

## NINTH DIVISION

[ CA-G.R. CV. NO. 85563, August 31, 2006 ]

**METROPOLITAN BANK & TRUST COMPANY, PLAINTIFF-  
APPELLEE, VS. ASTRO STEEL MANUFACTURING, CO., INC.,  
MANUEL GO KIAN AN, SORIANO GO KIAN HUA & FLORENCIO GO  
KIAN TIU, DEFENDANTS-APPELLANTS.**

### DECISION

**REYES, JR., A. J.:**

In this ordinary appeal, defendants-appellants Astro Manufacturing Co., Manuel Go Kian-An, Soriano Go, Kian Hua and Florencio Go Kian Tiu seek the reversal of the 15 July 2005 Decision of the Makati Regional Trial Court, Branch 64, in Civil Case No. 99-159, the *fallo* of which reads:

"WHEREFORE, in view of the foregoing, this Court finds the defendants Astro Steel Manufacturing Co., Inc., Manuel Go Kian An, Soriano Go Kian Hua and Florencio Go Kian Tiu jointly and severally liable to plaintiff Metropolitan Bank and Trust Company, and defendants are ordered to pay plaintiff the following:

1. P8,745,554.92 inclusive of the interest and penalty charges as of September 16, 1998, plus 12% interest per annum from the date of filing of the complaint until full payment is made.
2. The sum equivalent to ten percent (10%) of the amount of the award as and by way of attorney's fees; and
3. The Cost of suit.

SO ORDERED." (Records, p. 532)

As correctly culled by the trial court, the antecedent facts of the case are as follows:

"xxx    xxx    xxx.

This is a complaint for collection of sum of money filed by plaintiff Metropolitan Bank & Trust Company (plaintiff Bank) on January 25, 1999 against defendants Astro Steel Manufacturing Co., Inc., (ASTRO STEEL) Manuel Go Kian An, Soriano Go Kian Hua and Florencio Go Kian Tiu.

The complaint proceeds from the claim of plaintiff that defendants have an unpaid obligation to plaintiff as evidenced by Promissory Notes No.39956 BD-Bdo-58/98, and 159948 BD-Bdo-80/98 (Exhibits 'A' and 'B'). The individual defendants are jointly and solidarily liable with defendant ASTRO pursuant to the continuing Surety Agreements signed

by them in favor of plaintiff Bank (Exhibits 'C' and 'D') which secured the loan obligations of ASTRO. Plaintiff prays that judgment be rendered in favor of plaintiff and against defendants ordering them jointly and severally pay the following amounts:

a.) The sum of EIGHT MILLION SEVEN HUNDRED FORTY FIVE THOUSAND FIVE HUNDRED FIFTY FOUR PESOS AND 92/100 (P8,745,554.92), as of September 15, 1998, broken down as follows:

xxx    xxx    xxx.

- plus the stipulated interest, penalty and other bank charges from September 16, 1998 until fully paid.

b.) The sum equivalent to ten percent (10%) of the total amount due under the two (2) Causes of Action as and by way of attorney's fees; and

c.) The costs of suit and expenses litigation.

In their Answer which they filed on March 10, 1999 they admit that Astro Steel obtained for its account, two (2) loans in the amount of P6,000,000.00 and P1,500,000.00 covered by two (2) promissory notes (Exhibits 'A' and 'B') aforementioned. However, the individual defendants executed the continuing Surety Agreements (Exhibits 'C' and 'D') merely as accommodation guarantor, as in fact, no valuable consideration was received by them from plaintiff.

Defendants also aver that the filing of complaint was premature as there was no prior demand; and that the money claims plaintiff sought to recover are 'terribly unconscionable and unreasonable and inaccurate as there were payments made by defendant Astro Steel.

For their part defendants pray that judgment be rendered in their favor and against plaintiff by:

'1. dismissing the complaint;

2. Ordering the plaintiff to pay defendants their actual, moral and exemplary damages, including attorney's fees and costs of litigation in such amounts as this Honorable Court may award.'

xxx." (Records, pp. 523-525)

After trial, the court *a quo* made the following findings of facts: (1) Defendants-appellants failed to pay their loan obligations as evidenced by two (2) Promissory Notes: PN No. 39956 BD-Bdo-58/98 and PN No. 159948 BD-Bdo-80/98 in the amount of Six Million Pesos (P6,000,000.00) and One Million Five Hundred Thousand Pesos (P1,500,000.00), respectively;<sup>[1]</sup> (2) That as of 15 May, 1999, the total obligation amounted to P10,841,675.17 inclusive of interest and penalties as of said date and exclusive of attorney's fees and cost of litigation;<sup>[2]</sup> (3) Plaintiff-appellee,

thru counsel, sent demand letters for the payment of defendants-appellants' outstanding obligation;<sup>[3]</sup> (4) the liability of each defendant-appellant rests upon the application of the Continuing Surety Agreements signed by them in favor of plaintiff-appellee on 20 October 1994 and 11 December 1995.<sup>[4]</sup>

Based on these actual findings, the court *a quo* disposed the case in favor of the plaintiff-appellee when it issued the herein assailed decision, the *fallo* of which was quoted at the outset.

Thus, the present appeal, defendants-appellants raising the following assignment of errors, *viz.* :

I.

THE TRIAL COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT DESPITE FAILURE OF THE HEREIN PLAINTIFF-APPELLEE TO PROVE THAT IT HAS CAUSE OR CAUSES OF ACTION AGAINST HEREIN DEFENDANTS-APPELLANTS;

II.

THE TRIAL COURT A QUO ERRED IN RULING THAT DEFENDANTS-APPELLANTS MANUEL GO KIAN-AN, SORIANO GO KIAN HUA AND FLORENCIO GO KIAN TIU ARE PERSONALLY LIABLE TO PLAINTIFF-APPELLEE AS SURETY;

III.

THE TRIAL COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT DESPITE THE APPARENT ABSENCE OF AUTHORITY BY ATTY. EDMUNDO SAN JUAN TO SIGN THE VERIFICATION AND CERTIFICATION ON NO-FORUM SHOPPING AT THE TIME OF THE FILING OF THE COMPLAINT.

The appeal is without merit.

**Anent the first and second assigned errors**, defendants-appellants argued that the alleged Surety Agreement dated 20 October 1994 and 11 December 1995 were made security to the Promissory Notes dated 14 January 1998 and 20 January 1998. As the Promissory Notes were inexistent at the time the Surety Agreements were executed, plaintiff-appellee has no cause of action against them.

We disagree.

Defendants-appellants conveniently failed to state the nature of the Surety Agreement – that it is a CONTINUING SECURITY AGREEMENT, the relevant portion of which provides:

"... the SURETY, solidarily with the PRINCIPAL, binds himself/itself to the CREDITOR, its successors or assigns, to pay any and all loans, credits, overdrafts, advances, discounts and/or other credit accommodations, of which the PRINCIPAL, as maker, endorser, acceptor or otherwise may now be indebted or may hereafter become indebted to