

## THIRD DIVISION

[ G.R. No. 179880, January 19, 2009 ]

**ROBERTO TOTANES, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.**

### R E S O L U T I O N

**NACHURA, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court, filed by petitioner Roberto Totanes against respondent China Banking Corporation, assails the Court of Appeals (CA) Decision<sup>[1]</sup> dated June 26, 2007 and its Resolution<sup>[2]</sup> dated September 19, 2007, in CA-G.R. CV No. 68795.

The facts, as found by the appellate court, are as follows:

Petitioner and Manuel Antiquera (Antiquera) maintained their individual savings and current accounts with respondent in the latter's Legaspi City Branch. Petitioner and Antiquera, in conspiracy with respondent's branch manager Ronnie Lou Marquez (Marquez), allegedly engaged in what is commonly known in banking as "kiting operation," by manipulating the handling and operations of their deposit accounts.<sup>[3]</sup> Petitioner and Antiquera, likewise, effected transfers of funds to each other's accounts by drawing checks from their respective current accounts and depositing the same with the other's accounts by way of debit and credit memos, all in connivance with Marquez, to make it appear that their respective accounts were sufficiently funded, when in truth and in fact, they were not.<sup>[4]</sup>

On July 9, 1986, Antiquera duly executed and delivered Promissory Note No. 2081 in favor of the respondent, whereby he promised to pay the latter on July 16, 1986, the sum of P150,000.00 with 24% interest per annum until fully paid. On July 29, 1986, Antiquera executed Promissory Note No. 2099 for another P150,000.00, payable on August 5, 1986, with the same rate of interest. Antiquera agreed in both promissory notes that he would pay an additional amount by way of penalty, equivalent to 1/10 of 1% per day of the total amount due from date of default until full payment.<sup>[5]</sup>

To secure the aforesaid obligations, a surety agreement form was executed and signed by Antiquera as principal and the petitioner as surety.<sup>[6]</sup> As surety, petitioner bound himself to pay jointly and severally with Antiquera, the latter's obligation with the respondent. His liability, however, was limited to P300,000.00, plus interest.<sup>[7]</sup>

For the alleged acts of defraudation committed by Antiquera, Marquez and the petitioner; and for failure of Antiquera to pay his obligations covered by the promissory notes, respondent instituted a complaint for sum of money with damages. Antiquera and the petitioner were declared in default, hence, *ex parte*

hearings ensued.

After trial, the RTC rendered a Decision<sup>[8]</sup> in favor of the respondent, but dismissed the case as against the petitioner. On motion for reconsideration, the RTC reversed itself but only insofar as it dismissed the case against the petitioner.<sup>[9]</sup> Consequently, petitioner was held jointly and severally liable with Antiquera for P300,000.00 with 22% interest per annum until fully paid.<sup>[10]</sup>

Petitioner appealed the aforesaid order to the CA. Petitioner, however, failed to persuade the appellate court which affirmed the RTC's disposition. The CA sustained the validity of the continuing surety agreement signed by petitioner. The suretyship, according to the CA, was not limited to a single transaction; rather, it contemplated a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked.<sup>[11]</sup> To buttress its conclusion, the CA cited *Atok Finance Corporation v. Court of Appeals*,<sup>[12]</sup> which it held to be "on-all-fours" with the instant case. Finally, the CA declared that petitioner's liability as a surety was not negated by the trial court's finding that he did not, in any way, participate in the alleged "kiting operations" or connive with Antiquera in committing the acts of fraudulation, saying that petitioner's liability as a surety was separate and distinct from the fraudulent acts of which he was found innocent.<sup>[13]</sup>

Petitioner now comes before us in this petition for review on *certiorari* raising the following errors:

1) THE ASSAILED DECISION MISTAKENLY AND UNLAWFULLY HELD PETITIONER LIABLE FOR THE DEBT OF ANOTHER INDIVIDUAL, MANUEL ANTIQUERA. UNDER THE GENERAL RULE ON "RELATIVITY OF CONTRACT," RESPONDENT IS NOT LIABLE FOR THE CONTRACTUAL OBLIGATION OF MANUEL ANTIQUERA. NONE OF THE RECOGNIZED EXCEPTIONS APPLY TO PETITIONER. PETITIONER IS NOT THE MAKER, CO-MAKER, INDORSER, AGENT, BROKER, ACCOMMODATION PARTY, GUARANTOR OR SURETY OF MANUEL ANTIQUERA.

2) RESPONDENT IS ESTOPPED FROM ENFORCING THE LOAN TRANSACTIONS (i.e., SURETY AGREEMENT AND PROMISSORY NOTES) RESPONDENT CLAIMS TO BE VOID OR UNAUTHORIZED FOR LACK OF APPROVAL BY RESPONDENT'S BOARD OF DIRECTORS, AS REQUIRED IN RESPONDENT'S POLICY STATEMENTS DATED OCTOBER 19, 1983 (EXHIBIT E) AND SEPTEMBER 26, 1986 (EXHIBIT F).

3) THE ASSAILED DECISION MISINTERPRETED AND MISAPPLIED THE RULING IN "ATOK FINANCE CORPORATION VS. COURT OF APPEALS" WHICH CONCERNED ITSELF WITH THE APPLICABILITY OF THE PERFECTED SURETY AGREEMENT IN RELATION TO FUTURE OBLIGATIONS, WHILE IN THE PRESENT CASE THE ISSUE IS THE PERFECTION OF THE CREDIT LINE AND THE SUPPORTING SURETY AGREEMENT.

4) ASSUMING THE CREDIT LINE AND THE SUPPORTING SURETY AGREEMENT EXIST, THE UNILATERAL LOAN EXTENSIONS GRANTED BY RESPONDENT TO MANUEL ANTIQUERA HAD RESULTED IN THE

EXTINGUISHMENT OF PETITIONER'S OBLIGATION, IF ANY, UNDER THE SURETY AGREEMENT.<sup>[14]</sup>

In fine, the issue for resolution is whether the petitioner may be held jointly and severally liable with Antiquera for the latter's unsettled obligation with the respondent.

We rule in the affirmative.

Petitioner's liability was based on the surety agreement he executed and signed freely and voluntarily. He, however, argues that said agreement was not perfected because the principal obligation, which is the credit line, did not materialize. As such, being a stranger to any contract entered into by Antiquera with the respondent, he should not be held liable.

Both the trial and appellate courts recognized the genuineness and due execution of the promissory notes signed by Antiquera. We find no cogent reason to depart from such conclusion. These documents undoubtedly show the perfection of the principal contract, that is, the contract of loan; and consequently, the perfection of the accessory contract of suretyship.

We reiterate the well-established principle that factual findings of the trial court are conclusive on the parties and not reviewable by this Court - and they carry even more weight when the CA affirms these findings, as in the present case. We are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.<sup>[15]</sup>

From the terms of the contract, it appears that petitioner jointly and severally undertook, bound himself and warranted to the respondent "the prompt payment **of all** overdrafts, **promissory notes**, discounts, letters of credit, drafts, bills of exchange, and other obligations of every kind and nature, including trust receipts and discounts of drafts, bills of exchange, promissory notes, etc. x x x **for which the Principal(s) may now be indebted or may hereafter become indebted to the Creditor.**"<sup>[16]</sup>

The fact that the contract of suretyship was signed by the petitioner prior to the execution of the promissory note does not negate the former's liability. The contract entered into by the petitioner is commonly known as a continuing surety agreement. Of course, a surety is not bound to any particular principal obligation until that principal obligation is born. But there is no theoretical or doctrinal impediment for us to say that the suretyship agreement itself is valid and binding even before the principal obligation intended to be secured thereby is born, any more than there would be in saying that obligations which are subject to a condition precedent are valid and binding before the occurrence of the condition precedent.<sup>[17]</sup>

Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its