

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**MARIO C. TAN and ERLINDA S. TAN,**

Petitioners,

- versus -

**UNITED COCONUT PLANTERS BANK,**

Respondent.

**G.R. No. 213156**

**Present:**

CARPIO, J., *Chairperson*,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J. JR., and  
LAZARO-JAVIER, JJ.

**Promulgated:**

29 JUL 2019

*M. Cabalag*

**DECISION**

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

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court are the February 28, 2013 Decision<sup>2</sup> and the June 23, 2014 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 96652 which affirmed the trial court's dismissal of petitioners' complaint for specific performance and damages against respondent United Coconut Planters Bank (UCPB).

<sup>1</sup> *Rollo*, Vol. I, pp. 8-73.

<sup>2</sup> Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr., concurring; *rollo*, Vol. I, pp. 75-87.

<sup>3</sup> *Id.* at 89-90.

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### Facts

Petitioners spouses Mario C. Tan (Mario) and Erlinda S. Tan (spouses Tan) were pioneer clients of UCPB. Since the 1980's, they continuously availed of credit lines from UCPB.<sup>4</sup>

On August 16, 2001, spouses Tan were granted by UCPB an omnibus credit line in an amount not exceeding ₱300 Million.

This ₱300 Million credit line was also made available as an accommodation to several other parties, namely: (1) Lory Tan (Lory); (2) Evelyn Tan (Evelyn); (3) Allied Distributor; (4) Isabela Washington Lumber Hardware & Electrical Supply; and (5) Beatriz Siok Ping Tang (Beatriz), proprietress of Ready Traders.<sup>5</sup>

To secure the ₱300 Million credit line, the following collaterals were agreed upon:

#### ARTICLE IV COLLATERALS

Section 4.01. This **AGREEMENT**, including all release(s)/avaiement(s) made pursuant thereto is secured by:

- 1) **Suretyship Agreement executed in favor of the BANK by the SPS. MARIO TAN and ERLINDA TAN to secure the loan obligations of Lory Tan; Evelyn Tan; Allied Distributor; Isabela Washington Lumber Hardware & Electrical Supply, both owned by Mario Tan; and Beatriz Siok Ping Tang, proprietress of Ready Traders;**
- 2) **Deed of Negative Pledge over properties covered by Transfer Certificates of Title Nos. 20601 and 20602, both located in Paranaque City, including all improvements now existing and to be constructed thereon; and**
- 3) **Real Estate Mortgage over properties covered by Transfer Certificates of Title Nos. C-18864 and T-164181, both located in Caloocan city, registered under the name of Mario C. Tan, including all improvements now existing and to be constructed thereon.**<sup>6</sup> (Emphasis in the original)

Accordingly, spouses Tan executed a Surety Agreement dated August 16, 2001, to secure the credit availments of the accommodated parties.<sup>7</sup> The Surety Agreement, in pertinent part, provides:

<sup>4</sup> *Rollo*, Vol II, pp. 571-572.

<sup>5</sup> *Rollo*, Vol. I, p. 17.

<sup>6</sup> *Id.* at 108.

<sup>7</sup> *Id.*

Section 1.01. The **SURETIES**, jointly and severally with the **PRINCIPAL**, hereby unconditionally and irrevocably guarantee the full and complete payment when due, whether at stated maturity, by acceleration, or otherwise, of all sums payable by the **PRINCIPAL** under the Credit Agreement, the Note/s and other related documents or instruments referred to therein (herein after referred to collectively as the "**Loan Documents**") the terms and conditions of which are hereby deemed incorporated by reference.<sup>8</sup>

Also, in accordance with the terms of the ₱300 Million credit line agreement, two previously executed documents were carried over in favor of UCPB: (1) a Real Estate Mortgage (REM) dated August 29, 1991, covering the two parcels of land located at Caloocan City and registered under the names of spouses Tan; and (2) a Deed of Negative Pledge dated February 19, 1994, covering the two parcels of land located at Parañaque City registered under the name of Mario.

On August 29, 2001, Mario sent a letter<sup>9</sup> to UCPB, instructing the latter that Beatriz must first obtain a written authorization or conformity from either himself, Lory or Evelyn before Beatriz can avail of the credit accommodation.<sup>10</sup>

Pursuant to this instruction, written authorizations were given by Mario on October 1, 2001,<sup>11</sup> October 9, 2001,<sup>12</sup> and February 12, 2002,<sup>13</sup> authorizing Beatriz to avail of the credit line in various amounts for which UCPB accordingly issued the corresponding bank undertakings.

When the ₱300 Million credit line expired in July 2002, UCPB granted spouses Tan another omnibus credit line on August 1, 2002, in an amount not exceeding ₱500 Million and which shall expire on July 31, 2003. The ₱500 Million credit line was similarly made available to Lory, Evelyn, Allied Distributor and Isabela Washington Lumber Hardware & Electrical Supply. However, a credit facility in the form of a credit certification line up to the sub-limit amount of ₱300 Million was also made available to Beatriz, proprietress of Ready Traders and Able Transport Service.

As security for the ₱500 Million credit line, the REM over the Caloocan properties was carried over and, in addition, a REM dated August 1, 2002, over the Parañaque properties was executed. Spouses Tan also

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<sup>8</sup> Id. at 143.

<sup>9</sup> Id. at 151.

<sup>10</sup> Id. at 20.

<sup>11</sup> Id. at 377. This letter authorized Beatriz to avail of the credit line in an amount not exceeding ₱50,000,000.00 in favor of Caltex Philippines valid from October 1, 2001 to July 31, 2002.

<sup>12</sup> Id. at 394. This letter authorized Beatriz to avail of the credit line in an amount not exceeding ₱20,000,000.00 in favor of Subic Bay Distribution, Inc., (SBDI) valid from October 9, 2001 to July 31, 2002, for which a bank undertaking (id. at 395) dated October 9, 2001 was issued. Note that this bank undertaking was similarly-worded as the contested bank undertakings issued in favor of SBDI.

<sup>13</sup> Id. at 161. A bank undertaking valid for a period of one year, *i.e.*, from February 12, 2002 to February 7, 2003, issued in favor of Caltex Philippines.

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executed a Surety Agreement to secure any credit availments obtained by the accommodated parties including that of Beatriz's.<sup>14</sup>

On September 5, 2002, Mario again sent a letter<sup>15</sup> to UCPB, similarly instructing the latter that a written consent from either himself, Lory or Evelyn must first be obtained by Beatriz before she is allowed to avail of the credit line.<sup>16</sup> This letter was prompted by the fact that the ₱500 Million credit line was made available to Beatriz as proprietress of Ready Traders and Able Transport Service (unlike the ₱300 Million credit line which was made available to Beatriz as proprietress of Ready Traders only). The letter was further necessitated by the fact that spouses Tan had been receiving reports that UCPB has been extending credit facilities in favor of Subic Bay Distribution, Inc., (SBDI) for Beatriz drawn from spouses Tan's credit line without the required written authority.<sup>17</sup>

In November 2002, and upon the instructions of Mario, Evelyn obtained from Cynthia Camacho (Camacho), UCPB's account officer handling spouses Tan's credit line, a list of the outstanding availments made by spouses Tan and the accommodated parties from the ₱300 Million and ₱500 Million credit lines.<sup>18</sup> Allegedly, Camacho confirmed that there were several bank undertakings issued in favor of SBDI for the account of Beatriz but that it was taken out of Beatriz's own credit line.<sup>19</sup> Camacho then furnished Evelyn a one page list detailing the outstanding undertakings issued by UCPB to Beatriz by virtue of the ₱500 Million credit line, showing a total availments of ₱30,000,000.00.<sup>20</sup> Parenthetically, this list is to be later disputed by UCPB as actually composing of two pages, whereby the second page detailed the bank undertakings issued in favor of SBDI for the account of Beatriz and which were drawn from spouses Tan's credit line.

It was also in November 2002, that Mario was informed that SBDI was drawing payment against spouses Tan's credit line pursuant to the bank undertakings issued for the account of Able Transport Service.<sup>21</sup> Efforts to communicate with UCPB regarding this matter allegedly proved futile.<sup>22</sup>

Meanwhile, when the ₱500 Million credit line expired in July 2003, spouses Tan sought to renew the same but they were informed that UCPB could only grant a credit line in an amount not exceeding ₱250,000,000.00. Finding this unacceptable, Mario (through Jose Tan, treasurer of Isabela, Washington Lumber) sent a letter<sup>23</sup> dated September 15, 2003, to UCPB

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<sup>14</sup> Id. at 19.

<sup>15</sup> Id. at 238.

<sup>16</sup> Id. at 20.

<sup>17</sup> Id. at 291.

<sup>18</sup> Id. at 251.

<sup>19</sup> Id. at 292.

<sup>20</sup> Id.

<sup>21</sup> Id. at 292 and 310.

<sup>22</sup> Id. at 294.

<sup>23</sup> Id. at 153.

requesting for the immediate release of the REMs and the return of the certificates of title considering that the credit line expired on July 31, 2003, without being renewed and that spouses Tan had no outstanding liabilities. This request was reiterated in letters dated February 16, 2004<sup>24</sup> and March 17, 2004.<sup>25</sup>

Finally, on March 23, 2004, UCPB replied, denying the request for the release of the REMs. UCPB reminded Mario that the REM dated August 29, 1991 (over the Caloocan properties) secure the payment of all loans of Mario; that the REM dated August 1, 2002 (over the Parañaque properties) secured the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained by Mario, Lory, Evelyn and Beatriz, proprietress of Ready Traders and Able Transport Service; and that the Surety Agreement dated August 1, 2002, guaranteed full payment of all sums payable by Beatriz. According to UCPB, it issued two bank undertakings for the account of Beatriz in favor of SBDI and that the total credit accommodation granted by UCPB to Able Transport Service was ₱100,000,000.00. Since there were outstanding credit accommodations to Beatriz/Able Transport Service secured by the REMs and the Surety Agreement, UCPB declined Mario's request.<sup>26</sup>

Mario then received a letter dated May 12, 2004 from UCPB demanding the payment of ₱20,642,951.48 as surety for the unpaid obligations of Beatriz.<sup>27</sup> Spouses Tan denied having knowledge of any outstanding obligation of Beatriz with UCPB.<sup>28</sup> No reply thereto was given by UCPB.<sup>29</sup>

The stalemate led to the filing of spouses Tan of the complaint *a quo* for specific performance and damages wherein they prayed for the release of the REMs over the Caloocan and Parañaque properties and for UCPB to return the corresponding certificates of title.

#### *UCPB's Answer*

By way of answer,<sup>30</sup> UCPB argued that the REMs and the Surety Agreement secured all the obligations of Beatriz, whether or not the obligation was obtained through Mario's credit line or on Beatriz's own account.

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<sup>24</sup> Id. at 154.

<sup>25</sup> Id. at 158.

<sup>26</sup> Id. at 155.

<sup>27</sup> Id. at 24.

<sup>28</sup> Id.

<sup>29</sup> Id. at 298.

<sup>30</sup> Id. at 166-175.

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According to UCPB, Beatriz has an outstanding loan obligation of ₱34,513,331.89<sup>31</sup> as evidenced by the following promissory notes:

Borrower	Date	Amount
Beatriz Siok Ping Tang	March 4, 2004 <sup>32</sup>	Php5,000,000.00
Beatriz Siok Ping Tang	March 12, 2004 <sup>33</sup>	Php10,000,000.00
Beatriz Siok Ping Tang	March 18, 2004 <sup>34</sup>	Php5,000,000.00

Further, UCPB argued that Beatriz has a contingent liability in the amount of ₱115,000,000.00 since UCPB had issued the following bank undertakings in favor of SBDI upon Beatriz's request:<sup>35</sup>

Borrower/Client	Reference No.	Period	Amount
Beatriz Siok Ping Tang	CAL-004/02	March 6, 2002 to March 1, 2003	Php15,000,000.00 <sup>36</sup>
Able Transport Service	CAL-008/02	June 17, 2002 to September 30, 2002 (extended up to November 30, 2002) <sup>37</sup>	Php20,000,000.00 <sup>38</sup>
Able Transport Service	CAL-010/02	June 18, 2002 to September 18, 2002 (extended up to November 30, 2002) <sup>39</sup>	Php30,000,000.00 <sup>40</sup>
Able Transport Service	CAL-010/02	July 2, 2002 to September 18, 2002 (extended up to November 30, 2002) <sup>41</sup>	Php30,000,000.00 <sup>42</sup>

<sup>31</sup> Id. at 180. The statement of account (id. at 180) shows a principal unpaid amount of ₱20,000,000.00 with charges in the total amount of ₱14,513,331.89.

<sup>32</sup> Id. at 177.

<sup>33</sup> Id. at 178.

<sup>34</sup> Id. at 179.

<sup>35</sup> Id. at 172-173.

<sup>36</sup> Id. at 181-183.

<sup>37</sup> Id. at 191.

<sup>38</sup> Id. at 188-190.

<sup>39</sup> Id. at 187.

<sup>40</sup> Id. at 184-186.

<sup>41</sup> Id. at 198.

<sup>42</sup> Id. at 195-197.

Able Transport Service	CAL-012/02	August 5, 2002 to September 30, 2002 (extended up to November 30, 2002) <sup>43</sup>	Php20,000,000.00 <sup>44</sup>
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According to UCPB, SBDI already requested to draw payment on the foregoing bank undertakings.<sup>45</sup>

Spouses Tan countered that the aforesaid outstanding liabilities of Beatriz were incurred by her in her own personal capacity and not as an accommodated party. They also argued that the REMs and the Surety Agreement secure only those obligations drawn from the credit line agreements, the former being merely accessory to the latter. Thus, obligations incurred by Beatriz which were not drawn from either the ₱300 Million or ₱500 Million credit line agreements were not secured by the REMs and the Surety Agreement.<sup>46</sup>

Specifically, they pointed out that the promissory notes were executed by Beatriz in her personal capacity in 2004, or way after the expiration of the credit line agreements. Anent the bank undertakings, spouses Tan contend that these were issued either in favor of Beatriz in her personal capacity or in favor of Able Transport Service which is not an accommodated party under the ₱300 Million credit line. They also emphasized that these bank undertakings were issued without the required written authority from Mario.<sup>47</sup> Instead, they argued that the bank undertakings appear to have been issued by UCPB not by virtue of spouses Tan's ₱300 Million or ₱500 Million credit line agreements but by another credit agreement entered into between UCPB and Beatriz herself. To prove their point, spouses Tan directed attention to a separate complaint filed by Beatriz against UCPB wherein the latter admitted<sup>48</sup> that the bank undertakings were subject to the terms of the credit agreement entered into between Beatriz and UCPB.<sup>49</sup>

Spouses Tan also attached an Affidavit dated January 6, 2003 executed by Beatriz wherein she attested that she was accommodated by spouses Tan to avail of the ₱500 Million credit line and that by virtue thereof, she was granted by UCPB several bank undertakings. She, however,

<sup>43</sup> Id at 202.

<sup>44</sup> Id. at 199-201.

<sup>45</sup> Id. at 203-219.

<sup>46</sup> Id. at 228.

<sup>47</sup> Id. at 232.

<sup>48</sup> Id. at 240.

<sup>49</sup> Id. at 233.

attested that these bank undertakings were renewed and effected through her and UCPB's initiative and that no prior approval was sought from Mario.<sup>50</sup>

### *The RTC's Ruling*

On December 30, 2010, the RTC rendered its decision dismissing spouses Tan's complaint for specific performance. The RTC ruled that since spouses Tan allowed a third party, *i.e.*, Beatriz, to avail of the credit line, the latter's drawings were likewise secured by the REMs. It held that UCPB was not negligent in handling the credit line arrangement with spouses Tan. Perusing the list of outstanding availments given by UCPB to Evelyn in November 2002, the RTC found that there were outstanding liabilities drawn against the credit line, as such the REMs cannot as yet be cancelled, and the certificates of title released, and consequently, the complaint for specific performance, suffered from prematurity.<sup>51</sup>

The RTC disposed as follows:

**WHEREFORE**, premises considered, this Court hereby DISMISSED [sic] the Complaint for insufficiency of evidence or for lack of it, without pronouncement as to cost.

Moreover, the counterclaim of defendant is also hereby DISMISSED for insufficiency of evidence.

SO ORDERED.<sup>52</sup>

Spouses Tan appealed to the CA. They argued that they have no outstanding or contingent liability either under the ₱300 Million or ₱500 Million credit line agreements. It was their position that while Beatriz, as proprietress of Ready Traders and Able Transport Service, was made an accommodation party in the credit agreements, the promissory notes and the bank undertakings which were issued in her favor or in favor of the sole proprietorships were not covered by spouses Tan's credit line agreements.

### *The CA's Ruling*

The CA agreed with the RTC's ruling that the release of the collaterals was still premature. It observed that the REM dated August 1, 2002, over the Parañaque properties secured the payment of all loans obtained by Beatriz as proprietress of Ready Traders and Able Transport Service.<sup>53</sup> The CA further held that while Beatriz's financial obligations were drawn from her own separate credit line, such was of no moment considering that the refusal to release the collaterals was due to Beatriz's

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<sup>50</sup> Id. at 317.

<sup>51</sup> Id. at 554.

<sup>52</sup> Id. at 555.

<sup>53</sup> Id. at 84.



outstanding obligation in the amount of ₱34,513,331.89 which was secured by the REM dated August 1, 2002.

According to the CA, neither should the REM over the Caloocan properties be cancelled because spouses Tan failed to prove that their obligations with UCPB had been extinguished. Similar with the RTC, the CA pointed to the list of outstanding availments which showed that there were outstanding availments made by Isabela Washington Lumber Hardware & Electrical Supply and Allied Distributor from the credit line, which availments were not shown by spouses Tan to have been paid.<sup>54</sup> Resultantly, the CA held that unless spouses Tan present proof of full payment of their principal obligations with UCPB, it would be premature for them to pray for the release of the mortgage lien and the cancellation of the encumbrances annotated on the certificates of title.

With the denial of their appeal as well as their subsequent motion for reconsideration, spouses Tan interposed the present petition.

### Issues

Spouses Tan fault the CA for allegedly failing to resolve the material issue of whether the loan accommodations obtained by Beatriz were drawn from the ₱300 Million or ₱500 Million credit lines. For spouses Tan, the CA committed error when it ruled that there were outstanding obligations in the amount of ₱34,513,331.89 when the promissory notes evidencing said obligations were not formally offered in evidence.<sup>55</sup> The CA also allegedly erred when it failed to consider the judicial admissions made by UCPB in the separate civil complaint filed by Beatriz that the latter's obligations were incurred by her through her own credit line.<sup>56</sup> Fault is likewise attributed to the CA when, like the RTC, it regarded the list of availments sent by UCPB as outstanding obligations drawn from spouses Tan's credit line when said list supposedly only details the available credit on which spouses Tan and their accommodated parties can draw on.<sup>57</sup> In any case, spouses Tan argue, these alleged outstanding credit facilities expired without having been drawn or negotiated.<sup>58</sup>

For its part, UCPB seeks for the immediate dismissal of the petition for raising factual issues improper in a Rule 45 petition. Nevertheless, countering spouses Tan's arguments, UCPB maintains that the REMs and the Surety Agreement secure all the obligations of Beatriz, whether or not they were obtained through spouses Tan's ₱300 Million or ₱500 Million

<sup>54</sup> Id. at 84.

<sup>55</sup> Id. at 44. These promissory notes were attached to UCPB's answer in the complaint *a quo* but were not formally offered as documentary evidence.

<sup>56</sup> Id. at 47.

<sup>57</sup> Id. at 50.

<sup>58</sup> *Rollo*, Vol. II, pp. 752-753.

credit lines.<sup>59</sup> UCPB argues that because of Beatriz's contingent liability under the bank undertakings which UCPB issued in favor of SBDI, the collaterals cannot as yet be released.<sup>60</sup> It also argues that the written authority which spouses Tan required before Beatriz is allowed to avail of the credit line could not have amended the terms of the credit line agreements in the absence of the written agreement of all the parties thereto.<sup>61</sup> On the bases of these arguments, UCPB prays for the dismissal of the present petition.

At its core, the issue to be resolved is whether the CA erred when it denied the cancellation of the REMs and the release of the collaterals used to secure the credit lines granted to spouses Tan.

### **Ruling of the Court**

We deny the petition.

The rule is that only questions of law may be brought in petitions for review under Rule 45 of the Rules of Court and that findings of facts made by the Court of Appeals and trial courts are binding, absent any showing of abuse, capriciousness or arbitrariness.<sup>62</sup> Wading through the arguments advanced in the instant petition, the main issue which spouses Tan seek to be resolved is whether the obligations incurred by Beatriz are likewise secured by the REMs executed by spouses Tan. This is a factual issue, the determination of which necessitates a review and calibration of the evidence presented by the parties – a function which the Court does not, as a rule, perform in a petition for review.

As in all general rules, the rule that only questions of law may be entertained in a petition for review also permits exceptions. As enumerated in *Pascual v. Burgos*:<sup>63</sup>

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8)

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<sup>59</sup> Id. at 796.

<sup>60</sup> Id. at 797.

<sup>61</sup> Id. at 804.

<sup>62</sup> *Liberty Construction & Development Corp. v. Court of Appeals*, 327 Phil. 490, 491 (1996).

<sup>63</sup> 776 Phil. 167 (2016).

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When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>64</sup> (Internal citations omitted)

Spouses Tan invoke the lack of sufficient support in evidence of the trial court's judgment or the appellate court's misapprehension of adduced facts to propel the Court's factual review. However, mere invocation of these exceptions is not sufficient. There must be an ample demonstration on why it should be the exception rather than the general rule that must be applied. Spouses Tan fall short in this regard.

Even if the Court considers the facts as alleged by spouses Tan, it will still arrive at the conclusion that they fail to establish by preponderance of evidence that they are entitled to the release of the REMs and for the return of their certificates of title at the time they filed their complaint.

*The security provided by the REMs  
are continuing in nature*

It is spouses Tan's position that the REMs should be released as there are no outstanding availments from the credit lines secured by said mortgages. The terms of the REMs, however, negate the contention that the security provided by the mortgages is confined only to the ₱300 Million and ₱500 Million credit line agreements.

On the contrary, the obligations secured under the terms of the REM dated August 29, 1991, are as follows:

#### ARTICLE I

#### SECURED OBLIGATIONS

This MORTGAGE shall secure the following obligations:

The payment of all loans, overdrafts, credit lines and other credit facilities or accommodation obtained or hereinafter obtained, by the MORTGAGOR and/or by MARIO C. TAN (hereinafter referred to as DEBTOR).

The payment of all interests, charges, penalties, reimbursements and other obligations owing by the MORTGAGOR and/or DEBTOR to the MORTGAGEE whether direct or indirect, principal or secondary; absolute or contingent as appearing in [accounts] books and records of the MORTGAGEE.

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<sup>64</sup> Id. at 182.

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The payment of all obligations of the MORTGAGOR and/or DEBTOR of whatever kind or nature whether such loans have been contracted before, during, or after the constitution of this MORTGAGE.

In case the MORTGAGOR and/or DEBTOR incur subsequent obligations whether as a renewal of the former obligation or extension thereof, or as new loans or is given any other kind of accommodations, the payment of said obligations, and or accommodations without the necessity of executing new agreements. (Underscoring supplied)

The faithful and strict performance and compliance by the MORTGAGOR and/or DEBTOR of all the terms and [conditions] of the MORTGAGE, the credit agreements, promissory notes and other loan documents and agreements evidencing the overdrafts, credit lines and other credit accommodations granted to the MORTGAGOR and/or DEBTOR; including all amendments thereon, such as but not limited to changes in the interest rates, penalties, charges, or fees; accelerations of payments; [and the] like.<sup>65</sup>

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#### ARTICLE XXI

##### ACCOMMODATION MORTGAGE:

Whenever this mortgage is executed in accommodation of a DEBTOR other than a MORTGAGOR, the MORTGAGOR agrees [that the mortgage shall stand as security for the renewal, extension of payment of the obligation secured by this mortgage to its [conversion] into any other credit facility that may be agreed between the DEBTOR and the MORTGAGEE, as well as all additional loans or credit accommodations that may be granted by the MORTGAGEE to the DEBTOR without further need of [amending] the mortgage and the DEBTOR is deemed to be Attorney-in-Fact of the MORTGAGOR for such purpose. The MORTGAGOR [further] agrees that this mortgage shall also secure his/her own personal obligations with the MORTGAGEE of whatever kind and [...] whether direct or indirect, principal or secondary, as appearing in the account, books and records of the MORTGAGEE. [...] this mortgage were executed to secure the said personal obligations of the MORTGAGOR under the same terms and conditions [...] for this purpose, it is hereby agreed that the term "DEBTOR" or any other word describing the principal obligor shall otherwise mean and include the term "MORTGAGOR" and vice versa, as the context may require.<sup>66</sup> (Underscoring supplied)

In fact, the REM dated August 29, 1991 even preceded the ₱300 Million credit line and was merely carried over to secure the latter. This previously-executed REM was likewise carried over to secure the subsequent ₱500 Million credit line.

<sup>65</sup> Id. at 116.

<sup>66</sup> Id. at 120.

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Quite similarly, the obligations secured under the terms of the REM dated August 1, 2002 are as follows:

**ARTICLE I  
SECURED OBLIGATIONS**

This MORTGAGE shall secure the following obligations:

1. The payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the MORTGAGOR and/or by Mario Tan, Lory Tan, Evelyn Tan and Beatriz Siok Ping Tang, proprietress of Able Transport Service and Ready Traders (hereinafter referred to as DEBTOR)

2. The payment of all interests, charges, penalties, reimbursements and other obligations owing by the MORTGAGOR and/or DEBTOR to the MORTGAGEE whether direct or indirect, principal or secondary, absolute or contingent as appearing in the accounts, books and records of the MORTGAGEE.

3. The payment of all obligations of the MORTGAGOR, and/or DEBTOR, of whatever kind and nature whether such obligations have been contracted before, during or after, the constitution of this MORTGAGE.

4. In case the MORTGAGOR and/or DEBTOR incurs subsequent obligations of whatever kind or nature whether such obligations, as extension thereof, or as new loans or is given any other kind of accommodations, the payment of said obligations, and/or accommodations, without the necessity of executing new agreements.

5. The faithful and strict performance and compliance by the MORTGAGOR and/or DEBTOR of all the terms and conditions of the MORTGAGE, the credit agreements, promissory notes and other loan documents and agreements evidencing the loans, overdrafts, credit lines and other credit accommodations granted to the MORTGAGOR and/or DEBTOR; including all amendments thereon, such as, but not limited to, changes in the interest rates, penalties, charges, or fees; acceleration of payments; and the like.

All the foregoing obligations secured by this MORTGAGE are hereinafter referred to as SECURED OBLIGATIONS.<sup>67</sup> (Underscoring supplied)

The REMs dated August 29, 1991 and August 1, 2002, uniformly and clearly provide that the mortgages secure the payment of “all loans, overdrafts, credit lines and other credit facilities or accommodation, obtained or hereinafter obtained” by spouses Tan.

In *Bank of Commerce v. Spouses Flores*,<sup>68</sup> the Court explains the import of such phraseology as evidencing a continuing guaranty, thus:

<sup>67</sup> Id. at 146.

<sup>68</sup> 652 Phil. 97 (2010).

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A continuing guaranty is a recognized exception to the rule that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. Under Article 2053 of the Civil Code, a guaranty may be given to secure even future debts, the amount of which may not be known at the time the guaranty is executed. This is the basis for contracts denominated as a continuing guaranty or suretyship. A continuing guaranty is not limited to a single transaction, but contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked. It is prospective in its operation and is generally intended to provide security with respect to future transactions within certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable. In other words, a continuing guaranty is one that covers all transactions, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof.

A guaranty shall be construed as continuing when, by the terms thereof, it is evident that the object is to give a standing credit to the principal debtor to be used from time to time either indefinitely or until a certain period, especially if the right to recall the guaranty is expressly reserved. In other jurisdictions, it has been held that the use of particular words and expressions, such as payment of "any debt," "any indebtedness," "any deficiency," or "any sum," or the guaranty of "any transaction" or money to be furnished the principal debtor "at any time" or "on such time" that the principal debtor may require, has been construed to indicate a continuing guaranty.<sup>69</sup> (Citations omitted)

Accordingly, the Court held in *Bank of Commerce* that the payment of the amounts stated in the mortgage shall not discharge the mortgage until full payment of all debts obtained and unpaid. Here, the terms of the REMs, coupled with the fact that the REM dated August 29, 1991, was carried over to secure the latter credit lines, show that the mortgages are intended as security for the payment not only of the availments from the ₱300 Million and ₱500 Million credit lines, but as security for all amounts that spouses Tan may owe UCPB, including accommodations which spouses Tan voluntarily extended to other parties. Thus, in the absence of proof that these obligations had been extinguished, UCPB cannot, as yet, be compelled to release the REMs.

*Bank undertakings issued in favor of Beatriz were drawn from the ₱300 Million and ₱500 Million credit lines*

Even if the Court follows spouses Tan's theory that only availments drawn from the ₱300 Million and ₱500 Million credit lines are secured by the REMs, the same conclusion will still be arrived at because the subject bank undertakings are, in fact, demonstrated to have been drawn from said credit lines.

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<sup>69</sup> Id. at 105-106.

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To recall, UCPB refused to release the REMs because of Beatriz's outstanding obligations which were principally composed of: (1) the promissory notes amounting to ₱34,513,331.89; and (2) bank undertakings amounting to a contingent liability of ₱115,000,000.00.

The Court agrees with spouses Tan that, for purposes of the instant case, the promissory notes as allegedly evidencing Beatriz's outstanding obligations in the amount of ₱34,513,331.89 cannot be considered as these were not offered in evidence. The rule is that for evidence to be considered, it must be formally offered. Evidence not formally offered may be admitted and considered by the trial court if the following requisites are present: *one*, the documentary evidence must have been duly identified by testimony duly recorded and, *two*, the same must have been incorporated in the records of the case.<sup>70</sup> The Court is ill-equipped to determine whether Beatriz indeed incurred loans as the promissory notes, which remain to be the best evidence of the loan,<sup>71</sup> were merely attached to UCPB's answer but were not shown to have been identified by testimony duly recorded.

As regards the bank undertakings issued in favor of Beatriz, spouses Tan contend that these were not drawn from the credit lines, and, thus, the REMs should not be held as security therefor. To reiterate, the nature of the REMs as a continuing guaranty belies the claim that the REMs only secure the availments from the ₱300 Million and ₱500 Million credit lines.

UCPB, on the other hand, maintains that the bank undertakings were issued precisely because of the availability of the ₱300 Million and ₱500 Million credit lines.

To dispute this, spouses Tan argue that some of the bank undertakings had a validity period going beyond the term of the credit lines. This argument is specious considering that the credit line agreements provide that the term of the credit availments may go beyond the expiry date of the accommodation, only that all outstanding availments shall become due if the accommodation is not renewed.<sup>72</sup>

Spouses Tan also refuse to answer for the bank undertakings because these were issued not in favor of Beatriz as "proprietress of Ready Traders" (as provided under the ₱300 Million credit line agreement) but in favor of Beatriz in her personal capacity, or in favor of Able Transport Service which is not an accommodated party under the credit lines. In other words, spouses Tan argue that Beatriz can avail of the credit line only if she does so as the proprietress of Ready Traders.

<sup>70</sup> *Mato v. Court of Appeals*, 320 Phil. 344, 348 (1995).

<sup>71</sup> *Philippine National Bank v. Cua*, G.R. No. 199161, April 18, 2018.

<sup>72</sup> *Rollo*, Vol. I, p. 104.

The pertinent terms of the ₱300 Million credit line provides:

**ARTICLE I  
THE ACCOMMODATION**

Section 1.01. Amount and Nature. Subject to the terms and conditions hereof, the **BANK** agrees to grant **CLIENT** an **OMNIBUS LINE** in the aggregate principal amount of not exceeding **THREE HUNDRED MILLION PESOS (₱300,000,000.00), Philippine Currency, or its foreign currency equivalent**, hereinafter referred to as the **“Accommodation”**.

Subject to the same terms and conditions of this **AGREEMENT**, the **Accommodation** shall likewise be made available to **Lory Tan; Evelyn Tan; Allied Distributor; Isabela Washington Lumber Hardware & Electrical Supply, both owned by Mario Tan; and Beatriz Siok Ping Tang, proprietress of Ready Traders.**<sup>73</sup> (Emphasis in the original and underscoring supplied)

While the ₱500 Million credit line provides:

**ARTICLE I  
THE ACCOMMODATION**

Section 1.01. Amount and Nature. Subject to the terms and conditions hereof, the **BANK** agrees to grant **CLIENT** an **OMNIBUS LINE** in the aggregate principal amount of not exceeding **FIVE HUNDRED MILLION PESOS (₱500,000,000.00), Philippine Currency, or its foreign currency equivalent**, hereinafter referred to as the **“Accommodation”**.

Subject to the same terms and conditions of this **AGREEMENT**, the **Accommodation** shall likewise be made available to **Lory Tan; Evelyn Tan; Allied Distributor and Isabela Washington Lumber Hardware & Electrical Supply, both owned by Mario Tan.**

Section 1.02. Purpose. The proceeds of all availments of the **Accommodation** shall be used exclusively by **CLIENT** to finance their working capital requirements and to provide credit certification/guaranty as required by **CLIENT**'s suppliers.

x x x x

Section 1.04. Availment. **CLIENT** may avail of the **Accommodation** by way of any, some or all of the credit facilities offered by the **BANK** provided that each or any combination of which shall in no case exceed the aggregate principal amount stated in Section 1.01 hereof, under such terms and conditions as may agreed upon by the Parties hereto and subject to the limits set hereunder:

**CREDIT FACILITIES**

1) CREDIT CERTIFICATION LINE. **CLIENT** may avail of this credit facility up to sub-limit amount of **THREE HUNDRED MILLION PESOS**

<sup>73</sup> Id. at 103.

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(P1300,000,000.00), Philippine Currency, by way of credit certification to be issued by the BANK as required by the CLIENT'S suppliers. In case of drawdown, CLIENT may avail of this credit facility via Promissory Note/s.

This Facility shall likewise be made available to **Beatriz Siok Ping Tang, proprietress of Ready Traders and Able Transport Service.**<sup>74</sup>  
(Underscoring and emphasis supplied)

Clearly, the addition of the phrases "proprietress of Ready Traders" and "proprietress of Ready Traders and Able Transport Service" are merely descriptive of Beatriz's registered business names. It is a common business practice that sole proprietorships have no personality or existence separate from its owner. Thus, whether Beatriz availed of the credit line as proprietress of Ready Traders or Able Transport Service, will not be of material significance considering that sole proprietors are fully personally liable for the proprietorship's debts and obligations.

In any case, spouses Tan do not appear to be too strict as to whether Beatriz availed of the credit line in her capacity as sole proprietress. The written authorizations<sup>75</sup> which Mario gave to UCPB allowed "Beatriz" (without specifying that it should be in her capacity as sole proprietress of either business) to avail of the credit lines. Moreover, the bank undertaking dated October 9, 2001, (which spouses Tan admit to have been duly-authorized) is actually similarly-worded as the contested bank undertakings. In all instances, the bank undertakings did not specify that these were issued in favor of Beatriz as sole proprietress of either business.

Spouses Tan also harp on the alleged absence of a prior written authorization which should be required from Beatriz before she is allowed to avail of the credit lines. Notably, this requirement is not to be found on the credit line agreements, and therefore, UCPB could not be said to have acquiesced thereto. At any rate, the required written authorization cannot be deemed to be a principal aspect of the credit line agreement as spouses Tan unequivocally and unqualifiedly agreed to be an accommodation party in relation to Beatriz. The absence of a written authorization will not therefore work to invalidate the bank undertakings.

Strikingly, the facts disclose that spouses Tan knew that Beatriz had been availing of the credit lines even without the written authorization and that UCPB had been extending bank undertakings in her favor, and yet, spouses Tan did not bother to revoke the accommodation. On the contrary, spouses Tan even attempted to renew the credit line for the third time despite the above protestations. This goes to show that spouses Tan did not consider any of the above as breach of the credit line agreements.

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<sup>74</sup> Id. at 127-128.

<sup>75</sup> Supra notes 11, 12, and 13.

*Spouses Tan have outstanding availments from the credit lines*

Independently of the obligations of Beatriz, it has been established in the proceedings below that spouses Tan, in fact, had obligations which remained unpaid. Spouses Tan attempt to explain in the present petition that while there are several availments, no drawdowns were made against the credit line. However, the Court, not being a trier of facts, is unable to determine the veracity of this factual allegation. Further, spouses Tan could have offered this explanation at the proceedings before the RTC, but they did not. Basic is the rule that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.<sup>76</sup>

*Admissions of UCPB and Beatriz*

Finally, spouses Tan point to the alleged admission made by UCPB in a separate complaint to the effect that the bank undertakings were subject to the terms of a credit agreement entered into between UCPB and Beatriz herself. Spouses Tan also emphasize that Beatriz, in her Affidavit, stated that the bank undertakings were renewed through her own initiative.

Suffice to say that the separate complaint alluded to by spouses Tan pertains to the complaint filed by Beatriz against UCPB to prevent the latter from releasing funds pursuant to the bank undertakings in favor of SBDI on the ground that the latter did not comply with its contractual undertaking. Although the said complaint involves the same bank undertakings, it bears no direct relation to the issue involved in the instant case. Likewise, the Court cannot hastily jump into a conclusion on the mere basis of a redacted sentence sourced from UCPB's answer.

With respect to Beatriz's Affidavit, it is therein stated that Beatriz was accommodated by spouses Tan to avail of the credit line and that "by virtue thereof" she was granted by UCPB several bank undertakings. Beatriz's Affidavit actually achieved the opposite of what spouses Tan hoped it will serve – the Affidavit only confirmed and bolstered the fact that the bank undertakings issued upon her request were drawn against spouses Tan's credit line.

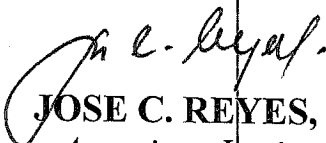
The foregoing considered, the Court finds no reason to grant spouses Tan's prayer for the release of the REMs and for the return of their certificates of title. Until and unless spouses Tan prove by preponderance of evidence that the obligations had been satisfied, UCPB is well within its right to hold onto the mortgages as security.

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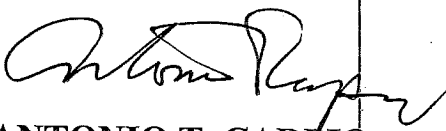
<sup>76</sup> *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

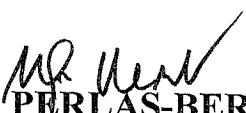
**WHEREFORE**, the instant Petition is **DENIED**. The Decision dated February 28, 2013 and the Resolution dated June 23, 2014 of the Court of Appeals in CA-G.R. CV No. 96652 are **AFFIRMED**.

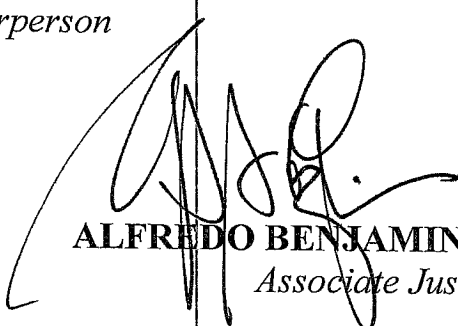
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*


  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

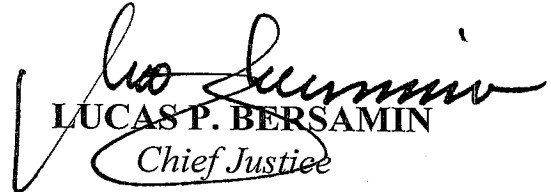
**ATTESTATION**

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.

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson, Second 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.

  
LUCAS P. BERSAMIN  
*Chief Justice*