IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH DEVELOPMENT AUTHORITY,
Plaintiff-Appellee,

v.

GUERRERO BROTHERS, INC., et al,
Defendants-Appellants.

SUPREME COURT NO. CV-04-0021-GA
SUPERIOR COURT NO. 97-677C

Cite as: 2007 MP 32

Decided December 28, 2007

F. Matthew Smith, Saipan, Northern Mariana Islands, for Plaintiff-Appellee.
Douglas F. Cushnie, Saipan, Northern Mariana Islands, for Defendant-Appellant.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; and ARTHUR R. BARCINAS, Justice Pro Tem

MANGLONA, J.:

¶ 1 This case arises from a personal loan guaranty the Commonwealth Development Authority ("CDA") sought to enforce against Guerrero Brothers, Inc. ("GBI")[1] by foreclosing on real property used to secure a mortgage. The trial court granted summary judgment in favor of CDA and GBI appealed. The question presented is whether GBI is financially liable for loans it entered into with a lender, which CDA later paid off on GBI's behalf. Because CDA paid off GBI's debt as part of a valid guaranty arrangement, we hold that GBI is liable for the debt, thus entitling CDA to move forward with foreclosure proceedings. Accordingly, we AFFIRM the trial court's grant of summary judgment, albeit on different grounds.

I

¶ 2 GBI, a Saipan construction company, entered into a contract with the Commonwealth Public School System ("PSS") to build Tinian High School. The project contract, effective from July 26, 1993 to January 18, 1995, entitled GBI to $3,849,000 upon its completion of the high school. To fund the project, GBI applied for a loan from CDA. CDA refused to make a direct loan, but agreed to guaranty a loan GBI subsequently obtained from the Bank of Saipan (the "bank").

¶ 3 On November 8, 1993, the bank approved two agreements with GBI. First, the bank approved a $500,000 revolving line credit. Second, the bank approved a $300,000 loan. CDA, as well as two of GBI's directors, Pedro R. Guerrero and Herman R. Guerrero, guaranteed the line of credit and the loan. On December 17, 1993, CDA and the bank executed a guaranty of the loans (the "first guaranty") in the amount of $800,000. As a result of this agreement, CDA's liability extended to ninety percent of the total principal balance due to the bank in the event that GBI defaulted on the loans. The first guaranty expired on December 17, 1994 as to the line of credit and March 8, 1995 as to the loan. On February 21, 1995, GBI extended the December 17, 1993 mortgage on Lot 1811 until May 26, 1995.

¶ 4 In the ensuing months, GBI fell behind on its construction schedule. Realizing it would not meet its January 1995 deadline, PSS granted GBI a seven-month extension to finish construction of Tinian High School. To cover the expenses associated with the extended period

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[1] The following individuals were named defendants in the trial court: Pedro R. Guerrero, serving as GBI's vice president and general manager; Herman R. Guerrero, serving as GBI's president; Pilar M. Guerrero, serving as GBI's secretary; and Lucy P. Guerrero. For the purposes of this case, we refer to GBI, Pedro R. Guerrero, Herman R. Guerrero, Pilar M. Guerrero, and Lucy P. Guerrero collectively as "GBI."

of construction, GBI requested that the bank increase its line of credit from $800,000 to $1.3 million in May 1995. The bank refused to grant the credit increase without CDA's further guaranty. On August 4, 1995, CDA and the bank executed a new guaranty (the "second guaranty") to cover the $1.3 million loan. The second guaranty expired on January 7, 1996.

¶ 5 In January 1996, nearly a year behind its construction schedule, GBI requested another contract extension from PSS and another loan extension from the bank. PSS granted the contract extension, and the bank agreed to delay repayment of the loan upon CDA's further guaranty. On March 13, 1996, CDA executed another guaranty (the "third guaranty") for the same $1.3 million as the expired second guaranty. The third guaranty's expiration date was July 8, 1996.

¶ 6 Before CDA executed the three guaranties in GBI's favor, Herman R. Guerrero, Pilar M. Guerrero, Pedro R. Guerrero, and Lucy P. Guerrero (collectively "GBI's directors") provided a number of personal guaranties to CDA in order to induce its increased financial obligations to the bank. For each of the three guaranties CDA provided for the bank, GBI's directors executed a real property mortgage in favor of CDA, which covered a piece of property designated as Lot 1811. Additionally, to further secure the first guaranty, Pedro R. Guerrero provided CDA with a personal guaranty on GBI's loan from the bank. To further secure the second guaranty, GBI's directors personally guaranteed GBI's $1.3 million loan from the bank and provided real estate as collateral. To further secure the third guaranty, GBI executed a security agreement in CDA's favor, which covered GBI's inventory and a number of accounts receivable. The personal guaranties executed by GBI's directors were independent of CDA's guaranty to the bank.

¶ 7 On October 19, 1996, over three months after the third guaranty expired, the bank demanded payment from CDA based on GBI's indebtedness.[2] Three days later, GBI, in a letter to the bank, requested that the bank collect its outstanding debt from CDA, which GBI referred to as its "guarantor." Defendant-Appellant's Supplemental Excerpts of Record ("Supp. ER") at 1. In accordance with GBI's request, the bank sought payment on GBI's debt from CDA, and CDA complied. On November 27, 1996, the bank acknowledged receipt of a $1,169,887.13 payment from CDA and assigned promissory notes, contract proceeds, and chattels to CDA. Additionally, the bank retained a ten percent interest in the remaining debt pursuant to a participation certificate. The participation certificate served, in part, as an agreement that the bank had a subordinate and secondary interest in CDA's interest in the notes, which would not be collected

[2] Following the execution of the third guaranty, a variety of construction delays ensued. In May 1996, the United States Department of Labor investigated claims that GBI failed to pay its laborers working on Tinian High School. Thereafter, in September 1996, the United States Department of the Interior instructed the Commonwealth Department of Finance to refrain from processing further progress payments to GBI until GBI resolved its outstanding payroll issues.

until CDA's balance, fees, and costs were collected. Thereafter, CDA sent a notice of default to GBI stating that the guaranties secured by the mortgages were in default.

¶ 8 When CDA attempted to collect payment from GBI, GBI argued that the guaranties between CDA and the bank expired and were no longer valid or enforceable. Therefore, GBI argued that it was not obligated to repay CDA, claiming CDA's $1,169,887.13 payment to the bank was voluntary.

¶ 9 After unsuccessfully attempting to collect payment from GBI, CDA filed its complaint as well as a motion for partial summary judgment. CDA requested that the trial court allow CDA to proceed with foreclosure proceedings against GBI as a result of its refusal to repay its debt. The trial court granted CDA's motion for summary judgment, finding that the guaranties bound GBI, and that CDA could proceed with foreclosure proceedings. GBI appeals on two grounds. First, GBI argues that the guaranties between CDA and the bank expired, rendering CDA's payment voluntary. Thus, GBI claims that CDA's voluntary payment on the expired guaranty relieved GBI of any financial obligation to repayment. Second, GBI argues that it posted insufficient collateral to cover the $1.3 million loan, which in turn, relieves GBI of its obligation to repay it. Thus, GBI argues that the trial court improperly granted CDA's motion for summary judgment.

II

¶ 10 An appeal from a decision on a motion for summary judgment is reviewed *de novo*. *Ferreira v. Borja*, 2 NMI 517, 520 (1992). We review the evidence in a light most favorable to the non-moving party. *Id.* at 521. We affirm if there is no issue of material fact and the trial court applied the relevant substantive law correctly. *Id*. If the trial court applied the incorrect substantive law, we determine if the result is correct under a different theory. *Id.*

III

CDA's Status as Guarantor

¶ 11 Both parties to this dispute base their arguments on contract law. GBI argues that because the third guaranty expired prior to the bank's demand for payment, CDA was not obligated to repay the bank. Because CDA was not obligated to pay, GBI argues that CDA's $1,169,887.13 payment to the bank was voluntary. GBI therefore claims that it is not obligated to pay CDA, as CDA voluntarily paid the bank on an extinct guaranty.[3]

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[3] In support of these arguments, GBI offers sparse support, citing and misciting cases that fail to directly address the issue at hand. In fact, the only cases cited by GBI deal with voluntary payments in insurance indemnity cases where liability is specifically limited by the indemnity agreement between the parties. Further, most of the cases GBI relies upon involve disputes between two insurers rather than between a surety and an unjustly enriched party. *See Auto Owners Ins. Co. v. Travelers Co. & Surety*, 227 F. Supp. 2d 1248 (M.D. Fla. 2002) (insurance coverage dispute); *Arison v. Cobb Ptnrs., Ltd.*, 807 So.2d 101, 106 (Fla. App. 2002) (stating that "liability could not be imposed under the terms of the indemnity

¶ 12 CDA counters that there were no limiting agreements between CDA and GBI absolving GBI's obligation to repay any of its outstanding debt. Rather, all agreements between CDA and GBI, as well as all the assigned agreements between the bank and GBI, contain language preserving liability in the event CDA purchased the loans, either voluntarily or involuntarily. Relying on the Restatement (Second) of Contracts § 317 (1981), CDA argues that contractual rights can be assigned unless a duty of the obligor is materially changed, or a statute or contract forbids assignment. In conformity with the Restatement, CDA contends that when it paid off GBI's loan, it purchased the bank's contractual right to collect payment from GBI. Thus, the bank assigned its contractual right to payment to CDA. Therefore, CDA argues that it is enforcing the independent and assigned loan documents, mortgages, and security agreements GBI executed, as opposed to the third guaranty.[4]

¶ 13 Courts use a number of different formulations to define situations giving rise to suretyship status.[5] For our purposes, it is enough to simply state that "a guarantor or surety is one who promises to answer for the debt or default of another." *United States v. Frisk*, 675 F.2d 1079, 1082 n.6 (9th Cir. 1982).

¶ 14 Section 1 of the Restatement (Third) of Suretyship and Guaranty (1995) ("Restatement") explains the circumstances in which transactions attain suretyship status.[6] A number of courts

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agreement"); *Nat'l Union Fire Ins. Co. v. Ranger Ins. Co.*, 190 A.D. 2d 395 (N.Y. App. 1993) (stating that insurer was never obligated to perform under insurance agreement between parties); *Wright v. Fidelity & Cas. Co.*, 139 So.2d 913 (Fla. App. 1962) (stating that indemnity agreement between parties controls).

4 Although CDA offers a persuasive argument, neither CDA nor GBI cite to the controlling law governing their dispute. As there is no written or customary law governing guaranties and sureties in the Commonwealth, we rely upon the Restatement (Third) of Suretyship and Guaranty (1995) ("Restatement"). *See* 7 CMC § 3401. Because there are no references to the Restatement in the parties' briefs or in the trial court's decision below, we find it necessary to review portions of the Restatement as it relates to the dispute at hand. Furthermore, there appears to be a sparsity of factually analogous case law interpreting relevant provisions of the Restatement. Thus, we find it all the more crucial to directly apply the Restatement to the facts of this dispute in order to guide our decision.

5 While the contracts in the record are entitled "guaranty," they nonetheless fall under the Restatement title of suretyship. *See* Restatement § 1 cmt. c. Additionally, the distinction, if any, between a guaranty and a surety has been the subject of debate. However, for our purposes, the two mechanisms are identical. *Id.*

6 Restatement § 1(1) provides:

> (1) This Restatement applies . . . and a secondary obligor has suretyship status whenever:
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> (a) pursuant to contract (the "secondary obligation"), an obligee has recourse against a person (the "secondary obligor") or that person's property with respect to the obligation (the "underlying obligation") of another person (the "principal obligor") to that obligee; and
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> (b) to the extent that the underlying obligation or the secondary obligation is performed the obligee is not entitled to performance of the other obligation; and

apply these circumstances in a variety of different contexts. In each case, however, there is a relationship between three distinct parties: an obligee, a principal obligor, and a secondary obligor. To a broad extent, this relationship becomes a suretyship when a secondary obligor is responsible to pay the debt of a defaulting principal obligor to the obligee. *Chemical Bank v. Meltzer*, 712 N.E. 2d 656, 660 (N.Y. 1999). Thus, a suretyship is created when three elements are satisfied: (1) an obligee has recourse against the secondary obligor for the principal obligor's debt; (2) to the extent that the principal obligor's debt is satisfied (by either the principal or secondary obligor), the obligee is not entitled to continued performance by either the principal or secondary obligor on the same debt, and (3) the principal obligor, as opposed to the secondary obligor, ought to perform the underlying debt or bear the cost of performance. Restatement § 1(1).

¶ 15 Restatement § 1 demonstrates that the guaranty arrangement between CDA, GBI, and the bank falls within its purview. The principal obligor is GBI because of the line of credit and loan it received from the bank. The bank, as creditor, is the obligee. The secondary obligor is CDA, which guaranteed repayment of GBI's debt to the bank in the event GBI defaulted. The transaction attained suretyship status because each of the three elements in Restatement § 1(1) were satisfied.

¶ 16 First, under Restatement § 1(1)(a), the bank, as obligee, had recourse[7] against CDA, as secondary obligor, with respect to the loan taken out by GBI, which was the principal obligor. This fact is clear, as all the agreements entered into between GBI, CDA, and the bank unequivocally state that GBI was primarily liable for its own debt. In the event that GBI defaulted on the debt, the bank could require CDA to either pay GBI's debt or purchase ninety percent of the debt from the bank. *See* Restatement § 1(2).

> (c) as between the principal obligor and the secondary obligor, it is the principal obligor who ought to perform the underlying obligation or bear the cost of performance.

[7] Under Restatement § 1(2)(a)-(b), an oblige has recourse against a secondary obligor whenever the following conditions are satisfied:

> (a) the principal obligor owes performance of the underlying obligation; and
> (b) pursuant to the secondary obligation, either:
>> (i) the secondary obligor has a duty to effect, in whole or in part, the performance that is the subject of the underlying obligation; or
>> (ii) the obligee has recourse against the secondary obligor or its property in the event of the failure of the principal obligor to perform the underlying obligation; or
>> (iii) the obligee may subsequently require the secondary obligor to either purchase the underlying obligation from the obligee or incur the duties described in subparagraph (i) or (ii).

¶ 17 Next, under Restatement § 1(1)(b), once the loan was paid off by either GBI or CDA, the bank, as obligee, was not entitled to either GBI's or CDA's continued performance on the same debt. The contractual language governing the transaction between GBI, CDA, and the bank indicated that once the $1.3 million debt was satisfied by GBI, the bank could not require continued payment from CDA and vice versa.

¶ 18 Finally, under Restatement § 1(1)(c), GBI was primarily liable for its own debt, and thus "ought to perform the underlying obligation or bear the cost of performance." *Id*. GBI needed the loan to cover its construction costs, and GBI both applied for the loan and promised to repay it. Additionally, CDA, as secondary obligor, only had an obligation to pay the debt in the event GBI could not. Accordingly, GBI was primarily responsible for the debt, thus meeting the requirements of Restatement § 1(1)(c).

¶ 19 The construct of the contracts between GBI, CDA, and the bank clearly meets the definition of a suretyship under Restatement § 1(1). The fact that the third guaranty expired between the bank and CDA has no bearing on CDA's status as surety. Although GBI may argue that by virtue of the expiration of the third guaranty CDA's payment to the bank was voluntary, it cannot argue with the fact that CDA acquired suretyship status under the Restatement.

¶ 20 Having determined that a suretyship was created, we turn to whether CDA, as secondary obligor, is entitled to repayment from GBI, as principal obligor. Under the Restatement, a secondary obligor may recover from a principal obligor under three separate theories: reimbursement, restitution, and subrogation. Although we find subrogation inapplicable to the present case,[8] the theories of reimbursement and restitution merit further discussion.

¶ 21 Reimbursement is based on the concept of an implied contract on the part of the principal obligor to make the secondary obligor whole, while restitution is based on the principle of unjust enrichment. Restatement § 26 cmt. d. "The difference is that, under the duty to reimburse, the secondary obligor is entitled to reimbursement for its reasonable outlay . . . while under the right of restitution recovery is limited to the amount of the principal obligor's enrichment." *Id.*

¶ 22 The concept of reimbursement in the context of suretyships and guaranties is clear: when a surety, at either the request or with the consent of the principal obligor, pays or is compelled to pay the principal's debt, the law implies a promise on the part of the principal to reimburse the surety. *United States v. Frisk*, 675 F.2d 1079, 1082 n.6 (9th Cir. 1982); *See Smith v. Mitsubishis*

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[8] Subrogation requires a "total satisfaction" of the underlying obligation. Restatement § 27; *see also*, *Am. Sur. Co. of New York v. Westinghouse Elec. Mfg. Co*., 296 U.S. 133, 137 (1935); *Dietrich Indus., Inc. v. United States*, 988 F.2d 568, 572 (5th Cir. 1993). Because CDA only paid off, and subsequently acquired the right to collect, ninety percent of GBI's outstanding debt, a complete satisfaction has not occurred. Thus, CDA is not entitled to be subrogated to the rights of the bank.

Motors Credit of Am., Inc., 721 A.2d 1187, 1190 (Conn. 1998) ("after payment, a surety is entitled to reimbursement from an underlying obligor who has notice of the suretyship"); *See Honey v. Davis*, 930 P.2d 908, 911 (Wash. 1997) (stating that where "the surety performs the obligation of the principal, or where the surety's property is used to satisfy the principal's duty, the principal is required to reimburse the surety"). Upon payment of the debt, the surety obtains a right of action against the principal obligor for reimbursement of the amount paid, plus any interest that may have accrued. *Frisk*, 675 F.2d at 1082 n.6. The Restatement describes the concept of reimbursement as follows:

> [W]hen the principal obligor is charged with notice of the secondary obligation it is the duty of the principal obligor to reimburse the secondary obligor to the extent that the secondary obligor (a) performs the secondary obligation; or (b) makes a settlement with the obligee that discharges the principal obligor, in whole or in part, with respect to the underlying obligation.

Restatement § 22(1).

¶ 23 As demonstrated by both case law and the Restatement, GBI, as principal obligor, had a duty to reimburse CDA, as secondary obligor, when GBI received notice of the secondary obligation. GBI received notice of the secondary obligation shortly after the bank demanded payment from CDA based on GBI's outstanding debt. After the bank demanded payment from GBI, GBI requested in a letter that the bank "call on our guarantor, the Commonwealth Development Authority (CDA) for the payment of our outstanding loan obligation with Bank of Saipan." Supp. ER at 1. Shortly thereafter, CDA performed ninety percent of the secondary obligation, obtained the bank's contractual right to collect directly from GBI, and demanded repayment from GBI. The fact that GBI knew its debt was past due, referred to CDA as its guarantor, requested that CDA pay off its debt, and received notice from CDA that its debt had indeed been paid off, demonstrates that GBI had notice of the secondary obligation. Upon receiving such notice, GBI's duty to reimburse CDA arose from an implied contract.[9]

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[9] Restatement § 22 cmt. a provides:

> Source of duty. When the principal obligor is charged with notice of the secondary obligation, the duty to reimburse, like the principal obligor's duty to perform, arises from implied contract. Just as the principal obligor impliedly agrees that it will perform the underlying obligation so that the secondary obligor will not have to perform, the principal obligor also agrees that it will reimburse the secondary obligor to the extent that the secondary obligor does perform, thereby fulfilling all or part of the underlying obligation . . . .
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> When the principal obligor is not charged with notice of the secondary obligation, there is no implied contract to reimburse. Nonetheless, if the secondary obligor performs the secondary obligation, thereby satisfying the underlying obligation in whole or part, the principal obligor is enriched; since the secondary obligor's performance is in satisfaction of the secondary obligor's own obligation, the principal obligor's enrichment is considered unjust enrichment. The secondary

¶ 24 Even without notice of the secondary obligation, however, GBI is still liable for its debt pursuant to the Restatement's clear stance against unjust enrichment. Under the Restatement, a principal obligor should not be unjustly enriched. Restatement § 22 cmt. a. A principal obligor is unjustly enriched when a secondary obligor satisfies a debt on behalf of a principal obligor. *Id*. In such circumstances, a secondary obligor is entitled to restitution from the principal obligor to the extent of the enrichment. *Id*.; *See also*, *In re M & T Elec. Contractors, Inc*., 267 B.R. 434, 450 (Bankr. D. D.C. 2001) (citing Restatement § 26); *SouthTrust Bank of Alabama, N.A., v. Webb-Stiles Co., Inc.*, 931 So.2d 706, 712 (Ala. 2005). The Restatement describes the concept of restitution as follows:

> The secondary obligor is entitled to restitution from the principal obligor to the extent that the secondary obligor's performance of the secondary obligation, or settlement with respect to it, relieves the principal obligor of its duty pursuant to the underlying obligation and the principal obligor has no duty to reimburse the secondary obligor for the cost of its performance.

Restatement § 26. As the Restatement explains, when a secondary obligor pays the debt of a principal obligor but is not entitled to reimbursement, the secondary obligor is still entitled to restitution to the extent of its performance. *Id.* In this context, restitution prevents a principal obligor from unjust enrichment.

¶ 25 In the present case, GBI was unjustly enriched when CDA paid off GBI's debt. GBI claims that CDA's payment of $1,169,887.13 to the bank was voluntary based on the expired guaranty. GBI therefore claims, in essence, that it should be able to keep over $1.1 million of free money that CDA paid on its behalf. The principle of unjust enrichment, however, dictates otherwise. CDA's payment to the bank satisfied GBI's underlying obligation, thus enriching GBI. Even if GBI could validly assert that it did not have notice of the secondary obligation, CDA is nonetheless entitled to restitution to the extent of GBI's enrichment.

¶ 26 Having discussed CDA's right of reimbursement and right to restitution, we turn specifically to GBI's claimed defense that CDA's repayment of the debt was voluntary, which, in turn, extinguished GBI's obligation to repay the loan. Although GBI bases its defense in contract law, the Restatement discusses defenses a primary obligor, such as GBI, has against a secondary obligor in the context of guaranties and suretyships. Specifically, Section 24(1) of the Restatement lays out six situations where a principal obligor has no duty to reimburse a secondary obligor.[10] Of the six defenses, only one, as set forth in Restatement § 24(1)(f), directly

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obligor, therefore, is entitled to restitution from the principal obligor to the extent of the enrichment.

[10] Restatement § 24(1) provides:

addresses GBI's alleged defense. Under Section 24(1)(f), a principal obligor has no duty to reimburse a secondary obligor if:

> [A]t the time of performance or settlement of the secondary obligation, the secondary obligor had notice of a defense to the secondary obligation that was not available to the principal obligor as a defense to the underlying obligation, *unless it was a reasonable business decision* to perform or settle the secondary obligation despite that defense.

Id. (emphasis added).

¶ 27 This defense is analogous to GBI's claimed defense. GBI argues that because the third guaranty expired prior to the bank's demand for payment, CDA was not obligated to repay the bank. As a result, GBI claims that CDA acted as a gratuitous volunteer and was not entitled to repayment on the debt. In essence, GBI argues that CDA, as a secondary obligor, performed its secondary obligation despite a defense it had against the bank, which GBI could not have raised itself. However, under the Restatement, this defense fails if the secondary obligor's performance of the secondary obligation was a "reasonable business decision." Restatement § 24(1)(f). Thus, GBI's defense turns on whether CDA's repayment of the debt constituted a voluntary gift or a reasonable business decision. The Restatement answers that question as follows:

> [I]n the sixth situation (see § 24(1)(f)) – when the secondary obligor performs the secondary obligation despite a defense to its duty to do so that is not also a defense available to the principal obligor with respect to the underlying obligation – performance of the secondary obligation relieves the principal

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(1) Notwithstanding § 22, the principal obligor has no duty to reimburse the secondary obligor to the extent that:

> (a) bankruptcy law relieves the principal obligor of that duty;
> (b) if the underlying obligation is contractual, the principal obligor is not liable because of its lack of capacity to enter into that obligation;
> (c) the principal obligor had a defense to the underlying obligation that, pursuant to the terms of the secondary obligation, was not available to the secondary obligor;
> (d) pursuant to § 39, the obligee's release of the principal obligor with respect to the underlying obligation has discharged the principal obligor's duty to reimburse the secondary obligor; or
> (e) at the time of performance or settlement of the secondary obligation, the secondary obligor had notice of a defense of the principal obligor to the underlying obligation that was available to the secondary obligor as a defense to the secondary obligation (§ 34), unless it was a reasonable business decision for the secondary obligor to perform or settle the secondary obligation in light of factors, amounting to business compulsion, of which the principal obligor had notice at the time it incurred the underlying obligation; or
> (f) at the time of performance or settlement of the secondary obligation, the secondary obligor had notice of a defense to the secondary obligation that was not available to the principal obligor as a defense to the underlying obligation, unless it was a reasonable business decision to perform or settle the secondary obligation despite that defense.

> obligor of its duty pursuant to the underlying obligation. While, strictly speaking, the performance by the secondary obligor was not required under the terms of the secondary obligation, it is quite likely that the decision to perform was based on the self-interest of the secondary obligor (*e.g.*, avoidance of the cost and uncertainty of litigating existence of suretyship defense) rather than intent to make a gift to the principal obligor. Accordingly, the secondary obligor in this circumstance *should not be treated as a volunteer*. Therefore, in such a case, the secondary obligor is entitled to restitution from the principal obligor.

Restatement § 26 cmt. 3 (emphasis added).

¶ 28 The Restatement makes clear that a surety or secondary obligor is not in the business of making monetary gifts. *Id*. Under the laws of suretyship, a secondary obligor who pays the debt of the principal obligor is not a volunteer. *Id*. In fact, even when a secondary obligor's performance is not absolutely required under the Restatement, there is a presumption that the secondary obligor is acting in self-interest, as opposed to making a monetary gift on behalf of the principal. *Id.* In such circumstances, a secondary obligor's decision to perform should be viewed as a business decision rooted in self-interest, rather than a desire to make a monetary gift to the principal obligor. *Id*.

¶ 29 In the present case, GBI's defense fails, as CDA was not a gratuitous volunteer under the Restatement. Rather, CDA's payment of the debt was a reasonable business decision. Upon GBI's default of its loan, CDA was obligated to pay the bank until the expiration of the third guaranty. CDA eventually paid off GBI's loan approximately three months after the expiration date. However, in light of Sections 24(1)(f) and 26 cmt. 3 of the Restatement, there is a presumption against viewing CDA as a volunteer. This presumption is supported by the fact that even after the expiration of the third guaranty, there were a variety of reasonable business concerns and justifications that would have, and likely should have, motivated CDA to pay off GBI's debt. First and foremost, CDA's statutory purpose is to stimulate economic development in the Commonwealth. 4 CMC § 10102. If CDA's guaranties are not worth the paper they are written on, construction and development throughout the Commonwealth would greatly suffer. Furthermore, the record indicates the bank had adequate evidence to go forward with litigation in demanding repayment of its loan. Accordingly, it was more than reasonable for CDA to pay off the loan on behalf of GBI in order to avoid a potential lawsuit. Indeed, even in a light most favorable to GBI, we find it difficult to believe that CDA's repayment of GBI's debt was anything less than a reasonable business decision. GBI is left defenseless against the express language of the Restatement.

¶ 30 Finally, it is important to note that all the Restatement remedies, which include reimbursement, restitution, and subrogation, are designed to prevent unjust enrichment. *See*

Restatement § 22 cmt. a ("[j]ust as the principal obligor impliedly agrees that it will perform the underlying obligation so that the secondary obligor will not have to perform, the principal obligor also agrees that it will reimburse the secondary obligor to the extent that the secondary obligor does perform . . ."); *Id.* § 26 cmt. a (a secondary obligor's performance in satisfaction of its obligation results in the unjust enrichment of the principal obligor, thus giving rise to restitution); *Id.* § 27 cmt. f ("[s]ubrogation is a remedy designed to prevent unjust enrichment"). The Restatement provisions cited above demonstrate that a primary obligor should not be unjustly enriched at the expense of the surety. Therefore, GBI's claim that CDA's payment was voluntary, thus exempting GBI from foreclosure proceedings, is without merit.

Sufficiency of Collateral

¶ 31 GBI argues that it offered insufficient collateral to justify a $1.3 million loan pursuant to the terms of the guaranty agreement between the bank and CDA. Therefore, GBI contends that CDA's purchase was voluntary. Specifically, GBI claims that the financial documents the bank held did not constitute "collateral" as defined by the Uniform Commercial Code, 5 CMC § 1201(37). These financial documents include promissory notes from GBI, assignment proceeds GBI was scheduled to receive upon completion of Tinian High School, and personal guaranties. GBI further argues that the collateral it offered was not sufficient to cover the $1.3 million loan, in that their collateral was worth less than $1.3 million. Thus, GBI argues, CDA had no obligation to purchase the guaranteed loan from the bank when GBI defaulted. GBI's arguments are, at best, unpersuasive and disingenuous. Nonetheless, we address its claims summarily.

¶ 32 First, we established that CDA's payment was not voluntary. We further established that the Restatement, and not the Uniform Commercial Code, governs this dispute. Consequently, whether or not the financial documents the bank held constituted collateral as defined by the Uniform Commercial Code is immaterial. Rather, we look to the Restatement. The Restatement makes clear that "the secondary obligor's ignorance as to the existence or amount of collateral for the underlying obligation is irrelevant." Restatement § 27 cmt. f.

¶ 33 Additionally, collateral is designed primarily to protect the lender, not to enrich the borrower. Thus, the lender, not the borrower, determines the adequate amount of security necessary to secure a loan. This fact was made explicitly clear in the Receivables and Inventory Security Agreement ("Security Agreement"). *See* ER at 133-137. The signed Security Agreement states, "[i]f in the judgment of CDA . . . CDA shall at any time deem itself insecure, Borrower(s) shall either provide additional collateral sufficient to satisfy CDA, or reduce the total indebtedness by an amount sufficient to satisfy CDA." *Id.* at 134.

¶ 34 Finally, we disagree with GBI's argument that if the security used by a primary obligor to secure a loan falls even a penny short of the exact amount of the loan, then the guarantor forfeits all right of recovery. If we were to accept such a proposition, we would, in essence, allow debtors to purposefully devalue their collateral in order to retain both their collateral and the proceeds from their loans while skirting their repayment obligations. The implications of such a proposition create potentially grave financial consequences that we are unwilling to accept.

IV

¶ 35 For the foregoing reasons, we hold that GBI has no basis for discharging its financial obligations for the loans it undertook as part of a guaranty agreement with CDA. CDA may proceed with foreclosure proceedings, as we hold that: (1) a valid suretyship existed between GBI, CDA, and the bank; (2) CDA's repayment of GBI's debt constituted a reasonable business decision under the Restatement, and did not amount to a monetary gift on behalf of GBI; and (3) GBI cannot skirt its financial obligations on the basis of posting insufficient collateral. Accordingly, we AFFIRM the trial court's grant of summary judgment, albeit on different grounds.

Concurring:
Demapan, C.J., Barcinas, J.P.T.