

SECOND DIVISION

[G.R. No. 173565, May 08, 2009]

**TRANSPACIFIC BATTERY, CORPORATION AND MICHAEL G. SAY,
PETITIONERS, VS. SECURITY BANK & TRUST CO., RESPONDENT.**

[G.R. NO. 173607]

**MICHAEL G. SAY AND JOSEPHINE G. SAY, PETITIONERS, VS.
SECURITY BANK & TRUST COMPANY, RESPONDENT.**

D E C I S I O N

TINGA, J.:

Before this Court are two petitions for review on certiorari^[1] under Rule 45 of the Rules of Court seeking the reversal of the decision^[2] of the Court of Appeals in CA-G.R. CV No. 74644 which affirmed with modification the decision^[3] of Branch 64 of the Regional Trial Court of Makati City, ordering petitioners Transpacific Battery Company (Transpacific), Michael Go Say (Michael), Melchor G. Say (Melchor) and Josephine G. Say (Josephine) jointly and severally liable to Security Bank and Trust Company (The Bank).

The facts, as culled from the records, follow.

Transpacific, represented by its officers, Michael G. Say, Josephine G. Say and Myrna Magpantay, entered into a Credit Line Agreement^[4] with the Bank. Consequently, the officers in behalf of Transpacific applied for nine (9) letters of credit (LC) with the Bank to facilitate the importation and/or purchases of certain merchandise, goods and supplies for its business. The Bank issued the corresponding LCs to Transpacific. Transpacific then executed and delivered to the Bank, as entrustor, nine (9) trust receipt agreements with for the release of the imported merchandise and supplies in its favor, with the aforementioned officers, individual petitioners herein, binding themselves to be solidarily liable with Transpacific to the Bank for the value of the merchandise and supplies covered by the trust receipts. The letters of credit and their corresponding trust receipts are listed below:

Letter of Credit No.	Trust Receipt Agreement Ref. No.	Date Issued	Expiry Date of Trust Receipt	Amount of Trust Receipt	Entrustees
73 DC-82/492	731B-83/8927	21 July 1983	19 October 1983	P359,040.00	Michael G.Say, Josephine G. Say, Myrna E. Magpantay ^[5]
73 DC-83/504	731B-83/9126	8 August 1983	7 November	P369,600.00	Michael G. Say, Melchor G. Say,

			1983		Myrna E. Magpantay ^[6]
73 DC-83/517	731B-83/9259	17 August 1983	15 November 1983	P355,200.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[7]
73 DC-83/6278	731B-83/9187	24 August 1983	22 November 1983	P119,359.69	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[8]
73 DC-6994	731B-83/9461	9 September 1983	8 December 1983	P68,772.19	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[9]
73 DC-6990	731B-83/9617	27 September 1983	26 December 1983	P84,032.62	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[10]
73 DC-83/5580	731B-83/587	6 October 1983	4 January 1984	P661,122.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[11]
73 DC-83/5581	731B-83/588	6 October 1983	4 January 1984	P826,402.50	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[12]
73 DC-83/432	731B-83/8110	8 November 1983	9 January 1984	P338,500.00	Michael G. Say, Melchor G. Say, Myrna E. Magpantay ^[13]

Under the terms of the trust receipts, the entrustees agreed to hold the goods, merchandise and supplies, as well as the proceeds of the sale and collection thereof, in trust for the Bank for the payment of petitioners' acceptance, bank commissions and charges, and/or any other indebtedness of petitioners to the Bank, and deliver the same to the Bank upon maturity date of said trust receipts.^[14]

On the maturity dates of the trust receipts, petitioners failed to account for and to deliver to the Bank the proceeds of the sale and collection of the goods, merchandise and supplies subject of the trust receipts. Despite repeated demands, petitioners reneged on their obligation.

On 8 February 1984, petitioners and the Bank executed a letter-agreement restructuring the former's obligation in the sum of P3,082,029.00, subject to the following terms and conditions:

1. Payment of all interest and other charges prior to restructuring;
2. TR term is for one year with equal monthly principal payments;

3. Interest at 5% p.a. over prime rate or 30% p.a., whichever is higher, amortized monthly;
4. Interest rate subject to review every amortization due; and
5. Against the joint and solidary liability of Sps. Miguel and Mary Say and Michael Go Say.^[15]

Failure to meet one monthly installment when due shall cause the unmatured balance to become due and demandable. The account shall be referred automatically to our Special Accounts Department for collection.^[16]

Alleging that out of the total obligation of P3,082,029.00, the amount of P2,290,865.41 remained unpaid, the Bank demanded in writing the payment of the unpaid balance.^[17]

Despite repeated demands, petitioners failed to comply with the restructuring agreement, prompting the Bank to file a criminal complaint for violation of Presidential Decree No. 115 or the Trust Receipts Law. However, said complaint was dismissed.

On 24 January 1992, the Bank filed a complaint for recovery of a sum of money with the RTC of Makati.^[18]

In his answer,^[19] Michael countered that the obligation had already been paid or if not totally paid, the same is very minimal. He further contended that said obligation had already been extinguished by novation when the Bank restructured the obligation of Transpacific. He also claimed that the Bank is guilty of laches for its inaction for an unreasonable length of time.^[20]

Melchor and Josephine, for their part, argued that the trust receipts have not been executed in strict compliance with the requirements of the Trust Receipts Law; that their participation in the questioned transactions was in their capacity as officers of Transpacific and consequently, cannot be held liable in their individual capacities; that their signatures in some of the documents were forged; and that the obligation had been extinguished by novation.^[21]

Ma. Fe Rosadio (Rosadio), who was employed at the Foreign Department of the Bank and tasked with documentation, processing and releasing of import bills and trust receipts, testified for the Bank. She identified the trust receipts and attested to the genuineness of the signatures of petitioners.

Instead of presenting their witnesses, petitioners filed a demurrer to evidence^[22] which the trial court denied on 8 December 1995.

In a decision dated 5 March 2002, the trial court ruled in favor of the Bank. The dispositive portion reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is rendered in favor of plaintiff Security Bank and Trust Company and against defendants Transpacific Battery Company, Michael Go Say, Melchor G.

Say and Josephine G. Say ordering the defendants to pay jointly and severally to the plaintiff the following amounts:

1. The sum of P2,290,865.41 representing the balance of defendants' outstanding and unpaid obligation as of the filing of the complaint on February 4, 1992 plus interest at the rate of 12% per annum from February 4, 1992 until full payment of the defendants' obligation under the aforesaid Trust Receipts and/or Letter Agreement is made;
2. Attorney's fees in the amount equivalent to 25% on the amount due;
3. Cost of suit.

SO ORDERED.^[23]

The trial court lent credence to the testimony of Rosadio and upheld the authenticity and genuineness of the signatures of the individual petitioners on the trust receipts. It also ruled that the restructuring of the obligation did not relieve individual petitioners of their liability as solidary debtors to the Bank as there was an express agreement on their part to be bound jointly and severally with Transpacific under the trust receipts.^[24]

On appeal, the Court of Appeals affirmed the ruling of the trial court with modification in that it deleted the award of attorney's fees.

The Court of Appeals' decision centered on the finding that there was no novation in the restructuring of the obligation, therefore, the individual petitioners as solidary debtors cannot be exonerated from the obligation of Transpacific. The appellate court also dismissed the allegation of forgery for failure of petitioners to present evidence to support their allegation that the purported signatures in the trust receipts were forged. With respect to the amount of the unpaid obligation, the appellate court concluded that since the issue is factual in nature, the finding of the trial court should not be disturbed on appeal.

In the petition filed by Michael, he insists that novation had taken place and effectively extinguished his obligation to the Bank. Moreover, he argues that he did not sign the restructuring agreement; hence, he should not be made liable to pay any obligation due to the Bank under said agreement.^[25]

Melchor and Josephine question the credibility of witness Rosadio to testify on the authenticity of their signatures on the trust receipts. They likewise point out the deficiencies in the trust receipts. Finally, they assert that whatever obligation they may have assumed under the agreements in the trust receipts they signed was fully novated by the restructuring agreement entered into between the Bank and Transpacific without their knowledge and consent.

The Bank posits that the arguments presented by petitioners involve factual questions and the findings thereof by the courts below are conclusive upon this Court. It also contends that there is no novation and the restructuring agreement was executed only to make it less onerous for the debtors to perform their

obligation. It avers that although petitioners were no longer signatories in the restructuring agreement, they are still bound as they were not expressly released from their obligation. On the contrary, it points out that the restructuring agreement was even made subject to their joint and solidary liability.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.^[26] Article 1292 of the Civil Code expressly provides:

Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be in every point incompatible with each other.

In order for novation to take place, the concurrence of the following requisites are indispensable:

1. There must be a previous valid obligation;
2. There must be an agreement of the parties concerned to a new contract;
3. There must be the extinguishment of the old contract; and
4. There must be the validity of the new contract.^[27]

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.^[28]

The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.^[29]

Petitioners proffer that the terms of the restructuring agreement are absolutely incompatible with the terms of the trust receipts. First, the maturity date under the trust receipts is reckoned at ninety (90) days from their respective issuance dates whereas it is one (1) year under the restructuring agreement. Second, payment is in full under the trust receipts while under the restructured obligation, it is to be made in equal monthly installments. Third, the rate of interest under the trust receipts is 16% or 18% per annum whereas it is 5% per annum over prime rate or 30% per annum, whichever is higher, under the restructured obligation. Fourth, the restructuring agreement has a provision on the time of interest payments, as well as a review of the interest rate, whereas there are no such provisions under the trust receipts. Fifth, the obligation under the trust receipts is secured by the joint and solidary liability of the alleged signatories, whereas the restructured obligation is