

GATEWAY ELECTRONICS CORPORATION AND GERONIMO B. DELOS REYES, JR., PETITIONERS, VS. ASIANBANK CORPORATION, RESPONDENT.

G.R. No. 172041. December 18, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This petition for review under Rule 45 seeks to nullify and set aside the Decision[1] dated October 28, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 80734 and its Resolution[2] of March 17, 2006 denying petitioners' motion for reconsideration.

The Facts

Petitioner Gateway Electronics Corporation (Gateway) is a domestic corporation that used to be engaged in the semi-conductor business. During the period material, petitioner Geronimo B. delos Reyes, Jr. was its president and one Andrew delos Reyes its executive vice-president.

On July 23, 1996, Geronimo and Andrew executed separate but almost identical deeds of suretyship for Gateway in favor of respondent Asianbank Corporation (Asianbank), pertinently providing:

I/We Geronimo B. de los Reyes, Jr. x x x warrant to the ASIANBANK CORPORATION, x x x due and punctual payment by the following individuals/companies/firms, hereinafter called the DEBTOR(S), of such amounts whether due or not, as indicated opposite their respective names, to wit:

NAME OF DEBTOR(S)

AMOUNT OF OBLIGATION

GATEWAY ELECTRONICS
CORPORATION

*P10,000,000.00*DOMESTIC BILLS
[PURCHASED LINE]

*US\$3,000,000.00*OMNIBUS
CREDIT LINE

owing to the said ASIANBANK CORPORATION, hereafter called the CREDITOR, as evidenced by all notes, drafts, overdrafts and other [credit] obligations of every kind and nature contracted/incurred by said DEBTOR(S) in favor of said CREDITOR.

In case of default by any and/or all of the DEBTOR(S) to pay the whole part of said indebtedness herein secured at maturity, I/WE jointly and severally agree and engage to the CREDITOR, its successors and assigns, the prompt payment, x x x of such notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with all

interests, penalty and other bank charges as may accrue thereon x x x.

I/WE further warrant the due and faithful performance by the DEBTOR(S) of all obligations to be performed under any contracts evidencing indebtedness/obligations and any supplements, amendments, changes or modifications made thereto, including but not limited to, the due and punctual payment by the said DEBTOR(S).

MY/OUR liability on this Deed of Suretyship shall be solidary, direct and immediate and not contingent upon the pursuit by the CREDITOR x x x of whatever remedies it or they may have against the DEBTOR(S) or the securities or liens it or they may possess; and I/WE hereby agree to be and remain bound upon this suretyship, x x x and notwithstanding also that all obligations of the DEBTOR(S) to you outstanding and unpaid at any time may exceed the aggregate principal sum hereinabove stated.[3]

Later developments saw Asianbank extending to Gateway several export packing loans in the total aggregate amount of USD 1,700,883.48. This loan package was later consolidated with Dollar Promissory Note (PN) No. FCD-0599-2749[4] for the amount of USD 1,700,883.48 and secured by a chattel mortgage over Gateway's equipment for USD 2 million.

Gateway initially made payments on its loan obligations, but eventually defaulted. Upon Gateway's request, Asianbank extended the maturity dates of the loan several times. These extensions bore the conformity of three of Gateway's officers, among them Andrew.

On July 15 and 30, 1999, Gateway issued two Philippine Commercial International Bank checks for the amounts of USD 40,000 and USD 20,000, respectively, as payment for its arrearages and interests for the periods June 30 and July 30, 1999; but both checks were dishonored for insufficiency of funds. Asianbank's demands for payment made upon Gateway and its sureties went unheeded. As of November 23, 1999, Gateway's obligation to Asianbank, inclusive of principal, interest, and penalties, totaled USD 2,235,452.17.

Thus, on December 15, 1999, Asianbank filed with the Regional Trial Court (RTC) in Makati City a complaint for a sum of money against Gateway, Geronimo, and Andrew. The complaint, as later amended, was eventually raffled to Branch 60 of the court and docketed as Civil Case No. 99-2102 entitled Asian Bank Corporation v. Gateway Electronics Corporation, Geronimo B. De Los Reyes, Jr. and Andrew S. De Los Reyes.

In its answer to the amended complaint, Gateway traced the cause of its financial difficulties, described the steps it had taken to address its mounting problem, and faulted Asianbank for trying to undermine its efforts toward recovery.

Andrew also filed an answer alleging, among other things, that the deed of suretyship he executed covering the Php 10 million-Domestic Bills Purchased Line and the USD 3 million-Omnibus Credit Line did not include PN No. FCD-0599-2749, the payment of which was extended several times without his consent.

Geronimo, on the other hand, alleged that the subject deed of suretyship, assuming the authenticity of his signature on it, was signed without his wife's consent and should, thus, be considered as a mere continuing offer. Like Andrew, Geronimo argued that he ought to be relieved of his liability under the surety agreement inasmuch as he too never consented to the repeated loan maturity date extensions given by Asianbank to Gateway.

After due hearing, the RTC rendered judgment dated October 7, 2003 [5] in favor of Gateway, the dispositive portion of which states:

WHEREFORE then, in view of the foregoing, judgment is rendered holding defendants Gateway Electronics Corporation, Geronimo De Los Reyes and Andrew De Los Reyes jointly and severally liable to pay the plaintiff the following:

a)

The sum of \$2,235,452.17 United States Currency with interest to be added on at the prevailing market rate over a given thirty day London Interbank Offered Rate (LIBOR) plus a spread of 5.5358 percent or ten and [45,455/100,000] percent per annum for the first 35 days and every thirty days beginning November 23, 1999 until fully paid;

b)

a penalty charge after November 23, 1999 of two percent (2%) per month until fully paid;

c)

attorney's fees of twenty percent (20%) of the total amount due and unpaid; and

d)

costs of the suit.

SO ORDERED.

Thereafter, Gateway, Geronimo, and Andrew appealed to the CA, their recourse docketed as CA-G.R. CV No. 80734. Following the filing of its and Geronimo's joint appellants' brief, Gateway filed on November 10, 2004 a petition for voluntary insolvency^[6] with the RTC in Imus, Cavite, Branch 22, docketed as SEC Case No. 037-04, in which Asianbank was listed in the attached Schedule of Obligations as one of the creditors. On March 16, 2005, Metrobank, as successor-in-interest of Asianbank, via a Notice of Creditor's Claim, prayed that it be allowed to participate in the Gateways's creditors' meeting.

In its Decision dated October 28, 2005, the CA affirmed the decision of the Makati City RTC. In time, Gateway and Geronimo interposed a motion for reconsideration. This was followed by a Supplemental Motion for Reconsideration dated January 20, 2006, stating that in SEC Case No. 037-04, the RTC in Imus, Cavite had issued an Order dated December 2, 2004, declaring Gateway insolvent and directing all its creditors to appear before the court on a certain date for the purpose of choosing among themselves the assignee of Gateway's estate which the court's sheriff has meanwhile placed in custodia legis.^[7] Gateway and Geronimo thus prayed that the assailed decision of the Makati City RTC be set aside, the insolvency court having acquired exclusive jurisdiction over the properties of Gateway by virtue of Section 60 of Act No. 1956, without prejudice to Asianbank pursuing its claim in the insolvency proceedings.

In its March 17, 2006 Resolution, however, the CA denied the motion for reconsideration and its supplement.

Hence, Gateway and Geronimo filed this petition anchored on the following grounds:

I

The [CA] erred in disregarding the established rule that an action commenced by a creditor against a judicially declared insolvent for the recovery of his claim should be dismissed and referred to the insolvency court. Where, therefore, as in this case, petitioner GEC [referring to Gateway] has been declared insolvent x x x, respondent Asianbank's claim for the payment of GEC's loans should be ventilated before the insolvency court x x x.

II

The [CA] erred in admitting as evidence the Deed of Surety purportedly signed by petitioner GBR [referring to Geronimo] despite the unexplained failure of respondent Asianbank to present the originals of the Deed of Surety during the trial.

III

The [CA] erred in holding that the repeated extensions granted by respondent Asianbank to GEC without notice to and the express consent of petitioner GBR did not discharge petitioner GBR from his liabilities as surety GEC in that:

A.

An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty.

B.

The [CA] interpreted the supposed Deed of Surety of petitioner GBR as "too comprehensive and all encompassing as to amount to absurdity."

C.

The repeated extensions granted by Asianbank to GEC prevented petitioner GBR from exercising his right of subrogation under Article 2080 of the Civil Code. As such, petitioner GBR should be released from his obligations as surety of GEC. The repeated extensions granted by Asianbank to GEC prevented petitioner GBR from exercising his right of subrogation under Article 2080 of the Civil Code. As such, petitioner GBR should be released from his obligations as surety of GEC.

IV

It is a well-settled rule that when a bank deviates from normal banking practice in a transaction and sustains injury as a result thereof, the bank is deemed to have assumed the risk and no right of payment accrues to the latter against any party to the transaction. By repeatedly extending the period for the payment of GEC's obligations and granting GEC other loans after the suretyship agreement despite GEC's default and in failing to foreclose the chattel mortgage constituted as security for GEC's loan contrary to normal banking practices, Asianbank failed to exercise reasonable caution for its own protection and assumed the risk of non-payment through its own acts, and thus has no right to proceed against petitioner GBR as surety for the payment of GEC's loans.

V

In *Agcaoili v. GSIS*, this Honorable Court had occasion to state that in determining the precise relief to give, the court will "balance the equities" or the respective interests of the parties and take into account the relative hardship that one relief or another may occasion to them. Upon a balancing of interests of both petitioner GBR and respondent Asianbank, greater and irreparable harm and injury would be suffered by petitioner GBR than respondent Asianbank if the assailed Decision and Resolution of the [CA] would be upheld x x x. This Honorable Court x x x should thus exercise its equity jurisdiction in the instant case to the end that it may render complete justice to both parties and declare petitioner GBR as released and discharged from any liability in respect of respondent Asianbank's claims.[8]

The Ruling of the Court

Gateway May Be Discharged from Liability But Not Geronimo

Gateway, having been declared insolvent, argues that jurisdiction over all claims against all of its properties and assets properly pertains to the insolvency court. Accordingly, Gateway adds, citing Sec. 60 of Act No. 1956,[9] as amended, or the Insolvency Law, any pending action against its properties and assets must be dismissed, the claimant relegated to the insolvency proceedings for the claimant's relief.

The contention, as formulated, is in a qualified sense meritorious. Under Sec. 18 of Act No. 1956, as couched, the issuance of an order declaring the petitioner insolvent after the insolvency court finds the corresponding petition

for insolvency to be meritorious shall stay all pending civil actions against the petitioner's property. For reference, said Sec. 18, setting forth the effects and contents of a voluntary insolvency order,[10] pertinently provides:

Section 18. Upon receiving and filing said petition, schedule, and inventory, the court x x x shall make an order declaring the petitioner insolvent, and directing the sheriff of the province or city in which the petition is filed to take possession of, and safely keep, until the appointment of a receiver or assignee, all the deeds, vouchers, books of account, papers, notes, bonds, bills, and securities of the debtor and all his real and personal property, estate and effects x x x. Said order shall further forbid the payment to the creditor of any debts due to him and the delivery to the debtor, or to any person for him, of any property belonging to him, and the transfer of any property by him, and shall further appoint a time and place for a meeting of the creditors to choose an assignee of the estate. Said order shall [be published] x x x. Upon the granting of said order, all civil proceedings pending against the said insolvent shall be stayed. When a receiver is appointed, or an assignee chosen, as provided in this Act, the sheriff shall thereupon deliver to such receiver or assignee, as the case may be all the property, assets, and belongings of the insolvent which have come into his possession x x x. (Emphasis supplied.)

Complementing Sec. 18 which appropriately comes into play "upon the granting of [the] order" of insolvency is the succeeding Sec. 60 which properly applies to the period "after the commencement of proceedings in insolvency." The two provisions may be harmonized as follows: Upon the filing of the petition for insolvency, pending civil actions against the property of the petitioner are not ipso facto stayed, but the insolvent may apply with the court in which the actions are pending for a stay of the actions against the insolvent's property. If the court grants such application, pending civil actions against the petitioner's property shall be stayed; otherwise, they shall continue. Once an order of insolvency nevertheless issues, all civil proceedings against the petitioner's property are, by statutory command, automatically stayed. Sec. 60 is reproduced below:

SECTION 60. Creditors proving claims cannot sue; Stay of action.—No creditor, proving his debt or claim, shall be allowed to maintain any suit therefor against the debtor, but shall be deemed to have waived all right of action and suit against him, and all proceedings already commenced, or any unsatisfied judgment already obtained thereon, shall be deemed to be discharged and surrendered thereby; and after the debtor's discharge, upon proper application and proof to the court having jurisdiction, all such proceedings shall be, dismissed, and such unsatisfied judgments satisfied of record: Provided, x x x. A creditor proving his debt or claim shall not be held to have waived his right of action or suit against the debtor when a discharge has have been refused or the proceedings have been determined to the without a discharge. No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit proceeding shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: Provided, That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed aforesaid. (Emphasis supplied.)

Applying the aforequoted provisions, it can rightfully be said that the issuance of the insolvency order of December 2, 2004 had the effect of automatically staying the civil action for a sum of money filed by Asianbank against Gateway. In net effect, the proceedings before the CA in CA-G.R. CV No. 80734, but only insofar as the claim against Gateway was concerned, was, or ought to have been, suspended after December 2, 2004, Asianbank having been duly notified of and in fact was a participant in the insolvency proceedings. The Court of course takes stock of the proviso in Sec. 60 of Act No. 1956 which in a way provided the CA with a justifying tool to continue and to proceed to judgment in CA-G.R. CV No. 80734, but only for the purpose of ascertaining the amount due from Gateway. At any event, on the postulate that jurisdiction over the properties of the insolvent- declared Gateway lies with the insolvency court, execution of the CA insolvency judgment against Gateway can only be

pursued before the insolvency court. Asianbank, no less, tends to agree to this conclusion when it stated: "[E]ven if it is assumed that the declaration of insolvency of petitioner Gateway can be taken cognizance of, such fact does relieve petitioner Geronimo and/or Andrew delos Reyes from performing their obligations based on the Deeds of Suretyship x x x." [11]

Geronimo, however, is a different story.

Asianbank argues that the stay of the collection suit against Gateway is without bearing on the liability of Geronimo as a surety, adding that claims against a surety may proceed independently from that against the principal debtor. Pursuing the point, Asianbank avers that Geronimo may not invoke the insolvency of Gateway as a defense to evade liability.

Geronimo counters with the argument that his liability as a surety cannot be separated from Gateway's liability. As surety, he continues, he is entitled to avail himself of all the defenses pertaining to Gateway, including its insolvency, suggesting that if Gateway is eventually released from what it owes Asianbank, he, too, should also be so relieved.

Geronimo's above contention is untenable.

Suretyship is covered by Article 2047 of the Civil Code, which states:

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

The Court's disquisition in *Palmares v. Court of Appeals* on suretyship is instructive, thus:

A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor. A suretyship is an undertaking that the debt shall be paid x x x. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. x x x In other words, a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default x x x.

x x x x

A creditor's right to proceed against the surety exists independently of his right to proceed against the principal. Under Article 1216 of the Civil Code, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The rule, therefore, is that if the obligation is joint and several, the creditor has the right to proceed even against the surety alone. Since, generally, it is not necessary for the 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 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. Perforce, x x x a surety is primarily liable, and with the rule that his proper remedy is to pay the debt and pursue the principal for reimbursement, the surety cannot at law, unless permitted by statute and in the absence of any agreement limiting the application of the security, require the creditor or obligee, before proceeding against the surety, to resort to and exhaust his remedies against the principal, particularly where both principal and surety are equally bound. [12]

Clearly, Asianbank's right to collect payment for the full amount from Geronimo, as surety, exists independently of its right against Gateway as principal debtor; [13] it could thus proceed against one of them or file separate

actions against them to recover the principal debt covered by the deed on suretyship, subject to the rule prohibiting double recovery from the same cause.[14] This legal postulate becomes all the more cogent in case of an insolvency situation where, as here, the insolvency court is bereft of jurisdiction over the sureties of the principal debtor. As Asianbank aptly points out, a suit against the surety, insofar as the surety's solidary liability is concerned, is not affected by an insolvency proceeding instituted by or against the principal debtor. The same principle holds true with respect to the surety of a corporation in distress which is subject of a rehabilitation proceeding before the Securities and Exchange Commission (SEC). As we held in *Commercial Banking Corporation v. CA*, a surety of the distressed corporation can be sued separately to enforce his liability as such, notwithstanding an SEC order declaring the former under a state of suspension of payment.[15]

Geronimo also states that, as things stand, his liability, as compared to that of Gateway, is contextually more onerous and burdensome, precluded as he is from seeking recourse against the insolvent corporation. From this premise, Geronimo claims that since Gateway cannot, owing to the order of insolvency, be made to pay its obligation, he, too, being just a surety, cannot also be made to pay, obviously having in mind Art. 2054 of the Civil Code, as follows:

A guarantor may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions.

Should he have bound himself for more, his obligations shall be reduced to the limits of that of the debtor.

The Court is not convinced. The above article enunciates the rule that the obligation of a guarantor may be less, but cannot be more than the obligation of the principal debtor. The rule, however, cannot plausibly be stretched to mean that a guarantor or surety is freed from liability as such guarantor or surety in the event the principal debtor becomes insolvent or is unable to pay the obligation. This interpretation would defeat the very essence of a suretyship contract which, by definition, refers to an agreement whereunder one person, the surety, engages to be answerable for the debt, default, or miscarriage of another known as the principal.[16] Geronimo's position that a surety cannot be made to pay when the principal is unable to pay is clearly specious and must be rejected.

The CA Did Not Err in Admitting
the Deed of Suretyship as Evidence

Going to the next ground, Geronimo maintains that the CA erred in admitting the Deed of Suretyship purportedly signed by him, given that Asianbank failed to present its original copy.

This contention is bereft of merit.

As may be noted, paragraph 6 of Asianbank's complaint alleged the following:

6. The loan was secured by the Deeds of Suretyship dated July 23, 1996 that were executed by defendants Geronimo B. De Los Reyes, Jr. and Andrew S. De Los Reyes. Attached as Annexes "B" and "C," respectively, are photocopies of the Deeds of Suretyship executed by defendants Geronimo B. De Los Reyes, Jr. and Andrew S. De Los Reyes. Subsequently, a chattel mortgage over defendant Gateway's equipment for \$2 million, United States currency, was executed.[17]

Geronimo traversed in his answer the foregoing allegation in the following wise: "2.5. Paragraph 6 is denied, subject to the special and affirmative defenses and allegations hereinafter set forth."

The ensuing special and affirmative defenses were raised in Gateway's answer:

15. Granting even that [Geronimo] signed the Deed of Suretyship, his wife x x x had not given her consent thereto. Accordingly, the security created by the suretyship shall be construed only as a continuing offer on the part of [Geronimo] and plaintiff and may only be perfected as a binding contract upon acceptance by Mrs.

Delos Reyes. x x x

17. Moreover, assuming, *gratia argumenti*, that [Geronimo] may be bound by the suretyship agreement, there is no showing that he has consented to the repeated extensions made by plaintiff in favor of GEC or to a waiver of notice of such extensions. It should be pointed out that Mr. Geronimo delos Reyes executed the suretyship agreement in his personal capacity and not in his capacity as Chairman of the Board of GEC. His consent, insofar as the continuing application of the suretyship agreement to GEC's obligations in view of the repeated extension extended by plaintiff [is concerned], is therefore necessary. Obviously, plaintiff cannot now hold him liable as a surety to GEC's obligations.[18]

The Rules of Court prescribes, under its Secs. 7 and 8, Rule 8, the procedure should a suit or defense is predicated on a written document, thus:

Sec. 7. Action or defense based on document.—Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Sec. 8. How to contest such documents.—When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (Emphasis supplied.)

Given the above perspective, Asianbank, by attaching a photocopy of the Deed of Suretyship to its underlying complaint, hewed to the requirements of the above twin provisions. Asianbank, thus, effectively alleged the due execution and genuineness of the said deed. From that point, Geronimo, if he intended to contest the surety deed, should have specifically denied the due execution and genuineness of the deed in the manner provided by Sec. 10, Rule 8 of the Rules of Court, thus:

Sec. 10. Specific denial.—A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (Emphasis supplied.)

In the instant case, Geronimo should have categorically stated that he did not execute the Deed of Suretyship and that the signature appearing on it was not his or was falsified. His Answer does not, however, contain any such statement. Necessarily then, Geronimo had not specifically denied, and, thus, is deemed to have admitted, the genuineness and due execution of the deed in question. In this regard, Sec. 11, Rule 8 of the Rules of Court states:

Sec. 11. Allegations not specifically denied deemed admitted.—Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. x x x

Owing to Geronimo's virtual admission of the genuineness and due execution of the deed of suretyship, Asianbank, contrary to the view of Gateway and Geronimo, need not present the original of the deed during the hearings of the case. Sec. 4, Rule 129 of the Rules says so:

Sec. 4. Judicial admissions.—An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (Emphasis supplied.)

Geronimo Is Liable for PN No. FCD-0599-2749
under His Deed of Suretyship

This brings us to the third ground which involves the issue of the coverage of the suretyship. Preliminarily, an overview on the process of taking out loans should first be made. Generally, especially for large loans, banks first approve a line or facility out of which a client may avail itself of loans in the form of promissory notes without need of further processing and/or approval every time a draw down is made. In the instant case, Asianbank approved in favor of Gateway the PhP 10 million-Domestic Bills Purchased Line and the USD 3 million-Omnibus Credit Line. Asianbank approved these credit lines which were covered by a chattel mortgage as well as the deeds of suretyship, such that loans extended from these lines would already be secured and pre-approved. In other words, these facilities are not financial obligations yet. Asianbank did not yet lend out any money to Gateway with the approval of these lines. The loan transaction occurred or the principal obligation, as secured by a surety agreement, was born after the execution of loan documents, such as PN No. FCD-0599-2749.

Geronimo now excepts from the ruling that the deed of suretyship he executed covered PN No. FCD-0599-2749 which embodied several export packing loans issued by Asianbank to Gateway. He claims that the deed only secured the PhP 10 million-Domestic Bills Purchased Line and the USD 3 million-Omnibus Credit Line. Geronimo describes as absurd the notion that a deed of suretyship would secure a loan obligation contracted three (3) years after the execution of the surety deed.

Geronimo's thesis that the deed in question cannot be accorded prospective application is erroneous. To be sure, the provisions of the subject deed of suretyship indicate a continuing suretyship. In *Fortune Motors (Phils.) v. Court of Appeals*,^[19] the Court, citing cases, defined and upheld the validity of a continuing suretyship in this wise:

"x x x Of course, a surety is not bound under any particular principal obligation until that principal obligation is born. But there is no theoretical or doctrinal difficulty inherent in saying that the suretyship agreement itself is valid and binding even before the principal obligation intended to be secured thereby is born, any more than there would be in saying that obligations which are subject to a condition precedent are valid and binding before the occurrence of the condition precedent.

Comprehensive or continuing surety agreements are in fact quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, commonly requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor."^[20]

In *Diño vs. Court of Appeals*,^[21] we again had occasion to discourse on continuing guaranty/suretyship thus:

"x x x A continuing guaranty is one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked. It is prospective in its operation and is generally intended to provide security with respect to future transactions within certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable. Otherwise stated, a continuing guaranty is one which covers all transactions, including those arising in the future, which are within the description or contemplation of the contract, of guaranty, until the expiration or termination thereof. A guaranty shall be construed as continuing when by the terms thereof it is evident that the object is to give a standing credit to the principal debtor to be used from time to time either indefinitely or until a certain period x x x.

In other jurisdictions, it has been held that the use of particular words and expressions such as payment of `any debt,' `any indebtedness,' `any deficiency,' or `any sum,' or the guaranty of `any transaction' or money to be furnished the principal debtor `at any time,' or `on such time' that the principal debtor may require, have been construed to indicate a continuing guaranty." (Emphasis supplied.)

By its nature, a continuing suretyship covers current and future loans, provided that, with respect to future loan transactions, they are, to borrow from Diño, as cited above, "within the description or contemplation of the contract of guaranty." The Deed of Suretyship Geronimo signed envisaged a continuing suretyship when, by the express terms of the deed, he warranted payment of the PhP 10 million-Domestic Bills Purchased Line and the USD 3 million-Omnibus Credit Line, as evidenced by:

x x x notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with all interests, penalty and other bank charges as may accrue thereon and all expenses which may be incurred by the latter in collecting any or all such instruments.[22]

Evidently, under the deed of suretyship, Geronimo undertook to secure all obligations obtained under the Domestic Bills Purchased Line and Omnibus Credit Line, without any specification as to the period of the loan.

Geronimo's application of *Garcia v. Court of Appeals*, a case covering two separate loans, denominated as SWAP Loan and Export Loan, is quite misplaced. There, the Court ruled that the continuing suretyship only covered the SWAP Loan as it was only this loan that was referred to in the continuing suretyship. The Court wrote in *Garcia*:

Particular attention must be paid to the statement appearing on the face of the Indemnity [Suretyship] Agreement x x x "evidenced by those certain loan documents dated April 20, 1982" x x x. From this statement, it is clear that the Indemnity Agreement refers only to the loan document of April 20, 1982 which is the SWAP loan. It did not include the EXPORT loan. Hence, petitioner cannot be held answerable for the EXPORT loan.[23] (Emphasis supplied.)

The Indemnity Agreement in *Garcia* specifically identified loan documents evidencing obligations of the debtor that the agreement was intended to secure. In the present case, however, the suretyship Geronimo assumed did not limit itself to a specific loan document to the exclusion of another. The suretyship document merely mentioned the Domestic Bills Purchased Line and Omnibus Credit Line as evidenced by "all notes, drafts x x x contracted/incurred by [Gateway] in favor of [Asianbank]."[24] As explained earlier, such credit facilities are not loans by themselves. Thus, the Deed of Suretyship was intended to secure future loans for which these facilities were opened in the first place. 0000 Lest it be overlooked, both the trial and appellate courts found the Omnibus Credit Line referred to in the Deed of Suretyship as covering the export packing credit loans Asianbank extended to Gateway. We agree with this factual determination. By the very use of the term "omnibus," and in practice, an omnibus credit line refers to a credit facility whence a borrower may avail of various kinds of credit loans. Defined as such, an omnibus line is broad enough to refer to or cover an export packing credit loan.

Geronimo's allegation that an export packing credit loan is separate and distinct from an omnibus credit line is but a bare and self-serving assertion bereft of any factual or legal basis. One who alleges something must prove it: a mere allegation is not evidence.[25] Geronimo has not discharged his burden of proof. His contention cannot be given any weight.

As a final and major ground for his release as surety, Geronimo alleges that Asianbank repeatedly extended the maturity dates of the obligations of Gateway without his knowledge and consent. Pressing this point, he avers that, contrary to the findings of the CA, he did not waive his right to notice of extensions of Gateway's obligations.

Such contention is unacceptable as it glosses over the fact that the waiver to be notified of extensions is embedded in surety document itself, built in the ensuing provision:

In case of default by any and/or all of the DEBTOR(S) to pay the whole part of said indebtedness herein secured at maturity, I/WE jointly and severally, agree and engage to the CREDITOR, its successors and assigns, the prompt payment, without demand or notice from said CREDITOR of such notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with all interests, penalty and other bank charges as may accrue thereon and all expenses which may be incurred by the latter in collecting any or all such instruments.[26] (Emphasis supplied.)

In light of the above provision, Geronimo verily waived his right to notice of the maturity of notes, drafts, overdraft, and other credit obligations for which Gateway shall become indebted. This waiver necessarily includes new agreements resulting from the novation of previous agreements due to changes in their maturity dates.

Additionally, Geronimo's lament about losing his right to subrogation is erroneous. He argues that by virtue of the order of insolvency issued by the insolvency court, title and right to possession to all the properties and assets of Gateway were vested upon Gateway's assignee in accordance with Sec. 32 of the Insolvency Law.

The transfer of Gateway's property to the insolvency assignee, if this be the case, does not negate Geronimo's right of subrogation, for such right may be had or exercised in the insolvency proceedings. The possibility that he may only recover a portion of the amount he is liable to pay is the risk he assumed as a surety of Gateway. Such loss does not, however, render ineffectual, let alone invalidate, his suretyship.

Geronimo's other arguments to escape liability are puerile and really partake more of a plea for liberality. They need not detain us long. In gist, Geronimo argues: first, that he is a gratuitous surety of Gateway; second, Asianbank deviated from normal banking practice, such as when it extended the period for payment of Gateway's obligation and when it opted not to foreclose the chattel mortgage constituted as guarantee of Gateway's loan obligation; and third, implementing the appealed CA's decision would cause him great harm and injury.

Anent the first argument, suffice it to state that Geronimo was then the president of Gateway and, as such, was benefited, albeit perhaps indirectly, by the loan thus granted by Asianbank. And as we said in *Security Pacific Assurance Corporation*, the surety is liable for the debt of another although the surety possesses no direct or personal interest over the obligation nor does the surety receive any benefit from it.[27]

Whether or not Asianbank really deviated from normal banking practice by extending the period for Gateway to comply with its loan obligation or by not going after the chattel mortgage adverted to is really of no moment. Banks are primarily in the business of extending loans and earn income from their lending operations by way of service and interest charges. This is why Asianbank opted to give Gateway ample opportunity to pay its obligations instead of foreclosing the chattel mortgage and in the process holding on to assets of which the bank has really no direct use.

The following excerpts from *Palmares* are in point:

We agree with respondent corporation that its mere failure to immediately sue petitioner on her obligation does not release her from liability. Where a creditor refrains from proceeding against the principal, the surety is not exonerated. In other words, mere want of diligence or forbearance does not affect the creditor's rights vis-à-vis the surety, unless the surety requires him by appropriate notice to sue on the obligation. Such gratuitous indulgence of the principal does not discharge the surety whether given at the principal's request or without it, and whether it is yielded by the creditor through sympathy or from an inclination to favor the principal x x x. The neglect of the creditor to sue the principal at the time the debt falls due does not discharge the surety, even

if such delay continues until the principal becomes insolvent. And, in the absence of proof of resultant injury, a surety is not discharged by the creditor's mere statement that the creditor will not look to the surety, or that he need not trouble himself. The consequences of the delay, such as the subsequent insolvency of the principal, or the fact that the remedies against the principal may be lost by lapse of time, are immaterial.[28]

The Court's Equity Jurisdiction

Finds No Application to the Instant Case

Geronimo urges the Court to release and discharge him from any liability arising from Asianbank's claims if what he terms as "complete justice" is to be served. He cites, as supporting reference, *Agcaoili v. GSIS*, [29] presenting in the same breath the following arguments: first, the Deed of Suretyship is a gratuitous contract from which he did not benefit; second, Asianbank assured him that the deed would not be enforced against him; third, the enforcement of the judgment of the CA would reduce Geronimo and his family to a life of penury; and fourth, Geronimo would be unable to exercise his right of subrogation, Gateway having already been declared as insolvent.

The first and last arguments have already been addressed and found to be without merit. The second argument is a matter of defense which has remained unproved and even belied by Asianbank by its filing of the complaint. We see no need to further belabor any of them.

As regards the third allegation, suffice it to state that the predicament Geronimo finds himself in is his very own doing. His misfortune is but the result of the implementation of a bona fide contract he freely executed, the terms of which he is presumed to have thoroughly examined. He was not at all compelled to act as surety; he had a choice. It may be more offensive to public policy or good customs if he be allowed to go back on his undertaking under the surety contract. The Court cannot be a party to the contract's impairment and relieve a surety from the effects of an unwise but nonetheless a valid surety contract.

WHEREFORE, the instant petition is hereby DENIED. The appealed Decision dated October 28, 2005 of the CA and its March 17, 2006 Resolution in CA-G.R. CV No. 80734 are hereby AFFIRMED with the modification that any claim of Asianbank or its successor-in-interest against Gateway, if any, arising from the judgment in this suit shall be pursued before the RTC, Branch 22 in Imus, Cavite as the insolvency court.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Austria-Martinez,[*] Carpio Morales, and Tinga, JJ., concur.

* Additional member as per November 14, 2008 raffle.

[1] Rollo, pp. 98-123. Penned by Associate Justice Remedios A. Salazar- Fernando and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe.

[2] Id. at 125-126.

[3] Id. at 133.

[4] Id. at 132.

[5] Id. at 141-157. Penned by Judge Marissa Macaraig-Guillen.

[6] Id. at 590-659.

[7] Id. at 235.

[8] Id. at 54-56. Original in uppercase.

[9] "An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors."

[10] The effect of an order or decision of involency, be it voluntary under Sec. 18 of Act No. 1956 or involuntary under Sec. 24, is the same. 2 Agbayani, COMMERCIAL LAWS OF THE PHILIPPINES 641.

[11] Rollo, p. 902, Memorandum (For Respondent).

[12] G.R. No. 126490, March 31, 1998, 288 SCRA 422, 435-436, 440-441.

[13] Ong v. Philippine Commercial International Bank, G.R. No. 160466, January 17, 2005, 448 SCRA 705, 709.

[14] Philippine Bank of Communications v. Lim, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 724; citing CIVIL CODE, Arts. 1216, 2047, 1217 & 1231.

[15] G.R. No. 85396, October 27, 1989, 178 SCRA 739, 743-745.

[16] Security Pacific Assurance Corporation v. Tria-Infante, G.R. No. 144740, August 31, 2005, 468 SCRA 526, 537.

[17] Rollo, p. 189.

[18] Id. at 62-63.

[19] G.R. No. 112191, February 7, 1997, 267 SCRA 653, 665-666.

[20] Atok Finance Corporation v. Court of Appeals, G.R. No. 80078, May 18, 1993, 222 SCRA 232, 244-245.

[21] G.R. No. 89775, November 26, 1992, 216 SCRA 9, 17-18.

[22] Rollo, p. 133.

[23] G.R. No. 119845, July 5, 1996, 258 SCRA 446, 453.

[24] Supra note 3.

[25] Salvador v. Court of Appeals, G.R. No. 124899, March 30, 2004, 426 SCRA 433, 446; Pimentel v. Court of Appeals, G.R. No. 117422, May 12, 1999, 307 SCRA 38, 46; Hernandez v. Court of Appeals, G.R. No. 104874, December 14, 1993, 228 SCRA 429, 437.

[26] Rollo, p. 133.

[27] Supra note 16.

[28] Supra note 12, at 441.

[29] No. L-30056, August 30, 1988, 165 SCRA 1.

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