

**MANILA MOTOR COMPANY, INC., PLAINTIFF AND APPELLEE, VS.
FIDELITY AND SURETY COMPANY OF THE PHILIPPINES,
DEFENDANT AND APPELLANT.**

CA No. 7411. April 29, 1946

Ponente: PARAS, J.

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PARAS, J.:

The plaintiff, Manila Motor Company, Inc., instituted an action in the Court of First Instance of Manila against the defendants, E. Schaare & Company, E. Schaare, Hans Huber, Lulu Benner, and the Fidelity and Surety Company of the Philippine Islands, for the purpose of recovering, under the first cause of action, from all the defendants the sum of P18,918.47, alleged balance in favor of the plaintiff upon the liquidation of the accounts of E. Schaare & Company under a contract of agency, whereby the latter was appointed plaintiff's representative in the Province of Cebu for the sale of automobiles, trucks and spare parts, and, under the second cause of action, from all the defendants except the surety company, the sum of P4,087.59, alleged balance due to the plaintiff upon the liquidation of the accounts of E. Schaare & Company under another contract of agency by virtue of which the latter was named plaintiff's representative in the Provinces of Iloilo and Negros for the sale of Studebaker units and spare parts. The surety company issued under a surety bond in the sum of P10,000 to guarantee, jointly and severally, the full and faithful performance by E. Schaare & Company of the Cebu contract of agency. Hans Huber, Lulu Benner and E. Schaare are the members of the partnership, E. Schaare & Company.

At the trial it was stipulated by the plaintiff and the defendants, except the Fidelity and Surety Company of the Philippine Islands, that the total liability of E. Schaare & Company is P14,044.30, of which only P215.96 corresponds to the agency in Negros Occidental. The Court of First Instance of Manila accordingly sentenced the defendants to pay to the plaintiff, jointly and severally, the sum of P14,044.30, the liability of the surety company being limited, however, to the amount of its bond (P10,000), with interest at the rate of 12 per centum per annum from the date of the decision, plus their proportionate share of the costs. From this judgment the surety company has appealed.

Under its first assignment of error, the appellant contends that it is not liable for the accounts of the partnership E. Schaare & Company, because the surety bond (Exhibit C) has reference to, and covers only, the personal and individual liability of E. Schaare under the latter's contract of agency (Exhibit B). The rule is then invoked that contracts of suretyship are looked upon with a jealous eye and should not be extended by implication.

It is a fact that the bond, standing alone, guaranteed only the obligations of E. Schaare; but it is no less a fact that after the partnership E. Schaare & Company was formed on November 1, 1934, and took over E. Schaare's Cebu contract of agency with the plaintiff, the appellant, on several occasions and in unmistakable terms, extended the effect and scope of said bond to the liabilities of the entity substituted for E. Schaare. Thus, in a letter dated March 1, 1935, the appellant advised the plaintiff that "following the request of Messrs. E. Schaare & Company of Cebu * * * we have agreed to extend our responsibility on bond F. & S. No. 205493, for P10,000 which we executed in

their behalf in connection with the handling of your products in Cebu, up to July 31, 1935." (Exhibit C-2.) Similar information was given to the plaintiff by the appellant through Exhibit C-3, which was dated October 31, 1935, and which extended the term of the bond up to January 31, 1936. Again, in another letter to the plaintiff, dated July 7, 1937 (Exhibit E), the appellant notified the former that "we are holding the sum of P5,000 deposited with the Philippine Trust Company in the name of Mrs. Hans Huber, subject to the obligation incurred by E. Schaare & Company of Cebu under bond executed by this office in your favor * * *," and requesting that "if you will furnish a detailed statement showing the exact amount chargeable against E. Schaare & Company under our bond, we will at once take steps toward settlement thereof." The letter (Exhibit E-1) to Hans Huber, dated July 7, 1937, copy of which was sent to the plaintiff, is more specific in referring to "a certain obligation incurred by E. Schaare & Company as agents of Manila Motor and secured by a bond of the Fidelity & Surety Company." Lastly, the appellant wrote the plaintiff, under date of December 13, 1937, that "we have been requested by Messrs. E. Schaare & Company to pay you the sum of P5,000 in reduction of our bond filed with you in their behalf for P10,000." (Exhibit F.) In our opinion, therefore, the bond (Exhibit C), considered in the light of the communications just quoted (Exhibits C-2, C-3, E, E-1 and F), was expressly made applicable by the appellant to the Cebu agency contract taken over by E. Schaare & Company. Otherwise, there would be no need for making the bond effective, first, up to July 31, 1935 (Exhibit C-2), and then until January 31, 1936 (Exhibit C-3), because E. Schaare had ceased to be plaintiff's agent in Cebu after November 1, 1934. A contract of suretyship need not be formulated or expressed in a single document. It may be spread over a series of coherent and connected instruments.

The appellant is of course correct in arguing that Exhibit C-2 could not have alluded to the agency of E. Schaare & Company covering Negros and Iloilo (Exhibit D), because the former is dated March 1, 1935. Undoubtedly, however, said Exhibit C-2 can and did refer to the Cebu contract of agency (Exhibit B), executed on a prior date, August 21, 1934, and assumed by E. Schaare & Company after the latter was formed on November 1, 1934, upon which the plaintiff bases its cause of action against the appellant.

We cannot accept appellant's pretense that the reference in their letters to E. Schaare & Company was merely a clerical error resulting from a confusion of names and that "it does not appear either that the appellant had ever known the formation of the partnership E. Schaare & Co." In the first place, we have already seen how the words "E. Schaare & Co." were used by the appellant with conspicuous insistence. In the second place, it is reasonable to expect that the appellant, or any surety company of the same size and category, should know that there is a great difference between "E. Schaare & Co." and E. Schaare or, at least, should be inquisitive enough to learn the true facts before making consistent commitments such as those heretofore quoted. In the third place, that there was neither confusion nor ignorance on the part of the appellant is further shown by its answer which is focused on the allegation that "the obligation, if any, contracted by E. Schaare & Company in favor of plaintiff, represents transactions had between plaintiff and the Bacolod, Occidental Negros, agency of the said E. Schaare & Company, and not guaranteed by defendant Fidelity & Surety Company of the Philippine Islands." In other words, exemption is claimed, not because appellant's bond did not refer to E. Schaare & Company, but because plaintiff's cause of action concerns transactions not covered by the Cebu agency contract. Appellant's position is made more evident by Exhibit F in which it stated that "the statement you furnished us thru E. Schaare & Company at one time contains several items which we have reason to believe represent transactions passed between you and Schaare & Company in Bacolod which are not guaranteed by our bond."

It is insisted, under the second assignment of error, that the amount of P14,044.30 represents an obligation of E. Schaare & Company for automobiles consigned to and sold by the latter in Bacolod, Negros Occidental, for which the appellant is not liable under its bond, which covered only sales effected in the Province of Cebu pursuant to the agency agreement (Exhibit B). In particular, the appellant maintains that it should not be charged with the

value of secondhand cars traded in to the branch office of E. Schaare & Company for sales effected in Bacolod, which secondhand cars (according to the testimony of the defendant Hans Huber), were later sent to and sold in Cebu for the account of the Bacolod branch office. Reliance is further placed on paragraph 6 of Exhibit B in support of the proposition that, for the appellant to be liable under the bond, the cars must not only be sold in Cebu but must be shipped thereto direct from Manila.

The testimony of Hans Huber is surely not controlling. Aside from the fact that he admitted having nothing to do with the management of the Bacolod branch office, his allegation is inconsistent with the report of its manager acknowledging that "sheet No. 1 represents secondhand cars which we have shipped to Cebu market and of which we cannot give you any further particulars as to information" (Exhibit I), and with the report of the sales of such secondhand cars in Cebu by the Cebu main office of E. Schaare & Company (Exhibits L, M, M-1 and O). It is obvious that paragraph 6 of the agency contract (Exhibit B) did not release E. Schaare & Company from liability for sales in Cebu of cars not shipped from Manila, as long as said sales were made for and in behalf of the plaintiff. Said paragraph emphasizes the period within which E. Schaare & Company was required to sell, rather than the place of shipment which is mentioned evidently as a basis for computing said period, namely, "one hundred twenty (120) days from date of shipments from Manila." Stated otherwise, if cars were shipped to E. Schaare & Company from elsewhere, it would be questionable whether the 120-day period should be counted from the date of shipment; but there can be no doubt that said company would have to account for the sale thereof in Cebu.

Moreover, we cannot consider the sales of the second-hand cars in Cebu as being chargeable to the Bacolod agency without disregarding the arrangement between the plaintiff and E. Schaare & Company, whereby the latter's authority to sell was limited, under the agency contract (Exhibit D), to the Provinces of Iloilo and Negros. This is undoubtedly the reason why plaintiff's cashier, Felipe Santiago, testified that the traded-in cars remained as plaintiff's property and that the latter was always notified whenever any of them was transferred to Cebu by the Bacolod office of E. Schaare & Company.

Evasion of liability is also predicated by the appellant on the claim that at least three cars were sold not in Cebu, but in Bohol: one to Rev. Celerino Caña for P438.90; one to Vicente Campo for P367.66; and another to Solomon del Rosario for P586.26. It appears, however, that these amounts, though embraced in the complaint, were paid by E. Schaare & Company on December 18, 1937 (Exhibit G) and that the same were already excluded when at the trial on June 21, 1939, all the defendants, except the appellant, admitted still being indebted to the plaintiff in the sum of P14,044.30.

The appellant further believes that the sum of P3,185, the value of one Studebaker Custom Sedan, is not collectible from it, for the reason that it had been admittedly consigned to Bacolod. It is noteworthy, in this connection, that said car was subsequently sent to Cebu and, at the request of the Bacolod branch credited to the account of E. Schaare & Company in Cebu. (Exhibit I and letter of E. Schaare & Co. in Bacolod, dated November 5, 1935.) Neither can the sum of P5,000 paid to the plaintiff on December 18, 1937 be taken into account as a payment by the appellant, although the latter (according to Exhibit F) remitted the same to the plaintiff at the request of E. Schaare & Company "in reduction of our bond filed with you in their behalf for P10,000," because, (1) that money belonged to Mrs. Hans Huber (stipulation and Exhibit E) and not to the appellant; (2) in the stipulation made during the trial on June 21, 1939, or long after the aforesaid payment, said item had already been considered in determining the outstanding obligation of E. Schaare & Company; (3) Exhibits G and G-1 recite that the sum of P5,000 was applied by the plaintiff to the payment of certain accounts of E. Schaare & Company not included in the amount of P14,044.30 confessed by the defendants E. Schaare & Company, E. Schaare, Hans Huber and Lulu Benner, who cannot contest said receipts "unless there should be ground for treating the contract

as void" (article 1172, Civil Code) ; and, (4) the point was not raised in the answer of the appellant or any of its codefendants.

The appealed judgment will therefore be affirmed, and it is so ordered with costs against the appellant.

Moron, C. J., Jaranilla, and Pablo, JJ., concur.

DISIDENTE

BRIONES, M.:

Creo que la apelante tiene derecho a ser absuelta de la demanda. Es muy claro que el contrato de fianza cubria solamente los automobiles y autocamiones consignados a la agenda de E. Schaare & Company en Cebu y vendidos por cuenta de dicha agenda. La agencia de Bacolod e Iloilo llevaba una cuenta completamente separada e independiente y la fianza no era extensiva a la misma.

No se discute que los coches de segunda mano vendidos en el territorio de la agencia de Cebu y que son objeto del presente pleito pertenecian a la agencia de Bacolod. Esta agenda los habia adquirido como parte del precio de coches de primera mano vendidos por dicha agencia en Negros e Iloilo. Segun declaracion no impugnada de Hans Huber, gerente de E. Schaare & Company en Cebu, esta ultima agenda vendio los coches a nombre y por cuenta de la agencia de Bacolod. ¿Que derecho tenia, pues, la demandante para trasladar dichos coches a la cuenta de Cebu, con el evidente proposito de colocarlos bajo el contrato de fianza? Solamente se podia hacer esto con el expreso consentimiento de la agencia de Cebu, y no solamente no consta dicho consentimiento, sino que tenemos la declaracion positiva de Hans Huber en sentido contrario, declaracion que no ha sido rebatida en autos mediante prueba fehaciente. Es verdad que el gerente de la agencia de Bacolod habia dicho, en una carta a la demandante, que ya no podia facilitar ultteriores informes sobre tales coches, pero esto no quiere decir que la agenda de Cebu habia asumido la cuenta en relacion con los referidos coches: todo lo que demuestra es que cualquier informacion sobre el particular debia venir de Cebu a donde se habian enviado los coches para su venta en consignacion.

Es doctrina bien establecida que el contrato de fianza debe interpretarse restrictivamente. La obligacion del fiador nunca se debe exigir mas alla de los limites claramente establecidos.

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