



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 22, 2022** which reads as follows:*

“G.R. No. 232065 (*Spouses Vicente and Amelita Papasin v. Westmont Bank, now United Overseas Bank Philippines, represented by its successor-in-interest, Onshore Strategic Assets [SPV-AMC], Inc.*). — The effect of a compromise agreement between the creditor and a surety with respect to the liability of the principal debtor is the core issue in this Petition for Review on *Certiorari* assailing the Court of Appeals’ (CA) Decision¹ dated February 29, 2016 in CA-G.R. CV No. 04518.

The facts follow.

Spouses Vicente and Amelita Papasin (Spouses Papasin) obtained various loans from Westmont Bank (Westmont), now United Overseas Bank Philippines, to finance their restaurant and catering businesses.² As security, Gil Dago-ob (Gil) executed a Continuing Suretyship Agreement³ with Westmont in favor of Spouses Papasin. In the contract, Gil bound himself jointly and severally with the Spouses Papasin for the payment of the loans, advances, and other obligations of every kind which may

¹ *Rollo*, pp. 19-32.

² *Id.* at 193; 197, 201, 205, 207, and 209. The obligations are as follow: (1) a loan of P205,000.00, covered by Promissory Note (P/N) No. BCD-245/98, with interest at 29% *per annum*, to mature on August 28, 1998; (2) four individual loans of P50,000.00 per transaction, secured by P/N Nos. BCD-251/98, BCD-256/98, BCD-257/98, and BCD-258/98, with interest at 22.777%, 22.501%, 22.501%, and 22.075% *per annum*, respectively, with a term of almost six (6) months from respective dates thereof, and; (3) a loan of P90,000.00, as evidenced by P/N No. BCD-376/99, with interest at 20.959% *per annum*, with a term of six (6) months. All interest rates were subject to repricing every month. The promissory notes provided that in case of default in the payment of any installment or interest, the balance of the unpaid obligation shall become due and payable, and subject to liquidated penalty charge of 35% *per annum*. The parties further stipulated that should there be a need for legal services or collection agency services for collection of payment, Spouses Papasin would be liable for attorney’s fees equivalent to 20% of the total amount due.

³ *Id.* at 146.

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become due to Westmont, together with interests, charges, penalties, and damages. Despite repeated demands, Spouses Papasin failed to settle their outstanding loan obligations in the total amount of ₱492,700.00, excluding interests and penalties.

Westmont sent a final demand letter to Spouses Papasin, copy furnished to Gil, for the payment of the loans. The demand went unheeded. Thus, Westmont filed a complaint for a sum of money against Spouses Papasin and Gil before the Regional Trial Court (RTC), docketed as Civil Case No. 99-10917. Meantime, Westmont assigned to Onshore Strategic Assets (SPV-AMC), Inc. (OSAI) its nonperforming loans which included the obligations of Spouses Papasin. In 2012, Westmont informed the RTC that it entered into a compromise agreement with Gil, who offered ₱300,000.00 partial payment in exchange for being dropped as party defendant in the case. The RTC approved the amicable settlement,⁴ to wit:

WHEREAS, Plaintiff and Defendant Dago-ob wishes [*sic*] to enter into an amicable settlement in the above-captioned case;

NOW THEREFORE, for and in consideration of the foregoing, herein parties hereby agree as follows:

1. Defendant Dago-ob agrees to pay OSAI the amount of Three Hundred Thousand Pesos ([₱]300,000.00), Philippine currency, covered by Queenbank (Bank) Check No. 0147658 dated 04 April 2012. A copy of said check being marked as ANNEX "A", is made an integral part hereof;

x x x x

3. Upon encashment of the aforementioned check, both parties shall file the necessary Motion before the Regional Trial Court x x x to have the Complaint against defendant Dago-ob dismissed, and to have his name dropped as party defendant in Civil Case No. 99-10917;

4. The encashment of the aforementioned check shall mean that the Plaintiff absolutely and unconditionally releases and discharges defendant Dago-ob from any claims, actions, and liabilities whatsoever in connection with or arising from Civil Case No. 99-10917;

5. This Compromise Agreement can be set up against both parties, their assigns and successors-in-interest and they can be held civilly or criminally liable if they renege on their declarations and commitments stated therein.

⁴ Id. at 333-334.

Thereafter, Westmont submitted a memorandum seeking to recover the remaining unpaid loan obligations from Spouses Papasin. On May 2, 2012, the RTC denied Westmont's money claims and held that the discharge of Gil as a solidary debtor redounds to the benefit of Spouses Papasin,⁵ thus:

WHEREFORE, PREMISES CONSIDERED, the prayer of the plaintiff to recover from the defendants spouses Vicente and Amelia Papasin is denied and is dismissed for lack of any legal basis.

SO ORDERED.

Westmont sought reconsideration but was denied. Undaunted, Westmont elevated the case to the CA, docketed as CA- G.R. CV No. 04518. On February 29, 2016, the CA reversed the RTC's findings and ruled that Westmont may still pursue its claim against Spouses Papasin for the payment of the remaining loan obligations, interests, and penalties,⁶ viz.:

The compromise agreement clearly states that the payment of Dago-ob in the amount of [P]300,000.00 shall release him from liability in the collection case and shall cause the dismissal of the case against him. By virtue of said compromise agreement, Dago-ob ceased to be solidarily liable with Spouses Papasin for the latter's loan obligations or for any liability in connection with the collection case filed by the Bank. However, there is nothing in the compromise agreement which provides for the release of Spouses Papasin's liabilities in connection with the collection suit. Certainly, the Bank had no intention to waive its claim for payment of the outstanding loan obligations, including interests and penalties, against Spouses Papasin.

We emphasize that Dago-ob paid only [P]300,000.00 and the total outstanding principal obligation amounted to [P]492,700.00, excluding interests and penalties. Dago-ob made only partial payment of the loan obligations of Spouses Papasin which was readily received by the Bank. The Bank had the discretion to receive partial payment made by a solidary debtor. In view of Article 1216 of the Civil Code, Dago-ob's partial payment of [P]300,000.00 shall not be an obstacle to a demand directed against Spouses Papasin, considering that the loan obligations have not been fully collected. Thus, the Bank is not barred from pursuing its collection case against Spouses Papasin.

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⁵ Id. at 48.

⁶ Id. at 19-32. Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Pablito A. Perez and Gabriel T. Robeniol.

All told, Spouses Papasin is liable to pay the Bank, through its successor-in-interest, OSAI, the outstanding principal loans in the total amount of [P]492,700.00, plus interests, penalties and attorney's fees, to be finally computed by the trial court. The partial payment of [P]300,000.00 made by Dago-ob, as surety, during the pendency of the case, should be deducted from the total amount due.

IN LIGHT OF ALL THE FOREGOING, the instant appeal is GRANTED and the Decision dated May 2, 2012 of the Regional Trial Court, Branch 45, Bacolod City, in Civil Case No. 99-10917, is SET ASIDE. A new decision is rendered in favor of plaintiff-appellant Westmont Bank, now United Overseas Bank Philippines, represented by its successor-in-interest, Onshore Strategic Assets (SPV-AMC), Inc. and against defendants-appellees Spouses Vicente and Amelita Papasin, as follows:

- (1) Ordering Spouses Papasin to pay the six [6] outstanding principal loan obligations in the total amount of [P]492,700.00;
- (2) Ordering Spouses Papasin to pay interests on the outstanding loans at the stipulated interest rates of 29%, 22.777%, 22.501%, 22.075% and 20.959% *per annum* from the respective dates of default until full payment;
- (3) Ordering Spouses Papasin to pay penalty charges at the rate of 12% *per annum* of the total amount due from the date of default until full payment; and
- (4) Ordering Spouses Papasin to pay attorney's fees of 10% of the total amount due.

Let the records of this case be remanded to the RTC of Bacolod City, Branch 45, for proper accounting and reception of such evidence as may be needed to determine the total amount of Spouses Papasin's indebtedness, in accordance with the pronouncement of [the] Court and with due regard to the [P]300,000.00 partial payment made by Gil P. Dago-ob during the pendency of the case.

SO ORDERED.⁷

Unsuccessful at a reconsideration, Spouses Papasin filed this Petition for Review on *Certiorari*.⁸ Spouses Papasin argue that the compromise agreement between Westmont and Gil is a complete and full settlement of the loan obligations which effectively barred the collection

⁷ Id. at 25-31

⁸ Id. at 3-17.

suit against them. On the other hand, Westmont contends that the terms of the amicable settlement pertain only to Gil's obligation and do not extend to Spouses Papasin's liability for the unpaid loans.

The petition is unmeritorious.

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,⁹ to wit:

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.**¹⁰ (Emphasis supplied.)

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.¹¹ To be sure, the provisions on joint and solidary obligations shall be observed in a contract of suretyship.¹² Specifically, a solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. Hence, when the obligor undertakes to be "jointly and severally" liable, the obligation is solidary.¹³

Here, it is undisputed that Gil executed a continuing suretyship agreement where he jointly and severally bound himself to pay the loans that Westmont extended to Spouses Papasin. Article 1216 of the New Civil

⁹ *Philippine Charter Insurance Corp. v. Petroleum Distributors & Services Corp.*, 686 Phil. 154, 167 (2012).

¹⁰ *Stronghold Insurance Co., Inc. v. Republic-Asahi Glass Corp.*, 525 Phil. 270, 280 (2006).

¹¹ *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation*, 559 Phil. 672, 681 (2007). See also *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 619-620 (2005).

¹² Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship."

¹³ *Bognot v. RRI Lending Corp.*, 744 Phil. 59, 77 (2014).

Code is explicit that “[t]he creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.” The debtors having obligated themselves *in solidum*, the creditor can bring its action *in toto* against any one of them. As such, Westmont properly filed a collection suit against Spouses Papasin and Gil, who are solidary debtors.

Contrary to Spouses Papasin’s theory, the amicable settlement between Westmont and Gil did not extinguish their entire loan obligations. The compromise agreement does not contain a *stipulation pour autrui* in favor of Spouses Papasin regarding the extinction of their liabilities. Also, there is nothing in the agreement which suggests that Gil’s discharge from the collection suit effectively released Spouses Papasin from their obligations. Also, for an obligation to be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligation be in every point incompatible with each other.¹⁴ Novation of a contract is never presumed. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.¹⁵

In this case, Gil’s partial payment of ₱300,000.00 stated in the compromise agreement was never intended to substitute Spouses Papasin’s ₱492,700.00 outstanding obligation. As the CA aptly observed, the settlement pertains only to Gil’s obligation and the dismissal of the complaint against him. Indeed, Westmont did not waive its right to recover the unpaid loans, interests, and penalties when it pursued collection against Spouses Papasin immediately after the RTC approved the compromise agreement. This conduct is consistent with Westmont’s substantive right to seek satisfaction of its credit from one, some, or all of its solidary debtors, as it deems fit or convenient for the protection of its interests. Moreover, the agreement allowing Gil to make partial payment can hardly lead to the conclusion that Westmont already lost its right to go after Spouses Papasin. Article 1211 of the New Civil Code clearly provides that “[s]olidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions.” At most, the compromise agreement partially extinguished the obligations only up to the amount of ₱300,000.00. Westmont can still recover the unpaid loans, interests, and penalties from Spouses Papasin as the principal debtor.

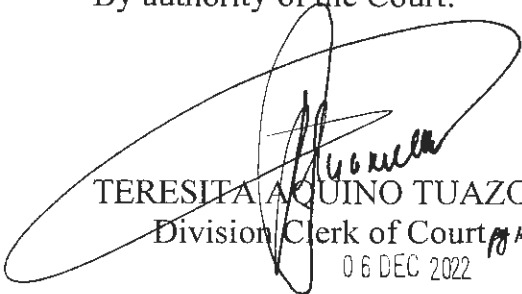
¹⁴ New Civil Code, Article 1292.

¹⁵ *Security Bank and Trust Company, Inc. v. Cuenca*, 396 Phil. 108, 122 (2000).

FOR THESE REASONS, the petition is **DENIED.** The Court of Appeals' Decision dated February 29, 2016 in CA-G.R. CV No. 04518 is **AFFIRMED.**

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
 Division Clerk of Court *pp R/G*
 06 DEC 2022

ATTYS. AUDREY VIOLET A. LACSON &
 SOLOMON A. LOBRIDO, JR. (reg)
 Counsels for Petitioners
 3rd Floor, Units 4 & 5, St. Francis Centre
 Araneta St., Bacolod City
 -and/or-
 Unit 1-J, G/F, Metrodome Bldg., Araneta St.
 Bacolod City

VILLANUEVA CAÑA & ASSOCIATES (reg)
 Counsel for Respondent
 Unit 2308, 23rd Floor, Cityland 10 Tower II
 154 H.V. Dela Costa cor. Valero Sts.
 Salcedo Village, Makati City

VILLARAZA & ANGANGCO (reg)
 Counsel for Respondent Onshore Strategic Assets
 (SPV-AMC), Inc.
 V&A Law Center, 11th Ave. cor. 39th St.
 Bonifacio Global City, 1630 Taguig City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 45
 6100 Bacolod City
 (Civil Case No. 99-10917)

COURT OF APPEALS (reg)
 Visayas Station
 Cebu City
 CA-G.R. CV No. 04518

JUDGMENT DIVISION (x)
 Supreme Court, Manila

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OFFICE OF THE CHIEF ATTORNEY (x)
 PHILIPPINE JUDICIAL ACADEMY (x)
 Supreme Court, Manila

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