TOMAS ANG, PETITIONER, VS. ASSOCIATED BANK AND ANTONIO ANG ENG LIONG, RESPONDENTS.

G.R. No. 146511. September 05, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This petition for certiorari under Rule 45 of the Rules on Civil Procedure seeks to review the October 9, 2000 Decision[1] and December 26, 2000 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 53413 which reversed and set aside the January 5, 1996 Decision[3] of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 20,299-90, dismissing the complaint filed by respondents for collection of a sum of money.

On August 28, 1990, respondent Associated Bank (formerly Associated Banking Corporation and now known as United Overseas Bank Philippines) filed a collection suit against Antonio Ang Eng Liong and petitioner Tomas Ang for the two (2) promissory notes that they executed as principal debtor and co-maker, respectively.

In the Complaint,[4] respondent Bank alleged that on October 3 and 9, 1978, the defendants obtained a loan of P50,000, evidenced by a promissory note bearing PN-No. DVO-78-382, and P30,000, evidenced by a promissory note bearing PN-No. DVO-78-390. As agreed, the loan would be payable, jointly and severally, on January 31, 1979 and December 8, 1978, respectively. In addition, subsequent amendments[5] to the promissory notes as well as the disclosure statements[6] stipulated that the loan would earn 14% interest rate per annum, 2% service charge per annum, 1% penalty charge per month from due date until fully paid, and attorney's fees equivalent to 20% of the outstanding obligation.

Despite repeated demands for payment, the latest of which were on September 13, 1988 and September 9, 1986, on Antonio Ang Eng Liong and Tomas Ang, respectively, respondent Bank claimed that the defendants failed and refused to settle their obligation, resulting in a total indebtedness of P539,638.96 as of July 31, 1990, broken down as follows:

PN-No. DVO-78-382 PN-No. DVO-78-390

Outstanding Balance P50,000.00 P30,000.00

Add Past due charges for 4,199 days (from 01-31-79 to 07-31-90) Past due charges for 4,253 days (from 12-8-78 to 07-31-90)

14% Interest P203,538.98 P125,334.41

2% Service Charge P11,663.89 P7,088.34

12% Overdue Charge P69,983.34 P42,530.00

Total P285,186.21 P174,952.75

Less: Charges paid P500.00 None

Amount Due P334,686.21 P204,952.75

In his Answer,[7] Antonio Ang Eng Liong only admitted to have secured a loan amounting to P80,000. He pleaded though that the bank "be ordered to submit a more reasonable computation" considering that there had been "no correct and reasonable statement of account" sent to him by the bank, which was allegedly collecting excessive interest, penalty charges, and attorney's fees despite knowledge that his business was destroyed by fire, hence, he had no source of income for several years.

For his part, petitioner Tomas Ang filed an Answer with Counterclaim and Cross-claim.[8] He interposed the affirmative defenses that: the bank is not the real party in interest as it is not the holder of the promissory notes, much less a holder for value or a holder in due course; the bank knew that he did not receive any valuable consideration for affixing his signatures on the notes but merely lent his name as an accommodation party; he accepted the promissory notes in blank, with only the printed provisions and the signature of Antonio Ang Eng Liong appearing therein; it was the bank which completed the notes upon the orders, instructions, or representations of his co-defendant; PN-No. DVO-78-382 was completed in excess of or contrary to the authority given by him to his co-defendant who represented that he would only borrow P30,000 from the bank; his signature in PN-No. DVO-78-390 was procured through fraudulent means when his co-defendant claimed that his first loan did not push through; the promissory notes did not indicate in what capacity he was intended to be bound; the bank granted his co-defendant successive extensions of time within which to pay, without his (Tomas Ang) knowledge and consent; the bank imposed new and additional stipulations on interest, penalties, services charges and attorney's fees more onerous than the terms of the notes, without his knowledge and consent, in the absence of legal and factual basis and in violation of the Usury Law; the bank caused the inclusion in the promissory notes of stipulations such as waiver of presentment for payment and notice of dishonor which are against public policy; and the notes had been impaired since they were never presented for payment and demands were made only several years after they fell due when his co-defendant could no longer pay them.

Regarding his counterclaim, Tomas Ang argued that by reason of the bank's acts or omissions, it should be held liable for the amount of P50,000 for attorney's fees and expenses of litigation. Furthermore, on his cross-claim against Antonio Ang Eng Liong, he averred that he should be reimbursed by his co-defendant any and all sums that he may be adjudged liable to pay, plus P30,000, P20,000 and P50,000 for moral and exemplary damages, and attorney's fees, respectively.

In its Reply,[9] respondent Bank countered that it is the real party in interest and is the holder of the notes since the Associated Banking Corporation and Associated Citizens Bank are its predecessors-in-interest. The fact that Tomas Ang never received any moneys in consideration of the two (2) loans and that such was known to the bank are immaterial because, as an accommodation maker, he is considered as a solidary debtor who is primarily liable for the payment of the promissory notes. Citing Section 29 of the Negotiable Instruments Law (NIL), the bank posited that absence or failure of consideration is not a matter of defense; neither is the fact that the holder knew him to be only an accommodation party.

Respondent Bank likewise retorted that the promissory notes were completely filled up at the time of their delivery. Assuming that such was not the case, Sec. 14 of the NIL provides that the bank has the prima facie authority to complete the blank form. Moreover, it is presumed that one who has signed as a maker acted with care and had signed the document with full knowledge of its content. The bank noted that Tomas Ang is a prominent businessman in Davao City who has been engaged in the auto parts business for several years, hence, certainly he is not so naive as to sign the notes without knowing or bothering to verify the amounts of the loans covered by them. Further, he is already in estoppel since despite receipt of several demand letters there was not a single protest raised by him that he signed for only one note in the amount of P30,000.

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It was denied by the bank that there were extensions of time for payment accorded to Antonio Ang Eng Liong. Granting that such were the case, it said that the same would not relieve Tomas Ang from liability as he would still be liable for the whole obligation less the share of his co-debtor who received the extended term.

The bank also asserted that there were no additional or new stipulations imposed other than those agreed upon. The penalty charge, service charge, and attorney's fees were reflected in the amendments to the promissory notes and disclosure statements. Reference to the Usury Law was misplaced as usury is legally non-existent; at present, interest can be charged depending on the agreement of the lender and the borrower.

Lastly, the bank contended that the provisions on presentment for payment and notice of dishonor were expressly waived by Tomas Ang and that such waiver is not against public policy pursuant to Sections 82 (c) and 109 of the NIL. In fact, there is even no necessity therefor since being a solidary debtor he is absolutely required to pay and primarily liable on both promissory notes.

On October 19, 1990, the trial court issued a preliminary pre-trial order directing the parties to submit their respective pre-trial guide.[10] When Antonio Ang Eng Liong failed to submit his brief, the bank filed an ex-parte motion to declare him in default.[11] Per Order of November 23, 1990, the court granted the motion and set the ex-parte hearing for the presentation of the bank's evidence.[12] Despite Tomas Ang's motion[13] to modify the Order so as to exclude or cancel the ex-parte hearing based on then Sec. 4, Rule 18 of the old Rules of Court (now Sec. 3[c.], Rule 9 of the Revised Rules on Civil Procedure), the hearing nonetheless proceeded.[14]

Eventually, a decision[15] was rendered by the trial court on February 21, 1991. For his supposed bad faith and obstinate refusal despite several demands from the bank, Antonio Ang Eng Liong was ordered to pay the principal amount of P80,000 plus 14% interest per annum and 2% service charge per annum. The overdue penalty charge and attorney's fees were, however, reduced for being excessive, thus:

> WHEREFORE, judgment is rendered against defendant Antonio Ang Eng Liong and in favor of plaintiff, ordering the former to pay the latter:
>
> On the first cause of action:
>
> 1) the amount of P50,000.00 representing the principal obligation with 14% interest per annum from June 27, 1983 with 2% service charge and 6% overdue penalty charges per annum until fully paid;
>
> 2) P11,663.89 as accrued service charge; and
>
> 3) P34,991.67 as accrued overdue penalty charge.
>
> On the second cause of action:
>
> 1) the amount of P50,000.00 (sic) representing the principal account with 14% interest from June 27, 1983 with 2% service charge and 6% overdue penalty charges per annum until fully paid;
>
> 2) P7,088.34 representing accrued service charge;
>
> 3) P21,265.00 as accrued overdue penalty charge;
>
> 4) the amount of P10,000.00 as attorney's fees; and
>
> 5) the amount of P620.00 as litigation expenses and to pay the costs.
>
> SO ORDERED.[16]

The decision became final and executory as no appeal was taken therefrom. Upon the bank's ex-parte motion, the court accordingly issued a writ of execution on April 5, 1991.[17]

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Thereafter, on June 3, 1991, the court set the pre-trial conference between the bank and Tomas Ang,[18] who, in turn, filed a Motion to Dismiss[19] on the ground of lack of jurisdiction over the case in view of the alleged finality of the February 21, 1991 Decision. He contended that Sec. 4, Rule 18 of the old Rules sanctions only one judgment in case of several defendants, one of whom is declared in default. Moreover, in his Supplemental Motion to Dismiss,[20] Tomas Ang maintained that he is released from his obligation as a solidary guarantor and accommodation party because, by the bank's actions, he is now precluded from asserting his cross-claim against Antonio Ang Eng Liong, upon whom a final and executory judgment had already been issued.

The court denied the motion as well as the motion for reconsideration thereon.[21] Tomas Ang subsequently filed a petition for certiorari and prohibition before this Court, which, however, resolved to refer the same to the Court of Appeals.[22] In accordance with the prayer of Tomas Ang, the appellate court promulgated its Decision on January 29, 1992 in CA G.R. SP No. 26332, which annulled and set aside the portion of the Order dated November 23, 1990 setting the ex-parte presentation of the bank's evidence against Antonio Ang Eng Liong, the Decision dated February 21, 1991 rendered against him based on such evidence, and the Writ of Execution issued on April 5, 1991.[23]

Trial then ensued between the bank and Tomas Ang. Upon the latter's motion during the pre-trial conference, Antonio Ang Eng Liong was again declared in default for his failure to answer the cross-claim within the reglementary period.[24]

When Tomas Ang was about to present evidence in his behalf, he filed a Motion for Production of Documents,[25] reasoning:

> x x x
> 2. That corroborative to, and/or preparatory or incident to his testimony[,] there is [a] need for him to examine original records in the custody and possession of plaintiff, viz:
>
> - original Promissory Note (PN for brevity) # DVO-78-382 dated October 3, 1978[;]
>
> - original of Disclosure Statement in reference to PN # DVO-78-382;
>
> - original of PN # DVO-78-390 dated October 9, 1978;
>
> - original of Disclosure Statement in reference to PN # DVO-78-390;
>
> - Statement or Record of Account with the Associated Banking Corporation or its successor, of Antonio Ang in CA No. 470 (cf. Exh. O) including bank records, withdrawal slips, notices, other papers and relevant dates relative to the overdraft of Antonio Eng Liong in CA No. 470;
>
> - Loan Applications of Antonio Ang Eng Liong or borrower relative to PN Nos. DVO-78-382 and DVO-78-390 (supra);
>
> - Other supporting papers and documents submitted by Antonio Ang Eng Liong relative to his loan application vis-à-vis PN. Nos. DVO-78-382 and DVO-78-390 such as financial statements, income tax returns, etc. as required by the Central Bank or bank rules and regulations.
>
> 3. That the above matters are very material to the defenses of defendant Tomas Ang, viz:
>
> -the bank is not a holder in due course when it accepted the [PNs] in blank.
>
> -The real borrower is Antonio Ang Eng Liong which fact is known to the bank.
>
> -That the PAYEE not being a holder in due course and knowing that defendant Tomas Ang is merely an accommodation party, the latter may raise against such payee or holder or successor-in-interest (of the notes)

> PERSONAL and EQUITABLE DEFENSES such as FRAUD in INDUCEMENT, DISCHARGE ON NOTE, Application of [Articles] 2079, 2080 and 1249 of the Civil Code, NEGLIGENCE in delaying collection despite Eng Liong's OVERDRAFT in C.A. No. 470, etc.[26]

In its Order dated May 16, 1994,[27] the court denied the motion stating that the promissory notes and the disclosure statements have already been shown to and inspected by Tomas Ang during the trial, as in fact he has already copies of the same; the Statements or Records of Account of Antonio Ang Eng Liong in CA No. 470, relative to his overdraft, are immaterial since, pursuant to the previous ruling of the court, he is being sued for the notes and not for the overdraft which is personal to Antonio Ang Eng Liong; and besides its non-existence in the bank's records, there would be legal obstacle for the production and inspection of the income tax return of Antonio Ang Eng Liong if done without his consent.

When the motion for reconsideration of the aforesaid Order was denied, Tomas Ang filed a petition for certiorari and prohibition with application for preliminary injunction and restraining order before the Court of Appeals docketed as CA G.R. SP No. 34840.[28] On August 17, 1994, however, the Court of Appeals denied the issuance of a Temporary Restraining Order.[29]

Meanwhile, notwithstanding its initial rulings that Tomas Ang was deemed to have waived his right to present evidence for failure to appear during the pendency of his petition before the Court of Appeals, the trial court decided to continue with the hearing of the case.[30]

After the trial, Tomas Ang offered in evidence several documents, which included a copy of the Trust Agreement between the Republic of the Philippines and the Asset Privatization Trust, as certified by the notary public, and news clippings from the Manila Bulletin dated May 18, 1994 and May 30, 1994.[31] All the documentary exhibits were admitted for failure of the bank to submit its comment to the formal offer.[32] Thereafter, Tomas Ang elected to withdraw his petition in CA G.R. SP No. 34840 before the Court of Appeals, which was then granted.[33]

On January 5, 1996, the trial court rendered judgment against the bank, dismissing the complaint for lack of cause of action.[34] It held that:

> Exh. "9" and its [sub-markings], the Trust Agreement dated 27 February 1987 for the defense shows that: the Associated Bank as of June 30, 1986 is one of DBP's or Development Bank of the [Philippines'] non-performing accounts for transfer; on February 27, 1987 through Deeds of Transfer executed by and between the Philippine National Bank and Development Bank of the Philippines and the National Government, both financial institutions assigned, transferred and conveyed their non-performing assets to the National Government; the National Government in turn and as TRUSTOR, transferred, conveyed and assigned by way of trust unto the Asset Privatization Trust said non-performing assets, [which] took title to and possession of, [to] conserve, provisionally manage and dispose[,] of said assets identified for privatization or disposition; one of the powers and duties of the APT with respect to trust properties consisting of receivables is to handle the administration, collection and enforcement of the receivables; to bring suit to enforce payment of the obligations or any installment thereof or to settle or compromise any of such obligations, or any other claim or demand which the government may have against any person or persons[.]
>
> The Manila Bulletin news clippings dated May 18, 1994 and May 30, 1994, Exh. "9-A", "9-B", "9-C", and "9-D", show that the Monetary Board of the Bangko Sentral ng Pilipinas approved the rehabilitation plan of the Associated Bank. One main feature of the rehabilitation plan included the financial assistance for the bank by the Philippine Deposit Insurance Corporation (PDIC) by way of the purchase of AB Assets worth P1.3945 billion subject to a buy-back arrangement over a 10 year period. The PDIC had approved of the rehab scheme, which included the purchase of AB's bad loans worth P1.86 at 25% discount. This will then be paid by AB within a 10-year period plus a yield comparable to the prevailing market rates x x x.

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> Based then on the evidence presented by the defendant Tomas Ang, it would readily appear that at the time this suit for Sum of Money was filed which was on August [28], 1990, the notes were held by the Asset Privatization Trust by virtue of the Deeds of Transfer and Trust Agreement, which was empowered to bring suit to enforce payment of the obligations. Consequently, defendant Tomas Ang has sufficiently established that plaintiff at the time this suit was filed was not the holder of the notes to warrant the dismissal of the complaint.[35]

Respondent Bank then elevated the case to the Court of Appeals. In the appellant's brief captioned, "ASSOCIATED BANK, Plaintiff-Appellant versus ANTONIO ANG ENG LIONG and TOMAS ANG, Defendants, TOMAS ANG, Defendant-Appellee," the following errors were alleged:

> I.
> THE LOWER COURT ERRED IN NOT HOLDING DEFENDANT ANTONIO ANG ENG LIONG AND DEFENDANT-APPELLEE TOMAS ANG LIABLE TO PLAINTIFF-APPELLANT ON THEIR UNPAID LOANS DESPITE THE LATTER'S DOCUMENTARY EXHIBITS PROVING THE SAID OBLIGATIONS.
>
> II.
> THE LOWER COURT ERRED IN DISMISSING PLAINTIFF-APPELLANT'S COMPLAINT ON THE BASIS OF NEWSPAPER CLIPPINGS WHICH WERE COMPLETELY HEARSAY IN CHARACTER AND IMPROPER FOR JUDICIAL NOTICE.[36]

The bank stressed that it has established the causes of action outlined in its Complaint by a preponderance of evidence. As regards the Deed of Transfer and Trust Agreement, it contended that the same were never authenticated by any witness in the course of the trial; the Agreement, which was not even legible, did not mention the promissory notes subject of the Complaint; the bank is not a party to the Agreement, which showed that it was between the Government of the Philippines, acting through the Committee on Privatization represented by the Secretary of Finance as trustor and the Asset Privatization Trust, which was created by virtue of Proclamation No. 50; and the Agreement did not reflect the signatures of the contracting parties. Lastly, the bank averred that the news items appearing in the Manila Bulletin could not be the subject of judicial notice since they were completely hearsay in character.[37]

On October 9, 2000, the Court of Appeals reversed and set aside the trial court's ruling. The dispositive portion of the Decision[38] reads:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Davao City, Branch 16, in Civil Case No. 20,299-90 is hereby REVERSED AND SET ASIDE and another one entered ordering defendant-appellee Tomas Ang to pay plaintiff-appellant Associated Bank the following:
>
> 1. P50,000.00 representing the principal amount of the loan under PN-No. DVO-78-382 plus 14% interest thereon per annum computed from January 31, 1979 until the full amount thereof is paid;
>
> 2. P30,000.00 representing the principal amount of the loan under PN-No. DVO-78-390 plus 14% interest thereon per annum computed from December 8, 1978 until the full amount thereof is paid;
>
> All other claims of the plaintiff-appellant are DISMISSED for lack of legal basis. Defendant-appellee's counterclaim is likewise DISMISSED for lack of legal and factual bases.
>
> No pronouncement as to costs.
>
> SO ORDERED.[39]

The appellate court disregarded the bank's first assigned error for being "irrelevant in the final determination of the case" and found its second assigned error as "not meritorious." Instead, it posed for resolution the issue of

whether the trial court erred in dismissing the complaint for collection of sum of money for lack of cause of action as the bank was said to be not the "holder" of the notes at the time the collection case was filed.

In answering the lone issue, the Court of Appeals held that the bank is a "holder" under Sec. 191 of the NIL. It concluded that despite the execution of the Deeds of Transfer and Trust Agreement, the Asset Privatization Trust cannot be declared as the "holder" of the subject promissory notes for the reason that it is neither the payee or indorsee of the notes in possession thereof nor is it the bearer of said notes. The Court of Appeals observed that the bank, as the payee, did not indorse the notes to the Asset Privatization Trust despite the execution of the Deeds of Transfer and Trust Agreement and that the notes continued to remain with the bank until the institution of the collection suit.

With the bank as the "holder" of the promissory notes, the Court of Appeals held that Tomas Ang is accountable therefor in his capacity as an accommodation party. Citing Sec. 29 of the NIL, he is liable to the bank in spite of the latter's knowledge, at the time of taking the notes, that he is only an accommodation party. Moreover, as a co-maker who agreed to be jointly and severally liable on the promissory notes, Tomas Ang cannot validly set up the defense that he did not receive any consideration therefor as the fact that the loan was granted to the principal debtor already constitutes a sufficient consideration.

Further, the Court of Appeals agreed with the bank that the experience of Tomas Ang in business rendered it implausible that he would just sign the promissory notes as a co-maker without even checking the real amount of the debt to be incurred, or that he merely acted on the belief that the first loan application was cancelled. According to the appellate court, it is apparent that he was negligent in falling for the alibi of Antonio Ang Eng Liong and such fact would not serve to exonerate him from his responsibility under the notes.

Nonetheless, the Court of Appeals denied the claims of the bank for service, penalty and overdue charges as well as attorney's fees on the ground that the promissory notes made no mention of such charges/fees.

In his motion for reconsideration,[40] Tomas Ang raised for the first time the assigned errors as follows:

> x x x
> 2) Related to the above jurisdictional issues, defendant-appellee Tomas Ang has recently discovered that upon the filing of the complaint on August 28, 1990, under the jurisdictional rule laid down in BP Blg. 129, appellant bank fraudulently failed to specify the amount of compounded interest at 14% per annum, service charges at 2% per annum and overdue penalty charges at 12% per annum in the prayer of the complaint as of the time of its filing, paying a total of only P640.00(!!!) as filing and court docket fees although the total sum involved as of that time was P647,566.75 including 20% attorney's fees. In fact, the stated interest in the body of the complaint alone amount to P328,373.39 (which is actually compounded and capitalized) in both causes of action and the total service and overdue penalties and charges and attorney's fees further amount to P239,193.36 in both causes of action, as of July 31, 1990, the time of filing of the complaint. Significantly, appellant fraudulently misled the Court, describing the 14% imposition as interest, when in fact the same was capitalized as principal by appellant bank every month to earn more interest, as stated in the notes. In view thereof, the trial court never acquired jurisdiction over the case and the same may not be now corrected by the filing of deficiency fees because the causes of action had already prescribed and more importantly, the jurisdiction of the Municipal Trial Court had been increased to P100,000.00 in principal claims last March 20, 1999, pursuant to SC Circular No. 21-99, section 5 of RA No. 7691, and section 31, Book I of the 1987 Administrative Code. In other words, as of today, jurisdiction over the subject falls within the exclusive jurisdiction of the MTC, particularly if the bank foregoes capitalization of the stipulated interest.
>
> 3) BY FAILING TO GIVE NOTICE OF ITS APPEAL AND APPEAL BRIEF TO APPELLEE ANG ENG LIONG, THE APPEALED JUDGMENT OF THE TRIAL COURT WHICH LEFT OUT TOMAS ANG'S CROSS-CLAIM AGAINST ENG LIONG (BECAUSE IT DISMISSED THE MAIN CLAIM), HAD LONG

> BECOME FINAL AND EXECUTORY, AS AGAINST ENG LIONG. Accordingly, Tomas Ang's right of subrogation against Ang Eng Liong, expressed in his cross-claim, is now SEVERAL TIMES foreclosed because of the fault or negligence of appellant bank since 1979 up to its insistence of an ex-parte trial, and now when it failed to serve notice of appeal and appellant's brief upon him. Accordingly, appellee Tomas Ang should be released from his suretyship obligation pursuant to Art. 2080 of the Civil Code. The above is related to the issues above-stated.
>
> 4) This Court may have erred in ADDING or ASSIGNING its own bill of error for the benefit of appellant bank which defrauded the judiciary by the payment of deficient docket fees.[41]

Finding no cogent or compelling reason to disturb the Decision, the Court of Appeals denied the motion in its Resolution dated December 26, 2000.[42]
Petitioner now submits the following issues for resolution:

- Is [A]rticle 2080 of the Civil Code applicable to discharge petitioner Tomas Ang as accommodation maker or surety because of the failure of [private] respondent bank to serve its notice of appeal upon the principal debtor, respondent Eng Liong?

- Did the trial court have jurisdiction over the case at all?

- Did the Court of Appeals [commit] error in assigning its own error and raising its own issue?

- Are petitioner's other real and personal defenses such as successive extensions coupled with fraudulent collusion to hide Eng Liong's default, the payee's grant of additional burdens, coupled with the insolvency of the principal debtor, and the defense of incomplete but delivered instrument, meritorious?[43]

Petitioner allegedly learned after the promulgation of the Court of Appeals' decision that, pursuant to the parties' agreement on the compounding of interest with the principal amount (per month in case of default), the interest on the promissory notes as of July 31, 1990 should have been only P81,647.22 for PN No. DVO-78-382 (instead of P203,538.98) and P49,618.33 for PN No. DVO-78-390 (instead of P125,334.41) while the principal debt as of said date should increase to P647,566.75 (instead of P539,638.96). He submits that the bank carefully and shrewdly hid the fact by describing the amounts as interest instead of being part of either the principal or penalty in order to pay a lesser amount of docket fees. According to him, the total fees that should have been paid at the time of the filing of the complaint on August 28, 1990 was P2,216.30 and not P614.00 or a shortage of 71%. Petitioner contends that the bank may not now pay the deficiency because the last demand letter sent to him was dated September 9, 1986, or more than twenty years have elapsed such that prescription had already set in. Consequently, the bank's claim must be dismissed as the trial court loses jurisdiction over the case.

Petitioner also argues that the Court of Appeals should not have assigned its own error and raised it as an issue of the case, contending that no question should be entertained on appeal unless it has been advanced in the court below or is within the issues made by the parties in the pleadings. At any rate, he opines that the appellate court's decision that the bank is the real party in interest because it is the payee named in the note or the holder thereof is too simplistic since: (1) the power and control of Asset Privatization Trust over the bank are clear from the explicit terms of the duly certified trust documents and deeds of transfer and are confirmed by the newspaper clippings; (2) even under P.D. No. 902-A or the General Banking Act, where a corporation or a bank is under receivership, conservation or rehabilitation, it is only the representative (liquidator, receiver, trustee or conservator) who may properly act for said entity, and, in this case, the bank was held by Asset Privatization Trust as trustee; and (3) it is not entirely accurate to say that the payee who has not indorsed the notes in all cases is the real party in interest because the rights of the payee may be subject of an assignment of incorporeal rights under Articles 1624 and 1625 of the Civil Code.

Lastly, petitioner maintains that when respondent Bank served its notice of appeal and appellant's brief only on him, it rendered the judgment of the trial court final and executory with respect to Antonio Ang Eng Liong, which, in effect, released him (Antonio Ang Eng Liong) from any and all liability under the promissory notes and, thereby, foreclosed petitioner's cross-claims. By such act, the bank, even if it be the "holder" of the promissory notes, allegedly discharged a simple contract for the payment of money (Sections 119 [d] and 122, NIL [Act No. 2031]), prevented a surety like petitioner from being subrogated in the shoes of his principal (Article 2080, Civil Code), and impaired the notes, producing the effect of payment (Article 1249, Civil Code).

The petition is unmeritorious.

Procedurally, it is well within the authority of the Court of Appeals to raise, if it deems proper under the circumstances obtaining, error/s not assigned on an appealed case. In Mendoza v. Bautista,[44] this Court recognized the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned, thus:

> As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.
>
> However, as with most procedural rules, this maxim is subject to exceptions. Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides:
>
> SEC. 8. Questions that may be decided. No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.
>
> Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent. (Citations omitted)[45]

To the Court's mind, even if the Court of Appeals regarded petitioner's two assigned errors as "irrelevant" and "not meritorious," the issue of whether the trial court erred in dismissing the complaint for collection of sum of money for lack of cause of action (on the ground that the bank was not the "holder" of the notes at the time of the filing of the action) is in reality closely related to and determinant of the resolution of whether the lower court correctly ruled in not holding Antonio Ang Eng Liong and petitioner Tomas Ang liable to the bank on their unpaid loans despite documentary exhibits allegedly proving their obligations and in dismissing the complaint based on newspaper clippings. Hence, no error could be ascribed to the Court of Appeals on this point.

Now, the more relevant question is: who is the real party in interest at the time of the institution of the complaint, is it the bank or the Asset Privatization Trust?

To answer the query, a brief history on the creation of the Asset Privatization Trust is proper.

Taking into account the imperative need of formally launching a program for the rationalization of the government corporate sector, then President Corazon C. Aquino issued Proclamation No. 50[46] on December 8, 1986. As one of the twin cornerstones of the program was to establish the privatization of a good number of government corporations, the proclamation created the Asset Privatization Trust, which would, for the benefit of the National Government, take title to and possession of, conserve, provisionally manage and dispose of transferred assets that were identified for privatization or disposition.[47]

In accordance with the provisions of Section 23[48] of the proclamation, then President Aquino subsequently issued Administrative Order No. 14 on February 3, 1987, which approved the identification of and transfer to the National Government of certain assets (consisting of loans, equity investments, accrued interest receivables, acquired assets and other assets) and liabilities (consisting of deposits, borrowings, other liabilities and contingent guarantees) of the Development Bank of the Philippines (DBP) and the Philippine National Bank (PNB). The transfer of assets was implemented through a Deed of Transfer executed on February 27, 1987 between the National Government, on one hand, and the DBP and PNB, on the other. In turn, the National Government designated the Asset Privatization Trust to act as its trustee through a Trust Agreement, whereby the non-performing accounts of DBP and PNB, including, among others, the DBP's equity with respondent Bank, were entrusted to the Asset Privatization Trust.[49] As provided for in the Agreement, among the powers and duties of the Asset Privatization Trust with respect to the trust properties consisting of receivables was to handle their administration and collection by bringing suit to enforce payment of the obligations or any installment thereof or settling or compromising any of such obligations or any other claim or demand which the Government may have against any person or persons, and to do all acts, institute all proceedings, and to exercise all other rights, powers, and privileges of ownership that an absolute owner of the properties would otherwise have the right to do.[50]

Incidentally, the existence of the Asset Privatization Trust would have expired five (5) years from the date of issuance of Proclamation No. 50.[51] However, its original term was extended from December 8, 1991 up to August 31, 1992,[52] and again from December 31, 1993 until June 30, 1995,[53] and then from July 1, 1995 up to December 31, 1999,[54] and further from January 1, 2000 until December 31, 2000.[55] Thenceforth, the Privatization and Management Office was established and took over, among others, the powers, duties and functions of the Asset Privatization Trust under the proclamation.[56]

Based on the above backdrop, respondent Bank does not appear to be the real party in interest when it instituted the collection suit on August 28, 1990 against Antonio Ang Eng Liong and petitioner Tomas Ang. At the time the complaint was filed in the trial court, it was the Asset Privatization Trust which had the authority to enforce its claims against both debtors. In fact, during the pre-trial conference, Atty. Roderick Orallo, counsel for the bank, openly admitted that it was under the trusteeship of the Asset Privatization Trust.[57]The Asset Privatization Trust, which should have been represented by the Office of the Government Corporate Counsel, had the authority to file and prosecute the case.

The foregoing notwithstanding, this Court can not, at present, readily subscribe to petitioner's insistence that the case must be dismissed. Significantly, it stands without refute, both in the pleadings as well as in the evidence presented during the trial and up to the time this case reached the Court, that the issue had been rendered moot with the occurrence of a supervening event — the "buy-back" of the bank by its former owner, Leonardo Ty, sometime in October 1993. By such re-acquisition from the Asset Privatization Trust when the case was still pending in the lower court, the bank reclaimed its real and actual interest over the unpaid promissory notes; hence, it could rightfully qualify as a "holder"[58] thereof under the NIL.

Notably, Section 29 of the NIL defines an accommodation party as a person "who has signed the instrument as

maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." As gleaned from the text, an accommodation party is one who meets all the three requisites, viz: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person.[59] An accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto.[60] The accommodation party is liable on the instrument to a holder for value even though the holder, at the time of taking the instrument, knew him or her to be merely an accommodation party, as if the contract was not for accommodation.[61]

As petitioner acknowledged it to be, the relation between an accommodation party and the accommodated party is one of principal and surety — the accommodation party being the surety.[62] As such, he is deemed an original promisor and debtor from the beginning;[63] he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are interwoven as to be inseparable.[64] Although a contract of suretyship is in essence accessory or collateral to a valid principal obligation, the surety's liability to the creditor is immediate, primary and absolute; he is directly and equally bound with the principal.[65] As an equivalent of a regular party to the undertaking, a surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations nor does he receive any benefit therefrom.[66]

Contrary to petitioner's adamant stand, however, Article 2080[67] of the Civil Code does not apply in a contract of suretyship.[68] Art. 2047 of the Civil Code states that if a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I, Book IV of the Civil Code must be observed. Accordingly, Articles 1207 up to 1222 of the Code (on joint and solidary obligations) shall govern the relationship of petitioner with the bank.

The case of Inciong, Jr. v. CA[69] is illuminating:

> Petitioner also argues that the dismissal of the complaint against Naybe, the principal debtor, and against Pantanosas, his co-maker, constituted a release of his obligation, especially because the dismissal of the case against Pantanosas was upon the motion of private respondent itself. He cites as basis for his argument, Article 2080 of the Civil Code which provides that:
>
> "The guarantors, even though they be solidary, are released from their obligation whenever by come act of the creditor, they cannot be subrogated to the rights, mortgages, and preferences of the latter."
>
> It is to be noted, however, that petitioner signed the promissory note as a solidary co-maker and not as a guarantor. This is patent even from the first sentence of the promissory note which states as follows:
>
> "Ninety one (91) days after date, for value received, I/we, JOINTLY and SEVERALLY promise to pay to the PHILIPPINE BANK OF COMMUNICATIONS at its office in the City of Cagayan de Oro, Philippines the sum of FIFTY THOUSAND ONLY (P50,000.00) Pesos, Philippine Currency, together with interest x x x at the rate of SIXTEEN (16) per cent per annum until fully paid."
>
> A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. On the other hand, Article 2047 of the Civil Code states:
>
> "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

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> this Book shall be observed. In such a case the contract is called a suretyship." (Italics supplied.)
>
> While a guarantor may bind himself solidarily with the principal debtor, the liability of a guarantor is different from that of a solidary debtor. Thus, Tolentino explains:
>
> "A guarantor who binds himself in solidum with the principal debtor under the provisions of the second paragraph does not become a solidary co-debtor to all intents and purposes. There is a difference between a solidary co-debtor, and a fiador in solidum (surety). The later, outside of the liability he assumes to pay the debt before the property of the principal debtor has been exhausted, retains all the other rights, actions and benefits which pertain to him by reason of rights of the fiansa; while a solidary co-debtor has no other rights than those bestowed upon him in Section 4, Chapter 3, title I, Book IV of the Civil Code."
>
> Section 4, Chapter 3, Title I, Book IV of the Civil Code states the law on joint and several obligations. Under Art. 1207 thereof, when there are two or more debtors in one and the same obligation, the presumption is that obligation is joint so that each of the debtors is liable only for a proportionate part of the debt. There is a solidarily liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.
>
> Because the promissory note involved in this case expressly states that the three signatories therein are jointly and severally liable, any one, some or all of them may be proceeded against for the entire obligation. The choice is left to the solidary creditor to determine against whom he will enforce collection. (Citations omitted)[70]

In the instant case, petitioner agreed to be "jointly and severally" liable under the two promissory notes that he co-signed with Antonio Ang Eng Liong as the principal debtor. This being so, it is completely immaterial if the bank would opt to proceed only against petitioner or Antonio Ang Eng Liong or both of them since the law confers upon the creditor the prerogative to choose whether to enforce the entire obligation against any one, some or all of the debtors. Nonetheless, petitioner, as an accommodation party, may seek reimbursement from Antonio Ang Eng Liong, being the party accommodated.[71]

It is plainly mistaken for petitioner to say that just because the bank failed to serve the notice of appeal and appellant's brief to Antonio Ang Eng Liong, the trial court's judgment, in effect, became final and executory as against the latter and, thereby, bars his (petitioner's) cross-claims against him: First, although no notice of appeal and appellant's brief were served to Antonio Ang Eng Liong, he was nonetheless impleaded in the case since his name appeared in the caption of both the notice and the brief as one of the defendants-appellees;[72] Second, despite including in the caption of the appellee's brief his co-debtor as one of the defendants-appellees, petitioner did not also serve him a copy thereof;[73] Third, in the caption of the Court of Appeals' decision, Antonio Ang Eng Liong was expressly named as one of the defendants-appellees;[74] and Fourth, it was only in his motion for reconsideration from the adverse judgment of the Court of Appeals that petitioner belatedly chose to serve notice to the counsel of his co-defendant-appellee.[75]

Likewise, this Court rejects the contention of Antonio Ang Eng Liong, in his "special appearance" through counsel, that the Court of Appeals, much less this Court, already lacked jurisdiction over his person or over the subject matter relating to him because he was not a party in CA-G.R. CV No. 53413. Stress must be laid of the fact that he had twice put himself in default- one, in not filing a pre-trial brief and another, in not filing his answer to petitioner's cross-claims. As a matter of course, Antonio Ang Eng Liong, being a party declared in default, already waived his right to take part in the trial proceedings and had to contend with the judgment rendered by the court based on the evidence presented by the bank and petitioner. Moreover, even without considering these default judgments, Antonio Ang Eng Liong even categorically admitted having secured a loan totaling P80,000. In his Answer to the complaint, he did not deny such liability but merely pleaded that the bank be ordered to

submit a more reasonable computation" instead of collecting excessive interest, penalty charges, and attorney's fees. For failing to tender an issue and in not denying the material allegations stated in the complaint, a judgment on the pleadings[76] would have also been proper since not a single issue was generated by the Answer he filed.

As the promissory notes were not discharged or impaired through any act or omission of the bank, Sections 119 (d)[77] and 122[78] of the NIL as well as Art. 1249[79] of the Civil Code would necessarily find no application. Again, neither was petitioner's right of reimbursement barred nor was the bank's right to proceed against Antonio Ang Eng Liong expressly renounced by the omission to serve notice of appeal and appellant's brief to a party already declared in default.

Consequently, in issuing the two promissory notes, petitioner as accommodating party warranted to the holder in due course that he would pay the same according to its tenor.[80] It is no defense to state on his part that he did not receive any value therefor[81] because the phrase "without receiving value therefor" used in Sec. 29 of the NIL means "without receiving value by virtue of the instrument" and not as it is apparently supposed to mean, "without receiving payment for lending his name."[82] Stated differently, when a third person advances the face value of the note to the accommodated party at the time of its creation, the consideration for the note as regards its maker is the money advanced to the accommodated party. It is enough that value was given for the note at the time of its creation.[83] As in the instant case, a sum of money was received by virtue of the notes, hence, it is immaterial so far as the bank is concerned whether one of the signers, particularly petitioner, has or has not received anything in payment of the use of his name.[84]

Under the law, upon the maturity of the note, a surety may pay the debt, demand the collateral security, if there be any, and dispose of it to his benefit, or, if applicable, subrogate himself in the place of the creditor with the right to enforce the guaranty against the other signers of the note for the reimbursement of what he is entitled to recover from them.[85] Regrettably, none of these were prudently done by petitioner. When he was first notified by the bank sometime in 1982 regarding his accountabilities under the promissory notes, he lackadaisically relied on Antonio Ang Eng Liong, who represented that he would take care of the matter, instead of directly communicating with the bank for its settlement.[86] Thus, petitioner cannot now claim that he was prejudiced by the supposed "extension of time" given by the bank to his co-debtor.

Furthermore, since the liability of an accommodation party remains not only primary but also unconditional to a holder for value, even if the accommodated party receives an extension of the period for payment without the consent of the accommodation party, the latter is still liable for the whole obligation and such extension does not release him because as far as a holder for value is concerned, he is a solidary co-debtor.[87] In Clark v. Sellner,[88] this Court held:

> x x x The mere delay of the creditor in enforcing the guaranty has not by any means impaired his action against the defendant. It should not be lost sight of that the defendant's signature on the note is an assurance to the creditor that the collateral guaranty will remain good, and that otherwise, he, the defendant, will be personally responsible for the payment.
>
> True, that if the creditor had done any act whereby the guaranty was impaired in its value, or discharged, such an act would have wholly or partially released the surety; but it must be born in mind that it is a recognized doctrine in the matter of suretyship that with respect to the surety, the creditor is under no obligation to display any diligence in the enforcement of his rights as a creditor. His mere inaction indulgence, passiveness, or delay in proceeding against the principal debtor, or the fact that he did not enforce the guaranty or apply on the payment of such funds as were available, constitute no defense at all for the surety, unless the contract expressly requires diligence and promptness on the part of the creditor, which is not the case in the present action. There is in some decisions a tendency toward holding that the creditor's laches may discharge the surety, meaning by laches a negligent forbearance. This theory, however, is not generally accepted and the

> courts almost universally consider it essentially inconsistent with the relation of the parties to the note. (21 R.C.L., 1032-1034)[89]

Neither can petitioner benefit from the alleged "insolvency" of Antonio Ang Eng Liong for want of clear and convincing evidence proving the same. Assuming it to be true, he also did not exercise diligence in demanding security to protect himself from the danger thereof in the event that he (petitioner) would eventually be sued by the bank. Further, whether petitioner may or may not obtain security from Antonio Ang Eng Liong cannot in any manner affect his liability to the bank; the said remedy is a matter of concern exclusively between themselves as accommodation party and accommodated party. The fact that petitioner stands only as a surety in relation to Antonio Ang Eng Liong is immaterial to the claim of the bank and does not a whit diminish nor defeat the rights of the latter as a holder for value. To sanction his theory is to give unwarranted legal recognition to the patent absurdity of a situation where a co-maker, when sued on an instrument by a holder in due course and for value, can escape liability by the convenient expedient of interposing the defense that he is a merely an accommodation party.[90]

In sum, as regards the other issues and errors alleged in this petition, the Court notes that these were the very same questions of fact raised on appeal before the Court of Appeals, although at times couched in different terms and explained more lengthily in the petition. Suffice it to say that the same, being factual, have been satisfactorily passed upon and considered both by the trial and appellate courts. It is doctrinal that only errors of law and not of fact are reviewable by this Court in petitions for review on certiorari under Rule 45 of the Rules of Court. Save for the most cogent and compelling reason, it is not our function under the rule to examine, evaluate or weigh the probative value of the evidence presented by the parties all over again.[91]

WHEREFORE, the October 9, 2000 Decision and December 26, 2000 Resolution of the Court of Appeals in CA-G.R. CV No. 53413 are AFFIRMED. The petition is DENIED for lack of merit.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Romeo J. Callejo, Sr. (now retired Supreme Court Associate Justice) and Juan Q. Enriquez, Jr. concurring.

[2] CA Rollo, p. 137.

[3] Penned by Judge Romeo D. Marasigan.

[4] Records, pp. 1-5.

[5] Id. at 500, 563.

[6] Id. at 501, 564.

[7] Id. at 14-16.

[8] Id. at 20-26.

[9] Id. at 32-46.

[10] Id. at 27-28.

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[11] Id. at 59-60.

[12] Id. at 62.

[13] Id. at 64-66.

[14] Id. at 72-73.

[15] Id.at 84-86.

[16] Id. at 86.

[17] Id.at 88-90, 144.

[18] Id. at 91.

[19] Id. at 92-94.

[20] Id. at 95-96.

[21] Id. at 119-120, 123-127, 140.

[22] Id. at 152.

[23] Id. at 164-170.

[24] TSN, January 18, 1993, p. 2

[25] Records, pp. 223-226.

[26] Id. at 223-224.

[27] Id. at 234-235.

[28] Id. at 236-240, 247, 250-275.

[29] Id. at 350.

[30] Id.at 358, 395, 401-402.

[31] Id. at 450, 529-542, 560-561; Exhibit "9" and its sub-markings.

[32] Id. at 487.

[33] Rollo, p. 182.

[34] Records, pp. 490-493.

[35] Id. at 492-493.

[36] CA Rollo, p. 23.

[37] Id. at 27-30.

[38] Id. at 79-84.

[39] Id. at 83.

[40] Id. at 89-133.

[41] Id. at 90-91.

[42] Id.at 137.

[43] Rollo, pp. 33-34.

[44] G.R. No. 143666, March 18, 2005, 453 SCRA 691.

[45] Id. at 702-703.

[46] PROCLAIMING AND LAUNCHING A PROGRAM FOR THE EXPEDITIOUS DISPOSITION AND PRIVATIZATION OF CERTAIN GOVERNMENT CORPORATIONS AND/OR THE ASSETS THEREOF AND CREATING THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST.

[47] Sec. 3, Art. II and Sec. 9, Art. III of Proclamation No. 50. In addition, the term "assets" is defined under Sec. 2 (1) of the Proclamation as:

> 1) Assets shall include (i) receivables and other obligations due to government institutions under credit, lease, indemnity and other agreements together with all collateral security and other rights (including but not limited to rights in relation to shares of stock in corporations such as voting rights as well as rights to appoint directors of corporations or otherwise engage in the management thereof) granted to such institutions by contract or operation of law to secure or enforce the right of payment of such obligations; (ii) real and personal property of any kind owned or held by the government institutions, including shares of stock in corporations, obtained by such government institutions, whether directly or indirectly, through foreclosure or other means, in settlement of such obligations; (iii) shares of stock and other investments held by government institutions; and (iv) the government institutions themselves, whether as parent or subsidiary corporations.

[48] Sec. 23 of the Proclamation reads:

SEC. 23. Mechanics of Transfer of Assets. — As soon as practicable, but not later than six months from the date of the issuance of this Proclamation, the President, acting through the Committee on Privatization, shall identify such assets of government institutions as appropriate for privatization and divestment in an appropriate instrument describing such assets or identifying the loan or other transactions giving rise to the receivables, obligations and other property constituting assets to be transferred. The Committee shall, from the list of assets deemed appropriate for divestment, identify assets to be transferred to the Trust or to be referred to the government institutions in an appropriate instrument, which upon execution by the Committee shall constitute as the operative act of transfer or referral of the assets described therein, and the Trust or the government institution may thereupon proceed with the divestment in accordance with the provisions of this Proclamation and guidelines issued by the Committee. Nothing in this Proclamation shall:

> (1) Affect the rights of the National Government to pursue the enforcement of any claim of a government institution in respect of or in relation to any asset transferred hereunder; (2) In relation to any debt hereby assigned and transferred to the National Government of which a government institution is the original creditor, give rise to any novation or requirement to obtain the consent of the debtor; and (3) In relation to any share of stock or any interest therein, give rise to any claim by any other stockholder for enforcement of rights of pre-emption or of first refusal or other similar rights, the provision of any law to the contrary notwithstanding. Where the contractual rights of creditors of any of the government institutions involved may be affected by the exercise of the Committee or the Trust of the powers granted herein, the Committee or the Trust shall see to it that such rights are not impaired.

[49] Records, pp. 529-533, 543.

[50] Id. at 530.

[51] Sec. 9, Art. III of Proclamation No. 50.

[52] Sec. 1 of Republic Act (R.A.) No. 7181.

[53] Sec. 1 of R.A. No. 7661.

[54] Sec. 1 of R.A. No. 7886.

[55] Sec. 1 of R.A. No. 8758.

[56] Sec. 2, Art. III of Executive Order No. 323, Series of 2000.

[57] TSN, January 18, 1993, p. 7.

[58] A "Holder" is defined under Sec. 191 of the NIL, as:

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

[59] Lim v. Saban, G.R. No. 163720, December 16, 2004, 447 SCRA 232, 244 and Crisologo-Jose v. Court of Appeals, G.R. No. 80599, September 15, 1989, 177 SCRA 594, 598.

[60] Spouses Gardose v. Tarroza, 352 Phil. 797, 807 (1998) citing Philippine Bank of Commerce v. Aruego, G.R. Nos. L-25836-37, January 31, 1981, 102 SCRA 530, 539-540.

[61] Lim v. Saban, supra at 244; Garcia v. Llamas, G.R. No. 154127, December 8, 2003, 417 SCRA 292, 304-305; Spouses Gardose v. Tarroza, supra at 807; Travel-On, Inc. v. Court of Appeals, G.R. No. 56169, June 26, 1992, 210 SCRA 351, 357; and Ang Tiong v. Ting, 130 Phil. 741, 744 (1968).

[62] Garcia v. Llamas, supra at 305; Agro Conglomerates, Inc. v. Court of Appeals, 401 Phil. 644, 654- 655 (2000); Spouses Gardose v. Tarroza, supra at 807; Caneda, Jr. v. Court of Appeals, G.R. No. 81322, February 5, 1990, 181 SCRA 762, 772; Crisologo-Jose v. Court of Appeals, supra at 598; Prudencio v. Court of Appeals, 227 Phil. 7, 12 (1986); and Philippine Bank of Commerce v. Aruego, supra at 539.

[63] Garcia v. Llamas, supra at 305.

[64] Trade & Investment Development Corp. v. Roblett Industrial Construction Corp., G.R. No. 139290, November 11, 2005, 474 SCRA 510, 531.

[65] International Finance Corporation v. Imperial Textile Mills, Inc., G.R. No. 160324, November 15, 2005, 475 SCRA 149, 160; Trade & Investment Development Corp. v. Roblett Industrial Construction Corp., id. at 531; Garcia v. Llamas, supra at 305; Agro Conglomerates, Inc. v. Court of Appeals, supra at 655; and Philippine Bank of Commerce v. Aruego, supra at 540.

[66] International Finance Corporation v. Imperial Textile Mills, Inc., id. at 160-161 and Trade & Investment Development Corp. v. Roblett Industrial Construction Corp., id. at 531.

[67] Art. 2080 of the Civil Code provides:

Art. 2080. The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preferences of the latter.

[68] E. Zobel, Inc. v. Court of Appeals, 352 Phil. 608, 618 (1998); Inciong, Jr. v. Court of Appeals, 327 Phil. 364, 372-373 (1996); and Bicol Savings & Loan Association v. Guinhawa, G.R. No. 62415, August 20, 1990, 188 SCRA 642, 647.

[69] 327 Phil. 364 (1996).

[70] Id. at 372-374.

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[71] Lim v. Saban, supra at 244; Agro Conglomerates, Inc. v. Court of Appeals, supra at 654; and Caneda, Jr. v. Court of Appeals, supra at 772.

[72] CA Rollo, p. 21.

[73] Id. at 40, 75.

[74] Id. at 79.

[75] Id. at 133.

[76] Sec. 1, Rule 34 of the 1997 Revised Rules on Civil Procedure states:

Section 1. Judgment on the pleadings. — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

[77] Sec. 119 of the NIL provides:

SECTION 119. Instrument; how discharged. — A negotiable instrument is discharged:

> (a.) By payment in due course by or on behalf of the principal debtor;
>
> (b.) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation;
>
> (c.) By the intentional cancellation thereof by the holder;
>
> (d.) By any other act which will discharge a simple contract for the payment of money;
>
> (e.) When the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Emphasis ours)

[78] Sec. 122 of the NIL states:

SECTION 122. Renunciation by holder. — The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing unless the instrument is delivered up to the person primarily liable thereon.

[79] Art. 1249 of the Civil Code provides:

> Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.
>
> The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. (Emphasis ours)

[80] Travel-On, Inc. v. Court of Appeals, supra at 357.

[81] Caneda, Jr. v. Court of Appeals, supra at 772; Crisologo-Jose v. Court of Appeals, supra at 598; and Ang Tiong v. Ting, supra at 744.

[82] Clark v. Sellner, 42 Phil. 384, 386 (1921).

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[83] Caneda, Jr. v. Court of Appeals, supra at 772.

[84] Clark v. Sellner, supra at 386.

[85] Id. at 386-387.

[86] TSN, February 21, 1995, p. 27 and TSN, April 4, 1995, p. 15.

[87] Prudencio v. Court of Appeals, supra at 12-13.

[88] 42 Phil. 384 (1921).

[89] Id. at 387-388.

[90] Ang Tiong v. Ting, supra at 744.

[91] Batangas State University v. Bonifacio, G.R. No. 167762, December 15, 2005, 478 SCRA 142, 147-148 and Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation, G.R. No. 141715, October 12, 2005, 472 SCRA 445, 451.

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