

PEOPLE'S SURETY AND INSURANCE COMPANY, INC., PLAINTIFF AND APPELLEE VS. GABRIEL & SONS TRANSPORTATION COMPANY, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-18568. November 29, 1963*

Ponente: CONCEPCION, J.

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This is an appeal, taken by defendants Gabriel & Sons Transportation Company, Inc.—hereinafter referred to as the Transportation Co.—Antonio P. Gabriel and Antonio Villarama from a decision of the Court of First Instance, sentencing them to pay, jointly and severally, to plaintiff, People's Surety and Insurance Co., Inc., the sum of P10,578.08, with interest thereon at the rate of 12% per annum from May 11, 1956 until fully paid, "plus 10% of the total amount as liquidated damages and 15% of the same amount as attorney's fees, and the costs", and ordering the Transportation Co. and Antonio P. Gabriel to reimburse Antonio Villarama "whatever amount the latter might pay to plaintiff" under said decision. Although originally forwarded to the Court of Appeals, the appeal was subsequently certified by the latter to this Court.

The record shows that on October 28, 1954, the Transportation Co., and the Luzon Stevedoring Co.—hereinafter referred to as the Stevedoring Co.—entered into a contract of stevedoring and lighterage relative to about 8,000 metric tone of rice in sacks aboard the "SS Harpagon", providing, inter alia, that said Transportation Co.;

"* * * shall furnish prior to the commencement of the stevedoring or discharge of said rice from the S.S. 'Harpagon' a guaranty bond in the sum of Thirty-Eight Thousand Four Hundred Pesos (P38,400.00), Philippine currency, to guaranty its fulfillment of the terms and conditions specified therein."

Pursuant to this stipulation, the Transportation Co., had secured from plaintiff, on the same date, the surety bond Exhibit A, subscribed by both, in which the Transportation Co., as principal, and plaintiff, as surety, bound themselves, jointly and severally, unto the Stevedoring Co., to pay said sum of P38,400.00 should the Transportation Co. fail to comply with its obligations under the aforementioned contract of stevedoring and lighterage. In consideration of this surety bond, Exhibit A, two indemnity agreements, both dated October 28, 1954, were executed, one, Exhibit C, by the Transportation Co., as well as by Antonio Gabriel and Sabino David, and the other, Exhibit D, by said Antonio P. Gabriel and Dr. Antonio Villarama. In each of these agreements, the indemnitors bound themselves, jointly and severally, to indemnify the surety company from all damages, losses, etc. it may sustain or incur in consequence of its having become a surety as above stated.

Sometime later, or on November 17, 1954, the Transportation Co. secured from the surety company another surety bond, Exhibit B, whereby both bound themselves, jointly and severally, unto the Stevedoring Co., to pay the sum of P9,600, in the event the Transportation Co. failed to comply with its obligations under the contract of stevedoring and lighterage already adverted to.

It would appear that the Transportation Co. did fail to comply with said obligations, in view of which the Stevedoring Co. instituted against plaintiff herein Civil Case No. 26592 of the Court of First Instance of Manila,

in which judgment was, in due course, rendered sentencing the plaintiff to pay to the Stevedoring Co. the sum of P9,855.68, plus interest thereon, which was satisfied by plaintiff herein. The latter demanded reimbursement from the Transportation Co. and then instituted the present action for the recovery of said sum of P9,859.28, with interest, plus liquidated damages, attorney's fees, and costs.

In his answer, Villarama admitted some allegations and denied other allegations of the complaint, set up some affirmative defenses, a counterclaim and a cross-claim against the Transportation Co. and Gabriel, and prayed for the dismissal of the complaint and for judgment on his; counterclaim and cross-claim. Similarly, the Transportation Co. and Gabriel made similar allegations and denials, set up some affirmative defenses and a counterclaim, and prayed for the dismissal of the complaint, as well as for judgment on their counterclaim. On plaintiff's motion, the complaints was dismissed as to defendant David, his whereabouts being unknown.

The main question for determination in this appeal is whether appellants Gabriel and Villarama are, under their indemnity agreement Exhibit D, liable to the plaintiff for the damages and losses it has suffered under the surety bond Exhibit B. Plaintiff maintains the affirmative, relying upon a provision of said indemnity agreement Exhibit D, reading:

"Indemnity.—The undersigned, jointly and severally, agree at all times to indemnify the COMPANY and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature which the COMPANY shall or may, at any time sustain or incur in consequence of having become surety upon this or any extension, renewal, substitute or alteration thereof, made at the instance of the undersigned or any of them or any other executed on behalf of the undersigned or any of them * * *".

Plaintiff contends that this provision in Exhibit D should be read as if the term "bond" had been written, by the parties on the two (2) blank spaces in said stipulation, and that appellants Villarama and Gabriel are, accordingly, liable for the damages and losses sustained or incurred by plaintiff in consequence, riot only of the surety bond Exhibit A, for P38,400, but, also, of any other surety bond executed on behalf of said appellants or any of them, such as Exhibit B. The lower court sustained this contention, with which we are unable to agree.

To begin with, the indemnity agreement Exhibit D is in a printed form of plaintiff herein, against which any ambiguity therein should, consequently, be construed.

Secondly, the first paragraph of Exhibit D, provides:

"The undersigned Mr. Antonio P. Gabriel and Dr. Antonio Villarama, jointly and severally, bind ourselves unto the PEOPLE'S SURETY & INSURANCE COMPANY, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, with head office at Manila, Philippines, hereinafter called the COMPANY, in consideration of having become SURETY upon a surety bond in the sum of Thirty-Eight Thousand Four Hundred Pesos (P38,400.00), Philippine currency, in favor of Luzon Stevedoring Company in behalf of Gabriel & Sons Trans. Co. dated October 28th, 1954, a copy of which is hereto attached and made an integral part (here) of."

The language of this paragraph indicates that Villarama and Gabriel, as indemnitors under Exhibit D, intended to assume no other liability than that which may arise under the aforementioned surety bond Exhibit A, for P38,400.00. This is confirmed by the fact that copy of this surety bond for P38,400 is attached to and expressly made an integral part of said indemnity agreement Exhibit D.

Thirdly, the stipulation therein to such effect would be useless, if any bond other than that described in said Exhibit D, and attached thereto, as well as made an integral part thereof, were, also, to be deemed covered by that indemnity agreement.

Fourthly, had the parties thereto intended to make it extensive to other bonds, they would have, in all probability, filled the blank spaces in the above quoted stipulation. This was corroborated by Bienvenido Alumno, the chief clerk of plaintiff's bond department, who testified that the surety bond for P9,600 was not covered by any indemnity agreement.

In short, appellants Villarama and Gabriel are not bound, under the indemnity agreement Exhibit D, to indemnify plaintiff herein for the damages and losses it has suffered under the surety bond Exhibit B.

It is urged, however, by the plaintiff, that, although Gabriel had admittedly paid P38,400 to the Stevedoring Co., this sum should be applied, not to the full settlement of defendants' obligations under the surety bond Exhibit A, as contended by the defendants, but to the partial satisfaction of the aggregate amount due under the two (2) bonds, Exhibits A and B. The lower court adopted this theory of the plaintiff, but upon review of the record, we find that the stand taken by defendants Villarama and Gabriel is more tenable, because: (1) defendant Gabriel testified, without contradiction, that he delivered to the Stevedoring Co. the check for said sum of P38,400 in payment of the amount due under the surety bond, Exhibit A, for the same sum; (2) this testimony is plausible, considering that this surety bond is precisely for said sum of P38,400; (3) the debtor who has several obligations, may upon making payment, specify to which obligation such payment shall be applied (Art. 1252, Civil Code of the Philippines) ; and (4) even if Gabriel had not specified the obligation to which said payment referred, said sum of P38,400.00 should be applied to the obligation covered by the surety bond Exhibit A, the same being more onerous to the debtor, for it is older than the surety bond Exhibit B (*National Bank vs. Veraguth*, 50 Phil. 253; *Socony-Vacuum Corporation vs. Miraflores*, [C.A.] 38 Off. Gaz., 2771, 67 Phil. 304), and the former is guaranteed by the indemnity agreements Exhibits C and D, whereas Exhibit B is not so guaranteed (*Traders Insurance & Surety Co. vs. Dy Eng Giok et al.*, 104 Phil., 807).

Wherefore, the decision appealed from should be, as it is hereby, modified, by eliminating therefrom the judgement against appellants Villarama and Gabriel. In all other respects, or, insofar as Gabriel & Sons Transportation Co., Inc. is concerned, said decision is hereby affirmed, without special pronouncement as to the costs in this instance. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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