

**CAPITAL INSURANCE & SURETY COMPANY, INC., PLAINTIFF
AND APPELLEE, VS. JOE EBERLY, DEFENDANT AND APPELLANT***G.R. No. L-8940. November 28, 1956*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/04a734ae393f/>**PADILLA, J.:**

On 23 September 1952 at the request of Joe Eberly and Douglas Moss the plaintiff filed a bail bond in the sum of P2,000 for the provisional release of said Douglas Moss who had been charged with homicide through reckless imprudence in the Justice of the Peace Court of Batac, Ilocos Norte (Annex A). On the same day, the defendant (Joe Eberly) and the accused (Douglas Moss) agreed to indemnify, jointly and severally, the plaintiff for damage it might suffer arising from its undertaking as surety (Annex B). For failure of the accused to appear before the Court of First Instance of Ilocos Norte on 29 December 1952 for arraignment, the Court ordered the bond forfeited and the plaintiff to produce the accused in Court within thirty days from notice and to show cause why judgment should not be rendered against it for the amount of the bond. After plaintiff's failure to comply with the order just mentioned, on 23 April 1953 the Court rendered judgment ordering the plaintiff to pay the Government the sum of P2,000 (Annex C). The next day, 24 April 1953, the Court issued a writ of execution (Annex D). On 13 July 1953 the plaintiff paid to the Sheriff of Manila the sum of P2,025.04. Thereafter, the plaintiff demanded from the defendant payment of the amount paid by it on account of the bond but the defendant refused or failed to pay. On 1 September 1953 the plaintiff brought an action in the Court of First Instance of Manila to recover from the defendant the sum of P2,025.04, interest thereon at 12% per annum from 13 July 1953 until paid, P300 as attorney's fees and costs.

A motion to dismiss having been denied, the defendant filed his answer.

On 11 November 1953 the plaintiff moved for summary judgment on the ground that, having failed to deny specifically the material allegations of the complaint, the defendant is deemed to have admitted them; and that having set up special defenses that had been pleaded in his motion to dismiss and denied by the Court, the same are deemed to have been finally adjudicated.

On 24 March 1954 the Court held that the plaintiff is entitled to summary judgment, and as prayed for ordered the defendant to pay the plaintiff the principal, interest, attorney's fees and costs. A motion for reconsideration was denied. The defendant has appealed.

The appellant contends that the appellee is not entitled to a summary judgment as a matter of law, because there exists a genuine issue as to material facts.

The pertinent sections of Rule 36 on summary judgments provide:

SECTION 1. Summary judgment for claimant.—A party seeking to recover upon claim, counterclaim, or cross claim or to obtain a declaratory relief, may at any time after the pleading in answer thereto has been served, move with affidavits for a summary judgment in his favor upon all or any part thereof.

Sec. 3. Motion and proceedings thereon.—The motion shall be served at least ten days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show; that, except as to the amount of damages, there is genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

By his failure to specifically deny under oath[1] the appellant is deemed to have admitted the genuineness and due execution of the indemnity agreement (Annex B) signed by him. To avoid liability arising from the indemnity agreement (Annex B), the appellant set up in his answer the special defense that he merely undertook to indemnify the appellee for loss or damage it might suffer as a result of the forfeiture of the bail bond filed by it in favor of the Justice of the Peace Court of Batac, Ilocos Norte, and not in favor of the Government of the Republic of the Philippines; that he signed the indemnity agreement relying on the assurance by the appellee that he would not be liable thereon because he was protected and covered by the terms of Policy [No. 200, 697 issued to him and Douglas Moss; and that the alleged payment made by the appellee to the Sheriff of Manila to satisfy the judgment against it was made without his knowledge and consent. On the other hand, the affidavit executed by Juan O. Martinez, Assistant District Manager and concurrently Manager of the Bond Department of the appellee, supported by papers referred to therein and attached to the motion for summary judgment recites the same facts alleged in the complaint, to the effect that the appellee filed the bail bond in the sum of ₱2,000 for the provisional release of Douglas Moss; that the appellant and the accused signed an indemnity agreement in favor of the appellee, undertaking jointly and severally to indemnify it for loss or damage it might suffer by reason of the bond filed for the release on bail of the accused Douglas Moss; that as the bond had been forfeited by the Court of First Instance of Ilocos Norte for failure of the accused to appear for arraignment, the appellee paid to the government its liability thereon; that demands had been made upon the appellee to pay the amount pursuant to the indemnity agreement but despite such demands the appellant refused to pay; and that the appellee never entered into any verbal or written compromise with the appellant regarding the payment of the amount of the bond filed for the release on bail of the accused Douglas Moss. The appellant did not serve an opposing affidavit. As he failed to serve such affidavit the motion of the appellee for summary judgment was properly granted by the trial court.[1]

The contention that there is a genuine issue that should be threshed out by holding a trial of the case because the appellant did not undertake to indemnify the appellee for loss or damage it might suffer as a result of the forfeiture of the bond in favor of the Government of the Republic of the Philippines is without merit, because the forfeiture of bail bonds is always in favor of the State. As to the appellant's claim that he was not liable on his indemnity agreement because the appellee made payment to the Sheriff of Manila without his knowledge and consent, suffice it to say that the appellee did not have to secure his consent to make such payment because it was pursuant to an order of execution issued by a court of competent jurisdiction and in accordance with the terms of the agreement wherein the appellant undertook to indemnify the appellee for damages that it might "sustain or incur in consequence of having become surety" for the provisional release of the accused Douglas Moss. On the appellant's defense that he signed the indemnity agreement relying upon the assurance by the appellee that he would not be liable thereon because he was protected and covered by the terms of policy No. 200, 697 issued in his favor and in favor of Douglas Moss, aside from the fact that such assurance does not appear in the indemnity agreement. (Annex B), the appellant failed to serve an opposing affidavit denying or controverting the verified statement of the appellee's Assistant District Manager & Manager, Bond Department, that there had been no such assurance.

The judgment appealed from is affirmed, with costs against the appellant.

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

[1] Section 8, Rule 15.

[1]Jugador vs. Vera, 94 Phil., 704.

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