

DIAMOND BUILDERS CONGLOMERATION, ROGELIO S. ACIDRE, TERESITA P. ACIDRE, GRACE C. OSIAS, VIOLETA S. FAIYAZ AND EMMA S. CUTILLAR, PETITIONERS, VS. COUNTRY BANKERS INSURANCE CORPOR...

G.R. No. 171820. December 13, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari to annul the Decision[1] of the Court of Appeals (CA) in CA-G.R. C.V. No. 48603, which reversed the Decision[2] of the Regional Trial Court, Branch 7, Manila (RTC Manila) in Civil Case No. 92-62029 and granted respondent Country Bankers Insurance Corporation's (Country Bankers') prayer for a sum of money against the petitioners.

The controversy originated from a civil case[3] pending before the Regional Trial Court, Branch 125, Caloocan City (RTC Caloocan) filed by Marceliano Borja (Borja) against Rogelio S. Acidre (Rogelio) for the latter's breach of his obligation to construct a residential and commercial building. Rogelio is the sole proprietor of petitioner Diamond Builders Conglomeration (DBC).

To put an end to the foregoing litigation, the parties entered into a Compromise Agreement[4] which provided, in part:

COMPROMISE AGREEMENT

1. x x x

- In lieu of rescission, the parties have mutually agreed, subject to the provisions hereunder, to fully implement the building contract dated October 1, 1990 and supplemented on October 2, 1990 with an additional scope of work marked as Annex "A" of the complaint and the Letter-Agreement dated November 16, 1991 signed by the [petitioner Rogelio] and plaintiff's son(,) Ferdinand A. Borja, marked as Annex "B" of the complaint, which required full compliance of the structural design of Engr. Ramos and explicit reminders in the constructing of the residential/commercial building and the additional works therein specified for the added consideration of P100,000.00 as alleged in paragraphs 2 and 3 of the complaint, Annex "C" hereof.

- [Petitioner Rogelio] admits full payment of plaintiff to him the amount of P1,530,000.00 leaving the balance of P570,000.00 of the contractual price of P2,100,000.00 for the construction of the buildings aforementioned.

- [Petitioner Rogelio] agrees to fully complete the construction of the residential/commercial building mentioned in paragraph 1 hereof provided plaintiff would pay to him, subject to hereunder terms, the aforesaid amount of P570,000.00.

- The plaintiff agrees to pay [petitioner Rogelio] the amount of P570,000.00 subject to the terms hereunder set forth and subject strictly to the condition that [petitioner Rogelio] will finish the building above-described pursuant to the agreements [Annex(es) "A" and "B"] set forth in paragraph 1 hereof.

- Plaintiff shall pay [petitioner Rogelio] the amount of P570,000.00 as follows:
 - P370,000.00 – the 5[th] day from approval of this compromise agreement by this Honorable Court and to coincide (with) the start of the 75 days for [petitioner Rogelio] to complete the construction of the building.
 - P200,000.00 – When the aforescribed building is fully constructed pursuant to agreements stated in paragraph 1 hereof.
 - Said building must be fully finished pursuant to the agreement stated in paragraph 1 hereof within 75 days (excluding Sundays and Holidays) counted from receipt of payment of P370,000.00. The date of receipt to be issued by [petitioner Rogelio] will control. The 75[th] day will be 12:00 noon of the 75[th] day.
 - From receipt of the aforesaid amount of P370,000.00, [petitioner Rogelio] shall submit in favor of plaintiff a performance or surety bond in the equivalent amount of P370,000.00 – to answer or indemnify plaintiff in the event the building is not finished on the 75[th] day.
 - In the event the building is finished within 75 days as heretofore stated and pursuant to the agreements set forth in paragraph 1 hereof, in addition to the amount of P200,000.00, the plaintiff shall also pay [petitioner Rogelio] the amount of P90,000.00 by way of [bonus]. However, in the event [petitioner Rogelio] shall fail to fully complete the construction of the building pursuant to the agreements set forth in paragraph 1 hereof within 75 days as heretofore stated, [petitioner Rogelio] shall not be entitled to any further payments and the performance or surety bond above- mentioned shall be fully implemented by way of penalizing [petitioner Rogelio] and/or as award for damages in favor of plaintiff.
- x x x x
- x x x
- That the construction herein contemplated shall not extend beyond 75 days. Said period shall commence five days from the date of the final approval hereof by this Honorable Court.
 - That any violation and/or avoidance of the terms and conditions of this Compromise Agreement by either of the parties herein shall forthwith entitle the aggrieved party to an immediate execution hereof and to the necessary and corresponding reliefs and remedies therefore. (Emphasis supplied.)

The RTC Caloocan approved the Compromise Agreement and rendered a Decision[5] in accordance with the terms and conditions contained therein.

In compliance with the Compromise Agreement, Rogelio obtained a Surety Bond[6] from Country Bankers in favor of the spouses Borja.[7] In this regard, Rogelio and his spouse, petitioner Teresita P. Acidre, together with DBC employees Grace C. Osias, Violeta S. Faiyaz and Emma S. Cutillar (the other petitioners herein), signed an Indemnity Agreement[8] consenting to their joint and several liability to Country Bankers should the surety bond be executed upon.

On April 23, 1992, Country Bankers received a Motion for Execution[9] of the surety bond filed by Borja with the RTC Caloocan for Rogelio's alleged violation of the Compromise Agreement. Consequently, Country Bankers, in a letter[10] dated May 13, 1992, advised petitioners that in the event it is constrained to pay under the surety bond to Borja, it shall proceed against petitioners for reimbursement.

In turn, petitioners wrote Country Bankers informing the latter of the filing of an Opposition to Borja's Motion for Execution.[11] In spite of the opposition, however, the RTC Caloocan issued a Writ of Execution[12] on May 25, 1992. Petitioners then filed a motion for reconsideration.

On May 29, 1992, Sheriff Perceverando Pangan of RTC Caloocan served Country Bankers a copy of the writ.

Posthaste, Country Bankers, in writing, requested Sheriff Pangan for a 10-day grace period within which to settle the claim.[13]

Subsequently, Rogelio filed an Urgent Omnibus Motion[14] to suspend the Writ of Execution and to resolve the Motion for Reconsideration dated June 3, 1992. Upon receipt of the Omnibus Motion, Country Bankers forthwith wrote Sheriff Pangan and requested that the implementation of the Writ of Execution be held in abeyance so as not to render moot and academic the RTC Caloocan's resolution on the Omnibus Motion.[15]

Nonetheless, on June 9, 1992, Country Bankers was served a Notice of Levy/Sheriff's Sale[16] with a list of its personal properties to be sold at the scheduled public auction on June 15, 1992.

The next day, or on June 10, 1992, Country Bankers verified with the RTC Caloocan the status of petitioners' Omnibus Motion. It was informed that the motion had yet to be acted upon. On the same date, Sheriff Pangan arrived at Country Bankers' office, and the latter was thus constrained to pay the amount of the surety bond.[17]

Significantly, on June 22, 1992, twelve (12) days after the satisfaction of judgment in Civil Case No. C-14745, Rogelio filed a Petition for Certiorari and Prohibition with Preliminary Injunction and Restraining Order[18] with the CA, docketed as CA-G.R. SP No. 28205. Although the appellate court issued a Temporary Restraining Order (TRO), the petition was eventually denied due course and dismissed outright for being *fait accompli*, as what it sought to enjoin or prohibit had already been fully satisfied and executed. [19]

In the meantime, after Country Bankers was compelled to pay the amount of the surety bond, it demanded reimbursement from the petitioners under the Indemnity Agreement.[20] However, petitioners refused to reimburse Country Bankers.

In addition, upon the dismissal of their petition in CA-G.R. SP No. 28205, petitioners wrote Country Bankers and informed the latter that the voluntary payment of the bond effectively prevented them from contesting the validity of the issuance of the Writ of Execution.[21]

As a result, Country Bankers filed a complaint for sum of money against the petitioners which, as previously stated, the RTC Manila dismissed. It disposed of the case, thus:

WHEREFORE, and considering the foregoing, judgment is hereby rendered:

- Dismissing the complaint for lack of merit;
- On the counterclaim, ordering [Country Bankers] to pay [petitioners] attorney's fees of P50,000.00, plus the costs of suit.

SO ORDERED.

On appeal, the CA reversed and set aside the decision of the RTC Manila, to wit:

WHEREFORE, premises considered, the Appeal is GRANTED and the Decision dated November 2, 1992 of Branch 7 of the Regional Trial Court of Manila is hereby REVERSED and a new one entered, ordering [petitioners] to pay [Country Bankers] the sum of THREE HUNDRED SEVENTY THOUSAND PESOS (P370,000.00), as reimbursement or actual damages, plus interest thereon at the rate of 12% per annum computed from the date of judicial demand, or from July 24, 1992, the date of filing of the complaint until the said amount has been fully paid.

SO ORDERED.

In reversing the trial court, the CA ruled that Country Bankers, as surety of Rogelio's loan obligation, did not effect voluntary payment on the bond. The appellate court found that what Country Bankers paid was an

obligation legally due and demandable. It declared that Country Bankers acted upon compulsion of a writ of execution, which appears to have been regularly, and validly issued, and, by its very nature, is immediately enforceable.

Hence, this appeal positing a sole issue for our resolution, to wit:

Whether petitioners should indemnify Country Bankers for the payment of the surety bond.

In fine, petitioners contend that Country Bankers is not entitled to reimbursement when it voluntarily paid the surety bond considering it knew full well the remedies availed of by petitioners to stay the execution of the compromise judgment. Thus, Country Bankers must bear the loss or damage arising from its voluntary act.

We deny the appeal and affirm the appellate court's ruling. Country Bankers should be reimbursed for the P370,000.00 it paid to Borja under the surety bond.

In impugning the CA's decision, petitioners invoke their pending Omnibus Motion to stay the execution of the compromise judgment. Petitioners' theory is that, although the RTC Caloocan had already issued a writ of execution and Country Bankers had been served a Notice of Levy/Sheriff's Sale of its properties at the impending public auction, the payment made by Country Bankers to Borja is a voluntary act. Petitioners push their theory even further, and deign to suggest that Country Bankers should have itself intervened in the proceedings before the RTC Caloocan to stay the writ of execution.

We reject this preposterous suggestion. Petitioners ought to be reminded of the nature of a judgment on a compromise and a writ of execution issued in connection therewith.

A compromise judgment is a decision rendered by a court sanctioning the agreement between the parties concerning the determination of the controversy at hand. Essentially, it is a contract, stamped with judicial imprimatur, between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which each of them prefers in the hope of gaining, balanced by the danger of losing. [22] Upon court approval of a compromise agreement, it transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with Rule 39 of the Rules of Court.[23]

Ordinarily, a judgment based on compromise is not appealable. It should not be disturbed except upon a showing of vitiated consent or forgery. The reason for the rule is that when both parties enter into an agreement to end a pending litigation and request that a decision be rendered approving said agreement, it is only natural to presume that such action constitutes an implicit, as undeniable as an express, waiver of the right to appeal against said decision.[24] Thus, a decision on a compromise agreement is final and executory, and is conclusive between the parties.[25]

It is beyond cavil that if a party fails or refuses to abide by a compromise agreement, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.[26] Following this mandatory rule, the RTC Caloocan granted Borja's motion, and subsequently issued an order to the sheriff to execute the compromise judgment. Notwithstanding the foregoing, petitioners still maintain that since they had taken steps to stay the execution of the compromise judgment, Country Bankers, with full knowledge of their active opposition to the execution thereof, should not have readily complied with the RTC Caloocan Order.

Petitioners' argument contemplates a brazen defiance of a validly issued court order, which had not been restrained by the appellate court or this Court. The argument is unacceptable.

The Compromise Agreement between Borja and Rogelio explicitly provided that the latter's failure to complete

construction of the building within the stipulated period[27] shall cause the full implementation of the surety bond as a penalty for the default, and as an award of damages to Borja. Furthermore, the Compromise Agreement contained a default executory clause in case of a violation or avoidance of the terms and conditions thereof. Therefore, the payment made by Country Bankers to Borja was proper, as failure to pay would have amounted to contumacious disobedience of a valid court order.

Clearly, even without the aforesaid default clause, the compromise judgment remained executory as against Rogelio, as the principal obligor (co-debtor), and Country Bankers as surety of the obligation. Section 4, Rule 39 of the Rules of Court provides:

SEC. 4. Judgments not stayed by appeal. – Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bind or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

Other judgments in actions declared to be immediately executory and not stayed by the filing of an appeal are for: (1) compromise,[28] (2) forcible entry and unlawful detainer,[29] (3) direct contempt,[30] and (4) expropriation.[31]

Likewise, Section 9, paragraph (a),[32] of the same Rule outlines the procedure for execution of judgments for money, thus:

SEC. 9 Execution of judgments for money, how enforced. –

(a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in case, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

As Rogelio's obligation under the compromise agreement, and approved by the RTC Caloocan, had a penal clause[33] which is monetary in nature,[34] the writ of execution availed of by Borja, and paid by Country Bankers, strictly complied with the rules on execution of money judgments.

It is true that the petitioners did not directly question the compromise judgment. What was pending before the Caloocan RTC was petitioners' Omnibus Motion praying for a stay in the implementation of the writ of execution. However, the bottom line issue raised in the Omnibus Motion is, actually, a question on the compromise judgment, since its resolution would require an inquiry into the stipulations contained in the Compromise Agreement, particularly the provision on immediate execution.

Thus, when the RTC Manila ruled that the payment on the bond made by Country Bankers was voluntary, the lower court effectively disregarded the rule on the non-appealable nature and the immediately executory character of a judgment on a compromise.

Moreover, it has not escaped our attention that petitioners belatedly filed a Petition for Certiorari and Prohibition with prayer for a TRO with the CA, ostensibly to stop the execution of the compromise judgment. Not only was

the filing thereof late, it was done twelve (12) days after the satisfaction of the compromise judgment. We are, therefore, perplexed why, despite the urgency of the matter, petitioners merely banked on a pending motion for reconsideration to stay the enforcement of an already issued writ of execution. Petitioners' total reliance thereon was certainly misplaced.

Admittedly, the general rule is that certiorari will not lie unless a motion for reconsideration is first filed before the respondent tribunal to allow it an opportunity to correct the imputed errors.[35] Nonetheless, the rule admits of exceptions, thus:

- (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was ex-parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.[36]

Evidently, it would not have been premature for petitioners to have filed a petition before the CA, upon the issuance by the RTC Caloocan of a writ of execution, because the RTC Caloocan already denied their Opposition to Borja's Motion for Execution on the surety bond. If, as petitioners insist, they had a meritorious challenge to the satisfaction of the writ of execution, they should have immediately filed a Petition for Certiorari with the CA and therein alleged the exceptional circumstance warranting the non-filing of a motion for reconsideration. Petitioners should not have persisted on waiting for the resolution of their Omnibus Motion.

We have consistently ruled that an order for the issuance of a writ of execution is ordinarily not appealable. The reason for this is that the merits of the case should not be delved into anew after a determination has been made thereon with finality.[37] Otherwise, there would be practically no end to litigation since the losing party would always try to thwart execution by appealing from every order granting the writ. In this case, this aphorism should apply. Rogelio, after agreeing to an amicable settlement with Borja to put an end to the case before the RTC Caloocan, cannot flout compliance of the court order of execution by refusing to reimburse Country Bankers, the surety of his obligation in the compromise agreement.

Still, petitioners stubbornly refuse to pay Country Bankers, contending that the CA itself, in CA-G.R. SP No. 28205, declared that the payment effected was voluntary.

We are not persuaded.

Article 2047 of the Civil Code specifically calls for the application of the provisions on solidary obligations to suretyship contracts. In particular, Article 1217 of the Civil Code recognizes the right of reimbursement from a co-debtor (the principal co-debtor, in case of suretyship) in favor of the one who paid (i.e., the surety).[38] In contrast, Article 1218 of the Civil Code is definitive on when reimbursement is unavailing, such that only those

payments made after the obligation has prescribed or became illegal shall not entitle a solidary debtor to reimbursement. Nowhere in the invoked CA Decision does it declare that a surety who pays, by virtue of a writ of execution, is not entitled to reimbursement from the principal co-debtor. The CA Decision was confined to the mootness of the issue presented and petitioners' preclusion from the relief it prayed for, i.e., a stay of the writ of execution, considering that the writ had already been satisfied.

More importantly, the Indemnity Agreement signed by Rogelio and the other petitioners explicitly provided for an incontestability clause on payments made by Country Bankers. The said clause reads:

INCONTESTABILITY OF PAYMENTS MADE BY THE COMPANY: - Any payment or disbursement made by [Country Bankers] on account of the above-mentioned Bond, its renewals, extensions, alterations or substitutions either in the belief that [Country Bankers] was obligated to make such payment or in the belief that said payment was necessary or expedient in order to avoid greater losses or obligations for which [Country Bankers] might be liable by virtue of the terms of the above-mentioned Bond, its renewals, extensions, alterations, or substitutions, shall be final and shall not be disputed by the undersigned, who hereby jointly and severally bind themselves to indemnify [Country Bankers] of any and all such payments, as stated in the preceding clauses.

In case [Country Bankers] shall have paid, settled or compromised any liability, loss, costs, damages, attorney's fees, expenses, claims, demands, suits, or judgments as above-stated, arising out of or in connection with said bond, an itemized statement thereof, signed by an officer of [Country Bankers] and other evidence to show said payment, settlement or compromise, shall be prima facie evidence of said payment, settlement or compromise, as well as the liability of [petitioners] in any and all suits and claims against [petitioners] arising out of said bond or this bond application.

Ineluctably, petitioners are obligated to reimburse Country Bankers the amount of P370,000.00.

Finally, petitioners desperately attempt to inveigle out of this burden, which is of their own making, by imputing a lack of initiative on Country Banker's part to intervene in the execution proceedings before the RTC.

This contention, as with the rest of petitioners' arguments, deserves scant consideration. Suffice it to state that Country Bankers is a surety of the obligation with a penal clause, constituted in the compromise judgment; it is not a joint and solidary co-debtor of Rogelio.

In the recent case of *EscaHo v. Ortigas*,^[39] we elucidated on the distinction between a surety as a co-debtor under a suretyship agreement and a joint and solidary co-debtor, thus:

(A)s 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 not 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. 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. 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."

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. C.V. No. 48603 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco[*], and Reyes, JJ., concur.

[*]As replacement of Associate Justice Ma. Alicia Austria-Martinez who was the ponente in the Court of Appeals Decision in CA-G.R. SP No. 28205.

[1] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Portia AliHo- Hormachuelos and Elvi John S. Asuncion, concurring, rollo, pp. 27-38.

[2] Penned by Judge Enrico A. Lanzas, id. at 39-47.

[3] Docketed as Civil Case No. C-14745.

[4] Records, pp. 101-111.

[5] Penned by Judge Geronimo S. Mangay, dated February 12, 1992, id. at 112-117.

[6] Surety Bond G (16) No. 38037, dated February 14, 1992, id. at 119-120.

[7] Mrs. Borja was joined in the suit before RTC Caloocan.

[8] Records, p. 121.

[9] Id. at 122-125.

[10] Id. at 126.

[11] Id. at 128.

[12] Id. at 133.

[13] Id. at 134.

[14] Id. at 135-137.

[15] Id. at 138.

[16] Id. at 139-140.

[17] Cash Voucher No. 75545, id. at 141; Manifestation of Satisfaction of Judgment/Execution, id. at 142.

[18] Dated June 3, 1992, id. at 147-156.

[19] Rollo, pp. 51-52. Decision penned by Justice Alicia Austria-Martinez (now SC Justice).

[20] Demand Letter, dated June 17, 1992; records, pp. 143-144.

[21] Rollo, pp. 53-54.

[22] Santos Ventura Hocorma Foundation, Inc. v. Santos, G.R. No. 153004, November 5, 2004, 441 SCRA 472, 479-480; see Martir v. Verano, G.R. No. 170395, July 28, 2006, 497 SCRA 120, 126-127.

[23] Martir v. Verano, supra, at 127.

[24] World Machine Enterprise v. Intermediate Appellate Court, G.R. No. 72019, December 20, 1990, 192 SCRA 459, 465.

[25] *Martir v. Verano*, supra note 22, at 127.

[26] *Id.* at 128.

[27] Seventy-five (75) days from receipt of payment of the P370,000.00 exclusive of Sundays and holidays.

[28] See *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, 370 Phil. 150 (1999); *Domingo v. Court of Appeals*, 325 Phil. 469 (1996).

[29] RULES OF COURT, Rule 70, Sec. 19.

[30] RULES OF COURT, Rule 71, Sec. 2.

[31] RULES OF COURT, Rule 67, Sec. 11.

[32] Paragraph 1.

[33] See Art. 1226 of the Civil Code.

[34] The forfeiture of the amount of the surety bond, i.e., P370,000.00.

[35] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, 641-642.

[36] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, 642, citing *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 751 (2002).

[37] *Shugo Noda & Co., Ltd. v. Court of Appeals*, G.R. No. 107404, March 30, 1994, 231 SCRA 620, 625.

[38] *Escaño v. Ortigas*, G.R. No. 151953, June 29, 2007. 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 xxx.

He who made payment may claim from his co-debtors only on 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 xxx.

[39] Supra note 38.

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