

SPOUSES VICKY TAN TOH AND LUIS TOH, PETITIONERS, VS. SOLID BANK CORPORATION, FIRST BUSINESS PAPER CORPORATION, KENNETH NG LI AND MA. VICTORIA NG LI, RESPONDENTS.

G.R. No. 154183. August 07, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RESPONDENT SOLID BANK CORPORATION AGREED TO EXTEND an "omnibus line" credit facility worth P10 million in favor of respondent First Business Paper Corporation (FBPC). The terms and conditions of the agreement as well as the checklist of documents necessary to open the credit line were stipulated in a "letter-advise" of the Bank dated 16 May 1993 addressed to FBPC and to its President, respondent Kenneth Ng Li.[1] The "letter-advise"[2] was effective upon "compliance with the documentary requirements."[3]

The documents essential for the credit facility and submitted for this purpose were the (a) Board Resolution or excerpts of the Board of Directors Meeting, duly ratified by a Notary Public, authorizing the loan and security arrangement as well as designating the officers to negotiate and sign for FBPC specifically stating authority to mortgage, pledge and/or assign the properties of the corporation; (b) agreement to purchase Domestic Bills; and, (c) Continuing Guaranty for any and all amounts signed by petitioner-spouses Luis Toh and Vicky Tan Toh, and respondent-spouses Kenneth and Ma. Victoria Ng Li.[4] The spouses Luis Toh and Vicky Tan Toh were then Chairman of the Board and Vice-President, respectively, of FBPC, while respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li were President and General Manager, respectively, of the same corporation.[5]

It is not disputed that the credit facility as well as its terms and conditions was not cancelled or terminated, and that there was no prior notice of such fact as required in the "letter-advise," if any was done.

On 10 May 1993, more than thirty (30) days from date of the "letter-advise," petitioner-spouses Luis Toh and Vicky Tan Toh and respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li signed the required Continuing Guaranty, which was embodied in a public document prepared solely by respondent Bank.[6] The terms of the instrument defined the contract arising therefrom as a surety agreement and provided for the solidary liability of the signatories thereto for and in consideration of "loans or advances" and "credit in any other manner to, or at the request or for the account" of FBPC.

The Continuing Guaranty set forth no maximum limit on the indebtedness that respondent FBPC may incur and for which the sureties may be liable, stating that the credit facility "covers any and all existing indebtedness of, and such other loans and credit facilities which may hereafter be granted to FIRST BUSINESS PAPER CORPORATION." The surety also contained a de facto acceleration clause if "default be made in the payment of any of the instruments, indebtedness, or other obligation" guaranteed by petitioners and respondents. So as to strengthen this security, the Continuing Guaranty waived rights of the sureties against delay or absence of notice or demand on the part of respondent Bank, and gave future consent to the Bank's action to "extend or change the time payment, and/or the manner, place or terms of payment," including renewal, of the credit facility or any part

thereof in such manner and upon such terms as the Bank may deem proper without notice to or further assent from the sureties.

The effectivity of the Continuing Guaranty was not contingent upon any event or cause other than the written revocation thereof with notice to the Bank that may be executed by the sureties.

On 16 June 1993 respondent FBPC started to avail of the credit facility and procure letters of credit.[7] On 17 November 1993 FBPC opened thirteen (13) letters of credit and obtained loans totaling P15,227,510.00.[8] As the letters of credit were secured, FBPC through its officers Kenneth Ng Li, Ma. Victoria Ng Li and Redentor Padilla as signatories executed a series of trust receipts over the goods allegedly purchased from the proceeds of the loans.[9]

On 13 January 1994 respondent Bank received information that respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li had fraudulently departed from their conjugal home.[10] On 14 January 1994 the Bank served a demand letter upon FBPC and petitioner Luis Toh invoking the acceleration clause[11] in the trust receipts of FBPC and claimed payment for P10,539,758.68 as unpaid overdue accounts on the letters of credit plus interests and penalties within twenty-four (24) hours from receipt thereof.[12] The Bank also invoked the Continuing Guaranty executed by petitioner-spouses Luis Toh and Vicky Tan Toh who were the only parties known to be within national jurisdiction to answer as sureties for the credit facility of FBPC.[13]

On 17 January 1994 respondent Bank filed a complaint for sum of money with ex parte application for a writ of preliminary attachment against FBPC, spouses Kenneth Ng Li and Ma. Victoria Ng Li, and spouses Luis Toh and Vicky Tan Toh, docketed as Civil Case No. 64047 of RTC-Br. 161, Pasig City.[14] Alias summonses were served upon FBPC and spouses Luis Toh and Vicky Tan Toh but not upon Kenneth Ng Li and Ma. Victoria Ng Li who had apparently absconded.[15]

Meanwhile, with the implementation of the writ of preliminary attachment resulting in the impounding of purported properties of FBPC, the trial court was deluged with third-party claims contesting the propriety of the attachment.[16] In the end, the Bank relinquished possession of all the attached properties to the third-party claimants except for two (2) insignificant items as it allegedly could barely cope with the yearly premiums on the attachment bonds.[17]

Petitioner-spouses Luis Toh and Vicky Tan Toh filed a joint answer to the complaint where they admitted being part of FBPC from its incorporation on 29 August 1991, which was then known as "MNL Paper, Inc.," until its corporate name was changed to "First Business Paper Corporation." [18] They also acknowledged that on 6 March 1992 Luis Toh was designated as one of the authorized corporate signatories for transactions in relation to FBPC's checking account with respondent Bank.[19] Meanwhile, for failing to file an answer, respondent FBPC was declared in default.[20]

Petitioner-spouses however could not be certain whether to deny or admit the due execution and authenticity of the Continuing Guaranty.[21] They could only allege that they were made to sign papers in blank and the Continuing Guaranty could have been one of them.

Still, as petitioners asserted, it was impossible and absurd for them to have freely and consciously executed the surety on 10 May 1993, the date appearing on its face[22] since beginning March of that year they had already divested their shares in FBPC and assigned them in favor of respondent Kenneth Ng Li although the deeds of assignment were notarized only on 14 June 1993.[23] Petitioners also contended that through FBPC Board Resolution dated 12 May 1993 petitioner Luis Toh was removed as an authorized signatory for FBPC and replaced by respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li and Redentor Padilla for all the

transactions of FBPC with respondent Bank.[24] They even resigned from their respective positions in FBPC as reflected in the 12 June 1993 Secretary's Certificate submitted to the Securities and Exchange Commission[25] as petitioner Luis Toh was succeeded as Chairman by respondent Ma. Victoria Ng Li, while one Mylene C. Padilla took the place of petitioner Vicky Tan Toh as Vice-President.[26]

Finally, petitioners averred that sometime in June 1993 they obtained from respondent Kenneth Ng Li their exclusion from the several surety agreements they had entered into with different banks, i.e., Hongkong and Shanghai Bank, China Banking Corporation, Far East Bank and Trust Company, and herein respondent Bank.[27] As a matter of record, these other banks executed written surety agreements that showed respondent Kenneth Ng Li as the only surety of FBPC's indebtedness.[28]

On 16 May 1996 the trial court promulgated its Decision in Civil Case No. 64047 finding respondent FBPC liable to pay respondent Solid Bank Corporation the principal of P10,539,758.68 plus twelve percent (12%) interest per annum from finality of the Decision until fully paid, but absolving petitioner-spouses Luis Toh and Vicky Tan Toh of any liability to respondent Bank.[29] The court a quo found that petitioners "voluntarily affixed their signature[s]" on the Continuing Guaranty and were thus "at some given point in time willing to be liable under those forms,"[30] although it held that petitioners were not bound by the surety contract since the letters of credit it was supposed to secure were opened long after petitioners had ceased to be part of FBPC.[31]

The trial court described the Continuing Guaranty as effective only while petitioner-spouses were stockholders and officers of FBPC since respondent Bank compelled petitioners to underwrite FBPC's indebtedness as sureties without the requisite investigation of their personal solvency and capability to undertake such risk.[32] The lower court also believed that the Bank knew of petitioners' divestment of their shares in FBPC and their subsequent resignation as officers thereof as these facts were obvious from the numerous public documents that detailed the changes and substitutions in the list of authorized signatories for transactions between FBPC and the Bank, including the many trust receipts being signed by persons other than petitioners,[33] as well as the designation of new FBPC officers which came to the notice of the Bank's Vice-President Jose Chan Jr. and other officers.[34]

On 26 September 1996 the RTC-Br. 161 of Pasig City denied reconsideration of its Decision.[35]

On 9 October 1996 respondent Bank appealed the Decision to the Court of Appeals, docketed as CA-G.R. CV No. 55957.[36] Petitioner-spouses did not move for reconsideration nor appeal the finding of the trial court that they voluntarily executed the Continuing Guaranty.

The appellate court modified the Decision of the trial court and held that by signing the Continuing Guaranty, petitioner-spouses became solidarily liable with FBPC to pay respondent Bank the amount of P10,539,758.68 as principal with twelve percent (12%) interest per annum from finality of the judgment until completely paid.[37] The Court of Appeals ratiocinated that the provisions of the surety agreement did not "indicate that Spouses Luis and Vicky Toh x x x signed the instrument in their capacities as Chairman of the Board and Vice-President, respectively, of FBPC only." [38] Hence, the court a quo deduced, "[a]bsent any such indication, it was error for the trial court to have presumed that the appellees indeed signed the same not in their personal capacities." [39] The appellate court also ruled that as petitioners failed to execute any written revocation of the Continuing Guaranty with notice to respondent Bank, the instrument remained in full force and effect when the letters of credit were availed of by respondent FBPC.[40]

Finally, the Court of Appeals rejected petitioners' argument that there were "material alterations" in the provisions of the "letter-advise," i.e., that only domestic letters of credit were opened when the credit facility was for importation of papers and other materials, and that marginal deposits were not paid, contrary to the requirements stated in the "letter-advise." [41] The simple response of the appellate court to this challenge was, first, the

"letter-advise" itself authorized the issuance of domestic letters of credit, and second, the several waivers extended by petitioners in the Continuing Guaranty, which included changing the time and manner of payment of the indebtedness, justified the action of respondent Bank not to charge marginal deposits.[42]

Petitioner-spouses moved for reconsideration of the Decision, and after respondent Bank's comment, filed a lengthy Reply with Motion for Oral Argument.[43] On 2 July 2002 reconsideration of the Decision was denied on the ground that no new matter was raised to warrant the reversal or modification thereof.[44] Hence, this Petition for Review.

Petitioner-spouses Luis Toh and Vicky Tan Toh argue that the Court of Appeals denied them due process when it did not grant their motion for reconsideration and without "bother[ing] to consider [their] Reply with Motion for Oral Argument." They maintain that the Continuing Guaranty is not legally valid and binding against them for having been executed long after they had withdrawn from FBPC. Lastly, they claim that the surety agreement has been extinguished by the material alterations thereof and of the "letter-advise" which were allegedly brought about by (a) the provision of an acceleration clause in the trust receipts; (b) the flight of their co-sureties, respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li; (c) the grant of credit facility despite the non-payment of marginal deposits in an amount beyond the credit limit of P10 million pesos; (d) the inordinate delay of the Bank in demanding the payment of the indebtedness; (e) the presence of ghost deliveries and fictitious purchases using the Bank's letters of credit and trust receipts; (f) the extension of the due dates of the letters of credit without the required 25% partial payment per extension; (g) the approval of another letter of credit, L/C 93-0042, even after respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li had defaulted on their previous obligations; and, (h) the unmistakable pattern of fraud.

Respondent Solid Bank maintains on the other hand that the appellate court is presumed to have passed upon all points raised by petitioners' Reply with Motion for Oral Argument as this pleading formed part of the records of the appellate court. It also debunks the claim of petitioners that they were inexperienced and ignorant parties who were taken advantage of in the Continuing Guaranty since petitioners are astute businessmen who are very familiar with the "ins" and "outs" of banking practice. The Bank further argues that the notarization of the Continuing Guaranty discredits the uncorroborated assertions against the authenticity and due execution thereof, and that the Decision of the trial court in the civil case finding the surety agreement to be valid and binding is now res judicata for failure of petitioners to appeal therefrom. As a final point, the Bank refers to the various waivers made by petitioner-spouses in the Continuing Guaranty to justify the extension of the due dates of the letters of credit.

To begin with, we find no merit in petitioners' claim that the Court of Appeals deprived them of their right to due process when the court a quo did not address specifically and explicitly their Reply with Motion for Oral Argument. While the Resolution of the appellate court of 2 July 2002 made no mention thereof in disposing of their arguments on reconsideration, it is presumed that "all matters within an issue raised in a case were laid before the court and passed upon it." [45] In the absence of evidence to the contrary, we must rule that the court a quo discharged its task properly. Moreover, a reading of the assailed Resolution clearly makes reference to a "careful review of the records," which undeniably includes the Reply with Motion for Oral Argument, hence there is no reason for petitioners to asseverate otherwise.

This Court holds that the Continuing Guaranty is a valid and binding contract of petitioner-spouses as it is a public document that enjoys the presumption of authenticity and due execution. Although petitioners as appellees may raise issues that have not been assigned as errors by respondent Bank as party-appellant, i.e., unenforceability of the surety contract, we are bound by the consistent finding of the courts a quo that petitioner-spouses Luis Toh and Vicky Tan Toh "voluntarily affixed their signature[s]" on the surety agreement and were thus "at some given

point in time willing to be liable under those forms." [46] In the absence of clear, convincing and more than preponderant evidence to the contrary, our ruling cannot be otherwise.

Similarly, there is no basis for petitioners to limit their responsibility thereon so long as they were corporate officers and stockholders of FBPC. Nothing in the Continuing Guaranty restricts their contractual undertaking to such condition or eventuality. In fact the obligations assumed by them therein subsist "upon the undersigned, the heirs, executors, administrators, successors and assigns of the undersigned, and shall inure to the benefit of, and be enforceable by you, your successors, transferees and assigns," and that their commitment "shall remain in full force and effect until written notice shall have been received by [the Bank] that it has been revoked by the undersigned." Verily, if petitioners intended not to be charged as sureties after their withdrawal from FBPC, they could have simply terminated the agreement by serving the required notice of revocation upon the Bank as expressly allowed therein. [47] In *Garcia v. Court of Appeals* [48] we ruled -

Regarding the petitioner's claim that he is liable only as a corporate officer of WMC, the surety agreement shows that he signed the same not in representation of WMC or as its president but in his personal capacity. He is therefore personally bound. There is no law that prohibits a corporate officer from binding himself personally to answer for a corporate debt. While the limited liability doctrine is intended to protect the stockholder by immunizing him from personal liability for the corporate debts, he may nevertheless divest himself of this protection by voluntarily binding himself to the payment of the corporate debts. The petitioner cannot therefore take refuge in this doctrine that he has by his own acts effectively waived.

But as we bind the spouses Luis Toh and Vicky Tan Toh to the surety agreement they signed so must we also hold respondent Bank to its representations in the "letter-advise" of 16 May 1993. Particularly, as to the extension of the due dates of the letters of credit, we cannot exclude from the Continuing Guaranty the preconditions of the Bank that were plainly stipulated in the "letter-advise." Fairness and justice dictate our doing so, for the Bank itself liberally applies the provisions of cognate agreements whenever convenient to enforce its contractual rights, such as, when it harnessed a provision in the trust receipts executed by respondent FBPC to declare its entire indebtedness as due and demandable and thereafter to exact payment thereof from petitioners as sureties. [49] In the same manner, we cannot disregard the provisions of the "letter-advise" in sizing up the panoply of commercial obligations between the parties herein.

Insofar as petitioners stipulate in the Continuing Guaranty that respondent Bank "may at any time, or from time to time, in [its] discretion x x x extend or change the time payment," this provision even if understood as a waiver is confined per se to the grant of an extension and does not surrender the prerequisites therefor as mandated in the "letter-advise." In other words, the authority of the Bank to defer collection contemplates only authorized extensions, that is, those that meet the terms of the "letter-advise."

Certainly, while the Bank may extend the due date at its discretion pursuant to the Continuing Guaranty, it should nonetheless comply with the requirements that domestic letters of credit be supported by fifteen percent (15%) marginal deposit extendible three (3) times for a period of thirty (30) days for each extension, subject to twenty-five percent (25%) partial payment per extension. This reading of the Continuing Guaranty is consistent with *Philippine National Bank v. Court of Appeals* [50] that any doubt on the terms and conditions of the surety agreement should be resolved in favor of the surety.

Furthermore, the assurance of the sureties in the Continuing Guaranty that "[n]o act or omission of any kind on [the Bank's] part in the premises shall in any event affect or impair this guaranty" [51] must also be read "strictissimi juris" for the reason that petitioners are only accommodation sureties, i.e., they received nothing out of the security contract they signed. [52] Thus said, the acts or omissions of the Bank conceded by petitioners as not affecting nor impairing the surety contract refer only to those occurring "in the premises," or those that have

been the subject of the waiver in the Continuing Guaranty, and stretch to no other. Stated otherwise, an extension of the period for enforcing the indebtedness does not by itself bring about the discharge of the sureties unless the extra time is not permitted within the terms of the waiver, i.e., where there is no payment or there is deficient settlement of the marginal deposit and the twenty-five percent (25%) consideration, in which case the illicit extension releases the sureties. Under Art. 2055 of the Civil Code, the liability of a surety is measured by the terms of his contract, and while he is liable to the full extent thereof, his accountability is strictly limited to that assumed by its terms.

It is admitted in the Complaint of respondent Bank before the trial court that several letters of credit were irrevocably extended for ninety (90) days with alarmingly flawed and inadequate consideration - the indispensable marginal deposit of fifteen percent (15%) and the twenty-five percent (25%) prerequisite for each extension of thirty (30) days. It bears stressing that the requisite marginal deposit and security for every thirty (30) - day extension specified in the "letter-advise" were not set aside or abrogated nor was there any prior notice of such fact, if any was done.

Moreover, these irregular extensions were candidly admitted by Victor Ruben L. Tuazon, an account officer and manager of respondent Bank and its lone witness in the civil case -

Q: You extended it even if there was no marginal deposit?

A: Yes.

Q: And even if partial payment is less than 25%?

A: Yes x x x x

Q: You have repeatedly extended despite the insufficiency partial payment requirement?

A: I would say yes.[53]

The foregoing extensions of the letters of credit made by respondent Bank without observing the rigid restrictions for exercising the privilege are not covered by the waiver stipulated in the Continuing Guaranty. Evidently, they constitute illicit extensions prohibited under Art. 2079 of the Civil Code, "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty." This act of the Bank is not mere failure or delay on its part to demand payment after the debt has become due, as was the case in unpaid five (5) letters of credit which the Bank did not extend, defer or put off,[54] but comprises conscious, separate and binding agreements to extend the due date, as was admitted by the Bank itself -

Q:

How much was supposed to be paid on 14 September 1993, the original LC of P1,655,675.13?

A:

Under LC 93-0017 first matured on 14 September 1993. We rolled it over, extended it to December 13, 1993 but they made partial payment that is why we extended it.

Q:

The question to you now is how much was paid? How much is supposed to be paid on September 14, 1993 on the basis of the original amount of P1,655,675.13?

A:

Whenever this obligation becomes due and demandable except when you roll it over so there is novation there

on the original obligations[55] (underscoring supplied).

As a result of these illicit extensions, petitioner-spouses Luis Toh and Vicky Tan Toh are relieved of their obligations as sureties of respondent FBPC under Art. 2079 of the Civil Code.

Further, we note several suspicious circumstances that militate against the enforcement of the Continuing Guaranty against the accommodation sureties. Firstly, the guaranty was executed more than thirty (30) days from the original acceptance period as required in the "letter-advise." Thereafter, barely two (2) days after the Continuing Guaranty was signed, corporate agents of FBPC were replaced on 12 May 1993 and other adjustments in the corporate structure of FBPC ensued in the month of June 1993, which the Bank did not investigate although such were made known to it.

By the same token, there is no explanation on record for the utter worthlessness of the trust receipts in favor of the Bank when these documents ought to have added more security to the indebtedness of FBPC. The Bank has in fact no information whether the trust receipts were indeed used for the purpose for which they were obtained.[56] To be sure, the goods subject of the trust receipts were not entirely lost since the security officer of respondent Bank who conducted surveillance of FBPC even had the chance to intercept the surreptitious transfer of the items under trust: "We saw two (2) delivery vans with Plates Nos. TGH 257 and PAZ 928 coming out of the compound x x x [which were] taking out the last supplies stored in the compound." [57] In addition, the attached properties of FBPC, except for two (2) of them, were perfunctorily abandoned by respondent Bank although the bonds therefor were considerably reduced by the trial court.[58]

The consequence of these omissions is to discharge the surety, petitioners herein, under Art. 2080 of the Civil Code,[59] or at the very least, mitigate the liability of the surety up to the value of the property or lien released -

If the creditor x x x has acquired a lien upon the property of a principal, the creditor at once becomes charged with the duty of retaining such security, or maintaining such lien in the interest of the surety, and any release or impairment of this security as a primary resource for the payment of a debt, will discharge the surety to the extent of the value of the property or lien released x x x [for] there immediately arises a trust relation between the parties, and the creditor as trustee is bound to account to the surety for the value of the security in his hands.[60]

For the same reason, the grace period ranted by respondent Bank represents unceremonious abandonment and forfeiture of the fifteen percent (15%) marginal deposit and the twenty-five percent (25%) partial payment as fixed in the "letter-advise." These payments are unmistakably additional securities intended to protect both respondent Bank and the sureties in the event that the principal debtor FBPC becomes insolvent during the extension period. Compliance with these requisites was not waived by petitioners in the Continuing Guaranty. For this unwarranted exercise of discretion, respondent Bank bears the loss; due to its unauthorized extensions to pay granted to FBPC, petitioner-spouses Luis Toh and Vicky Tan Toh are discharged as sureties under the Continuing Guaranty.

Finally, the foregoing omission or negligence of respondent Bank in failing to safe-keep the security provided by the marginal deposit and the twenty-five percent (25%) requirement results in the material alteration of the principal contract, i.e., the "letter-advise," and consequently releases the surety.[61] This inference was admitted by the Bank through the testimony of its lone witness that "[w]henver this obligation becomes due and demandable, except when you roll it over, (so) there is novation there on the original obligations." As has been said, "if the suretyship contract was made upon the condition that the principal shall furnish the creditor additional security, and the security being furnished under these conditions is afterwards released by the creditor, the surety is wholly discharged, without regard to the value of the securities released, for such a transaction amounts to an

alteration of the main contract." [62]

WHEREFORE, the instant Petition for Review is GRANTED. The Decision of the Court of Appeals dated 12 December 2001 in CA-G.R. CV No. 55957, Solid Bank Corporation v. First Business Paper Corporation, Kenneth Ng Li, Ma. Victoria Ng Li, Luis Toh and Vicky Tan Toh, holding petitioner-spouses Luis Toh and Vicky Tan Toh solidarily liable with First Business Paper Corporation to pay Solid Bank Corporation the amount of P10,539,758.68 as principal with twelve percent (12%) interest per annum until fully paid, and its Resolution of 2 July 2002 denying reconsideration thereof are REVERSED and SET ASIDE.

The Decision dated 16 May 1996 of RTC-Br. 161 of Pasig City in Civil Case No. 64047, Solid Bank Corporation v. First Business Paper Corporation, Kenneth Ng Li, Ma. Victoria Ng Li, Luis Toh and Vicky Tan Toh, finding First Business Paper Corporation liable to pay respondent Solid Bank Corporation the principal of P10,539,758.68 plus twelve percent (12%) interest per annum until fully paid, but absolving petitioner-spouses Luis Toh and Vicky Tan Toh of any liability to respondent Solid Bank Corporation is REINSTATED and AFFIRMED. No costs.

SO ORDERED.

Quisumbing, Austria-Martinez, and Tinga, JJ., concur.
Callejo, Sr., J., on leave.

[1] TSN, 3 August 1995, p. 22; TSN, 9 November 1995, p. 4; Exhs. "4" and "5."

[2] Original Record, pp. 550-554; Exhs. "4" and "5."

[3] TSN, 9 November 1995, p. 24.

[4] Original Record, p. 554.

[5] Id., p. 2.

[6] Id., pp. 505-506; Exh. "AA."

[7] Id., p. 652.

[8] Ibid.; CA Rollo, p. 168; TSN, 22 June 1995, pp. 9-11; Exhs. "A" to "M;" Exh. "BB."

[9] Ibid; TSN, 6 July 1995, p. 14; Exhs. "N" to "Z."

[10] Original Record, p. 39; Exh. "CC."

[11] Id., p. 37; It states "[t]he Bank may at any time cancel this trust and take possession of said goods, documents or instruments or of the proceeds as may then have been sold wherever the said goods or proceeds may then be found, and in the event of any suspension, or failure or assignment for benefit of creditor or our non-fulfillment of any obligation, or of the non-payment at maturity of any acceptance specified hereon or under any credit issued by the Bank on our account, or of any indebtedness on our part to said Bank, all our obligations, acceptances, indebtedness, and liabilities whatsoever shall thereupon (with or without notice) mature and become due and payable."

[12] Id., p. 509; TSN, 22 June 1995, p. 11; TSN, 3 August 1995, p. 5; Exh. "BB."

[13] Ibid.

[14] Original Record, p. 1.

[15] Id., pp. 650-651.

[16] Ibid.

[17] Id., pp. 414-420, 449-451.

[18] Id., p. 224.

[19] Id., pp. 225, 235.

[20] Id., p. 652.

[21] Id., pp. 221-222.

[22] Id., p. 222.

[23] Id., pp. 227, 236-238.

[24] Id., pp. 227, 239.

[25] Id., pp. 227, 241.

[26] Ibid.

[27] Id., pp. 222, 227.

[28] Ibid.

[29] Id., p. 660; Penned by Judge Alicia P. Marina-Co.

[30] Id., p. 657.

[31] Ibid.

[32] Ibid.

[33] Id., p. 658.

[34] Ibid; see TSN, 9 November 1995, pp. 3, 26-27.

[35] Id., pp. 708-709.

[36] Id., p. 711.

[37] CA Rollo, pp. 167-179; Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Salvador J. Valdez Jr. and Sergio L. Pestaño.

[38] Id., p. 174.

[39] Ibid.

[40] Id., p. 175.

[41] Id., p. 176.

[42] Ibid.

[43] Id., pp. 234-269.

[44] Id., pp. 273-274.

[45] Rules of Court, Rule 131, sec. 3 (o).

[46] Original Record, p. 657.

[47] Fortune Motors v. Court of Appeals, G.R. No. 112191, 7 February 1997, 267 SCRA 653.

[48] G.R. No. 80201, 20 November 1990, 191 SCRA 493, 497.

[49] Original Record, p. 38.

[50] No. L- 33174, 4 July 1991, 198 SCRA 767.

[51] Underscoring added.

[52] Pacific Tobacco Corporation v. Lorenzana, 102 Phil. 234 (1957).

[53] TSN, 24 August 1995, pp. 42-43.

[54] Original Record, pp. 36-37; These letters of credit are LC Nos. 93-0038, 93-0036, 93-0035, 93-0039 and 93-0042.

[55] TSN, 24 August 1995, p. 40.

[56] TSN, 22 June 1995, pp. 32-37.

[57] Original Record, p. 511.

[58] Id., pp. 414-420, 449-451, 652.

[59] Art. 2080 reads: "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 preference of the latter;" There is no reason not to apply this provision to a surety agreement since guaranty and surety are cognate contracts; see People's Bank and Trust Company v. Tambunting, No. L-29666, 29 October 1971, 42 SCRA 119.

[60] A.A. Stearns and N.P. Feinsinger, The Law of Suretyship (1934), pp. 141, 141a, 141c; Civil Code, Art. 2080.

[61] Macondray and Company, Inc. Piñon, No. L-13817, 31 August 1961, 2 SCRA 1109.

[62] A.A. Stearns, *supra* at 141b; see Civil Code, Art. 2080; People's Bank and Trust Company v. Tambunting, *supra*.

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