

100 Phil. 679

[ G. R. No. L-9542. January 11, 1957 ]

**PLAMDEL SURETY & INSURANCE CO., INC., PETITIONER AND ' APPELLANT, VS.  
P. L. GALANG MACHINERY CO., INC., RESPONDENTS AND APPELLEES.**

**D E C I S I O N**

**BENGZON, C.J.:**

Review by certiorari of the Court of Appeals! decision affirming that of the Manila Court of First Instance which required Plaridel Surety & Insurance Company, jointly and severally with Constancio San Jose, to pay P. L. Galang Machinery Co., Inc. the sum of P30,000,( with legal interest thereon from the date of the filing of the complaint, plus 15 per cent of the said amount as attorneys' fees and the costs. It is this additional liability for interest and attorneys' fees that petitioner challenges before this Court.

The facts necessary for adjudication are those found by the Court of Appeals:

“On November 4, 1950, P. L. Galang Machinery Co., Inc. and Constancio San Jose executed an agreement (Exhibit A), whereby the latter bound himself to cut, deliver and sell to the former 2,550,000 board feet of peeler and veneer logs at the price of P60 per thousand board feet f.o.b. vessel at the port of Polilio, to be delivered in three consecutive months beginning January, 1951, each delivery' consisting of 850,000 board feet. Said corporation had intended these logs for exportation to Japan. Thus, a few days later, relying upon the agreement (Exhibit A), it sold logs to Marubeni Co., Ltd., of Tokyo at P845 per thousand board feet f.o.b. vessel at Polilio (Exhibit D). To secure the performance of the obligation of Constancio San Jose, the Plaridel Surety & Insurance Co. on November 9, 1950, put up and executed a performance bond (Exhibit B) in the sum of P30,600, binding itself jointly and severally with the former as principal, for the faithful performance of the contract.

“In accordance with Exhibit ‘A’, P. L. Gaflang Machinery Co., Inc. advanced to Constancio San Jose the sum of P16,300, with interest at 10 per cent per annum (Exhibit C). As San Jose failed to deliver the corresponding quantity of logs for January, 1951, he addressed a letter to the corporation (Exhibit E), asking an extension of time ‘to complete the delivery of said quantity of logs’ on the ground that he had just acquired the logging machineries and equipment needed for the logging operation in Polilio. The request was verbally denied. Similarly, and as no logs were delivered in the month of February, 1951, on March 7, 1951, he again wrote a letter to the corporation advising it that due to his failure to comply with the terms of the aforementioned contract, he was expecting to deposit with the Plaridel Surety & Insurance Co. the sum of P30,000 (it should be P30,600).

“Consequently, and for failure of Constancio San Jose to comply with, the terms and stipulation of the agreement (Exhibit “A”), P. K Galang Machinery Co., Inc. notified the surety company on February 8, 1951 (Exhibit Q) of the failure of said Constancio San Jose and demanded at the same time the payment of the amount of the performance bond (Exhibit B) in the sum of P30,600 the payment of which was refused.

“Upon the foregoing, P. L. Galang Machinery Co., Inc. filed a complaint on May 8, 1951, against the aforementioned principal and his surety \* \* \*

Petitioner objects to the payment of interest and attorneys’ fees because: (1) they were not mentioned in the bond; and (2) the surety would become liable for more than the amount stated in the contract of suretyship. In support of its objection petitioner dwells on the proposition that a surety’s liability can not be extended beyond the terms of his undertaking, citing articles 1956 and 2208 of the New Civil Code which provide as follows:

“Art. 1966. No interest shall be due unless it has been expressly stipulated in writing.”

“Art. 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except; \* \* \*.”

The objection has to be overruled, because as far back as the year 1922 this Court held in *Tagawa vs. Aldanese*, 43 Phil. 852, that creditors suing on a suretyship bond may recover

from the surety as part of their damages, interest at the legal rate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond. "The theory is that interest is allowed only by way of damages for delay upon the part of the sureties in making payment after they should have done so. In some states, the interest has been charged from the date of the judgment of the appellate court. In this jurisdiction, we rather prefer to follow the general practice, which is to order that interest begin to run from the date when the complaint was filed in court, \* \* \*." 6

Such theory aligned with sec. 510 of the Code of Civil Procedure which was subsequently recognized in the Rules of Court (Rule 53, section 6) and with Article 1108 of the Civil Code (now Art. 2209 of the New Civil Code). In other words the Surety is made to pay interest/ not by reason of the contract, but by reason of its failure to pay when demanded and for having compelled the plaintiff to resort to the courts to obtain payment. It should be observed that interest does not run from the time the obligation became due, but from the filing of the complaint.

As to attorney's fees. Before the enactment of the New Civil Code, successful litigants could not recover attorney's fees as part of the damages they suffered by reason of the litigation. Even if the party paid thousands of pesos to his lawyers, he could not charge the amount to his opponent. 1

However the New Civil Code permits recovery of attorney's fees in eleven cases enumerated in Article 2208, among them, "where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered" or "when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim". This gives the courts discretion in apportioning attorney's fees.

Now, considering, in this case, that the principal debtor had openly and expressly admitted his liability under the bond, and the surety knew it, (p. 123, R. A.) we can not say there was abuse of lower courts' discretion in the way of awarding fees, specially, when the indemnity agreement signed by Constancio San Jose and Ramon F. Cuervo afforded the surety adequate protection. Nevertheless, in view of the principal amount to be recovered and the relatively uncomplicated work devolving upon plaintiff's counsel, the damages and expenses should be reduced to 10 percent for attorney's compensation - as originally suggested in the complaint (p. 13 R.A.).

With this modification, the decision under review is affirmed, with costs.

*Paras, C. J. Padilla, Montemayor, Bautista Angelo, Labarador, Conception, Reyes J. B. L., and Endencia, JJ., concur.*

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[1] *Ti vs. Alvear*, 26 Phil., 566.

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