

[G. R. No. L-10894. March 24, 1958]

PACIFIC TOBACCO CORPORATION, PETITIONER, VS. THE COURT OF APPEALS AND MANILA SURETY & FIDELITY CO., INC., RESPONDENT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal by certiorari from a decision of the Court of Appeals, reversing that of the Court of First Instance of Manila. The facts are set forth in the aforesaid decision of the Court of Appeals from which we quote:

“Early in December, 1952 (1951) Matias Defensor as attorney-in-fact of Domingo Ramos began negotiating with Co Cho Chit, President and General Manager of the Pacific Tobacco Corporation, for the appointment of his principal as sole and exclusive agent of said corporation in the province of Occidental Negros and having come to an understanding with the latter, Defensor went back to Bacolod to inform his principal, Domingo Ramos, of the acceptance of his proposal.

“On January 5, 1952 Domingo Ramos executed a special power of attorney in favor of Matias Defensor appointing him as his true and lawful attorney for him in his name and for his use and benefit to execute, sign, seal and deliver for him all bills, bonds, notes, invoices, trust receipts, or other instruments or documents in writing of whatever kind or nature which may be necessary for his proper conduct of said branch or distributing agency of which he had been appointed by the Pacific Tobacco Corporation of Manila, a corporation organized and existing under and by virtue of the laws of the Philippines for the purpose of selling and disposing of cigarettes of said concern (Exhibit C) and in connection likewise with said appointment Domingo Ramos executed a surety bond (Exhibit B) as principal and the Manila Surety & Fidelity Co., Inc. as guarantor in favor of the Pacific Tobacco Corporation in the penal sum of P10, 000, Philippine currency,

for the payment of which sum well and duly to be made said Domingo Ramos and the Manila Surety & Fidelity Co., Inc. bound themselves jointly and severally on condition, among others, that if the principal would account for all products which he may receive from the Pacific Tobacco Corporation from time to time in an amount not exceeding 10,000, the said bond would be considered null and void, otherwise if would remain in full force and effect and subject to execution according to law.

“With said special power of attorney and surety bond, Matias Defensor proceeded to Manila and signed and executed for and in the name and behalf of Domingo Ramos with the Pacific Tobacco Corporation the contract, Exhibit A, whereby Domingo Ramos was appointed to act as the sole distributor of its cigarettes, cigars and other tobacco products of said corporation in the Island of Negros which said company might sell to said distributor on credit provided that the balance of the latter’s account should not at any time exceed P5,000; that the distributor’s account, should fall due and payable in the office of the company within 30 days from the date of the sales invoice issued by said company; that all goods shipped to the distributor should be deemed to be on the basis of absolute sale and therefore no return should be accepted by the company from the distributor, provided, however, that should the goods which turned out to be originally defective the distributor should notify the company within three days from receipt thereof and await his instructions from the company, otherwise the distributor shall be barred from making any claims, return or discount and that the distributor shall post a surety bond in favor of the company signed by him and a solvent and reputable company acceptable to the company in the amount of P10,000 which bond should answer for the merchandise delivered to him by virtue of this contract and for the delivery truck which he shall be allowed to use by the company by virtue of said Contract.

“In accordance with said contract Domingo Ramos received from the company goods of the total value of P10,187.40 as evidenced by the following invoices:

Date	Invoice No.	Amount	Date due
Jan. 8, 1952	783	P1,275.00	Feb. 8, 1952
“ 10 1952	768	1,525.00	“ 10 1952
“ 19 1952	787	3,987.40	“ 19 1952

" 22 1952	791	425.00	" 22 1952
,			, 2
" 29 1952	803	1,700.00	" 29 1952
,			, 2
Feb. 9, 1952	282	1,275.	Mar. 9, 1952

Ramos paid only P600, thereby leaving a balance of P9,587.40 which he has failed to pay notwithstanding repeated demands made upon him to that effect.

"On March 10, 1952 the President and General Manager of the Pacific Tobacco Corporation, made demand in writing on the Manila Surety & Fidelity Co., Inc. for the payment of the balance of P9,587.40 guaranteed by its bond No. ON-1567 for P10,000 executed in favor of the Pacific Tobacco Corporation by the Bacolod branch of said company, Exhibit F, and as the demand was not heeded, on August 23, 1952 the Pacific Tobacco Corporation commenced this suit in the Court of First Instance of Manila against Domingo Ramos and the Manila Surety & Fidelity Co., Inc. for the collection of the above-mentioned amount to which the defendant surety company filed its answer containing admissions and denials and special defenses as well as cross-claim praying for the dismissal of plaintiff's complaint as far as said defendant is concerned and that in the event that judgment is rendered in favor of the plaintiff judgment in turn be entered in favor of said defendant as cross-plaintiff and against the cross-defendant, ordering them jointly and severally to effect full indemnity and reimbursement in favor of said defendant cross-plaintiff and for attorney's fees in an amount equivalent to 15% of the total sum claimed in said action. And as this appeal refers only to the question between the Pacific Tobacco Corporation and the Manila Surety & Fidelity Co., Inc, the pleadings filed by the other defendant were omitted in the Record on Appeal.

"On August 30, 1954, the lower court rendered its decision sentencing Domingo Ramos and the Manila Surety & Fidelity Co., Inc. to pay plaintiff jointly and severally the sum of P9,587.40 with interest thereon at the legal rate from August. 23, 1952 the date of the filing of the complaint until fully paid plus the costs of the suit. From said decision only the Manila Surety & Fidelity Co., Inc. has appealed alleging that the lower court erred:

1. In declaring that whether the contract, Exhibit A, was one of agency or distributorship was of no moment insofar as the position of the herein appellant was concerned.
2. In finding that the surety company, by its letter of March 7, 1953, confirmed its obligation to be bound under the terms of the contract, Exhibit A;
3. In not holding the extension of credit beyond P5,000 to Domingo Ramos as a further ground to release the appellant surety company from liability.
4. In holding that the surety company could not avoid liability inasmuch as it did not present any evidence of injury or prejudice.”

The pertinent part of the Surety bond Exhibit B reads:

KNOW ALL MEN BY THESE PRESENTS:

That we, DOMINGO RAMOS, of legal age, Filipino, married and resident of Bacolod City, Philippines as PRINCIPAL and the MANILA SURETY & FIDELITY Co., Inc., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, are held and firmly bound unto the Pacific Tobacco Co., of Manila, in the penal sum of Ten Thousand Pesos (P10,000.00), Philippine Currency, of the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally firmly by these presents.

“The conditions of this obligation are as follows:

“WHEREAS, the Pacific Tobacco, has appointed the principal as Agent in the Island of Negros and as such he is authorized to carry with him tobacco products worth Ten Thousand Pesos (P10,000.00), more or less; to dispose and sell the said products and to account for the proceeds thereof within the period required by the said Company;

“WHEREAS, the said Company requires the Principal to post a surety bond for Ten Thousand Pesos (10,000.00), Philippine Currency, to answer for such articles which he might fail to account as stated above.

“NOW, THEREFORE, the condition of this bond is such that if the principal will account for all products which he will receive from the PACIFIC TOBACCO Co., from time to time, in an amount not exceeding Ten Thousand Pesos (P10,000.00),

Philippine Currency, then this bond will be considered null and void; otherwise it shall remain in full force and effect and subject to execution according to law.

“The liability of the Manila Surety & Fidelity Co., Inc. under this bond will expire twelve (12) months from this date. It is hereby agreed and understood that the Surety will not be liable for any claim not discovered and presented to the said Surety within three (3) months from the expiration of this bond and the obligee hereby waives his right to file any court action against the Surety after the termination of the bond three months above-mentioned.”

In the language of the decision appealed from:

“The question at issue in this appeal is whether appellant is bound to pay the claim of appellee under the surety bond Exhibit B.”

The Court of Appeals decided this question in the negative and, hence, it reversed the decision of the Court of First Instance and absolved the surety company from the complaint filed against it, with costs against the Pacific Tobacco Corporation. Accordingly, the latter has filed the present petition for review by writ of certiorari. Plaintiff-appellant maintains

“1. That the Court of Appeals erred in holding that the surety bond, Exhibit B, was executed by respondent Manila Surety & Fidelity Company, Inc. as guarantor for Domingo Ramos.

“2. That the Court of Appeals erred in releasing the respondent Manila Surety & Fidelity Company, Inc. from liability under its surety bond, Exhibit B, by reason of the execution by petitioner and Domingo Ramos of a contract of distributorship instead of one of agency.

“3. That the Court of Appeals erred in reversing the finding of the lower court that respondent Manila Surety & Fidelity Company, Inc., by its letter of March 7, 1952, confirmed its obligation to be bound under the terms of its surety bond Exhibit B.”

We find no merit in this appeal. To begin with, the language of the surety bond in question,

Exhibit B, dated January 4, 1952, clearly contemplates the appointment of Domingo Ramos as *agent* of petitioner herein, with authority to dispose of and sell its products, and *to account* for the same or the proceeds of the sale, for which reason the surety company undertook to answer only for such articles as Ramos might “fail to account.” Upon the other hand, the contract (Exhibit A) entered into, on January 7, 1952, between Ramos and petitioner herein, provided that the former shall be the sole *distributor* of the latter in the Island of Negros; that petitioner shall sell cigarettes and other tobacco products to *Ramos*; that the corresponding price shall be due from, and payable, by Ramos “within 30 days from the date of the sales invoice” issued by the petitioner; and that Ramos shall give a P10,000.00 bond to “answer for the merchandise delivered to him by virtue” of said contract with petitioner herein. In other words, the juridical relation eventually established between petitioner and Ramos was *materially distinct and different* from that contemplated in respondent’s bond Exhibit B. Indeed, despite the fact that on January 4, 1952, the surety company and Ramos had given a P10,000.00 bond “to answer for such articles which he (Ramos) might *fail to account* as above stated,” in said contract, Exhibit A, dated January 7, 1952, petitioner required Ramos to post a surety bond to “answer *for the merchandise delivered to Kim*,” thus indicating that petitioner was not agreeable to said bond, Exhibit B.

It is true that, on January 21, 1952—or *after* delivery to Ramos of goods worth P6,787.40—petitioner demanded from the surety company a confirmation of said bond, Exhibit B, which the company gave on March 7, 1952, after receipt by Ramos of additional goods of petitioner herein valued P3,400.00. This confirmation did not modify, however, the provisions of the bond, Exhibit E, which secures not the payment of the price at which the goods were sold by petitioner to Ramos, but, merely, an accounting of said goods or of the proceeds of the sale thereof by Ramos to third persons.

Petitioner maintains that the Manila Surety & Fidelity Co., Inc., was a surety, not merely a guarantor, but the distinction is immaterial in the case at bar, for, in view of the circumstances already adverted to, there has been no meeting of the minds between petitioner and said respondent herein. As a consequence, there is between them no contractual or juridical relation, pursuant to which petitioner could exact from the surety company any responsibility arising from the acts or omissions of Ramos as distributor and consignee of said petitioner, and *buyer* of its products, not as *agent* of petitioner.

Independently of the foregoing, there is no evidence, or even, allegation to the effect that Ramos had misappropriated said goods, or otherwise failed to account for the same or the sale price thereof, if the goods have been sold by him. Accordingly, even if a contractual

relation had come into existence between petitioner and the surety company, the result is that petitioner has no cause of action against the latter under the bond Exhibit B.

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner, Pacific Tobacco Corporation. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista, Angelo, Labrador, Reyes, J. B. L. and Endencia, JJ., concur.

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