

FIRST DIVISION

[G.R. No. 184041, October 13, 2010]

ANICETO G. SALUDO, JR., PETITIONER, VS. SECURITY BANK CORPORATION, RESPONDENT.

D E C I S I O N

PEREZ, J.:

Before this Court is a petition for review on *certiorari* seeking the reversal of the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 88079 dated 24 January 2008 which affirmed the Decision^[2] of Branch 149 of the Regional Trial Court (RTC) of Makati City, finding petitioner Aniceto G. Saludo, Jr. and Booklight, Inc. (Booklight) jointly and severally liable to Security Bank Corporation (SBC).

The basic facts follow--

On 30 May 1996, Booklight was extended an omnibus line credit facility^[3] by SBC in the amount of P10,000,000.00. Said loan was covered by a Credit Agreement^[4] and a Continuing Suretyship^[5] with petitioner as surety, both documents dated 1 August 1996, to secure full payment and performance of the obligations arising from the credit accommodation.

Booklight drew several availments of the approved credit facility from 1996 to 1997 and faithfully complied with the terms of the loan. On 30 October 1997, SBC approved the renewal of credit facility of Booklight in the amount of P10,000,000.00 under the prevailing security lending rate.^[6] From August 3 to 14, 1998, Booklight executed nine (9) promissory notes^[7] in favor of SBC in the aggregate amount of P9,652,725.00. For failure to settle the loans upon maturity, demands^[8] were made on Booklight and petitioner for the payment of the obligation but the duo failed to pay. As of 15 May 2000, the obligation of Booklight stood at P10,487,875.41, inclusive of interest past due and penalty.^[9]

On 16 June 2000, SBC filed against Booklight and herein petitioner an action for collection of sum of money with the RTC. Booklight initially filed a motion to dismiss, which was later on denied for lack of merit. In his Answer, Booklight asserted that the amount demanded by SBC was not based on the omnibus credit line facility of 30 May 1996, but rather on the amendment of the credit facilities on 15 October 1996 increasing the loan line from P8,000,000.00 to P10,000,000.00. Booklight denied executing the promissory notes. It also claimed that it was not in default as in fact, it paid the sum of P1,599,126.11 on 30 September 1999 as a prelude to restructuring its loan for which it earnestly negotiated for a mutually acceptable agreement until 5 July 2000, without knowing that SBC had already filed the collection case.^[10]

In his Answer to the complaint, herein petitioner alleged that under the Continuing Suretyship, it was the parties' understanding that his undertaking and liability was merely as an accommodation guarantor of Booklight. He countered that he came to know that Booklight offered to pay SBC the partial payment of the loan and proposed the restructuring of the obligation. Petitioner argued that said offer to pay constitutes a valid tender of payment which discharged Booklight's obligation to the extent of the offer. Petitioner also averred that the imposition of the penalty on the supposed due and unpaid principal obligation based on the penalty rate of 2% per month is clearly unconscionable.^[11]

On 7 March 2005, Booklight was declared in default. Consequently, SBC presented its evidence *ex-parte*. The case against petitioner, however, proceeded and the latter was able to present evidence on his behalf.

After trial, the RTC ruled that petitioner is jointly and solidarily liable with Booklight under the Continuing Suretyship Agreement. The dispositive portion reads:

WHEREFORE, in view of the foregoing considerations, the Court hereby finds in favor of the plaintiff against the defendants by ordering the defendants Booklight, Inc. and Aniceto G. Saludo, Jr., jointly and severally liable (solidarily liable) to plaintiff [sic], the following sums of Philippine Pesos:

PN No.	Amount	Interest Rate (per annum)	Beginning--Until fully paid
74/787/98	P1,927,000.00	20.189%	November 2, 1998
74/788/98	913,545.00	20.189%	November 2, 1998
74/789/98	1,927,090.00	20.189%	November 2, 1998
74/791/98	500,000.0	20.178%	November 4, 1998
74/792/98	800,000.00	20.178%	November 4, 1998
74/793/98	665,000.00	20.178%	November 3, 1998
74/808/98	970,000.00	20.178%	November 9, 1998
74/822/98	975,000.00	20.178%	November 12, 1998
74/823/98	975,000.00	20.178%	November 12, 1998

with attorney's fee of P100,000.00 plus cost of suit.^[12]

The Court of Appeals affirmed *in toto* the ruling of the RTC.^[13] Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals on 7 August 2008.^[14]

Hence, the instant petition on the following arguments:

1. The first credit facility has a one-year term from 30 June 1996 to 30 June 1997 while the second credit facility runs from 30 October

1997 to 30 October 1998.

2. When the first credit facility expired, its accessory contract, the Continuing Surety agreement likewise expired.
3. The second credit facility is not covered by the Continuing Suretyship, thus, availments made in 1998 by Booklight are not covered by the Continuing Suretyship.
4. The approval of the second credit facility necessitates the consent of petitioner for the latter's Continuing Suretyship to be effective.
5. The nine (9) promissory notes executed and drawn by Booklight in 1998 did not specify that they were drawn against and subject to the Continuing Suretyship. Neither was it mentioned in the Continuing Suretyship that it was executed to serve as collateral to the nine (9) promissory notes.
6. The Continuing Suretyship is a contract of adhesion and petitioner's participation to it is his signing of his contract.
7. The approval of the second credit facility is considered a novation of the first sufficient to extinguish the Continuing Suretyship and discharge petitioner.
8. The 20.178% interest rate imposed by the RTC is unconscionable.

[15]

The main derivative of these averments is the issue of whether or not petitioner should be held solidarily liable for the second credit facility extended to Booklight.

We rule in the affirmative.

There is no doubt that Booklight was extended two (2) credit facilities, each with a one-year term, by SBC. Booklight availed of these two (2) credit lines. While Booklight was able to comply with its obligation under the first credit line, it defaulted in the payment of the loan obligation amounting to P9,652,725.00 under the second credit line. There is likewise no dispute that the first credit line facility, with a term from 30 June 1996 to 30 June 1997, was covered by a Continuing Suretyship with petitioner acting as the surety. The dispute is on the coverage by the Continuing Suretyship of the loan contracted under the second credit facility.

Under the Continuing Suretyship, petitioner undertook to guarantee the following obligations:

- a) "Guaranteed Obligations" - the obligations of the Debtor arising from all credit accommodations extended by the Bank to the Debtor, **including increases, renewals, roll-overs, extensions, restructurings, amendments or novations thereof**, as well as (i) all obligations of the Debtor presently or hereafter owing to the Bank, as

appears in the accounts, books and records of the Bank, whether direct or indirect, and (ii) any and all expenses which the Bank may incur in enforcing any of its rights, powers and remedies under the Credit Instruments as defined herein below; ^[16] (Emphasis supplied.)

Whether the second credit facility is considered a renewal of the first or a brand new credit facility altogether was indirectly answered by the trial court when it invoked paragraph 10 of the Continuing Suretyship which provides:

10. Continuity of Suretyship. - This Suretyship shall remain in full force and effect until full and due payment and performance of the Guaranteed Obligations. This Suretyship shall not be terminated by the partial payment to the Bank of Guaranteed Obligations by any other surety or sureties of the Guaranteed Obligations, even if the particular surety or sureties are relieved of further liabilities.^[17]

and concluded that the liability of petitioner did not expire upon the termination of the first credit facility.

It cannot be gainsaid that the second credit facility was renewed for another one-year term by SBC. The terms of renewal read:

30 October 1997

BOOKLIGHT, INC.

x x x x

Gentlemen:

We are pleased to advise you that the Bank has approved the renewal of your credit facility subject to the terms and conditions set forth below:

Facility : **Loan Line**

Amount : P10,000,000.00

Collateral : Existing JSS of Atty. Aniceto Saludo (marital consent waived)

Term : 180 day Promissory Notes

Interest Rate : Prevailing SBC lending rate; subject to monthly setting and payment

Expiry : October 31, 1998

x x x x.^[18]

This very renewal is explicitly covered by the guaranteed obligations of the Continuing Suretyship.

The essence of a continuing surety has been highlighted in the case of *Totanes v.*