS OF LACHES ARE PRESENT IN THIS CASE?

"1-d WHETHER OR NOT THE RULING IN THE CASE OF PHILIPPINE NATIONAL BANK VS. COURT OF APPEALS, 217 SCRA 347, IS APPLICABLE IN THIS INSTANT CASE?"

In the main, the issue is whether petitioners may raise the defense of laches in order to avoid their liability under the surety agreement. Preliminarily, we shall also take up the question of petitioners' liability as sureties.

The Court's Ruling

The appeal is not meritorious.

Preliminary Matter: Liability of Petitioners as Sureties

The present controversy began when the Philippine National Bank (PNB) sought to enforce the Surety Agreement. The pertinent provisions of said Agreement are as follows:

"WHEREAS, FIL-EASTERN WOOD INDUSTRIES, INC. herein referred to as the Principal, has obtained and/or desires to obtain certain credits, loans, overdrafts, discounts, etc., from the Creditor, for all of which the Creditor requires security; and the Surety, on account of valuable consideration received from the Principal, has agreed and undertake to assist the principal by becoming such Surety.

"NOW THEREFORE, for the purpose above mentioned, the Surety, jointly and severally with the Principal, hereby guarantees and warrants to the Creditor, its successors or assigns, the prompt payment at maturity of all the notes, drafts, bills of exchange, overdrafts and other obligations of every kind, on which the Principal may now be indebted or may hereafter become indebted to the Creditor, but the liability of the Surety shall not at any time exceed the sum of TWO MILLION FIVE HUNDRED THOUSAND ONLY (P2,500,000.00) (demand loan of P2,500,000.00), Philippine Currency, plus the interest thereon at the rate of (____%) per cent per annum, and the cost and expenses of the Creditor incurred in connection with the granting of the credits, loans, overdrafts, etc., covered by this surety agreement, including those for the custody, maintenance and preservation of the securities given therefor and also for the collection thereof.

"Both the Principal and the Surety shall be considered in default when they fail to pay the obligation upon maturity with or without demand and in such case the Surety agrees to pay to the creditor, its [successors] or assigns, all outstanding obligations of the Principal, whether due or not due and whether held by the Creditor as principal or agent, and it is agreed that a certified statement by the Creditor as to the amount due from the Principal shall be accepted as correct by the Surety without question.

"The Surety expressly waives all rights to demand for payment and notice of non-payment and protest, and agrees that the securities of every kind, that are now and may hereafter be left with the Creditor, its successors, indorsees or assigns, as collateral to any evidence of debt or obligations or upon which a lien may exist thereon may be withdrawn or surrendered at any time, and the time of payment thereof extended, without notice to, or consent by the Surety; and that the liability on this guaranty shall be solidary, direct and immediate and not contingent upon the pursuit by the Creditor, its successors, indorsees or assigns, of whatever remedies it or they have against the Principal or the securities or liens it or they may possess and the Surety will at any time, whether due or not due, pay to the Creditor with or without demand upon the Principal, any obligation or indebtedness of the Principal not in excess of the amount abovementioned.

"This instrument is intended to be a complete and perfect indemnity to the Creditor to the extent above stated, 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 by the Surety at any time, but

only after forty-eight hours notice in writing to the Creditor, and such revocation shall not operate to relieve the Surety from responsibility for obligations incurred by the Principal prior to the termination of such period." (Emphasis supplied.)

It must be stressed that petitioners, as sureties, bound themselves solidarily for the obligation of Fil-Eastern to PNB. Petitioners admit that they signed the Surety Agreement, but they challenge their liability thereon on the ground that they were allegedly coerced by their employer into signing the deed. The argument is too late at best.

As pointed out by the Court of Appeals, petitioners failed to challenge their consent to the Agreement within the prescriptive period. Article 1391 of the Civil Code provides that the action to annul a contract vitiated by intimidation, violence or undue influence shall be filed within four years from the cessation of such defects. In this case, Petitioners Agra, Gamo and Novales resigned from Fil-Eastern in 1967, 1968 and 1969, respectively. It was only in 1976, when PNB sought to enforce the contract, that they alleged a defect in their consent. By their inaction, their alleged cause of action based on vitiated consent had prescribed. There was no question that petitioners, in their capacity as sureties, were answerable for the obligations of Fil-Eastern to PNB.

We shall now go to the main issue of this case: Whether petitioners may invoke the defense of laches, considering that PNB's claim had not yet prescribed.

Main Issue: Laches

Petitioners admit that PNB's claim, though filed more than seven years from the maturity of the obligation, fell within the ten-year prescriptive period. They argue, however, that the cause was already barred by laches, which is defined as "the failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it." [7] In arguing that the appellate court erred in rejecting the defense of laches, petitioners cite four reasons: (1) the defense of laches applies independently of prescription; (2) the cause of action against petitioners accrued from the maturity of the obligation, not from the time of judicial demand; (3) the four well-settled elements of laches were duly proven; and (4) PNB v. CA applies in the instant case. As will be shown below, all these arguments are devoid of merit.

Application of Laches

Assailing the CA ruling that laches was inapplicable because the claim was brought within the ten-year prescriptive period, petitioners stress that the defense of laches differs from and is applied independently of prescription. In support, they cite, among others, *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, [8] in which the Supreme Court ruled:

"[T]he defense of laches applies independently of prescription. Laches is different from the statute of limitations. Prescription is concerned with the fact of delay, whereas laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity; whereas prescription applies at law. Prescription is based on fixed time, laches is not."

True, prescription is different from laches, but petitioners' reliance on *Nielson* is misplaced. As held in the *aforecited* case, laches is principally a question of equity. Necessarily, "there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations." [9] Petitioners, however, failed to show that the collection suit against herein sureties was inequitable. Remedies in equity address only situations tainted with inequity, not those expressly governed by statutes. Indeed, the petitioners failed to prove the presence of all the

four established requisites of laches, viz:

- "(1) conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy;
- (2) delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit;
- (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his claim; and
- (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred." [10]

That the first element exists is undisputed. Neither Fil-Eastern nor the sureties, herein petitioners, paid the obligation under the Surety Agreement.

The second element cannot be deemed to exist. Although the collection suit was filed more than seven years after the obligation of the sureties became due, the lapse was within the prescriptive period for filing an action. In this light, we find immaterial petitioners' insistence that the cause of action accrued on December 31, 1968, when the obligation became due, and not on August 30, 1976, when the judicial demand was made. In either case, both submissions fell within the ten-year prescriptive period. In any event, "the fact of delay, standing alone, is insufficient to constitute laches." [11]

Petitioners insist that the delay of seven years was unreasonable and unexplained, because demand was not necessary. Again we point that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. In *Chavez v. Bonto-Perez*, [12] the Court reiterated an earlier holding, viz:

"Laches is a doctrine in equity while prescription is based on law. Our courts are basically courts of law and not courts of equity. Thus, laches cannot be invoked to resist the enforcement of an existing legal right. We have ruled in *Arsenal v. Intermediate Appellate Court* x x x that it is a long standing principle that equity follows the law. Courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. In *Zabat, Jr. v. Court of Appeals* x x x, this Court was more emphatic in upholding the rules of procedure. We said therein:

"As for equity, which has been aptly described as 'justice outside legality,' this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequitas nunquam contravenit legis*. This pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.'

"Thus, where the claim was filed within the three-year statutory period, recovery therefore cannot be barred by laches."

Petitioners also failed to prove the third element of laches. It is absurd to maintain that petitioners did not know that PNB would assert its right under the Surety Agreement. It is unnatural, if not unheard of, for banks to condone debts without adequate recompense in some other form. Petitioners have not given us reason why they assumed that PNB would not enforce the Agreement against them.

Finally, petitioners maintain that the fourth element is present because they would suffer damage or injury as a result of PNB's claim. This is the crux of the controversy. In addition to the payment of the amount stipulated in the Agreement, other equitable grounds were enumerated by petitioners, viz:

"1. Petitioners acted as sureties under pressure from Felipe 'Baby' Ysmael, Jr., the headman of the Ysmael Group of Companies where the petitioners were all employed in various executive positions.

2. Petitioners did not receive a single centavo in consideration of their acting as sureties.

3. The surety agreement was not really a requisite for the grant of the loan to FIL-EASTERN because the first release on the loan was made on July 17, 1967, or even before the Surety Agreement was executed by petitioners on July 21, 1967.

4. Petitioners were assured that the Surety Agreement was merely a formality, and they had reason to believe that assurance because the loan was principally secured by an assignment of 15% of the proceeds of the sale of logs of FIL-EASTERN to Iwai & Co., Ltd., and such assignment was clearly stated in PNB Board Resolution No. 407. In fact, while it was expressly stated in all of the eight (8) promissory notes covering the releases of the loan that the said loan was secured by 15% of the contract of sale with Iwai & Co., Ltd., only three (3) promissory notes stated that the loan was also secured by the "joint and several signatures of the officers of the corporation". It is to be noted that no mention was even made of the joint and several signatures of petitioners as sureties. In other words, the principal security was the assignment of 15% of the contract for the sale of logs to Iwai & Co., Ltd.

5. For reasons not explained by PNB, PNB did not collect the 15% of the proceeds of the sale of the logs to Iwai & Co., Ltd., and such failure resulted in the non-collection of the P2,500,000.00 demand loan, or at least a portion of it.

6. For reasons likewise unexplained by PNB, PNB did not make any demand upon petitioners to pay the unpaid loan of FIL-EASTERN until after FIL-EASTERN had become bankrupt, and PNB was aware of this fact because it foreclosed the chattel mortgages on the other loans of FIL-EASTERN which were secured by said chattel mortgages."^[13] (Emphasis found in the original.)

These circumstances do not justify the application of laches. Rather, they disclose petitioners' failure to understand the language and the nature of the Surety Arrangement. They cannot now argue that the Surety Agreement was merely a formality, secondary to the assignment of 15 percent of the proceeds of the sale of Fil-Eastern's logs to Iwai and Co., Ltd. Neither can they rely on PNB's failure to collect the assigned share in the sale of the logs or to make a demand on petitioners until after Fil-Eastern had become bankrupt. The Court stresses that the obligation of a surety is direct, primary and absolute. Thus, the Court has held:

"[A]lthough the contract of a surety is in essence secondary only to a valid principal obligation, his 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. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom."^[14]

When petitioners signed as sureties, they expressly and unequivocally agreed to the stipulation that "the liability on this guaranty shall be solidary, direct and immediate and not contingent upon the pursuit by the creditor, its successors, indorsees or assigns, of whatever remedies it or they have against the principal or the securities or liens it or they may possess."

If they had mistaken the import of the Surety Agreement, they could have easily asked for its revocation. The Agreement stipulates that it "may be revoked by the Surety at any time, but only after forty-eight hours notice in writing to the Creditor, and such revocation shall not operate to relieve the Surety from responsibility for obligations incurred by the Principal prior to the termination of such period." This they did not do.

Equally unavailing is petitioners' allegation that the Surety Agreement was not a requisite for the grant of the loan.

Even if their assertion is true, the fact remains that they signed the contract and voluntarily bound themselves to be solidarily liable for the loan amounting to P2,500,000.

The other "equitable" circumstances above enumerated fail to support petitioners' cause. As earlier stated, petitioners are already barred from questioning the voluntariness of their consent. Furthermore, this Court has categorically ruled that a surety is liable for the debt of another, although he or she received no benefit therefrom.[15]

Clearly, aside from the fact that the collection suit was filed only after the lapse of seven years from the date the obligation became due and demandable, petitioners failed to adduce any showing of inequity. Hence, the rules on equity cannot protect them.

Applicability of PNB v. CA

Petitioners allege that the CA committed grave error in failing to apply PNB v. Court of Appeals,[16] which they insist to be analogous to the present case. The facts in said case are as follows:

"Private Respondent B.P. Mata & Co. Inc. (Mata), is a private corporation engaged in providing goods and services to shipping companies. Since 1966, it has acted as a manning or crewing agent for several foreign firms, one of which is Star Kist foods, Inc., USA (Star Kist). As part of their agreement, Mata makes advances for the crew's basic personal needs. Subsequently, Mata sends monthly billings to its foreign principal Star Kist, which in turn reimburses Mata by sending a telegraphic transfer through banks for credit to the latter's account.

"Against this background, on February 21, 1975, Security Pacific National Bank (SEPAC) of Los Angeles which had an agency arrangement with Philippine National Bank (PNB), transmitted a cable message to the International Department of PNB to pay the amount of US\$14,000 to Mata by crediting the latter's account with the Insular Bank of Asia and America (IBAA), per order of Star Kist. Upon receipt of this cabled message on February 24, 1975, PNB's International Department noticed an error and sent a service message to SEPAC Bank. The latter replied with the instructions that the amount of US\$14,000 should only be for US\$1,400.

"On the basis of the cable message dated February 24, 1975, Cashier's Check No. 269522 in the amount of US\$1,400 (P9,772.96) representing reimbursement from Star Kist, was issued by the Star Kist for the account of Mata on February 25, 1975 through the Insular Bank of Asia and America (IBAA).

"However, fourteen days after or on March 11, 1975, PNB effected another payment through Cashier's Check No. 270271 in the amount of US\$14,000 (P97,878.60) purporting to be another transmittal of reimbursement from Star Kist, private respondent's foreign principal.

"Six years later, or more specifically, on May 13, 1981, PNB requested Mata for refund of US\$14,000 (P97,878.60) after it discovered its error in effecting the second payment.

"On February 4, 1982, PNB filed a civil case for collection and refund of US\$14,000 against Mata arguing that based on a constructive trust under Article 1456 of the Civil Code, it has a right to recover the said amount it erroneously credited to respondent Mata."[17]

On the ground of laches, the Court decided against the claim of PNB, stating that:

"[i]t is amazing that it took petitioner almost seven years before it discovered that it had erroneously paid private respondent. Petitioner would attribute its mistake to the heavy volume of international transactions handled by the Cable and Remittance Division of the International Department of PNB. Such specious reasoning is not persuasive. It is unbelievable for a bank, and a government bank at that, which regularly publishes its balanced financial statements annually or more frequently, by the quarter, to notice its error only seven years later. As a universal bank with worldwide operations, PNB cannot afford to commit such costly

mistakes. Moreover, as between parties where negligence is imputable to one and not to the other, the former must perforce bear the consequences of its neglect. Hence, petitioner should bear the cost of its own negligence."

Petitioners maintain that the delay in PNB v. CA was even shorter than that in the present case. If the bank in the aforesaid case was negligent in not discovering the overpayment, herein petitioners assert that the negligence was even more culpable in the present case. They add that, given the standard practice of banks to flag delinquent accounts, the inaction for almost seven years of herein respondent bank was gross and inexcusable.

We are not persuaded. There are no absolute rules in the application of equity, and each case must be examined in the light of its peculiar facts. In PNB v. CA, there was a mistake, an inexcusable one, on the part of petitioner bank in making an overpayment and repeating the same error fourteen days later. If the bank could not immediately discover the mistake despite all its agents and employees, the beneficiary of the amount could not be expected to do so. It is, thus, inequitable to allow PNB to collect the amount, after such a long delay, from the beneficiary who had assumed, after all those years, that the amount really belonged to it.

In the present case, there is no showing of any mistake or any inequity. The fact alone that seven years had lapsed before PNB filed the collection suit does not mean that it discovered the obligation of the sureties only then. There was a Surety Arrangement, and the law says that the said contract can be enforced by action within ten years. The bank and the sureties all knew that the action to enforce the contract did not have to be filed immediately. In other words, the bank committed no mistake or inequitable conduct that needed correction, and the sureties had no misconception about their liabilities under the contract.

Clearly, petitioners have no recourse in equity, because they failed to show any inequity on the part of PNB.

Additional Issue: Liability of Conjugal Assets

In their Memorandum, petitioners belatedly ask the Court to rule that, in case of a court ruling adverse to them, the conjugal properties would not be liable for the husbands' debts that did not redound to the benefit of the conjugal partnership.[18]

This issue cannot be allowed, for it is being raised for the first time only in petitioners' Memorandum. Issues, arguments, theories and causes of action not raised below may no longer be posed on appeal.[19] Furthermore, petitioners are asking the Court to issue a ruling on a hypothetical situation. In effect, they are asking the Court to render an advisory opinion, a task which is beyond its constitutional mandate.

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

SO ORDERED.

Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.
Romero, J., (Chairman), abroad on official leave.

[1] Penned by J. Arturo B. Buena (now Associate Justice of the Supreme Court), division chairman; with the concurrence of JJ. Buenaventura J. Guerrero and Portia Alino-Hormachuelos, members.

[2] CA Decision, p. 14; Rollo, p. 43.

[3] Rollo, p. 45.

- [4] CA Decision, pp. 1-4; Rollo, pp. 30-33. The case was deemed submitted for resolution on January 28, 1999, when the Court received petitioners' Reply Memorandum.
- [5] CA Decision, p. 10; Rollo, p. 39.
- [6] Petitioners' Memorandum, p. 5; Rollo, p. 148.
- [7] Vitug, Compendium of Civil Law and Jurisprudence, pp. 570-571; citing *Madeja v. Patcho*, 132 SCRA 540.
- [8] 18 SCRA 1040, December 17, 1966, per Zaldivar, J. See also *Heirs of Batiog Lacamen v. Heirs of Laruan*, 65 SCRA 605, 609, July 31, 1975; *Radio Communication of the Philippines, Inc. v. NLRC*, 223 SCRA 656, June 25, 1993; *Jimenez v. Fernandez*, 184 SCRA 190, 196, April 6, 1990; *Santiago v. Court of Appeals*, 278 SCRA 98, August 21, 1997, per Hermosisima, Jr. J.
- [9] *Jimenez v. Fernandez*, 184 SCRA 196, April 6, 1990, per Paras, J.
- [10] *Catholic Bishop of Balanga v. CA*, 264 SCRA 181, November 14, 1996, per Hermosisima Jr., J.; *Go Chi Gun, et al. v. Co Cho, et al.*, 96 Phil. 622, February 28, 1955; *Mejia de Lucas v. Gamponia*, 100 Phil. 277, October 31, 1956; *Z.E. Lotho, Inc. v. Ice & Cold Storage Industries, Inc.*, 3 SCRA 744, December 28, 1961, 1961; *Abraham v. Recto-Kasten*, 4 SCRA 298, June 31, 1962; *Custodio v. Casiano*, 9 SCRA 841, December 27, 1963; *Nielsen & Co., Inc. v. Lepanto Consolidated Mining Co.*, 18 SCRA 1040, December 17, 1966; *Miguel v. Catalino*, 26 SCRA 234, November 29, 1968; *Yusingco v. Ong Hing Lian*, 42 SCRA 589, December 24, 1971; *Perez v. Ong Chua*, 116732, September 23, 1982; *Rafols v. Barba*, 119 SCRA 146, December 13, 1982; *Chung Ka Bio v. Intermediate Appellate Court*, supra; *Claverias v. Quingco*, 207 SCRA 66, 83 March 6, 1992; *Buenaventura v. Court of Appeals*, 216 SCRA 818, 824, December 28, 1992.
- [11] *Chavez v. Bonto-Perez*, 242 SCRA 73, March 1, 1995, per Puno, J.
- [12] 242 SCRA 81, supra; quoting *Imperial Valley Shipping Agency v. NLRC*, 200 SCRA 178, August 5, 1991.
- [13] Petitioners' Memorandum, pp. 17-18; Rollo, pp. 160-161.
- [14] *Garcia v. Court of Appeals*, 191 SCRA 493, November 20, 1990, per Cruz, J.
- [15] Ibid.
- [16] 217 SCRA 347, January 21, 1993, per Romero, J.
- [17] *PNB v. CA*, supra, pp. 350-351.
- [18] Petitioners' Memorandum, p. 27; Rollo, p. 170.
- [19] *San Juan Structural v. CA*, GR No. 129459, September 29, 1998; *Keng Hua Paper Product Co., Inc. v. CA*, GR No. 116863, February 12, 1998.

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