Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROSALINA CARODAN,
Petitioner,

- versus -

CHINA BANKING CORPORATION,
Respondent.

G.R. No. 210542

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:
FEB 24 2016

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DECISION

SERENO, *CJ:*

This is a Petition for Review on *Certiorari*[1] seeking to set aside the Decision[2] dated 9 July 2013 and the Resolution[3] dated 29 November 2013 rendered by the Court of Appeals (CA), Ninth Division, Manila, in CA-G.R. CV No. 95835. The CA denied petitioner's appeal assailing the Decision[4] dated 23 June 2010 issued by the Regional Trial Court (RTC) of Tuguegarao City, Branch 2, in Civil Case No. 5692.

THE ANTECEDENT FACTS

The records reveal that on 6 June 2000, China Banking Corporation (China Bank) instituted a Complaint[5] for a sum of money against Barbara Perez (Barbara), Rebecca Perez-Viloria (Rebecca), Rosalina Carodan (Rosalina) and Madeline Carodan (Madeline). China Bank claimed that on 15 January 1998, Barbara and Rebecca, for value received, executed and delivered Promissory Note No. TLS-98/007[6] to respondent bank under which they promised therein to jointly and severally pay the amount of

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[1] *Rollo*, pp. 9-23.
[2] Id. at 37-47; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.
[3] Id. at 24-25.
[4] Id. at 49-62; penned by Judge Vilma T. Pauig.
[5] Records, pp. 1-17.
[6] Id. at 8-9.

₱2.8 million.[7] China Bank further claimed that as security for the payment of the loan, Barbara, Rebecca and Rosalina also executed a Real Estate Mortgage[8] over a property registered in the name of Rosalina and covered by Transfer Certificate Title (TCT) No. T-10216.[9] Respondent alleged that a Surety Agreement[10] in favor of China Bank as creditor was also executed by Barbara and Rebecca as principals and Rosalina and her niece Madeline as sureties. Through that agreement, the principals and sureties warranted the payment of the loan obligation amounting to ₱2.8 million including interests, penalties, costs, expenses, and attorney's fees.[11]

Barbara and Rebecca failed to pay their loan obligation despite repeated demands from China Bank. Their failure to pay prompted the bank institute extrajudicial foreclosure proceedings on the mortgaged property on 26 November 1999.[12] From the extrajudicial sale, it realized only ₱1.5 million as evidenced by a Certificate of Sale.[13] This amount, when applied to the total outstanding loan obligation of ₱1,865,345.77, would still leave a deficiency of ₱365,345.77. For that reason, the bank prayed that the court order the payment of the deficiency amount with interest at 12% per annum computed from 13 January 2000; attorney's fees equal to 10% of the deficiency amount; and litigation expenses and costs of suit.[14]

Barbara and Rebecca filed their Answer. They interposed the defense that although they both stood as principal borrowers, they had entered into an oral agreement with Madeline and Rosalina. Under that agreement which was witnessed by China Bank's loan officer and branch manager, they would equally split both the proceeds of the loan and the corresponding obligation and interest pertaining thereto, and they would secure the loan with the properties belonging to them.[15] Barbara and Rebecca used as security their real properties covered by TCT Nos. T-93177, T-93176, T-93174, T-93167, T-93169, T-93170, T-93171 and T-93172; while Rosalina and Madeline used for the same purpose the former's property covered by TCT No. T-10216.[16]

Barbara and Rebecca further alleged that while Rosalina and Madeline obtained their share of ₱1.4 million of the loan amount, the latter two never complied with their obligation to pay interest. It was only Rebecca's account with China Bank that was automatically debited in the total amount of ₱1,002,735.54.[17] Barbara and Rebecca asked China Bank for

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[7] Id. at 2.
[8] Id. at 10-12.
[9] Id. at 3.
[10] Id. at 13-14.
[11] Id.
[12] Id. at 94-96.
[13] Id. at 15-16.
[14] Id. at 4-5.
[15] Id. at 29.
[16] Id. at 30.
[17] Id.

the computation of their total obligation, for which they paid ₱1.5 million aside from the interest payments, and respondent bank thereafter released the Real Estate Mortgage over their properties.[18]

By way of crossclaim, Barbara and Rebecca asked Rosalina and Madeline to pay half of ₱1,002,735.54 as interest payments, as well as the deficiency amount plus 12% interest per annum and attorney's fees, the total amount of which pertained to the loan obligation of the latter two.[19] By way of counterclaim, Barbara and Rebecca also asked China Bank to pay ₱1 million as moral damages, ₱500,000 as exemplary damages, plus attorney's fees and costs of suit.[20]

China Bank filed its Reply and Answer to Counterclaim clarifying that it was suing Barbara and Rebecca as debtors under the Promissory Note and as principals in the Surety Agreement, as well as Rosalina and Madeline as sureties in the Surety Agreement.[21] It claimed that equal sharing of the proceeds of the loan was "a bat at misrepresentation" and "a self-serving prevarication," because what was clearly written on the note was that Rebecca and Barbara were the principal debtors.[22] It reiterated that the two were liable for the full payment of the principal amount plus the agreed interest, charges, penalties and attorney's fees, with recourse to reimbursement from Rosalina and Madeline.[23]

China Bank also disputed the claim of Rebecca and Barbara that upon their payment to the bank of ₱1.5 million, the Real Estate Mortgage over their properties was cancelled. Their claim was disputed because, even after their payment of ₱1.5 million, Rebecca and Barbara were still indebted in the amount of ₱1.3 million exclusive of interest, charges, penalties and other legitimate fees.[24] Furthermore, respondent stated that if there was a cancellation of mortgage, it referred to other mortgages securing other separate loan obligations of Barbara and Rebecca; more particularly, that of Barbara.[25]

Rosalina filed her Answer with Counterclaim and Crossclaim.[26] She alleged that on 2 July 1997, she and Barbara executed (1) a Real Estate Mortgage covering Rosalina's lot and ancestral house, as well as Barbara's eight residential apartments, annotated as an encumbrance at the back of the TCTs corresponding to the properties as evidenced by the Annexes to the

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[18] Id. at 31.
[19] Id.
[20] Id. at 32.
[21] Id. at 35-36.
[22] Id. at 37.
[23] Id. at 38.
[24] Id. at 39.
[25] Id.
[26] Id. at 173-231.

Answer; and (2) a Surety Agreement to secure the credit facility granted by the bank to Barbara and Rebecca up to the principal amount of ₱2.8 million.[27] Rosalina further stated that the execution of the contracts was "made in consideration of the long-time friendship" between Barbara and Rebecca, and Madeline, and that "no monetary or material consideration whatsoever passed between [Barbara and Rebecca], on the one hand, and [Rosalina], on the other hand."[28]

Rosalina acknowledged that on 15 January 1998, Barbara and Rebecca executed a Promissory Note for the purpose of evidencing a loan charged against the loan facility secured by the mortgage.[29] She averred, though, that when Barbara and Rebecca paid half of the loan under the Promissory Note, the properties of Barbara covered by the mortgage were released by the bank from liability. The cancellation of the mortgage lien was effected by an instrument dated 27 May 1999 and reflected on the TCTs evidenced by the Annexes to the Answer.[30]

This cancellation, according to Rosalina, illegally and unjustly caused her property to absorb the singular risk of foreclosure.[31] The result, according to her, was the extinguishment of the indivisible obligation contained in the mortgage pursuant to Article 1216[32] of the Civil Code.[33]

Rosalina further averred that when the bank instituted the foreclosure proceedings, it misrepresented that her property was the only one that was covered by the mortgage; omitted from the schedule of mortgaged properties those of Barbara; and misrepresented that "the terms and condition of the aforesaid mortgage have never been changed or modified whether tacitly or expressly, by any agreement made after the execution thereof."[34]

Finally, Rosalina stated that she had made demands on Barbara and Rebecca to cause the rectification of the illegal and unjust deprivation of her property in payment of the indemnity. Allegedly, Barbara and Rebecca simply ignored her demands, so, she prayed that the two be held solidarily liable for the total amount of damages and for the deficiency judgment sought in this Complaint.[35]

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[27] Id. at 174-175.
[28] Id. at 154.
[29] Id. at 175.
[30] Id. at 176-177.
[31] Id. at 177.
[32] Art. 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. (1144a)
[33] Records, p. 177.
[34] Id.
[35] Id. at 178.

China Bank filed its Reply and Answer to Counterclaim.[36] It alleged that the issue of whether Rosalina obtained material benefit from the loan was not material, since she had voluntarily and willingly encumbered her property;[37] that the indivisibility of mortgage does not apply to the case at bar, since Article 2089[38] of the Civil Code presupposes several heirs, a condition that is not present in this case;[39] that nothing short of payment of the debt or an express release would operate to discharge a mortgage;[40] and that, as surety, Rosalina was equally liable as principal debtor to pay the deficiency obligation in the sum of ₱365,345.77.[41] The bank also filed its Comment/Opposition[42] to the Entry of Appearance of Atty. Edwin V. Pascua as counsel for Rosalina. It said that Atty. Pascua had once been its retained lawyer pursuant to a Retainer Agreement dated 5 September 1997.[43] Because of its Opposition, Rosalina was subsequently represented by Atty. Reynaldo A. Deray.

All the parties submitted their Pre-Trial Briefs with the exception of Madeline, whose case had been archived by the RTC upon motion of China Bank for the court's failure to acquire jurisdiction over her person. The issues of the case were thereafter limited to the following: (1) whether the defendants were jointly and severally liable to pay the deficiency claim; (2) whether the surety was still liable to the bank despite the release of the mortgage of the principal borrower; (3) whether there was a previous agreement among the defendants that Barbara and Rebecca would receive half and Rosalina and Madeline, the other half; and (4) whether respondent bank still had a cause of action against the surety after the mortgage of the principal borrower had been released by the bank.[44]

THE RULING OF THE RTC

The RTC ruled that although no sufficient proof was adduced to show that Rosalina had obtained any pecuniary benefit from the loan agreement between Rebecca and Barbara and China Bank, the mortgage between

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[36] Id. at 238-248.
[37] Id. at 240-241.
[38] Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is expected the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied. (1860)
[39] Records, p. 243.
[40] Id. at 244.
[41] Id. at 245.
[42] Id. at 249-254.
[43] Id. at 250.
[44] Id. at 389.

Rosalina and China Bank was still valid.[45] The trial court declared that respondent bank had therefore lawfully foreclosed the mortgage over the property of Rosalina, even if she was a mere accommodation mortgagor.[46] The RTC also declared Rosalina's claim to be without merit and without basis in law and jurisprudence. She claimed that because the Real Estate Mortgage covering her property was a single and indivisible contract, China Bank's act of releasing the principal debtors' properties resulted in the extinguishment of the obligation.[47] The trial court held that the creditor had the right to proceed against any one of the solidary debtors, or some or all of them simultaneously; and that a creditor's right to proceed against the surety exists independently of the creditor's right to proceed against the principal.[48]

Finally, the RTC ordered Rebecca, Barbara and Rosalina to be jointly and severally liable to China Bank for the deficiency between the acquisition cost of the foreclosed real estate property and the outstanding loan obligation of Barbara and Rebecca at the time of the foreclosure sale. Interest was set at the rate of 12% per annum from 13 January 2000 until full payment. Rebecca and Barbara were also ordered to reimburse Rosalina for the amount of the deficiency payment charged against her including interests thereon.[49]

THE RULING OF THE CA

Rosalina filed a timely Notice of Appeal and imputed error to the trial court in finding her, together with Rebecca and Barbara, jointly and severally liable to pay the deficiency claim; in finding that she was still liable as surety even if the bank had already released the collateral of the principal borrower; and in not annulling the foreclosure sale of the property, not reconveying the property to her, and not awarding her damages as prayed for in her counterclaim. She said that these were done by the court despite the fact that China Bank had deliberately and maliciously released the properties of the principal borrowers, thereby exposing her property to risk.[50]

The CA found the appeal bereft of merit.[51] It qualified Rosalina as a surety who had assumed or undertaken a principal debtor's responsibility or obligation. As such, she was supposed to be principally liable for the payment of the debt in case the principal debtors did not pay, regardless of their financial capacity to do so.[52] As for the deficiency, the CA cited *BPI*

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[45] Id. at 614.
[46] Id.
[47] Id. at 615.
[48] Id.
[49] Id. at 617.
[50] *Rollo*, pp.97-98.
[51] Id. at 44.
[52] Id. at 44-45.

Family Savings Bank v. Avenido.[53] The Supreme Court had ruled therein that the creditor was not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the real estate mortgage, would result in a deficiency.[54] The CA ultimately affirmed the RTC Decision *in toto*[55] and denied the Motion for Reconsideration.[56] Hence, this Petition.

Before this Court, petitioner Rosalina now imputes error to the CA's affirmance of the RTC Decision. She says that the CA Decision was not in accord with law and jurisprudence in holding that petitioner, jointly and severally with Barbara and Rebecca, was liable to pay China Bank's deficiency claim after the bank's release of the collateral of the principal debtors. Respondent bank's alleged act of exposing Rosalina's property to the risk of foreclosure despite the indivisible character of the Real Estate Mortgage supposedly violated Article 2089 of the New Civil Code.[57]

China Bank filed its Comment[58] claiming that all the grounds cited by petitioner were "mere reiterations, repetitions, or rehashed grounds and arguments raised in the Appellant's Brief x x x which were exhaustively passed upon and considered by the CA in its Decision";[59] and that the petition "is wanting of any new, substantial and meritorious grounds that would justify the reversal of the CA Decision affirming the RTC decision."[60]

THE ISSUE

The sole issue to be resolved by this Court is whether petitioner Rosalina is liable jointly and severally with Barbara and Rebecca for the payment of respondent China Bank's claims.

THE RULING OF THIS COURT

Loan transactions in banking institutions usually entail the execution of loan documents, typically a promissory note, covered by a real estate mortgage and/or a surety agreement.[61] In the instant case, petitioner Rosalina admitted that she was a party to these loan documents although she vehemently insisted that she had received nothing from the proceeds of the loan.[62] Meanwhile, respondent bank offered in evidence the Promissory

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[53] G.R. No. 175816, 7 December 2011, 661 SCRA 758.
[54] *Rollo*, p. 46.
[55] Id. at 47.
[56] Id. at 24.
[57] Id. at 14.
[58] *Rollo*, pp. 172-185.
[59] Id. at 174.
[60] Id. at 179.
[61] *Gateway v. Asianbank*, 395 Phil. 353 (2008).
[62] *See* notes 27 and 28.

Note, the Real Estate Mortgage and the Surety Agreement signed by the parties.

We find that Rosalina is liable as an accommodation mortgagor.

In *Belo v. PNB*,[63] we had the occasion to declare:

> An accommodation mortgage is not necessarily void simply because the accommodation mortgagor did not benefit from the same. The validity of an accommodation mortgage is allowed under Article 2085 of the New Civil Code which provides that (t)hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.[64]

Apart from being an accommodation mortgagor, Rosalina is also a surety, defined under Article 2047 of the Civil Code in this wise:

> Art. 2047. By guaranty a person, called a 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.

A contract of suretyship (second paragraph of Article 2047) has been juxtaposed against a contract of guaranty (first paragraph of Article 2047) as follows:

> 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.[65](Citations omitted)

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[63]405 Phil. 851(2001).
[64]Id. at 87.
[65]*Palmares v. CA*, 351 Phil. 664, 680-681 (1998).

In *Inciong, Jr. v. CA,*[66] we elucidated further in this wise:

> While a guarantor may bind himself solidarily with the principal debtor, the liability of a guarantor is different from that of a solidary debtor. Thus, Tolentino explains:
>
> > A guarantor who binds himself *in solidum* with the principal debtor under the provisions of the second paragraph does not become a solidary co-debtor to all intents and purposes. There is a difference between a solidary co-debtor, and *a fiador in solidum* (surety). The latter, outside of the liability he assumes to pay the debt before the property of the principal debtor has been exhausted, retains all the other rights, actions and benefits which pertain to him by reason of the *fiansa;* while a solidary co-debtor has no other rights than those bestowed upon him in Section 4, Chapter 3, title I, Book IV of the Civil Code.
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> Section 4, Chapter 3, Title I, Book IV of the Civil Code states the law on joint and several obligations. Under Art. 1207 thereof, when there are two or more debtors in one and the same obligation, the presumption is that the obligation is joint so that each of the debtors is liable only for a proportionate part of the debt. There is a solidarity liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.[67] (Citations omitted)

Further discussion on the same legal concept proceeded thusly:

> A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.
>
> Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A surety is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promissor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of guaranty is the guarantor's own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.

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[66] 327 Phil. 364 (1996).
[67] Id. at 373.

> Simply put, a surety is distinguished from a guaranty in that a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is ***unable to pay*** while a surety is the insurer of the debt, and he obligates himself to pay if the principal ***does not pay.***[68](Citations omitted)

When Rosalina affixed her signature to the Real Estate Mortgage as mortgagor and to the Surety Agreement as surety which covered the loan transaction represented by the Promissory Note, she thereby bound herself to be liable to China Bank in case the principal debtors, Barbara and Rebecca, failed to pay. She consequently became liable to respondent bank for the payment of the debt of Barbara and Rebecca when the latter two actually did not pay.

China Bank, on the other hand, had a right to proceed after either the principal debtors or the surety when the debt became due. It had a right to foreclose the mortgage involving Rosalina's property to answer for the loan.

The proceeds from the extrajudicial foreclosure, however, did not satisfy the entire obligation. For this reason, respondent bank instituted the present Complaint against Barbara and Rebecca as principals and Rosalina as surety.

A mortgage is simply a security for, and not a satisfaction of indebtedness.[69] If the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor.[70] We have already recognized this rule:

> While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage.[71]

The creditor, respondent China Bank in this Petition, is therefore not precluded, from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the Real Estate Mortgage, would result in a deficiency.

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[68] *E. Zobe, Inc. v. CA*, 352 Phil. 608, 614-615 (1998).
[69] *Suico Rattan & Buri Interiors, Inc. v. CA*, G.R. No. 138145, 15 June 2006, 490 SCRA 560.
[70] *See* note 38
[71] *BPI v. Reyes*, 680 Phil. 718, 725 (2012), citing *BPI v. Avenido*, G.R. No. 175816, 7 December 2011, 661 SCRA 758.

Rosalina protests her liability for the deficiency. She claims that China Bank cancelled the mortgage lien and released the principal borrowers from liability. She contends that this act violated Article 2089 of the Civil Code on the indivisibility of mortgage and ultimately discharged her from liability as a surety.

We disagree.

A resort to the terms of the Surety Agreement can easily settle the question of whether Rosalina should still be held liable. The agreement expressly contains the following stipulation:

> **The Surety(ies)** expressly waive all rights to demand for payment and notice of non-payment and protest, and **agree that the securities** of every kind that are now and may hereafter be left with the Creditor its successors, indorsees or assigns as collateral to any evidence of debt or obligation, or upon which a lien may exist therefor, **may be substituted, withdrawn or surrendered at any time**, and the time for the payment of such obligations extended, **without notice to or consent by the Surety(ies)** x xx.[72] (Emphases supplied)

We therefore find no merit in Rosalina's protestations in this petition. As provided by the quoted clause in the contract, she not only waived the rights to demand payment and to receive notice of nonpayment and protest, but she also expressly agreed that the time for payment may be extended. More significantly, she agreed that the securities may be "substituted, withdrawn or surrendered at any time" without her consent or without notice to her. That China Bank indeed surrendered the properties of the principal debtors was precisely within the ambit of this provision in the contract. Rosalina cannot now contest that act in light of her express agreement to that stipulation.

There have been similar cases in which this Court was tasked to rule on whether a surety can be discharged from liability due to an act or omission of the creditor. A review of these rulings reveals though, that in the absence of an express stipulation, the surety was discharged from liability if the act of the creditor was such as would be declared negligent or constitutive of a material alteration of the contract. On the other hand, in the presence of an express stipulation in the surety agreement allowing these acts, the surety was not considered discharged and was decreed to be bound by the stipulations.

In *PNB v. Manila Surety*,[73] the Court *en banc* declared the surety discharged from liability on account of the creditor's negligence. In that

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[72]Records, pp. 13-14.
[73]122 Phil. 106 (1965).

case, the creditor failed to collect the amounts due to the debtor contrary to the former's duty to make collections as holder of an exclusive and irrevocable power of attorney. The negligence of the creditor allowed the assigned funds to be exhausted without notice to the surety and ultimately resulted in depriving the latter of any possibility of recourse against that security.

Also, in *PNB v. Luzon Surety*,[74] the Court hinted at the possibility of the surety's discharge from liability. It was recognized in that case that in this jurisdiction, alteration can be a ground for release. The Court clarified, though, that this principle can only be successfully invoked on the condition that the alteration is material. Failure to comply with this requisite means that the surety cannot be freed from liability. Applying this doctrine in that case, the Court ruled that the alterations in the form of increases in the credit line with the full consent of the surety did not suffice to release the surety.

Meanwhile, in *Palmares v. CA,*[75] the Court ruled:

> It may not be amiss to add that leniency shown to a debtor in default, by delay permitted by the creditor without change in the time when the debt might be demanded, does not constitute an extension of the time of payment, which would release the surety. In order to constitute an extension discharging the surety, it should appear that the extension of the time was for a definite period, pursuant to an enforceable agreement between the principal and the creditor, and that it was made without the consent of the surety or with the reservation of rights with respect to him. The contract must be one which precludes the creditor from, or at least hinders him in, enforcing the principal contract with the period during which he could otherwise have enforced it, and which precludes the surety from paying the debt. (Citations omitted)

In *E. Zobel Inc. v. CA, et al.*,[76] the Court upheld the validity of the provision on the continuing guaranty – which we had earlier interpreted as a surety consistent with its contents and intention of the parties. The Court upheld the validity of the provision despite the insistence of the surety that he should be released from liability due to the failure of the creditor to register the mortgage. In particular, the Court decreed:

> SOLIDBANK's failure to register the chattel mortgage did not release petitioner from the obligation. In the Continuing Guaranty executed in favor of SOLIDBANK, petitioner bound itself to the contract irrespective of the existence of any collateral. It even released SOLIDBANK from any fault or negligence that may impair the contract. The pertinent portions of the contract so provides:
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> > the undersigned (petitioner) who hereby agrees to be and remain bound upon this guaranty, irrespective of the existence, value or

[74] 160-A Phil. 854 (1975).
[75] Id. at 686-687.
[76] 352 Phil. 608(1998).

> condition of any collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, sale, application, renewal or extension, and notwithstanding also that all obligations of the Borrower to you outstanding and unpaid at any time(s) may exceed the aggregate principal sum herein above prescribed.
>
> This is a Continuing Guaranty and shall remain in force and effect until written notice shall have been received by you that it has been revoked by the undersigned, but any such notice shall not be released the undersigned from any liability as to any instruments, loans, advances or other obligations hereby guaranteed, which may be held by you, or in which you may have any interest, at the time of the receipt of such notice. No act or omission of any kind on your part in the premises shall in any event affect or impair this guaranty, nor shall same be affected by any change which may arise by reason of the death of the undersigned, of any partner(s) of the undersigned, or of the Borrower, or of the accession to any such partnership of any one or more new partners.[77]

Another illustrative case is *Gateway Electronics Corporation and Geronimo delos Reyes v. Asianbank,*[78] in which the surety similarly asked for his discharge from liability. He invoked the creditor's repeated extensions of maturity dates to the principal debtor's request, without the surety's knowledge and consent. Still, this Court ruled:

> Such contention is unacceptable as it glosses over the fact that the waiver to be notified of extensions is embedded in surety document itself, built in the ensuing provision:
>
> > In case of default by any/or all of the DEBTOR(S) to pay the whole part of said indebtedness herein secured at maturity, I/WE jointly and severally, agree and engage to the CREDITOR, its successors and assigns, the prompt payment, without demand or notice from said CREDITOR of such notes, drafts, overdrafts and other credit obligations on which the DEBTOR(S) may now be indebted or may hereafter become indebted to the CREDITOR, together with interest, penalty and other bank charges as may accrue thereon and all expenses which may be incurred by the latter in collecting any or all such instruments.[79]

On Rosalina's argument that the release of the mortgage violates the indivisibility of mortgage as enunciated in Article 2089[80] of the Civil Code, *People's Bank and Trust Company v. Tambunting et al.*[81] is most instructive. In that case, the surety likewise argued that he should be discharged from liability. He alleged that the creditor had extended the time of payment and

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[77] Id. at 618-619.
[78] 595 Phil. 353 (2008).
[79] Id. at 377.
[80] *See* note 55.
[81] 149 Phil. 169 (1971).

released the shares pledged by the principal debtors without his consent. The Court *en banc* found his argument unpersuasive and decreed:

> 1. It is thus obvious that the contract of absolute guaranty executed by appellant Santana is the measure of rights and duties. As it is with him, so it is with the plaintiff bank. What was therein stipulated had to be complied with by both parties. Nor could appellant have any valid cause for complaint. He had given his word; he must live up to it. Once the validity of its terms is conceded, he cannot be indulged in his unilateral determination to disregard his commitment. A promise to which the law accords binding force must be fulfilled. It is as simple as that. So the Civil Code explicitly requires: "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."
>
> 2. It could have been different if there were no such contract of absolute guaranty to which appellant was a party under the aforesaid Article 2080. He would have been freed from the obligation as a result of plaintiff releasing to the Tambuntings without his consent the 135 shares of the International Sports Development Corporation pledged to plaintiff bank to secure the overdraft line. For thereby subrogation became meaningless. Such a provision is intended for the benefit of a surety. That was a right he could avail of. He is not precluded however from waiving it. That was what appellant did precisely when he agreed to the contract of absolute guaranty. Again the law is clear. A right may be waived unless it would be contrary to law, public order, public policy, morals or good customs. There is no occasion here for the exceptions coming into play x xx[82]

While we rule that Rosalina, along with the principal debtors, Barbara and Rebecca, is still liable as a surety for the deficiency amount, we modify the RTC's imposition of interest rate at 12% per annum, which the CA subsequently affirmed. We must modify the rates according to prevailing jurisprudence. Hence, the 12% legal interest should be imposed on the deficiency amount from 13 January 2000 until 30 June 2013 and 6% legal interest from 1 July 2013 until full payment.

WHEREFORE, premises considered, the assailed CA Decision and Resolution finding Rosalina Carodan jointly and severally liable with Barbara Perez and Rebecca Perez-Viloria for the deficiency amount are **AFFIRMED WITH MODIFICATIONS.** Rebecca, Barbara and Rosalina are held jointly and severally liable to China Bank for the deficiency amount of ₱365,345.77 and interest thereon at the rates of 12% per annum from 13 January 2000 until 30 June 2013 and 6% per annum from 1 July 2013 until full payment; and that Rebecca and Barbara are also ordered to reimburse Rosalina for the amount charged against her including interests thereon.[83]

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[82] Id. at 174-175.
[83] Id. at 617.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice