

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAXIMINO GUMAYAN AND PEOPLE'S SURETY
INSURANCE COMPANY, DEFENDANTS, PEOPLE'S SURETY
& INSURANCE CO., DEFENDANT AND APP...**

G.R. No. L-16780. May 31, 1961

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

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

Originally brought to the Court of Appeals, this appeal was certified to us by that court on the ground that it involves only question of law.

The facts of the case are as follows:

On or about May 15, 1950, Maximino Gumayan was issued a license to engage in the business of receiving palay for storage at Cagamutan Norte, Leganes, Iloilo, in accordance with the provisions of Act No. 3893 as amended by Republic Act No. 247, known as the General Bonded Warehouse Law. Pursuant to the requirements of said Act, Gumayan as principal and the People's Surety and Insurance Company as surety, filed Bond No. 35 dated July 13, 1951 in the amount of P3,700 Bond No. 82 dated March 13, 1953 in the amount of P3,666.67, and Bond No. 67 dated February 11, 1952 in the amount of P3,667, to insure the return to the depositors of the palay that may be received by Gumayan under his license or the payment of their market value in case they could not be returned. Later, Gumayan in turn delivered to the People's Surety and Insurance Company two indemnity agreements, the first signed by Gumayan himself and the second signed by him jointly and severally with another person, Pablo H. Hinon, agreeing to indemnify the surety company for any damages, costs, payments, expenses, including attorney's fees with 12% interest in case of delay in payment that said company may sustain or incur as a consequence of its having executed two of the aforementioned Bonds (i.e., Bonds Nos. 35 and 82).

On or about December 14, 1954, the Republic of the Philippines filed Civil Case No. 3339 in the Court of First Instance of Iloilo against Gumayan and the People's Surety and Insurance Company alleging that Gumayan, inspite of demands by plaintiff, had failed to return 2,733 cavans of palay received by him for storage from different persons named in the complaint or to pay their value at the price of P10 per cavan or a total of P27,830; and prayed for judgment against Gumayan and the surety company on their surety bonds, in the amount of P11,033.67, plus legal interests and costs.

In his answer, Gumayan claimed that the deposits of palay mentioned in the complaint had been either fully or partly paid to the depositors, and that arrangements had been made by him for the payment of the remaining outstanding claims which allegedly amounted to only P6,571. The defendant surety company, on its part, adopted in its answer the defenses interposed by Gumayan, and also filed a cross-claim against him for all amounts that it might be sentenced to pay under their bonds. The surety company likewise filed a third-party complainant against Pablo H. Hinon one of the signatories to one of the indemnity agreements delivered by Gumayan to the surety company.

Issues having been joined, the case was set for trial on January 18, 1957. On January 15, 1957, defendant Gumayan filed a motion for postponement on the ground that counsel would be in the town of Estancia from January 16 to 19, 1957, in connection with an administrative case pending therein. When the case was thus called for trial on January 18, 1957, neither defendant Gumayan nor counsel was present. The court, however, denied Gumayan's motion for postponement and allowed the plaintiff and the surety company to introduce their respective evidence. Then on February 13, 1957, the court rendered judgment in the case the dispositive portion of which reads:

"Wherefore, judgment is hereby rendered as follows:

(a) Maximino Gumayan and People's Surety & Insurance Co., Inc. are hereby sentenced to, jointly and severally, pay plaintiff the amount of P11,033.67 with interest thereon at the legal rate from the filing of the complaint until fully paid;

(b) Maximino Gumayan is hereby sentenced to pay plaintiff the sum of P2,066.83 with interest thereon at the legal rate from the filing of the complaint until fully paid;

(c) On the cross-claim of People's Surety & Insurance Co., Inc. against Maximino Gumayan, the latter is hereby sentenced to pay the former, whatever amount the former shall have paid the plaintiff pursuant to this judgment;

(d) Costs are taxed against the herein defendants."

From the above judgment, both Gumayan and the People's Surety & Insurance Company appealed.

In his appeal, defendant Gumayan claims that the lower court erred (1) in denying his motion for postponement; (2) in not furnishing him with a copy of the order denying his motion for postponement; and (3) in denying his motion for new trial.

We see no merit in these assigned errors.

As to the denial of Gumayan's motion for postponement, we have repeatedly held that such motions are addressed to the sound discretion of the court^[1] and that movant has no right to assume that his motion would be granted, especially on less than three day's notice and must be in court on the day of the hearing so that if his motion is denied, he can proceed with the trial^[2] considering that counsel for Gumayan gave no valid excusable reason in his motion for postponement why he had to attend the administrative case in the town of Estancia in preference to the hearing of this case; that copies of the motion for postponement were served on the other parties by ordinary mail only on January 15, 1957, so that they could not have had at least three day's notice thereof before the hearing on January 18, 1957; and that both plaintiff and the surety company were in court ready for trial on the day set for hearing; the lower court committed no abuse of discretion in denying Gumayan's motion for postponement and in allowing the other parties to introduce their respective evidence even in the absence of Gumayan or counsel.

Gumayan argues that he was not furnished with a copy of the order denying his motion for postponement, and that for this reason, he was deprived of his chance to present evidence in support of his defense. Again we see no merit in this claim. While it is true that Gumayan was entitled to a copy of the court's order denying his motion for postponement, he suffered no prejudice by such lack of notice, for he lost his chance to present evidence not because he was not notified of the denial of his motion for postponement, but because of his unwarranted absence in court on the date of the hearing. Anyway, Gumayan was served a copy of the decision rendered by the court, and such notice of the decision based on evidence presented at the hearing by the other parties during Gumayan's absence was sufficient notice to him of the denial of his motion for postponement.

Finally, Gumayan urges that the lower court erred in denying his motion for reconsideration asking that he be allowed to introduce his evidence. This motion of Gumayan, which was not really a motion for reconsideration but a motion for new trial, was again correctly denied, because it offered no justifiable excuse for Gumayan or counsel's failure to attend the hearing on January 18, 1957, nor did it attach affidavits of merit showing the facts and/or evidence upon which Gumayan bases his defense that he had allegedly fully or partly settled the accounts sued upon by plaintiff in its complaint (sections 1 and 2, Rule 37, Rules of Court). Either one of these two reasons constitutes sufficient ground for the denial of Gumayan's motion for new trial.

We now come to the appeal interposed by the defendant People's Surety and Insurance Company from that portion of the decision of the court a quo granting it recovery under its cross-claim against defendant Gumayan and its third-party complaint against third-party defendant Pablo H. Hinon, to wit:

"Wherefore, judgment is hereby rendered as follows:

* * * * *

(c) On the cross-claim of People's Surety & Insurance Co. Inc. against Maximino Gumayan, the latter is hereby sentenced to pay the former, whatever amount the former shall have paid the plaintiff pursuant to this judgment;

(d) On the third-party complaint of People's Surety & Insurance Co., Inc. against Pablo H. Hinon the latter is hereby sentenced to pay the former whatever amount it shall have paid the plaintiff under the surety bond No. 35 dated July 13, 1951 plus 15% of said amount for attorney's fees."

Relying on the following provisions of the two indemnity agreements (Exhibits 1 and 2) signed by Gumayan and Hinon in its favor:

"Indemnity.—To indemnify the Company for any damages, prejudice, loss, costs, payments, advances, and expenses of whatever kind and nature, including counsel or attorney's fees, which the Company may, at any time, sustain or incur, as a consequence of having executed the above-mentioned Bond, its renewals, extension or substitutions and said attorney's fees shall not be less than fifteen (15%) per cent of the amount claimed by the Company in each action, the same to be due and payable, irrespective of whether the case is settled judicially or extrajudicially.

* * * * *

Interest in Case of Delay.—In the event of delay in payment of the said sum or sums, by the undersigned, they will pay interest at the rate of 12% per annum on same, which interest, if not paid, will be liquidated and accumulated to the capital quarterly, and shall earn the same interest as the capital; all this without prejudice to the Company's right to demand judicially or extrajudicially the full payment of its claims."

appellant surety company claims that it is entitled to recover, (1) on its cross-claim against Gumayan, not only whatever amounts it would pay plaintiff under its bonds, but also costs, if paid by it, attorney's fees equivalent to 15% of whatever amounts it would have to pay plaintiff, and interest at the rate of 12% in the event of delay in payment by Gumayan; and (2) on its third-party complaint against Pablo H. Hinon, not only whatever amount it would pay plaintiff under the surety bond No. 35, and 15% of said amount as attorney's fees, but also costs if paid by the surety company, and 12% interest per annum on all payments due to the company, in case of delay in payment.

The suggested modification of the judgment of the court a quo against the third-party defendant Pablo H. Hinon is warranted, because Hinon is bound by the terms of the indemnity agreement Exhibit "1" which he signed in behalf of the appellant surety company jointly and severally with defendant Gumayan, and said indemnity

agreement clearly stipulates that the indemnitors would pay any costs, if paid by the surety company, and 12% interest on all amounts due from the indemnitors to the company in case of delay in payment.

With respect to the judgment against defendant Gumayan on the appellant surety company's cross-claim against him, however, it will be noticed that the two indemnity agreements delivered by Gumayan to the appellant surety company (the first signed by him with third-party defendant Hinon, Exhibit "1", and the second, signed by Gumayan himself, Exhibit "2") only answer for two out of the three bonds issued by the appellant company in favor of plaintiff: i.e., Bonds Nos. 35 and 82, for the amounts of P3,700 and P3,667.00 respectively, or a total amount of P7,367. In so far as the appellant company would make payment on these bonds to plaintiff, it is correct in claiming that Gumayan should indemnify it not only for the principal amounts paid, but also for costs, 15% attorney's fees and 12% interest per annum in case of delay in payment, as provided for in the indemnity agreements Exhibits 1 and 2. On any payments the appellant surety company would make to plaintiff on Bond No. 67, however, which is not guaranteed by the indemnity agreements Exhibits "1" and "2", said surety company would only be entitled to reimbursement of all the amounts paid and costs, if paid by it, as decreed by the court below.

Wherefore, the judgment appealed from is modified in the sense that paragraphs (c) and (d) of its dispositive portion should read as follows:

"(c) On the cross-claim of People's Surety & Insurance Co., Inc. against Maximino Gumayan, the latter is hereby sentenced to pay the former, whatever amount the former shall have paid the plaintiff pursuant to this judgment, plus costs if paid partly or wholly by said company; and on all amounts paid by the surety company to plaintiff on Bonds Nos. 35 and 82, defendant Gumayan is sentenced to pay the surety company 15% thereof as attorney's fees, plus 12% interest per annum in case of delay in payment on all sums due the surety company on said bonds.

(d) On the third-party complaint of People's Surety & Insurance Co., Inc. against Pablo H. Hinon, the latter is hereby sentenced to pay the former whatever amount it shall pay the plaintiff under the surety bond No. 35, plus 15% of said amount as attorney's fees and 12% interest per annum on the total amount due in case of delay in payment, plus costs if the surety company would pay the same partly or wholly; unless all such amounts would have been paid by defendant Gumayan to the surety company under the latter's cross-claim against the former."

In all other respects, the judgment appealed from is affirmed. Defendant Gumayan shall pay the costs of his own appeal, while the costs of the appeal of the People's Surety & Insurance Company shall be taxed against defendant Gumayan and third-party defendant Pablo H. Hinon.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] *Martir vs. Jalandoni*, 107 Phil., 308; *Panti vs. Prov. Bd. of Catanduanes*, 106 Phil., 1093; *Adan vs. Pantalla*, 105 Phil., 921; *Casilan vs. Gancayco*, 104 Phil., 418; 56 Off. Gaz., (13) 2799; *Dimayuga vs. Dimayuga*, 96 Phil., 859; 51 Off. Gaz., (5) 2397; *Bautista vs. Mun. Council of Mandaluyong, Rizal*, 98 Phil., 409; 52 Off. Gaz., (2) 759.

[2] *National Lumber Hardware Co. vs. Velasco*, 106 Phil., 1098; *Wack Wack Golf and Country Club vs. C.A.*, 106 Phil., 501; *Benares Montelibano vs. Benares*, 103 Phil., 106; *Parina vs. Cobangbang*, G.R. No. L-8398, March 21, 1956; *Salvador vs. Romero*, 96 Phil., 34; 50 Off. Gaz. [11] 5279.

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