

MELECIO ARRANZ, PLAINTIFF AND APPELLANT, VS. MANILA FIDELITY AND SURETY CO., INC., DEFENDANT AND APPELLEE.

G. R. No. L-9674. April 29, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of dismissal of the complaint rendered by the judge of the Court of First Instance, Honorable Rafael Amparo, presiding.

The complaint alleges the following facts: On November 25, 1949, the defendant-appellee Manila Fidelity & Surety Co., executed and delivered to the Manila Ylang Ylang Distillery a surety bond, by virtue of which defendant-appellee, as surety, understood to pay jointly and severally with plaintiff as principal, the sum of P90,000. The surety bond executed by Arranz and the defendant-appellee contains the following stipulation:

"The surety hereunder waives notice of default and expressly agrees that it shall not be necessary for the Manila Ylang Ylang Distillery, Ltd. to proceed against the Principal upon his default or to exhaust the property of said Principal, before proceeding against the surety, the Surety's liability under this bond being- a primary one and shall be exigible and demandable immediately upon occurrence of such default." (p. 16, R.O.A.)

To secure the surety against loss arising from the surety bond, plaintiff executed a second mortgage over the properties which were transferred by the Manila Ylang Ylang Distillery to plaintiff. When the first installment of P50,000 became due on June 30, 1950, the surety, defendant-appellee, did not have funds to pay the same, and neither did it have funds to pay the second installment of P40,000 which became due on June 30, 1951. So the complaint was filed by the Manila Ylang Ylang Distillery on November 16, 1950, and a supplemental complaint was later filed on January 2, 1952, to include the second installment of P40,000 then already due. The defendant had no funds with which to pay either the P50,000 or the P40,000 due under the agreement and the only amount it was able to raise was P20,000. And that was paid to Manila Ylang Ylang Distillery on account.

As defendant surety had no money with which to respond for the obligation, plaintiff made an arrangement with the Philippine National Bank, whereby he would mortgage the same properties to the latter in order to raise the amount needed to pay the amount of the loan. The Philippine National Bank wanted that defendant surety cancel the second mortgage executed in its favor by Arranz, but the defendant refused to do so unless Arranz pay to it the following sums:

- (a) P20,000, the partial payment made to the Manila Ylang Ylang Distillery on account of the latter's judgment credit;
- (b) P3,045.12, premium from December 31, 1900 to December 31, 1954;
- (c) P7,091.09, including renewal premium on Bond No. S674, from November 25, 1950 to November 25, 1954, and incidental expenses and interests;
- (d) P25,000, to be held by defendant in trust to answer for an alleged contingent liability of the Manila Ylang Ylang Distillery to it.

As the plaintiff feared that the credit accommodation he sought from the Philippine National Bank could not be secured without release by the surety of its second mortgage, Arranz paid the above amounts except the P25,000, and thereupon the second mortgage executed in favor of surety, defendant-appellee, was cancelled.

The complaint seeks to recover (a) P7,200, the premiums corresponding to the period from November 25, 1950 to November 25, 1954; and (6) P7,000 representing attorney's* fees. Arranz claims that these two amounts were never due and owing to the defendant surety and that he paid it against his will in order to be able to save the properties from loss and obtain the credit accommodation from the Philippine National Bank.

The defendant presented a motion to dismiss the complaint on the ground that there was no cause of action and inasmuch as the sums sought to be recovered were paid by virtue of the compromise, and no allegation is made in the complaint that said compromise is vitiated by mistake, violence, intimidation, undue influence and fraud. In answer to the motion to dismiss, plaintiff alleged that he was compelled to pay the amounts. The court ruled that the payment of the sum of P14,200 demanded in plaintiff's complaint was paid as a price for the release of the properties held on second mortgage by the defendant, or that the same was the consideration for said release in order to save his properties, and therefore dismissed the complaint.

We are unable to agree with the judgment of the trial court that the sum of P14,200 was paid as a consideration for the release of the mortgage. There is no allegation in the complaint to that effect. From the allegations of the complaint, we gather the following facts: (1) that the surety did not have the money with which to pay the obligation, the payment of which was guaranteed in the contract of suretyship; (2) that the premium of P7,200 sought to be collected by the defendant from the plaintiff and the P7,000 also collected as attorney's fees, were never due from the plaintiff, because the surety was not able to put up the amount that it undertook to pay if the principal did not pay the same; (3) that plaintiff was compelled against his will by the circumstances to pay the sums now sought to be recovered. The question which the motion for dismissal poses therefore is, Is plaintiff under obligation to pay the premium on the bond because of failure of his surety to pay the indebtedness secured by it (surety) ?

There is no allegation in the complaint or in any other paper in the case that the surety promised the principal that it will pay the loan or obligation contracted by the principal (plaintiff herein) for the latter's account. In the contract of suretyship the creditor was given the right to sue the principal, or the latter and the surety at the same time. This does not imply, however, that the surety covenanted or agreed with the principal that it will pay the loan for the benefit of the principal. Such a promise is not implied by law either. Plaintiff, therefore, cannot claim that there has been a breach on the part of the surety of any obligation it has made or undertaken under the suretyship contract. And the failure or refusal of the surety to pay the debt for the principal's account did not have the effect of relieving the principal of his obligation to pay the premium on the bond furnished.

The premium is the consideration for furnishing the bond or the guaranty. While the liability of the surety to the obligee subsists the premium is collectible from the principal. Under the terms of the contract of suretyship the surety's obligation is that the principal pay the loan and the interest thereon, and that the surety shall be relieved of his obligation when the loan or obligation secured is paid.

"Now, Therefore, if the 'above abounded Principal shall pay promptly said installments and interest thereon and shall in all respects do and fully observe all and singular the covenants, agreements and conditions as provided for in the aforesaid agreement of November 21, 1949, Annexes 'A' and 'B' respectively, to the true intent and meaning thereof, this obligation shall be null and void, otherwise, it shall remain in full force and effect." (p. 16, R.O.A.)

As the loan and interest remained unpaid the surety continued to be bound to the creditor-obligee, and as a

corollary its right to collect the premium on the bond also continued.

Plaintiff-appellant, therefore, cannot excuse himself from the payment of the premium on the bond upon the failure or refusal of the surety to pay the loan and the interest. Even if, therefore, the payment of the premium were against his will, still plaintiff-appellant has no cause of action for the return thereof, because the surety was entitled thereto.

For the foregoing considerations, the order of dismissal is affirmed on other grounds. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Endencia, and Felix, JJ., concur.

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