

PHILIPPINE NATIONAL BANK, PETITIONER, VS. MANILA SURETY & FIDELITY CO., INC., AND THE COURT OF APPEALS (SECOND DIVISION), RESPONDENTS.

G.R. No. L-20567. July 30, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Philippine National Bank petitions for the review and reversal of the decision rendered by the Court of Appeals (Second Division), in its case CA-G. R. No. 24232-R, dismissing the Bank's complaint against respondent Manila Surety & Fidelity Co., Inc., and modifying the judgment of the Court of First Instance of Manila in its, Civil Case No. 11263.

The material facts of the case, as found by the appellate Court, are as follows:

The Philippine National Bank had opened a letter of credit and advanced thereon \$120,000.00 to Edgington Oil Refinery for 8,000 tons of hot asphalt. Of this amount, 2,000 tons worth P279,000.00 were released and delivered to Adams & Taguba Corporation (known as ATACO) under a trust receipt guaranteed by Manila Surety & Fidelity Co. up to the amount of P75,000.00. To pay for the asphalt, ATACO constituted the Bank its assignee and attorney-in-fact to receive and collect from the Bureau of Public Works the amount aforesaid out of funds payable to the assignor under Purchase Order No. 71947. This assignment (Exhibit "A") stipulated that:

"The conditions of this assignment are as follows:

1. The same shall remain irrevocable until the said credit accommodation is fully liquidated.
2. The PHILIPPINE NATIONAL BANK is hereby appointed as our Attorney-in-fact for us and in our name, place and stead, to collect and to receive the payments to be made by virtue of the aforesaid Purchase Order, with full power and authority to execute and deliver on our behalf, receipt for all payments made to it; to endorse for deposit or encashment checks, money order and treasury war rants which said Bank may receive, and to apply said payments to the settlement of said credit accommodation.

This power of attorney shall also remain irrevocable until our total indebtedness to the said Bank have been fully liquidated. (Exhibit E)"

ATACO delivered to the Bureau of Public Works, and the latter accepted, asphalt to the total value of P431,466.52. Of this amount the Bank regularly collected, from April 21, 1948 to November 18, 1948, P106,382.01. Thereafter, for unexplained reasons, the Bank ceased to collect, until in 1952 its investigators found that more moneys were payable to ATACO from the Public Works office, because the latter had allowed another creditor to collect funds due to ATACO under the same purchase order, to a total of P311,230.41.

Its demands on the principal debtor and the Surety having been refused, the Bank sued both in the Court of First Instance of Manila to recover the balance of P158,563.18 as of February 15, 1950, plus interests and costs.

On October 4, 1958, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

1. Ordering defendants, Adams & Taguba Corporation and Manila Surety & Fidelity Co., Inc., to pay plaintiff, Philippine National Bank, the sum of P174,462.34 as of February 24, 1956, minus the amount of P8,000 which defendant, Manila Surety Co., Inc. paid from March, 1956 to October, 1956, with interest at the rate of 5% per annum from February 25, 1956, until fully paid provided that the total amount that should be paid by defendant Manila Surety Co., Inc., on account of this case shall not exceed P75,000.00, and to pay the costs;
2. Ordering cross-defendant, Adams & Taguba Corporation, and third-party defendant, Pedro A. Taguba, jointly and severally, to pay cross and third-party plaintiff, Manila Surety & Fidelity Co., Inc., whatever amount the latter has paid or shall pay under this judgment;
3. Dismissing the complaint insofar as the claim for 17% special tax is concerned; and
4. Dismissing the counterclaims of defendants Adams & Taguba Corporation and Manila Surety & Fidelity Co., Inc.

From said decision, only the defendant Surety Company has duly perfected its appeal. The Central Bank of the Philippines did not appeal, while defendant ATACO failed to perfect its appeal.

The Bank recurred to the Court of Appeals, which rendered an adverse decision and modified the judgment of the court of origin as to the surety's liability. Its motions for reconsideration having proved unavailing, the Bank appealed to this Court.

The Court of Appeals found the Bank to have been negligent in having stopped collecting from the Bureau of Public Works the moneys falling due in favor of the principal debtor, ATACO, from and after November 18, 1948, before the debt was fully collected, thereby allowing such funds to be taken and exhausted by other creditors, to the prejudice of the surety, and held that the Bank's negligence resulted in the exoneration of respondent Manila Surety & Fidelity Company.

This holding is now assailed by the Bank. It contends that the power of attorney obtained from ATACO was merely an additional security in its favor, and that if was; the duty of the surety, and not that of the creditor, to see to it that the obligor fulfills his obligation, and that the creditor owed the surety no duty of active diligence to collect any sum from the principal debtor, citing Judge Advocate General vs. Court of Appeals, G. R. No. L-10671, October 23, 1958.

This argument of appellant Bank misses the point. The Court of Appeals did not hold the Bank answerable for negligence in failing to collect from the principal debtor but for its neglect in collecting the sums due to the debtor from the Bureau of Public Works, contrary to its duty as holder of an exclusive and irrevocable power of attorney to make such collections, since an agent is required to act with the care of a good father of a family (Civ. Code, Art. 1887) and becomes liable for the damages which the principal may suffer through his non-performance (Civ. Code, Art. 1884). Certainly, the Bank could not expect either ATACO or the surety to collect from the Bureau of Public Works the moneys it had failed to demand. Not only because these parties had the right to expect that the Bank would diligently perform its duty under its power of attorney, but because they could not have collected from the Bureau even if they had attempted to do so. It must not be forgotten that the Bank's power to collect was expressly made irrevocable, so that the Bureau of Public Works could very well refuse to make payments to the principal debtor itself, and a fortiori reject any demands by the surety.

Even if the assignment with power of attorney from the principal debtor were considered as more additional security, still, by allowing the assigned funds to be exhausted without notifying the surety, the Bank deprived the

former of any possibility of recouring against that security. The Bank thereby exonerated the surety, pursuant to Article 2080 of the Civil Code:

"Art. 2080—The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they can not be subrogated to the rights, mortgages and preferences of the latter." (*Italics supplied*).

The appellant points out to its letter of demand, Exhibit "K", addressed to the Bureau of Public Works, on May 5, 1949, and its letter to ATACO, Exhibit "G", informing the debtor that as of its date, October 31, 1949, its outstanding balance was P156,374.83. Said Exhibit "G" has no bearing on the issue whether the Bank has exercised due diligence in collecting from the Bureau of Public Works, since the letter was addressed to ATACO, and the funds were to come from elsewhere. As to the letter of demand on the Public Works office, it does not appear that any reply there to was made; nor that the demand was pressed, nor that the debtor or the surety were ever apprised that payment was not being made. The fact remains that because of the Bank's inactivity the other creditors were enabled to collect 173,870.31, when the balance due to appellant Bank was only P158,563.18. The finding of negligence made by the Court of Appeals is thus not only conclusive on us but fully supported by the evidence.

Even if the Court of Appeals erred on the second reason it advanced in support of the decision now under appeal, because the rules on application of payments, giving preference to secured obligations, are only operative in cases where there are several distinct debts, and not where there is only one that is partially secured, the error is of no importance, since the principal reason based on the Bank's negligence furnishes adequate support to the decision of the Court of Appeals that the surety was thereby released.

Wherefore, the appealed decision is affirmed, with costs against appellant Philippine National Bank.

Bengzon, C. J., Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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