

THIRD DIVISION

[G.R. No. 188539, March 12, 2014]

MARIANO LIM, PETITIONER, VS. SECURITY BANK CORPORATION, * RESPONDENT.

D E C I S I O N

PERALTA, J.:

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision^[1] of the Court of Appeals (CA), promulgated on July 30, 2008, and the Resolution^[2] dated June 1, 2009, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

Petitioner executed a Continuing Suretyship in favor of respondent to secure "any and all types of credit accommodation that may be granted by the bank hereinto and hereinafter" in favor of Raul Arroyo for the amount of P2,000,000.00 which is covered by a Credit Agreement/Promissory Note.^[3] Said promissory note stated that the interest on the loan shall be 19% per annum, compounded monthly, for the first 30 days from the date thereof, and if the note is not fully paid when due, an additional penalty of 2% per month of the total outstanding principal and interest due and unpaid, shall be imposed.

In turn, the Continuing Suretyship^[4] executed by petitioner stipulated that:

3. Liability of the Surety. - The liability of the Surety is solidary and not contingent upon the pursuit of the Bank of whatever remedies it may have against the Debtor or the collaterals/liens it may possess. **If any of the Guaranteed Obligations is not paid or performed on due date (at stated maturity or by acceleration), the Surety shall, without need for any notice, demand or any other act or deed, immediately become liable therefor and the Surety shall pay and perform the same.**^[5]

Guaranteed Obligations are defined in the same document as follows:

- a) "Guaranteed Obligations" - the obligations of the Debtor arising from all credit accommodations extended by the Bank to the Debtor, including increases, renewals, roll-overs, extensions, restructurings, amendments or novations thereof, as well as **(i) all obligations of the Debtor presently or hereafter owing to the Bank, as appears in the accounts, books and records of the Bank, whether direct or indirect, and (ii) any and all expenses which the Bank may incur**

in enforcing any of its rights, powers and remedies under the Credit Instruments as defined hereinbelow.^[6]

The debtor, Raul Arroyo, defaulted on his loan obligation. Thereafter, petitioner received a Notice of Final Demand dated August 2, 2001, informing him that he was liable to pay the loan obtained by Raul and Edwina Arroyo, including the interests and penalty fees amounting to P7,703,185.54, and demanding payment thereof. For failure of petitioner to comply with said demand, respondent filed a complaint for collection of sum of money against him and the Arroyo spouses. Since the Arroyo spouses can no longer be located, summons was not served on them, hence, only petitioner actively participated in the case.

After trial, the Regional Trial Court of Davao (RTC) rendered judgment against petitioner.^[7] The dispositive portion of the RTC Decision reads as follows:

Wherefore, judgment is hereby rendered ordering defendant Lim to pay the following sums.

1. The principal sum of two million pesos plus nineteen percent interest of the outstanding principal interest due and unpaid to be computed from January 28, 1997 until fully paid, plus two percent interest per month as penalty to be computed from February 28, 1997 until fully paid.
2. Four hundred thousand pesos as attorney's fees.
3. Thirty thousand pesos as litigation expenses.

SO ORDERED.^[8]

Petitioner appealed to the CA, but the appellate court, in its Decision dated July 30, 2008, affirmed the RTC judgment with the modification that interest be computed from August 1, 1997; the penalty should start only from August 28, 1997; the award of attorney's fees is set at 10% of the total amount due; and the award for litigation expenses increased to P92,321.10.^[9] Petitioner's motion for reconsideration of the CA Decision was denied per Resolution dated June 1, 2009.

Petitioner then elevated the matter to this Court via a petition for review on *certiorari*, where the main issue is whether petitioner may validly be held liable for the principal debtor's loan obtained six months after the execution of the Continuing Suretyship.

The other issues, such as the proper computation of the total indebtedness and the amount of litigation expenses are factual matters that had been satisfactorily addressed by the CA, to wit: (1) the CA ruled that respondent should recompute the total amount due, since the proceeds from the foreclosure of the real estate and chattel mortgages were deducted only on June 20, 2001, when the public auctions were conducted on August 26, 1998 and September 7, 1999, respectively, thus, the amount of the proceeds from the foreclosure of the mortgaged properties should have been deducted from the amount of indebtedness on the date the public auction was held; and (2) the CA likewise pointed out that as can be seen from the Legal

Fees Form,^[10] the litigation expense incurred by respondent was P92,321.10, the amount it paid as filing fee. It is hornbook principle that this Court is not a trier of facts, hence, such issues will not be revisited by this Court in the present petition. With regard to the propriety of making petitioner a hostile witness, respondent is correct that the issue cannot be raised for the first time on appeal. Thus, the Court will no longer address these issues which had been improperly raised in this petition for review on *certiorari*.

The main issue deserves scant consideration, but the matter of the award of attorney's fees deserves reexamination.

The nature of a suretyship is elucidated in *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation*^[11] in this wise:

A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. Although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. This was explained in the case of *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*, where it was written:

The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, **although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.**

x x x x

Thus, suretyship arises upon the solidary binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation. **A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.** x x x.^[12]

In this case, what petitioner executed was a Continuing Suretyship, which the Court described in *Saludo, Jr. v. Security Bank Corporation*^[13] as follows:

The essence of a continuing surety has been highlighted in the case of *Totanes v. China Banking Corporation* in this wise:

Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial