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[G. R. No. L-12077. June 27, 1958]

EMMANUEL C. ONGSIAKO, ET AL., PLAINTIFFS, VS. THE WORLD WIDE INSURANCE & SURETY CO., INC., ET AL., DEFENDANTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

On November 10, 1951, Catalina de Leon executed in favor of Augusto V. Ongsiako a promissory note in the amount of P1,200.00, payable ninety (90) days after date, with interest at 1 per cent per month. On the same date, a surety bond was executed by Catalina de Leon, as principal, and the World Wide Insurance & Surety Co., Inc., as surety, whereby they bound to pay said amount jointly and severally to Augusto V. Ongsiako. As the obligation was not paid on its date of maturity either by Catalina de Leon or by the surety notwithstanding the demands made upon them, Ongsiako brought this action on March 6, 1953 in the Municipal Court of Manila to recover the same from both the principal and the surety. Judgment having been rendered for the plaintiff, both defendants appealed to the court of first instance. In the latter court, Catalina de Leon failed to answer and so she was declared in default. In due time the surety company filed its answer setting up a counterclaim against plaintiff and a cross-claim against its co-defendant.

After hearing, the court rendered judgment ordering Catalina de Leon to pay plaintiff the sum of P1,200.00, with interest at the rate of 1 per cent per month from February 10, 1952, and the sum of P300.00 as attorneys' fees, and costs. Defendant surety company was likewise ordered to pay to plaintiff the same judgment but with the *proviso* that "execution should not issue against defendant The World-Wide Insurance & Surety Co., Inc., until a return is made by the Sheriff upon execution against defendant Catalina de Leon showing that the judgment against her remained unsatisfied in whole or in part; and provided, further, that defendant Catalina de Leon shall reimburse to defendant Company whatever amount the latter might pay under this judgment together with such expenses as may be necessary to effectuate said reimbursement." From this judgment, the surety company

appealed and the case is now before us because, as certified by the Court of Appeals, it only involves questions of law. Augusto V. Ongsiako, having died in the meantime, was substituted by his special administrators Emmanuel Ongsiako and Severino Santiangco.

The surety bond in question was executed in November 10, 1951 and among the important provisions it contains is the following: that the principal and the surety "are held and firmly bound unto Dr. Augusto V. Ongsiako in the sum of One Thousand Two Hundred Pesos (P1,200.00), Philippine Currency, for the payment of which well and truly to be made, we bind ourselves * * * jointly and severally, firmly by these presents" (and referring to the Promissory Note) "whose terms and conditions are made parts hereof." In said bond there also appears a special condition which recites: "The Liability of the World-Wide Insurance & Surety Go., Inc. under this bond will expire on February 10, 1952." The note therein referred to, on the other hand, provides that the obligation is payable ninety days from date of issue, November 10, 1951, which means that its date of maturity is February 10, 1952. The evidence shows that neither the principal nor the surety paid the obligation on said date of maturity and immediately thereafter demands for payment were made upon them. Thus, it appears that as early as February 12, 1952, or two days thereafter, the creditor wrote to the surety company a letter notifying it of the failure of its principal to pay the obligation and requesting that it make good its guaranty under the bond (Exhibit B), which demand was reiterated in subsequent letters (Exhibits C, D and E). To these demands, the company merely set up the defense that it only acted as a guarantor and as such its liability cannot be exacted until after the property of the principal shall have been exhausted (Exhibit G).

It therefore appears that appellant has no justification whatever to resist the claim of the plaintiff for in the judgment appealed from it is precisely provided that execution of judgment should not issue against it until after it is shown that the execution of the judgment against the principal has been returned by the sheriff unsatisfied, which was the only excuse given by said appellant in not fulfilling its commitment under the bond. And yet it appealed from said judgment just to put up the additional defense that its liability under the bond has already expired because of the condition that its liability shall expire on February 10, 1952. Even if this were true, we consider however this stipulation as unfair and unreasonable for it practically nullifies the nature of the undertaking assumed by appellant. It should be noted that the principal obligation is payable ninety days from date of issue, which falls on February 10, 1952. Only on this date can demand for payment be made on the principal debtor. If the debtor should fail to pay and resort is made to the surety for payment on the next day, it would be unfair for the latter to allege that its liability has already expired. And yet such is the stand taken by appellant. As the terms of the bond

should be given a reasonable interpretation, it is logical to hold that the liability of the surety attaches as soons as the principal debtor defaults, and notice thereof is given the surety within reasonable time to enable it to take steps to protect its interest. This is what was done by appellee in the present case. After all, the surety has a remedy under the law which is to foreclose the counterbond put up by the principal debtor. This is in effect what was done by the lower court.

This Court has taken note of the reprehensible attitude adopted by the surety company in this case by resorting to improper means in an effort to evade its clear responsibility under the law. An instance of such attitude is the insertion in the bond of a provision which in essence tends to nullify its commitment. This is a subtle way of making money thru trickery and deception. Such practice should be stopped if only to protect honest dealers or people in financial stress. Because of such improper conduct, this Court finds no justification for the present appeal and considers it frivolous and unnecessary. For this appellant should be made to pay treble costs.

Wherefore, the decision appealed from is affirmed, with treble costs against appellant.

Bengzon, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Paras, C. J., Montemayor, and *Reyes, A., JJ.,* concur in the result.

Date created: October 14, 2014