

SECOND DIVISION

[G.R. NO. 152082, March 10, 2006]

**RAMON R. OLBES AND RICARDO R. OLBES, PETITIONERS, VS.
CHINA BANKING CORPORATION, RESPONDENT**

DECISION

GARCIA, J.:

Under consideration is this petition for review on certiorari to set aside and reverse that portion of the Decision^[1] dated January 31, 2002 of the Court of Appeals (CA) in CA G.R. CV No. 56487 entitled "*China Banking Corporation vs. Olbes, Ogilvy & Mather, Inc. (OO&M), Ramon R. Olbes and Ricardo R. Olbes,*" holding herein petitioners Ramon R. Olbes and Ricardo R. Olbes solidarily liable with OO&M on the loan obligation obtained by the latter from respondent China Banking Corporation.

The CA recites the facts, as follows:

On four occasions in 1989 up to 1990, [herein respondent] China Banking Corporation ..., as lender and [OO&M] ... as borrower entered into loan agreements covered by promissory notes bearing numbers T-227, T-228, T-229, T-230 and T-231

The promissory notes [PNs] contain identical provisions with a few exceptions. The identical provisions material to the present case include the escalation clause found in the 4th paragraph of each of the five [PNs], ..., the name of Ramon Olbes with a signature appearing thereon as agent of the borrower corporation, and the name of Ricardo Olbes which was rubber stamped in the first 4 notes as "co-maker".

The material differences, on the other hand, concern the dates of execution ..., the dates of maturity ... [of the notes], the amounts received by [OO&M] on the 5 [PNs] (P200,000.00, P315,000.00, P700,000.00, P100,000.00 and P200,000.00, respectively), and the interest rates thereon *per annum* (19% for [PN] T-227, 24% for [PN] T-228 and 27% for the 3 others).

To secure the payment of the [PNs], [petitioners] Ramon Olbes and Ricardo Olbes executed on November 12, 1990 in favor of [respondent bank] a suretyship agreement whereby they jointly and severally undertook to pay upon maturity any and all obligations for which the borrower corporation may then or thereafter be indebted to the extent of one million pesos (P1,000,000) plus interests and attorney's fees.

Initial payments on the [PNs] were made by [OO&M] and the Olbeses. Since March 12, 1992, however, no further payments were made by them, and by [respondent bank's] computation, the 5 [PNs] had outstanding balances of P88,000.00, P140,000.00, P407,500.00, P52,400.00, P121,600.00 respectively or a total of P809,500.00 as of that date, exclusive of interests and penalty charges. As demands for payment proved futile, [respondent bank] filed a complaint for collection before the Regional Trial Court (RTC) Branch 7 of Manila on December 2, 1992 against [OO&M] and the Olbeses.

The [OO&M] denied liability on the [PNs], claiming that it had fully met its obligation and that the alleged balance came about due to the unwarranted application ... of the escalation clause provided for in paragraph 4 of each of the notes.

Both Olbeses denied any liability under the suretyship agreement, they claiming that they signed it merely as officers of [OO&M] and that its import was never explained to them by [respondent bank].

Ricardo Olbes also denied liability as co-maker, he claiming that he was signing as an officer of [OO&M].

All the defendants denied liability on the penalty charges and attorney's fees They thus interposed a counterclaim for attorney's fees. (Underscoring and words in bracket added.)

On September 12, 1998, in Civil Case No. 92-63676, the Regional Trial Court of Manila, Branch 7, on the premise that Ramon Olbes is liable on the promissory notes (PNs) based on the suretyship agreement as is Ricardo Olbes who is furthermore personally liable as co-maker, rendered judgment for respondent bank, as plaintiff *a quo*, and against OO&M and the Olbeses, as defendants *a quo*.

Therefrom, herein petitioners and OO&M went on appeal to the CA whereat their recourse was docketed as *CA G.R. CV No. 56487.123*

On January 31, 2002, the CA rendered the herein assailed Decision affirming that of the trial court, particularly its disposition on the solidary liability of herein petitioners Ramon R. Olbes and Ricardo R. Olbes, with the modification of disallowing the application by the respondent bank of the escalating interest rate on the loan transactions. In full, the dispositive portion of the CA Decision reads:

ACCORDINGLY, judgment is hereby rendered AFFIRMING the appealed decision with MODIFICATION in accordance with the foregoing discussions.

As modified, the judgment reads as follows: Defendant-appellant corporation, as maker of promissory notes Nos. T-227, T-228, T-229 and T-230, defendant-appellant Ricardo Olbes, as co-maker thereof, and appellants Ricardo Olbes and Ramon Olbes as sureties, are hereby ordered to pay plaintiff-appellee jointly and severally:

1. On the first cause of action, P88,000.00 representing the unpaid principal of the promissory note No. T-227 (Exhibit "A") plus 19% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;
2. On the second cause of action, P140,000.00 representing the unpaid principal of promissory note No. T-228 (Exhibit "B") plus 24% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;
3. On the third cause of action, P407,500.00 representing the unpaid principal of promissory note No. T-229 (Exhibit "C") plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates; and;
4. On the fourth cause of action, P52,400.00 representing the unpaid principal of promissory note No. T-230 (Exhibit "D") plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid principal corresponding to the amounts included therein by escalating the interest rates;

Defendant-appellant corporation, as maker of promissory note No. T-231, and defendants-appellants Ricardo and Ramon Olbes as sureties thereof, are also hereby ordered to pay jointly and severally plaintiff-appellee; and

5. On the fifth cause of action, P121,600.00 representing the unpaid principal of promissory note No. T- 231 plus 27% interest per annum from March 12, 1992, with deductions on the said unpaid corresponding to the amounts included therein by escalating the interest rates.^[2]

Inasmuch as the assailed decision sustained their solidary liability with, for the loan obligation of, OO&M, petitioners have interposed the instant recourse, ascribing to the CA the commission of the following errors, viz:

1. In holding petitioners liable retroactively for the loan obligations of ... OO&M under the surety agreement.
2. In holding petitioner Ricardo Olbes liable on 4 of the subject promissory notes as co-maker based on a mere title of "co-maker" rubber stamped under his name on the said promissory notes despite the absence of any provision showing him to have understood that he was affixing his signature as such.^[3]

The petition is without merit.

Petitioners disclaim, at the outset, liability on the PNs on the basis of the suretyship agreement they executed on **November 12, 1990** after the execution of the last