

G.R No. L-12378

[G.R No. L-12378. May 28, 1958]

GLOBE ASSURANCE COMPANY, INC., PLAINTIFF-APPELLANT, VS. JOSEPH ARCACHE, DEFENDANT-APPELLEE.

D E C I S I O N

ENDENCIA, J.:

On May 22, 1954, defendant-appellee was appointed depository and custodian of the properties subject matter of the litigation in Civil Case No. 18633 in the Court of First Instance of Manila, entitled "Chief of Staff, Armed Forces of the Philippines, plaintiff, versus Collector of Internal Revenue, defendant." For the faithful performance of his duties as such depository and custodian, he was required to post a bond, hence he applied for and obtained from plaintiff-appellant a depository bond (Exh. A) which, on the same day, was submitted to the court, On May 24, 1954, the court approved the bond and directed the plaintiff in said Civil Case No. 18633 to deliver and/or turn over to herein defendant-appellee the properties therein litigated, including the cash amount of P24, 292.00, authorizing him at the same time to withdraw such amount or amounts as may be needed or required for transportation and administration of said properties, subject to the approval of the court. However, on June 2, 1954, the order of May 24, 1954 was suspended, upon agreement of the parties, because of an urgent motion for reconsideration filed by atty. Crispin T. Reyes, one of the defendants in the aforesaid case; and on June 10, 1954, upon agreement of the parties, the herein defendant-appellee was relieved as such custodian and depository and replaced by atty. Crispin T. Reyes who posted, on the same day, the corresponding bond in the sum of P100,000. Since May 22, 1954 up to June 10, 1954, the herein defendant-appellee never took possession of the properties litigate in said Civil Case No. 18633 and on August 26 the bond furnished by him was ordered withdrawn and cancelled by the lower court. For the issuance oa the bond which plaintiff-appellant has posted in said Civil Case No. 18633, defendant-appellee agreed to pay the sum of P2,000 as premium as shown by paragraphs 2 and 3 of the Indemnity Agreement (Exh. B), which reads as follows:

“In consideration of the responsibility undertaken by the COMPANY, for the original Bond, and for any renewals, extensions and substitution thereof, the undersigned, jointly and severally, bind themselves in favor of the said COMPANY, in the following terms:

“PREMIUM:- To pay to the COMPANY the sum of TWO THOUSAND (P2,000.00) in advance as premium of same, for each period of - - one year - - or fraction thereof, to be computed from this date, until said Bond, or any renewals, or extensions, or substitutions thereof, be cancelled in full by the person or entity guaranteed thereby, or by a court of competent jurisdiction.”

He failed, however, to pay such premium, hence on November 14, and December 6, 1955, plaintiff-appellant demanded from him the payment of the agreed premium plus P31.35 for documentary stamps and P2.00 for notarial fees. Defendant-Appellee kept silent and paid nothing, hence plaintiff-appellant initiated the present action which, after trial, was dismissed by the lower court for failure of plaintiff-appellant to prove its cause of action, its finding being that “the bond furnished by defendant in Civil Case No. 18633 was withdrawn and therefore, had no effect; that although the bond in question appeared in the record of said case, the motion for its withdrawal, with the effect that the said bond furnished by the plaintiff is of no value and said plaintiff was relieved of all responsibilities mentioned in said bond.”

Plaintiff-appellant appealed from the decision and now contends that the lower court erred: (1) in finding that before defendant-appellee was appointed and qualified as depository and custodian in Civil Case No. 18633 of the Court of First Instance of Manila another person was appointed in his stead; and (2) in finding that plaintiff-appellant failed to prove its cause of action and in dismissing the complaint. The appeal was brought to the Court of Appeals which in turn certified it to this Court on the ground that plaintiff-appellant raises no question of fact but only of law.

There is no dispute as to the facts of the case as above narrated and the only questions to be determined are: (1) whether the defendant-appellee has qualified as depository and custodian of the properties involved in the oft-mentioned Civil Case No. 18633; and (2) whether the plaintiff is entitled to collect from him the sum of P2,033.35 plus P500.00 for attorney's fees and costs.

As to the first question, we find the defendant as having qualified as depository and

custodian in the aforesaid civil case, because he posted a bond, although he was not able to discharge his duties because the properties therein litigate never came into his hands due to the fact that the order of the court dated June 2, 1954, and on June 10, 1954 he was relieve as such depositary and custodian. The aforesaid bond, therefore, did not serve its purpose, but it cannot be denied that from May 22 up to June 10, 1954, the responsibility of the plaintiff as bondsmen, existed and, therefore, it should be entitled, at least, to a partial payment of the premium in question plus the sum of P33.35 spent by plaintiff for documentary stamps and notarial fees for the execution of the bond in question. We hold that plaintiff is not entitled to collect from the defendant the entire premium of P2,000 because, as stated above, (1) the properties litigate in Civil Case No. 18633 never passed into his custody; (2) defendant was relieved as depositary before he could take possession of said properties; and (3) the bond in question was ordered withdrawn and cancelled by court's order dated August 26, 1954. We hold, however, that defendant is bound to make partial payment of the premium agreed upon by the parties because since May 24, 1954 when the bond was executed, submitted to the court, approved by it and attached to the record, up to June 10, 1954 when defendant was relieved as custodian and depositary, the aforesaid bond stood ready to respond for any responsibility that defendant-appellee might have incurred as such custodian and depositary. Moreover, we find that, in answering the complaint, defendant alleged by way of special defense, "that he is entitled to an equitable reduction of the amount allegedly due because the bond referred to has been cancelled before it could serve its purpose in accordance with the agreement entered into by the parties." Certainly, this allegation constitutes an admission by defendant that plaintiff is entitled to a partial payment of the premium in question.

Anent the attorney's fees, claimed, we find plaintiff appellant not entitled thereto, under the facts of the case, for defendant's refusal to pay the amount claimed in the complaint which prompted the filling of the present action, was due not to malice but to the fact that plaintiff demanded had the right to refuse it.

Wherefore, the decision appealed from is hereby reversed and the defendant ordered to pay unto the plaintiff the sum of P233.35, plus costs.

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

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