

SECOND DIVISION

[G.R. NO. 160466, January 17, 2005]

**SPOUSES ALFREDO AND SUSANA ONG, PETITIONERS, VS.
PHILIPPINE COMMERCIAL INTERNATIONAL BANK,
RESPONDENT.**

D E C I S I O N

PUNO, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court to set aside the Decision of the Court of Appeals in CA-G.R. SP No. 39255, dated February 17, 2003, affirming the decision of the trial court denying petitioners' motion to dismiss.

The facts: Baliwag Mahogany Corporation (BMC) is a domestic corporation engaged in the manufacture and export of finished wood products. Petitioners-spouses Alfredo and Susana Ong are its President and Treasurer, respectively.

On April 20, 1992, respondent Philippine Commercial International Bank (now Equitable-Philippine Commercial International Bank or E-PCIB) filed a case for collection of a sum of money^[1] against petitioners-spouses. Respondent bank sought to hold petitioners-spouses liable as sureties on the three (3) promissory notes they issued to secure some of BMC's loans, totalling five million pesos (P5,000,000.00).

The complaint alleged that in 1991, BMC needed additional capital for its business and applied for various loans, amounting to a total of five million pesos, with the respondent bank. Petitioners-spouses acted as sureties for these loans and issued three (3) promissory notes for the purpose. Under the terms of the notes, it was stipulated that respondent bank may consider debtor BMC in default and demand payment of the remaining balance of the loan upon the levy, attachment or garnishment of any of its properties, or upon BMC's insolvency, or if it is declared to be in a state of suspension of payments. Respondent bank granted BMC's loan applications.

On November 22, 1991, BMC filed a petition for rehabilitation and suspension of payments with the Securities and Exchange Commission (SEC) after its properties were attached by creditors. Respondent bank considered debtor BMC in default of its obligations and sought to collect payment thereof from petitioners-spouses as sureties. In due time, petitioners-spouses filed their Answer.

On October 13, 1992, a Memorandum of Agreement (MOA)^[2] was executed by debtor BMC, the petitioners-spouses as President and Treasurer of BMC, and the consortium of creditor banks of BMC (of which respondent bank is included). The MOA took effect upon its approval by the SEC on November 27, 1992.^[3]

Thereafter, **petitioners-spouses moved to dismiss^[4] the complaint.** They argued that as the SEC declared the principal debtor BMC in a state of suspension of payments and, under the MOA, the creditor banks, including respondent bank, agreed to temporarily suspend any pending civil action against the debtor BMC, the benefits of the MOA should be extended to petitioners-spouses who acted as BMC's sureties in their contracts of loan with respondent bank. Petitioners-spouses averred that respondent bank is barred from pursuing its collection case filed against them.

The trial court denied the motion to dismiss. Petitioners-spouses appealed to the Court of Appeals which affirmed the trial court's ruling that a creditor can proceed against petitioners-spouses as surety independently of its right to proceed against the principal debtor BMC.

Hence this appeal.

Petitioners-spouses claim that the collection case filed against them by respondent bank should be dismissed for three (3) reasons: First, the MOA provided that during its effectivity, there shall be a suspension of filing or pursuing of collection cases against the BMC and this provision should benefit petitioners as sureties. Second, principal debtor BMC has been placed under suspension of payment of debts by the SEC; petitioners contend that it would prejudice them if the principal debtor BMC would enjoy the suspension of payment of its debts while petitioners, who acted only as sureties for some of BMC's debts, would be compelled to make the payment; petitioners add that compelling them to pay is contrary to **Article 2063** of the Civil Code which provides that a compromise between the creditor and principal debtor benefits the **guarantor** and should not prejudice the latter. Lastly, petitioners rely on **Article 2081** of the Civil Code which provides that: "the **guarantor** may set up against the creditor all the defenses which pertain to the principal debtor and are inherent in the debt; but not those which are purely personal to the debtor." Petitioners aver that if the principal debtor BMC can set up the defense of suspension of payment of debts and filing of collection suits against respondent bank, petitioners as sureties should likewise be allowed to avail of these defenses.

We find no merit in petitioners' contentions.

Reliance of petitioners-spouses on Articles 2063 and 2081 of the Civil Code is misplaced as these provisions refer to contracts of guaranty. They do not apply to suretyship contracts. Petitioners-spouses are not guarantors but sureties of BMC's debts. There is a sea of difference in the rights and liabilities of a guarantor and a surety. A **guarantor insures the solvency of the debtor while a surety is an insurer of the debt itself.** A contract of guaranty gives rise to a **subsidiary obligation on the part of the guarantor.** It is only after the creditor has proceeded against the properties of the principal debtor and the debt remains unsatisfied that a guarantor can be held liable to answer for any unpaid amount. This is the principle of excussion. In a suretyship contract, however, **the benefit of excussion is not available to the surety as he is principally liable for the payment of the debt.** As the surety insures the debt itself, he obligates himself to pay the debt if the principal debtor will not pay, regardless of whether or not the latter is financially capable to fulfill his obligation. Thus, a creditor can go directly against the surety although the principal debtor is solvent and is able to pay or no