

JACINTO UY DIÑO AND NORBERTO UY, PETITIONERS, VS. HON. COURT OF APPEALS AND METROPOLITAN BANK AND TRUST COMPANY, RESPONDENTS.

G.R. No. 89775. November 26, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Continuing Suretyship Agreements signed by the petitioners set off this present controversy.

Petitioners assail the 22 June 1989 Decision of the Court of Appeals in CA-G.R. CV No. 17724[1] which reversed the 2 December 1987 Decision of Branch 45 of the Regional Trial Court (RTC) of Manila in a collection suit entitled "Metropolitan Bank and Trust Company vs. Uy Tiam, doing business under the name of 'UY TIAM ENTERPRISES & FREIGHT SERVICES,' Jacinto Uy Diño and Norberto Uy" and docketed as Civil Case No. 82-9303. They likewise challenge public respondent's Resolution of 21 August 1989[2] denying their motion for the reconsideration of the former.

The impugned Decision of the respondent Court summarizes the antecedent facts as follows:

"It appears that in 1977, Uy Tiam Enterprises and Freight Services (hereinafter referred to as UTEFS), thru its representative Uy Tiam, applied for and obtained credit accommodations (letter of credit and trust receipt accommodations) from the Metropolitan Bank and Trust Company (hereinafter referred to as METROBANK) in the sum of P700,000.00 (Original Records, p. 333). To secure the aforementioned credit accommodations, Norberto Uy and Jacinto Uy Diño executed separate Continuing Suretyships (Exhibits "E" and "F" respectively), dated 25 February 1977, in favor of the latter. Under the aforesaid agreements, Norberto Uy agreed to pay METROBANK any indebtedness of UTEFS up to the aggregate sum of P300,000.00 while Jacinto Uy Diño agreed to be bound up to the aggregate sum of P800,000.00.

Having paid the obligation under the above letter of credit in 1977, UTEFS, through Uy Tiam, obtained another credit accommodation from METROBANK in 1978, which credit accommodation was fully settled before an irrevocable letter of credit was applied for and obtained by the abovementioned business entity in 1979 (September 8, 1987, *tsn*, pp. 14-15).

The Irrevocable Letter of Credit No. SN--Loc-309, dated March 30, 1979, in the sum of P815,600.00, covered UTEFS' purchase of '8,000 Bags Planters Urea and 4,000 Bags Planters 21-0-0.' It was applied for and obtained by UTEFS without the participation of Norberto Uy and Jacinto Uy Diño as they did not sign the document denominated as 'Commercial Letter of Credit and Application.' Also, they were not asked to execute any suretyship to guarantee its payment. Neither did METROBANK nor UTEFS inform them that the 1979 Letter of Credit has been opened and that the Continuing Suretyships separately executed in February, 1977 shall guarantee its payment (Appellees' brief, pp. 2-3; *Rollo*, p. 28).

The 1979 letter of credit (Exhibit "B") was negotiated. METROBANK paid Planters Products the amount of P815,600.00 which payment was covered by a Bill of Exchange (Exhibit "C"), dated 4 June 1979, in favor of the former, drawn on and accepted by UTEFS (Original Records, p. 331).

Pursuant to the above commercial transaction, UTEFS executed and delivered to METROBANK a Trust Receipt (Exh. "D"), dated 4 June 1979, whereby the former acknowledged receipt in trust from the latter of the aforementioned goods from Planters Products which amounted to P815,600.00. Being the entrustee, the former agreed to deliver to METROBANK the entrusted goods in the event of non-sale or, if sold, the proceeds of the sale thereof, on or before September 2, 1979.

However, UTEFS did not acquiesce to the obligatory stipulations in the trust receipt. As a consequence, METROBANK sent letters to the said principal obligor and its sureties, Norberto Uy and Jacinto Uy Diño, demanding payment of the amount due. Informed of the amount due, UTEFS made partial payments to the Bank which were accepted by the latter.

Answering one of the demand letters, Diño, thru counsel, denied his liability for the amount demanded and requested METROBANK to send him copies of documents showing the source of his liability. In its reply, the bank informed him that the source of his liability is the Continuing Suretyship which he executed on February 25, 1977.

As a rejoinder, Diño maintained that he cannot be held liable for the 1979 credit accommodation because it is a new obligation contracted without his participation. Besides, the 1977 credit accommodation which he guaranteed has been fully paid.

Having sent the last demand letter to UTEFS, Diño and Uy and finding resort to extrajudicial remedies to be futile, METROBANK filed a complaint for collection of a sum of money (P613,339.32, as of January 31, 1982, inclusive of interest, commission penalty and bank charges) with a prayer for the issuance of a writ of preliminary attachment, against Uy Tiam, representative of UTEFS and impleaded Diño and Uy as parties-defendants.

The court issued an order, dated 29 July 1983, granting the attachment writ, which writ was returned unserved and unsatisfied as defendant Uy Tiam was nowhere to be found at his given address and his commercial enterprise was already non-operational (Original Records, p. 37).

On April 11, 1984, Norberto Uy and Jacinto Uy Diño (sureties-defendants herein) filed a motion to dismiss the complaint on the ground of lack of cause of action. They maintained that the obligation which they guaranteed in 1977 has been extinguished since it has already been paid in the same year. Accordingly, the Continuing Suretyships executed in 1977 cannot be availed of to secure Uy Tiam's Letter of Credit obtained in 1979 because a guaranty cannot exist without a valid obligation. It was further argued that they can not be held liable for the obligation contracted in 1979 because they are not privies thereto as it was contracted without their participation (Records, pp. 42-46).

On April 24, 1984, METROBANK filed its opposition to the motion to dismiss. Invoking the terms and conditions embodied in the comprehensive suretyships separately executed by sureties-defendants, the bank argued that sureties-movants bound themselves as solidary obligors of defendant Uy Tiam to both existing obligations and future ones. It relied on Article 2053 of the new Civil Code which provides: 'A guaranty may also be given as security for future debts, the amount of which is not yet known; x x x.' It was further asserted that the agreement was in full force and effect at the time the letter of credit was obtained in 1979 as sureties-defendants did not exercise their right to revoke it by giving notice to the bank. (Ibid., pp. 51-54).

Meanwhile, the resolution of the aforecited motion to dismiss was held in abeyance pending the introduction of evidence by the parties as per order dated February 21, 1986 (Ibid., p. 71).

Having been granted a period of fifteen (15) days from receipt of the order dated March 7, 1986 within which to file the answer, sureties-defendants filed their responsive pleading which merely rehashed the arguments in their motion to dismiss and maintained that they are entitled to the benefit of excussion (Original Records, pp. 88-93).

On February 23, 1987, plaintiff filed a motion to dismiss the complaint against defendant Uy Tiam on the ground that it has no information as to the heirs or legal representatives of the latter who died sometime in December, 1986, which motion was granted on the following day (*Ibid.*, pp. 180--182).

After trial, x x x the court a quo, on December 2, 1987, rendered its judgment, a portion of which reads:

'The evidence and the pleadings, thus, pose the query (sic):

'Are the defendants Jacinto Uy Diño and Norberto Uy liable for the obligation contracted by Uy Tiam under the Letter of Credit (Exh. B) issued on March 30, 1979 by virtue of the Continuing Suretyships they executed on February 25, 1977?

'Under the admitted proven facts, the Court finds that they are not.

'a) When Uy and Diño executed the continuing suretyships, exhibits E and F, on February 25, 1977, Uy Tiam was obligated to the plaintiff in the amount of P700,000.00 -- and this was the obligation which both defendants guaranteed to pay. Uy Tiam paid this 1977 obligation -- and such payment extinguished the obligation they assumed as guarantors/sureties.

'b) The 1979 Letter of Credit (Exh. B) is different from the 1977 Letter of Credit which covered the 1977 account of Uy Tiam. Thus, the obligation under either is apart and distinct from the obligation created in the other -- as evidenced by the fact that Uy Tiam had to apply anew for the 1979 transaction (Exh. A). And Diño and Uy, being strangers thereto, cannot be answerable thereunder.

'c) The plaintiff did not serve notice to the defendants Diño and Uy when it extended to Uy Tiam the 1979 Letter of Credit -- at least to inform them that the continuing suretyships they executed on February 25, 1977 will be considered by the plaintiff to secure the 1979 transaction of Uy Tiam.

'd) There is no sufficient and credible showing that Diño and Uy were fully informed of the import of the Continuing Suretyships when they affixed their signatures thereon -- -that they are thereby securing all future obligations which Uy Tiam may contract with the plaintiff. On the contrary, Diño and Uy categorically testified that they signed the blank forms in the office of Uy Tiam at 623 Asuncion Street, Binondo, Manila, in obedience to the instruction of Uy Tiam, their former employer. They denied having gone to the office of the plaintiff to subscribe to the documents (October 1, 1987, *tsn*, pp. 5-7, 14; October 15, 1987, *tsn*, pp. 3-8, 13-16).' (Records, pp. 333-334).'"[3]

x x x

In its Decision, the trial court decreed as follows:

"PREMISES CONSIDERED, judgment is hereby rendered:

'a) dismissing the COMPLAINT against JACINTO UY DIÑO and NORBERTO UY;

'b) ordering the plaintiff to pay to Diño and Uy the amount of P6,000.00 as attorney's fees and expenses of litigation; and

'c) denying all other claims of the parties for want of legal and/or factual basis.'

'SO ORDERED'. (Records, p. 336)."[4]

From the said Decision, the private respondent appealed to the Court of Appeals. The case was docketed as CA-G.R. CV No. 17724. In support thereof, it made the following assignment of errors in its Brief:

"I. THE LOWER COURT SERIOUSLY ERRED IN NOT FINDING AND HOLDING THAT DEFENDANTS-APPELLEES JACINTO UY DIÑO AND NORBERTO UY ARE SOLIDARILY LIABLE TO PLAINTIFF-APPELLANT FOR THE OBLIGATION OF DEFENDANT UY TIAM UNDER THE LETTER OF CREDIT ISSUED ON MARCH 30, 1979 BY VIRTUE OF THE CONTINUING SURETYSHIPS THEY EXECUTED ON FEBRUARY 25, 1977.

II. THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF-APPELLANT IS ANSWERABLE TO DEFENDANTS-APPELLEES JACINTO UY DIÑO AND NORBERTO UY FOR ATTORNEY'S FEES AND EXPENSES OF LITIGATION."[5]

On 22 June 1989, public respondent promulgated the assailed Decision the dispositive portion of which reads:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and SET ASIDE. In lieu thereof, another one is rendered:

- 1) Ordering sureties-appellees Jacinto Uy Diño and Norberto Uy to pay, jointly and severally, to appellant METROBANK the amount of P2,397,883.68 which represents the amount due as of July 17, 1987 inclusive of principal, interest and charges;
- 2) Ordering sureties-appellees Jacinto Uy Diño and Norberto Uy to pay, jointly and severally, appellant METROBANK the accruing interest, fees and charges thereon from July 18, 1987 until the whole monetary obligation is paid; and
- 3) Ordering sureties-appellees Jacinto Uy Diño and Norberto Uy to pay, jointly and severally, to plaintiff P20,000.00 as attorney's fees.

With costs against appellees.

SO ORDERED."[6]

In ruling for the herein private respondent (hereinafter METROBANK), public respondent held that the Continuing Suretyship Agreements separately executed by the petitioners in 1977 were intended to guarantee payment of Uy Tiam's outstanding as well as future obligations; each suretyship arrangement was intended to remain in full force and effect until METROBANK would have been notified of its revocation. Since no such notice was given by the petitioners, the suretyships are deemed outstanding and hence, cover even the 1979 letter of credit issued by METROBANK in favor of Uy Tiam.

Petitioners filed a motion to reconsider the foregoing Decision. They questioned the public respondent's construction of the suretyship agreements and its ruling with respect to the extent of their liability thereunder. They argued that even if the agreements were in full force and effect when METROBANK granted Uy Tiam's application for a letter of credit in 1979, the public respondent nonetheless seriously erred in holding them liable for an amount over and above their respective face values.

In its Resolution of 21 August 1989, public respondent denied the motion:

"x x x considering that the issues raised were substantially the same grounds utilized by the lower court in rendering judgment for defendants-appellees which We upon appeal found and resolved to be untenable, thereby reversing and setting aside said judgment and rendering another in favor of plaintiff, and no new or fresh issues have been posited to justify reversal of Our decision herein, x x x."[7]

Hence, the instant petition which hinges on the issue of whether or not the petitioners may be held liable as sureties for the obligation contracted by Uy Tiam with METROBANK on 30 May 1979 under and by virtue of the

Continuing Suretyship Agreements signed on 25 February 1977.

Petitioners vehemently deny such liability on the ground that the Continuing Suretyship Agreements were automatically extinguished upon payment of the principal obligation secured thereby, i.e., the letter of credit obtained by Uy Tiam in 1977. They further claim that they were not advised by either METROBANK or Uy Tiam that the Continuing Suretyship Agreements would stand as security for the 1979 obligation. Moreover, it is posited that to extend the application of such agreements to the 1979 obligation would amount to a violation of Article 2052 of the Civil Code which expressly provides that a guaranty cannot exist without a valid obligation. Petitioners further argue that even granting, for the sake of argument, that the Continuing Suretyship Agreements still subsisted and thereby also secured the 1979 obligations incurred by Uy Tiam, they cannot be held liable for more than what they guaranteed to pay because it is axiomatic that the obligations of a surety cannot extend beyond what is stipulated in the agreement.

On 12 February 1990, this Court resolved to give due course to the petition after considering the allegations, issues and arguments adduced therein, the Comment thereon by the private respondent and the Reply thereto by the petitioners; the parties were required to submit their respective Memoranda.

The issues presented for determination are quite simple:

1. Whether petitioners are liable as sureties for the 1979 obligations of Uy Tiam to METROBANK by virtue of the Continuing Suretyship Agreements they separately signed in 1977; and
2. On the assumption that they are, what is the extent of their liabilities for said 1979 obligations.

Under the Civil Code, a guaranty may be given to secure even future debts, the amount of which may not be known at the time the guaranty is executed.[8] This is the basis for contracts denominated as a continuing guaranty or suretyship. 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.[9] 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.[10] 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, especially if the right to recall the guaranty is expressly reserved. Hence, where the contract of guaranty states that the same is to secure advances to be made "from time to time" the guaranty will be construed to be a continuing one.[11]

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.[12]

In the case at bar, the pertinent portion of paragraph I of the suretyship agreement executed by petitioner Uy provides thus:

"I. For and in consideration of any existing indebtedness to the BANK of UY TIAM (hereinafter called the 'Borrower'), for the payment of which the SURETY is now obligated to the BANK, either as guarantor or otherwise, and/or in order to induce the BANK, in its discretion, at any time or from time to time hereafter, to make loans or advances or to extend credit in any other manner to, or at the request, or for the account of the

Borrower, either with or without security, and/or to purchase or discount, or to make any loans or advances evidenced or secured by any notes, bills, receivables, drafts, acceptances, checks, or other instruments or evidences of indebtedness (all hereinafter called 'instruments') upon which the Borrower is or may become liable as maker, endorser, acceptor, or otherwise, the SURETY agrees to guarantee, and does hereby guarantee, the punctual payment at maturity to the BANK of any and all such instruments, loans, advances credits and/or other obligations hereinbefore referred to, and also any and all other indebtedness of every kind which is now or may hereafter become due or owing to the BANK by the Borrower, together with any and all expenses which may be incurred by the BANK in collecting all or any such instruments or other indebtedness or obligations hereinbefore referred to, and/or in enforcing any rights hereunder, and the SURETY also agrees that the BANK may make or cause any and all such payments to be made strictly in accordance with the terms and provisions of any agreement(s) express or implied, which has (have) been or may hereafter be made or entered into by the Borrower in reference thereto, regardless of any law, regulation or decree, unless the same is mandatory and non-waivable in character, nor or hereafter in effect, which might in any manner affect any of the terms or provisions of any such agreement(s) or the BANK's rights with respect thereto as against the Borrower, or cause or permit to be invoked any alteration in the time, amount or manner of payment by the Borrower of any such instruments, obligations or indebtedness; provided, however, that the liability of the SURETY hereunder shall not exceed at any one time the aggregate principal sum of PESOS: THREE HUNDRED THOUSAND ONLY (P300,000.00) (irrespective of the currency(ies) in which the obligations hereby guaranteed are payable), and such interest as may accrue thereon either before or after any maturity(ies) thereof and such expenses as may be incurred by the BANK as referred to above."[13]

Paragraph I of the Continuing Suretyship Agreement executed by petitioner Diño contains identical provisions except with respect to the guaranteed aggregate principal amount which is EIGHT HUNDRED THOUSAND PESOS (P800,000.00).[14]

Paragraph IV of both agreements stipulate that:

"VI. This is a continuing guaranty and shall remain in full force and effect until written notice shall have been received by the BANK that it has been revoked by the SURETY, but any such notice shall not release the SURETY from any liability as to any instruments, loans, advances or other obligations hereby guaranteed, which may be held by the BANK, or in which the BANK may have any interest at the time of the receipt (sic) of such notice. No act or omission of any kind on the BANK's part in the premises shall in any event affect or impair this guaranty, nor shall same (sic) be affected by any change which may arise by reason of the death of the SURETY, or of any partner(s) of the SURETY, or of the Borrower, or of the accession to any such partnership of any one or more new partners."[15]

The foregoing stipulations unequivocally reveal that the suretyship agreements in the case at bar are continuing in nature. Petitioners do not deny this; in fact, they candidly admitted it. Neither have they denied the fact that they had not revoked the suretyship agreements. Accordingly, as correctly held by the public respondent:

"Undoubtedly, the purpose of the execution of the Continuing Suretyships was to induce appellant to grant any application for credit accommodation (letter of credit/trust receipt) UTEFS may desire to obtain from appellant bank. By its terms, each suretyship is a continuing one which shall remain in full force and effect until the bank is notified of its revocation.

X X X

When the Irrevocable Letter of Credit No. SN-Loc-309 was obtained from appellant bank, for the purpose of obtaining goods (covered by a trust receipt) from Planters Products, the continuing suretyships were in full force and effect. Hence, even if sureties-appellees did not sign the 'Commercial Letter of Credit and Application, they are still liable as the credit accommodation (letter of credit/trust receipt) was covered by the said suretyships.

What makes them liable thereunder is the condition which provides that the Borrower 'is or may become liable as maker, endorser, acceptor or otherwise.' And since UTEFS which (sic) was liable as principal obligor for having failed to fulfill the obligatory stipulations in the trust receipt, they as insurers of its obligation, are liable thereunder." [16]

Petitioners maintain, however, that their Continuing Suretyship Agreements cannot be made applicable to the 1979 obligation because the latter was not yet in existence when the agreements were executed in 1977; under Article 2052 of the Civil Code, a guaranty "cannot exist without a valid obligation." We cannot agree. First of all, the succeeding article provides that "[a] guaranty may also be given as security for future debts, the amount of which is not yet known." Secondly, Article 2052 speaks about a valid obligation, as distinguished from a void obligation, and not an existing or current obligation. This distinction is made clearer in the second paragraph of Article 2052 which reads:

"Nevertheless, a guaranty may be constituted to guarantee the performance of a voidable or an unenforceable contract. It may also guarantee a natural obligation."

As to the amount of their liability under the Continuing Suretyship Agreements, petitioners contend that the public respondent gravely erred in finding them liable for more than the amount specified in their respective agreements, to wit: (a) P800,000.00 for petitioner Diño and (b) P300,000.00 for petitioner Uy.

The limit of the petitioners' respective liabilities must be determined from the suretyship agreement each had signed. It is undoubtedly true that the law looks upon the contract of suretyship with a jealous eye, and the rule is settled that the obligation of the surety cannot be extended by implication beyond its specified limits. To the extent, and in the manner, and under the circumstances pointed out in his obligation, he is bound, and no farther. [17]

Indeed, the Continuing Suretyship Agreements signed by petitioner Diño and petitioner Uy fix the aggregate amount of their liability, at any given time, at P800,000.00 and P300,000.00, respectively. The law is clear that 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. [18] In the case at bar, both agreements provide for liability for interest and expenses, to wit:

"x x x and such interest as may accrue thereon either before or after any maturity(ies) thereof and such expenses as may be incurred by the BANK referred to above." [19]

They further provide that:

"In the event of judicial proceedings being instituted by the BANK against the SURETY to enforce any of the terms and conditions of this undertaking, the SURETY further agrees to pay the BANK a reasonable compensation for and as attorney's fees and costs of collection, which shall not in any event be less than ten per cent (10%) of the amount due (the same to be due and payable irrespective of whether the case is settled judicially or extrajudicially)." [20]

Thus, by express mandate of the Continuing Suretyship Agreements which they had signed, petitioners separately bound themselves to pay interests, expenses, attorney's fees and costs. The last two items are pegged at not less than ten percent (10%) of the amount due.

Even without such stipulations, the petitioners would, nevertheless, be liable for the interest and judicial costs. Article 2055 of the Civil Code provides: [21]

"ART. 2055. A guaranty is not presumed; it must be express and cannot extend to more than what is stipulated

therein.

If it be simple or indefinite, it shall comprise not only the principal obligation, but also all its accessories, including the judicial costs, provided with respect to the latter, that the guarantor shall only be liable for those costs incurred after he has been judicially required to pay."

Interests and damages are included in the term accessories. However, such interest should run only from the date when the complaint was filed in court. Even attorney's fees may be imposed whenever appropriate, pursuant to Article 2208 of the Civil Code. Thus, in *Plaridel Surety & Insurance Co., Inc. vs. P. L. Galang Machinery Co., Inc.*, [22] this Court held:

"Petitioner objects to the payment of interest and attorney's fees because: (1) they were not mentioned in the bond; and (2) the surety would become liable for more than the amount stated in the contract of suretyship.

x x x

The objection has to be overruled, because as far back as the year 1922 this Court held in *Tagawa vs. Aldanese*, 43 Phil. 852, that creditors suing on a suretyship bond may recover from the surety as part of their damages, interest at the legal rate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond. 'The theory is that interest is allowed only by way of damages for delay upon the part of the sureties in making payment after they should have done so. In some states, the interest has been charged from the date of the judgment of the appellate court. In this jurisdiction, we rather prefer to follow the general practice, which is to order that interest begin to run from the date when the complaint was filed in court, x x x.'

Such theory aligned with sec. 510 of the Code of Civil Procedure which was subsequently recognized in the Rules of Court (Rule 53, section 6) and with Article 1108 of the Civil Code (now Art. 2209 of the New Civil Code).

In other words the surety is made to pay interest, not by reason of the contract, but by reason of its failure to pay when demanded and for having compelled the plaintiff to resort to the courts to obtain payment. It should be observed that interest does not run from the time the obligation became due, but from the filing of the complaint.

As to attorney's fees. Before the enactment of the New Civil Code, successful litigants could not recover attorney's fees as part of the damages they suffered by reason of the litigation. Even if the party paid thousands of pesos to his lawyers, he could not charge the amount to his opponent (*Tan Ti vs. Alvear*, 26 Phil. 566).

However the New Civil Code permits recovery of attorney's fees in eleven cases enumerated in Article 2208, among them, 'where the court deems it just and equitable that attorney's (sic) fees and expenses of litigation should be recovered' or 'when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim'. This gives the courts discretion in apportioning attorney's fees."

The records do not reveal the exact amount of the unpaid portion of the principal obligation of Uy Tiam to METROBANK under Irrevocable Letter of Credit No. SN-Loc-309 dated 30 March 1979. In referring to the last demand letter to Mr. Uy Tiam and the complaint filed in Civil Case No. 82-9303, the public respondent mentions the amount of "P613,339.32, as of January 31, 1982, inclusive of interest commission penalty and bank charges." [23] This is the same amount stated by METROBANK in its Memorandum. [24] However, in summarizing Uy Tiam's outstanding obligation as of 17 July 1987, public respondent states:

"Hence, they are jointly and severally liable to appellant METROBANK of UTEFS' outstanding obligation in the sum of P2,397,883.68 (as of July 17, 1987) -- P651,092.82 representing the principal amount, P825,133.54, for past due interest (5-31-82 to 7-17-87) and P921,657.32, for penalty charges at 12% per annum (5-31-82 to 7-17-87) as shown in the Statement of Account (Exhibit I)." [25]

Since the complaint was filed on 18 May 1982, it is obvious that on that date, the outstanding principal obligation of Uy Tiam, secured by the petitioners' Continuing Suretyship Agreements, was less than P613,339.32. Such amount may be fully covered by the Continuing Suretyship Agreement executed by petitioner Diño which stipulates an aggregate principal sum of not exceeding P800,000.00, and partly covered by that of petitioner Uy which pegs his maximum liability at P300,000.00.

Consequently, the judgment of the public respondent shall have to be modified to conform to the foregoing exposition, to which extent the instant petition is impressed with partial merit.

WHEREFORE, the petition is partly GRANTED, but only insofar as the challenged decision has to be modified with respect to the extent of petitioners' liability. As modified, petitioners JACINTO UY DIÑO and NORBERTO UY are hereby declared liable for and are ordered to pay, up to the maximum limit only of their respective Continuing Suretyship Agreement, the remaining unpaid balance of the principal obligation of UY TIAM or UY TIAM ENTERPRISES & FREIGHT SERVICES under Irrevocable Letter of Credit No. SN-Loc-309, dated 30 March 1979, together with the interest due thereon at the legal rate commencing from the date of the filing of the complaint in Civil Case No. 82-9303 with Branch 45 of the Regional Trial Court of Manila, as well as the adjudged attorney's fees and costs.

All other dispositions in the dispositive portion of the challenged decision not inconsistent with the above are affirmed.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 46-56; per Associate Justice Segundino G. Chua, ponente, concurred in by Associate Justices Serafin E. Camilon and Justo P. Torres, Jr.

[2] Id., 60.

[3] Rollo, 46-50.

[4] Id., 50.

[5] Rollo, 51.

[6] Rollo, 55-56.

[7] Rollo, 60.

[8] Article 2053, Civil Code; see *Rizal Commercial Banking Corp. vs. Arro*, 115 SCRA 777 [1982].

[9] 38 C.J.S. 1142.

[10] 38 C.J.S. 1206.

[11] Id., 1209.

[12] Id.

[13] Rollo, 68-69; underscoring supplied.

[14] Rollo, 69.

[15] *Id.*, 70-71; underscoring supplied.

[16] *Rollo*, 52-53.

[17] *La Insular vs. Machuca Go-Tauco*, 39 Phil. 567, 570-71 [1919], citing *Uy Aloc vs. Cho Jan Ling*, 27 Phil. 427 [1914], and *Miller vs. Stewart*, 9 Wheat., 680; 6 L. ed., 189. See also *Magdalena Estates, Inc. vs. Rodriguez*, 18 SCRA 967 [1966]; *Republic vs. Umali*, 22 SCRA 922 [1968]; *Zenith Insurance Corp. vs. Court of Appeals*, 119 SCRA 485 [1982]; *Philippine Commercial and Industrial Bank vs. Court of Appeals*, 159 SCRA 24 [1988]; *Umali vs. Court of Appeals*, 189 SCRA 529 [1990].

[18] Article 2054, Civil Code.

[19] *Rollo*, 69.

[20] *Id.*, 40.

[21] See *National Marketing Corp. vs. Marquez*, 26 SCRA 722 [1969] explaining the provisions; *Republic vs. Pal-Fox Lumber Co., Inc.*, 43 SCRA 365 [1972].

[22] 100 Phil. 679, 681-682 [1957]; *Philippine National Bank vs. Luzon Surety Co., Inc.*, 68 SCRA 207 [1975].

[23] *Rollo*, 48.

[24] *Id.*, 128.

[25] *Rollo*, 55.

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