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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES CALVIN LUTHER R.
GENOTIVA and VIOLET S.
GENOTIVA,

Petitioners,

- *VERSUS* -

EQUITABLE-PCI BANK (now
BANCO DE ORO UNIBANK,
INC.),

Respondent.

GR. No. 213796

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J.Y., JJ.

Promulgated:

June 28, 2021

MisPCB-H

X ----- X

DECISION

HERNANDO, J.:

Before this Court is a Petition for Review¹ assailing the March 28, 2014 Decision² and July 28, 2014 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 02724-MIN and CA-G.R. SP No. 04424-MIN.

In its assailed Decision, the CA reversed the August 31, 2010 Decision⁴ of the Regional Trial Court (RTC) of Misamis Oriental granting the

¹ *Rollo*, pp. 19-26.

² *Id.* at 45-57. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

³ *Id.* at 69-72. Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Oscar V. Badelles and Pablito A. Perez.

⁴ *Id.* at 29-42. Penned by Presiding Judge Gil G. Bollozos.

Complaint⁵ filed by the spouses Calvin Luther Genotiva and Violet Genotiva (spouses Genotiva) against the Equitable PCI-Bank, now Banco De Oro Unibank, Inc. (BDO), and instead dismissed the same.⁶ In its assailed Resolution, the CA denied the Genotiva's Motion for Reconsideration.⁷

Antecedents:

On February 13, 2003, the spouses Genotiva filed before the RTC a Complaint for Declaration of Nullity of Contract, Reconveyance and Damages with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order against BDO.⁸

In the Complaint, they alleged that Calvin Genotiva (Calvin), together with his business colleagues, ventured into the commercial production of hollow blocks and concrete pavers under the registered name Goldland Equity, Inc. (Goldland).⁹ Sometime in 1997, Goldland applied for a "clean loan" with BDO at its Cagayan de Oro City Branch where petitioner Violet Genotiva (Violet) was an employee.¹⁰ BDO granted the loan in the amount of ₱2,000,000.00 as evidenced by a Promissory Note dated November 12, 1996.¹¹

The Genotivas further alleged that when Violet retired on October 15, 1998, she requested for the payment of her retirement benefits¹² and for the release of the owner's copy of Transfer Certificate of Title No. 77966 (subject property) which was retained by BDO in relation to Violet's earlier housing loan which loan was already fully paid.¹³ However, BDO allegedly refused to release her retirement benefits unless she and her husband would execute a real estate mortgage over the subject property to secure Goldland's loan.¹⁴ Being pressed for money, they had no choice but to accede to BDO's demands and to sign the Real Estate Mortgage dated March 17, 1999 (subject contract) in favor of BDO.¹⁵

According to the spouses Genotiva, sometime after the subject contract was executed, they offered to pay BDO the amount of ₱500,000.00 to redeem the collateral.¹⁶ However, instead of applying the ₱500,000.00 for the redemption, BDO applied it to the payment of the interest due on Goldland's

⁵ Id. at 146-155.

⁶ Id. at 57.

⁷ Id. at 72.

⁸ CA *rollo*, pp. 68-78.

⁹ *Rollo*, p. 147.

¹⁰ Id. at 148.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 148-149.

¹⁵ Id. at 149.

¹⁶ Id. at 149-150.

loan.¹⁷ Further, when Goldland defaulted in its payment of the loan, BDO wrongfully foreclosed the subject property and scheduled its auction sale.¹⁸

Thus, in their Complaint, the spouses Genotiva prayed for the following: *first*, the declaration of the subject contract as void for having been executed under duress in view of BDO's withholding of Violet's retirement benefits; *second*, for an order releasing the ₱500,000.00 deposit, the retention thereof by BDO not having any basis, as well an order requiring BDO to pay damages; and *third*, for the issuance of a Temporary Restraining Order (TRO) against the scheduled auction sale of the subject property.¹⁹

On February 21, 2003, the RTC issued a TRO which was lifted on March 6, 2003 after trial.²⁰

Thereafter, BDO filed its Answer to the Complaint alleging that it withheld the issuance of Violet's clearance, a condition for the release of her retirement benefits, because of her existing obligation to the bank arising from the Deed of Suretyship dated November 7, 1996.²¹ Such Deed of Suretyship was previously executed by the Genotivas and other stockholders when Goldland applied for the ₱2,000,000.00 loan in 1996.²² The agreement partly provides:

I/We, SPS. ALDRICO/ROSIE MAÑUS, SPS. EDUARDO/JOSEPHINE CHAN, SPS. CALVIN LUTHER/VIOLET GENOTIVA, SPS LEON/EDILINA GO x x x hereby constitute myself/ourselves as Surety of, and bind myself/ourselves solidarily with, GOLDLAND EQUITY, INC., x x x, in accordance with the following terms and conditions:

1. I/We, undertake solidarily to pay the obligations of the DEBTOR to the BANK, x x x in the event the DEBTOR defaults x x x.²³ (Emphasis supplied)

BDO further claimed that it was actually the spouses Genotiva who offered to secure Goldland's loan by executing the subject contract in exchange for the release of Violet's retirement benefits.²⁴ After the bank accepted the offer, Violet's retirement benefits were released.²⁵

However, because Goldland continued to be in default and failed to comply with the terms of the loan, the bank had no other recourse but to exercise its right as creditor to foreclose the subject property.²⁶

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 154-155.

²⁰ Id. at 48.

²¹ Id. at 49.

²² Id.

²³ Id. at 128.

²⁴ Id. at 49.

²⁵ Id. at 49-50.

²⁶ Id. at 50.

As to the spouses Genotiva's deposit of ₱500,000.00, BDO claimed that the same constitutes their admission as to the existence and validity of the principal obligation and the mortgage they subsequently executed.²⁷ As a creditor, BDO properly applied the amount to Goldland's past due interest.²⁸

Ruling of the Regional Trial Court:

In its August 31, 2010 Decision, the RTC held that the subject contract was voidable considering that it was executed by the spouses Genotiva under BDO's undue influence.²⁹ The trial court held that "the freedom of [the spouses Genotiva] to bargain under the circumstances obtaining during the signing of the [subject contract] has been greatly diminished by the superior bargaining power of [BDO] having its hold [on] the retirement benefits of plaintiff Violet."³⁰ Violet, being pressed with financial problems at that time, was left with no choice but to accede to BDO's demands.³¹ Thus, the subject contract was voidable at the instance of the spouses Genotiva.³² The property subject of the mortgage should therefore be released to them.³³

As to the ₱500,000.00, the trial court ordered the amount to be returned to the Genotivas for having been invalidly applied to the interest on Goldland's loan.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, there being preponderance of evidence in favor of Plaintiffs, the Real Estate Mortgage is hereby declared NULL and VOID. The foreclosure of the aforementioned property subject of the mortgage contract is likewise ordered ANNULLED. The defendant is directed to reconvey the property of plaintiff covered by TCT No. 77966 and to restore the title to the plaintiff. Likewise, the defendant bank is directed to return to plaintiff, Calvin Genotiva[,] the amount of P500,000.00 unduly sequestered by defendant, with legal interest effective the filing of this action until fully paid. Further the defendant is directed to pay P50,000.00 as moral damages, P20,000.00 as exemplary damages, [and] P50,000.00 as attorney's fees.

SO ORDERED.³⁴

As an incident of the main case, the spouses Genotiva filed a Motion for Writ of Execution Pending Appeal,³⁵ which was granted by the RTC in its

²⁷ Id.

²⁸ Id.

²⁹ Id. at 40.

³⁰ Id.

³¹ Id.

³² Id. at 41.

³³ Id.

³⁴ Id. at 41-42.

³⁵ Id. at 51.

May 17, 2011 Order.³⁶ In response, BDO filed an Urgent Motion to Stay Discretionary Execution by Posting of Supersedeas Bond, which the trial court denied in its July 11, 2011 Order.³⁷ The bank elevated the May 17, 2011 and July 11, 2011 Orders to the CA,³⁸ which would eventually be denied by the CA in its January 25, 2012 Resolution,³⁹ and on further appeal, dismissed by this Court in its June 13, 2012 Resolution.⁴⁰

Ruling of the Court of Appeals:

In its assailed Decision, the CA granted BDO's appeal and set aside the August 31, 2010 Decision of the RTC.⁴¹ It held that the bank as a creditor has the right to proceed against the spouses Genotiva as sureties:

Under Article 1216 of the New Civil Code, PCI Bank as creditor may proceed against Spouses Genotiva as sureties. PCI Bank's right to collect payment from the surety exists independently of its right to proceed directly against the principal debtor. In fact, the creditor bank may go against the surety alone without prior demand for payment on the principal debtor. Consequently, PCI Bank has the right to withhold Violet Genotiva's retirement benefit since she is one of the sureties of Goldland. To the mind of this Court, the Spouses Genotiva, in executing the real estate mortgage of their property to secure Goldland's obligation so that the retirement benefits be released, agreed to accept what they thought was a lesser of two disadvantages. In such case, they made a choice free and untrammelled and must accordingly abide by it. Thus, the court *a quo* erred in finding the mortgage voidable on the ground that Spouses Genotiva's consent was vitiated by undue influence. x x x⁴² (Citations omitted.)

As to the ₱500,000.00 deposit offered by the Genotivas for redemption purposes, the CA held that BDO, as a creditor, had the option to accept or reject the same.⁴³ Thus, when the bank rejected the offer and applied the said amount to Goldland's due interest, it merely exercised its right as a creditor under the Deed of Suretyship.⁴⁴

The *fallo* of the assailed CA Decision reads:

WHEREFORE, the appeal in CA-G.R. CV No. 02724-MIN and the petition in CA-G.R. SP No. 04424-MIN are **GRANTED**. The Decision dated August 31, 2010 and the Orders dated May 17, 2011 and July 11, 2011 of the Regional Trial Court, 10th Judicial Region, Branch No. 21, Cagayan de Oro City, in Civil Case No. 2003-060 are **SET ASIDE** and a new judgment is

³⁶ Id. at 52.

³⁷ Id.

³⁸ Id.

³⁹ Id. at 53.

⁴⁰ Id. at 73.

⁴¹ Id. at 57.

⁴² Id. at 54.

⁴³ Id. at 56.

⁴⁴ Id.

rendered dismissing Spouses Genotiva's complaint against the Equitable-PCI Bank (presently known as Banco de Oro Unibank, Inc.) for lack of merit.

SO ORDERED.⁴⁵

The Genotivas moved for reconsideration which was, however, denied by the CA in its assailed Resolution.⁴⁶

The Petition:

The couple insist that their consent was vitiated when they signed the subject contract since BDO would not release Violet's retirement benefits if she and her husband will not secure Goldland's loan.⁴⁷ Further, they assert that the ₱500,000.00 deposit intended for the redemption of the subject property was wrongfully credited by BDO to another account as to amount to unjust enrichment.⁴⁸

As for the Deed of Suretyship, the spouses Genotiva argue that their obligation under the contract has already been extinguished through novation in view of BDO's application of the ₱500,000.00 deposit to Goldland's interest.⁴⁹

The Genotivas likewise advert to this Court's June 13, 2012 Resolution which dismissed BDO's petition for *certiorari* in relation to the RTC's grant of their Motion for Writ of Execution Pending Appeal and its denial of BDO's Urgent Motion to Stay Discretionary Execution by Posting of Supersedeas Bond.⁵⁰ They argue that such resolution already resolved the issues in the instant case.⁵¹

In its Comment,⁵² the bank maintains that it did not force, intimidate, or exert undue influence and duress upon the spouses when they executed the subject contract.⁵³ The bank claims that such allegation was merely self-serving and contrary to the evidence on record, as the Genotiva couple in fact voluntarily and knowingly offered the subject property to secure Goldland's loan, as evidenced by the correspondences between the parties.⁵⁴

⁴⁵ Id. at 57.

⁴⁶ Id. at 72.

⁴⁷ Id. at 16-19.

⁴⁸ Id. at 21-23.

⁴⁹ Id. at 23-25.

⁵⁰ Id. at 19-20.

⁵¹ Id. at 20-21.

⁵² Id. at 88-127.

⁵³ Id. at 108.

⁵⁴ Id. at 108-119.

Further, as to the application of the ₱500,000.00 deposit to Goldland's past due interest, BDO posits that it had the option to reject the couple's offer of redemption, which was what it in fact did.⁵⁵ Its application of the deposit to Goldland's loan was merely an exercise of its right as a creditor under the Deed of Suretyship.⁵⁶

Finally, as to the argument on novation, BDO claims that such argument was raised for the first time on appeal and should therefore be disregarded by this Court.⁵⁷

In its Reply,⁵⁸ the spouses Genotiva reiterate that their consent was vitiated⁵⁹ and that the ₱500,000.00 was improperly applied to Goldland's due interest.⁶⁰

Issues:

The issues in this case are (1) whether the subject contract is valid in view of the spouses Genotiva's claim of vitiated consent; and (2) whether BDO has the right to retain the ₱500,000.00 under the Deed of Suretyship.

Our Ruling

The Petition is partly meritorious.

The Subject Contract is valid:

The spouses Genotiva insist that their consent was vitiated by duress or pressure and undue influence. Duress or intimidation is present "when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon [their] person or property, or upon the person or property of [their] spouse, descendants or ascendants, to give [their] consent."⁶¹ For intimidation to vitiate consent, the following requisites must be present:

(1) that the intimidation must be the determining cause of the contract, or must have caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real and serious, there being an evident disproportion between the evil and the resistance which all men can offer, leading to the choice of the contract as the lesser evil; and (4) that it produces reasonable and well-grounded fear from the fact that the person from whom it

⁵⁵ Id. at 119-121.

⁵⁶ Id. at 121.

⁵⁷ Id. at 123.

⁵⁸ Id. at 412-423.

⁵⁹ Id. at 415.

⁶⁰ Id. at 418.

⁶¹ CIVIL CODE, Art. 1335.

comes has the necessary means or ability to inflict the threatened injury. x x x⁶²

Applying the foregoing to this case, it is obvious that BDO's supposed "threat", *i.e.*, its withholding of Violet's retirement benefits, is not the intimidation referred to by law. The records show that the bank was unable to release Violet's clearance for the release of her retirement benefits for the simple reason that she had an existing liability to the bank arising from the Deed of Suretyship that she executed with her husband and other stockholders of Goldland. Clearly, such act is neither unjust nor unlawful. Contrary to the spouses Genotiva's claim that they were intimidated by BDO into signing the subject contract, the records show that it was actually them who "willing[ly]"⁶³ offered to execute the subject contract in exchange for the release of Violet's retirement benefits. In Calvin's December 1, 1998 letter⁶⁴ to BDO, he expressly admitted that:

I know, at this point, the release of the retirement benefits is your prerogative. You merely need to be assured that you are not letting go of "a bird in hand". **I am positive the company's loan with PCIBank will be liquidated in due time but to re-emphasize our need for the release of the money, we are willing to mortgage our house and lot to PCIBank.** Your office in Cagayan de Oro has existing records of the appraisal [of] our property.⁶⁵ (Emphasis retained)

Further, in her December 4, 1998 Letter,⁶⁶ Violet admitted:

To show good faith, my husband offered our house and lot to secure the loan of Goldland Equity, Inc. (GEI), in replacement of my retirement benefit. Please be advised, however, that this is without prejudice to my plan of seeking legal redress for this injustice that PCIBANK is doing to me.⁶⁷ (Emphasis supplied)

It is important to differentiate consent that is reluctantly but freely given, on one hand, from consent that was obtained through duress or any other vice of consent, on the other. Contracts entered into with reluctance are not necessarily voidable. We explained in *Martinez v. Hongkong & Shanghai Banking Corp.*⁶⁸ that:

It is necessary to distinguish between real duress and the motive which is present when one gives his consent reluctantly. A contract is valid even though one of the parties entered into it against his wishes and desires or even against his better judgment. Contracts are also valid even though they are entered into by one of the parties without hope of advantage or profit. x x x⁶⁹

⁶² *De Leon v. Court of Appeals*, 264 Phil. 711, 726 (1990).

⁶³ Records, p. 110.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ *Rollo*, p. 132.

⁶⁷ Id. at 132.

⁶⁸ 15 Phil. 252 (1910).

⁶⁹ Id. at 258.

Here, We fully agree with the appellate court's observation that the Genotivas, in executing the subject contract in exchange for the release of Violet's retirement benefits, agreed to accept what they thought was a better option. Being competent persons with experience in business and banking, they negotiated for the release of Violet's retirement benefits which was unfortunately impeded by her existing liability to the bank. They cannot simply change their minds and assail the validity of the subject contract after they have received the benefits therefrom.

Similarly, there was no undue influence as found by the RTC. There is undue influence "when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice"⁷⁰. We have held that "[f]or undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy [their] free agency, making [them] express the will of another rather than [their] own."⁷¹ There is no evidence of such degree of influence exerted by BDO on the spouses Genotiva in this case. The latter may have desperately needed Violet's retirement benefits, but there was no showing to any degree that they were deprived of free agency when they signed the subject contract. In *Mangahas v. Brobio*,⁷² We held:

Being forced into a situation does not amount to vitiated consent where it is not shown that the party is deprived of free will and choice. Respondent still had a choice: she could have refused to execute the promissory note and resorted to judicial means to obtain petitioner's signature. Instead, respondent chose to execute the promissory note to obtain petitioner's signature, thereby agreeing to pay the amount demanded by petitioner.

The fact that respondent may have felt compelled, under the circumstances, to execute the promissory note will not negate the voluntariness of the act. As rightly observed by the trial court, the execution of the promissory note in the amount of P600,000.00 was, in fact, the product of a negotiation between the parties. Respondent herself testified that she bargained with petitioner to lower the amount: x x x.⁷³ (Emphasis supplied.)

In the same vein, the Genotivas had an option: they could have desisted from offering to mortgage the subject property and resorted to other means, such as through judicial action, to obtain or process the release of Violet's retirement benefits. Instead, they "willing[ly]" mortgaged the subject property to sway BDO to release Violet's retirement benefits. The bank could not be blamed for accepting what appeared to it as a reasonable offer. The fact that the couple felt compelled, under the circumstances, to mortgage the subject property did not negate the voluntariness of their act.

⁷⁰ CIVIL CODE, Art. 1337.

⁷¹ *Mangahas v. Brobio*, 648 Phil. 560, 568 (2010) citing *Carpo v. Chua*, 508 Phil. 462 (2005).

⁷² *Id.*

⁷³ *Id.*

Courts cannot extricate competent persons from the consequences of contracts which are the product of their voluntary acts, as this Court fittingly held in *Vales v. Villa*:⁷⁴

x x x Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome *illegally*. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by then – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation of law*, the commission of what the law knows as an *actionable wrong*, before the courts are authorized to lay hold of the situation and remedy it.⁷⁵

The Genotivas further raise the issue of novation of the Deed of Suretyship. They likewise advert to this Court's June 13, 2012 Resolution. However, the records show that the argument on novation was raised for the first time on appeal. Absent showing of any exception to the rule, We may not consider the same without offending the basic rules of fair play, justice and due process.⁷⁶ As to the Court's June 13, 2012 Resolution, it resolved only the issue of the execution pending appeal and did not dwell on the merits of the case. Consequently, it does not bar the resolution of this case.

**BDO has no right to apply the
₱500,000.00 to Goldland's loan.**

In retaining the ₱500,000.00 and applying the same to the payment of Goldland's interest, BDO invokes its right as a creditor to proceed against the spouses Genotiva who are solidarily liable under the Deed of Suretyship. The right to proceed against a solidary debtor is provided under Article 1216 of the Civil Code:

Article 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) (Emphasis supplied)

In *Palmares v. Court of Appeals*,⁷⁷ We elucidated on the nature of the creditor's right to proceed against the surety who is solidarily liable:

⁷⁴ 35 Phil. 769 (1916).

⁷⁵ Id. at 788.

⁷⁶ *Chinatrust (Phils.) Commercial Bank v. Turner*, 812 Phil. 1, 16 (2017) citing *Vitug v. Abuda*, 776 Phil. 540, (2016) and *Maxicare PCIB CIGNA Healthcare v. Contreras*, 702 Phil. 688 (2013).

⁷⁷ 351 Phil. 664 (1998).

A creditor's right to proceed against the surety exists independently of his right to proceed against the principal. Under Article 1216 of the Civil Code, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The rule, therefore, is that if the obligation is joint and several, the creditor has the right to proceed even against the surety alone. Since, generally, it is not necessary for a creditor to proceed against a principal in order to hold the surety liable, where, by the terms of the contract, the obligation of the surety is the same as that of the principal, then as soon as the principal is in default, the surety is likewise in default, and may be sued immediately and before any proceedings are had against the principal. x x x

We agree with respondent corporation that its mere failure to immediately sue petitioner on her obligation does not release her from liability. Where a creditor refrains from proceeding against the principal, the surety is not exonerated. In other words, mere want of diligence or forbearance does not affect the creditor's rights vis-a-vis the surety, unless the surety requires him by appropriate notice to sue on the obligation. Such gratuitous indulgence of the principal does not discharge the surety whether given at the principal's request or without it, and whether it is yielded by the creditor through sympathy or from an inclination to favor the principal, or is only the result of passiveness. **The neglect of the creditor to sue the principal at the time the debt falls due does not discharge the surety, even if such delay continues until the principal becomes insolvent. x x x⁷⁸** (Citations omitted, emphasis supplied)

As can be deduced above, the right of the creditor to proceed against the surety refers to the right to **sue** the surety independently of the right to sue the principal or the other sureties. By "proceed", the law means to "sue" or to "institute proceedings" for collection or enforcement of the surety contract. This interpretation finds support in Art. 1144 of the Spanish Código Civil of 1889 from which Art. 1216 of the present Civil Code was taken. The official English translation of Art. 1144 reads:

Article 1144. A creditor may **sue** any of the joint and several (solidarios) debtors or all of them simultaneously. The claims instituted against one shall not be an obstacle for those that may be later presented against the others, as long as it does not appear that the debt has been collected in full. (Emphasis supplied)

In *Philippine National Bank v. Macapanga Producers Inc.*,⁷⁹ We explained that the consequence of the surety's being solidarily bound is that the creditor may **sue** any or all of the solidary debtors:

The action joining Plaridel Surety & Insurance as party defendant is justified by the following provisions and cases:

x x x x

⁷⁸ Id. at 685-686.

⁷⁹ 99 Phil. 180 (1956).

Article 1822, invoked by the appellant, provides that 'if the surety bound himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first of this book shall be observed,' that is of book fourth of the Civil Code. **Section fourth of the chapter title, and book mentioned provides that 'a creditor may sue any of the joint debtor or all of them simultaneously.'** (Art. 1144). In conformity with this provision, the sureties Pua Ti and Yap Chatco having bound themselves in solidum (jointly and severally) with the principal debtor Pua Te Ching, the creditor, that is, the Chinese Chamber of Commerce, may sue any of them or all of them simultaneously; which is what the Chinese Chamber of Commerce did in filing suit against the joint and several debtors. (Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil., 406).⁸⁰ (Emphasis supplied)

Obviously, the creditor's right to proceed against the surety does not give him any right to deprive said surety of his property without due process of the law. It does not contemplate a situation where the creditor is allowed to take by force or without consent the property of the surety. Much like collecting from the principal debtor, the creditor may recover only through lawful means. The creditor may not simply take the law in his own hands and summarily take the property of the debtor or surety.

Here, while We agree that the bank is entitled to collect from the spouses Genotiva, they being solidarily liable under the Deed of Suretyship, BDO may not precipitously deprive them of their property without due process of the law. The manner by which it enforced the surety contract violates the basic principle of due process. BDO claims that it rejected the offer for redemption. However, We find nothing on record to support such claim. What is apparent is that after the Genotivas made the offer, BDO responded through its January 31, 2001 Letter⁸¹ simply stating that "[t]he amount of [P]500,000.00 remitted to [BDO] has been applied to past due interest."⁸²

If BDO indeed rejected the offer, the proper course of action for the bank was to return the amount to the spouses Genotiva or inquire if the latter would be interested in applying the payment to Goldland's due interest. BDO may not simply retain the money and apply it to another account under the excuse that it was exercising its right as a creditor to collect from the sureties. Again, while the bank indeed has the right to proceed against the spouses Genotiva, it must do so through lawful means, *i.e.*, through the institution of proceedings for collection or enforcement of the surety contract.

What appears is that BDO took a shortcut in collecting from the Genotivas. It unilaterally set-off the amount of P500,000.00 to answer for Goldland's due interest because the Genotiva couple were solidarily liable for Goldland's loan anyway. However, BDO may not set off the amounts without

⁸⁰ Id. at 182.

⁸¹ *Rollo*, p. 141.

⁸² Id.

the consent of the spouses Genotiva because consent is required for conventional compensation.⁸³ Neither can BDO invoke legal compensation because the same requires each of the debtors to be bound principally,⁸⁴ and in this case, while the spouses Genotiva are directly liable for Goldland's loan, their liability stems not from a principal contract, but a secondary one, *i.e.*, the Deed of Suretyship. Thus, BDO's claim that its retention of the ₱500,000.00 is allowed under the Deed of Suretyship lacks basis. Accordingly, said amount must be returned to the spouses Genotiva as prayed for and as adjudged by the RTC.

In addition, We find the RTC's award of moral damages in the amount of ₱50,000.000 to be proper in light of BDO's unlawful retention resulting to mental anguish on the part of the spouses Genotiva.⁸⁵ They are likewise entitled to attorney's fees in the amount of ₱50,000.00 as they were compelled to litigate to protect their interest.⁸⁶ However, they are not entitled to exemplary damages as there was no evidence that the bank acted in a wanton, fraudulent, reckless, or malevolent manner.⁸⁷

In fine, We find the subject contract to be valid as it was a product of the spouses Genotiva's free will. However, BDO must return the amount of ₱500,000.00 to the Genotivas since it was improperly applied to Goldland's due interest.

WHEREFORE, the Petition is hereby **PARTLY GRANTED**. The March 28, 2014 Decision of the Court of Appeals in CA-G.R. CV NO. 02724-MIN and CA-G.R. SP NO. 04424-MIN is **SET ASIDE** and a new one entered ordering **EQUITABLE-PCI BANK** (now **BANCO DE ORO UNIBANK, INC.**) to pay the following amounts to **SPOUSES CALVIN LUTHER and VIOLET GENOTIVA**:

- (1) Five Hundred Thousand Pesos (₱500,000.00), with interest of twelve percent (12%) *per annum*, computed from the filing of the Complaint on February 18, 2003 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment;
- (2) moral damages in the amount of Fifty Thousand Pesos (₱50,000.00); and
- (3) attorney's fees in the amount of Fifty Thousand Pesos (₱50,000.00).

⁸³ *United Planters Sugar Milling Co., Inc. v. Court of Appeals*, 602 Phil. 13 (2009) citing *Madecor v. Uy*, 415 Phil. 348, 359 (2001).


⁸⁴ CIVIL CODE, Art. 1279 (1).

⁸⁵ CIVIL CODE, Art. 2217.

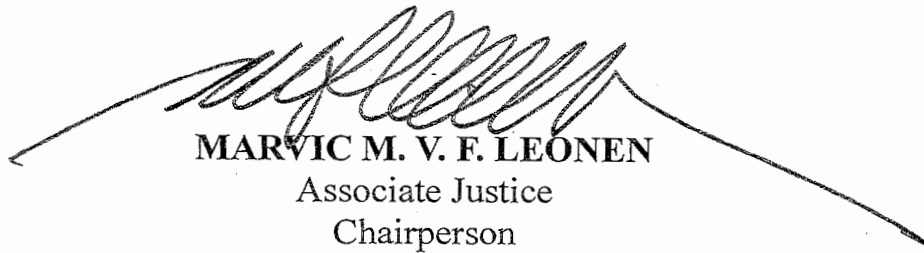
⁸⁶ CIVIL CODE, Art. 2208 (2).

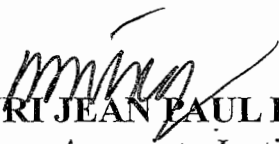
⁸⁷ CIVIL CODE, Art. 2232.


SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

I attest 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's Division.

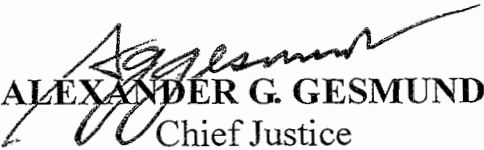


MARVIC M. V. F. LEONEN

Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.



ALEXANDER G. GESMUNDO

Chief Justice

