

## THIRD DIVISION

[ G.R. No. 138544, October 03, 2000 ]

**SECURITY BANK AND TRUST COMPANY, INC., PETITIONER, VS.  
RODOLFO M. CUENCA, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor. The fundamental rules of fair play require the creditor to obtain the consent of the surety to any material alteration in the principal loan agreement, or at least to notify it thereof. Hence, petitioner bank cannot hold herein respondent liable for loans obtained in excess of the amount or beyond the period stipulated in the original agreement, absent any clear stipulation showing that the latter waived his right to be notified thereof, or to give consent thereto. This is especially true where, as in this case, respondent was no longer the principal officer or major stockholder of the corporate debtor at the time the later obligations were incurred. He was thus no longer in a position to compel the debtor to pay the creditor and had no more reason to bind himself anew to the subsequent obligations.

### The Case

This is the main principle used in denying the present Petition for Review under Rule 45 of the Rules of Court. Petitioner assails the December 22, 1998 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR CV No. 56203, the dispositive portion of which reads as follows:

"WHEREFORE, the judgment appealed from is hereby amended in the sense that defendant-appellant Rodolfo M. Cuenca [herein respondent] is **RELEASED** from liability to pay any amount stated in the judgment.

"Furthermore, [Respondent] Rodolfo M. Cuenca's counterclaim is hereby **DISMISSED** for lack of merit.

"In all other respect[s], the decision appealed from is **AFFIRMED**."<sup>[2]</sup>

Also challenged is the April 14, 1999 CA Resolution,<sup>[3]</sup> which denied petitioner's Motion for Reconsideration.

Modified by the CA was the March 6, 1997 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Makati City (Branch 66) in Civil Case No. 93-1925, which disposed as follows:

"WHEREFORE, judgment is hereby rendered ordering defendants Sta. Ines Melale Corporation and Rodolfo M. Cuenca to pay, jointly and severally, plaintiff Security Bank & Trust Company the sum of P39,129,124.73 representing the balance of the loan as of May 10, 1994 plus 12% interest per annum until fully paid, and the sum of P100,000.00 as attorney's fees and litigation expenses and to pay the costs.

SO ORDERED."

### **The Facts**

The facts are narrated by the Court of Appeals as follows:<sup>[5]</sup>

"The antecedent material and relevant facts are that defendant-appellant Sta. Ines Melale ('Sta. Ines') is a corporation engaged in logging operations. It was a holder of a Timber License Agreement issued by the Department of Environment and Natural Resources ('DENR').

"On 10 November 1980, [Petitioner] Security Bank and Trust Co. granted appellant Sta. Ines Melale Corporation [SIMC] a credit line in the amount of [e]ight [m]illion [p]esos (P8,000,000.00) to assist the latter in meeting the additional capitalization requirements of its logging operations.

"The Credit Approval Memorandum expressly stated that the P8M Credit Loan Facility shall be effective until 30 November 1981:

` JOINT CONDITIONS:

` 1. Against Chattel Mortgage on logging trucks and/or inventories (except logs) valued at 200% of the lines plus JSS of Rodolfo M. Cuenca.

` 2. Submission of an appropriate Board Resolution authorizing the borrowings, indicating therein the company's duly authorized signatory/ies;

` 3. Reasonable/compensating deposit balances in current account shall be maintained at all times; in this connection, a Makati account shall be opened prior to availment on lines;

` 4. **Lines shall expire on November 30, 1981;** and

` 5. The bank reserves the right to amend any of the aforementioned terms and conditions upon written notice to the Borrower.' (Emphasis supplied.)

"To secure the payment of the amounts drawn by appellant SIMC from the above-mentioned credit line, SIMC executed a Chattel Mortgage dated 23 December 1980 (Exhibit 'A') over some of its machinery and equipment in favor of [Petitioner] SBTC. As additional security for the payment of the loan, [Respondent] Rodolfo M. Cuenca executed an Indemnity Agreement dated 17 December 1980 (Exhibit 'B') in favor of

[Petitioner] SBTC whereby he solidarily bound himself with SIMC as follows:

x x x

x x x

x x x

'Rodolfo M. Cuenca x x x hereby binds himself x x x **jointly and severally** with the client (SIMC) in favor of the bank for the payment, upon demand and without the benefit of excussion of whatever amount x x x the client may be indebted to the bank x x x by virtue of aforesaid credit accommodation(s) **including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s) x x x**.' (Emphasis supplied).

"On 26 November 1981, four (4) days prior to the expiration of the period of effectivity of the P8M-Credit Loan Facility, appellant SIMC made a first drawdown from its credit line with [Petitioner] SBTC in the amount of [s]ix [m]illion [o]ne [h]undred [t]housand [p]esos (P6,100,000.00). To cover said drawdown, SIMC duly executed promissory Note No. TD/TLS-3599-81 for said amount (Exhibit `C').

"Sometime in 1985, [Respondent] Cuenca resigned as President and Chairman of the Board of Directors of defendant-appellant Sta. Ines. Subsequently, the shareholdings of [Respondent] Cuenca in defendant-appellant Sta. Ines were sold at a public auction relative to Civil Case No. 18021 entitled `Adolfo A. Angala vs. Universal Holdings, Inc. and Rodolfo M. Cuenca'. Said shares were bought by Adolfo Angala who was the highest bidder during the public auction.

"Subsequently, appellant SIMC repeatedly availed of its credit line and obtained six (6) other loan[s] from [Petitioner] SBTC in the aggregate amount of [s]ix [m]illion [t]hree [h]undred [s]ixty-[n]ine [t]housand [n]ineteen and 50/100 [p]esos (P6,369,019.50). Accordingly, SIMC executed Promissory Notes Nos. DLS/74/760/85, DLS/74773/85, DLS/74/78/85, DLS/74/760/85 DLS/74/12/86, and DLS/74/47/86 to cover the amounts of the abovementioned additional loans against the credit line.

"Appellant SIMC, however, encountered difficulty<sup>[6]</sup> in making the amortization payments on its loans and requested [Petitioner] SBTC for a complete restructuring of its indebtedness. SBTC accommodated appellant SIMC's request and signified its approval in a letter dated 18 February 1988 (Exhibit `G') wherein SBTC and defendant-appellant Sta. Ines, without notice to or the prior consent of [Respondent] Cuenca, agreed to restructure the past due obligations of defendant-appellant Sta. Ines. [Petitioner] Security Bank agreed to extend to defendant-appellant Sta. Ines the following loans:

- a. Term loan in the amount of [e]ight [m]illion [e]ight [h]undred [t]housand [p]esos (P8,800,000.00), to be applied to liquidate the principal portion of defendant-appellant Sta. Ines[`] total outstanding indebtedness to [Petitioner] Security Bank (cf. P. 1 of Exhibit `G',

Expediente, at Vol. II, p. 336; Exhibit `5-B-Cuenca', Expediente, et Vol I, pp. 33 to 34) and

- b. Term loan in the amount of [t]hree [m]illion [f]our [h]undred [t]housand [p]esos (P3,400,000.00), to be applied to liquidate the past due interest and penalty portion of the indebtedness of defendant-appellant Sta. Ines to [Petitioner] Security Bank (cf. Exhibit `G', Expediente, at Vol. II, p. 336; Exhibit `5-B-Cuenca', Expediente, at Vol. II, p. 33 to 34).'

"It should be pointed out that in restructuring defendant-appellant Sta. Ines' obligations to [Petitioner] Security Bank, Promissory Note No. TD-TLS-3599-81 in the amount of [s]ix [m]illion [o]ne [h]undred [t]housand [p]esos (P6,100,000.00), which was the only loan incurred prior to the expiration of the P8M-Credit Loan Facility on 30 November 1981 and the only one covered by the Indemnity Agreement dated 19 December 1980 (Exhibit `3-Cuenca', Expediente, at Vol. II, p. 331), was not segregated from, but was instead lumped together with, the other loans, i.e., Promissory Notes Nos. DLS/74/12/86, DLS/74/28/86 and DLS/74/47/86 (Exhibits `D', `E', and `F', Expediente, at Vol. II, pp. 333 to 335) obtained by defendant-appellant Sta. Ines which were not secured by said Indemnity Agreement.

"Pursuant to the agreement to restructure its past due obligations to [Petitioner] Security Bank, defendant-appellant Sta. Ines thus executed the following promissory notes, both dated 09 March 1988 in favor of [Petitioner] Security Bank:

PROMISSORY NOTE NO.	AMOUNT
RL/74/596/88	P8,800,000.00
RL/74/597/88	P3,400,000.00
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TOTAL	P12,200,000.00

(Exhibits `H' and `I', Expediente, at Vol. II, pp. 338 to 343).

"To formalize their agreement to restructure the loan obligations of defendant-appellant Sta. Ines, [Petitioner] Security Bank and defendant-appellant Sta. Ines executed a Loan Agreement dated 31 October 1989 (Exhibit `5-Cuenca', Expediente, at Vol. I, pp. 33 to 41). Section 1.01 of the said Loan Agreement dated 31 October 1989 provides:

`1.01 Amount - The Lender agrees to grant loan to the Borrower in the aggregate amount of TWELVE MILLION TWO HUNDRED THOUSAND PESOS (P12,200,000.00), Philippines [c]urrency (the `Loan'). The loan shall be released in two (2) tranches of P8,800,000.00 for the first tranche (the `First Loan') and P3,400,000.00 for the second tranche (the `Second Loan') to be applied in the manner and for the

purpose stipulated hereinbelow.

`1.02. Purpose - The First Loan shall be applied to liquidate the principal portion of the Borrower's present total outstanding indebtedness to the Lender (the `indebtedness') while the Second Loan shall be applied to liquidate the past due interest and penalty portion of the Indebtedness.' (Underscoring supplied.) (cf. p. 1 of Exhibit `5-Cuenca', Expediente, at Vol. I, p. 33)

"From 08 April 1988 to 02 December 1988, defendant-appellant Sta. Ines made further payments to [Petitioner] Security Bank in the amount of [o]ne [m]illion [s]even [h]undred [f]ifty-[s]even [t]housand [p]esos (P1,757,000.00) (Exhibits `8', `9-P-SIMC' up to `9-GG-SIMC', Expediente, at Vol. II, pp. 38, 70 to 165)

"Appellant SIMC defaulted in the payment of its restructured loan obligations to [Petitioner] SBTC despite demands made upon appellant SIMC and CUENCA, the last of which were made through separate letters dated 5 June 1991 (Exhibit `K') and 27 June 1991 (Exhibit `L'), respectively.

"Appellants individually and collectively refused to pay the [Petitioner] SBTC. Thus, SBTC filed a complaint for collection of sum of money on 14 June 1993, resulting after trial on the merits in a decision by the court a quo, x x x from which [Respondent] Cuenca appealed."

### **Ruling of the Court of Appeals**

In releasing Respondent Cuenca from liability, the CA ruled that the 1989 Loan Agreement had novated the 1980 credit accommodation earlier granted by the bank to Sta. Ines. Accordingly, such novation extinguished the Indemnity Agreement, by which Cuenca, who was then the Board chairman and president of Sta. Ines, had bound himself solidarily liable for the payment of the loans secured by that credit accommodation. It noted that the 1989 Loan Agreement had been executed without notice to, much less consent from, Cuenca who at the time was no longer a stockholder of the corporation.

The appellate court also noted that the Credit Approval Memorandum had specified that the credit accommodation was for a total amount of P8 million, and that its expiry date was November 30, 1981. Hence, it ruled that Cuenca was liable only for loans obtained prior to November 30, 1981, and only for an amount not exceeding P8 million.

It further held that the restructuring of Sta. Ines' obligation under the 1989 Loan Agreement was tantamount to a grant of an extension of time to the debtor without the consent of the surety. Under Article 2079 of the Civil Code, such extension extinguished the surety.

The CA also opined that the surety was entitled to notice, in case the bank and Sta. Ines decided to materially alter or modify the principal obligation after the expiry date of the credit accommodation.