

TERESA S. DE LEON, ETC., PLAINTIFF-APPELLEE, VS. CHING LENG, ET. AL., DEFENDANTS-APPELLANTS.

G.R. No. L-7122. January 22, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Plaintiff-appellee sued the herein defendants-appellants Ching Leng, Chung Kiat Kang and Jai Alai Corporation of the Philippines for the collection of P106,000.00 with interest at 6% per annum from May 2, 1949 until paid, and P15,000.00 as attorney's fees upon their failure to pay, at its maturity, the promissory note Exhibit A, the payment of which in due time was guaranteed by defendant-appellant Jai Alai in a deed of guaranty, Exhibit C.

Exhibit A reads as follows:

"Manila, Philippines, May 1st, 1948

P100,000.00

On or before the 1st day of May, 1949, for value received (P100,000.00; in cash in P500.00 peso bills) we promise to pay, jointly and severally, to the order of Mrs. Teresa de Leon, the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS, Philippine currency, with interest at the rate of six (6%) per cent per annum in her residence at No. 1001 Oroquieta, Manila.

If this note is not paid at its maturity, the principal sum and the accrued interest shall draw interest, without demand, from the date of maturity until paid, at the rate of six (6%) per cent per annum. If it should be necessary to employ the services of a lawyer to enforce payment of this note, there shall be paid, in addition to the aggregate of the principal sum and accrued interest, a sum equivalent to fifteen (15%) per cent of the principal for attorney's fees and costs.

(Sgd.) CHING LENG
CHUNG KIAT KANG

SIGNED IN THE PRESENCE OF:
(Sgd.)"

and Exhibit C is couched in the following language:

"GUARANTY

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS on May 1, 1948, CHING LENG and CHUNG KIAT KANG, concessionaires of the bar and restaurant services of the Jai Alai Corporation of the Philippines, a corporation duly organized and existing under the laws of the Philippines, with its principal office in the City of Manila, at No. 214 Taft Avenue, have obtained from TERESA S. DE LEON of No. of No. 1001 Oroquieta, Manila, a loan in the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) Philippine currency, payable on or before May 1, 1949, with

interest thereon at the rate of Six Percent (6%) per annum, evidenced by a promissory note signed by them on the said date, which promissory note in words and figures is quoted, as follows:

Manila, Philippines, May 1st, 1948

P100,000.00

On or before the 1st day of May, 1949, for value received (P100,000.00 in cash in P500.00 peso bills) we promise to pay, jointly and severally, to the order of Mrs. Teresa de Leon, the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS, Philippine Currency, with interest at the rate of six (6%) per cent per annum in her residence at No. 1001 Oroquieta, Manila.

If this note is not paid at its maturity, the principal sum and the accrued interest shall draw interest, without demand, from the date of maturity until paid, at the rate of six (6%) per cent per annum. If it should be necessary to employ the services of a lawyer to enforce payment of this note, there shall be paid, in addition to the aggregate of the principal sum and accrued interest, a sum equivalent to fifteen (15%) per cent of the principal for attorney's fees and costs.

(Sgd.) CHING LENG "

CHUNG KIAT KANG

SIGNED IN THE PRESENCE OF:

(Sgd.)'

AND WHEREAS, the Jai Alai Corporation of the Philippines has in the resolutions of its Executive Committee dated March 24, 1948 and of its Board of Directors dated May 6, 1948, and of its Executive Committee dated June 2, 1948, has agreed to guarantee the payment of the said promissory note upon its maturity;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the sum of ONE PESO (P1.00), Philippine currency, the receipt whereof is hereby acknowledged, the JAI ALAI CORPORATION OF THE PHILIPPINES hereby guarantee unto the said TERESA S. DE LEON, her heirs, administrators, executors or assigns, the payment of the promissory note signed in her favor by Ching Leng and Chung Kiat.Kang above quoted.

IN WITNESS WHEREOF, the JAI ALAI CORPORATION OF THE PHILIPPINES, thru its Vice-President hereunto duly authorized, has executed these presents in the City of Manila, Philippines, this 23th day of DECEMBER, 1948.

JAI ALAI CORPORATION OF THE PHILIPPINES By: (Sgd.) JOSE RAZON Vice-President"

After trial, the court a quo rendered decision in favor of the plaintiff, its dispositive part being as follows:

"Premised upon the foregoing considerations, the principal debtors, Ching Leng, and Chung Kiat Kang, are hereby ordered to pay jointly and severally to the plaintiff the principal sum of P100,000.00, plus the sum of P6,000.00 as interest at the rate of six per centum (6%) per annum from May 1, 1948 to May 1, 1949, plus interest at the same rate per annum on the sum of P106,000.00 from May 2, 1948 until the said sum of P106,000.00 shall have been paid. The said defendants are likewise ordered to pay jointly and severally the stipulated attorney's fees of P15,000.00 and the costs of this suit.

No writ of execution shall issue against the defendant Jai Alai Corporation of the Philippines for the satisfaction of this judgment until after it shall have been shown to the satisfaction of the Court that the principal debtors cannot pay or are insolvent.

SO ORDERED."

Appellants Ching Leng and Chung Kiat Kang filed no brief, hence their appeal should be declared abandoned and, therefore, dismissed. Appellant Jai Alai Corporation perfected its appeal claiming that the lower¹ court erred:

1. in not granting herein defendant-appellant's motion to dismiss the case against it, plaintiff-appellee having no cause of action against it until and unless the defendants-appellants Ching Leng and Chung Kiat Kang, the principal debtors on the guaranteed obligation, are shown unable to pay said obligation by a return of a writ of execution unsatisfied;
2. in not holding that the deed of guaranty, upon which herein defendant-appellant's alleged liability is based, was null and void, due to misrepresentations as to the consideration supporting the principal obligation and alteration thereof without the knowledge; and consent of the herein defendant-appellant;
3. in not holding that the herein defendant-appellant has been released from its obligation under the contract of guaranty, assuming, arguendo, the validity thereof, by virtue of plaintiff-appellee's own breach and violation of its terms and conditions;
4. in not absolving herein defendant-appellant from any liability to plaintiff-appellee on the deed of guaranty; and
5. in not sentencing defendants-appellants Ching Leng and Chung Kiat Kang to pay jointly and severally to herein defendant-appellant the sum of P5,000.00 on its cross-claim by way of damages.

It is contended by appellant Jai Alai in the first assignment of error that it should not be included as defendant because plaintiff has no action against it, for all the remedies against the principal debtors, its co-defendants Ching Leng and Chung Kiat Kang, had not been previously exhausted. It is argued that the contract of guaranty signed by this appellant being a collateral undertaking separate and distinct from the principal contract, no action could be filed against it until all the remedies or proceedings against the principal debtors to secure the full payment of the promissory note Exhibit A had been previously exhausted. In support of this contention, it cites Art. 1330 of the old Civil Code, Arts. 2058 and 2062 of the new Civil Code and the cases of *Machetti vs. Hospicio de San Jose and Fidelity & Surety Co.*, 43 Phil. 297, 300; *Wise & Co. vs. Tanglao*, 63 Phil. 373; and *Ma-ao Sugar Central Co., Inc. vs. Barrios et al.*, G. R. No. L-1539, Dec. 3, 1947.

Art. 1830 of the old Civil Code provides:

"The guarantor cannot be compelled to pay the creditor until all the property of the debtor has first been exhausted."

Articles 2058 and 2062 of the new Civil Code read as follows:

Art. 2058. "The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor."

Art. 2062. "In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter."

The obligation of herein appellant Jai Alai to pay the value of the promissory note in question matured on May, 1949; the present action was brought on July 28, 1949; therefore the law applicable to the present case is undoubtedly the provisions of Art. 1534 of the old Civil Code which clearly provides that -

"The creditor may sue the guarantor jointly with the principal debtor, but shall always be required to have the property of the principal first exhausted, even if judgment is rendered against both of them."

Accordingly, in the disputed decision, defendant Jai Alai is not ordered to pay the promissory note Exhibit A before all the property of the other defendants had been exhausted, it having been clearly stated there in that no writ of execution shall issue against defendant Jai Alai Corporation, for the satisfaction of the judgment, until after it shall have been shown, to the satisfaction of the Court, that the principal debtors cannot pay or are insolvent. Hence, appellant Jai Alai's contention that plaintiff cannot proceed against it, is completely untenable despite the provisions of Art. 2062 of the new Civil Code to the effect that the action of the creditor should be against the principal debtor alone, for the cause of action in the present case accrued before the new Civil Code took effect in August, 1950.

Relative to the cases of *Machetti vs. Hospicio de San Jose and Fidelity & Sure Co.*; *Wise & Co. v. Tanglao*; and *Ma-ao Sugar Central Co., Inc. vs. Barrios et al.*, we find them inapplicable to the present case, for the doctrines laid down therein do not conflict with the theory sustained by the lower court to the effect that plaintiff-appellee herein had the right to sue and include in the complaint appellant Jai Alai under Art. 1334 of the old Civil Code. In the first case, Machetti, as plaintiff, sued the Hospicio de San Jose for the balance of the contract price of a building which he constructed for the Hospicio de San Jose. Fidelity & Sure Co. was the guarantor for the faithful compliance by Machetti of the terms of the contract and, in its answer, Hospicio de San Jose filed a counterclaim for damages for alleged partial noncompliance with the conditions of the contract. Machetti was subsequently declared insolvent, upon petition of his creditors and, pursuant to Sec. 60 of the Insolvency Law, all proceedings between Machetti and Hospicio de San Jose were ordered suspended. Despite this suspension, the Hospicio de San Jose asked the court to allow it to include Fidelity & Surety Co. as party co-defendant in the counterclaim and that proceedings against said company be continued. The motion was granted and the Hospicio de San Jose was allowed to file a complaint against Fidelity & Surety Co., to the exclusion of the principal debtor, thus converting the original action in which Machetti was the plaintiff and the Hospicio de San Jose the defendant into an action in which the latter was the plaintiff and the Fidelity & Surety Co., the defendant, practically eliminating Machetti from the case; and after trial, the court rendered judgment against Fidelity & Surety Co. for P12,300.00. On appeal, this Court reversed the judgment, for We held:

"As will be seen, the original action in which Machetti was the plaintiff and the Hospicio de San Jose the defendant, has been converted into an action in which the Hospicio de San Jose is the plaintiff and the Fidelity & Surety Co., the original plaintiff's guarantor, the defendant, Machetti having been practically eliminated from the case.

We think the court below erred in proceeding with the case against the guarantor while the proceedings were suspended as to the principal." (43 Phil. 297, 299)

And we so ruled because Machetti's obligation to pay the damages claimed by the Hospicio de San Jose was not clear and therefore the Fidelity & Surety Co., as guarantor of Machetti, could not be sued without including the latter; but the latter could not be included because all actions against him were suspended due to the insolvency proceeding instituted by his creditors.

As to the case of *Wise & Co. vs. Tanglao*, the action brought therein against defendant Tanglao was for the payment of the judgment indebtedness of plaintiff's employee named David, which was guaranteed by defendant Tanglao. Plaintiff Wise & Co. brought action directly against Tanglao without including David as defendant, who was shown to have property more than sufficient to pay for his obligation and, consequently, the action against Tanglao without including the principal debtor David, was held incorrect. Clearly, the question decided in that case was not whether David can be included in the complaint filed by Wise & Co., but whether the latter had direct action against Tanglao without including the principal debtor David.

With reference to the case of *Ma-ao Sugar Central Co. vs. Barrios*, which was a petition for certiorari, it appears

that the question involved therein was whether the respondent court acted without jurisdiction or with grave abuse of discretion in dismissing a complaint which seeks payment of debt covered by Executive Order No. 25, as amended by Executive Order No. 32, declaring moratorium on the payment of such debt. It has no bearing whatsoever on the question involved in this case.

Thus we conclude that the doctrines laid down in the cases cited by appellant Jai Alai do not run counter to the theory sustained by the lower court and, therefore, it did not err in holding that plaintiff-appellee has the right to sue the guarantor jointly with the principal and in rendering judgment against them subject to the requirement that the property of the principal debtor should first be exhausted for the satisfaction of the obligation.

Under the second assignment of error, appellant Jai Alai contends that "the deed of guaranty (Exhibit C) was null and void due to misrepresentations as to the consideration supporting the principal obligation and alteration thereof without the knowledge and consent of said defendant-appellant." It urges that, in executing the guaranty, it was unaware of any other agreement concerning the loan between the appellants-concessionaires and plaintiff-appellee, except those that were embodied in the guaranty contract; that plaintiff-appellee and appellants Ching Leng and Chung Kiat Kang failed to apprise appellant Jai Alai that there was a private supplementary agreement whereby said Ching Leng and Chung Kiat Kang agreed to pay plaintiff-appellee 1% of their gross sales, after deduction of all taxes, as concessionaires of the bars and restaurants of Jai Alai, as shown by the evidence of record, specially Exhibit 1-Jai Alai; that the existence of said subsequent supplemental agreement (Exh. 1-Jai Alai) essentially altered the terms of the loan contract which appellant Jai Alai had guaranteed; that any material alteration in the undertaking or obligation of the principal debtor or an extension granted without the consent of the guarantor, extinguishes the guaranty, hence the execution of the supplemental agreement without the knowledge and consent of appellant Jai Alai, which imposed a more onerous burden on the principal debtors, voided and extinguished the deed of guaranty (Exh. C) and absolutely relieved the Jai Alai Corporation from any liability thereunder. Plaintiff-appellee denied the existence of such agreement and vigorously claimed that: "(1) the existence of the alleged agreement (Exh. 1-Jai Alai) has not been satisfactorily proven; (2) there is nothing in the said alleged agreement showing that it was in any way connected with the obligation of the appellants concessionaires to the plaintiff-appellee which was guaranteed by appellant Jai Alai, and (3) assuming the existence of such alleged agreement, it does not extinguish the guaranty of appellant Jai Alai.

Upon careful examination of the evidence on record, we find appellee's contention on the point more tenable. Exhibit 1-Jai Alai is an unsigned copy, without any date, not proven to be a true copy of its original, if the latter existed. Appellant Jai Alai tried to identify it through the testimony of two witnesses, viz., Wenceslao Vital and Vitaliano E. Pineda, its accountant and chief clerk, respectively, but they were not able to properly and convincingly testify about the execution of the original Exhibit 1-Jai Alai or to properly, identify the latter as true copy of the alleged original. These witnesses were merely the alleged subscribing witnesses to the original of Exhibit 1-Jai Alai supposedly executed by Ching Leng and Chung Kiat Kang and acknowledged before Notary Nicanor S. Sison, hence the best witnesses to establish the execution of the original of Exhibit 1-Jai Alai or to prove the truth of the execution of its original were Ching Leng, Chung Kiat Kang and Notary Sison. However, appellant Jai Alai failed to adduce the testimonies of these persons, thus giving rise to the implication that had they been called to the witness stand, they would have denied the execution of the alleged contract Exhibit 1-Jai Alai. On the other hand, when appellant Jai Alai, on cross-examination, tried to elicit from the herein appellee the existence of the alleged agreement, she denied it; that in the session of March 2, 1951 (t.s.n. pages 5, 6 & 8) when appellant Jai Alai tried to make its first witness identify Exhibit 1-Jai Alai, the trial court ruled that before said appellant could introduce Exhibit 1-Jai Alai as evidence, it should first prove the existence of its original or its due execution. Under these circumstances, it was therefore the duty of appellant Jai Alai to call to the witness stand its co-defendants Ching Leng and Chung Kiat Kang and Notary Public Nicanor S. Sison, for they were the best

witnesses about the execution of the original Exhibit 1-Jai Alai and the correctness of said exhibit as true copy of its original, but it failed to do so.

Again, we note that Exhibit 1-Jai Alai bears no date, and according to witness Vital, the same must have been executed in the middle of 1948, while the deed of guaranty Exhibit C was executed on December 28, 1946; therefore, it could not be pretended that Exhibit 1-Jai Alai had the effect of altering the contract of guaranty Exhibit C. Moreover, in the present case, the action brought against Jai Alai was only to enforce the terms and conditions of Exhibit C and not those of Exhibit 1-Jai Alai, consequently, granting that Exhibit 1-Jai Alai was ever executed, appellant cannot invoke it to evade its obligation to comply with the terms and conditions of the aforementioned contract of guaranty.

Under the third assignment of error, it is urged that (1) the deed of guaranty executed by appellant Jai Alai was subject to certain essential terms and conditions, to wit: "that the amount of the loan should be amortized with the amounts due the corporation from the concessionaires as rentals, pursuant to the resolutions of the Executive Committee and the Board of Directors of the defendant corporation, dated March 24, 1949 and May 6, 1948, respectively, which form an integral part of the contract of guaranty," and that (2) the lower court erred in refusing to sustain this allegation. Admittedly, the aforesaid resolutions were mentioned in the deed of guaranty; but, therein, it was not clearly stated that the promissory note in question should be amortized with the rentals due the corporation from the concessionaires; on the contrary, in said Exhibit C, dated December 28, 1948, Jai Alai obligated itself plainly to guarantee the exact payment of the promissory note on or before May, 1949. Appellant Jai Alai, however, insists that the Executive Resolution of March 24, 1948 and the Board of Directors' Resolution of May 6, 1946 having been mentioned in the contract of guaranty, it should be understood as having been incorporated therein the condition that the promissory note shall be amortized with the rentals due the appellant corporation. This is untenable, for, evidently, the aforesaid resolutions were mentioned in the deed of guaranty only in connection with the authority given to the concessionaires to secure a loan for the purpose of rehabilitating appellant's bar and restaurant leased to defendants Ching Leng and Chung Kiat Kang. Moreover, the disputed condition is so important, affecting as it does how the loan should be paid, that had the parties intended it to be the mode of payment of said loan, certainly they would not have failed to so state it clearly and unmistakably in the deed of guaranty. And Exhibit C bearing no such condition, we are constrained to believe appellee's contention that the same was never agreed upon between the parties. This being the case, we also hold untenable appellant Jai Alai's contention that it has been released from its obligation on account of plaintiff-appellee's failure and neglect to collect from the concessionaires the amounts due the corporation as rentals for the amortization of the loan in question, for, as stated above, nowhere in the deed of guaranty is it stated that said loan should be amortized with the rentals due the Jai Alai Corporation. Furthermore, as the lower court correctly ruled "by reason of the terms of the promissory note which is the principal contract between the parties, the plaintiff could not have collected for want of right to the rentals due for the period from May 1, 1948 to January 9, 1949 when the principal defendants as concessionaires were allegedly ejected by the defendant corporation from its premises."

Anent the fifth assignment of error, we find it also untenable. "There is no showing that the failure of Ching Leng and Chung Kiat Kang to pay the promissory note in question was due to malice or intent to compel appellant Jai Alai to enter into litigation with plaintiff-appellee; and the evidence shows that both appellant Jai Alai and its 'co-defendants Ching Leng and Chung Kiat Kang were bound to pay the promissory note in question when it became due in January, 1949, but all of them failed to do so, hence the action was properly brought against them.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed with costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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