45 Phil. 532

[G.R. No. 20588. December 17, 1923]

THE ASIATIC PETROLEUM COMPANY (PHILIPPINE ISLANDS), LTD., PLAINTIFF AND APPELLANT, VS. FRANCISCO HIZON Y SINGIAN AND JUSTINO A. DAVID, DEFENDANTS. FRANCISCO HIZON Y SINGIAN, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

This civil action was instituted in the Court of First Instance of the Province of Pampanga by the Asiatic Petroleum Company (Philippine Islands), Ltd., to recover of Justino A. David, as principal, and of Francisco Hizon y Singian, as surety, the sum of P51,560.12, an alleged balance due upon liquidation of accounts between the plaintiff and said David, and for which Francisco Hizon y Singian is alleged to be obligated as joint and several surety with the principal debtor. At the hearing judgment was rendered in favor of the plaintiff to recover of Justino A. David, as principal, the sum of P40,786.98, and of Francisco Hizon y Singian, as surety, a portion of the same debt not to exceed the sum of P5,000. From this judgment Justino A. David did not appeal, and his obligation, as principal debtor, to the extent adjudged by the trial court, is not now in question. As regards the liability declared by the trial court against Francisco Hizon y Singian, an appeal was taken both by the plaintiff and by said Hizon, the plaintiff contending that the court should have held Hizon jointly and severally responsible for the entire sum adjudged against the principal debtor, while Hizon claims that he should have been wholly absolved.

It appears in evidence that the plaintiff is a corporation lawfully engaged in the

selling of petroleum products in the Philippine Islands. In the year 1916 the plaintiff made a contract (Exhibit B) with Justino A. David, whereby the latter became the selling agent of the plaintiff at San Fernando, in the Province of Pampanga, with authority extending not only over the municipality of San Fernando but over the neighboring places of Guagua, Angeles, San Simon, Capas, Magalang, and Mabalakat, in the same province. In accordance with this contract and in conformity with the practices of the contracting parties thereunder, the said Justino A. David from time to time over a period of about five years received for sale and distribution at the places mentioned various consignments of kerosene, gasoline, and similar petroleum products, which were sold and disposed of by Justino A. David as selling agent. The relation thus established was continued without interruption until in the year 1921, when all the transactions between the two parties were gone over, and it was found that David was indebted to the plaintiff in the amount of nearly P60,000, a sum which, by subsequent payments, was reduced to P40,786.98, as found and adjudged by the trial court.

The alleged liability of the appellant, Francisco Hizon y Singian, is planted upon a document (Exhibit B-1), which, as appearing in evidence, is pasted to the Exhibit B. By the said Exhibit B-1, Francisco Hizon y Singian obligates himself to answer jointly and severally with the agent (Justino A. David) for all the obligations contracted or to be contracted by the latter in accordance with the terms of the contract of agency (Exhibit B), and the said Francisco Hizon y Singian further agrees finally to answer for any balance that should be due to the plaintiff from said agent upon liquidation of the account, or accounts, between said two parties.

The contract of suretyship (Exhibit B-1) consists of a single sheet of paper and the agreement therein expressed consists of a printed form completed by the interpolation, with pen and ink, of the names of the parties and the date of the transaction. It purports to have been signed on November 13, 1916, but the notarial acknowledgment appended thereto bears date of November 17, 1916, which

is the same as the date upon which the contract Exhibit B was acknowledged. As already stated the document B-1 is pasted to the contract Exhibit B, also made upon a printed form, but the two documents do not form integral parts of the same sheet, or sheets. However, the document B-1 refers to the contract of agency to which it is appended; and when the two are considered together, it would appear that the contract Exhibit B is the identical instrument referred to in Exhibit B-1 and that the former was executed in relation with the latter. Upon this point, however, a question is made, which constitutes in our opinion the decisive feature of the case.

As already stated the contract Exhibit B declares that David shall serve the plaintiff company as its only selling agent at San Fernando, Guagua, Angeles, San Simon, Capas, Magalang, and Mabalakat, in the Province of Pampanga; and the indebtedness which is the subject of this action was incurred by said David as selling agent of the plaintiff at all the places named.

From the time demand was first made upon the present appellant, Hizon, for the satisfaction of the balance due to the plaintiff upon liquidation of the account of David, the appellant has insisted that he had obligated himself to answer for indebtedness to be incurred by David as selling agent at and for the town of San Fernando and that he had been given to understand, at the time he contracted the obligation, that the indebtedness so incurred would not be in excess of P5,000.

The representation as to the amount into which the indebtedness would run—a representation which seems to have come exclusively from David—we consider unimportant, since the written contract places no limit upon the amount of the obligation; but the defendant’s contention concerning the place, or places, over which David’s agency extended is of a more serious character.

In this connection it is important to note that in the principal contract

(Exhibit B), as submitted in evidence, the words “Guagua, Angeles, San Simon, Capas, Magalang, Mabalakat” (after the words San Fernando), have been inserted in the printed form by means of a typewriting machine, and owing to lack of space in the printed form, it was necessary for the typist to interline the words “Guagua, Angeles, and San Simon.” Furthermore, the word “Mabalakat,” as written by the typist, overlaps and obscures the succeeding printed words, “in the,” standing before “Province of Pampanga.” There is of course nothing particularly suspicious about this, but the situation thus revealed suggests the possibility that the words Guagua, Angeles, San Simon, Capas, Magalang, and Mabalakat may have been inserted after the contract of suretyship had been signed and acknowledged by the appellant Hizon. Conclusive proof on this point comes, however, from another quarter and from a source not at all dependent upon the credibility of the oral testimony of the appellant Hizon. Said proof consists in the fact now to be stated.

It appears that at the time the appellant acknowledged the contract of suretyship (Exhibit B-1), duplicate copies of the principal contract were produced before the notary public and were there present for the inspection of the parties. The notary who acted in the matter was one A. E. Cuyugan, an attorney, who, at the time of the incident now in question, was engaged in the exercise of the legal profession, and at the time he was examined as a witness was filling the office of assistant attorney of the Bureau of Justice. This witness was introduced by the plaintiff, and his testimony has every appearance of being candid and truthful. He states that the two copies of the principal contract which were produced at the time the acknowledgment of Hizon to the contract of suretyship was taken were the same.

Now, after the principal contract had been acknowledged by Justino A. David, as appears from the notarial certificate appended thereto, and after the contract of suretyship had been at the same time acknowledged by the appellant, as appears from the contemporaneous notarial certificate appended thereto, the notary public delivered to David one copy of the principal contract, together

with one copy of the contract of suretyship acknowledged by the appellant; and these two documents went to the hands of the plaintiff and have appeared in evidence as Exhibits B and B-1, as already stated. The other copy of the principal contract was retained in the possession of the notary, in accordance with notarial usage in such matters. It thus became a part of his official records and, with other documents, was afterwards delivered by the notary to the clerk of court, of the Province of Pampanga, by whom it was transmitted to the division of archives of the Philippine Library and Museum.

In the course of the trial of this case, a duly authenticated copy of said contract, as appearing in the official archives of said division, was introduced in evidence in this case; and upon comparison of said copy with the Exhibit B, the two documents are found to differ in the sole circumstance that the words Guagua, Angeles, San Simon, Capas, Magalang, and Mabalakat, are wanting in the instrument now preserved in the division of archives.

Upon this circumstance, in relation with the testimony of the notary public and the appellant, the trial judge reached the conclusion that at the time the appellant signed and acknowledged the contract of suretyship the principal contract made no mention of other places than San Fernando; and that the names of the other places, after San Fernando, had been interpolated in the document Exhibit B after the contract of suretyship had been acknowledged. We believe that there can be little doubt as to the correctness of this conclusion, and it completely bears out the contention of the appellant to the effect that he really obligated himself only to answer for such indebtedness as might be incurred by David as agent at San Fernando. We may add that no witness was produced by the plaintiff for the purpose of explaining in any way the discrepancy between the two documents above referred to.

The circumstance should not pass unnoticed that the appellant’s contention concerning the extent of the agency at the time he obligated himself

was formulated at a time when he did not know of the existence of a copy of the contract of agency in the files of the division of archives; and the subsequent discovery of this piece of evidence is strongly suggestive of the appellant's good faith in claiming that he had obligated himself only for the results of an agency to be established at San Fernando. Our conclusion upon a careful consideration of the evidence is that, when the appellant acknowledged the contract of suretyship, the principal contract was limited to the agency at that place and that the document Exhibit B was subsequently amended by agreement between the plaintiff and Justino A. David, but without the knowledge or consent of the appellant, by the insertion therein of the names of the other places mentioned in said exhibit.

It is fundamental in the law of suretyship that any agreement between the creditor and the principal debtor which essentially varies the terms of the principal contract, without the consent of the surety, will release the surety from liability. (21 R. C. L., 1004.) This principle is equally valid under the civil as under the common law; and though not specifically expressed in the Civil Code, it may be deduced, so far as its application to the facts of this case is concerned, from the second paragraph of article 1822 in relation with article 1143 of the same Code. It requires no argument to show that the increase of liability incident to the extension of the agency to other places than San Fernando was prejudicial to the interest of the appellant, and the change could not be lawfully made without his consent.

The
trial judge was therefore not in error in holding that the appellant was in effect discharged from liability under the contract of suretyship (Exhibit B-1); but his Honor nevertheless gave judgment against the defendant for the sum of P5,000. In doing so he proceeded upon the idea that the defendant admitted that he had intended to obligate himself to the extent of P5,000, and his Honor concluded that by entering into the contract of suretyship the defendant had induced the plaintiff to make the contract of agency—which appears to have been signed by the representative of the plaintiff after it had been signed and acknowledged by David; for which reason his Honor considered it

just to hold the defendant to the extent at least in which he had intended to bind himself. The validity of this conclusion cannot be admitted. The only obligation which was created on the part of the defendant was the contract of suretyship (Exhibit B-1), and when that obligation was nullified by the subsequent alteration of the principal contract, the appellant was discharged *in toto*.

In the course of this decision the fact has not escaped our attention that the answer of the appellant does not specially plead the alteration of the contract of agency. But this is sufficiently explained by the circumstance that the document which conclusively proves the fact of alteration had not been discovered in the division of archives at the time the answer was filed. We note further that when a copy of said document was finally produced, it was introduced in evidence and admitted without question. Upon this state of facts it would be permissible, if necessary, for this court to direct an amendment of the answer, as was done in Harty *vs.* Macabuhay (39 Phil., 495). But as the point is purely defensive and the right clear, we consider it unnecessary to require the appellant to go through the form of this technicality.

In the light of what has been said it becomes necessary to reverse the appealed judgment in so far as it awards the sum of P5,000 against the appellant Francisco Hizon y Singian, and he will be completely absolved from the complaint.

So ordered, without special pronouncement as to costs.

Malcolm, Avanceña, Villamor, and *Romualdez, JJ.*, concur.
Johns, J., dissenting: Upon the facts shown in the record and the pleadings the judgment should be affirmed.

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