Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

YULIM INTERNATIONAL COMPANY LTD., JAMES YU, JONATHAN YU, and ALMERICK TIENG LIM, Petitioners,	**G.R. No. 203133**
	Present:
	VELASCO, JR., *J.*, *Chairperson*,
	PERALTA,
	DEL CASTILLO,*
- versus -	VILLARAMA, JR., and
	REYES, *JJ.*
INTERNATIONAL EXCHANGE BANK (now Union Bank of the Philippines), Respondent.	Promulgated:
	February 18, 2015

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DECISION

REYES, *J.*:

In the assailed Decision[1] dated February 1, 2012 in CA-G.R. CV No. 95522, the Court of Appeals (CA) modified the Decision[2] dated December 21, 2009 of the Regional Trial Court (RTC) of Makati City, Branch 145, in Civil Case No. 02-749, holding that James Yu (James), Jonathan Yu (Jonathan) and Almerick Tieng Lim (Almerick), who were capitalist partners in Yulim International Company Ltd. (Yulim), collectively called as the petitioners, were jointly and severally liable with Yulim for its loan obligations with respondent International Exchange Bank (iBank).

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* Acting Member per Special Order No. 1934 dated February 11, 2015 *vice* Associate Justice Francis H. Jardeleza.

1 Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Ramon M. Bato, Jr. and Priscilla J. Baltazar-Padilla concurring; *rollo* pp. 420-431.

2 Issued by Acting Presiding Judge Cesar O. Untalan; id. at 367-372.

The Facts

On June 2, 2000, iBank, a commercial bank, granted Yulim, a domestic partnership, a credit facility in the form of an Omnibus Loan Line for ₱5,000,000.00, as evidenced by a Credit Agreement[3] which was secured by a Chattel Mortgage[4] over Yulim's inventories in its merchandise warehouse at 106 4th Street, 9th Avenue, Caloocan City. As further guarantee, the partners, namely, James, Jonathan and Almerick, executed a Continuing Surety Agreement[5] in favor of iBank.

Yulim availed of its aforesaid credit facility with iBank, as follows:

Promissory Note No.	Face Value	PN Date	Date of Maturity
2110005852	₱ 1,298,926.00	10/26/2000	01/29/2001
2110006026	1,152,963.00	11/18/2000	02/05/2001
2110006344	499,890.00	12/04/2000	03/12/2001
2110006557	798,010.00	12/18/2000	04/23/2001
2110100189	496,521.00	01/11/2001	05/07/2001[6]

The above promissory notes (PN) were later consolidated under a single promissory note, PN No. SADDK001014188, for ₱4,246,310.00, to mature on February 28, 2002.[7] Yulim defaulted on the said note. On April 5, 2002, iBank sent demand letters to Yulim, through its President, James, and through Almerick,[8] but without success. iBank then filed a Complaint for Sum of Money with Replevin[9] against Yulim and its sureties. On August 8, 2002, the Court granted the application for a writ of replevin. Pursuant to the Sheriff's Certificate of Sale dated November 7, 2002,[10] the items seized from Yulim's warehouse were worth only ₱140,000.00, not ₱500,000.00 as the petitioners have insisted.[11]

On October 2, 2002, the petitioners moved to dismiss the complaint insisting that their loan had been fully paid after they assigned to iBank their Condominium Unit No. 141, with parking space, at 20 Landsbergh Place in Tomas Morato Avenue, Quezon City.[12] They claimed that while the pre-selling value of the condominium unit was ₱3.3 Million, its market

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3 Id. at 84.
4 Id. at 92-98.
5 Id. at 90-91.
6 Id. at 195-204.
7 Id. at 177-178.
8 Id. at 205-208.
9 Id. at 66-83.
10 Id. at 192.
11 Id. at 245.
12 Id. at 120-123.

value has since risen to □5.5 Million.[13] The RTC, however, did not entertain the motion to dismiss for non-compliance with Rule 15 of the Rules of Court.

On May 16, 2006, the petitioners filed their Answer reiterating that they have paid their loan by way of assignment of a condominium unit to iBank, as well as insisting that iBank's penalties and charges were exorbitant, oppressive and unconscionable.[14]

Ruling of the RTC

After trial on the merits, the RTC rendered judgment on December 21, 2009, the dispositive portion of which reads, as follows:

> **WHEREFORE**, in view of the foregoing considerations, the Court finds the individual defendants James Yu, Jonathan Yu and Almerick Tieng Lim, not liable to the plaintiff, iBank, hence the complaint against them is hereby DISMISSED for insufficiency of evidence, without pronouncement as to cost.
>
> This court, however, finds defendant corporation Yulim International Company Ltd. liable; and it hereby orders defendant corporation to pay plaintiff the sum of P4,246,310.00 with interest at 16.50% per annum from February 28, 2002 until fully paid plus cost of suit.
>
> The counterclaims of defendants against plaintiff iBank are hereby DISMISSED for insufficiency of evidence.
>
> **SO ORDERED**.[15]

Thus, the RTC ordered Yulim alone to pay iBank the amount of □4,246,310.00, plus interest at 16.50% *per annum* from February 28, 2002 until fully paid, plus costs of suit, and dismissed the complaint against petitioners James, Jonathan and Almerick, stating that there was no iota of evidence that the loan proceeds benefited their families.[16]

The petitioners moved for reconsideration on January 12, 2010;[17] iBank on January 19, 2010 likewise filed a motion for partial reconsideration.[18] In its Joint Order[19] dated March 8, 2010, the RTC denied both motions.

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13 Id. at 58.
14 Id. at 137-145.
15 Id. at 372.
16 Id. at 370.
17 Id. at 277-282.
18 Id. at 283-294.

Ruling of the CA

On March 23, 2010, Yulim filed a Notice of Partial Appeal, followed on March 30, 2010 by iBank with a Notice of Appeal.

Yulim interposed the following as errors of the court *a quo*:

> I. THE LOWER COURT ERRED IN ORDERING [YULIM] TO PAY [iBANK] THE AMOUNT OF P4,246,310.00 WITH INTEREST AT 16.5% PER ANNUM FROM FEBRUARY 28, 2002 UNTIL FULLY PAID.
>
> II. THE LOWER COURT ERRED IN NOT ORDERING [iBANK] TO PAY ATTORNEY'S FEES, MORAL DAMAGES AND EXEMPLARY DAMAGES.[20]

For its part, iBank raised the following as errors of the RTC:

> I. THE TRIAL COURT ERRED IN NOT HOLDING INDIVIDUAL [PETITIONERS JAMES, JONATHAN AND ALMERICK] SOLIDARILY LIABLE WITH [YULIM] ON THE BASIS OF THE CONTINUING SURETYSHIP AGREEMENT EXECUTED BY THEM.
>
> II. THE TRIAL COURT ERRED IN NOT HOLDING ALL THE [PETITIONERS] LIABLE FOR PENALTY CHARGES UNDER THE CREDIT AGREEMENT AND PROMISSORY NOTES SUED UPON.
>
> III. THE TRIAL COURT ERRED IN NOT HOLDING [THE PETITIONERS] LIABLE TO [iBANK] FOR ATTORNEY'S FEES AND INDIVIDUAL [PETITIONERS] JOINTLY AND SEVERALLY LIABLE WITH [YULIM] FOR COSTS OF SUIT INCURRED BY [iBANK] IN ORDER TO PROTECT ITS RIGHTS.[21]

Chiefly, the factual issue on appeal to the CA, raised by petitioners James, Jonathan and Almerick, was whether Yulim's loans have in fact been extinguished with the execution of a Deed of Assignment of their condominium unit in favor of iBank, while the corollary legal issue, raised by iBank, was whether they should be held solidarily liable with Yulim for its loans and other obligations to iBank.

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19 Id. at 311-312.
20 Id. at 399.
21 Id. at 335-336.

The CA ruled that the petitioners failed to prove that they have already paid Yulim's consolidated loan obligations totaling □4,246,310.00, for which it issued to iBank PN No. SADDK001014188 for the said amount. It held that the existence of a debt having been established, the burden to prove with legal certainty that it has been extinguished by payment devolves upon the debtors who have offered such defense. The CA found the records bereft of any evidence to show that Yulim had fully settled its obligation to iBank, further stating that the so-called assignment by Yulim of its condominium unit to iBank was nothing but a mere temporary arrangement to provide security for its loan pending the subsequent execution of a real estate mortgage. Specifically, the CA found nothing in the Deed of Assignment which could signify that iBank had accepted the said property as full payment of the petitioners' loan. The CA cited *Manila Banking Corporation v. Teodoro, Jr.*[22] which held that an assignment to guarantee an obligation is in effect a mortgage and not an absolute conveyance of title which confers ownership on the assignee.

Concerning the solidary liability of petitioners James, Jonathan and Almerick, the CA disagreed with the trial court's ruling that it must first be shown that the proceeds of the loan redounded to the benefit of the family of the individual petitioners before they can be held liable. Article 161 of the Civil Code and Article 121 of the Family Code cited by the RTC apply only where the liability is sought to be enforced against the conjugal partnership itself. In this case, regardless of whether the loan benefited the family of the individual petitioners, they signed as sureties, and iBank sought to enforce the loan obligation against them as sureties of Yulim.

Thus, the appellate court granted the appeal of iBank, and denied that of the petitioners, as follows:

> **WHEREFORE**, the foregoing considered, [iBank's] appeal is **PARTLY GRANTED** while [the petitioners'] appeal is **DENIED**. Accordingly, the appealed decision is hereby **MODIFIED** in that [petitioners] James Yu, Jonathan Yu and A[l]merick Tieng Lim are hereby held jointly and severally liable with defendant-appellant Yulim for the payment of the monetary awards. The rest of the assailed decision is **AFFIRMED**.
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> **SO ORDERED.**[23]

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22 G.R. No. 53955, January 13, 1989, 169 SCRA 95.

23 *Rollo*, pp. 430-431.

Petition for Review to the Supreme Court

In the instant petition, the following assigned errors are before this Court:

> 1. The CA erred in ordering petitioners James, Jonathan and Almerick jointly and severally liable with petitioner Yulim to pay iBank the amount of □4,246,310.00 with interest at 16.5% *per annum* from February 28, 2002 until fully paid.
>
> 2. The CA erred in not ordering iBank to pay the petitioners moral damages, exemplary damages, and attorney's fees.[24]

The petitioners insist that they have paid their loan to iBank. They maintain that the letter of iBank to them dated May 4, 2001, which "expressly stipulated that the petitioners shall execute a Deed of Assignment over one condominium unit No. 141, 3rd Floor and a parking slot located at 20 Landsbergh Place, Tomas Morato Avenue, Quezon City," was with the understanding that the Deed of Assignment, which they in fact executed, delivering also to iBank all the pertinent supporting documents, would serve to totally extinguish their loan obligation to iBank. In particular, the petitioners state that it was their understanding that upon approval by iBank of their Deed of Assignment, the same "shall be considered as full and final payment of the petitioners' obligation." They further assert that iBank's May 4, 2001 letter expressly carried the said approval.

The petitioner invoked Article 1255 of the Civil Code, on **payment by cession,** which provides:

> Art. 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.

Ruling of the Court

The petition is bereft of merit.

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24 Id. at 55.

Firstly, the individual petitioners do not deny that they executed the Continuing Surety Agreement, wherein they *"jointly and severally with the PRINCIPAL [Yulim], hereby unconditionally and irrevocably guarantee full and complete payment when due, whether at stated maturity, by acceleration, or otherwise, of any and all credit accommodations that have been granted"* to Yulim by iBank, including interest, fees, penalty and other charges.[25] Under Article 2047 of the Civil Code, these words are said to describe a contract of suretyship. It states:

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

In a contract of suretyship, one lends his credit by joining in the principal debtor's obligation so as to render himself directly and primarily responsible with him without reference to the solvency of the principal.[26] According to the above Article, if a person binds himself solidarily with the principal debtor, the provisions of Articles 1207 to 1222, or Section 4, Chapter 3, Title I, Book IV of the Civil Code on joint and solidary obligations, shall be observed. Thus, where there is a concurrence of two or more creditors or of two or more debtors in one and the same obligation, Article 1207 provides that among them, "*[t]here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.*"

"A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable."[27] And it is well settled that when the obligor or obligors undertake to be "jointly and severally" liable, it means that the obligation is solidary,[28] as in this case. There can be no mistaking the same import of Article I of the Continuing Surety Agreement executed by the individual petitioners:

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25 Id. at 90.

26 *See Palmares v. CA*, 351 Phil. 664 (1998).

27 *Philippine National Bank v. Hon. Pineda, etc., et al.,* 274 Phil. 274, 282 (1991).

28 *Crystal v. Bank of the Philippine Islands*, G.R. No. 172428, November 28, 2008, 572 SCRA 697, 703. *See* also *Escano v. Ortigas, Jr.*, 553 Phil. 24 (2007).

ARTICLE I

LIABILITIES OF SURETIES

SECTION 1.01. The SURETIES, jointly and severally with the PRINCIPAL, hereby unconditionally and irrevocably guarantee full and complete payment when due, whether at stated maturity, by acceleration, or otherwise, of any and all credit accommodations that have been granted or may be granted, renewed and/or extended by the BANK to the PRINCIPAL.

The liability of the SURETIES shall not be limited to the maximum principal amount of FIVE MILLION PESOS (□5,000,000.00) but shall include interest, fees, penalty and other charges due thereon.

SECTION 1.02. This INSTRUMENT is a guarantee of payment and not merely of collection and is intended to be a perfect and continuing indemnity in favor of the BANK for the amounts and to the extent stated above.

The liability of the SURETIES shall be direct, immediate and not contingent upon the pursuit of the BANK of whatever remedies it may have against the PRINCIPAL of the other securities for the Accommodation.[29]

Thereunder, in addition to binding themselves "*jointly and severally*" with Yulim to "*unconditionally and irrevocably guarantee full and complete payment*" of any and all credit accommodations that have been granted to Yulim, the petitioners further warrant that their liability as sureties "*shall be direct, immediate and not contingent upon the pursuit [by] the BANK of whatever remedies it may have against the PRINCIPAL of other securities.*" There can thus be no doubt that the individual petitioners have bound themselves to be solidarily liable with Yulim for the payment of its loan with iBank.

As regards the petitioners' contention that iBank in its letter dated May 4, 2001 had "accepted/approved" the assignment of its condominium unit in Tomas Morato Avenue as full and final payment of their various loan obligations, the Court is far from persuaded. On the contrary, what the letter accepted was only the collaterals provided for the loans, as well as the consolidation of the petitioners' various PN's under one PN for their aggregate amount of □4,246,310.00. The letter goes on to spell out the terms of the new PN, such as, that its expiry would be February 28, 2002 or a term of 360 days, that interest would be due every 90 days, and that the rate would be based on the 91-day Treasury Bill rate or other market reference.

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29 *Rollo*, p. 90.

Nowhere can it be remotely construed that the letter even intimates an understanding by iBank that the Deed of Assignment would serve to extinguish the petitioners' loan. Otherwise, there would have been no need for iBank to mention therein the three "collaterals" or "supports" provided by the petitioners, namely, the Deed of Assignment, the Chattel Mortgage and the Continuing Surety Agreement executed by the individual petitioners. In fact, Section 2.01 of the Deed of Assignment expressly acknowledges that it is a mere "*interim security for the repayment of any loan granted and those that may be granted in the future by the BANK to the ASSIGNOR and/or the BORROWER, for compliance with the terms and conditions of the relevant credit and/or loan documents thereof.*"[30] The condominium unit, then, is a mere temporary security, not a payment to settle their promissory notes.[31]

Even more unmistakably, Section 2.02 of the Deed of Assignment provides that as soon as title to the condominium unit is issued in its name, Yulim shall "*immediately execute the necessary Deed of Real Estate Mortgage in favor of the BANK to secure the loan obligations of the ASSIGNOR and/or the BORROWER.*"[32] This is a plain and direct acknowledgement that the parties really intended to merely constitute a real estate mortgage over the property. In fact, the Deed of Assignment expressly states, by way of a resolutory condition concerning the purpose or use of the Deed of Assignment, that after the petitioners have delivered or caused the delivery of their title to iBank, the Deed of Assignment shall then become **null and void**. Shorn of its legal efficacy as an interim security, the Deed of Assignment would then become *functus officio* once title to the condominium unit has been delivered to iBank. This is so because the petitioners would then execute a Deed of Real Estate Mortgage over the property in favor of iBank as security for their loan obligations.

Respondent iBank certainly does not share the petitioners' interpretation of its May 4, 2001 letter. Joy Valerie Gatdula, Senior Bank Officer of iBank and the Vice President of iBank's Commercial Banking Group, declared in her testimony that the purpose of the Deed of Assignment was merely to serve as collateral for their loan:

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30 Section 2.01. This ASSIGNMENT is executed as an interim security for the repayment of any loan granted and those that may be granted in the future by the BANK to the ASSIGNOR and/or the BORROWER, for compliance with the terms and conditions of the relevant credit and/or loan documents thereof x x x.

31 *Rollo*, pp. 427-428.

32 Section 2.02. The ASSIGNOR hereby warrants and undertakes that as soon as title to the Assigned Property is issued in its name, it shall immediately execute the necessary Deed of Real Estate Mortgage in favor of the BANK to secure the loan obligations of the ASSIGNOR and/or the BORROWER. Likewise, it undertakes to deliver or cause the delivery of the covering title to the Assigned Property in favor of the BANK. In such event, this Deed of Assignment shall become null and void." (Underlining ours)

Q: And during the time that the defendant[,] James Yu[,] was negotiating with your bank, [is it] not a fact that the defendant offered to you a [condominium] unit so that – that will constitute full payment of his obligation?
A: No ma'am. It was not offered that way. It was offered as security or collateral to pay the outstanding loans. But the premise is, that he will pay x x x in cash. So, that property was offered as a security or collateral.

Q: That was your position?
A: That was the agreement and that was how the document was signed. It was worded out[.]

x x x x

Q: Do you remember if a real estate mortgage was executed over this property that was being assigned to the plaintiff?
A: To my recollection, none at all.

Q: Madam Witness, this Deed of Assignment was considered as full payment by the plaintiff bank, what document was executed by the plaintiff bank?
A: It should have been a Dacion en Pago.

Q: Was there such document executed in this account?
A: None.[33]

To stress, the assignment being in its essence a mortgage, it was but a security and not a satisfaction of the petitioners' indebtedness.[34] Article 1255[35] of the Civil Code invoked by the petitioners contemplates the existence of two or more creditors and involves the assignment of the entire debtor's property, not a *dacion en pago*.[36] Under Article 1245 of the Civil Code, "[*d*]*ation* in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law on sales." Nowhere in the Deed of Assignment can it be remotely said that a sale of the condominium unit was contemplated by the parties, the consideration for which would consist of the amount of outstanding loan due to iBank from the petitioners.

WHEREFORE, premises considered, the petition is **DENIED**.

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33 *Rollo*, p. 427.
34 *Philippine Bank of Commerce v. De Vera*, 116 Phil. 1326, 1329 (1962).
35 Art. 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.
36 *DBP v. CA*, 348 Phil. 15, 29-30 (1998).

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice