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WHEREFORE, the Court resolves to *FINE* Judge Leocadio H. Ramos, Jr. in the amount of Ten Thousand Pesos (₱10,000.00), to be deducted from his retirement pay, for losing the case records of Civil Case No. 95-02-16 and thereby unduly delaying the resolution of the pending incidents in the said case.

The complaint against Atty. Irene T. Pontejos-Cordeta is hereby *DISMISSED* for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and *Corona, JJ.,* concur.

THIRD DIVISION

[G.R. No. 105774. April 25, 2002]

GREAT ASIAN SALES CENTER CORPORATION and TAN CHONG LIN, *petitioners, vs.* **THE COURT OF APPEALS and BANCASIA FINANCE AND INVESTMENT CORPORATION,** *respondents.*

SYNOPSIS

The board of directors of Great Asian Sales Center Corporation approved a resolution authorizing its Treasurer and General Manager, Arsenio Lim Piat, Jr. to secure a loan from Bancasia and to sign all documents necessary to secure the loan. After sometime, the board of directors of Great Asian approved a second resolution authorizing Great Asian to secure a discounting line with Bancasia and designating Arsenio as the authorized signatory, to sign all documents to secure the discounting line. Tan Chong Lin signed two surety agreements to guarantee solidarily the debts of Great Asian to Bancasia. Great Asian, through Arsenio, signed four (4) Deeds of Assignment of Receivables assigning to Bancasia fifteen (15)

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postdated checks which were dishonored by the drawee banks. Subsequently, Great Asian filed a petition for insolvency. Thereafter, Bancasia filed a complaint for collection of a sum of money against Great Asian and Tan Chong Lin. The trial court decided in favor of the plaintiff. On appeal, the Court of Appeals sustained the decision of the lower court, deleting only the award of attorney's fees. Hence, this petition.

The Supreme Court ruled that Arsenio had all the proper and necessary authority from the board of directors of Great Asian to sign the Deeds of Assignment and to endorse the fifteen postdated checks. Arsenio signed the Deeds of Assignment as agent and authorized signatory of Great Asian under the authority expressly granted by its board of directors.

The failure of the drawers to pay the checks is a suspensive condition, the happening of which gives rise to Bancasia's right to demand payment from Great Asian. This conditional obligation of Great Asian arises from its written contracts with Bancasia as embodied in the Deeds of Assignment.

Indisputably, Tan Chong Lin explicitly and unconditionally bound himself to pay Bancasia, solidarily with Great Asian, if the drawers of the checks fail to pay on their due dates. The condition on which Tan Chong Lin's obligation hinged had happened. As surety, Tan Chong Lin automatically became liable for the entire obligation to the same extent as Great Asian.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; PRIVATE CORPORATIONS; CORPORATE POWERS, EXERCISED BY THE BOARD OF DIRECTORS; EXCEPTION.** — The Corporation Code of the Philippines vests in the board of directors the exercise of the corporate powers of the corporation, save in those instances where the Code requires stockholders' approval for certain specific acts. Section 23 of the Code provides: "SEC. 23. The Board of Directors or Trustees. Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x." In the ordinary course of business, a corporation can

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borrow funds or dispose of assets of the corporation only on authority of the board of directors. The board of directors normally designates one or more corporate officers to sign loan documents or deeds of assignment for the corporation.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SOURCES OF OBLIGATIONS.— Obviously, there is one vital suspensive condition in the Deeds of Assignment. That is, in case the drawers fail to pay the checks on maturity, Great Asian obligated itself to pay Bancasia the full face value of the dishonored checks, including penalty and attorney's fees. The failure of the drawers to pay the checks is a suspensive condition, the happening of which gives rise to Bancasia's right to demand payment from Great Asian. This conditional obligation of Great Asian arises from its written contracts with Bancasia as embodied in the Deeds of Assignment. Article 1157 of the Civil Code provides that - "Obligations arise from: (1) Law; (2) Contracts; (3) Quasi-contracts; (4) Acts or omissions punished by law; and (5) Quasi-delicts."

3. ID.; ID.; OBLIGATORY FORCE OF CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES; CASE AT BAR.— By express provision in the Deeds of Assignment, Great Asian unconditionally obligated itself to pay Bancasia the full value of the dishonored checks. In short, Great Asian sold the postdated checks on *with recourse* basis against itself. This is an obligation that Great Asian is bound to faithfully comply because it has the force of law as between Great Asian and Bancasia. Article 1159 of the Civil Code further provides that - "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

4. ID.; ID.; AUTONOMY OF CONTRACTS; CONTRACTING PARTIES MAY ESTABLISH SUCH STIPULATIONS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY; CASE AT BAR.— Great Asian and Bancasia agreed on this specific *with recourse* stipulation, despite the fact that the receivables were negotiable instruments with the endorsement of Arsenio. The contracting parties had the right to adopt the *with recourse* stipulation which is separate and distinct from the warranties of an endorser under the Negotiable Instruments Law. Article 1306 of the Civil Code

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provides that – "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." The explicit *with recourse* stipulation against Great Asian effectively enlarges, by agreement of the parties, the liability of Great Asian beyond that of a mere endorser of a negotiable instrument. Thus, whether or not Bancasia gives notice of dishonor to Great Asian, the latter remains liable to Bancasia because of the *with recourse* stipulation which is independent of the warranties of an endorser under the Negotiable Instruments Law.

5. COMMERCIAL LAW; FINANCING COMPANY ACT; ASSIGNMENT OF A NEGOTIABLE INSTRUMENT, PRINCIPAL MODE OF CONVEYING ACCOUNTS RECEIVABLE; CASE AT BAR.— There is nothing in the Negotiable Instruments Law or in the Financing Company Act (old or new), that prohibits Great Asian and Bancasia parties from adopting the *with recourse* stipulation uniformly found in the Deeds of Assignment. Instead of being negotiated, a negotiable instrument may be assigned. Assignment of a negotiable instrument is actually the principal mode of conveying accounts receivable under the Financing Company Act. Since in discounting of receivables the assignee is subrogated as creditor of the receivable, the endorsement of the negotiable instrument becomes necessary to enable the assignee to collect from the drawer. This is particularly true with checks because collecting banks will not accept checks unless endorsed by the payee. The purpose of the endorsement is merely to facilitate collection of the proceeds of the checks. The purpose of the endorsement is not to make the assignee finance company a holder in due course because policy considerations militate against according finance companies the rights of a holder in due course. Otherwise, consumers who purchase appliances on installment, giving their promissory notes or checks to the seller, will have no defense against the finance company should the appliances later turn out to be defective. Thus, the endorsement does not operate to make the finance company a holder in due course. For its own protection, therefore, the finance company usually requires the assignor, in a separate and distinct contract, to pay the finance company in the event of dishonor of the notes or checks.

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6. ID.; NEGOTIABLE INSTRUMENTS LAW; NOTICE OF DISHONOR; WHEN NOTICE NEED NOT BE GIVEN TO THE DRAWER; CASE AT BAR.— The exercise by Bancasia of its option to sue for breach of contract under the Civil Code will not leave Great Asian holding an empty bag. Great Asian, after paying Bancasia, is subrogated back as creditor of the receivables. Great Asian can then proceed against the drawers who issued the checks. Even if Bancasia failed to give timely notice of dishonor, still there would be no prejudice whatever to Great Asian. Under the Negotiable Instruments Law, notice of dishonor is not required if the drawer has no right to expect or require the bank to honor the check, or if the drawer has countermanded payment. In the instant case, all the checks were dishonored for any of the following reasons: "account closed," "account under garnishment," "insufficiency of funds," or "payment stopped." In the first three instances, the drawers had no right to expect or require the bank to honor the checks, and in the last instance, the drawers had countermanded payment.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; ALTHOUGH THE CAUSE IS NOT STATED IN THE CONTRACT, IT IS PRESUMED THAT IT EXISTS AND IS LAWFUL.— One other issue raised by Great Asian, that of lack of consideration for the Deeds of Assignment, is completely unsubstantiated. The Deeds of Assignment uniformly provide that the fifteen postdated checks were assigned to Bancasia "for valuable consideration." Moreover, Article 1354 of the Civil Code states that, "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary." The record is devoid of any showing on the part of Great Asian rebutting this presumption.

8. COMMERCIAL LAW; INSOLVENCY LAW; PETITION FOR VOLUNTARY INSOLVENCY; REQUISITES.— [I]n its verified petition for voluntary insolvency, Great Asian admitted its debt to Bancasia when it listed Bancasia as one of its creditors, an extra-judicial admission that Bancasia proved when it formally offered in evidence the verified petition for insolvency. The Insolvency Law requires the petitioner to submit a schedule of debts that must "contain a full and true statement of all his debts and liabilities." The Insolvency Law even requires the petitioner to state in his verification that the schedule of debts contains "a full, correct and true discovery of all my debts

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and liabilities x x x." Great Asian cannot now claim that the listing of Bancasia as a creditor was not an admission of its debt to Bancasia but merely an acknowledgment that Bancasia had sent a demand letter to Great Asian.

9. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SOLIDARY OBLIGATION; NOT EXTINGUISHED IN CASE AT BAR.— Under Article 1215 of the Civil Code, what releases a solidary debtor is a "novation, compensation, confusion or remission of the debt" made by the creditor with any of the solidary debtors. These warranties, however, are the usual warranties made by one who discounts receivables with a financing company or bank. The Surety Agreements, written on the letter head of "Bancasia Finance & Investment Corporation," uniformly state that "Great Asian Sales Center x x x has obtained and/or desires to obtain loans, overdrafts, *discounts and/or other forms of credits* from" Bancasia. Tan Chong Lin was clearly on notice that he was holding himself as surety of Great Asian which was discounting postdated checks issued by its buyers of goods and merchandise. Moreover, Tan Chong Lin, as President of Great Asian, cannot feign ignorance of Great Asian's business activities or discounting transactions with Bancasia. Thus, the warranties do not increase or enlarge the risks of Tan Chong Lin under the Surety Agreements. There is, moreover, no novation of the debt of Great Asian that would warrant release of the surety.

10. ID.; ID.; ID.; WHEN IT EXISTS; CASE AT BAR.— Article 1207 of the Civil Code provides, "xxx There is a solidary liability only when the obligation expressly so states, or when the law or nature of the obligation requires solidarity." The stipulations in the Surety Agreements undeniably mandate the solidary liability of Tan Chong Lin with Great Asian. Moreover, the stipulations in the Surety Agreements are sufficiently broad, expressly encompassing "*all the notes, drafts, bills of exchange, overdraft and other obligations of every kind which the PRINCIPAL may now or may hereafter owe the Creditor*". Consequently, Tan Chong Lin must be held solidarily liable with Great Asian for the nonpayment of the fifteen dishonored checks, including penalty and attorney's fees in accordance with the Deeds of Assignment.

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11. ID.; DAMAGES; ATTORNEY'S FEES; AWARDED IN CASE AT BAR.— The award of attorney's fees in the instant case is justified, not only because of such stipulation, but also because Great Asian and Tan Chong Lin acted in gross and evident bad faith in refusing to pay Bancasia's plainly valid, just and demandable claim. We deem it just and equitable that the stipulated attorney's fee should be awarded to Bancasia.

APPEARANCES OF COUNSEL

Antonio H. Garces for petitioners.
Balgos & Perez for private respondent.
Angelito Chua for Bancasia Finance & Investment Corporation.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules on Civil Procedure assailing the June 9, 1992 Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 20167. The Court of Appeals affirmed the January 26, 1988 Decision[3] of the Regional Trial Court of Manila, Branch 52,[4] ordering petitioners Great Asian Sales Center Corporation ("Great Asian" for brevity) and Tan Chong Lin to pay, solidarily, respondent Bancasia Finance and Investment Corporation ("Bancasia" for brevity) the amount of ₱1,042,005.00. The Court of Appeals affirmed the trial court's award of interest and costs of suit but deleted the award of attorney's fees.

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[1] *Rollo*, pp. 38-58.

[2] Eleventh Division composed of Justices Nathanael P. De Pano, Jr. (*ponente*), Jesus M. Elbinias and Angelina S. Gutierrez (now a member of this Court).

[3] *Rollo*, pp. 144-157.

[4] Penned by Judge Maximo A. Savellano, Jr.

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The Facts

Great Asian is engaged in the business of buying and selling general merchandise, in particular household appliances. On March 17, 1981, the board of directors of Great Asian approved a resolution authorizing its Treasurer and General Manager, Arsenio Lim Piat, Jr. ("Arsenio" for brevity) to secure a loan from Bancasia in an amount not to exceed ₱1.0 million. The board resolution also authorized Arsenio to sign all papers, documents or promissory notes necessary to secure the loan. On February 10, 1982, the board of directors of Great Asian approved a second resolution authorizing Great Asian to secure a discounting line with Bancasia in an amount not exceeding ₱2.0 million. The second board resolution also designated Arsenio as the authorized signatory to sign all instruments, documents and checks necessary to secure the discounting line.

On March 4, 1981, Tan Chong Lin signed a Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. On January 29, 1982, Tan Chong Lin signed a Comprehensive and Continuing Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. Thus, Tan Chong Lin signed two surety agreements ("Surety Agreements" for brevity) in favor of Bancasia.

Great Asian, through its Treasurer and General Manager Arsenio, signed four (4) Deeds of Assignment of Receivables ("Deeds of Assignment" for brevity), assigning to Bancasia fifteen (15) postdated checks. Nine of the checks were payable to Great Asian, three were payable to "New Asian Emp.," and the last three were payable to cash. Various customers of Great Asian issued these postdated checks in payment for appliances and other merchandise.

Great Asian and Bancasia signed the first Deed of Assignment on January 12, 1982 covering four postdated checks with a total face value of ₱244,225.82, with maturity dates not later than March 17, 1982. Of these four postdated checks, two were dishonored. Great Asian and Bancasia signed the second Deed of Assignment also on January 12, 1982 covering four postdated checks with a total face value of ₱312,819.00, with

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maturity dates not later than April 1, 1982. All these four checks were dishonored. Great Asian and Bancasia signed the third Deed of Assignment on February 11, 1982 covering eight postdated checks with a total face value of ₱344,475.00, with maturity dates not later than April 30, 1982. All these eight checks were dishonored. Great Asian and Bancasia signed the fourth Deed of Assignment on March 5, 1982 covering one postdated check with a face value of ₱200,000.00, with maturity date on March 18, 1982. This last check was also dishonored. Great Asian assigned the postdated checks to Bancasia at a discount rate of less than 24% of the face value of the checks.

Arsenio endorsed all the fifteen dishonored checks by signing his name at the back of the checks. Eight of the dishonored checks bore the endorsement of Arsenio below the stamped name of "Great Asian Sales Center," while the rest of the dishonored checks just bore the signature of Arsenio. The drawee banks dishonored the fifteen checks on maturity when deposited for collection by Bancasia, with any of the following as reason for the dishonor: "account closed," "payment stopped," "account under garnishment," and "insufficiency of funds." The total amount of the fifteen dishonored checks is ₱1,042,005.00. Below is a table of the fifteen dishonored checks:

Drawee Bank	**Check No.**	**Amount**	**Maturity Date**
1st Deed			
Solid Bank	C-A097480	137,500.00	March 16, 1982
Pacific Banking Corp.	23950	₱47,211.00	March 17, 1982
2nd Deed			
Metrobank	030925	₱68,722.00	March 19, 1982
	030926	₱45,230.00	March 19, 1982
Solidbank	C-A097478	₱140,000.00	March 23, 1982
Pacific Banking Corp.	CC 769910	₱58,867.00	April 1, 1982
3rd Deed			
Phil. Trust Company	060835	₱21,228.00	April 21, 1982
	060836	₱22,187.00	April 28, 1982
Allied Banking Corp.	11251624	₱41,773.00	April 22, 1982
	11251625	₱38,592.00	April 29, 1982
Pacific Banking Corp.	237984	₱37,886.00	April 23, 1982
	237988	₱47,385.00	April 28, 1982
	237985	₱46,748.00	April 30, 1982
Security Bank & Trust Co.	22061	₱88,676.00	April 30, 1982
4th Deed			
Pacific Banking Corp.	860178	₱200,000.00	March 18, 1982

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After the drawee bank dishonored Check No. 097480 dated March 16, 1982, Bancasia referred the matter to its lawyer, Atty. Eladia Reyes, who sent by registered mail to Tan Chong Lin a letter dated March 18, 1982, notifying him of the dishonor and demanding payment from him. Subsequently, Bancasia sent by personal delivery a letter dated June 16, 1982 to Tan Chong Lin, notifying him of the dishonor of the fifteen checks and demanding payment from him. Neither Great Asian nor Tan Chong Lin paid Bancasia the dishonored checks.

On May 21, 1982, Great Asian filed with the then Court of First Instance of Manila a petition for insolvency, verified under oath by its Corporate Secretary, Mario Tan. Attached to the verified petition was a "Schedule and Inventory of Liabilities and Creditors of Great Asian Sales Center Corporation," listing Bancasia as one of the creditors of Great Asian in the amount of ₱1,243,632.00.

On June 23, 1982, Bancasia filed a complaint for collection of a sum of money against Great Asian and Tan Chong Lin. Bancasia impleaded Tan Chong Lin because of the Surety Agreements he signed in favor of Bancasia. In its answer, Great Asian denied the material allegations of the complaint claiming it was unfounded, malicious, baseless, and unlawfully instituted since there was already a pending insolvency proceedings, although Great Asian subsequently withdrew its petition for voluntary insolvency. Great Asian further raised the alleged lack of authority of Arsenio to sign the Deeds of Assignment as well as the absence of consideration and consent of all the parties to the Surety Agreements signed by Tan Chong Lin.

Ruling of the Trial Court

The trial court rendered its decision on January 26, 1988 with the following findings and conclusions:

"From the foregoing facts and circumstances, the Court finds that the plaintiff has established its causes of action against the defendants. The Board Resolution (Exh. "T"), dated March 17, 1981, authorizing Arsenio Lim Piat, Jr., general manager and treasurer of

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the defendant Great Asian to apply and negotiate for a loan accommodation or credit line with the plaintiff Bancasia in an amount not exceeding One Million Pesos (₱1,000,000.00), and the other Board Resolution approved on February 10, 1982, authorizing Arsenio Lim Piat, Jr., to obtain for defendant Asian Center a discounting line with Bancasia at prevailing discounting rates in an amount not to exceed Two Million Pesos (₱2,000,000.00), both of which were intended to secure money from the plaintiff financing firm to finance the business operations of defendant Great Asian, and pursuant to which Arsenio Lim Piat, Jr. was able to have the aforementioned fifteen (15) checks totaling ₱1,042,005.00 discounted with the plaintiff, which transactions were obviously known by the beneficiary thereof, defendant Great Asian, as in fact, in its aforementioned Schedule and Inventory of Liabilities and Creditors (Exh. DD, DD-1) attached to its Verified Petition for Insolvency, dated May 12, 1982 (pp. 50-56), the defendant Great Asian admitted an existing liability to the plaintiff, in the amount of ₱1,243,632.00, secured by it, by way of 'financing accommodation,' from the said financing institution Bancasia Finance and Investment Corporation, plaintiff herein, sufficiently establish the liability of the defendant Great Asian to the plaintiff for the amount of ₱1,042,005.00 sought to be recovered by the latter in this case.[5]

x x x x x x x x x

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the two (2) defendants ordering the latter, jointly and severally, to pay the former:

(a) The amount of ₱1,042,005.00, plus interest thereon at the legal rate from the filing of the complaint until the same is fully paid;

(b) Attorney's fees equivalent to twenty per cent (20%) of the total amount due; and

(c) The costs of suit.

SO ORDERED."[6]

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[5] *Rollo*, pp. 154-155.

[6] *Ibid.*, pp. 156-157.

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Ruling of the Court of Appeals

On appeal, the Court of Appeals sustained the decision of the lower court, deleting only the award of attorney's fees, as follows:

"As against appellants' bare denial of it, the Court is more inclined to accept the appellee's version, to the effect that the subject deeds of assignment are but individual transactions which — being collectively evidentiary of the loan accommodation and/or credit line it granted the appellant corporation — should not be taken singly and distinct therefrom. In addition to its plausibility, the proposition is, more importantly, adequately backed by the documentary evidence on record. Aside from the aforesaid Deeds of Assignment (Exhs. "A", "D", "I", and "R") and the Board Resolutions of the appellant corporation's Board of Directors (Exhs. "T", "U" and "V"), the appellee — consistent with its theory — interposed the Surety Agreements the appellant Tan Chong Lin executed (Exhs. "W" and "X"), as well as the demand letters it served upon the latter as surety (Exhs. "Y" and "Z"). It bears emphasis that the second Resolution of the appellant corporation's Board of Directors (Exh. "V") even closely coincides with the execution of the February 11, 1982 and March 5, 1982 Deeds of Assignment (Exhs. "I" and "R"). Were the appellants' posturings true, it seems rather strange that the appellant Tan Chong Lin did not even protest or, at least, make known to the appellee what he — together with the appellant corporation — represented to be a corporate larceny to which all of them supposedly fell prey. In the petition for voluntary insolvency it filed, the appellant corporation, instead, indirectly acknowledged its indebtedness in terms of financing accommodations to the appellee, in an amount which, while not exactly matching the sum herein sought to be collected, approximates the same (Exhs. "CC", "DD" and "DD-1").[7]

x x x x x x x x x

The appellants contend that the foregoing warranties enlarged or increased the surety's risk, such that appellant Tan Chong Lin should be released from his liabilities (pp. 37-44, Appellant's Brief). Without saying more, the appellants' position is, however, soundly debunked by the undertaking expressed in the Comprehensive and Continuing Surety Agreements (Exhs. "W" and "X"), to the effect that the "xxx

[7] *Ibid.*, pp. 76-77.

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surety/ies, jointly and severally among themselves and likewise with the principal, hereby agree/s and bind/s himself to pay at maturity all the notes, drafts, bills of exchange, overdrafts and other obligations which the principal may now or may hereafter owe the creditor xxx." With the possible exception of the fixed ceiling for the amount of loan obtainable, the surety undertaking in the case at bar is so comprehensive as to contemplate each and every condition, term or warranty which the principal parties may have or may be minded to agree on. Having affixed his signature thereto, the appellant Tan Chong Lin is expected to have, at least, read and understood the same.

x x x x x x x x x

With the foregoing disquisition, the Court sees little or no reason to go into the appellants' remaining assignments of error, save the matter of attorney's fees. For want of a statement of the rationale therefore in the body of the challenged decision, the trial court's award of attorney's fees should be deleted and disallowed (*Abrogar vs. Intermediate Appellate Court*, 157 SCRA 57).

WHEREFORE, the decision appealed from is MODIFIED, to delete the trial court's award of attorney's fees. The rest is AFFIRMED *in toto*.

SO ORDERED."[8]

The Issues

The petition is anchored on the following assigned errors:

"1. The respondent Court erred in not holding that the proper parties against whom this action for collection should be brought are the drawers and indorser of the checks in question, being the real parties in interest, and not the herein petitioners.

2. The respondent Court erred in not holding that the petitioner-corporation is discharged from liability for failure of the private respondent to comply with the provisions of the Negotiable Instruments Law on the dishonor of the checks.

3. The respondent Court erred in its appreciation and interpretation of the effect and legal consequences of the

[8] *Ibid.*, pp. 79-81.

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signing of the deeds of assignment and the subsequent indorsement of the checks by Arsenio Lim Piat, Jr. in his individual and personal capacity and without stating or indicating the name of his supposed principal.

4. The respondent Court erred in holding that the assignment of the checks is a loan accommodation or credit line accorded by the private respondent to petitioner-corporation, and not a purchase and sale thereof.

5. The respondent Court erred in not holding that there was a material alteration of the risk assumed by the petitioner-surety under his surety agreement by the terms, conditions, warranties and obligations assumed by the assignor Arsenio Lim Piat, Jr. under the deeds of assignment or receivables.

6. The respondent Court erred in holding that the petitioner-corporation impliedly admitted its liability to private respondent when the former included the latter as one of its creditors in its petition for voluntary insolvency, although no claim was filed and proved by the private respondent in the insolvency court.

7. The respondent Court erred in holding the petitioners liable to private respondent on the transactions in question."[9]

The issues to be resolved in this petition can be summarized into three:

1. WHETHER ARSENIO HAD AUTHORITY TO EXECUTE THE DEEDS OF ASSIGNMENT AND THUS BIND GREAT ASIAN;

2. WHETHER GREAT ASIAN IS LIABLE TO BANCASIA UNDER THE DEEDS OF ASSIGNMENT FOR BREACH OF CONTRACT PURSUANT TO THE CIVIL CODE, INDEPENDENT OF THE NEGOTIABLE INSTRUMENTS LAW;

3. WHETHER TAN CHONG LIN IS LIABLE TO GREAT ASIAN UNDER THE SURETY AGREEMENTS.

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[9] *Rollo*, pp. 13-15.

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The Court's Ruling

The petition is bereft of merit.

First Issue: Authority of Arsenio to Sign the Deeds of Assignment

Great Asian asserts that Arsenio signed the Deeds of Assignment and indorsed the checks in his personal capacity. The primordial question that must be resolved is whether Great Asian authorized Arsenio to sign the Deeds of Assignment. If Great Asian so authorized Arsenio, then Great Asian is bound by the Deeds of Assignment and must honor its terms.

The Corporation Code of the Philippines vests in the board of directors the exercise of the corporate powers of the corporation, save in those instances where the Code requires stockholders' approval for certain specific acts. Section 23 of the Code provides:

"SEC. 23. The Board of Directors or Trustees. Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x."

In the ordinary course of business, a corporation can borrow funds or dispose of assets of the corporation only on authority of the board of directors. The board of directors normally designates one or more corporate officers to sign loan documents or deeds of assignment for the corporation.

To secure a credit accommodation from Bancasia, the board of directors of Great Asian adopted two board resolutions on different dates, the first on March 17, 1981, and the second on February 10, 1982. These two board resolutions, as certified under oath by Great Asian's Corporate Secretary Mario K. Tan, state:

First Board Resolution

"RESOLVED, that the Treasurer of the corporation, Mr. Arsenio Lim Piat, Jr., be authorized as he is authorized to apply for and negotiate for a *loan accommodation or credit line* in the amount

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not to exceed ONE MILLION PESOS (₱1,000,000.00), with Bancasia Finance and Investment Corporation, and likewise to sign any and all papers, documents, and/or promissory notes in connection with said loan accommodation or credit line, including the power to mortgage such properties of the corporation as may be needed to effectuate the same."[10] (Italics supplied)

Second Board Resolution

"RESOLVED that Great Asian Sales Center Corp. obtain a *discounting line* with BANCASIA FINANCE & INVESTMENT CORPORATION, at prevailing discounting rates, in an amount not to exceed** TWO MILLION PESOS ONLY (₱2,000,000),** Philippine Currency.

RESOLVED FURTHER, that the corporation secure such other forms of credit lines with BANCASIA FINANCE & INVESTMENT CORPORATION in an amount not to exceed** TWO MILLION PESOS ONLY (₱2,000,000.00),** PESOS, under such terms and conditions as the signatories may deem fit and proper.

RESOLVED FURTHER, that the following persons be authorized individually, jointly or collectively to sign, execute and deliver any and all instruments, documents, checks, sureties, etc. necessary or incidental to secure any of the foregoing obligation:

(signed)
Specimen Signature

1.ARSENIO LIM PIAT, JR.

2. _____

3. _____

4. _____

PROVIDED FINALLY that this authority shall be valid, binding and effective until revoked by the Board of Directors in the manner prescribed by law, and that BANCASIA FINANCE & INVESTMENT CORPORATION shall not be bound by any such revocation until such time as it is noticed in writing of such revocation."[11] (Italics supplied)

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[10] Plaintiff's Evidence, p. 15.

[11] Plaintiff's Evidence, p. 16.

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The first board resolution expressly authorizes Arsenio, as Treasurer of Great Asian, to apply for a "*loan accommodation or credit line*" with Bancasia for not more than P1.0 million. Also, the first resolution explicitly authorizes Arsenio to sign any document, paper or promissory note, including mortgage deeds over properties of Great Asian, to secure the loan or credit line from Bancasia.

The second board resolution expressly authorizes Great Asian to secure a "*discounting line*" from Bancasia for not more than ₱2.0 million. The second board resolution also expressly empowers Arsenio, as the authorized signatory of Great Asian, "*to sign, execute and deliver any and all documents, checks x x x necessary or incidental to secure*" the discounting line. The second board resolution specifically authorizes Arsenio to secure the discounting line "*under such terms and conditions as (he) x x x may deem fit and proper.*"

As plain as daylight, the two board resolutions clearly authorize Great Asian to secure a *loan or discounting line* from Bancasia. The two board resolutions also categorically designate Arsenio as the authorized signatory to sign and deliver all the implementing documents, including checks, for Great Asian. There is no iota of doubt whatsoever about the purpose of the two board resolutions, and about the authority of Arsenio to act and sign for Great Asian. The second board resolution even gave Arsenio *full authority* to agree with Bancasia on the terms and conditions of the discounting line. Great Asian adopted the correct and proper board resolutions to secure a loan or discounting line from Bancasia, and Bancasia had a right to rely on the two board resolutions of Great Asian. Significantly, the two board resolutions specifically refer to Bancasia as the financing institution from whom Great Asian will secure the loan accommodation or discounting line.

Armed with the two board resolutions, Arsenio signed the Deeds of Assignment selling, and endorsing, the fifteen checks of Great Asian to Bancasia. On the face of the Deeds of Assignment, the contracting parties are indisputably Great Asian and Bancasia as the names of these entities are expressly mentioned therein as the assignor and assignee, respectively.

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Great Asian claims that Arsenio signed the Deeds of Assignment in his personal capacity because Arsenio signed above his printed name, below which was the word "Assignor," thereby making Arsenio the assignor. Great Asian conveniently omits to state that the first paragraph of the Deeds expressly contains the following words: "*the ASSIGNOR, Great Asian Sales Center, a domestic corporation x x x herein represented by its Treasurer Arsenio Lim Piat, Jr.*" The assignor is undoubtedly Great Asian, represented by its Treasurer, Arsenio. The only issue to determine is whether the Deeds of Assignment are indeed the transactions the board of directors of Great Asian authorized Arsenio to sign under the two board resolutions.

Under the Deeds of Assignment, Great Asian sold fifteen postdated checks at a discount, over three months, to Bancasia. The Deeds of Assignment uniformly state that Great Asian, –

"x x x for valuable consideration received, does hereby SELL, TRANSFER, CONVEY, and ASSIGN, unto the ASSIGNEE, BANCASIA FINANCE & INVESTMENT CORP., a domestic corporation x x x, the following ACCOUNTS RECEIVABLES due and payable to it, having an aggregate face value of x x x."

The Deeds of Assignment enabled Great Asian to generate instant cash from its fifteen checks, which were still not due and demandable then. In short, instead of waiting for the maturity dates of the fifteen postdated checks, Great Asian sold the checks to Bancasia at less than the total face value of the checks. In exchange for receiving an amount less than the face value of the checks, Great Asian obtained immediately much needed cash. Over three months, Great Asian entered into four transactions of this nature with Bancasia, showing that Great Asian availed of a discounting line with Bancasia.

In the financing industry, the term "discounting line" means a credit facility with a financing company or bank, which allows a business entity to sell, on a continuing basis, its accounts receivable at a discount.[12] The term "discount" means the sale

[12] The following entry on "discount" in Simon & Schuster *New Millennium Encyclopedia* (2000 CD Version) explains the meaning of a

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of a receivable at less than its face value. The purpose of a discounting line is to enable a business entity to generate instant cash out of its receivables which are still to mature at future dates. The financing company or bank which buys the receivables makes its profit out of the difference between the face value of the receivable and the discounted price. Thus, Section 3 (a) of the Financing Company Act of 1998 provides:

"Financing companies" are corporations x x x primarily organized for the purpose of *extending credit* facilities to consumers and to industrial, commercial or agricultural enterprises *by discounting* or factoring commercial papers or *accounts receivable, or by buying and selling* contracts, leases, chattel mortgages, or other *evidences of indebtedness,* or by financial leasing of movable as well as immovable property." (Italics supplied)

This definition of "financing companies" is substantially the same definition as in the old Financing Company Act (R.A. No. 5980).[13]

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discounting line: "In finance, discounts are premiums or considerations given on the purchase of promissory notes, bills of exchange, or other forms of negotiable commercial paper in advance of their maturity dates. Such discounts make up deductions from the face value of the discounted paper and are made at the time of purchase. The principal agencies engaged in discounting commercial paper are commercial banks and, in a few countries, financial institutions that specialize in that practice. When discounted paper is again put into circulation by a bank or discount house and is discounted again, it is said to be rediscounted.

When discounted paper matures, the holders of such bills and notes receive the full face value of the commercial paper they present for payment; therefore, the practice of discounting bills and notes is, in effect, a means of extending credit in the form of loans; the discounts are regarded as advance collections of interest on the loans. Rates for discounting and rediscounting commercial paper are established by commercial banks and discount houses in accordance with the relative supply of money available for commercial loans. In countries in which the banking system is organized on a centralized basis, discount and rediscount rates are determined in large part by the central banks; in the U.S., these rates are established in part by the Federal Reserve System to control the volume of credit and thus stimulate or slow the economy."

[13] Section 3 (a) of R.A. No. 5980 stated as follows: "Financing companies," hereinafter called companies, are corporations x x x which are

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Moreover, Section 1 (h) of the New Rules and Regulations adopted by the Securities and Exchange Commission to implement the Financing Company Act of 1998 states:

"*Discounting*" *is a type of receivables financing* whereby evidences of indebtedness of a third party, such as installment contracts, promissory notes and similar instruments, are purchased by, or *assigned to, a financing company in an amount or for a consideration less than their face value.*" (Italics supplied)

Likewise, this definition of "discounting" is an exact reproduction of the definition of "discounting" in the implementing rules of the old Finance Company Act.

Clearly, the discounting arrangements entered into by Arsenio under the Deeds of Assignment were the very transactions envisioned in the two board resolutions of Great Asian to raise funds for its business. Arsenio acted completely within the limits of his authority under the two board resolutions. Arsenio did exactly what the board of directors of Great Asian directed and authorized him to do.

Arsenio had all the proper and necessary authority from the board of directors of Great Asian to sign the Deeds of Assignment and to endorse the fifteen postdated checks. Arsenio signed the Deeds of Assignment as agent and authorized signatory of Great Asian under an authority expressly granted by its board of directors. The signature of Arsenio on the Deeds of Assignment is effectively also the signature of the board of directors of Great Asian, binding on the board of directors and on Great Asian itself. Evidently, Great Asian shows its bad faith in disowning the Deeds of Assignment signed by its own Treasurer, after receiving valuable consideration for the checks assigned under the Deeds.

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primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, either by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, x x x."

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Second Issue: Breach of Contract by Great Asian

Bancasia's complaint against Great Asian is founded on the latter's breach of contract under the Deeds of Assignment. The Deeds of Assignment uniformly stipulate[14] as follows:

"*If for any reason the receivables or any part thereof cannot be paid by the obligor/s, the ASSIGNOR unconditionally and irrevocably agrees to pay the same*, assuming the liability to pay, by way of penalty three per cent (3%) of the total amount unpaid, for the period of delay until the same is fully paid.

In case of any litigation which the ASSIGNEE may institute to enforce the terms of this agreement, the ASSIGNOR shall be liable for all the costs, plus attorney's fees equivalent to twenty-five (25%) per cent of the total amount due. Further thereto, the ASSIGNOR agrees that any and all actions which may be instituted relative hereto shall be filed before the proper courts of the City of Manila, all other appropriate venues being hereby waived.

The last Deed of Assignment[15] contains the following added stipulation:

"xxx Likewise, it is hereby understood that the warranties which the ASSIGNOR hereby made are deemed part of the consideration for this transaction, such that any violation of any one, some, or all of said warranties shall be deemed as deliberate misrepresentation on the part of the ASSIGNOR. In such event, the monetary obligation herein conveyed unto the ASSIGNEE shall be conclusively deemed defaulted, giving rise to the immediate responsibility on the part of the ASSIGNOR to make good said obligation, and making the ASSIGNOR liable to pay the penalty stipulated hereinabove as if the original obligor/s of the receivables actually defaulted. xxx"

Obviously, there is one vital suspensive condition in the Deeds of Assignment. That is, in case the drawers fail to pay the checks on maturity, Great Asian obligated itself to pay Bancasia the full face value of the dishonored checks, including penalty and attorney's fees. The failure of the drawers to pay the checks

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[14] Plaintiff's Evidence, Exhs. "A", "D", "I", "R", pp. 1, 3, 6 and 11-12.

[15] Plaintiff's Evidence, Exh. "R", pp. 11-12.

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is a suspensive condition,[16] the happening of which gives rise to Bancasia's right to demand payment from Great Asian. This conditional obligation of Great Asian arises from its written contracts with Bancasia as embodied in the Deeds of Assignment. Article 1157 of the Civil Code provides that -

> "Obligations arise from:
> (1) Law;
> (2) Contracts;
> (3) Quasi-contracts;
> (4) Acts or omissions punished by law; and
> (5) Quasi-delicts."

By express provision in the Deeds of Assignment, Great Asian unconditionally obligated itself to pay Bancasia the full value of the dishonored checks. In short, Great Asian sold the postdated checks on *with recourse* basis against itself. This is an obligation that Great Asian is bound to faithfully comply because it has the force of law as between Great Asian and Bancasia. Article 1159 of the Civil Code further provides that-

> "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

Great Asian and Bancasia agreed on this specific *with recourse* stipulation, despite the fact that the receivables were negotiable instruments with the endorsement of Arsenio. The contracting parties had the right to adopt the *with recourse* stipulation which is separate and distinct from the warranties of an endorser under the Negotiable Instruments Law. Article 1306 of the Civil Code provides that –

> "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

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[16] Article 1181 of the Civil Code provides as follows: "In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition."

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The explicit *with recourse* stipulation against Great Asian effectively enlarges, by agreement of the parties, the liability of Great Asian beyond that of a mere endorser of a negotiable instrument. Thus, whether or not Bancasia gives notice of dishonor to Great Asian, the latter remains liable to Bancasia because of the *with recourse* stipulation which is independent of the warranties of an endorser under the Negotiable Instruments Law.

There is nothing in the Negotiable Instruments Law or in the Financing Company Act (old or new), that prohibits Great Asian and Bancasia parties from adopting the *with recourse* stipulation uniformly found in the Deeds of Assignment. Instead of being negotiated, a negotiable instrument may be assigned.[17] Assignment of a negotiable instrument is actually the principal mode of conveying accounts receivable under the Financing Company Act. Since in discounting of receivables the assignee is subrogated as creditor of the receivable, the endorsement of the negotiable instrument becomes necessary to enable the assignee to collect from the drawer. This is particularly true with checks because collecting banks will not accept checks unless endorsed by the payee. The purpose of the endorsement is merely to facilitate collection of the proceeds of the checks.

The purpose of the endorsement is not to make the assignee finance company a holder in due course because policy considerations militate against according finance companies the rights of a holder in due course.[18] Otherwise, consumers who purchase appliances on installment, giving their promissory notes or checks to the seller, will have no defense against the finance company should the appliances later turn out to be defective. Thus, the endorsement does not operate to make the finance company a holder in due course. For its own protection, therefore, the finance company usually requires the

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[17] *Sesbreño vs. Court of Appeals*, 222 SCRA 466 (1993).

[18] See Campos & Campos, p. 128, *Notes and Selected Cases on Negotiable Instruments Law* (1971).

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assignor, in a separate and distinct contract, to pay the finance company in the event of dishonor of the notes or checks.

As endorsee of Great Asian, Bancasia had the option to proceed against Great Asian under the Negotiable Instruments Law. Had it so proceeded, the Negotiable Instruments Law would have governed Bancasia's cause of action. Bancasia, however, did not choose this route. Instead, Bancasia decided to sue Great Asian for breach of contract under the Civil Code, a right that Bancasia had under the express *with recourse* stipulation in the Deeds of Assignment.

The exercise by Bancasia of its option to sue for breach of contract under the Civil Code will not leave Great Asian holding an empty bag. Great Asian, after paying Bancasia, is subrogated back as creditor of the receivables. Great Asian can then proceed against the drawers who issued the checks. Even if Bancasia failed to give timely notice of dishonor, still there would be no prejudice whatever to Great Asian. Under the Negotiable Instruments Law, notice of dishonor is not required if the drawer has no right to expect or require the bank to honor the check, or if the drawer has countermanded payment.[19] In the instant case, all the checks were dishonored for any of the following reasons: "account closed," "account under garnishment", insufficiency of funds," or "payment stopped." In the first three instances, the drawers had no right to expect or require the bank to honor the checks, and in the last instance, the drawers had countermanded payment.

Moreover, under common law, delay in notice of dishonor, where such notice is required, discharges the drawer only to the extent of the loss caused by the delay.[20] This rule finds application in this jurisdiction pursuant to Section 196 of the

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[19] Section 114 (d) and (e) of the Negotiable Instruments Law provides as follows: "When notice need not be given to drawer. - Notice of dishonor is not required to be given to the drawer in either of the following cases: (a) x x x; (d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (e) Where the drawer has countermanded payment."

[20] Campos & Campos, p. 516, *supra.*, Note 18.

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Negotiable Instruments Law which states, "Any case not provided for in this Act shall be governed by the provisions of existing legislation, or in default thereof, by the rules of the Law Merchant." Under Section 186 of the Negotiable Instruments Law, delay in the presentment of checks discharges the drawer. However, Section 186 refers only to delay in presentment of checks but is silent on delay in giving notice of dishonor. Consequently, the common law or Law Merchant can supply this gap in accordance with Section 196 of the Negotiable Instruments Law.

One other issue raised by Great Asian, that of lack of consideration for the Deeds of Assignment, is completely unsubstantiated. The Deeds of Assignment uniformly provide that the fifteen postdated checks were assigned to Bancasia "for valuable consideration." Moreover, Article 1354 of the Civil Code states that, "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary." The record is devoid of any showing on the part of Great Asian rebutting this presumption. On the other hand, Bancasia's Loan Section Manager, Cynthia Maclan, testified that Bancasia paid Great Asian a consideration at the discount rate of less than 24% of the face value of the postdated checks.[21] Moreover, in its verified petition for voluntary insolvency, Great Asian admitted its debt to Bancasia when it listed Bancasia as one of its creditors, an extra-judicial admission that Bancasia proved when it formally offered in evidence the verified petition for insolvency.[22] The Insolvency Law requires the petitioner to submit a schedule of debts that must "contain a full and true statement of all his debts and liabilities."[23] The Insolvency Law even requires the petitioner to state in his verification that the schedule of debts contains "a full, correct and true discovery of all my debts and liabilities x x x."[24] Great

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[21] TSN, May 7, 1984, p. 9.

[22] Original Records, Exhibits "DD", "DD-1", pp. 238-244.

[23] Act No. 1956, Section 15.

[24] *Ibid.*, Section 17.

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Asian cannot now claim that the listing of Bancasia as a creditor was not an admission of its debt to Bancasia but merely an acknowledgment that Bancasia had sent a demand letter to Great Asian.

Great Asian, moreover, claims that the assignment of the checks is not a loan accommodation but a sale of the checks. With the sale, ownership of the checks passed to Bancasia, which must now, according to Great Asian, sue the drawers and indorser of the check who are the parties primarily liable on the checks. Great Asian forgets that under the Deeds of Assignment, Great Asian expressly undertook to pay the full value of the checks in case of dishonor. Again, we reiterate that this obligation of Great Asian is separate and distinct from its warranties as indorser under the Negotiable Instruments Law.

Great Asian is, however, correct in saying that the assignment of the checks is a sale, or more properly a discounting, of the checks and not a loan accommodation. However, it is precisely because the transaction is a sale or a discounting of receivables, embodied in separate Deeds of Assignment, that the relevant provisions of the Civil Code are applicable and not the Negotiable Instruments Law.

At any rate, there is indeed a fine distinction between a discounting line and a loan accommodation. If the accounts receivable, like postdated checks, are sold for a consideration less than their face value, the transaction is one of discounting, and is subject to the provisions of the Financing Company Act. The assignee is immediately subrogated as creditor of the accounts receivable. However, if the accounts receivable are merely used as collateral for the loan, the transaction is only a simple loan, and the lender is not subrogated as creditor until there is a default and the collateral is foreclosed.

In summary, Great Asian's four contracts assigning its fifteen postdated checks to Bancasia expressly stipulate the suspensive condition that in the event the drawers of the checks fail to pay, Great Asian itself will pay Bancasia. Since the common condition in the contracts had transpired, an obligation on the

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part of Great Asian arose from the four contracts, and that obligation is to pay Bancasia the full value of the checks, including the stipulated penalty and attorney's fees.

Third Issue: The liability of surety Tan Chong Lin

Tan Chong Lin, the President of Great Asian, is being sued in his personal capacity based on the Surety Agreements he signed wherein he solidarily held himself liable with Great Asian for the payment of its debts to Bancasia. The Surety Agreements contain the following common condition:

"Upon failure of the Principal to pay at maturity, with or without demand, any of the obligations above mentioned, or in case of the Principal's failure promptly to respond to any other lawful demand made by the Creditor, its successors, administrators or assigns, both the Principal and the Surety/ies shall be considered in default and the Surety/ies agree/s to pay jointly and severally to the Creditor all outstanding obligations of the Principal, whether due or not due, and whether held by the Creditor as Principal or agent, and it is agreed that a certified statement by the Creditor as to the amount due from the Principal shall be accepted by the Surety/ies as correct and final for all legal intents and purposes."

Indisputably, Tan Chong Lin explicitly and unconditionally bound himself to pay Bancasia, solidarily with Great Asian, if the drawers of the checks fail to pay on due date. The condition on which Tan Chong Lin's obligation hinged had happened. As surety, Tan Chong Lin automatically became liable for the entire obligation to the same extent as Great Asian.

Tan Chong Lin, however, contends that the following warranties in the Deeds of Assignment enlarge or increase his risks under the Surety Agreements:

"The ASSIGNOR warrants:

1. the soundness of the receivables herein assigned;
2. that said receivables are duly noted in its books and are supported by appropriate documents;
3. that said receivables are genuine, valid and subsisting;
4. that said receivables represent bona fide sale of goods, merchandise, and/or services rendered in the ordinary course of its business transactions;

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5. that the obligors of the receivables herein assigned are solvent;
6. that it has valid and genuine title to and indefeasible right to dispose of said accounts;
7. that said receivables are free from all liens and encumbrances;
8. that the said receivables are freely and legally transferable, and that the obligor/s therein will not interpose any objection to this assignment, and has in fact given his/their consent hereto."

Tan Chong Lin maintains that these warranties in the Deeds of Assignment materially altered his obligations under the Surety Agreements, and therefore he is released from any liability to Bancasia. Under Article 1215 of the Civil Code, what releases a solidary debtor is a "novation, compensation, confusion or remission of the debt" made by the creditor with any of the solidary debtors. These warranties, however, are the usual warranties made by one who discounts receivables with a financing company or bank. The Surety Agreements, written on the letter head of "Bancasia Finance & Investment Corporation," uniformly state that "Great Asian Sales Center x x x has obtained and/or desires to obtain loans, overdrafts, *discounts and/or other forms of credits* from" Bancasia. Tan Chong Lin was clearly on notice that he was holding himself as surety of Great Asian which was discounting postdated checks issued by its buyers of goods and merchandise. Moreover, Tan Chong Lin, as President of Great Asian, cannot feign ignorance of Great Asian's business activities or discounting transactions with Bancasia. Thus, the warranties do not increase or enlarge the risks of Tan Chong Lin under the Surety Agreements. There is, moreover, no novation of the debt of Great Asian that would warrant release of the surety.

In any event, the provisions of the Surety Agreements are broad enough to include the obligations of Great Asian to Bancasia under the warranties. The first Surety Agreement states that:

"x x x *herein Surety/ies, jointly and severally* among themselves and likewise with principal, hereby *agree/s and bind/s himself/ themselves to pay at maturity all the notes, drafts, bills of exchange, overdraft and other obligations of every kind which the Principal*

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may now or may hereafter owe the Creditor, including extensions or renewals thereof in the sum *** ONE MILLION ONLY*** PESOS (₱1,000,000.00), Philippine Currency, plus stipulated interest thereon at the rate of sixteen percent (16%) per annum, or at such increased rate of interest which the Creditor may charge on the Principal's obligations or renewals or the reduced amount thereof, plus all the costs and expenses which the Creditor may incur in connection therewith.

x x x x x x x x x

Upon failure of the Principal to pay at maturity, with or without demand, any of the obligations above mentioned, or in case of the Principal's failure promptly to respond to any other lawful demand made by the Creditor, its successors, administrators or assigns, both the Principal and the Surety/ies shall be considered in default and the *Surety/ies agree/s to pay jointly and severally to the Creditor all outstanding obligations of the Principal,* whether due or not due, and whether held by the Creditor as Principal or agent, and it is agreed that a certified statement by the Creditor as to the amount due from the Principal shall be accepted by the Surety/ies as correct and final for all legal intents and purposes. (Italics supplied)

The second Surety Agreement contains the following provisions:

"x x x *herein Surety/ies, jointly and severally* among themselves and likewise with PRINCIPAL, hereby *agree and bind themselves to pay at maturity all the notes, drafts, bills of exchange, overdraft and other obligations of every kind which the PRINCIPAL may now or may hereafter owe the Creditor*, including extensions and/or renewals thereof in the principal sum not to exceed TWO MILLION (₱2,000,000.00) PESOS, Philippine Currency, plus stipulated interest thereon, or such increased or decreased rate of interest which the Creditor may charge on the principal sum outstanding pursuant to the rules and regulations which the Monetary Board may from time to time promulgate, together with all the cost and expenses which the CREDITOR may incur in connection therewith.

If for any reason whatsoever, the PRINCIPAL should fail to pay at maturity any of the obligations or amounts due to the CREDITOR, or if for any reason whatsoever the PRINCIPAL fails to promptly respond to and comply with any other lawful demand made by the CREDITOR, or if for any reason whatsoever any obligation of the

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PRINCIPAL in favor of any person or entity should be considered as defaulted, then both the PRINCIPAL and the SURETY/IES shall be considered in default under the terms of this Agreement. Pursuant thereto, *the SURETY/IES agree/s to pay jointly and severally with the PRINCIPAL, all outstanding obligations of the CREDITOR*, whether due or not due, and whether owing to the PRINCIPAL in its personal capacity or as agent of any person, endorsee, assignee or transferee. x x x. (Italics supplied)

Article 1207 of the Civil Code provides, "xxx There is a solidary liability only when the obligation expressly so states, or when the law or nature of the obligation requires solidarity." The stipulations in the Surety Agreements undeniably mandate the solidary liability of Tan Chong Lin with Great Asian. Moreover, the stipulations in the Surety Agreements are sufficiently broad, expressly encompassing "*all the notes, drafts, bills of exchange, overdraft and other obligations of every kind which the PRINCIPAL may now or may hereafter owe the Creditor*". Consequently, Tan Chong Lin must be held solidarily liable with Great Asian for the nonpayment of the fifteen dishonored checks, including penalty and attorney's fees in accordance with the Deeds of Assignment.

The Deeds of Assignment stipulate that in case of suit Great Asian shall pay attorney's fees equivalent to 25% of the outstanding debt. The award of attorney's fees in the instant case is justified,[25] not only because of such stipulation, but also because Great Asian and Tan Chong Lin acted in gross and evident bad faith in refusing to pay Bancasia's plainly valid, just and demandable claim. We deem it just and equitable that the stipulated attorney's fee should be awarded to Bancasia.

The Deeds of Assignment also provide for a 3% penalty on the total amount due in case of failure to pay, but the Deeds are silent on whether this penalty is a running monthly or annual penalty. Thus, the 3% penalty can only be considered as a one-time penalty. Moreover, the Deeds of Assignment do not provide for interest if Great Asian fails to pay. We can only

[25] Article 2208 of the Civil Code.

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award Bancasia legal interest at 12% interest per annum, and only from the time it filed the complaint because the records do not show that Bancasia made a written demand on Great Asian prior to filing the complaint.[26] Bancasia made an extrajudicial demand on Tan Chong Lin, the surety, but not on the principal debtor, Great Asian.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CV No. 20167 is *AFFIRMED* with *MODIFICATION*. Petitioners are ordered to pay, solidarily, private respondent the following amounts: (a) ₱1,042,005.00 plus 3% penalty thereon, (b) interest on the total outstanding amount in item (a) at the legal rate of 12% per annum from the filing of the complaint until the same is fully paid, (c) attorney's fees equivalent to 25% of the total amount in item (a), including interest at 12% per annum on the outstanding amount of the attorney's fees from the finality of this judgment until the same is fully paid, and (c) costs of suit.

SO ORDERED.

Vitug (Acting Chairman), and *Panganiban, JJ.,* concur.

Melo (Chairman), J., on leave.

Sandoval-Gutierrez, J., no part.

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[26] *Eastern Shipping Lines, Inc. vs. Court of Appeals*, 234 SCRA 78 (1994).