PREMIERE DEVELOPMENT BANK, PETITIONER, VS. CENTRAL SURETY & INSURANCE COMPANY, INC., RESPONDENT.

G.R. No. 176246. February 13, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 85930, which reversed and set aside the decision of the Regional Trial Court (RTC), Branch 132, Makati City in Civil Case No. 0051306.[2]

On August 20, 1999, respondent Central Surety & Insurance Company (Central Surety) obtained an industrial loan of P6,000,000.00 from petitioner Premiere Development Bank (Premiere Bank) with a maturity date of August 14, 2000. This P6,000,000.00 loan, evidenced by Promissory Note (PN) No. 714-Y,[3] stipulates payment of 17% interest per annum payable monthly in arrears and the principal payable on due date. In addition, PN No. 714-Y provides for a penalty charge of 24% interest per annum based on the unpaid amortization/installment or the entire unpaid balance of the loan. In all, should Central Surety fail to pay, it would be liable to Premiere Bank for: (1) unpaid interest up to maturity date; (2) unpaid penalties up to maturity date; and (3) unpaid balance of the principal.

To secure payment of the P6,000,000.00 loan, Central Surety executed in favor of Premiere Bank a Deed of Assignment with Pledge[4] covering Central Surety's Membership Fee Certificate No. 217 representing its proprietary share in Wack Wack Golf and Country Club Incorporated (Wack Wack Membership). In both PN No. 714-Y and Deed of Assignment, Constancio T. Castañeda, Jr. and Engracio T. Castañeda, president and vice-president of Central Surety, respectively, represented Central Surety and solidarily bound themselves to the payment of the obligation.

Parenthetically, Central Surety had another commercial loan with Premiere Bank in the amount of P40,898,000.00 maturing on October 10, 2001. This loan was, likewise, evidenced by a PN numbered 376-X[5] and secured by a real estate mortgage over Condominium Certificate of Title No. 8804, Makati City. PN No. 376-X was availed of through a renewal of Central Surety's prior loan, then covered by PN No. 367-Z.[6] As with the P6,000,000.00 loan and the constituted pledge over the Wack Wack Membership, the P40,898,000.00 loan with real estate mortgage was transacted by Constancio and Engracio Castañeda on behalf of Central Surety.

It appears that on August 22, 2000, Premiere Bank sent a letter to Central Surety demanding payment of the P6,000,000.00 loan, to wit:

> August 22, 2000
>
> CENTRAL SURETY AND INSURANCE CO.
>
> 2[nd] Floor Universalre Bldg.
> No. 106 Paseo de Roxas, Legaspi Village

Makati City

Attention: Mr. Constancio T. Castaneda, Jr.

President

Mr. Engracio T. Castaneda

Vice President

Gentlemen:

This has reference to your overdue loan of P6.0 Million.

We regret to inform you that despite efforts to restructure the same, you have failed up to this time, to submit the required documents and come up with equity necessary to implement the restructuring scheme.

In view thereof, we regret that unless the above loan is settled on or before five (5) days from the date hereof, we shall exercise our option to have the Stock Certificate No. 217 with Serial No. 1793 duly issued by Wack Wack Golf and Country Club, Inc. transferred in the name of Premiere Development Bank in accordance with the terms and conditions of the Deed of Assignment with Pledge executed in favor of Premiere Development Bank.

We shall appreciate your prompt compliance.

Very truly yours,

(sgd.)

IGNACIO R. NEBRIDA, JR.

Senior Asst. Vice President/

Business Development Group - Head[7]

Posthaste, Central Surety responded and sent the following letter dated August 24, 2000:

24 August 2000

Mr. Ignacio R. Nebrida, Jr.
Senior Asst. Vice President/
Business Development Group - Head
Premiere Bank
EDSA cor. Magallanes Avenue
Makati City

Sir:

With reference to this 6.0 Million loan account, we have informed Ms. Evangeline Veloira that we are intending to settle the account by the end of September. As of 14 August 2000 we made payment to your bank as per receipt attached.

As you may know, present conditions have been difficult for the insurance industry whose performance is so closely linked to the nation's economic prosperity; and we are now asking for some consideration and leeway on your very stiff and immediate demands.

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Kindly extend to us your favorable approval.

Very truly yours,

(sgd.)

ENGRACIO T. CASTANEDA
Vice-President[8]

Accordingly, by September 20, 2000, Central Surety issued Bank of Commerce (BC) Check No. 08114[9] dated September 22, 2000 in the amount of P6,000,000.00 and payable to Premiere Bank. The check was received by Premiere Bank's Senior Account Manager, Evangeline Veloira, with the notation "full payment of loan-Wack Wack," as reflected in Central Surety's Disbursement Voucher.[10] However, for undisclosed reasons, Premiere Bank returned BC Check No. 08114 to Central Surety, and in its letter dated September 28, 2000, demanded from the latter, not just payment of the P6,000,000.00 loan, but also the P40,898,000.00 loan which was originally covered by PN No. 367-Z.[11] In the same letter, Premiere Bank threatened foreclosure of the loans' respective securities, the pledge and real estate mortgage, should Central Surety fail to pay these within ten days from date, thus:

28 September 2000

CENTRAL SURETY & INSURANCE CO.
By: Constancio T. Castañeda Jr. - President
Engracio T. Castañeda - Vice President
2[nd] Floor Universalre Bldg. No. 106
Paseo de Roxas, Legaspi Village, Makati City

RE: YOUR COMMERCIAL LOAN OF P40,898,000.00 &

P6,000,000.00 WITH PREMIERE DEVELOPMENT BANK
UNDER ACCOUNT NOS. COM-367-Z AND COM 714-Y

****

Dear Sirs:

We write on behalf of our client, Premiere Development Bank, in connection with your above-captioned loan account.

While our client has given you all the concessions, facilities and opportunities to service your loans, we regret to inform you that you have failed to settle the same despite their past due status.

In view of the foregoing and to protect the interest of our client, please be advised that unless the outstanding balances of your loan accounts as of date plus interest, penalties and other fees and charges are paid in full or necessary arrangements acceptable to our client is made by you within ten (10) days from date hereof, we shall be constrained much to our regret, to file foreclosure proceedings against the collateral of the loan mortgaged to the Bank or pursue such action necessary in the premises.

We trust, therefore, that you will give this matter your preferential attention.

Very truly yours,

(sgd.)

PACITA M. ARAOS[12]

(italics supplied)

The very next day, on September 29, 2000, Central Surety, through its counsel, wrote Premiere Bank and re-tendered payment of the check:

29 September 2000

PREMIERE BANK
EDSA cor. Magallanes Avenue
Makati City

Attention: Mr. Ignacio R. Nebrida, Jr.

Senior Asst. Vice President/
Business Development Group - Head

Re : Promissory Note No. 714-Y

Sir:

This is further to our client's letter to you dated 24 August 2000, informing you that it would settle its account by the end of September 2000.

Please be advised that on 20 September 2000 our client delivered to your bank BC cheque no. 08114 payable to Premiere Bank in the amount of SIX MILLION PESOS (P6,000,000.00), which was received by your Senior Account Manager, Ms. Evangeline Veloira. However, for unexplained reasons the cheque was returned to us.

We are again tendering to you the said cheque of SIX MILLION PESOS (P6,000,000.00), in payment of PN#714-Y. Please accept the cheque and issue the corresponding receipt thereof. Should you again refuse to accept this cheque, then I shall advise my client to deposit it in court for proper disposition.

Thank you.

Very truly yours,

(sgd.)

EPIFANIO E. CUA

Counsel for Central Surety & Insurance Company[13]

(italics supplied)

On even date, a separate letter with another BC Check No. 08115 in the amount of P2,600,000.00 was also tendered to Premiere Bank as payment for the Spouses Engracio and Lourdes Castañeda's (Spouses Castañeda's) personal loan covered by PN No. 717-X and secured by Manila Polo Club, Inc. membership shares.

On October 13, 2000, Premiere Bank responded and signified acceptance of Central Surety's checks under the following application of payments:

13 October 2000

ATTY. EPIFANIO E. CUA
2/F Universalre Condominium

106 Paseo de Roxas
Legaspi Village, Makati City

Dear Atty. Cua:

Thank you for your two (2) letters both dated 29 September 2000 on behalf of your clients with the enclosed check nos. 0008114 and 0008115 for the total of P8,600,000.00.

As previously relayed to your client, Premiere Bank cannot accept the two (2) checks as full settlement of the obligation under Account Nos. PN #714-Y and PN # 717-X, as the amount is insufficient.

In accordance with the terms and conditions of the Promissory Notes executed by your clients in favor of Premiere Development Bank, we have applied the two (2) checks to the due obligations of your clients as follows:

1)

Account No.: COM 235-Z[14]

P1,044,939.45

2)

Account No.: IND 717-X

P1,459,693.15

3)

Account No.: COM 367-Z[15]

P4,476,200.18

4)

Account No.: COM 714-Y

P1,619,187.22

TOTAL

P8,600,000.00

==========

We are enclosing Xerox copy each of four (4) official receipts covering the above payments. The originals are with us which your clients or their duly authorized representative may pick-up anytime during office hours.

We shall appreciate the settlement in full of the accounts of your client or necessary arrangements for settlement thereof be made as soon as possible to put the accounts on up to-date status.

Thank you.

Very truly yours,

(sgd.)

MS. ELSA M. SAPAPO

Manager

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Loans Accounting and
Control Department[16]

Significantly, the P8,600,000.00 check payments were not applied in full to Central Surety's P6,000,000.00 loan under PN No. 714-Y and the Spouses Castañeda's personal loan of P2,600,000.00 under PN No. 717-X. Premiere Bank also applied proceeds thereof to a commercial loan under PN No. 235-Z taken out by Casent Realty and Development Corporation (Casent Realty),[17] and to Central Surety's loan originally covered by PN No. 367-Z, renewed under PN No. 376-X, maturing on October 20, 2001.

Strongly objecting to Premiere Bank's application of payments, Central Surety's counsel wrote Premiere Bank and reiterated Central Surety's demand for the application of the check payments to the loans covered by PN Nos. 714-X and 714-Y. Additionally, Central Surety asked that the Wack Wack Membership pledge, the security for the P6,000,000.00 loan, should be released.

In the final exchange of correspondence, Premiere Bank, through its SAVP/Acting Head-LGC, Atty. Pacita Araos, responded and refused to accede to Central Surety's demand. Premiere Bank insisted that the PN covering the P6,000,000.00 loan granted Premiere Bank sole discretion respecting: (1) debts to which payments should be applied in cases of several obligations by an obligor and/or debtor; and (2) the initial application of payments to other costs, advances, expenses, and past due interest stipulated thereunder.

As a result, Central Surety filed a complaint for damages and release of security collateral, specifically praying that the court render judgment: (1) declaring Central Surety's P6,000,000.00 loan covered by PN No. 714-Y as fully paid; (2) ordering Premiere Bank to release to Central Surety its membership certificate of shares in Wack Wack; (3) ordering Premiere Bank to pay Central Surety compensatory and actual damages, exemplary damages, attorney's fees, and expenses of litigation; and (4) directing Premiere Bank to pay the cost of suit.

On July 12, 2005, the RTC rendered a decision dismissing Central Surety's complaint and ordering it to pay Premiere Bank P100,000.00 as attorney's fees. The RTC ruled that the stipulation in the PN granting Premiere Bank sole discretion in the application of payments, although it partook of a contract of adhesion, was valid. It disposed of the case, to wit:

> Now that the issue as to the validity of the stipulation is settled, [Premiere Bank] was right in contending that it had the right to apply [Central Surety's] payment to the most onerous obligation or to the one it sees fit to be paid first from among the several obligations. The application of the payment to the other two loans of Central Surety namely, account nos. COM 367-Z and IND 714-Y was within [Premiere Bank's] valid exercise of its right according the stipulation. However, [Premiere Bank] erred in applying the payment to the loan of Casent Realty and to the personal obligation of Mr. Engracio Castañeda despite their connection with one another. Therefore, [Premiere Bank] cannot apply the payment tendered by Central Surety to the other two entities capriciously and expressly violating the law and pertinent Central Bank rules and regulations. Hence, the application of the payment to the loan of Casent Realty (Account No. COM 236-Z) and to the loan of Mr. Engracio Castañeda (Account No. IND 717-X) is void and must be annulled.
>
> As to the issue of whether or not [Central Surety] is entitled to the release of Membership Fee Certificate in the Wack Wack Golf and Country Club, considering now that [Central Surety] cannot compel [Premiere Bank] to release the subject collateral.
>
> With regard to the issue of damages and attorney's fees, the court finds no basis to grant [Premiere Bank's] prayer for moral and exemplary damages but deems it just and equitable to award in its favor attorney's fees in the sum of Php 100,000.00.
>
> WHEREFORE, judgment is hereby rendered dismissing the complaint and ordering [Central Surety] to pay

> [Premiere Bank] Php 100,000.00 as attorney's fees.[18] (emphasis supplied)

On appeal by Central Surety, the CA reversed and set aside the trial court's ruling. The appellate court held that with Premiere Bank's letter dated August 22, 2000 specifically demanding payment of Central Surety's P6,000,000.00 loan, it was deemed to have waived the stipulation in PN No. 714-Y granting it the right to solely determine application of payments, and was, consequently, estopped from enforcing the same. In this regard, with the holding of full settlement of Central Surety's P6,000,000.00 loan under PN No. 714-Y, the CA ordered the release of the Wack Wack Membership pledged to Premiere Bank.

Hence, this recourse by Premiere Bank positing the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE AND PALPABLE ERROR WHEN IT APPLIED THE PRINCIPLE OF WAIVER AND ESTOPPEL IN THE PRESENT CASE INSOFAR AS THE DEMAND LETTER SENT TO [CENTRAL SURETY] IS CONCERNED NULLIFYING THE APPLICATION OF PAYMENTS EXERCISED BY [PREMIERE BANK]
>
> WHETHER OR NOT THE FINDING OF WAIVER AND ESTOPPEL BY THE HONORABLE COURT OF APPEALS COULD PREVAIL OVER THE CLEAR AND UNMISTAKABLE STATUTORY AND CONTRACTUAL RIGHT OF [PREMIERE BANK] TO EXERCISE APPLICATION OF PAYMENT AS WARRANTED BY THE PROMISSORY NOTE
>
> EVEN ASSUMING EX GRATIA THAT THE 6 MILLION SHOULD BE APPLIED TO THE SUBJECT LOAN OF RESPONDENT, WHETHER OR NOT THE SUBJECT WACK-WACK SHARES COULD BE RELEASE[D] DESPITE THE CROSS DEFAULT AND CROSS GUARANTEE PROVISIONS OF THE DEED OF ASSIGNMENT WITH PLEDGE AND RELEVANT REAL ESTATE MORTGAGE CONTRACTS EXECUTED BY [CENTRAL SURETY], CASENT REALTY AND SPS. CASTAÑEDA.
>
> WHETHER OR NOT THERE IS A VALID TENDER OF PAYMENT AND CONSIGNATION OF THE SUBJECT TWO CHECK PAYMENTS BY [CENTRAL SURETY].
>
> WHETHER OR NOT, AS CORRECTLY FOUND BY THE COURT A QUO [CENTRAL SURETY] IS ESTOPPED FROM CONTESTING THE STIPULATIONS OR PROVISIONS OF THE PROMISSORY NOTES AUTHORIZING [PREMIERE BANK] TO MAKE SUCH APPLICATION OF PAYMENTS
>
> WHETHER OR NOT AS CORRECTLY FOUND BY THE LOWER COURT [PREMIERE BANK] IS ENTITLED TO AN AWARD OF DAMAGES AS OCCASIONED BY THE MALICIOUS FILING OF THIS SUIT.[19]

At the outset, we qualify that this case deals only with the extinguishment of Central Surety's P6,000,000.00 loan secured by the Wack Wack Membership pledge. We do not dispose herein the matter of the P2,600,000.00 loan covered by PN No. 717-X subject of BC Check No. 08115.

We note that both lower courts were one in annulling Premiere Bank's application of payments to the loans of Casent Realty and the Spouses Castañeda under PN Nos. 235-Z and 717-X, respectively, thus:

> It bears stressing that the parties to PN No. 714-Y secured by Wack Wack membership certificate are only Central Surety, as debtor and [Premiere Bank], as creditor. Thus, when the questioned stipulation speaks of "several obligations", it only refers to the obligations of [Central Surety] and nobody else.
>
> [I]t is plain that [Central Surety] has only two loan obligations, namely: 1.) Account No. 714-Y - secured by Wack Wack membership certificate; and 2.) Account No. 367-Z - secured by Condominium Certificate of Title. The two loans are secured by separate and different collaterals. The collateral for Account No. 714-Y, which is the Wack Wack membership certificate answers only for that account and nothing else. The collateral

> for Account No. 367-Z, which is the Condominium Certificate of Title, is answerable only for the said account.
>
> The fact that the loan obligations of [Central Surety] are secured by separate and distinct collateral simply shows that each collateral secures only a particular loan obligation and does not cover loans including future loans or advancements.
>
> As regards the loan covered by Account No. 235-Z, this was obtained by Casent Realty, not by [Central Surety]. Although Mr. Engracio Castañeda is the vice-president of [Central Surety], and president of Casent Realty, it does not follow that the two corporations are one and the same. Both are invested by law with a personality separate and distinct from each other.
>
> Thus, [Central Surety] cannot be held liable for the obligation of Casent Realty, absent evidence showing that the latter is being used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues, or when it is merely an adjunct, a business conduit or an alter ego of [Central Surety] or of another corporation; or used as a cloak to cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of creditors.
>
> Likewise, [Central Surety] cannot be held accountable for the loan obligation of spouses Castañeda under Account No. IND 717-X. Settled is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it. The corporate debt or credit is not the debt or credit of the stockholder nor is the stockholder's debt or credit that of the corporation.
>
> The mere fact that a person is a president of the corporation does not render the property he owns or possesses the property of the corporation, since that president, as an individual, and the corporation are separate entities.[20]

In fact, Premiere Bank did not appeal or question the RTC's ruling specifically annulling the application of the P6,000,000.00 check payment to the respective loans of Casent Realty and the Spouses Castañeda. Undoubtedly, Premiere Bank cannot be allowed, through this petition, to surreptitiously include the validity of its application of payments concerning the loans to Casent Realty and the Spouses Castañeda.

Thus, we sift through the issues posited by Premiere Bank and restate the same, to wit:

> - Whether Premiere Bank waived its right of application of payments on the loans of Central Surety.
>
> - In the alternative, whether the P6,000,000.00 loan of Central Surety was extinguished by the encashment of BC Check No. 08114.
>
> - Corollarily, whether the release of the Wack Wack Membership pledge is in order.

The Petition is meritorious.

We shall take the first and the second issues in tandem.

Creditor given right to apply payments

At the hub of the controversy is the statutory provision on application of payments, specifically Article 1252 of the Civil Code, viz.:

> Article 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.
>
> If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

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The debtor's right to apply payment is not mandatory. This is clear from the use of the word "may" rather than the word "shall" in the provision which reads: "He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of the same must be applied."

Indeed, the debtor's right to apply payment has been considered merely directory, and not mandatory,[21] following this Court's earlier pronouncement that "the ordinary acceptation of the terms `may' and `shall' may be resorted to as guides in ascertaining the mandatory or directory character of statutory provisions."[22]

Article 1252 gives the right to the debtor to choose to which of several obligations to apply a particular payment that he tenders to the creditor. But likewise granted in the same provision is the right of the creditor to apply such payment in case the debtor fails to direct its application. This is obvious in Art. 1252, par. 2, viz.: "If the debtor accepts from the creditor a receipt in which an application of payment is made, the former cannot complain of the same." It is the directory nature of this right and the subsidiary right of the creditor to apply payments when the debtor does not elect to do so that make this right, like any other right, waivable.

Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[23]

A debtor, in making a voluntary payment, may at the time of payment direct an application of it to whatever account he chooses, unless he has assigned or waived that right. If the debtor does not do so, the right passes to the creditor, who may make such application as he chooses. But if neither party has exercised its option, the court will apply the payment according to the justice and equity of the case, taking into consideration all its circumstances.[24]

Verily, the debtor's right to apply payment can be waived and even granted to the creditor if the debtor so agrees.[25] This was explained by former Senator Arturo M. Tolentino, an acknowledged expert on the Civil Code, thus:

> The following are some limitations on the right of the debtor to apply his payment:
>
> x x x x
>
> 5) when there is an agreement as to the debts which are to be paid first, the debtor cannot vary this agreement.[26]

Relevantly, in a Decision of the Supreme Court of Kansas in a case with parallel facts, it was held that:

> The debtor requested Planters apply the payments to the 1981 loan rather than to the 1978 loan.Planters refused.Planters notes it was expressly provided in the security agreement on the 1981 loan that Planters had a legal right to direct application of payments in its sole discretion.Appellees do not refute this.Hence, the debtors had no right by agreement to direct the payments.This also precludes the application of the U.S. Rule, which applies only in absence of a statute or specific agreement.Thus the trial courterred. Planters was entitled to apply the Hi-Plains payments as it saw fit.[27]

In the case at bench, the records show that Premiere Bank and Central Surety entered into several contracts of loan, securities by way of pledges, and suretyship agreements. In at least two (2) promissory notes between the parties, Promissory Note No. 714-Y and Promissory Note No. 376-X, Central Surety expressly agreed to grant Premiere Bank the authority to apply any and all of Central Surety's payments, thus:

In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in any manner it sees fit, any or all of my/our deposits and payments to any of my/our obligations whether due or not. Any such application of deposits or payments shall be conclusive and binding

upon us.

This proviso is representative of all the other Promissory Notes involved in this case. It is in the exercise of this express authority under the Promissory Notes, and following Bangko Sentral ng Pilipinas Regulations, that Premiere Bank applied payments made by Central Surety, as it deemed fit, to the several debts of the latter.

All debts were due; There was no waiver on the part of petitioner

Undoubtedly, at the time of conflict between the parties material to this case, Promissory Note No. 714-Y dated August 20, 1999, in the amount of P6,000,000.00 and secured by the pledge of the Wack Wack Membership, was past the due and demand stage. By its terms, Premiere Bank was entitled to declare said Note and all sums payable thereunder immediately due and payable, without need of "presentment, demand, protest or notice of any kind." The subsequent demand made by Premiere Bank was, therefore, merely a superfluity, which cannot be equated with a waiver of the right to demand payment of all the matured obligations of Central Surety to Premiere Bank.

Moreover, this Court may take judicial notice that the standard practice in commercial transactions to send demand letters has become part and parcel of every collection effort, especially in light of the legal requirement that demand is a prerequisite before default may set in, subject to certain well-known exceptions, including the situation where the law or the obligations expressly declare it unnecessary.[28]

Neither can it be said that Premiere Bank waived its right to apply payments when it specifically demanded payment of the P6,000,000.00 loan under Promissory Note No. 714-Y. It is an elementary rule that the existence of a waiver must be positively demonstrated since a waiver by implication is not normally countenanced. The norm is that a waiver must not only be voluntary, but must have been made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence to show an actual intention to relinquish the right. Mere silence on the part of the holder of the right should not be construed as a surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver.[29]

Besides, in this case, any inference of a waiver of Premiere Bank's, as creditor, right to apply payments is eschewed by the express provision of the Promissory Note that: "no failure on the part of [Premiere Bank] to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof."

Thus, we find it unnecessary to rule on the applicability of the equitable principle of waiver that the Court of Appeals ascribed to the demand made by Premiere Bank upon Central Surety to pay the amount of P6,000,000.00, in the face of both the express provisions of the law and the agreements entered into by the parties. After all, a diligent creditor should not needlessly be interfered with in the prosecution of his legal remedies.[30]

When Central Surety directed the application of its payment to a specific debt, it knew it had another debt with Premiere Bank, that covered by Promissory Note 367-Z, which had been renewed under Promissory Note 376-X, in the amount of P40.898 Million. Central Surety is aware that Promissory Note 367-Z (or 376-X) contains the same provision as in Promissory Note No 714-Y which grants the Premiere Bank authority to apply payments made by Central Surety, viz.:

> In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in any manner it sees fit, any or all of my/our deposits and payments to any of my/our obligations whether due or not. Any such application of deposits or payments shall be conclusive and binding upon us.[31]

Obviously, Central Surety is also cognizant that Promissory Note 367-Z contains the proviso that:

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> the bank shall be entitled to declare this Note and all sums payable hereunder to be immediately due and payable, without need of presentment, demand, protest or notice of nay kind, all of which I/We hereby expressly waive, upon occurrence of any of the following events: x x x (ii) My/Our failure to pay any amortization or installment due hereunder; (iii) My/Our failure to pay money due under any other document or agreement evidencing obligations for borrowed money x x x.[32]

by virtue of which, it follows that the obligation under Promissory Note 367-Z had become past due and demandable, with further notice expressly waived, when Central Surety defaulted on its obligations under Promissory Note No. 714-Y.

Mendoza v. Court of Appeals[33] forecloses any doubt that an acceleration clause is valid and produces legal effects. In fact, in Selegna Management and Development Corporation v. United Coconut Planters Bank,[34] we held that:

> Considering that the contract is the law between the parties, respondent is justified in invoking the acceleration clause declaring the entire obligation immediately due and payable. That clause obliged petitioners to pay the entire loan on January 29, 1999, the date fixed by respondent.

It is worth noting that after the delayed payment of P6,000,000.00 was tendered by Central Surety, Premiere Bank returned the amount as insufficient, ostensibly because there was, at least, another account that was likewise due. Obviously, in its demand of 28 September 2000, petitioner sought payment, not just of the P6,000,000.00, but of all these past due accounts. There is extant testimony to support this claim, as the transcript of stenographic notes on the testimony of Atty. Araos reveals:

> Atty. Opinion: Q. But you accepted this payment of Six Million (P6,000,000.00) later on when together with this was paid another check for 1.8 Million?
>
> Witness: A. We accepted.
>
> Atty. Opinion: Q. And you applied this to four (4) other accounts three (3) other accounts or to four (4) accounts mentioned in Exhibit "J." Is that correct?
>
> Atty. Tagalog: We can stipulate on that. Your Honor.
>
> Court: This was stipulated?
>
> Atty. Tagalog: Yes, Your Honor. In fact, there is already stipulation that we confirm that those are the applications of payments made by the defendant Bank on those loan accounts.
>
> Atty. Opinion: Q. Were these accounts due already when you made this application, distribution of payments?
>
> Witness: A. Yes sir.[35]

Conversely, in its evidence-in-chief, Central Surety did not present any witness to testify on the payment of its obligations. In fact, the record shows that after marking its evidence, Central Surety proceeded to offer its evidence immediately. Only on the rebuttal stage did Central Surety present a witness; but even then, no evidence was adduced of payment of any other obligation. In this light, the Court is constrained to rule that all obligations of Central Surety to Premiere Bank were due; and thus, the application of payments was warranted.

Being in receipt of amounts tendered by Central Surety, which were insufficient to cover its more onerous obligations, Premiere Bank cannot be faulted for exercising the authority granted to it under the Promissory Notes, and applying payment to the obligations as it deemed fit. Subject to the caveat that our ruling herein shall be limited only to the transactions entered into by the parties to this case, the Court will not disturb the finding of the lower court that Premiere Bank rightly applied the payments that Central Surety had tendered. Corollary

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thereto, and upon the second issue, the tender of the amount of P6,000,000.00 by Central Surety, and the encashment of BC Check No. 08114 did not totally extinguish the debt covered by PN No. 714-Y.

Release of the pledgedWack Wack Membership

Contract of Adhesion

To the extent that the subject promissory notes were prepared by the Premiere Bank and presented to Central Surety for signature, these agreements were, indeed, contracts of adhesion. But contracts of adhesion are not invalid per se. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.

In interpreting such contracts, however, courts are expected to observe greater vigilance in order to shield the unwary or weaker party from deceptive schemes contained in ready-made covenants.[36] Thus, Article 24 of the Civil Code pertinently states:

> In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

But in this case, Central Surety does not appear so weak as to be placed at a distinct disadvantage vis-à-vis the bank. As found by the lower court:

> Considering that [Central Surety] is a known business entity, the [Premiere Bank] was right in assuming that the [Central Surety] could not have been cheated or misled in agreeing thereto, it could have negotiated with the bank on a more favorable term considering that it has already established a certain reputation with the [Premiere Bank] as evidenced by its numerous transactions. It is therefore absurd that an established company such as the [Central Surety] has no knowledge of the law regarding bank practice in loan transactions.

The Dragnet Clause.

The factual circumstances of this case showing the chain of transactions and long-standing relationship between Premiere Bank and Central Surety militate against the latter's prayer in its complaint for the release of the Wack Wack Membership, the security attached to Promissory Note 714-Y.

A tally of the facts shows the following transactions between Premiere Bank and Central Surety:

> Date
>
> Instrument
>
> Amount covered
>
> Stipulation
>
> August 20, 1999
>
> PN 714-Y
>
> P 6 M
>
> August 29, 1999
>
> Deed of
> Assignment

with Pledge

P 15 M

As security for PN 714-Y and/or such Promissory Note/s which the ASSIGNOR / PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE

From these transactions and the proviso in the Deed of Assignment with Pledge, it is clear that the security, which peculiarly specified an amount at P15,000,000.00 (notably greater than the amount of the promissory note it secured), was intended to guarantee not just the obligation under PN 714-Y, but also future advances. Thus, the said deed is explicit:

> As security for the payment of loan obtained by the ASSIGNOR/PLEDGOR from the ASSIGNEE/PLEDGEE in the amount of FIFTEEN MILLION PESOS (15,000,000.00) Philippine Currency in accordance with the Promissory Note attached hereto and made an integral part hereof as Annex "A" and/or such Promissory Note/s which the ASSIGNOR/PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE, the ASSIGNOR/PLEDGOR hereby transfers, assigns, conveys, endorses, encumbers and delivers by way of first pledge unto the ASSIGNEE/PLEDGEE, its successors and assigns, that certain Membership fee Certificate Share in Wack Wack Golf and Country Club Incorporate covered by Stock Certificate No. 217 with Serial No. 1793 duly issue by Wack Wack Golf and Country Club Incorporated on August 27, 1996 in the name of the ASSIGNOR." (Emphasis made in the Petition.)

Then, a Continuing Guaranty/Comprehensive Surety Agreement was later executed by Central Surety as follows:

Date

Instrument

Amount

Stipulation

Notarized,

Continuing

P40,898,000.00

In consideration of the loan and/or any credit accommodation which you (petitioner) have extended and/or will extend to Central Surety and Insurance Co.

Sept. 22, 1999

Guaranty/Comprehensive

Surety Agreement

And on October 10, 2000, Promissory Note 376-X was entered into, a renewal of the prior Promissory Note 367-Z, in the amount of P40,898,000.00. In all, the transactions that transpired between Premiere Bank and Central Surety manifest themselves, thusly:

Date

Instrument

Amount covered

Stipulation

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August 20, 1999

PN 714-Y

P 6 M

August 29, 1999

Deed of Assignment
with Pledge

P 15 M

As security for PN 714-Y and/or such Promissory Note/s which the ASSIGNOR / PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE

Notarized,
Sept. 22, 1999

Continuing
Guaranty/Comprehensive
Surety Agreement

P40,898,000.00

In consideration of the loan and/or any credit accommodation which you (petitioner) have extended and/or will extend to Central Surety and Insurance Co.

October 10, 2000

Promissory Note
376-X (PN 367-Z)

P40,898,000.00

From the foregoing, it is more than apparent that when, on August 29, 1999, the parties executed the Deed of Assignment with Pledge (of the Wack Wack Membership), to serve as security for an obligation in the amount of P15,000,000.00 (when the actual loan covered by PN No. 714-Y was only P6,000,000.00), the intent of the parties was for the Wack Wack Membership to serve as security also for future advancements. The subsequent loan was nothing more than a fulfillment of the intention of the parties. Of course, because the subsequent loan was for a much greater amount (P40,898,000.00), it became necessary to put up another security, in addition to the Wack Wack Membership. Thus, the subsequent surety agreement and the specific security for PN No. 367-X were, like the Wack Wack Membership, meant to secure the ballooning debt of the Central Surety.

The above-quoted provision in the Deed of Assignment, also known as the "dragnet clause" in American jurisprudence, would subsume all debts of respondent of past and future origins. It is a valid and legal undertaking, and the amounts specified as consideration in the contracts do not limit the amount for which the pledge or mortgage stands as security, if from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. A pledge or mortgage given to secure future advancements is a continuing security and is not discharged by the repayment of the amount named in the mortgage until the full amount of all advancements shall have been paid.[37]

Our ruling in Prudential Bank v. Alviar[38] is instructive:

> A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is

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> specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, et cetera. Indeed, it has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.
> The "blanket mortgage clause" in the instant case states:
>
> That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to, irrespective of number, as DEBTOR, and to secure the payment of the same and those that may hereafter be obtained, the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (P250,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the Mortgagor declares that he/it isthe absolute owner free from all liens and incumbrances. . . .
>
> x x x x

In the case at bar, the subsequent loans obtained by respondents were secured by other securities, thus: PN BD#76/C-345, executed by Don Alviar was secured by a "hold-out" on his foreign currency savings account, while PN BD#76/C-430, executed by respondents for Donalco Trading, Inc., was secured by "Clean-Phase out TOD CA 3923" and eventually by a deed of assignment on two promissory notes executed by Bancom Realty Corporation with Deed of Guarantee in favor of A.U. Valencia and Co., and by a chattel mortgage on various heavy and transportation equipment. The matter of PN BD#76/C-430 has already been discussed. Thus, the critical issue is whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended, or particularly, to PN BD#76/C-345.

Under American jurisprudence, two schools of thought have emerged on this question. One school advocates that a "dragnet clause" so worded as to be broad enough to cover all other debts in addition to the one specifically secured will be construed to cover a different debt, although such other debt is secured by another mortgage. The contrary thinking maintains that a mortgage with such a clause will not secure a note that expresses on its face that it is otherwise secured as to its entirety, at least to anything other than a deficiency after exhausting the security specified therein, such deficiency being an indebtedness within the meaning of the mortgage, in the absence of a special contract excluding it from the arrangement.

The latter school represents the better position. The parties having conformed to the "blanket mortgage clause" or "dragnet clause," it is reasonable to conclude that they also agreed to an implied understanding that subsequent loans need not be secured by other securities, as the subsequent loans will be secured by the first mortgage. In other words, the sufficiency of the first security is a corollary component of the "dragnet clause." But of course,there is no prohibition, as in the mortgage contract in issue, against contractually requiring other securities for the subsequent loans. Thus, when the mortgagor takes another loan for which another security was given it could not be inferred that such loan was made in reliance solely on the original security with the "dragnet clause,"

but rather, on the new security given. This is the "reliance on the security test."

Hence, based on the "reliance on the security test," the California court in the cited case made an inquiry whether the second loan was made in reliance on the original security containing a "dragnet clause." Accordingly, finding a different security was taken for the second loan no intent that the parties relied on the security of the first loan could be inferred, so it was held. The rationale involved, the court said, was that the "dragnet clause" in the first security instrument constituted a continuing offer by the borrower to secure further loans under the security of the first security instrument, and that when the lender accepted a different security he did not accept the offer.

In another case, it was held that a mortgage with a "dragnet clause" is an "offer" by the mortgagor to the bank to provide the security of the mortgage for advances of and when they were made. Thus, it was concluded that the "offer" was not accepted by the bank when a subsequent advance was made because (1) the second note was secured by a chattel mortgage on certain vehicles, and the clause therein stated that the note was secured by such chattel mortgage; (2) there was no reference in the second note or chattel mortgage indicating a connection between the real estate mortgage and the advance; (3) the mortgagor signed the real estate mortgage by her name alone, whereas the second note and chattel mortgage were signed by the mortgagor doing business under an assumed name; and (4) there was no allegation by the bank, and apparently no proof, that it relied on the security of the real estate mortgage in making the advance.

Indeed, in some instances, it has been held that in the absence of clear, supportive evidence of a contrary intention, a mortgage containing a "dragnet clause" will not be extended to cover future advances unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor.

It was therefore improper for petitioner in this case to seek foreclosure of the mortgaged property because of non-payment of all the three promissory notes. While the existence and validity of the "dragnet clause" cannot be denied, there is a need to respect the existence of the other security given for PN BD#76/C-345. The foreclosure of the mortgaged property should only be for the P250,000.00 loan covered by PN BD#75/C-252, and for any amount not covered by the security for the second promissory note. As held in one case, where deeds absolute in form were executed to secure any and all kinds of indebtedness that might subsequently become due, a balance due on a note, after exhausting the special security given for the payment of such note, was in the absence of a special agreement to the contrary, within the protection of the mortgage, notwithstanding the giving of the special security. This is recognition that while the "dragnet clause" subsists, the security specifically executed for subsequent loans must first be exhausted before the mortgaged property can be resorted to.

The security clause involved in the case at bar shows that, by its terms:

> As security for the payment of loan obtained by the ASSIGNOR/PLEDGOR from the ASSIGNEE/PLEDGEE in the amount of FIFTEEN MILLION PESOS (15,000,000.00) Philippine Currency in accordance with the Promissory Note attached hereto and made an integral part hereof as Annex "A" and/or such Promissory Note/s which the ASSIGNOR/PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE, the ASSIGNOR/ PLEDGOR hereby transfers, assigns, conveys, endorses, encumbers and delivers by way of first pledge unto the ASSIGNEE/PLEDGEE, its successors and assigns, that certain Membership fee Certificate Share in Wack Wack Golf and Country Club Incorporated covered by Stock Certificate No. 217 with Serial No. 1793 duly issue by Wack Wack Gol

f and Country Club Incorporated on August 27, 1996 in the name of the ASSIGNOR."

it is comparable with the security clause in the case of Prudential, viz.:

> That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to, irrespective of number, as

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> DEBTOR, and to secure the payment of the same and those that may hereafter be obtained, the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (P250,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the Mortgagor declares that he/it isthe absolute owner free from all liens and incumbrances. . . .

and there is no substantive difference between the terms utilized in both clauses securing future advances.

To recall, the critical issue resolved in Prudential was whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended. We then declared that the special security for subsequent loans must first be exhausted in a situation where the creditor desires to foreclose on the "subsequent" loans that are due. However, the "dragnet clause" allows the creditor to hold on to the first security in case of deficiency after foreclosure on the special security for the subsequent loans.

In Prudential, we disallowed the petitioner's attempt at multiple foreclosures, as it foreclosed on all of the mortgaged properties serving as individual securities for each of the three loans. This Court then laid down the rule, thus:

> where deeds absolute in form were executed to secure any and all kinds of indebtedness that might subsequently become due, a balance due on a note, after exhausting the special security given for the payment of such note, was, in the absence of a special agreement to the contrary, within the protection of the mortgage, notwithstanding the giving of the special security. This is recognition that while the "dragnet clause" subsists, the security specifically executed for subsequent loans must first be exhausted before the mortgaged property can be resorted to.

However, this does not prevent the creditor from foreclosing on the security for the first loan if that loan is past due, because there is nothing in law that prohibits the exercise of that right. Hence, in the case at bench, Premiere Bank has the right to foreclose on the Wack Wack Membership, the security corresponding to the first promissory note, with the deed of assignment that originated the "dragnet clause." This conforms to the doctrine in Prudential, as, in fact, acknowledged in the decision's penultimate paragraph, viz.:

> Petitioner, however, is not without recourse. Both the Court of Appeals and the trial court found that respondents have not yet paid the P250,000.00 and gave no credence to their claim that they paid the said amount when they paid petitioner P2,000,000.00. Thus, the mortgaged property could still be properly subjected to foreclosure proceedings for the unpaid P250,000.00 loan, and as mentioned earlier, for any deficiency after D/A SFDX#129, security for PN BD#76/c-345, has been exhausted, subject of course to defenses which are available to respondents.

In any event, even without this Court's prescription in Prudential, the release of the Wack Wack Membership as the pledged security for Promissory Note 714-Y cannot yet be done as sought by Central Surety. The chain of contracts concluded between Premiere Bank and Central Surety reveals that the Wack Wack Membership, which stood as security for Promissory Note 714-Y, and which also stands as security for subsequent debts of Central Surety, is a security in the form of a pledge. Its return to Central Surety upon the pretext that Central Surety is entitled to pay only the obligation in Promissory Note No. 714-Y, will result in the extinguishment of the pledge, even with respect to the subsequent obligations, because Article 2110 of the Civil Code provides:

> (I)f the thing pledged is returned by the pledgor or owner, the pledge is extinguished. Any stipulation to the

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contrary is void.

This is contrary to the express agreement of the parties, something which Central Surety wants this Court to undo. We reiterate that, as a rule, courts cannot intervene to save parties from disadvantageous provisions of their contracts if they consented to the same freely and voluntarily.[39]

Attorney's Fees

The final issue is the propriety of attorney's fees. The trial court based its award on the supposed malice of Central Surety in instituting this case against Premiere Bank. We find no malice on the part of Central Surety; indeed, we are convinced that Central Surety filed the case in the lower court in good faith, upon the honest belief that it had the prerogative to choose to which loan its payments should be applied.

Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: (a) malice and (b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person; and that it was initiated deliberately, knowing that the charge was false and baseless. Hence, the mere filing of what turns out to be an unsuccessful suit does not render a person liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate.[40] Malice must be proved with clear and convincing evidence, which we find wanting in this case.

WHEREFORE, the instant petition is PARTIALLY GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 85930 dated July 31, 2006, as well as its Resolution dated January 4, 2007, are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Makati City, Branch 132, in Civil Case No. 00-1536, dated July 12, 2005, is REINSTATED with the MODIFICATION that the award of attorney's fees to petitioner is DELETED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Leonardo-De Castro[*], JJ., concur.

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[*] Per Raffle dated February 18, 2008.

[1] Penned by Presiding Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca de Guia-Salvador and Monina Arevalo-Zenarosa, concurring; rollo, pp. 45-69.

[2] Penned by Judge Rommel O. Baybay.

[3] Annex "A" of the Complaint, records, p. 11.

[4] Annex "B" of the Complaint, id. at 12-13.

[5] Annex "E," formal offer of exhibits, id. at 206.

[6] Rollo, p. 11.

[7] Annex "D" of the Complaint, records, p. 15. (Italics supplied.)

[8] Annex "E" of the Complaint, id. at 16. (Italics supplied.)

[9] Annex "G" of the Complaint, id. at 18.

[10] Annex "G-1" of the Complaint, id. at 18.

[11] Now covered by PN No. 376-X to mature on October 20, 2001.

[12] Annex "H" of the Complaint, records, p. 19.

[13] Annex "I" of the Complaint, id. at 20.

[14] Loan of P40,000,000.00 to Casent Realty and Development Corporation with Engracio Castañeda signing the PN as president thereof.

[15] Supra notes 3, 4.

[16] Annexes "J," "J-1" of the Complaint, records, pp. 21-22.

[17] An affiliate company of Central Surety with Engracio Castañeda as president thereof.

[18] Rollo, pp. 79-80.

[19] Id. at 9-10.

[20] Id. at 61-64.

[21] Baltazar v. Lingayen Gulf Electric Power Co., Inc., 121 Phil. 1308, 1321 (1965).

[22] Social Security Commission v. Court of Appeals, G.R. No. 152058, September 27, 2004, 439 SCRA 239.

[23] CIVIL CODE, Art. 6.

[24] Allen & Robinson v. F. H. Redward and Hawaiian Lodge, No. 21, of Free and Accepted Masons, April 25, 1896, 10 Haw. 273, 1896 WL 1624 (Hawaii Rep.).

[25] IV Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 311 (1985), citing Salvat 104-105, 7 Planiol & Ripert 542, De Buen, 3 Colin & Capitant, 188, 296.

[26] Id.

[27] The Ram Company, Inc. v. The Estate of Clyde K. Kobbeman, et al. and Planters Bank and Trust Company, Appellant, No. 56408, March 2, 1985, 236 Kan. 751, 696 P. 2d 936, citing Gray v. Amoco Production Company, 1 Kan. App. 2d 338, P 11, 564 P. 2d 579 (1977) aff'd in part, rev'd in part 223 Kan. 441, 573 P. 2d 1080 (1978),

[28] CIVIL CODE, Art. 1169.

[29] Valderama v. Macalde, G.R. No. 165005, September 16, 2005, 470 SCRA 168, 183, citing People v. Bodoso, 446 Phil. 838 (2003).

[30] Francis Saul II, Trustee, et al. v. Vaughn & Co., Ltd., Nos. 32433, 32462, December 5, 1977, 240 Ga. 301, 241 S.e. 2d 180.

[31] Emphasis supplied.

[32] Emphasis supplied.

[33] G.R. No. 116216, June 20, 1997, 274 SCRA 527.

[34] G.R. No. 165662, May 3, 2006, 489 SCRA 125.

[35] TSN, July 9, 2004, pp. 42-43.

[36] Everett Steamship Corporation v. Court of Appeals, 358 Phil. 129, 137 (1998), citing Ong Yiu v. Court of Appeals, 91 SCRA 223 (1979).

[37] Republic Planters Bank v. Sarmiento, G.R. No. 170785, October 19, 2007, 537 SCRA 303, 314.

[38] G.R. No. 150197, July 28, 2005, 464 SCRA 353.

[39] Development Bank of the Philippines v. Court of Appeals, G.R. No. 138703, June 30, 2006, 494 SCRA 25, 46.

[40] Ceballos v. Intestate Estate of the Late Emigdio Mercado, G.R. No. 155856, May 28, 2004, 430 SCRA 323, 336, citing China Banking Corporation v. Court of Appeals, 231 SCRA 472 (1994).

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