SALVADOR P. ESCAÑO AND MARIO M. SILOS, PETITIONERS, VS. RAFAEL ORTIGAS, JR., RESPONDENT.

G.R. NO. 151953. June 29, 2007

Ponente: TINGA, J.

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TINGA, J.:

The main contention raised in this petition is that petitioners are not under obligation to reimburse respondent, a claim that can be easily debunked. The more perplexing question is whether this obligation to repay is solidary, as contended by respondent and the lower courts, or merely joint as argued by petitioners.

On 28 April 1980, Private Development Corporation of the Philippines (PDCP)[1] entered into a loan agreement with Falcon Minerals, Inc. (Falcon) whereby PDCP agreed to make available and lend to Falcon the amount of US$320,000.00, for specific purposes and subject to certain terms and conditions.[2] On the same day, three stockholders-officers of Falcon, namely: respondent Rafael Ortigas, Jr. (Ortigas), George A. Scholey and George T. Scholey executed an Assumption of Solidary Liability whereby they agreed "to assume in [their] individual capacity, solidary liability with [Falcon] for the due and punctual payment" of the loan contracted by Falcon with PDCP.[3] In the meantime, two separate guaranties were executed to guarantee the payment of the same loan by other stockholders and officers of Falcon, acting in their personal and individual capacities. One Guaranty[4] was executed by petitioner Salvador Escaño (Escaño), while the other[5] by petitioner Mario M. Silos (Silos), Ricardo C. Silverio (Silverio), Carlos L. Inductivo (Inductivo) and Joaquin J. Rodriguez (Rodriguez).

Two years later, an agreement developed to cede control of Falcon to Escaño, Silos and Joseph M. Matti (Matti). Thus, contracts were executed whereby Ortigas, George A. Scholey, Inductivo and the heirs of then already deceased George T. Scholey assigned their shares of stock in Falcon to Escaño, Silos and Matti.[6] Part of the consideration that induced the sale of stock was a desire by Ortigas, et al., to relieve themselves of all liability arising from their previous joint and several undertakings with Falcon, including those related to the loan with PDCP. Thus, an Undertaking dated 11 June 1982 was executed by the concerned parties,[7] namely: with Escaño, Silos and Matti identified in the document as "SURETIES," on one hand, and Ortigas, Inductivo and the Scholeys as "OBLIGORS," on the other. The Undertaking reads in part:

> - That whether or not SURETIES are able to immediately cause PDCP and PAIC to release OBLIGORS from their said guarantees [sic], SURETIES hereby irrevocably agree and undertake to assume all of OBLIGORs' said guarantees [sic] to PDCP and PAIC under the following terms and conditions:
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> - Upon receipt by any of [the] OBLIGORS of any demand from PDCP and/or PAIC for the payment of FALCON's obligations with it, any of [the] OBLIGORS shall immediately inform SURETIES thereof so that the latter can timely take appropriate measures;
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> - Should suit be impleaded by PDCP and/or PAIC against any and/or all of OBLIGORS for collection of said loans and/or credit facilities, SURETIES agree to defend OBLIGORS at their own expense, without prejudice to any and/or all of OBLIGORS impleading SURETIES therein for contribution, indemnity, subrogation or other relief in respect to any of the claims of PDCP and/or PAIC; and

> - In the event that any of [the] OBLIGORS is for any reason made to pay any amount to PDCP and/or PAIC, SURETIES shall reimburse OBLIGORS for said amount/s within seven (7) calendar days from such payment;

- OBLIGORS hereby waive in favor of SURETIES any and all fees which may be due from FALCON arising out of, or in connection with, their said guarantees[sic].[8]

Falcon eventually availed of the sum of US$178,655.59 from the credit line extended by PDCP. It would also execute a Deed of Chattel Mortgage over its personal properties to further secure the loan. However, Falcon subsequently defaulted in its payments. After PDCP foreclosed on the chattel mortgage, there remained a subsisting deficiency of P5,031,004.07, which Falcon did not satisfy despite demand.[9]

On 28 April 1989, in order to recover the indebtedness, PDCP filed a complaint for sum of money with the Regional Trial Court of Makati (RTC) against Falcon, Ortigas, Escaño, Silos, Silverio and Inductivo. The case was docketed as Civil Case No. 89-5128. For his part, Ortigas filed together with his answer a cross-claim against his co-defendants Falcon, Escaño and Silos, and also manifested his intent to file a third-party complaint against the Scholeys and Matti.[10] The cross-claim lodged against Escaño and Silos was predicated on the 1982 Undertaking, wherein they agreed to assume the liabilities of Ortigas with respect to the PDCP loan.

Escaño, Ortigas and Silos each sought to seek a settlement with PDCP. The first to come to terms with PDCP was Escaño, who in December of 1993, entered into a compromise agreement whereby he agreed to pay the bank P1,000,000.00. In exchange, PDCP waived or assigned in favor of Escaño one-third (1/3) of its entire claim in the complaint against all of the other defendants in the case.[11] The compromise agreement was approved by the RTC in a Judgment[12] dated 6 January 1994.

Then on 24 February 1994, Ortigas entered into his own compromise agreement[13] with PDCP, allegedly without the knowledge of Escaño, Matti and Silos. Thereby, Ortigas agreed to pay PDCP P1,300,000.00 as "full satisfaction of the PDCP's claim against Ortigas,"[14] in exchange for PDCP's release of Ortigas from any liability or claim arising from the Falcon loan agreement, and a renunciation of its claims against Ortigas.

In 1995, Silos and PDCP entered into a Partial Compromise Agreement whereby he agreed to pay P500,000.00 in exchange for PDCP's waiver of its claims against him.[15]

In the meantime, after having settled with PDCP, Ortigas pursued his claims against Escaño, Silos and Matti, on the basis of the 1982 Undertaking. He initiated a third-party complaint against Matti and Silos,[16] while he maintained his cross-claim against Escaño. In 1995, Ortigas filed a motion for Summary Judgment in his favor against Escaño, Silos and Matti. On 5 October 1995, the RTC issued the Summary Judgment, ordering Escaño, Silos and Matti to pay Ortigas, jointly and severally, the amount of P1,300,000.00, as well as P20,000.00 in attorney's fees.[17] The trial court ratiocinated that none of the third-party defendants disputed the 1982 Undertaking, and that "the mere denials of defendants with respect to non-compliance of Ortigas of the terms and conditions of the Undertaking, unaccompanied by any substantial fact which would be admissible in evidence at a hearing, are not sufficient to raise genuine issues of fact necessary to defeat a motion for summary judgment, even if such facts were raised in the pleadings."[18] In an Order dated 7 March 1996, the trial court denied the motion for reconsideration of the Summary Judgment and awarded Ortigas legal interest of 12% per annum to be computed from 28 February 1994.[19]

From the Summary Judgment, recourse was had by way of appeal to the Court of Appeals. Escaño and Silos appealed jointly while Matti appealed by his lonesome. In a Decision[20] dated 23 January 2002, the Court of Appeals dismissed the appeals and affirmed the Summary Judgment. The appellate court found that the RTC did not err in rendering the summary judgment since the three appellants did not effectively deny their execution of the 1982 Undertaking. The special defenses that were raised, "payment and excussion," were characterized by the

Court of Appeals as "appear[ing] to be merely sham in the light of the pleadings and supporting documents and affidavits."[21] Thus, it was concluded that there was no genuine issue that would still require the rigors of trial, and that the appealed judgment was decided on the bases of the undisputed and established facts of the case.

Hence, the present petition for review filed by Escaño and Silos.[22] Two main issues are raised. First, petitioners dispute that they are liable to Ortigas on the basis of the 1982 Undertaking, a document which they do not disavow and have in fact annexed to their petition. Second, on the assumption that they are liable to Ortigas under the 1982 Undertaking, petitioners argue that they are jointly liable only, and not solidarily. Further assuming that they are liable, petitioners also submit that they are not liable for interest and if at all, the proper interest rate is 6% and not 12%.

Interestingly, petitioners do not challenge, whether in their petition or their memorandum before the Court, the appropriateness of the summary judgment as a relief favorable to Ortigas. Under Section 3, Rule 35 of the 1997 Rules of Civil Procedure, summary judgment may avail if the pleadings, supporting affidavits, depositions and admissions on file show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Petitioner have not attempted to demonstrate before us that there existed a genuine issue as to any material fact that would preclude summary judgment. Thus, we affirm with ease the common rulings of the lower courts that summary judgment is an appropriate recourse in this case.

The vital issue actually raised before us is whether petitioners were correctly held liable to Ortigas on the basis of the 1982 Undertaking in this Summary Judgment. An examination of the document reveals several clauses that make it clear that the agreement was brought forth by the desire of Ortigas, Inductivo and the Scholeys to be released from their liability under the loan agreement which release was, in turn, part of the consideration for the assignment of their shares in Falcon to petitioners and Matti. The whereas clauses manifest that Ortigas had bound himself with Falcon for the payment of the loan with PDCP, and that "amongst the consideration for OBLIGORS and/or their principals aforesaid selling is SURETIES" relieving OBLIGORS of any and all liability arising from their said joint and several undertakings with FALCON."[23] Most crucial is the clause in Paragraph 3 of the Undertaking wherein petitioners "irrevocably agree and undertake to assume all of OBLIGORs' said guarantees [sic] to PDCP x x x under the following terms and conditions."[24]

At the same time, it is clear that the assumption by petitioners of Ortigas's "guarantees" [sic] to PDCP is governed by stipulated terms and conditions as set forth in sub-paragraphs (a) to (c) of Paragraph 3. First, upon receipt by "any of OBLIGORS" of any demand from PDCP for the payment of Falcon's obligations with it, "any of OBLIGORS" was to immediately inform "SURETIES" thereof so that the latter can timely take appropriate measures. Second, should "any and/or all of OBLIGORS" be impleaded by PDCP in a suit for collection of its loan, "SURETIES agree[d] to defend OBLIGORS at their own expense, without prejudice to any and/or all of OBLIGORS impleading SURETIES therein for contribution, indemnity, subrogation or other relief"[25] in respect to any of the claims of PDCP. Third, if any of the "OBLIGORS is for any reason made to pay any amount to [PDCP], SURETIES [were to] reimburse OBLIGORS for said amount/s within seven (7) calendar days from such payment."[26]

Petitioners claim that, contrary to paragraph 3(c) of the Undertaking, Ortigas was not "made to pay" PDCP the amount now sought to be reimbursed, as Ortigas voluntarily paid PDCP the amount of P1.3 Million as an amicable settlement of the claims posed by the bank against him. However, the subject clause in paragraph 3(c) actually reads "[i]n the event that any of OBLIGORS is for any reason made to pay any amount to PDCP x x x"[27] As pointed out by Ortigas, the phrase "for any reason" reasonably includes any extra-judicial settlement of obligation such as what Ortigas had undertaken to pay to PDCP, as it is indeed obvious that the phrase was

incorporated in the clause to render the eventual payment adverted to therein unlimited and unqualified.

The interpretation posed by petitioners would have held water had the Undertaking made clear that the right of Ortigas to seek reimbursement accrued only after he had delivered payment to PDCP as a consequence of a final and executory judgment. On the contrary, the clear intent of the Undertaking was for petitioners and Matti to relieve the burden on Ortigas and his fellow "OBLIGORS" as soon as possible, and not only after Ortigas had been subjected to a final and executory adverse judgment.

Paragraph 1 of the Undertaking enjoins petitioners to "exert all efforts to cause PDCP x x x to within a reasonable time release all the OBLIGORS x x x from their guarantees [sic] to PDCP x x x"[28] In the event that Ortigas and his fellow "OBLIGORS" could not be released from their guaranties, paragraph 2 commits petitioners and Matti to cause the Board of Directors of Falcon to make a call on its stockholders for the payment of their unpaid subscriptions and to pledge or assign such payments to Ortigas, et al., as security for whatever amounts the latter may be held liable under their guaranties. In addition, paragraph 1 also makes clear that nothing in the Undertaking "shall prevent OBLIGORS, or any one of them, from themselves negotiating with PDCP x x x for the release of their said guarantees [sic]."[29]

There is no argument to support petitioners" position on the import of the phrase "made to pay" in the Undertaking, other than an unduly literalist reading that is clearly inconsistent with the thrust of the document. Under the Civil Code, the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[30] Likewise applicable is the provision that if some stipulation of any contract should admit of several meanings, it shall be understood as bearing

that import which is most adequate to render it effectual.[31] As a means to effect the general intent of the document to relieve Ortigas from liability to PDCP, it is his interpretation, not that of petitioners, that holds sway with this Court.

Neither do petitioners impress us of the non-fulfillment of any of the other conditions set in paragraph 3, as they claim. Following the general assertion in the petition that Ortigas violated the terms of the Undertaking, petitioners add that Ortigas "paid PDCP BANK the amount of P1.3 million without petitioners ESCANO and SILOS's knowledge and consent."[32] Paragraph 3(a) of the Undertaking does impose a requirement that any of the "OBLIGORS" shall immediately inform "SURETIES" if they received any demand for payment of FALCON's obligations to PDCP, but that requirement is reasoned "so that the [SURETIES] can timely take appropriate measures"[33] presumably to settle the obligation without having to burden the "OBLIGORS." This notice requirement in paragraph 3(a) is markedly way off from the suggestion of petitioners that Ortigas, after already having been impleaded as a defendant in the collection suit, was obliged under the 1982 Undertaking to notify them before settling with PDCP.

The other arguments petitioners have offered to escape liability to Ortigas are similarly weak.

Petitioners impugn Ortigas for having settled with PDCP in the first place. They note that Ortigas had, in his answer, denied any liability to PDCP and had alleged that he signed the Assumption of Solidary Liability not in his personal capacity, but as an officer of Falcon. However, such position, according to petitioners, could not be justified since Ortigas later voluntarily paid PDCP the amount of P1.3 Million. Such circumstances, according to petitioners, amounted to estoppel on the part of Ortigas.

Even as we entertain this argument at depth, its premises are still erroneous. The Partial Compromise Agreement between PDCP and Ortigas expressly stipulated that Ortigas's offer to pay PDCP was conditioned "without [Ortigas's] admitting liability to plaintiff PDCP Bank's complaint, and to terminate and dismiss the said case as

against Ortigas solely."[34] Petitioners profess it is "unthinkable" for Ortigas to have voluntarily paid PDCP without admitting his liability,[35] yet such contention based on assumption cannot supersede the literal terms of the Partial Compromise Agreement.

Petitioners further observe that Ortigas made the payment to PDCP after he had already assigned his obligation to petitioners through the 1982 Undertaking. Yet the fact is PDCP did pursue a judicial claim against Ortigas notwithstanding the Undertaking he executed with petitioners. Not being a party to such Undertaking, PDCP was not precluded by a contract from pursuing its claim against Ortigas based on the original Assumption of Solidary Liability.

At the same time, the Undertaking did not preclude Ortigas from relieving his distress through a settlement with the creditor bank. Indeed, paragraph 1 of the Undertaking expressly states that "nothing herein shall prevent OBLIGORS, or any one of them, from themselves negotiating with PDCP x x x for the release of their said guarantees [sic]."[36] Simply put, the Undertaking did not bar Ortigas from pursuing his own settlement with PDCP. Neither did the Undertaking bar Ortigas from recovering from petitioners whatever amount he may have paid PDCP through his own settlement. The stipulation that if Ortigas was "for any reason made to pay any amount to PDCP[,] x x x SURETIES shall reimburse OBLIGORS for said amount/s within seven (7) calendar days from such payment"[37] makes it clear that petitioners remain liable to reimburse Ortigas for the sums he paid PDCP.

We now turn to the set of arguments posed by petitioners, in the alternative, that is, on the assumption that they are indeed liable.

Petitioners submit that they could only be held jointly, not solidarily, liable to Ortigas, claiming that the Undertaking did not provide for express solidarity. They cite Article 1207 of the New Civil Code, which states in part that "[t]here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity."

Ortigas in turn argues that petitioners, as well as Matti, are jointly and severally liable for the Undertaking, as the language used in the agreement "clearly shows that it is a surety agreement"[38] between the obligors (Ortigas group) and the sureties (Escaño group). Ortigas points out that the Undertaking uses the word "SURETIES" although the document, in describing the parties. It is further contended that the principal objective of the parties in executing the Undertaking cannot be attained unless petitioners are solidarily liable "because the total loan obligation can not be paid or settled to free or release the OBLIGORS if one or any of the SURETIES default from their obligation in the Undertaking."[39]

In case, there is a concurrence of two or more creditors or of two or more debtors in one and the same obligation, Article 1207 of the Civil Code states that among them, "[t]here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." Article 1210 supplies further caution against the broad interpretation of solidarity by providing: "The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility."

These Civil Code provisions establish that in case of concurrence of two or more creditors or of two or more debtors in one and the same obligation, and in the absence of express and indubitable terms characterizing the obligation as solidary, the presumption is that the obligation is only joint. It thus becomes incumbent upon the party alleging that the obligation is indeed solidary in character to prove such fact with a preponderance of evidence.

The Undertaking does not contain any express stipulation that the petitioners agreed "to bind themselves jointly

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and severally" in their obligations to the Ortigas group, or any such terms to that effect. Hence, such obligation established in the Undertaking is presumed only to be joint. Ortigas, as the party alleging that the obligation is in fact solidary, bears the burden to overcome the presumption of jointness of obligations. We rule and so hold that he failed to discharge such burden.

Ortigas places primary reliance on the fact that the petitioners and Matti identified themselves in the Undertaking as "SURETIES", a term repeated no less than thirteen (13) times in the document. Ortigas claims that such manner of identification sufficiently establishes that the obligation of petitioners to him was joint and solidary in nature.

The term "surety" has a specific meaning under our Civil Code. Article 2047 provides the statutory definition of a surety agreement, thus:

> Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship. [Emphasis supplied][40]

As provided in Article 2047 in a surety agreement the surety undertakes to be bound solidarily with the principal debtor. Thus, a surety agreement is an ancillary contract as it presupposes the existence of a principal contract. It appears that Ortigas's argument rests solely on the solidary nature of the obligation of the surety under Article 2047. In tandem with the nomenclature "SURETIES" accorded to petitioners and Matti in the Undertaking, however, this argument can only be viable if the obligations established in the

Undertaking do partake of the nature of a suretyship as defined under Article 2047 in the first place. That clearly is not the case here, notwithstanding the use of the nomenclature "SURETIES" in the Undertaking.

Again, as indicated by Article 2047, a suretyship requires a principal debtor to whom the surety is solidarily bound by way of an ancillary obligation of segregate identity from the obligation between the principal debtor and the creditor. The suretyship does bind the surety to the creditor, inasmuch as the latter is vested with the right to proceed against the former to collect the credit in lieu of proceeding against the principal debtor for the same obligation.[41] At the same time, there is also a legal tie created between the surety and the principal debtor to which the creditor is not privy or party to. The moment the surety fully answers to the creditor for the obligation created by the principal debtor, such obligation is extinguished.[42] At the same time, the surety may seek reimbursement from the principal debtor for the amount paid, for the surety does in fact "become subrogated to all the rights and remedies of the creditor."[43]

Note that Article 2047 itself specifically calls for the application of the provisions on joint and solidary obligations to suretyship contracts.[44] Article 1217 of the Civil Code thus comes into play, recognizing the right of reimbursement from a co-debtor (the principal debtor, in case of suretyship) in favor of the one who paid (i.e., the surety).[45] However, a significant distinction still lies between a joint and several debtor, on one hand, and a surety on the other. Solidarity signifies that the creditor can compel any one of the joint and several debtors or the surety alone to answer for the entirety of the principal debt. The difference lies in the respective faculties of the joint and several debtor and the surety to seek reimbursement for the sums they paid out to the creditor.

Dr. Tolentino explains the differences between a solidary co-debtor and a surety:

> 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 latter, 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 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.
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> The second paragraph of [Article 2047] is practically equivalent to the contract of suretyship. The civil law suretyship is, accordingly, nearly synonymous with the common law guaranty; and the civil law relationship existing between the co-debtors liable in solidum is similar to the common law suretyship.[46]

In the case of joint and several debtors, Article 1217 makes plain that the solidary debtor who effected the payment to the creditor "may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made." Such solidary debtor will not be able to recover from the co-debtors the full amount already paid to the creditor, because the right to recovery extends only to the proportional share of the other co-debtors, and not as to the particular proportional share of the solidary debtor who already paid. In contrast, even as the surety is solidarily bound with the principal debtor to the creditor, the surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety.

What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures that "[t]he guarantor who pays for a debtor must be indemnified by the latter," such indemnity comprising of, among others, "the total amount of the debt."[47] Further, Article 2067 of the Civil Code likewise establishes that "[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor."[48]

Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino's observation that "[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty."[49] For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations.

Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047. These rights granted to the surety who pays materially differ from those granted under Article 1217 to the solidary debtor who pays, since the "indemnification" that pertains to the latter extends "only [to] the share which corresponds to each [co-debtor]." It is for this reason that the Court cannot accord the conclusion that because petitioners are identified in the Undertaking as "SURETIES," they are consequently joint and severally liable to Ortigas.

In order for the conclusion espoused by Ortigas to hold, in light of the general presumption favoring joint liability, the Court would have to be satisfied that among the petitioners and Matti, there is one or some of them who stand as the principal debtor to Ortigas and another as surety who has the right to full reimbursement from the principal debtor or debtors. No suggestion is made by the parties that such is the case, and certainly the Undertaking is not revelatory of such intention. If the Court were to give full fruition to the use of the term "sureties" as conclusive indication of the existence of a surety agreement that in turn gives rise to a solidary obligation to pay Ortigas, the necessary implication would be to lay down a corresponding set of rights and obligations as between the "SURETIES" which petitioners and Matti did not clearly intend.

It is not impossible that as between Escaño, Silos and Matti, there was an agreement whereby in the event that Ortigas were to seek reimbursement from them per the terms of the Undertaking, one of them was to act as surety and to pay Ortigas in full, subject to his right to full reimbursement from the other two obligors. In such case, there would have been, in fact, a surety agreement which evinces a solidary obligation in favor of Ortigas. Yet if there was indeed such an agreement, it does not appear on the record. More consequentially, no such intention is reflected in the Undertaking itself, the very document that creates the conditional obligation that petitioners and Matti reimburse Ortigas should he be made to pay PDCP. The mere utilization of the term "SURETIES" could not work to such effect, especially as it does not appear who exactly is the principal debtor whose obligation is "assured" or "guaranteed" by the surety.

Ortigas further argues that the nature of the Undertaking requires "solidary obligation of the Sureties," since the Undertaking expressly seeks to "reliev[e] obligors of any and all liability arising from their said joint and several undertaking with [F]alcon," and for the "sureties" to "irrevocably agree and undertake to assume all of obligors said guarantees to PDCP."[50] We do not doubt that a finding of solidary liability among the petitioners works to the benefit of Ortigas in the facilitation of these goals, yet the Undertaking itself contains no stipulation or clause that establishes petitioners' obligation to Ortigas as solidary. Moreover, the aims adverted to by Ortigas do not by themselves establish that the nature of the obligation requires solidarity. Even if the liability of petitioners and Matti were adjudged as merely joint, the full relief and reimbursement of Ortigas arising from his payment to PDCP would still be accomplished through the complete execution of such a judgment.

Petitioners further claim that they are not liable for attorney's fees since the Undertaking contained no such stipulation for attorney's fees, and that the situation did not fall under the instances under Article 2208 of the Civil Code where attorney's fees are recoverable in the absence of stipulation.

We disagree. As Ortigas points out, the acts or omissions of the petitioners led to his being impleaded in the suit filed by PDCP. The Undertaking was precisely executed as a means to obtain the release of Ortigas and the Scholeys from their previous obligations as sureties of Falcon, especially considering that they were already divesting their shares in the corporation. Specific provisions in the Undertaking obligate petitioners to work for the release of Ortigas from his surety agreements with Falcon. Specific provisions likewise mandate the immediate repayment of Ortigas should he still be made to pay PDCP by reason of the guaranty agreements from which he was ostensibly to be released through the efforts of petitioners. None of these provisions were complied with by petitioners, and Article 2208(2) precisely allows for the recovery of attorney's fees "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."

Finally, petitioners claim that they should not be liable for interest since the Undertaking does not contain any stipulation for interest, and assuming that they are liable, that the rate of interest should not be 12% per annum, as adjudged by the RTC.

The seminal ruling in Eastern Shipping Lines, Inc. v. Court of Appeals[51] set forth the rules with respect to the manner of computing legal interest:

> - When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
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> - With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> - When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance

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> of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> - When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> - When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[52]

Since what was the constituted in the Undertaking consisted of a payment in a sum of money, the rate of interest thereon shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand. The interest rate imposed by the RTC is thus proper. However, the computation should be reckoned from judicial or extrajudicial demand. Per records, there is no indication that Ortigas made any extrajudicial demand to petitioners and Matti after he paid PDCP, but on 14 March 1994, Ortigas made a judicial demand when he filed a Third-Party Complaint praying that petitioners and Matti be made to reimburse him for the payments made to PDCP. It is the filing of this Third Party Complaint on 14 March 1994 that should be considered as the date of judicial demand from which the computation of interest should be reckoned.[53] Since the RTC held that interest should be computed from 28 February 1994, the appropriate redefinition should be made.

WHEREFORE, the Petition is GRANTED in PART. The Order of the Regional Trial Court dated 5 October 1995 is modified by declaring that petitioners and Joseph M. Matti are only jointly liable, not jointly and severally, to respondent Rafael Ortigas, Jr. in the amount of P1,300,000.00. The Order of the Regional Trial Court dated 7 March 1996 is MODIFIED in that the legal interest of 12% per annum on the amount of P1,300,000.00 is to be computed from 14 March 1994, the date of judicial demand, and not from 28 February 1994 as directed in the Order of the lower court. The assailed rulings are affirmed in all other respects. Costs against petitioners.

SO ORDERED.

Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

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[1] Now PDCP Development Bank.

[2] See rollo, p. 29.

[3] Id. at 38.

[4] Id. at 39.

[5] Id. at 41.

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[6] See id. at 52-55.

[7] See id. at 54.

[8] Id. at 53-54. Emphasis supplied.

[9] See id. at 29-30.

[10] See id. at 48-49.

[11] See id. at 56.

[12] Id. at 56-57.

[13] Id. at 58-60.

[14] Id. at 59.

[15] See id. at 62-63.

[16] While apparently dropping his cross-claim against Silos.

[17] Rollo, pp. 33-34.

[18] Id. at 34.

[19] Id. at 35-36.

[20] Id. at 26-32. Penned by Associate Justice R. A. Barrios, concurred in by then Presiding Justice of the Court of Appeals (now Supreme Court Associate Justice) M. A. Austria-Martinez and Associate Justice B. L. Reyes.

[21] Id. at 31.

[22] Matti did not appeal. See id. at 169.

[23] See id. at 52.

[24] Id. at 53.

[25] Id.

[26] Id. at 54.

[27] Id. at 53.

[28] Id.

[29] Id.

[30] CIVIL CODE, Art. 1374.

[31] CIVIL CODE, Art. 1373.

[32] Rollo, p. 18.

[33] Id. at 53.

[34] Id. at 59.

[35] Id.

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[36] Id. at 53.

[37] Supra note 26.

[38] Rollo, p. 177.

[39] Rollo, p. 178.

[40] CIVIL CODE, Art. 2047.

[41] "Since, generally, it is not necessary for a creditor to proceed against a principal in order to hold the surety liable, where, by the terms of the contract, the obligation of the surety is the same as that of the principal, then as soon as the principal is in default, the surety is likewise in default, and may be sued immediately and before any proceedings are had against the principal." Palmares v. Court of Appeals, 351 Phil. 664, 685 (1998) citing Standard Accident Insurance Co. v. Standard Oil Co., 133 So. 2d 539; School District No. 65 of Lincoln County v. Universal Surety Co., 135 N. W. 2d 232; Depot Realty Syndicate v. Enterprise Brewing Co., 171 P. 223.

[42] "Payment made by one of the solidary debtors extinguishes the obligation." See CIVIL CODE, Art. 1217.

[43] See Palmares v. Court of Appeals, supra note 41 at 686; citing 74 AM JUR 2D, PRINCIPAL AND SURETY, §§68, 53.

[44] See note 49.

[45] See Lapanday Agricultural v. Court of Appeals, 381 Phil. 41, 52 (2000). Art. 1217 reads in part: ""Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept x x x

He who made payment may claim from his co-debtors only the share which corresponds to each, with interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded x x x""

[46] A. TOLENTINO, V CIVIL CODE OF THE PHILIPPINES (1992 ed.), at 502. See also Inciong v. Court of Appeals, 327 Phil. 364, 373 (1996).

[47] CIVIL CODE, Art. 2066.

[48] CIVIL CODE, Art. 2067.

[49] A. TOLENTINO, supra note 46 citing Manila Surety & Fidelity Co. v. Barter Construction & Co., et al., 53 Off. Gaz. 8836 & Arranz v. Manila Fidelity & Surety Co., 53 Off. Gaz. 7247.

[50] Rollo, p. 89-90.

[51] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[52] Id. at 95-97.

[53] See Records, pp. 429-436.

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