

## SECOND DIVISION

**[ G.R. No.187403, February 12, 2014 ]**

**TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (FORMERLY PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION.), PETITIONER, VS. ASIA PACES CORPORATION, PACES INDUSTRIAL CORPORATION, NICOLAS C. BALDERRAMA, SIDDCOR INSURANCE CORPORATION (NOW MEGA PACIFIC INSURANCE CORPORATION), PHILIPPINE PHOENIX SURETY AND INSURANCE, INC., PARAMOUNT INSURANCE CORPORATION, \* AND FORTUNE LIFE AND GENERAL INSURANCE COMPANY, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on certiorari<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 30, 2008 and Resolution<sup>[3]</sup> dated March 27, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86558 which affirmed the Decision<sup>[4]</sup> dated April 29, 2005 of the Regional Trial Court of Makati, Branch 132 (RTC) in Civil Case No. 95-1812. The CA upheld the RTC's finding that the liabilities of Paramount Insurance Corporation (Paramount), and respondents Philippine Phoenix Surety and Insurance, Inc. (Phoenix), Mega Pacific Insurance Corporation<sup>[5]</sup> (Mega Pacific), and Fortune Life and General Insurance Company (Fortune) on their respective counter-surety bonds have been extinguished due to the extension of the principal obligations these bonds covered, to which said respondents did not give their consent.

### The Facts

On January 19, 1981, respondents Asia Paces Corporation (ASPAC) and Paces Industrial Corporation (PICO) entered into a sub-contracting agreement, denominated as "200 KV Transmission Lines Contract No. 20-/80-II Civil Works & Electrical Erection," with the Electrical Projects Company of Libya (ELPCO), as main contractor, for the construction and erection of a double circuit bundle phase conductor transmission line in the country of Libya. To finance its working capital requirements, ASPAC obtained loans from foreign banks Banque Indosuez and PCI Capital (Hong Kong) Limited (PCI Capital) which, upon the latter's request, were secured by several Letters of Guarantee issued by petitioner Trade and Investment Development Corporation of the Philippines (TIDCORP),<sup>[6]</sup> then Philippine Export and Foreign Loan Guarantee Corp., a government owned and controlled corporation created for the primary purpose of, among others, "guarantee[ing], with the prior concurrence of the Monetary Board, subject to the rules and regulations that the Monetary Board may prescribe, approved foreign loans, in whole or in part, granted to any entity, enterprise or corporation organized or licensed to engage in business in the Philippines."<sup>[7]</sup> Under the Letters of Guarantee, TIDCORP irrevocably and

unconditionally guaranteed full payment of ASPAC's loan obligations to Banque Indosuez and PCI Capital in the event of default by the latter.<sup>[8]</sup> The denominations of these letters, including the loan agreements secured by each, are detailed as follows:<sup>[9]</sup>

LETTER OF GUARANTEE	LOAN AGREEMENT SECURED	CREDITOR
Letter of Guarantee No. 82-446 F dated March 11, 1982 (LG No. 82-446 F)	Loan Agreement dated March 9, 1982 (with an extension dated March 25, 1983), in the amount of US\$250,000.00	Banque Indosuez
Letter of Guarantee No. 82-498 F dated June 10, 1982 (LG No. 82-498 F)	Loan Agreement dated June 10, 1982, in the amount of US\$250,000.00	PCI Capital
Letter of Guarantee No. 82-548 F dated October 5, 1982 (LG No. 82-548 F)	Loan Agreement dated October 5, 1982, in the amount of US\$2,000,000.00	PCI Capital

As a condition precedent to the issuance by TIDCORP of the Letters of Guarantee, ASPAC, PICO, and ASPAC's President, respondent Nicolas C. Balderrama (Balderrama) had to execute several Deeds of Undertaking,<sup>[10]</sup> binding themselves to jointly and severally pay TIDCORP for whatever damages or liabilities it may incur under the aforementioned letters. **In the same light, ASPAC, as principal debtor, entered into surety agreements (Surety Bonds) with Paramount, Phoenix, Mega Pacific and Fortune (bonding companies), as sureties, also holding themselves solidarily liable to TIDCORP, as creditor, for whatever damages or liabilities the latter may incur under the Letters of Guarantee.**<sup>[11]</sup> The details of said bonds, including their respective coverage amounts and expiration dates, among others, are as follows:

SURETY BOND	LETTER OF GUARANTEE COVERED	COVERAGE AMOUNT <sup>[12]</sup>	BONDING COMPANY/ SURETY	FINAL EXPIRATION DATE
Surety Bond No. G(16)01943 <sup>[13]</sup>	LG No. 82-446 F	P2,752,000.00	Paramount	March 5, 1986 <sup>[14]</sup>
Surety Bond No. G(16)01906 <sup>[15]</sup>	LG No. 82-498 F	P1,845,000.00	Paramount	June 4, 1986 <sup>[16]</sup>
Surety Bond No. G(16)15495 <sup>[17]</sup>		P1,849,000.00	Fortune	November 21, 1985 <sup>[18]</sup>
Surety Bond No. G(16)01903 <sup>[19]</sup>	LG No. 82-548 F	P11,970,000.00	Phoenix	September 28, 1985 <sup>[20]</sup>
Surety Bond No. G(16)01497 <sup>[21]</sup>		P5,030,000.00	Mega Pacific	September 28, 1985 <sup>[22]</sup>

ASPAC eventually defaulted on its loan obligations to Banque Indosuez and PCI

Capital, prompting them to demand payment from TIDCORP under the Letters of Guarantee. The demand letter of Banque Indosuez was sent to TIDCORP on March 5, 1984,<sup>[23]</sup> while that of PCI Capital was sent on February 21, 1985.<sup>[24]</sup> In turn, TIDCORP demanded payment from Paramount,<sup>[25]</sup> Phoenix,<sup>[26]</sup> Mega Pacific,<sup>[27]</sup> and Fortune<sup>[28]</sup> under the Surety Bonds. TIDCORP's demand letters to the bonding companies were sent on May 28, 1985, or before the final expiration dates of all the Surety Bonds, but to no avail.<sup>[29]</sup>

Taking into account the moratorium request<sup>[30]</sup> issued by the Minister of Finance of the Republic of the Philippines (whereby members of the international banking community were requested to grant government financial institutions,<sup>[31]</sup> such as TIDCORP, among others, a 90-day roll over from their foreign debts beginning October 17, 1983), TIDCORP and its various creditor banks, such as Banque Indosuez and PCI Capital, forged a Restructuring Agreement<sup>[32]</sup> on April 16, 1986, extending the maturity dates of the Letters of Guarantee.<sup>[33]</sup> The bonding companies were not privy to the Restructuring Agreement and, hence, did not give their consent to the payment extensions granted by Banque Indosuez and PCI Capital, among others, in favor of TIDCORP. Nevertheless, following new payment schedules,<sup>[34]</sup> TIDCORP fully settled its obligations under the Letters of Guarantee to both Banque Indosuez and PCI Capital on December 1, 1992, and April 19 and June 4, 1991, respectively.<sup>[35]</sup> Seeking payment for the damages and liabilities it had incurred under the Letters of Guarantee and with its previous demands therefor left unheeded, TIDCORP filed a collection case<sup>[36]</sup> against: (a) ASPAC, PICO, and Balderrama on account of their obligations under the deeds of undertaking; and (b) the bonding companies on account of their obligations under the Surety Bonds.

### **The RTC Ruling**

In a Decision<sup>[37]</sup> dated April 29, 2005, the RTC partially granted TIDCORP's complaint and thereby found ASPAC, PICO, and Balderrama jointly and severally liable to TIDCORP in the sum of P277,891,359.66 pursuant to the terms of the Deeds of Undertaking, but absolved the bonding companies from liability on the ground that the moratorium request and the consequent payment extensions granted by Banque Indosuez and PCI Capital in TIDCORP's favor without their consent extinguished their obligations under the Surety Bonds. As basis, the RTC cited Article 2079 of the Civil Code which provides that an extension granted to the debtor by the creditor without the consent of the guarantor/surety extinguishes the guaranty/suretyship, and, in this relation, added that the bonding companies "should not be held liable as sureties for the extended period."<sup>[38]</sup>

Dissatisfied, TIDCORP and Balderrama filed separate appeals before the CA.<sup>[39]</sup> For its part, TIDCORP averred, among others, that Article 2079 of the Civil Code is only limited to contracts of guaranty, and, hence, should not apply to contracts of suretyship. Meanwhile, Balderrama theorized that the main contractor's (*i.e.*, ELPCO) failure to pay ASPAC due to the war/political upheaval in Libya which further resulted in the latter's inability to pay Banque Indosuez and PCI Capital had the effect of releasing him from his obligations under the Deeds of Undertaking.

### **The CA Ruling**

In a Decision<sup>[40]</sup> dated April 30, 2008, the CA upheld the RTC's ruling that the moratorium request "had the effect of an extension granted to a debtor, which extension was without the consent of the guarantor, and thus released the surety companies from their respective liabilities under the issued surety bonds" pursuant to Article 2079 of the Civil Code.<sup>[41]</sup> To this end, it noted that "the maturity of the foreign loans was extended to December 31, 1989 or up to December 31, 1994 as provided under Section 4.01 of the Restructuring Agreement," and that "said extension is beyond the expiry date[s] of the surety bonds x x x and the maturity date of the principal obligations it purportedly secured, which extension was without [the bonding companies'] consent,"<sup>[42]</sup> It further discredited TIDCORP's contention that Article 2079 of the Civil Code is only limited to contracts of guaranty by citing the Court's pronouncement on the provision's applicability to suretyships in the case of *Security Bank and Trust Co., Inc. v. Cuenca*<sup>[43]</sup> (*Security Bank*). As for Balderrama, the CA debunked his assignment of error, ratiocinating that "[h]is undertaking to pay is not dependent upon the payment to be made by ELPCO to ASPAC."<sup>[44]</sup> The CA, however, modified the RTC decision to the extent of holding ASPAC, PICO, and Balderrama liable to TIDCORP for attorney's fees in the reasonable amount of P2,000,000.00 since the payment of attorney's fees was stipulated by the parties in the Deed of Undertaking dated April 2, 1982.<sup>[45]</sup>

Aggrieved, TIDCORP and Balderrama filed separate motions for reconsideration,<sup>[46]</sup> which were, however, denied in a Resolution<sup>[47]</sup> dated March 27, 2009. Only TIDCORP elevated the matter to the Court on appeal. Pending resolution thereof, or on October 6, 2010, TIDCORP filed a Motion for Partial Withdrawal<sup>[48]</sup> of its claim against Paramount in view of their Compromise Agreement<sup>[49]</sup> dated June 24, 2010 which was approved<sup>[50]</sup> by the CA in CA-G.R. CV No. 92818, entitled "*Trade & Investment Corporation of the Phils., et al. v. Roblet Industrial Construction Corp. and Paramount Insurance Corp., et al.*"<sup>[51]</sup>

### **The Issue Before the Court**

The essential issue raised for the Court's resolution is whether or not the CA erred in holding that the bonding companies' liabilities to TIDCORP under the Surety Bonds have been extinguished by the payment extensions granted by Banque Indosuez and PCI Capital to TIDCORP under the Restructuring Agreement.

### **The Court's Ruling**

The petition is granted.

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. Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.<sup>[52]</sup> The fundamental reason therefor is that a contract of

suretyship effectively binds the surety as a solidary debtor. This is provided under Article 2047 of the Civil Code which states:

Article 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.**  
(Emphasis and underscoring supplied)

Thus, since the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety's liability to attach.<sup>[53]</sup> Article 1216 of the Civil Code provides that:

Article 1216. The 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.

Comparing a surety's obligations with that of a guarantor, the Court, in the case of *Palmares v. CA*,<sup>[54]</sup> illumined that a surety is responsible for the debt's payment at once if the principal debtor makes default, whereas a guarantor pays only if the principal debtor is unable to pay, viz.:<sup>[55]</sup>

**A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor.** A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. In other words, **a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor.** (Emphases and underscoring supplied; citations omitted)

Despite these distinctions, the Court in *Cochingyan, Jr. v. R&B Surety & Insurance Co., Inc.*,<sup>[56]</sup> and later in the case of *Security Bank*, held that Article 2079 of the Civil Code, which pertinently provides that "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty," equally applies to both contracts of guaranty and suretyship. The rationale therefor was explained by the Court as follows:<sup>[57]</sup>

The theory behind Article 2079 is that **an extension of time given to the principal debtor by the creditor without the surety's consent**