

SECURITY BANK AND TRUST COMPANY, INC., PETITIONER, VS. RODOLFO M. CUENCA, RESPONDENT.

G.R. No. 138544. October 03, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor. The fundamental rules of fair play require the creditor to obtain the consent of the surety to any material alteration in the principal loan agreement, or at least to notify it thereof. Hence, petitioner bank cannot hold herein respondent liable for loans obtained in excess of the amount or beyond the period stipulated in the original agreement, absent any clear stipulation showing that the latter waived his right to be notified thereof, or to give consent thereto. This is especially true where, as in this case, respondent was no longer the principal officer or major stockholder of the corporate debtor at the time the later obligations were incurred. He was thus no longer in a position to compel the debtor to pay the creditor and had no more reason to bind himself anew to the subsequent obligations.

The Case

This is the main principle used in denying the present Petition for Review under Rule 45 of the Rules of Court. Petitioner assails the December 22, 1998 Decision[1] of the Court of Appeals (CA) in CA-GR CV No. 56203, the dispositive portion of which reads as follows:

"WHEREFORE, the judgment appealed from is hereby amended in the sense that defendant-appellant Rodolfo M. Cuenca [herein respondent] is RELEASED from liability to pay any amount stated in the judgment.

"Furthermore, [Respondent] Rodolfo M. Cuenca's counterclaim is hereby DISMISSED for lack of merit.

"In all other respect[s], the decision appealed from is AFFIRMED."[2]

Also challenged is the April 14, 1999 CA Resolution,[3] which denied petitioner's Motion for Reconsideration.

Modified by the CA was the March 6, 1997 Decision[4] of the Regional Trial Court (RTC) of Makati City (Branch 66) in Civil Case No. 93-1925, which disposed as follows:

"WHEREFORE, judgment is hereby rendered ordering defendants Sta. Ines Melale Corporation and Rodolfo M. Cuenca to pay, jointly and severally, plaintiff Security Bank & Trust Company the sum of P39,129,124.73 representing the balance of the loan as of May 10, 1994 plus 12% interest per annum until fully paid, and the sum of P100,000.00 as attorney's fees and litigation expenses and to pay the costs.

SO ORDERED."

The Facts

The facts are narrated by the Court of Appeals as follows:[5]

"The antecedent material and relevant facts are that defendant-appellant Sta. Ines Melale ('Sta. Ines') is a corporation engaged in logging operations. It was a holder of a Timber License Agreement issued by the Department of Environment and Natural Resources ('DENR').

"On 10 November 1980, [Petitioner] Security Bank and Trust Co. granted appellant Sta. Ines Melale Corporation [SIMC] a credit line in the amount of [e]ight [m]illion [p]esos (P8,000,000.00) to assist the latter in meeting the additional capitalization requirements of its logging operations.

"The Credit Approval Memorandum expressly stated that the P8M Credit Loan Facility shall be effective until 30 November 1981:

`JOINT CONDITIONS:

`1. Against Chattel Mortgage on logging trucks and/or inventories (except logs) valued at 200% of the lines plus JSS of Rodolfo M. Cuenca.

`2. Submission of an appropriate Board Resolution authorizing the borrowings, indicating therein the company's duly authorized signatory/ies;

`3. Reasonable/compensating deposit balances in current account shall be maintained at all times; in this connection, a Makati account shall be opened prior to availment on lines;

`4. Lines shall expire on November 30, 1981; and

`5. The bank reserves the right to amend any of the aforementioned terms and conditions upon written notice to the Borrower.' (Emphasis supplied.)

"To secure the payment of the amounts drawn by appellant SIMC from the above-mentioned credit line, SIMC executed a Chattel Mortgage dated 23 December 1980 (Exhibit `A') over some of its machinery and equipment in favor of [Petitioner] SBTC. As additional security for the payment of the loan, [Respondent] Rodolfo M. Cuenca executed an Indemnity Agreement dated 17 December 1980 (Exhibit `B') in favor of [Petitioner] SBTC whereby he solidarily bound himself with SIMC as follows:

x x x x x x x x

`Rodolfo M. Cuenca x x x hereby binds himself x x x jointly and severally with the client (SIMC) in favor of the bank for the payment, upon demand and without the benefit of excussion of whatever amount x x x the client may be indebted to the bank x x x by virtue of aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s) x x x .' (Emphasis supplied).

"On 26 November 1981, four (4) days prior to the expiration of the period of effectivity of the P8M-Credit Loan Facility, appellant SIMC made a first drawdown from its credit line with [Petitioner] SBTC in the amount of [s]ix [m]illion [o]ne [h]undred [t]housand [p]esos (P6,100,000.00). To cover said drawdown, SIMC duly executed promissory Note No. TD/TLS-3599-81 for said amount (Exhibit `C').

"Sometime in 1985, [Respondent] Cuenca resigned as President and Chairman of the Board of Directors of defendant-appellant Sta. Ines. Subsequently, the shareholdings of [Respondent] Cuenca in defendant-appellant Sta. Ines were sold at a public auction relative to Civil Case No. 18021 entitled `Adolfo A. Angala vs. Universal Holdings, Inc. and Rodolfo M. Cuenca'. Said shares were bought by Adolfo Angala who was the highest bidder during the public auction.

"Subsequently, appellant SIMC repeatedly availed of its credit line and obtained six (6) other loan[s] from [Petitioner] SBTC in the aggregate amount of [s]ix [m]illion [t]hree [h]undred [s]ixty-[n]ine [t]housand [n]ineteen and 50/100 [p]esos (P6,369,019.50). Accordingly, SIMC executed Promissory Notes Nos.

DLS/74/760/85, DLS/74773/85, DLS/74/78/85, DLS/74/760/85 DLS/74/12/86, and DLS/74/47/86 to cover the amounts of the abovementioned additional loans against the credit line.

"Appellant SIMC, however, encountered difficulty[6] in making the amortization payments on its loans and requested [Petitioner] SBTC for a complete restructuring of its indebtedness. SBTC accommodated appellant SIMC's request and signified its approval in a letter dated 18 February 1988 (Exhibit 'G') wherein SBTC and defendant-appellant Sta. Ines, without notice to or the prior consent of [Respondent] Cuenca, agreed to restructure the past due obligations of defendant-appellant Sta. Ines. [Petitioner] Security Bank agreed to extend to defendant-appellant Sta. Ines the following loans:

- Term loan in the amount of [e]ight [m]illion [e]ight [h]undred [t]housand [p]esos (P8,800,000.00), to be applied to liquidate the principal portion of defendant-appellant Sta. Ines['] total outstanding indebtedness to [Petitioner] Security Bank (cf. P. 1 of Exhibit 'G', Expediente, at Vol. II, p. 336; Exhibit '5-B-Cuenca', Expediente, et Vol I, pp. 33 to 34) and

- Term loan in the amount of [t]hree [m]illion [f]our [h]undred [t]housand [p]esos (P3,400,000.00), to be applied to liquidate the past due interest and penalty portion of the indebtedness of defendant-appellant Sta. Ines to [Petitioner] Security Bank (cf. Exhibit 'G', Expediente, at Vol. II, p. 336; Exhibit '5-B-Cuenca', Expediente, at Vol. II, p. 33 to 34).'

"It should be pointed out that in restructuring defendant-appellant Sta. Ines' obligations to [Petitioner] Security Bank, Promissory Note No. TD-TLS-3599-81 in the amount of [s]ix [m]illion [o]ne [h]undred [t]housand [p]esos (P6,100,000.00), which was the only loan incurred prior to the expiration of the P8M-Credit Loan Facility on 30 November 1981 and the only one covered by the Indemnity Agreement dated 19 December 1980 (Exhibit '3-Cuenca', Expediente, at Vol. II, p. 331), was not segregated from, but was instead lumped together with, the other loans, i.e., Promissory Notes Nos. DLS/74/12/86, DLS/74/28/86 and DLS/74/47/86 (Exhibits 'D', 'E', and 'F', Expediente, at Vol. II, pp. 333 to 335) obtained by defendant-appellant Sta. Ines which were not secured by said Indemnity Agreement.

"Pursuant to the agreement to restructure its past due obligations to [Petitioner] Security Bank, defendant-appellant Sta. Ines thus executed the following promissory notes, both dated 09 March 1988 in favor of [Petitioner] Security Bank:

PROMISSORY NOTE NO.

AMOUNT

RL/74/596/88

P8,800,000.00

RL/74/597/88

P3,400,000.00

TOTAL P12,200,000.00

(Exhibits 'H' and 'I', Expediente, at Vol. II, pp. 338 to 343).

"To formalize their agreement to restructure the loan obligations of defendant-appellant Sta. Ines, [Petitioner] Security Bank and defendant-appellant Sta. Ines executed a Loan Agreement dated 31 October 1989 (Exhibit '5-Cuenca', Expediente, at Vol. I, pp. 33 to 41). Section 1.01 of the said Loan Agreement dated 31 October 1989 provides:

`1.01 Amount - The Lender agrees to grant loan to the Borrower in the aggregate amount of TWELVE MILLION TWO HUNDRED THOUSAND PESOS (P12,200,000.00), Philippines [c]urrency (the 'Loan'). The loan shall be released in two (2) tranches of P8,800,000.00 for the first tranche (the 'First Loan') and P3,400,000.00 for the second tranche (the 'Second Loan') to be applied in the manner and for the purpose stipulated hereinbelow.

`1.02. Purpose - The First Loan shall be applied to liquidate the principal portion of the Borrower's present total outstanding indebtedness to the Lender (the 'indebtedness') while the Second Loan shall be applied to liquidate the past due interest and penalty portion of the Indebtedness.' (Underscoring supplied.) (cf. p. 1 of Exhibit '5-Cuenca', Expediente, at Vol. I, p. 33)

"From 08 April 1988 to 02 December 1988, defendant-appellant Sta. Ines made further payments to [Petitioner] Security Bank in the amount of [o]ne [m]illion [s]even [h]undred [f]ifty-[s]even [t]housand [p]esos (P1,757,000.00) (Exhibits '8', '9-P-SIMC' up to '9-GG-SIMC', Expediente, at Vol. II, pp. 38, 70 to 165)

"Appellant SIMC defaulted in the payment of its restructured loan obligations to [Petitioner] SBTC despite demands made upon appellant SIMC and CUENCA, the last of which were made through separate letters dated 5 June 1991 (Exhibit 'K') and 27 June 1991 (Exhibit 'L'), respectively.

"Appellants individually and collectively refused to pay the [Petitioner] SBTC. Thus, SBTC filed a complaint for collection of sum of money on 14 June 1993, resulting after trial on the merits in a decision by the court a quo, x x x from which [Respondent] Cuenca appealed."

Ruling of the Court of Appeals

In releasing Respondent Cuenca from liability, the CA ruled that the 1989 Loan Agreement had novated the 1980 credit accommodation earlier granted by the bank to Sta. Ines. Accordingly, such novation extinguished the Indemnity Agreement, by which Cuenca, who was then the Board chairman and president of Sta. Ines, had bound himself solidarily liable for the payment of the loans secured by that credit accommodation. It noted that the 1989 Loan Agreement had been executed without notice to, much less consent from, Cuenca who at the time was no longer a stockholder of the corporation.

The appellate court also noted that the Credit Approval Memorandum had specified that the credit accommodation was for a total amount of P8 million, and that its expiry date was November 30, 1981. Hence, it ruled that Cuenca was liable only for loans obtained prior to November 30, 1981, and only for an amount not exceeding P8 million.

It further held that the restructuring of Sta. Ines' obligation under the 1989 Loan Agreement was tantamount to a grant of an extension of time to the debtor without the consent of the surety. Under Article 2079 of the Civil Code, such extension extinguished the surety.

The CA also opined that the surety was entitled to notice, in case the bank and Sta. Ines decided to materially alter or modify the principal obligation after the expiry date of the credit accommodation.

Hence, this recourse to this Court.[7]

The Issues

In its Memorandum, petitioner submits the following for our consideration:[8]

"A.

Whether or not the Honorable Court of Appeals erred in releasing Respondent Cuenca from liability as surety under the Indemnity Agreement for the payment of the principal amount of twelve million two hundred thousand pesos (P12,200,000.00) under Promissory Note No. RL/74/596/88 dated 9 March 1988 and Promissory Note No. RL/74/597/88 dated 9 March 1988, plus stipulated interests, penalties and other charges due thereon;

i.

Whether or not the Honorable Court of Appeals erred in ruling that Respondent Cuenca's liability under the Indemnity Agreement covered only availments on SIMC's credit line to the extent of eight million pesos (P8,000,000.00) and made on or before 30 November 1981;

ii.

Whether or not the Honorable Court of Appeals erred in ruling that the restructuring of SIMC's indebtedness under the P8 million credit accommodation was tantamount to an extension granted to SIMC without Respondent Cuenca's consent, thus extinguishing his liability under the Indemnity Agreement pursuant to Article 2079 of the Civil Code;

iii.

Whether or not the Honorable Court of appeals erred in ruling that the restructuring of SIMC's indebtedness under the P8 million credit accommodation constituted a novation of the principal obligation, thus extinguishing Respondent Cuenca's liability under the indemnity agreement;

B.

Whether or not Respondent Cuenca's liability under the Indemnity Agreement was extinguished by the payments made by SIMC;

C.

Whether or not petitioner's Motion for Reconsideration was pro-forma;

D.

Whether or not service of the Petition by registered mail sufficiently complied with Section 11, Rule 13 of the 1997 Rules of Civil Procedure."

Distilling the foregoing, the Court will resolve the following issues: (a) whether the 1989 Loan Agreement novated the original credit accommodation and Cuenca's liability under the Indemnity Agreement; and (b) whether Cuenca waived his right to be notified of and to give consent to any substitution, renewal, extension, increase, amendment, conversion or revival of the said credit accommodation. As preliminary matters, the procedural questions raised by respondent will also be addressed.

The Court's Ruling

The Petition has no merit.

Preliminary Matters:

Procedural Questions

Motion for Reconsideration Not Pro Forma

Respondent contends that petitioner's Motion for Reconsideration of the CA Decision, in merely rehashing the arguments already passed upon by the appellate court, was pro forma; that as such, it did not toll the period for filing the present Petition for Review.[9] Consequently, the Petition was filed out of time.[10]

We disagree. A motion for reconsideration is not pro forma just because it reiterated the arguments earlier passed upon and rejected by the appellate court. The Court has explained that a movant may raise the same arguments, precisely to convince the court that its ruling was erroneous.[11]

Moreover, there is no clear showing of intent on the part of petitioner to delay the proceedings. In *Marikina Valley Development Corporation v. Flojo*,[12] the Court explained that a pro forma motion had no other purpose than to gain time and to delay or impede the proceedings. Hence, "where the circumstances of a case do not show an intent on the part of the movant merely to delay the proceedings, our Court has refused to characterize the motion as simply pro forma." It held:

"We note finally that because the doctrine relating to pro forma motions for reconsideration impacts upon the reality and substance of the statutory right of appeal, that doctrine should be applied reasonably, rather than literally. The right to appeal, where it exists, is an important and valuable right. Public policy would be better served by according the appellate court an effective opportunity to review the decision of the trial court on the merits, rather than by aborting the right to appeal by a literal application of the procedural rules relating to pro forma motions for reconsideration."

Service by Registered Mail Sufficiently Explained

Section 11, Rule 13 of the 1997 Rules of Court, provides as follows:

"SEC. 11. Priorities in modes of service and filing. -- Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed."

Respondent maintains that the present Petition for Review does not contain a sufficient written explanation why it was served by registered mail.

We do not think so. The Court held in *Solar Entertainment v. Ricafort*[13] that the aforecited rule was mandatory, and that "only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with."

In this case, the Petition does state that it was served on the respective counsels of Sta. Ines and Cuenca "by registered mail in lieu of personal service due to limitations in time and distance." [14] This explanation sufficiently shows that personal service was not practicable. In any event, we find no adequate reason to reject the contention of petitioner and thereby deprive it of the opportunity to fully argue its cause.

First Issue:

Original Obligation Extinguished by Novation

An obligation may be extinguished by novation, pursuant to Article 1292 of the Civil Code, which reads as follows:

"ART. 1292. In order that an obligation may be extinguished by another which substitute the same, it is

imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other."

Novation of a contract is never presumed. It has been held that "[i]n the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point." [15] Indeed, the following requisites must be established: (1) there is a previous valid obligation; (2) the parties concerned agree to a new contract; (3) the old contract is extinguished; and (4) there is a valid new contract. [16]

Petitioner contends that there was no absolute incompatibility between the old and the new obligations, and that the latter did not extinguish the earlier one. It further argues that the 1989 Agreement did not change the original loan in respect to the parties involved or the obligations incurred. It adds that the terms of the 1989 Contract were "not more onerous." [17] Since the original credit accommodation was not extinguished, it concludes that Cuenca is still liable under the Indemnity Agreement.

We reject these contentions. Clearly, the requisites of novation are present in this case. The 1989 Loan Agreement extinguished the obligation [18] obtained under the 1980 credit accommodation. This is evident from its explicit provision to "liquidate" the principal and the interest of the earlier indebtedness, as the following shows:

"1.02. Purpose. The First Loan shall be applied to liquidate the principal portion of the Borrower's present total outstanding Indebtedness to the Lender (the "Indebtedness") while the Second Loan shall be applied to liquidate the past due interest and penalty portion of the Indebtedness." [19] (Italics supplied.)

The testimony of an officer [20] of the bank that the proceeds of the 1989 Loan Agreement were used "to pay-off" the original indebtedness serves to strengthen this ruling. [21]

Furthermore, several incompatibilities between the 1989 Agreement and the 1980 original obligation demonstrate that the two cannot coexist. While the 1980 credit accommodation had stipulated that the amount of loan was not to exceed P8 million, [22] the 1989 Agreement provided that the loan was P12.2 million. The periods for payment were also different.

Likewise, the later contract contained conditions, "positive covenants" and "negative covenants" not found in the earlier obligation. As an example of a positive covenant, Sta. Ines undertook "from time to time and upon request by the Lender, [to] perform such further acts and/or execute and deliver such additional documents and writings as may be necessary or proper to effectively carry out the provisions and purposes of this Loan Agreement." [23] Likewise, SIMC agreed that it would not create any mortgage or encumbrance on any asset owned or hereafter acquired, nor would it participate in any merger or consolidation. [24]

Since the 1989 Loan Agreement had extinguished the original credit accommodation, the Indemnity Agreement, an accessory obligation, was necessarily extinguished also, pursuant to Article 1296 of the Civil Code, which provides:

"ART. 1296. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent."

Alleged Extension

Petitioner insists that the 1989 Loan Agreement was a mere renewal or extension of the P8 million original accommodation; it was not a novation. [25]

This argument must be rejected. To begin with, the 1989 Loan Agreement expressly stipulated that its purpose was to "liquidate," not to renew or extend, the outstanding indebtedness. Moreover, respondent did not sign or

consent to the 1989 Loan Agreement, which had allegedly extended the original P8 million credit facility. Hence, his obligation as a surety should be deemed extinguished, pursuant to Article 2079 of the Civil Code, which specifically states that "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. x x x." In an earlier case,[26] the Court explained the rationale of this provision in this wise:

"The theory behind Article 2079 is that an extension of time given to the principal debtor by the creditor without the surety's consent would deprive the surety of his right to pay the creditor and to be immediately subrogated to the creditor's remedies against the principal debtor upon the maturity date. The surety is said to be entitled to protect himself against the contingency of the principal debtor or the indemnitors becoming insolvent during the extended period."

Binding Nature of the Credit Approval Memorandum

As noted earlier, the appellate court relied on the provisions of the Credit Approval Memorandum in holding that the credit accommodation was only for P8 million, and that it was for a period of one year ending on November 30, 1981. Petitioner objects to the appellate court's reliance on that document, contending that it was not a binding agreement because it was not signed by the parties. It adds that it was merely for its internal use.

We disagree. It was petitioner itself which presented the said document to prove the accommodation. Attached to the Complaint as Annex A was a copy thereof "evidencing the accommodation." [27] Moreover, in its Petition before this Court, it alluded to the Credit Approval Memorandum in this wise:

"4.1 On 10 November 1980, Sta. Ines Melale Corporation ("SIMC") was granted by the Bank a credit line in the aggregate amount of Eight Million Pesos (P8,000,000.00) to assist SIMC in meeting the additional capitalization requirements for its logging operations. For this purpose, the Bank issued a Credit Approval Memorandum dated 10 November 1980."

Clearly, respondent is estopped from denying the terms and conditions of the P8 million credit accommodation as contained in the very document it presented to the courts. Indeed, it cannot take advantage of that document by agreeing to be bound only by those portions that are favorable to it, while denying those that are disadvantageous.

Second Issue:

Alleged Waiver of Consent

Pursuing another course, petitioner contends that Respondent Cuenca "impliedly gave his consent to any modification of the credit accommodation or otherwise waived his right to be notified of, or to give consent to, the same." [28] Respondent's consent or waiver thereof is allegedly found in the Indemnity Agreement, in which he held himself liable for the "credit accommodation including [its] substitutions, renewals, extensions, increases, amendments, conversions and revival." It explains that the novation of the original credit accommodation by the 1989 Loan Agreement is merely its "renewal," which "connotes cessation of an old contract and birth of another one x x x." [29]

At the outset, we should emphasize that an essential alteration in the terms of the Loan Agreement without the consent of the surety extinguishes the latter's obligation. As the Court held in *National Bank v. Veraguth*, [30] "[i]t is fundamental in the law of suretyship that any agreement between the creditor and the principal debtor which essentially varies the terms of the principal contract, without the consent of the surety, will release the surety from liability."

In this case, petitioner's assertion - that respondent consented to the alterations in the credit accommodation -- finds no support in the text of the Indemnity Agreement, which is reproduced hereunder:

"Rodolfo M. Cuenca of legal age, with postal address c/o Sta. Ines Malale Forest Products Corp., Alco Bldg., 391 Buendia Avenue Ext., Makati Metro Manila for and in consideration of the credit accommodation in the total amount of eight million pesos (P8,000,000.00) granted by the SECURITY BANK AND TRUST COMPANY, a commercial bank duly organized and existing under and by virtue of the laws of the Philippine, 6778 Ayala Avenue, Makati, Metro Manila hereinafter referred to as the BANK in favor of STA. INES MELALE FOREST PRODUCTS CORP., x x x ---- hereinafter referred to as the CLIENT, with the stipulated interests and charges thereon, evidenced by that/those certain PROMISSORY NOTE(S)], made, executed and delivered by the CLIENT in favor of the BANK hereby bind(s) himself/themselves jointly and severally with the CLIENT in favor of the BANK for the payment , upon demand and without benefit of excussion of whatever amount or amounts the CLIENT may be indebted to the BANK under and by virtue of aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendment, conversions and revivals of the aforesaid credit accommodation(s), as well as of the amount or amounts of such other obligations that the CLIENT may owe the BANK, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the BANK, plus interest and expenses arising from any agreement or agreements that may have heretofore been made, or may hereafter be executed by and between the parties thereto, including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s), and further bind(s) himself/themselves with the CLIENT in favor of the BANK for the faithful compliance of all the terms and conditions contained in the aforesaid credit accommodation(s), all of which are incorporated herein and made part hereof by reference."

While respondent held himself liable for the credit accommodation or any modification thereof, such clause should be understood in the context of the P8 million limit and the November 30, 1981 term. It did not give the bank or Sta. Ines any license to modify the nature and scope of the original credit accommodation, without informing or getting the consent of respondent who was solidarily liable. Taking the bank's submission to the extreme, respondent (or his successors) would be liable for loans even amounting to, say, P100 billion obtained 100 years after the expiration of the credit accommodation, on the ground that he consented to all alterations and extensions thereof.

Indeed, it has been held that a contract of surety "cannot extend to more than what is stipulated. It is strictly construed against the creditor, every doubt being resolved against enlarging the liability of the surety." [31] Likewise, the Court has ruled that "it is a well-settled legal principle that if there is any doubt on the terms and conditions of the surety agreement, the doubt should be resolved in favor of the surety x x x. Ambiguous contracts are construed against the party who caused the ambiguity." [32] In the absence of an unequivocal provision that respondent waived his right to be notified of or to give consent to any alteration of the credit accommodation, we cannot sustain petitioner's view that there was such a waiver.

It should also be observed that the Credit Approval Memorandum clearly shows that the bank did not have absolute authority to unilaterally change the terms of the loan accommodation. Indeed, it may do so only upon notice to the borrower, pursuant to this condition:

"5. The Bank reserves the right to amend any of the aforementioned terms and conditions upon written notice to the Borrower." [33]

We reject petitioner's submission that only Sta. Ines as the borrower, not respondent, was entitled to be notified of any modification in the original loan accommodation. [34] Following the bank's reasoning, such modification would not be valid as to Sta. Ines if no notice were given; but would still be valid as to respondent to whom no notice need be given. The latter's liability would thus be more burdensome than that of the former. Such untenable theory is contrary to the principle that a surety cannot assume an obligation more onerous than that of the principal. [35]

The present controversy must be distinguished from *Philamgen v. Mutuc*,^[36] in which the Court sustained a stipulation whereby the surety consented to be bound not only for the specified period, "but to any extension thereafter made, an extension x x x that could be had without his having to be notified."

In that case, the surety agreement contained this unequivocal stipulation: "It is hereby further agreed that in case of any extension of renewal of the bond, we equally bind ourselves to the Company under the same terms and conditions as herein provided without the necessity of executing another indemnity agreement for the purpose and that we hereby equally waive our right to be notified of any renewal or extension of the bond which may be granted under this indemnity agreement."

In the present case, there is no such express stipulation. At most, the alleged basis of respondent's waiver is vague and uncertain. It confers no clear authorization on the bank or Sta. Ines to modify or extend the original obligation without the consent of the surety or notice thereto.

Continuing Surety

Contending that the Indemnity Agreement was in the nature of a continuing surety, petitioner maintains that there was no need for respondent to execute another surety contract to secure the 1989 Loan Agreement.

This argument is incorrect. That the Indemnity Agreement is a continuing surety does not authorize the bank to extend the scope of the principal obligation inordinately.^[37] In *Dino v. CA*,^[38] the Court held that "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 or termination thereof."

To repeat, in the present case, the Indemnity Agreement was subject to the two limitations of the credit accommodation: (1) that the obligation should not exceed P8 million, and (2) that the accommodation should expire not later than November 30, 1981. Hence, it was a continuing surety only in regard to loans obtained on or before the aforementioned expiry date and not exceeding the total of P8 million.

Accordingly, the surety of Cuenca secured only the first loan of P6.1 million obtained on November 26, 1991. It did not secure the subsequent loans, purportedly under the 1980 credit accommodation, that were obtained in 1986. Certainly, he could not have guaranteed the 1989 Loan Agreement, which was executed after November 30, 1981 and which exceeded the stipulated P8 million ceiling.

Petitioner, however, cites the *Dino* ruling in which the Court found the surety liable for the loan obtained after the payment of the original one, which was covered by a continuing surety agreement. At the risk of being repetitious, we hold that in *Dino*, the surety Agreement specifically provided that "each suretyship is a continuing one which shall remain in full force and effect until this bank is notified of its revocation." Since the bank had not been notified of such revocation, the surety was held liable even for the subsequent obligations of the principal borrower.

No similar provision is found in the present case. On the contrary, respondent's liability was confined to the 1980 credit accommodation, the amount and the expiry date of which were set down in the Credit Approval Memorandum.

Special Nature of the JSS

It is a common banking practice to require the JSS ("joint and solidary signature") of a major stockholder or corporate officer, as an additional security for loans granted to corporations. There are at least two reasons for this. First, in case of default, the creditor's recourse, which is normally limited to the corporate properties under

the veil of separate corporate personality, would extend to the personal assets of the surety. Second, such surety would be compelled to ensure that the loan would be used for the purpose agreed upon, and that it would be paid by the corporation.

Following this practice, it was therefore logical and reasonable for the bank to have required the JSS of respondent, who was the chairman and president of Sta. Ines in 1980 when the credit accommodation was granted. There was no reason or logic, however, for the bank or Sta. Ines to assume that he would still agree to act as surety in the 1989 Loan Agreement, because at that time, he was no longer an officer or a stockholder of the debtor-corporation. Verily, he was not in a position then to ensure the payment of the obligation. Neither did he have any reason to bind himself further to a bigger and more onerous obligation.

Indeed, the stipulation in the 1989 Loan Agreement providing for the surety of respondent, without even informing him, smacks of negligence on the part of the bank and bad faith on that of the principal debtor. Since that Loan Agreement constituted a new indebtedness, the old loan having been already liquidated, the spirit of fair play should have impelled Sta. Ines to ask somebody else to act as a surety for the new loan.

In the same vein, a little prudence should have impelled the bank to insist on the JSS of one who was in a position to ensure the payment of the loan. Even a perfunctory attempt at credit investigation would have revealed that respondent was no longer connected with the corporation at the time. As it is, the bank is now relying on an unclear Indemnity Agreement in order to collect an obligation that could have been secured by a fairly obtained surety. For its defeat in this litigation, the bank has only itself to blame.

In sum, we hold that the 1989 Loan Agreement extinguished by novation the obligation under the 1980 P8 million credit accommodation. Hence, the Indemnity Agreement, which had been an accessory to the 1980 credit accommodation, was also extinguished. Furthermore, we reject petitioner's submission that respondent waived his right to be notified of, or to give consent to, any modification or extension of the 1980 credit accommodation.

In this light, we find no more need to resolve the issue of whether the loan obtained before the expiry date of the credit accommodation has been paid.

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Written by Justice Jorge S. Imperial (Division chairman), with the concurrence of Justices Hector L. Hofileña and Omar U. Amin (members).

[2] CA Decision, pp. 32-33; rollo, pp. 52-53.

[3] Rollo, p. 56. Penned by Justice Amin with the concurrence of Justices Hofilena and Marina L. Buzon.

[4] Written by Judge Eriberto U. Rosario Jr. (now a member of the Court of Appeals)

[5] CA Decision, pp. 4-9; rollo, pp. 24-29.

[6] According to the RTC, Sta. Ines' Timber License Agreement, which was supposed to expire on July 15, 1998, was suspended by the Department of Environment and Natural Resources on December 6, 1989 and eventually cancelled on May 4, 1990. (RTC Decision, p. 3; rollo, p. 12.)

[7] This case was deemed submitted for decision on May 8, 2000, upon receipt by this Court of respondent's

Reply Memorandum signed by Attys. Elvira C. Oquendo and Vissia Concepcion C. Calderon of Carpio Villaraza & Cruz. Filed earlier on March 3, 2000, was petitioner's Memorandum, signed by Attys. Menardo I. Guevarra, Adrian Ferdinand S. Sugay and Ma. Jazmin B. Banal of De Borja Medialdea Bello Guevarra & Gerodias.

[8] Petitioner's Memorandum, pp. 9-10; rollo, pp. 320-321. All in upper case in the original.

[9] §2, Rule 37 of the Rules of Court, provides that "[a] pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal."

[10] Respondent's Memorandum, pp. 114-115; rollo, pp. 480-481.

[11] See *Guerra Enterprises v. CFI*, 32 SCRA 314, April 17, 1970.

[12] 251 SCRA 87, December 8, 1995, per Feliciano, J.

[13] 293 SCRA 661, August 5, 1998, per Davide, J. (now CJ).

[14] Petition for Review, p. 29; rollo, p. 92.

[15] *Lim Tay v. CA*, 293 SCRA 364, August 5, 1998, per Panganiban, J.

[16] *Cruz v. CA*, 293 SCRA 239, July 27, 1998; citing Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 ed., p. 528.

[17] Petitioner's Memorandum, pp. 25-26; rollo, pp. 336-337.

[18] As will be shown later, only one loan was obtained before the expiry date of the 1980 credit accommodation.

[19] Rollo, p. 125.

[20] Carmen Comia, former manager of the bank's Loans and Discounts Department.

[21] Respondent's Memorandum, pp. 67-68; rollo, pp. 433-434; citing TSN, June 17, 1994, pp. 21, 90, 95-96.

[22] Credit Approval Memorandum, p. 1; rollo, p. 109.

[23] 1989 Loan Agreement, p. 4; rollo, p. 128.

[24] *Ibid.*

[25] Petitioner's Memorandum, p. 28; rollo, p. 339.

[26] *Cochingyan v. R & B Surety and Insurance Co.*, 151 SCRA 339, 352, June 30, 1987, per Feliciano, J.

[27] Complaint, p. 2; rollo, p. 135.

[28] Petitioner's Memorandum, p. 19; rollo, p. 330.

[29] Petitioner's Memorandum, p. 29; rollo, p. 340.

[30] 50 Phil. 253, 257, April 1, 1927, per Villamor, J.

[31] *Aguenza v. CA*, 271 SCRA 1, April 7, 1997, per Hermosissima, J. See also *Zenith Insurance v. CA*, 119 SCRA 485, December 29, 1982.

[32] *Garcia v. CA*, 258 SCRA 446, 456, July 5, 1996, per Melo, J.

[33] Credit Approval Memorandum, p. 2; rollo, p. 110.

[34] Petitioner's Memorandum, pp. 24-25; rollo, pp. 335-336.

[35] Article 2054, Civil Code.

[36] 61 SCRA 22, 26, November 13, 1974, per Fernando, J.

[37] In *Atok Finance Corp. v. CA*, 222 SCRA 232, 245, May 18, 1993, per Feliciano, J., the Court explained the nature of a continuing surety in this wise:

"Comprehensive or continuing surety agreements are in fact quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, commonly requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor."

[38] 216 SCRA 9, November 26, 1992, per Davide, J. (now CJ). See also *Fortune Motors v. CA*, 267 SCRA 653, February 7, 1997.

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