

SECOND DIVISION

[G.R. No. 113931, May 06, 1998]

**E. ZOBEL, INC., PETITIONER, VS. THE COURT OF APPEALS,
CONSOLIDATED BANK AND TRUST CORPORATION, AND
SPOUSES RAUL AND ELEA R. CLAVERIA, RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

This petition for review on certiorari seeks the reversal of the decision^[1] of the Court of Appeals dated July 13, 1993 which affirmed the Order of the Regional Trial Court of Manila, Branch 51, denying petitioner's Motion to Dismiss the complaint, as well as the Resolution^[2] dated February 15, 1994 denying the motion for reconsideration thereto.

The facts are as follows:

Respondent spouses Raul and Elea Claveria, doing business under the name "Agro Brokers," applied for a loan with respondent Consolidated Bank and Trust Corporation (now SOLIDBANK) in the amount of Two Million Eight Hundred Seventy Five Thousand Pesos (P2, 875,000.00) to finance the purchase of two (2) maritime barges and one tugboat^[3] which would be used in their molasses business. The loan was granted subject to the condition that respondent spouses execute a chattel mortgage over the three (3) vessels to be acquired and that a continuing guarantee be executed by Ayala International Philippines, Inc., now herein petitioner E. Zobel, Inc. in favor of SOLIDBANK. The respondent spouses agreed to the arrangement. Consequently, a chattel mortgage and a Continuing Guaranty^[4] were executed.

Respondent spouses defaulted in the payment of the entire obligation upon maturity. Hence, on January 31, 1991, SOLIDBANK filed a complaint for sum of money with a prayer for a writ of preliminary attachment, against respondents spouses and petitioner. The case was docketed as Civil Case No. 91-55909 in the Regional Trial Court of Manila.

Petitioner moved to dismiss the complaint on the ground that its liability as guarantor of the loan was extinguished pursuant to Article 2080 of the Civil Code of the Philippines. It argued that it has lost its right to be subrogated to the first chattel mortgage in view of SOLIDBANK's failure to register the chattel mortgage with the appropriate government agency.

SOLIDBANK opposed the motion contending that Article 2080 is not applicable because petitioner is not a guarantor but a surety.

On February 18, 1993, the trial court issued an Order, portions of which reads:

"After a careful consideration of the matter on hand, the Court finds the ground of the motion to dismiss without merit. The document referred to as 'Continuing Guaranty' dated August 21, 1985 (Exh. 7) states as follows:

'For and in consideration of any existing indebtedness to you of Agro Brokers, a single proprietorship owned by Mr. Raul Claveria for the payment of which the undersigned is now obligated to you as surety and in order to induce you, in your discretion, at any other manner, to, or at the request or for the account of the borrower, x x x '

"The provisions of the document are clear, plain and explicit.

"Clearly therefore, defendant E. Zobel, Inc. signed as surety. Even though the title of the document is 'Continuing Guaranty', the Court's interpretation is not limited to the title alone but to the contents and intention of the parties more specifically if the language is clear and positive. The obligation of the defendant Zobel being that of a surety, Art. 2080 New Civil Code will not apply as it is only for those acting as guarantor. In fact, in the letter of January 31, 1986 of the defendants (spouses and Zobel) to the plaintiff it is requesting that the chattel mortgage on the vessels and tugboat be waived and/or rescinded by the bank inasmuch as the said loan is covered by the Continuing Guaranty by Zobel in favor of the plaintiff thus thwarting the claim of the defendant now that the chattel mortgage is an essential condition of the guaranty. In its letter, it said that because of the Continuing Guaranty in favor of the plaintiff the chattel mortgage is rendered unnecessary and redundant.

"With regard to the claim that the failure of the plaintiff to register the chattel mortgage with the proper government agency, i.e. with the Office of the Collector of Customs or with the Register of Deeds makes the obligation a guaranty, the same merits a scant consideration and could not be taken by this Court as the basis of the extinguishment of the obligation of the defendant corporation to the plaintiff as surety. The chattel mortgage is an additional security and should not be considered as payment of the debt in case of failure of payment. The same is true with the failure to register, extinction of the liability would not lie.

"WHEREFORE, the Motion to Dismiss is hereby denied and defendant E. Zobel, Inc., is ordered to file its answer to the complaint within ten (10) days from receipt of a copy of this Order."^[5]

Petitioner moved for reconsideration but was denied on April 26, 1993.^[6]

Thereafter, petitioner questioned said Orders before the respondent Court of Appeals, through a petition for certiorari, alleging that the trial court committed grave abuse of discretion in denying the motion to dismiss.

On July 13, 1993, the Court of Appeals rendered the assailed decision the dispositive portion of which reads:

"WHEREFORE, finding that respondent Judge has not committed any grave abuse of discretion in issuing the herein assailed orders, We hereby DISMISS the petition."

A motion for reconsideration filed by petitioner was denied for lack of merit on February 15, 1994.

Petitioner now comes to us *via* this petition arguing that the respondent Court of Appeals erred in its finding: (1) that Article 2080 of the New Civil Code which provides: "The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preferences of the latter," is not applicable to petitioner; (2) that petitioner's obligation to respondent SOLIDBANK under the continuing guaranty is that of a surety; and (3) that the failure of respondent SOLIDBANK to register the chattel mortgage did not extinguish petitioner's liability to respondent SOLIDBANK.

We shall first resolve the issue of whether or not petitioner under the "Continuing Guaranty" obligated itself to SOLIDBANK as a guarantor or a surety.

A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not.^[7] A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.^[8]

Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A surety is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promisor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of guaranty is the guarantor's own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.^[9]

Simply put, a surety is distinguished from a guaranty in that a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is **unable to pay** while a surety is the insurer of the debt, and he obligates himself to pay if the principal **does not pay**.^[10]

Based on the aforementioned definitions, it appears that the contract executed by petitioner in favor of SOLIDBANK, albeit denominated as a "Continuing Guaranty," is a contract of surety. The terms of the contract categorically obligates petitioner as "**surety**" to induce SOLIDBANK to extend credit to respondent spouses. This can be seen in the following stipulations.

"For and in consideration of any existing indebtedness to you of AGRO BROKERS, a single proprietorship owned by MR. RAUL P. CLAVERIA, of legal age, married and