

103 Phil. 162

[G. R. No. L-9433. March 24, 1958]

MATERIAL DISTRIBUTORS (PHIL.), INC., PLAINTIFF AND APPELLEE, VS. MILES TIMBER AND TRANSPORT CORPORATION, PRENTICE M. MILES, HARRY LYONS, ALLISON J. GIBBS, FINLEY J. GIBBS, AND MALAKAS CONSTRUCTION, INC., DEFENDANTS AND APPELLEES. MILES TIMBER AND TRANSPORT CORPORATION AND PRENTICE M. MILES, CROSS-CLAIMANTS, VS. ALLISON J. GIBBS, FINLEY J. GIBBS, AND MALAKAS CONSTRUCTION, INC., COUNTER-DEFENDANTS, STEWART T. TAIT, INTERVENOR AND APPELLEE, LUZON SURETY COMPANY, INC., SURETY AND APPELLANT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal taken by the Luzon Surety Company, Inc., from an order of the Court of First Instance of Manila requiring, said appellant to deposit in court the sum of P20,000 for payment to intervenor, Stewart T. Tait and cross-claimant, Prentice M. Miles.

Tait is the owner of several parcels of land, located at Invernes Street, Santa Ana, Manila, together with a house and other improvements existing thereon. On February 7, 1947, he executed a deed of lease of said property in favor of Miles Timber & Transport Corporation (hereafter referred to as the lessee) for a period of ten (10) years, beginning from January 1, 1947, at a monthly rental of P2,700 (Exhibit A). On the same date, the lessee subleased the property to Material Distributors (Phil.), Inc., (thereafter referred to as the sublessee) for the same period and monthly rental, payable directly to Tait (Exhibit B), who forthwith consented to said sublease. It would seem that, in consequence of a misunderstanding that ensued, later on, between the lessee and the sublessee, Civil.Cases Nos. 5062, 5228, 5505, 5700, 6945 and No. 5859—the one at bar—were instituted in the Court of First Instance of Manila. On July 11, 1948, the lessee moved in case No. 5700 for the appointment of a receiver to take possession of all the books, records, papers, assets, properties and equipment of the sublessee. No action was taken on this motion, until after a typhoon in September, 1948, when Prentice M. Miles was appointed receiver to save the aforementioned properties of the sublessee from further deterioration. Miles discharged his

duties as receiver up to July 26, 1949, on which date the court issued an order directing the sale of said properties and relieving Miles as such receiver. Miles claims to have incurred expenses in the total sum of P22,627.31, which he seeks to recover as cross-claimant.

Meanwhile, the rentals from February to June, 1949, inclusive, aggregating P13,500 were not paid to Tait, who, pursuant to the provisions of his contract with the lessee, exercised the right to terminate, and did terminate, the same in July, 1949 and then leased his property for P3,000 a 'month to Marscon, Inc. However, Harry Lyons, president of the sublessee company, did not vacate the house of Tait until June, 1950, for which reason Marscon, Inc., deducted P300 a month from the rentals due to Tait from said corporation, from July, 1949, to June, 1950. The deductions thus made, amounting altogether to P3,600, is one of the items now sought to be recovered by Tait, who was allowed to intervene in the case at bar.

Moreover, the realty tax on the leased property, for the second half of 1948 and the first half of 1949, aggregating P3,670.53, was not paid, either by the lessee, or the sublessee. Tait settled this obligation, as well as unpaid bills for the following items:

1. Electricity P419.10
2. Telephone 501.60, and
3. Water..... 430.76

When Marscon, Inc. took possession of the leased property in 1949, several equipment and machinery of the sublessee were scattered in the premises. For clearing the area and putting said scattered equipment and machinery in one place, Marscon, Inc. charged Tait P865.21. Again, when in June, 1950, Lyons vacated the house, its condition was such that it was unfit for habitation. Accordingly, Tait had to repair it at a cost of P1,519.75. Thus, the amount that Tait, as intervenor, is entitled, to recover, according to the lower court, aggregates P24,506.95, apart from P5,000 claimed by Tait by way of attorney's fees.

After Miles' discharge as receiver, the lower court authorized the delivery to, and removal by, the sublessee of its properties in the leased premises, under certain conditions specified in an order of October 28, 1949, among which was the posting of a bond for P20,000, which was given on November 14, 1949, by the sublessee, as principal, and the herein appellant, Luzon Surety Company, Inc., as surety.

Prior thereto and during his receivership, Miles had sold a tractor of the sublessee for P14,500.00. Out of the proceeds of the sale, there was a balance of P11,838.15, now

deposited with the clerk of the lower court. Said sum of P11,838.15 and the aforementioned bond of P20,000.00 are, in the words of said court, "all that remain of the properties" of the sublessee, upon which the landlord's lien of Tait and the claims of Miles are sought to be enforced.

Upon a joint motion to dismiss, dated January 22, 1952 filed by all of the parties in the six (6) cases aforementioned, except Stewart T. Tait, intervenor in civil case No. 5859, the lower court dismissed civil cases Nos. 5062, 5228, 5505, 5700 and 6945. Thus, only civil case No. 5859 remains, on account of Tait's objection.

Passing upon the aforementioned claims of Tait and Miles, the lower court, after due trial, rendered a decision, dated November 29, 1954, the dispositive part of which, as amended on January 13, 1955, reads as follows:

"In view of the foregoing, the court hereby renders judgment.

"(a) Authorizing Prentice M. Miles to withdraw, and ordering the clerk of court to pay him, the amount of P2,308.68 out of the deposit of P11,838.15;

"(b) Ordering Material Distributors (Phil.), Inc., to pay Prentice M. Miles interest on this amount of P2,308.68 at 6% per annum from the filing of Miles' report on July 12, 1949, to the date of the withdrawal of said amount from the clerk of court;

"(c) Ordering Material Distributors (Phil.), Inc., to pay Prentice M. Miles the sum of P12,625.86 with interest at 6% per annum from the filing of Miles' report on July 12, 1949, until said sum is paid in full;

"(d) Authorizing Stewart Tait to receive, and ordering the clerk of court to pay him, the remainder of said deposit, or P9,529.47;

"(e) Ordering Material Distributors" (Phil.), Inc., and Miles Timber & Transport Corporation' to pay Stewart Tait, jointly and severally, interest on said amount of P9,529.47 at 12% per annum from the filing of the complaint in intervention on January 10, 1951, to the date of the withdrawal of the amount from the clerk of court;

"(f) Ordering Material Distributors (Phil.), Inc., and Miles Timber & Transport

Corporation to pay Tait, jointly and severally, the balance of the latter's claim in the sum of P11,377.48 and attorney's fees: in the amount of P4,000.00, or a total of P15,377.48 "plus interest on this amount of P15,377.48 at 12% per annum from January 10, 1961, until said amount is paid in full; and

"(g) Ordering Material Distributors (Phil.), Inc., and Miles Timber & Transport Corporation to pay the costs in favor of Stewart Tait."

Inasmuch, however, as the lower court held that it could not render judgment against the Luzon Surety Co., without previous notice and hearing, Tait, thereupon, moved for a judgment against said surety company upon its afore-mentioned bond. The company objected to said motion, whereas Miles urged that the same be granted. After due hearing, on February 15, 1955, the lower court issued an order, the pertinent portions of which are of the, following tenor:

"Wherefore, conformably to the condition of the oft-repeated bond, the Luzon Surety Co., Inc., is hereby ordered to deposit the amount thereof in the sum of 20,000.00 with the court for payment to Prentice M. Miles and Stewart Tait.

"In its decision of November 29, 1954, the court said:

"After, deducting Miles' share of P2,308.68 in the deposit of P11,838.15 from the total amount of P14,932.54 allowed him, there remains an unpaid balance of P12,628.86, excluding interest. Of this balance, P4,929.10 (P7,237.78, the total cost of repair, minus P2,308.68, the cost of repairs of the D-8 tractor) is a preferred credit. Too, after deducting Tait's' share of P9,529.47 in the same deposit from the amount of P24,908.95, including attorney's fees and excluding interest, there remains an unpaid balance of P15,377.48. Of this balance, P3,970.53 (P13,500.00 total rents from February to June, 1949, minus P9,529.47) is a preferred credit but inferior to Miles' preferred credit.'

"Accordingly, from the proceeds of the bond the amount of P4,929.10 shall first be deducted and paid to Prentice M. Miles; next, the amount of P3,970.53 shall be paid to Tait; and the balance, or P11,100.37, shall be divided between Tait and Miles in proportion to the total amounts respectively awarded them in the decision."

The surety company now seeks a review of this order, upon the ground that Material Distributors (Phil.), Inc. vs. Miles Timber and Transport Corp. et al.

“1. The lower court erred in rendering judgment against appellant Luzon Surety Co., Inc. without giving it a hearing, whereat it can have an opportunity to prove that the conditions of its bond have not been violated, and that therefore, it is not liable for the judgment.

“2. The lower court erred in not holding that under the conditions, of its bond the appellant surety company is not directly answerable for the judgment against the Material Distributors (Phil.), Inc., and that its liability rests, only upon a proper showing that the properties which it guarantees no longer exist or have been lost.”

With respect to the first assignment of error, it will be noted that, in its decision, dated November 29, 1954, the lower court held that it could not render judgment against appellant herein, upon the bond in question, without a hearing; that, thereafter, Tait moved for the rendition of said judgment; that said motion was set for hearing on January 15, 1955; that, on January 14, 1955, appellant filed an opposition to said motion; that, on January 25, 1955, Miles filed a similar motion, which was objected to by appellant; and that, on February 15, 1955, the lower court issued the order complained of, directing appellant to deposit the amount of said bond “in the sum of P20,000 with the court for payment to Prentice M. Miles and Stewart Tait.” In short, *this order was issued after due notice and hearing*, and hence, appellant’s first assignment of error is untenable.

As regards the second assignment of error, the record shows that, on October 28, 1949. the lower court issued an order, the pertinent part of which reads: .

“In view of the foregoing, it is hereby ordered that—

“(1) a new inventory of the properties in litigation at Invernes be taken immediately with the concurrence of the parties interested therein, if they so desire;

“(2) thereafter the Material Distributors (Phil.), Inc. may take possession of and remove said properties from 179 Invernes Street, Sta. Ana, Manila, upon filing a

bond in the sum of P20,000.00 with sureties satisfactory to this court, conditioned on the following:

(a) Material Distributors (Phil.), Inc. shall preserve the properties and shall not do or cause to be done anything which would diminish the value thereof;

(b) Material Distributors (Phil.), Inc. shall .at all times hold the saidl properties amenable to whatever only final disposition the Supreme Court may direct in the certiorari proceedings, S, C.-G.R. Nos. L-3274 and L-3292-5;

(c) The bond shall be payable to the Clerk of this Court and shall answer for any and all claims, demands, suits, rights or causes of action by any claimant thereto as owner or lien holder thereof or otherwise; and

(d) Material Distributors (Phil.), Inc. shall not sell, assign, transfer convey, mortgage, pledge or otherwise dispose of the said properties or any part thereof without previous authority from the court; and

“(3) The removal of the properties from 179 Invernes, Sta. Ana, Manila, shall be without prejudice to any and all claims and liens thereon or on any part thereof, whether or riot those claims or liens were made a matter of record in any of the above cases.

On November 12, 1949, there was filed a surety bond subscribed by the sublessee, as principal, and the herein appellant, as surety, Said bond, which was approved by the lower court on November 14, 1949, is couched in the following language:

“Whereas, an order dated October 28, 1949 was issued in the above-entitled case, the dispositive portion of which reads as follows:

‘In view of the foregoing, it is hereby ordered that—

(1) A new inventory of the properties in litigation at Invernes be taken immediately with the concurrence of the parties interested’ therein, if they so desire;

(2) Thereafter the Material Distributors (Phil.), Inc. may take possession of and remove said properties from 179 Invernes Street, Sta. Ana, Manila, upon filing a

bond in the sum of P20,000.00 with sureties satisfactory to this court, conditioned on the following:

(a) Material Distributors (Phil.), Inc. shall preserve the properties' and shall not do or cause to be done anything which would diminish the value thereof;

(b) Material Distributors (Phil.), Inc. shall at all times hold the said properties amenable to whatever final disposition the Supreme Court may direct in the' certiorari proceeding, S, C—G. R. Nos. L-3274 and 3292-5;

(c) The bond shall be payable to the Clerk of' this Court and shall answer for any and all claims, demands, suits, rights or causes of action by any claimant thereto as owner or lien holder whereof or otherwise; and

(d) Material Distributors (Phil.), Inc. shall not sell, assign, transfer, convey, mortgage, pledge or otherwise dispose of the said properties or any part thereof without previous authority from the court; and

“(3) the removal of the properties from 179 Invernes, Sta. Ana, Manila, shall be without prejudice to any and all claims and liens thereon or on any part thereof, whether or not those claims were made a matter of record in any of the above cases.’

“AND WHEREAS, said order requires the filing of a bond in the sum of TWENTY THOUSAND (P20,000) PESOS, Philippine currency, conditioned as above stated.

“WHEREFORE, WE MATERIAL DISTRIBUTORS (PHIL) INC., a corporation duly organized and existing under the laws of the Philippines with principal place of business at 180 David, Manila, as Surety, in consideration of the above, jointly and severally bind ourselves in the sum of twenty thousand (P20,000) PESOS, Philippine currency, in favor of the Clerk of Court of First Instance of Manila, under the conditions above-specified;

“IT IS FURTHER PROVIDED, That if the principal shall perform well and truly the foregoing conditions, then this obligation shall, be null and void,

“IN WITNESS WHEREOF, the parties hereto have set their hands and seal in the City of Manila, Philippines, on this 12th day of November, 1919.”

Appellant maintains that this is not a supersedeas bond; that, pursuant to the terms thereof, it is not responsible for any judgment that may be rendered in favor either of Tait or of Miles; that its liability, under the bond, would accrue only if and when the property released upon the filing of said bond were not properly accounted for; and that there is no affirmative showing that said property had been unlawfully disposed of. It "will be noted, however, that the bond was given in consideration of the release of certain properties under receivership, and that said properties were subject to the claims of the parties herein, particularly the lessor and the receiver. In other words, the circumstances under which it had been required and filed leave no room for doubt that said bond was given to take the place of the properties released as above stated. Moreover, paragraph (c) of the bond provides that same "shall be payable to the Clerk of this Court and shall answer for *any and all claims, * * * or causes of action by any claimant thereto* as owner or lien holder whereof or otherwise." Again, appellant did not allege, in any of its aforementioned oppositions to the motions of the lessor and Miles, that any of the aforementioned properties of the sublessee are available for the satisfaction of the claims of said movants. Indeed, up to the present, appellant has neither offered to prove, nor alleged, that any of said properties may be found and applied to the payment of the aforementioned claims. Under these circumstances it was not unreasonable for the lower court to feel that said properties of the sublessee must have been disposed of and are beyond the reach of appellees herein. At any rate, if appellant should later locate those properties, it could, upon payment of the claims of said appellees, exercise such rights as the latter may have by virtue of such claims (Articles 1177, 1302, 2066 and 2067, Civil Code of the Philippines).

Wherefore, the order appealed from is hereby affirmed, with costs against the appellant, Luzon Surety Co., Inc. It is so ordered.

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