Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GO TONG ELECTRICAL SUPPLY CO., INC. and GEORGE C. GO, Petitioners,	**G.R. No. 187487**
- versus -	Present: SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
BPI FAMILY SAVINGS BANK, INC., substituted by PHILIPPINE INVESTMENT ONE [SPV-AMC], INC.,* Respondent.	Promulgated: JUN 29 2015

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 17, 2009 and the Resolution[3] dated April 13, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 86749 which affirmed the Decision[4] dated September 6, 2005 of the Regional Trial Court of Makati City, Branch 143 (RTC) in Civil Case No. 02-1203, an action for collection of sum of money, rendered in favor of respondent BPI Family Savings Bank, Inc. (respondent).

The Facts

On October 4, 2002, respondent filed a complaint[5] against petitioners Go Tong Electrical Supply Co., Inc. (Go Tong Electrical) and its President, George C. Go (Go; collectively petitioners), docketed as Civil Case No. 02-

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* See respondent's Manifestation with Motion for Substitution with annexes (*rollo*, pp. 197-202), which the Court granted in a Resolution dated January 27, 2010 (id. at 208).

1 Id. at 11-30.

2 Id. at 38-46. Penned by Associate Justice Jose Catral Mendoza (now a Member of the Court) with Associate Justices Portia Aliño-Hormachuelos and Ramon M. Bato, Jr. concurring.

3 Id. at 48.

4 Id. at 123-128. Penned by Presiding Judge Zenaida T. Galapate-Laguilles.

5 Dated September 2, 2002; id. at 49-53.

1203, seeking that the latter be held jointly and severally liable to it for the payment of their loan obligation in the aggregate amount of □87,086,398.71, inclusive of the principal sum, interests, and penalties as of May 28, 2002, as well as attorney's fees, litigation expenses, and costs of suit.[6] As alleged by respondent, as early as 1996, Go Tong Electrical had applied for and was granted financial assistance by the then Bank of South East Asia (BSA). Subsequently, DBS[7] Bank of the Philippines, Inc. (DBS) became the successor-in-interest of BSA. The application for financial assistance was renewed on January 6, 1999 through a Credit Agreement.[8] On even date, Go Tong Electrical, represented by Go, among others, obtained a loan from DBS in the principal amount of □40,491,051.65, for which Go Tong Electrical executed Promissory Note No. 82-91-00176-7[9] (PN) for the same amount in favor of DBS, maturing on February 5, 2000.[10] Under the PN's terms, Go Tong Electrical bound itself to pay a default penalty interest at the rate of one percent (1%) per month in addition to the current interest rate,[11] as well as attorney's fees equivalent to twenty-five percent (25%) of the amount sought to be recovered.[12] As additional security, Go executed a Comprehensive Surety Agreement[13] (CSA) covering any and all obligations undertaken by Go Tong Electrical, including the aforesaid loan.[14] Upon default of petitioners, DBS – and later, its successor-in-interest, herein respondent[15] – demanded payment from petitioners,[16] but to no avail,[17] hence, the aforesaid complaint.

In their Answer with Counterclaim[18] (Answer), petitioners merely stated that they "specifically deny"[19] the allegations under the complaint. Of particular note is their denial of the execution of the loan agreement, the PN, and the CSA "for being self-serving and pure conclusions intended to suit [respondent's] purposes."[20] By way of special and affirmative defenses, petitioners argued, among others, that: (*a*) the real party-in-interest should be DBS and not respondent; (*b*) no demand was made upon them; and (*c*) Go cannot be held liable under the CSA since there was supposedly no solidarity of debtors.[21] Petitioners further interposed counterclaims for the payment of moral and exemplary damages, as well as litigation and attorney's fees in the total amount of □1,250,000.00.[22]

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6 Id. at 52.
7 Mentioned as "Development Bank of Singapore" in the letters dated July 1, 2002 and July 12, 2002. See id. at 107 and 108.
8 Id. at 100-101.
9 Id. at 102-104.
10 Id. at 50.
11 See id. at 102.
12 See id. at 103. See also id. at 50-51.
13 Dated January 6, 1996; id. at 105-106.
14 Id. at 51.
15 See id. at 49. See Certificate of Filing of the Articles and Plan of Merger; id. at 68.
16 See Demand Letters dated July 1, 2002; id. at 107, and July 12, 2002; id. at 108.
17 Id. at 51.
18 Dated December 19, 2002; id. at 57-62.
19 Id. at 57.
20 Id. at 57-58.
21 Id. at 58-59.
22 Id. at 59.

During trial, respondent presented Ricardo O. Suñio[23] (Suñio), the Account Officer handling petitioners' loan accounts, as its witness. Sunio attested to the existence of petitioners' loan obligation in favor of respondent,[24] and identified a Statement of Account[25] which shows the amount due as of June 16, 2004 as follows:

SUMMARY	
PRINCIPAL	□ 40,491,051.65
PAST DUE INTEREST	□ 31,437,800.28
PENALTY	□ 47,473,042.27
SUB-TOTAL	□119,401,894.20
PLUS	
UNPAID INTEREST	□ 1,805,507.21
UNPAID PENALTY	□ 1,776,022.80
SUB-TOTAL	□122,983,424.21
LESS: PAYMENTS	**- 1,877,286.08**
	□121,106.138.13[26]

On cross-examination, Suñio nonetheless admitted that he had no knowledge of how the PN was prepared, executed, and signed, nor did he witness its signing.[27]

For their part, petitioners presented Go Tong Electrical's Finance Officer, Jocelyn Antonette Lim, who testified that Go Tong Electrical was able to pay its loan, albeit partially. However, she admitted that she does not know how much payments were made, nor does she have a rough estimate thereof, as these were allegedly paid for in dollars.[28]

The RTC Ruling

In a Decision[29] dated September 6, 2005, the RTC ruled in favor of respondent, thereby ordering petitioners to jointly and severally pay the former: (*a*) the principal sum of □40,491,051.65, with legal interest to be reckoned from the filing of the Complaint; (*b*) penalty interest of one percent (1%) per month until the obligation is fully paid; and (*c*) attorney's fees in the sum of □50,000.00.[30]

It found that respondent had amply demonstrated by competent evidence that it was entitled to the reliefs it prayed for. Particularly, respondent's documentary evidence – the authenticity of which the RTC observed to be undisputed – showed the existence of petitioners' valid and

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23 "Sunio" in some parts of the *rollo*.
24 *Rollo*, p. 78.
25 Respondent formally offered as Exhibit "G" the aforesaid Statement of Account. See Id. at 109-112.
26 Id. at 112; emphasis supplied.
27 Id. at 124-125.
28 Id. at 125-126.
29 Id. at 123-128.
30 Id. at 128.

demandable obligation. On the other hand, petitioners failed to discharge the burden of proving that they had already paid the same, even partially.[31] Further, the RTC debunked petitioners' denial of the demands made by respondent since, ultimately, the Credit Agreement, PN, and CSA clearly stated that no demand was needed to render them in default.[32] Likewise, the argument that Go could not be held solidarily liable was not sustained since he bound himself as a surety under the CSA, which was executed precisely to induce respondent's predecessor-in-interest, DBS, to grant the loan.[33] Separately, the RTC found the penalty interest at three percent (3%) per month sought by respondent to be patently iniquitous and unconscionable and thus, was reduced to twelve percent (12%) per annum, or one percent (1%) per month. Attorney's fees were also tempered to the reasonable amount of □50,000.00.[34]

Unconvinced, petitioners appealed[35] to the CA.

The CA Ruling

In a Decision[36] dated February 17, 2009, the CA sustained the RTC's ruling *in toto*, finding the following facts to be beyond cavil: (*a*) that Go Tong Electrical applied for and was granted a loan accommodation from DBS in the amount of □40,491,051.65 after the execution of the Credit Agreement and the PN dated January 6, 1999, maturing on February 5, 2000; (*b*) that as additional security, Go executed the CSA binding himself jointly and severally to pay the obligation of Go Tong Electrical; and (*c*) that petitioners failed to pay the loan obligation upon maturity, despite written demands from then DBS, now, herein respondent.[37] In this relation, the CA discredited petitioners' argument that respondent's sole witness, Suñio, was incompetent to testify on the documentary evidence presented as he had no personal knowledge of the loan documents' execution,[38] given that petitioners, in their Answer, did not deny under oath the genuineness and due execution of the PN and CSA and, hence, are deemed admitted under Section 8, Rule 8 of the Rules of Court (Rules).[39] Besides, the CA observed that, despite the aforesaid admission, respondent still presented the testimony of Suñio who, having informed the court that the loan documents were in his legal custody as the designated Account Officer when DBS merged with herein respondent, had personal knowledge of the existence of the loan documents.[40] It added that, although he was not privy to the

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31 See id. at 126.
32 See id. at 126-127.
33 See id. at 127.
34 See id. at 127-128.
35 See Appellant's Brief dated August 18, 2006; id. at 129-147.
36 Id. at 38-46.
37 Id. at 43.
38 Id. at 41.
39 Id. at 43-44.
40 Id. at 44.

execution of the same, it does not significantly matter as their genuineness and due execution were already admitted.[41]

Petitioners filed a motion for reconsideration,[42] which was, however, denied in a Resolution[43] dated April 13, 2009, hence, this petition.

The Issue Before The Court

The issue for the Court's resolution is whether or not the CA erred in upholding the RTC's ruling.

The Court's Ruling

The petition lacks merit.

The Court concurs with the CA Decision holding that the genuineness and due execution of the loan documents in this case were deemed admitted by petitioners under the parameters of Section 8, Rule 8 of the Rules which provides:

> SEC. 8. *How to contest such documents.* — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument **shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts***;* but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (Emphasis supplied)

A reading of the Answer shows that petitioners failed to specifically deny the execution of the Credit Agreement, PN, and CSA under the auspices of the above-quoted rule. The mere statement in paragraph 4 of their Answer, *i.e.*, that they "specifically deny" the pertinent allegations of the Complaint "for being self-serving and pure conclusions intended to suit plaintiff's purposes,"[44] does not constitute an effective specific denial as contemplated by law.[45] Verily, a denial is not specific simply because it is so qualified by the defendant. Stated otherwise, a general denial does not become specific by the use of the word "specifically."[46] Neither does it

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41 Id. at 45.

42 Dated March 19, 2009; id. at 180-185.

43 Id. at 48.

44 Id. at 57-58.

45 The other invoked affirmative defense of petitioners that respondent is not a real party-in-interest, aside from not being a specific denial of a factual allegation, has, on its own account, no merit, considering that petitioner had not sufficiently disproved the merger of DBS and respondent. Thus, as the surviving corporation in the merger, respondent is DBS's successor-in-interest, which maintains the right to enforce the loan obligation and hence, a real party-in-interest in this case. See Paragraph 6 of the Answer; id. at 58. See also petition; id. at 28.

46 *Camitan v. CA*, 540 Phil. 377, 386 (2006).

become so by the simple expedient of coupling the same with a broad conclusion of law that the allegations contested are "self-serving" or are intended "to suit plaintiff's purposes."

In *Permanent Savings & Loan Bank v. Velarde*[47] (*Permanent Savings & Loan Bank*), citing the earlier case of *Songco v. Sellner*,[48] the Court expounded on how to deny the genuineness and due execution of an actionable document, *viz.*:

> This means that the defendant **must declare under oath that he did not sign the document or that it is otherwise false or fabricated**. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either.[49] (Emphasis supplied)

To add, Section 8, Rule 8 of the Rules further requires that the defendant "**sets forth what he claims to be the facts**," which requirement, likewise, remains absent from the Answer in this case.

Thus, with said pleading failing to comply with the "specific denial under oath" requirement under Section 8, Rule 8 of the Rules, the proper conclusion, as arrived at by the CA, is that petitioners had impliedly admitted the due execution and genuineness of the documents evidencing their loan obligation to respondent.

To this, case law enlightens that "[t]he admission of the genuineness and due execution of a document means that the party whose signature it bears admits that he voluntarily signed the document or it was signed by another for him and with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formalities required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Also, **it effectively eliminated any defense relating to the authenticity and due execution of the document**, *e.g.*, that the document was spurious, counterfeit, or of different import on its face as the one executed by the parties; or that the signatures appearing thereon were forgeries; or that the signatures were unauthorized."[50]

Accordingly, with petitioners' admission of the genuineness and due execution of the loan documents as above-discussed, the competence of respondent's witness Suñio to testify in order to authenticate the same is

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47 482 Phil. 193 (2004).
48 37 Phil. 254, 256 (1917).
49 *Permanent Savings & Loan Bank v. Velarde*, supra note 47, at 202.
50 Id. at 202-203; emphasis supplied.

therefore of no moment. As the Court similarly pointed out in *Permanent Savings & Loan Bank*, "[w]hile Section [20],[51] Rule 132 of the [Rules] requires that private documents be proved of their due execution and authenticity before they can be received in evidence, *i.e.*, presentation and examination of witnesses to testify on this fact; in the present case, **there is no need for proof of execution and authenticity with respect to the loan documents because of respondent's implied admission thereof**."[52]

The Court clarifies that while the "[f]ailure to deny the genuineness and due execution of an actionable document does not preclude a party from arguing against it by evidence of fraud, mistake, compromise, payment, statute of limitations, *estoppel* and want of consideration [nor] bar a party from raising the defense in his answer or reply and prove at the trial that there is a mistake or imperfection in the writing, or that it does not express the true agreement of the parties, or that the agreement is invalid or that there is an intrinsic ambiguity in the writing,"[53] none of these defenses were adequately argued or proven during the proceedings of this case.

Of particular note is the affirmative defense of payment raised during the proceedings *a quo*. While petitioners insisted that they had paid, albeit partially, their loan obligation to respondent, the fact of such payment was never established by petitioners in this case. Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it; the burden rests on the defendant, *i.e.*, petitioners, to prove payment, rather than on the plaintiff, *i.e.*, respondent, to prove non-payment. When the creditor is in possession of the document of credit, proof of non-payment is not needed for it is presumed.[54] Here, respondent's possession of the Credit Agreement, PN, and CSA, especially with their genuineness and due execution already having been admitted, cements its claim that the obligation of petitioners has not been extinguished. Instructive too is the Court's disquisition in *Jison v. CA*[55] on the evidentiary burdens attendant in a civil proceeding, to wit:

> Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own

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51 SEC. 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or
(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

52 *Permanent Savings & Loan Bank v. Velarde*, supra note 47, at 203; emphasis supplied.

53 *Republic of the Phils. v. CA*, 357 Phil. 174, 186 (1998).

54 *Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 96-97.

55 350 Phil. 138 (1998).

> evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[56]

Finally, the Court finds as untenable petitioners' theory on Go's supposed non-liability. As established through the CSA, Go had clearly bound himself as a surety to Go Tong Electrical's loan obligation. Thus, there is no question that Go's liability thereto is solidary with the former. As provided in Article 2047[57] of the Civil Code, "the surety undertakes to be bound solidarily with the principal obligor. That undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. Let it be stressed that notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking,"[58] as Go in this case.

However, while petitioners' liability has been upheld in this case, the Court finds it proper to modify the RTC's ruling, as affirmed by the CA, with respect to the following:

First, the partial payment made by Go Tong Electrical on June 16, 2004 in the amount of ₱1,877,286.08, as admitted by respondent through a Statement of Account,[59] formally offered as Exhibit "G" and duly identified by Suñio during trial, should be deducted from the principal amount of ₱40,491,051.65 due respondent.

Second, with respect to the interests and penalties:

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56 Id. at 173.

57 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.

58 *Asset Builders Corp. v. Stronghold Insurance Company, Inc.*, 647 Phil. 692, 703 (2010).

59 The Statement of Account prepared by Account Officer Suñio and noted by Market Head Ma. Cristina F. Asis disclosed the amount due respondent as of June 16, 2004, as follows:

SUMMARY	
PRINCIPAL	₱ 40,491,051.65
PAST DUE INTEREST	₱ 31,437,800.28
PENALTY	₱ 47,473,042.27
SUB-TOTAL	₱119,401,894.20
PLUS	
UNPAID INTEREST	₱ 1,805,507.21
UNPAID PENALTY	₱ 1,776,022.80
SUB-TOTAL	₱122,983,424.21
LESS: PAYMENTS	**- 1,877,286.08**
	₱121,106,138.13 (See *rollo*, p. 112; emphasis supplied)

(*a*) petitioners should be held liable for the twenty percent (20%) per annum stipulated interest rate reckoned 31 days from January 6, 1999, as agreed upon in the PN,[60] until its maturity date on February 5, 2000, which period is regarded as the initial period in said PN. Said interest rate should be upheld as this was stipulated by the parties, and the rate cannot be considered unconscionable.[61] The same shall be computed based on the entire principal amount due, *i.e.*, □40,491,051.65, since the records disclose that the admitted partial payment of □1,877,286.08 was still unpaid before the complaint was filed on October 4, 2002,[62] or before the February 5, 2000 maturity date; and

(*b*) the reduced interest rate of one percent (1%) per month and penalty rate of one percent (1%) per month are upheld,[63] but should accrue from the PN's February 5, 2000 maturity date[64] until June 16, 2004, or the date when the partial payment of □1,877,286.08 has been made by Go Tong Electrical, and computed based on the entire principal amount of □40,491,051.65. Interest and penalty, at the same reduced rate, due thereafter (*i.e.*, from June 17, 2004 until full payment) shall be computed based on the net amount of □38,613,765.57 (*i.e.*, the amount arrived at after deducting the partial payment of □1,877,286.08 from the principal amount of □40,491,051.65).

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60 Id. at 102. See PN dated January 6, 1999, the pertinent portion of which provides:

> a. The Borrower agrees to pay interest on the outstanding principal amount of this Note for each 31-day period commencing on the date hereof until maturity date (each such period, an interest period), such interest to be payable on the last day of each such interest period. The interest on the outstanding principal amount of this Note shall be computed (i) for the initial interest period; at the rate of 20% per annum, and (ii) for each succeeding interest period; at the rate determined by the Lender and advised to the Borrower on the first day of each succeeding interest period. If the Borrower finds the interest rate unacceptable, the Borrower shall have the right to prepay the outstanding loan (not later than the second banking day of the then current interest period) without premium or penalty. The failure of the Borrower to make such prepayment within the said period shall be deemed to be an acceptance of the Borrower to the new interest rate.
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> b. Default Penalty. If the Borrower fails to make payment of any amount payable by it hereunder or under this Note when due (whether at the stated maturity, by acceleration or otherwise), the Borrower shall pay default interest on such past due and unpaid amount from the due date until paid in full at the rate equal to 1% per month, in addition to the then current interest rate.
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> x x x x

61 *Villanueva v. CA,* 671 Phil. 467 (2011), citing *Sps. Bacolor v. Banco Filipino savings and Mortgage Bank Dagupan City Branch*, 544 Phil. 18, 27 (2007), and *Garcia v. CA*, 249 Phil. 739, 756 (1988).

62 See complaint dated September 2, 2002; *rollo*, p. 49-52.

63 See RTC Decision dated September 6, 2005; id. at 128.

64 Id. at 127. This is in light of the finding of the RTC that:

> The Credit Agreement clearly states that "the Borrower shall be in default without need for notice, demand or presentment." The Promissory Note likewise contains the same caveat: **"Presentment for payment, demand and notice of dishonor waived."** The Comprehensive Surety Agreement likewise states: "**The undersigned hereby waives x x x in giving any notice to or making any claim or demand hereunder upon the undersigned."** Clearly there is really no need for the plaintiff to demand payment from the borrower and surety for payment when the obligation became due and demandable."

WHEREFORE, the petition is **DENIED**. The Decision dated February 17, 2009 and the Resolution dated April 13, 2009 of the Court of Appeals in CA-G.R. CV No. 86749 are hereby **AFFIRMED** with the above-stated **MODIFICATIONS**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice