

LUZON SURETY COMPANY, INC., PLAINTIFF-APPELLEE, VS. PASTOR T. QUEBRAR AND FRANCISCO KILAYKO, DEFENDANTS-APPELLANTS.

G.R. No. L-40517. January 31, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal from the judgment of the Court of First Instance of Manila in Civil Case No. 52790 dated November 3, 1964 which was certi-fied to this Court by the Court of Appeals in its resolution dated March 20, 1975.

On August 9, 1954, plaintiff-appellee issued two administrator's bond in the amount of P15,000.00 each, in behalf of the defendant-appellant Pastor T. Quebrar, as administrator in Special Proceedings Nos. 3075 and 3076 of the Court of First Instance of Negros Occidental, entitled "Re Testate Estate of A.B. Chinsuy," and "Re Testate Estate of Cresenciana Lipa," respectively, (pp. 8-12, 17-21, ROA; p. 9, rec.). In consideration of the suretyship, wherein the plaintiff-appellee Luzon Surety Company, Inc. was bound jointly and severally with the defendant appellant Pastor T. Quebrar, the latter, together with Francisco Kilayko, executed two indemnity agreements, wherein, among other things, they agreed, jointly and severally, to pay the plaintiff-appellee "the sum of Three Hundred Pesos (P300.00) in advance as premium thereof for every 12 months or fraction thereof, this x x x or any renewal or substitution thereof is in effect" and to indemnify plaintiff-appellee against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses, whatsoever, including the 15% of the account involved in any litigation, for attorney's fees (pp. 12-16, 21-25, ROA; p. 9, rec.).

For the first year, from August 9, 1954 to August 9, 1955, the defendants-appellants paid P304.50 under each indemnity agreement or a total of P609.00 for premiums and documentary stamps.

On June 6, 1957, the Court of First Instance of Negros Occidental approved the amended Project of Partition and Accounts of defendant-appellant (p. 87, ROA; p. 9, rec.).

On May 8, 1962, the plaintiff-appellee demanded from the defendants-appellants the payment of the premiums and documentary stamps from August 9, 1955.

On October 17, 1962, the defendants-appellants filed a motion for cancellation and/or reduction of executor's bonds on the ground that "the heirs of these testate estates have already received their respective shares" (pp. 69-70, ROA, p. 9, rec.).

On October 20, 1962, the Court of First Instance of Negros Occidental, acting on the motions filed by the defendants-appellants ordered the bonds cancelled.

Plaintiff-appellee's demand amounted to P2,436.00 in each case, hence, a total of P4,872.00 for the period of August 9, 1955 to October 20, 1962. The defendants-appellants refused to pay the said amount of P4,872.00.

On January 8, 1963, the plaintiff-appellee filed the case with the Court of First Instance of Manila. During the

pre-trial, the parties presented their documentary evidences and agreed on the ultimate issue -- "whether or not the administrator's bonds were in force and effect from and after the year that they were filed and approved by the court up to 1962, when they were cancelled." The defendants-appellants offered P1,800.00 by way of amicable settlement which the plaintiff-appellee refused.

The lower court allowed the plaintiff to recover from the defendants-appellants, holding that:

"We find for the plaintiff. It is clear from the terms of the Order of the Court, in which these bonds were filed, that the same were in force and effect from and after filing thereof up to and including 20 October, 1962, when the same were cancelled. It follows that the defendants are liable under the terms of the Indemnity Agreements, notwithstanding that they have not expressly sought the renewal of these bonds, because the same were in force and effect until they were cancelled by order of the Court. The renewal of said bonds is presumed from the fact that the defendants did not ask for the cancellation of the same; and their liability springs from the fact that defendant Administrator, Pastor Quebrar, benefitted from the bonds during their lifetime.

"We find no merit in defend-ants' claim that the Administrator's bonds in question are not judicial bonds but legal or conventional bonds only, since they were constituted by virtue of Rule 82, Sec. 1 of the Old Rules of Court. Neither is there merit in defendants' claim that payments of premiums and documentary stamps were conditions precedent to the effectivity of the bonds, since it was the defendants' duty to pay for the premiums as long as the bonds were in force and effect. Finally, defendants' claim that they are not liable under the Indemnity Agreements is also without merit, since the undertaking of defendants under said Indemnity Agreements includes the payment of yearly premiums for the bonds.

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the defendants to pay the plaintiff, jointly and severally, the amount of P6,649.36 plus interest at the legal rate from 27 July 1964 until fully paid, and the sum equivalent to 10% of the total amount due as and or attorney's fees, and costs" (pp. 92-94, ROA; p. 9, rec.).

Defendants-appellants appealed to the Court of Appeals. On March 20, 1975, the Court of Appeals in a resolution certified the herein case to this Court after finding that this case involves only errors or questions of law.

1. The proper determination of the liability of the surety and of the principal on the bond must depend primarily upon the language of the bond itself. The bonds herein were required by Section 1 of Rule 81 of the Rules of Court. While a bond is nonetheless a contract because it is required by statute (*Midland Co. vs. Broat*, 52 NW 972), said statutory bonds are construed in the light of the statute creating the obligation secured and the purposes for which the bond is required, as expressed in the statute (*Michael vs. Logan*, 52 NW 972; *Squires vs. Miller*, 138 NW. 1062). The statute which requires the giving of a bond becomes a part of the bond and imparts into the bond any conditions prescribed by the statute (*Scott vs. United States Fidelity Co.*, 252 Ala 373, 41 So 2d 298; *Employer's Liability Assurance Corp. vs. Lunt*, 82 Ariz 320, 313 P2d 393).

The bonds in question herein contain practically the very same conditions in Sec. 1, Rule 81 of the Rules of Court. Pertinent provision of the administrator's bonds is as follows:

"Therefore, if the said Pastor T. Quebrar faithfully prepares and presents to the Court, within three months from the date of his appointment, a correct inventory of all the property of the deceased which may have come into his possession or into the possession of any other person representing him according to law, if he administers all the property of the deceased which at any time comes into his possession or into the possession of any other person representing him; faithfully pays all the debts, legacies, and bequests which encumber said estate, pays whatever dividends which the Court may decide should be paid, and renders a just and true account of his administrations to the Court within a year or at any other date that he may be required so to do, and faithfully executes all orders and decrees of said Court, then in this case this obligation shall be void, otherwise it shall remain full force and effect" (p. 9, 18, ROA; p. 9, rec.).

Section 1 of Rule 81 of the Rules of Court requires the administrator/executor to put up a bond for the purpose of indemnifying the creditors, heirs, legatees and the estate. It is conditioned upon the faithful performance of the administrator's trust (*Mendoza vs. Pacheco*, 64 Phil. 134).

Having in mind the purpose and intent of the law, the surety is then liable under the administrator's bond, for as long as the administrator has duties to do as such administrator/executor. Since the liability of the sureties is co-extensive with that of the administrator and embraces the performance of every duty he is called upon to perform in the course of administration (*Deobold vs. Oppermann*, 111 NY 531, 19 NE 94), it follows that the administrator is still duty bound to respect the indemnity agreements entered into by him in consideration of the suretyship.

It is shown that the defendant-appellant Pastor T. Quebrar, still had something to do as an administrator/executor even after the approval of the amended project of partition and accounts on June 6, 1957.

The contention of the defendants-appellants that the administrator's bond ceased to be of legal force and effect with the approval of the project of partition and statement of accounts on June 6, 1957 is without merit. The defendant-appellant Pastor T. Quebrar did not cease as administrator after June 6, 1957, for administration is for the purpose of liquidation of the estate and distribution of the residue among the heirs and legatees. And liquidation means the determination of all the assets of the estate and payment of all the debts and expenses (*Flores vs. Flores*, 48 Phil. 982). It appears that there were still debts and expenses to be paid after June 6, 1957.

And in the case of *Montemayor vs. Gutierrez* (114 Phil. 95), an estate may be partitioned even before the termination of the administration proceedings. Hence, the approval of the project of partition did not necessarily terminate the administration proceedings. Notwithstanding the approval of the partition, the Court of First Instance of Negros Occidental still had jurisdiction over the administration proceedings of the estate of A.B. Chinsuy and Cresenciana Lipa.

2. The sureties on an administration bond are liable only as a rule, for matters occurring, during the term covered by the bond. And the term of a bond does not usually expire until the administration has been closed and terminated in the manner directed by law (*Hartford Accident and Indemnity Co. vs. White*, 115 SW 2d 249). Thus, as long as the probate court retains jurisdiction of the estate, the bond contemplates a continuing liability (*Deobold vs. Oppermann*, *supra*) notwithstanding the non-renewal of the bond by the defendants-appellants.

It must be remembered that the probate court possesses an all-embracing power over the administrator's bond and over the administration proceedings and it cannot be devoid of legal authority to execute and make that bond answerable for the very purpose for which it was filed (*Mendoza vs. Pacheco*, 64 Phil. 135).

It is the duty of the courts of probate jurisdiction to guard jealously the estates of the deceased persons by intervening in the administration thereof in order to remedy or repair any injury that may be done thereto (*Dariano vs. Fernandez Fidalgo*, 14 Phil. 62, 67; *Sison vs. Azarraga*, 30 Phil. 129, 134).

3. In cases like these where the pivotal point is the interpretation of the contracts entered into, it is essential to scrutinize the very language used in the contracts. The two Indemnity Agreements provided that:

"The undersigned, Pastor T. Quebrar and Dr. Francisco Kilayko, jointly and severally, bind ourselves unto the Luzon Surety Co., Inc. x x x. in consideration of it having become SURETY upon Civil Bond in the Sum of Fifteen Thousand Pesos (P15,000.00) xx xx in favor of the Republic of the Philippines in Special Proceeding. x x dated August 9, 1954, a copy of which is hereto attached and made an integral part hereto" (*Italics supplied*; pp. 12-13, 21, ROA; p. 9, rec.).

To separately consider these two agreements would then be contrary to the intent of the parties in making them integrated as a whole.

The contention then of the defendants-appellants that both the Administrator's Bonds and the Indemnity Agreements ceased to have any force and effect, the former since June 6, 1957 with the approval of the project of partition and the latter since August 9, 1955 with the non-payment of the stated premiums, is without merit. Such construction of the said contracts entered into would render futile the purpose for which they were made.

To allow the defendants-appellants to evade their liability under the Indemnity Agreements by non-payment of the premiums would ultimately lead to giving the administrator the power to diminish or reduce and altogether nullify his liability under the Administrator's Bonds. As already stated, this is contrary to the intent and purpose of the law in providing for the administrator's bonds for the protection of the creditors, heirs, legatees, and the estate.

4. Moreover, the lower court was correct in holding that there is no merit in the defendants' claim that payments of premiums and documentary stamps are conditions precedent to the effectivity of the bonds.

It is worthy to note that there is no provision or condition in the bond to the effect that it will terminate at the end of the first year if the premium for continuation thereafter is not paid. And there is no clause by which its obligation is avoided or even suspended by the failure of the obligee to pay an annual premium (U.S. vs. Maryland Casualty Co. [DCMd] 129 F. Supp; Dale vs. Continental Insurance Co., 31 SW 266; Equitable Insurance Co. vs. Harvey, 40 SW 1092).

It was held in the case of Fourth and First Bank and Trust Co vs. Fidelity and Deposit Co. (281 SW 785), that "at the end of the first year, the bond went on, whether or not the premium was paid or not x x x. Even on a failure to pay an annual premium, the contract ran on until affirmative action was taken to avoid it. The obligation of the bond was therefore continuous." And in United States vs. American Surety Co. of New York (172 F2d 135), it was held that "under a surety bond securing faithful performance of duties by postal employee, liability for default of employee occurring in any one year would continue, whether or not a renewal premium was paid for a later year."

The payment of the annual premium is to be enforced as part of the consideration, and not as a condition (Woodfin vs. Asheville Mutual Insurance Co., 51 N.C. 558); for the payment was not made a condition to the attaching or continuing of the contract (National Bank vs. National Surety Co., 144 A 576). The premium is the consideration for furnishing the bonds and the obligation to pay the same subsists for as long as the liability of the surety shall exist (Reparations Commission vs. Universal Deep-Sea Fishing Corp., L-21996, 83 SCRA 764, June 27, 1978). And in Arranz vs. Manila Fidelity and Surety Co., Inc. (101 Phil. 272), the premium is the consideration for furnishing the bond or the guaranty. While the liability of the surety subsists the premium is collectible from the principal. Lastly, in Manila Surety and Fidelity Co., Inc. vs. Villarama (107 Phil. 891), it was held that "the one-year period mentioned therein refers not to the duration or lifetime of the bond, but merely to the payment of premiums, and, consequently, does not affect at all the effectivity or efficacy of such bond. But such non-payment alone of the premiums for the succeeding years x x does not necessarily extinguish or terminate the effectivity of the counter-bond in the absence of an express stipulation in the contract making such non-payment of premiums a cause for the extinguishment or termination of the undertaking. xx xx There is no necessity for an extension or renewal of the agreement because by specific provision thereof, the duration of the counter-bond was made dependent upon the existence of the original bond."

5. It is true that in construing the liability of sureties, the principle of strictissimi juris applies (Asiatic Petroleum Co. vs. De Pio, 46 Phil. 167; Standard Oil Co. of N.Y. vs. Cho Siong, 53 Phil. 205); but with the advent of corporate surety, suretyship became regarded as insurance where, usually, provisions are interpreted

most favorably to the insured and against the insurer because ordinarily the bond is prepared by the insurer who then has the opportunity to state plainly the term of its obligation (*Surety Co. vs. Pauly*, 170 US 133, 18 S.Ct. 552, 42 L.Ed. 972).

This rule of construction is not applicable in the herein case because there is no ambiguity in the language of the bond and more so when the bond is read in connection with the statutory provision referred to.

With the payment of the premium for the first year, the surety already assumed the risk involved, that is, in case defendant-appellant Pastor T. Quebrar defaults in his administrative duties. The surety became liable under the bond for the faithful administration of the estate by the administrator/executor. Hence, for as long as defendant-appellant Pasta T. Quebrar was administrator of the estates, the bond was held liable and inevitably, the plaintiff-appellee's liability subsists since the liability of the sureties is co-extensive with that of the administrator.

WHEREFORE, THE DECISION OF THE COURT OF FIRST INSTANCE OF MANILA DATED NOVEMBER 3, 1964 IS HEREBY AFFIRMED. WITH COSTS AGAINST DEFEND-ANTS-APPELLANTS.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Aquino, J., no part.

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