

CITIZENS SURETY AND INSURANCE COMPANY, INC., PETITIONER, VS. COURT OF APPEALS AND PASCUAL M. PEREZ, RESPONDENTS.

G.R. No. L-48958. June 28, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Court of Appeals which reversed the decision of the Court of First Instance of Batangas in a case involving a claim for a sum of money against the estate of the late Nicasia Sarmiento, administered by her husband Pascual M. Perez.

On December 4, 1959, the petitioner issued two (2) surety bonds CSIC Nos. 2631 and 2632 to guarantee compliance by the principal Pascual M. Perez Enterprises of its obligation under a "Contract of Sale of Goods" entered into with the Singer Sewing Machine Co. In consideration of the issuance of the aforesaid bonds, Pascual M. Perez, in his personal capacity and as attorney-in-fact of his wife, Nicasia Sarmiento and in behalf of the Pascual M. Perez Enterprises executed on the same date two (2) indemnity agreements wherein he obligated himself and the Enterprises to indemnify the petitioner jointly and severally, whatever payments advances and damage it may suffer or pay as a result of the issuance of the surety bonds.

In addition to the two indemnity agreements, Pascual M. Perez Enterprises was also required to put up a collateral security to further insure reimbursement to the petitioner of whatever losses or liabilities it may be made to pay under the surety bonds. Pascual M. Perez therefore executed a deed of assignment on the same day, December 4, 1959, of his stock of lumber with a total value of P400,000.00. On April 12, 1960, a second real estate mortgage was further executed in favor of the petitioner to guarantee the fulfillment of said obligation.

Pascual M. Perez Enterprises failed to comply with its obligation under the contract of sale of goods with Singer Sewing Machine Co., Ltd. Consequently, the petitioner was compelled to pay, as it did pay, the fair value of the two surety bonds in the total amount of P144,000.00. Except for partial payments in the total sum of P55,600.00 and notwithstanding several demands, Pascual M. Perez Enterprises failed to reimburse the petitioner for the losses it sustained under the said surety bonds.

The petitioner filed a claim for sum of money against the estate of the late Nicasia Sarmiento which was being administered by Pascual M. Perez.

In opposing the money claim, Pascual M. Perez asserts that the surety bonds and the indemnity agreements had been extinguished by the execution of the deed of assignment.

After the trial on the merits, the Court of First Instance of Batangas rendered judgment on April 15, 1968, the dispositive portion of which reads:

"WHEREFORE, considering that the estate of the late Nicasia Sarmiento is jointly and severally liable to the Citizens' Surety and Insurance Co., Inc., for the amount the latter had paid the Singer Sewing Machine Company, Ltd., the court hereby orders the administrator Pascual M. Perez to pay the claimant the sum of

P144,000.00, with interest at the rate of ten (10%) per cent per annum from the date this claim was filed, until fully paid, minus the payments already made in the amount of P55,600.00." (pp. 97-98, Record on Appeal)

Both parties appealed to the Court of Appeals. On August 31, 1978, the Court of Appeals rendered its decision with the following dispositive portion:

"WHEREFORE, the decision rendered by the Court of First Instance of Batangas on April 15, 1986 is hereby reversed and set aside and another one entered dismissing the claim of the Citizens' Surety and Insurance Co., Inc., against the estate of the late Nicasia Sarmiento. No pronouncement as to costs." (p. 87, Rollo)

The petitioner raises the following alleged errors of the respondent court as the issues in this petition for review:

I

RESPONDENT COURT OF APPEALS ERRED IN CONCLUDING THAT THE OBLIGATION OF PRIVATE RESPONDENT PASCUAL M. PEREZ HAD BEEN EXTINGUISHED BY VIRTUE OF THE EXECUTION OF THE DEED OF ASSIGNMENT (EXHIBIT "1") AND/OR THE RELEASE OF THE SECOND REAL ESTATE MORTGAGE (EXHIBIT "2").

II

RESPONDENT COURT OF APPEALS ERRED IN CONCLUDING THAT THERE WAS DATION IN PAYMENT BY VIRTUE OF THE EXECUTION OF THE DEED OF ASSIGNMENT (EXHIBIT "1").

III

RESPONDENT COURT OF APPEALS ERRED WHEN IT TOTALLY REVERSED AND SET ASIDE THE DECISION OF THE COURT OF FIRST INSTANCE OF BATANGAS THUS DEPRIVING PETITIONER OF THE PRINCIPAL SUM DUE PLUS INTEREST AND ATTORNEY'S FEES. (p. 4, Petitioner's Brief).

The main issue in this petition is whether or not the administrator's obligation under the surety bonds and indemnity agreements had been extinguished by reason of the execution of the deed of assignment.

It is the general rule that when the words of a contract are plain and readily understandably, there is no room for construction thereof (*San Mauricio Milling Co. v. Ancheta*, 105 SCRA 371). However, this is only a general rule and it admits exceptions.

Pascual M. Perez executed an instrument denominated as "Deed of Assignment." Pertinent portions of the deed read as follows:

"I, Pascual M. Perez, Filipino, of legal age, married, with residence and postal address at 115 D. Silang, Batangas, as the owner and operator of a business styled 'PASCUAL M. PEREZ ENTERPRISES,' with office at R-3I Madrigal Building, Escolta, Manila, hereinafter referred to as ASSIGNOR, for and in consideration of the issuance in my behalf and in favor of the SINGER SEWING MACHINE COMPANY, LTD., of two Surety Bonds (C.S.I.C Bond Nos. 2631 and 2632 each in the amount of SEVENTY-TWO THOUSAND PESOS (P72,000.00), or with a total sum of ONE HUNDRED FORTY-FOUR THOUSAND PESOS (P144,000.00), Philippine Currency, by the CITIZENS' SURETY AND INSURANCE CO., INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at R-306 Samanillo Building, Escolta, Manila, Philippines, and duly represented in the act by its Vice-President and General Manager, ARISTEO L. LAT, hereinafter referred to as ASSIGNEE, assign by these presents; unto said ASSIGNEE, its heirs, successors, administrators or assigns the herein ASSIGNOR'S stock (Insured) of low grade lumber, class 'No. 2 COMMON' kept and deposited at Tableria Tan Tao at Batangas, Batangas, with a total measurement of Two Million (2,000,000.00) hoard feet and valued of P0.20 per board feet or with a total value of P400,000.00 which lumber is intended by the ASSIGNOR for exportation under a Commodity Trade Permit, the condition being that in the event that the herein assignor exports said lumber and as soon as

he gets the necessary export shipping and related and pertinent documents therefor, the ASSIGNOR will turn said papers over to the herein ASSIGNEE, conserving all of the latter's dominion, rights and interests in said exportation.

"The ASSIGNEE hereby agrees and accepts this assignment under the conditions abovementioned." (pp. 77-79, Record on Appeal)

On its face, the document speaks of an assignment where there seems to be a complete conveyance of the stocks of lumber to the petitioner, as assignee. However, in the light of the circumstances obtaining at the time of the execution of said deed of assignment, we can not regard the transaction as an absolute conveyance. As held in the case of *Sy v. Court of Appeals*, (131 SCRA 116, 124):

"It is a basic and fundamental rule in the interpretation of contract that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, then the literal meaning of the stipulations shall control but when the words appear contrary to the evident intention of the parties, the latter shall prevail over the former. (*Labasan v. Lacuesta*, 86 SCRA 16) In order to judge the intention of the parties, their contemporaneous and subsequent acts shall be principally considered. (Italics supplied)

The petitioner issued the two (2) surety bonds on December 4, 1959 in behalf of the Pascual M. Perez Enterprises to guaranty fulfillment of its obligation under the "Contract of Sale of Goods" entered into with the Singer Sewing Machine Co. In consideration of the two surety bonds, two indemnity agreements were executed by Pascual M. Perez followed by a Deed of Assignment which was also executed on the same date.

In the case of *Lopez v. Court of Appeals* (114 SCRA 673), we stated that:

"The indemnity agreement and the stock assignment must be considered together as related transactions because in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (Article 1371, New Civil Code). Thus, considering that the indemnity agreement connotes a continuing obligation of Lopez towards Philamgen while the stock assignment indicates a complete discharge of the same obligation, the existence of the indemnity agreement whereby Lopez had to pay a premium of P1,000.00 for a period of one year and agreed at all times to indemnify Philamgen of any and all kinds of losses which the latter might sustain by reason of it becoming a surety, is inconsistent with the theory of an absolute sale for and in consideration of the same undertaking of Philamgen. There would have been no necessity for the execution of the indemnity agreement if the stock assignment was really intended as an absolute conveyance. Hence, there are strong and cogent reasons to conclude that the parties intended said stock assignment to complement the indemnity agreement and thereby sufficiently guarantee the indemnification of Philamgen should it be required to pay Lopez' loan to Prudential Bank, (at pp. 682-683)

The respondent court stated that "by virtue of the execution of the deed of assignment, ownership of administrator-appellant's lumber materials had been transferred to the claimant-appellant and this amounted to dation in payment whereby the former is considered to have alienated his property in favor of the latter in satisfaction of a monetary debt (Article 1245). As a consequence thereof, administrator-appellant's obligation under the surety bonds is thereby extinguished upon the execution of the deed of assignment." This statement is not sustained by the records.

The transaction could not be dation in payment. As pointed out in the concurring and dissenting opinion of Justice Edgardo L. Paras and the dissenting opinion of Justice Mariano Serrano when the deed of assignment was executed on December 4, 1959, the obligation of the assignor to refund the assignee had not yet arisen. In other words, there was no obligation yet on the part of the petitioner. Citizens' Surety and Insurance Co., to pay Singer Sewing Machine Co. There was nothing to be extinguished on that date, hence, there could not have been a dation in payment.

In the case of *Lopez v. Court of Appeals* (supra) we had the occasion to explain:

"Considering the above jurisprudence, We find that the debt or obligation at bar has not matured on June 2, 1959 when Lopez 'alienated' his 4,000 shares of stock to Philamgen. Lopez' obligation would arise only when he would default in the payment of the principal obligation (the loan) to the bank and Philamgen had to pay for it. Such fact being adverse to the nature and concept of dation in payment, the same could not have been constituted when the stock assignment was executed. Moreover, there is no express provision in the terms of the stock assignment between Philamgen and Lopez that the principal obligation (which is the loan) is immediately extinguished by reason of such assignment." (at p. 686)

The deed of assignment cannot be regarded as an absolute conveyance whereby the obligation under the surety bonds was automatically extinguished. The subsequent acts of the private respondent bolster the fact that the deed of assignment was intended merely as a security for the issuance of the two bonds. Partial payments amounting to P55,600.00 were made after the execution of the deed of assignment to satisfy the obligation under the two surety bonds. Since later payments were made to pay the indebtedness, it follows that no debt was extinguished upon the execution of the deed of assignment. Moreover, a second real estate mortgage was executed on April 12, 1960 and eventually cancelled only on May 15, 1962. If indeed the deed of assignment extinguished the obligation, there was no reason for a second mortgage to still have to be executed. We agree with the two dissenting opinions in the Court of Appeals that the only conceivable reason for the execution of still another mortgage on April 12, 1960 was because the obligation under the indemnity bonds still existed. It was not yet extinguished when the deed of assignment was executed on December 4, 1959. The deed of assignment was therefore intended merely as another collateral security for the issuance of the two surety bonds.

Recapitulating the facts of the case, the records show that the petitioner surety company paid P144,000.00 to Singer on the basis of the two surety bonds it had issued in behalf of Pascual Perez Enterprises. Perez in turn was able to indemnify the petitioner for its payment to Singer in the amount of P55,600.00 thus leaving a balance of only P88,400.00.

The petitioner surety company was more than adequately protected. Lumber worth P400,000.00 was assigned to it as collateral. A second real estate mortgage was also given by Perez although it was later cancelled obviously because the P-400,000.00 worth of lumber was more than enough guaranty for the obligations assumed by the petitioner. As pointed out by Justice Paras in his separate opinion, the proper procedure was for Citizens' Insurance and Surety Co., to collect the remaining P-88,400.00 from the sales of lumber and to return whatever was retained to Perez. We cannot order the return in this decision because the Estate of Mrs. Perez has not asked for any return of excess lumber or its value. There appears to have been other transactions, surety bonds, and performance bonds between the petitioner and Perez Enterprises but these are extraneous matters which, the records show, have absolutely no bearing on the resolution of the issues in this petition.

With respect to the claim for interests and attorney's fees, we agree with the private respondent that the petitioner is not entitled to either one. It had the means to recoup its investment and losses many times over, yet it chose to litigate and delay the final determination of how much was really owing to it. As stated by Justice Paras in his separate opinion:

"Interest will not be given the Surety because it had all the while (or at least, it may be presumed that such was the case) the P400,000.00 worth of lumber, from which value the 'refunding by assignor could have been deducted if it had so informed the assignor of the plan.

"For the same reason as in No. (5), attorney's fees cannot be charged, for despite the express stipulation on the matter in the contract, there was actually no failure on the part of the assignor to comply with the obligation of refunding. The means of compliance was right there with the Surety itself: surely it could have earlier

conferred with the assignor on how to effect the 'refunding.'" (p. 39, Rollo)

WHEREFORE, the petition is hereby DISMISSED. For the reasons abovestated, the claim of Citizens' Surety and Insurance Co., Inc., against the estate of Nicasia Sarmiento is DISMISSED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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