

THIRD DIVISION

[G.R. NO. 158138, April 12, 2005]

**PHILIPPINE BANK OF, COMMUNICATIONS, PETITIONER, VS.
ELENA LIM, RAMON CALDERON, AND TRI-ORO INTERNATIONAL
TRADING & MANUFACTURING CORPORATION, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

A restrictive stipulation on the venue of actions contained in a promissory note applies to the surety agreement supporting it, because the nature of the two contracts and the factual circumstances surrounding their execution are intertwined or interconnected. The surety agreement is merely an accessory to the principal loan agreement embodied in the promissory note. Hence, the enforcement of the former depends upon the latter.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the April 29, 2003 Decision^[2] of the Court of Appeals (CA) in CA-GR SP No. 69786. The challenged Decision disposed as follows:

"WHEREFORE, based on the foregoing, the instant petition is hereby **GRANTED**. The assailed Orders dated June 9, 2000 and January 9, 2002 are hereby **ANNULED** and **SET ASIDE**. Civil Case No. 99-94976 is hereby ordered **DISMISSED** without prejudice to the filing thereof in the venue exclusively stipulated by the parties."^[3]

The Facts

The facts are related by the CA as follows:

"On September 3, 1999, the Philippine Bank of Communications (hereinafter '[petitioner]') filed a complaint against [Respondents Elena Lim, Ramon Calderon and Tri-Oro International Trading & Manufacturing Corporation ("Tri-Oro" for brevity)] with the Regional Trial Court of Manila for the collection of a deficiency amounting to P4,014,297.23 exclusive of interest. [Petitioner] alleged therein that [respondents] obtained a loan from it and executed a continuing surety agreement dated November 16, 1995 in favor of [petitioner] for all loans, credits, etc., that were extended or may be extended in the future to [respondents]. [Petitioner] granted a renewal of said loan upon [respondent's] request, the most recent being on January 21, 1998 as evidenced by Promissory Note Renewal BD-Variable No. 8298021001 in the amount of P3,000,000.00. It was expressly stipulated therein that the venue for any legal action that may arise out of said promissory note shall be Makati City, "to the

exclusion of all other courts" x x x. [Respondents allegedly] failed to pay said obligation upon maturity. Thus, [petitioner] foreclosed the real estate mortgage executed by [respondents] valued at P1,081,600.00 leaving a deficiency balance of P4,014,297.23 as of August 31, 1999.

"[Respondents] moved to dismiss the complaint on the ground of improper venue, invoking the stipulation contained in the last paragraph of the promissory note with respect to the restrictive/exclusive venue. [The trial court] denied said motion asseverating that [petitioner] ha[d] separate causes of action arising from the promissory note and the continuing surety agreement. Thus, [under] Rule 4, Section 2, of the 1997 Rules of Civil Procedure, as amended, x x x venue was properly laid in Manila. [The trial court] supported [its] order with cases where venue was held to be merely permissive. A motion for reconsideration of said order was likewise denied."^[4]

Ruling of the Court of Appeals

On appeal, the CA ruled that respondents' alleged debt was based on the Promissory Note, which had provided an exclusionary stipulation on venue "to the exclusion of all other courts."^[5] The parties' Surety Agreement, though silent as to venue, was an accessory contract that should have been interpreted in consonance with the Promissory Note.^[6]

Hence, this Petition.^[7]

The Issue

Petitioner raises the following issue for our consideration:

"Whether or not the Honorable Court of Appeals had decided the issue of venue in a way not in accord with law and applicable decisions of this Honorable Court and had thereby departed from the accepted and usual course of judicial proceedings, as to call for this Honorable Supreme Court's power of supervision and appellate review."^[8]

The Court's Ruling

The Petition is unmeritorious.

Sole Issue: **Venue**

At the outset, this Court observes that petitioner took liberties with the stipulated facts to suit its allegations in the present Petition. In its Complaint, petitioner bank averred that respondents had entered into the Surety Agreement (SA) to guarantee existing and future credit facilities, and that they had executed the Promissory Note (PN) to document their loan.^[9] Now, the bank is claiming that Tri-Oro issued the PN on which the other respondents should be made liable as sureties.^[10]

This strategy is obviously intended to disconnect the SA from the PN and to support

the claim of petitioner that the stipulation on venue does not apply to the SA. However, as will be discussed below, the cause of action to recover on the basis of the SA is inseparable from that which is based on the PN.

Rule on Venue

Section 2 of Rule 4 of the Rules of Court provides that personal actions^[11] must be commenced and tried (1) in the place where the plaintiff resides, or (2) where the defendant resides, or (3) in case of non-resident defendants, where they may be found, at the choice of the plaintiff.^[12] This rule on venue does not apply when the law specifically provides otherwise, or when -- before the filing of the action -- the contracting parties agree in writing on the exclusive venue thereof.^[13] Venue is not jurisdictional and may be waived by the parties.^[14]

A stipulation as to venue does not preclude the filing of the action in other places, unless qualifying or restrictive words are used in the agreement.^[15]

In the instant case, the stipulation on the exclusivity of the venue as stated in the PN is not at issue. What petitioner claims is that there was no restriction on the venue, because none was stipulated in the SA on which petitioner had allegedly based its suit.^[16] Accordingly, the action on the SA may be filed in Manila, petitioner's place of residence.

Petitioner adds that its Complaint filed in the trial court had two causes of action: the first was founded on a breach of the PN; and the second, on a violation of the SA.^[17] Consequently, it was allegedly correct to join the causes of action and to file the case in Manila, per Section 5 of Rule 2 of the Rules of Court, which reads:^[18]

"Section 5. *Joinder of Causes of Action.* -A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

x x x

x x x

x x x

(c) Where the causes of action are between the same parties but pertain to different venue or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of the said court and venue lies therein."^[19]

Surety Agreement

Suretyship arises upon the solidary binding of a person -- deemed the surety -- with the principal debtor, for the purpose of fulfilling an obligation.^[20] The prestation is not an original and direct obligation for the performance of the surety's own act, but merely accessory or collateral to the obligation contracted by the principal.^[21] Although the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.^[22]

In enforcing a surety contract, the "complementary-contracts-construed-together" doctrine finds application.^[23] According to this principle, an accessory contract must