

TRADERS INSURANCE & SURETY COMPANY, PLAINTIFF AND APPELLANT, VS. DY ENG GIOK, PEDRO LOPEZ DEE AND PEDRO E. DY-LIACCO, DEFENDANTS AND APPELLEES.

G.R. No. L-9073. November 17, 1958

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

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

Appeal interposed against that part of the decision of the Court of First Instance of Manila (in its civil case No. 20305) absolving Pedro Lopez Dee and Pedro E. Dy- Liacco from the obligation to reimburse the plaintiff Traders Insurance and Surety Co.

From the stipulation of facts made by the parties in the court below, it appears that from 1948 to 1952 the corporation "Destileria Lim Tuaco & Co., Inc." had one By Eng Giok as its provincial sales agent, with the duty of turning over the proceeds of his sales to the principal, the distillery company. As of August 3, 1951, the agent Dy Eng Giok had an outstanding running account in favor of his principal in the sum of P12,898.61.

On August 4, 1951, a surety bond (Annex A, complaint) was executed by Dy Eng Giok, as principal, and appellant Traders Insurance and Surety Co., as solidary guarantor, whereby they bound themselves, jointly and severally, in the sum of F10,000.00 in favor of the Destilleria Lim Tuaco & Co., Inc., under the following terms:

"The Condition op this Obligation is Such That: Whereas, the above bounden principal has entered in to a contract with the aforementioned Company to act as their provincial sales agent and to receive goods or their products under the said Principal's credit account. The proceeds of the sales are to be turned over to the Company.

WHEREAS, the contract requires the above bounden principal to give a good and sufficient bond in the above stated sum to secure the full and faithful fulfillment on its part of said contract; namely, to guarantee the full payment of the Principal's obligation not to exceed the above stated sum.

Now, therefore, if the above bounden principal shall in all respects duly and fully observe and perform all and singular the aforesaid covenants, conditions, and agreements to the true intent and meaning thereof, then this obligation shall be null and void; otherwise, to remain in full force and effect.

Liability of surety on this bond will expire on August 4, 1952 and said bond will be cancelled TEN DAYS after its expiration, unless surety is notified in writing of any existing obligations thereunder or otherwise extended by the surety in writing." (Rec. App., pp. 7-8) (*Italics supplied*)

On the same date, by Eng Giok, as principal, with Pedro Lopez Dee and Pedro Dy-Liacco, as counterboundsmen, subscribed an indemnity agreement (Annex B. of the complaint) in favor of appellant Surety Company, whereby, in consideration of its surety bond (Annex A), the three agreed to be obligated to the surety company—

"Indemnity:—To indemnify the COMPANY for any damages, prejudice, loss, costs, payments, advances and expenses of what- ever 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 abovementioned bond, its renewals, extensions or substitutions, and said attorney's fee shall not be less than (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." (Rec. App. pp. 9-10)

From August 4, 1951 to August 3, 1952, agent Dy Eng Giok contracted obligations in favor of the Destilleria Lim Tuaco & Co., in the total amount of P41,449.93; and during the same period, he made remittances amounting to F41,864.49. The distillery company, however, applied said remittances first to Dy Eng Giok's outstanding balance prior to August 4, 1951 (before the suretyship agreement was executed) in the sum of P12,898.61; and the balance of F28,965.88 to Dy's obligations between August 4, 1951 and August 3, 1952. It then demanded payment of the remainder (P12,484.05) from the agent, and later, from the appellant Surety Company. The latter paid F10,000.00 (the maximum of its bond) on July 17, 1953, apparently, without questioning the demand; and then sought reimbursement from Dy Eng Giok and his counter guarantors, appellees herein. Upon their failure to pay, it began the present action to enforce collection.

After trial, the Court of First Instance of Manila absolved the counter-guarantors Pedro Lopez Dee and Pedro Dy-Liacco, on the theory that in so far as they are concerned, the payments made by Dy Eng Giok from August 4, 1951 to August 3, 1952, in the sum of P41,864.49, should have been applied to his obligations during that period, which were the ones covered by the surety bond and the counter-guaranty; and as these obligations only amounted to P41,449.93, so that the payments exceeded the obligations, the court concluded that the Surety Company incurred no liability and the counterbondsmen in turn had nothing to answer for. The trial court, however, sentenced Dy Eng Giok to repay to the Surety Company P10,000 with interest at 12% per annum, plus P1,500 attorney's fee and the costs of the suit.

Not satisfied with the decision, the Traders Insurance & Surety Company appealed to this Court on points of law.

We find the decision appealed from to be correct. There are two reasons why the remittances by Dy Eng Giok in the sum of P41,864.49 should be applied to the obligation of P41,449.93 contracted by him during the period covered by the suretyship agreement, Annex A. The first is that, in the absence of express stipulation, a guaranty or suretyship operates prospectively and not retroactively; that is to say, it secures only the debts contracted after the guaranty takes effect (*El Vencedor vs. Canlas*, 44 Phil. 699). This rule is a consequence of the statutory directive that a guaranty is not presumed, but must be express, and can not extend to more than what is stipulated. (*New Civil Code*, Art. 2055). To apply the payments made by the principal debtor to the obligations he contracted prior to the guaranty is, in effect, to make the surety answer for debts incurred outside of the guaranteed period, and this can not be done without the express consent of the guarantor. Note that the suretyship agreement, Annex A, did not guarantee the payment of any outstanding balance due from the principal debtor, Dy Eng Giok; but only that he would turn over the proceeds of the sales to the "Destileria Lim Tuaco & Co., Inc.", and this he has done, since his remittances during the period of the guaranty exceed the value of his sales. There is no evidence that these remittances did not come from his sales.

A similar situation was dealt with in our decision in the case of *Municipality of Lemery vs. Mendoza*, 48 Phil. 415, wherein we said (pp. 422-423) :

"As we have previously stated Mendoza has paid to the municipality the full sum of P23,000. In our opinion this discharged the sureties from all further liability. The circumstance that the sum of P23,000 which Mendoza paid may have been applied by the municipality to Mendoza's indebtedness for the first year of the lease is without significance as against the sureties, since the sureties were not parties to the contract of lease (Exhibit D) and are liable only upon the contract of suretyship (Exhibit E), which calls for the payments of only P23,000 by the principal. It is a just rule of jurisprudence, recognized in article 1827 of the Civil Code, that the

obligation of a surety must be express and cannot be extended by implication beyond its specified limits.

We do not overlook the fact that the obligating clause in Exhibit E binds the sureties in the amount of ₱46,000, but, as in all bonds, that obligation was intended as an assurance of the performance of the principal obligation and when the principal obligation was discharged, the larger obligation expressed in the contract of suretyship ceased to have any vitality"

The second reason is that, since the obligations of Dy Eng Giok between August 4, 1951 to August 4, 1952, were guaranteed, while his indebtedness prior to that period was not secured, then in the absence of express application by the debtor, or of any receipt issued by the creditor specifying a particular imputation of the payment (New Civil Code, Art. 1252), any partial payments made by him should be imputed or applied to the debts that were guaranteed, since they are regarded as the more onerous debts from the standpoint of the debtor (New Civil Code, Art. 1254).

"Art. 1254. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately."

Debts covered by a guaranty are deemed more onerous to the debtor than the simple obligations because, in their case, the debtor may be subjected to action not only by the creditor, but also by the guarantor, and this even before the guaranteed debt is paid by the guarantor (Art. 2071, New Civil Code); hence, the payment of the guaranteed debt liberates the debtor from liability to the creditor as well as to the guarantor, while payment of the unsecured obligation only discharges him from possible action by only one party, the unsecured creditor.

The rule that guaranteed debts are to be deemed more onerous to the debtor than those not guaranteed, and entitled to priority in the application of the debtor's payments, was already recognized in the Roman Law (Ulpian, fr. ad Sabinum, Digest, Lib. 46, Tit 3, Law 4, in fine), and has passed to us through the Spanish Civil Code. Manresa in his Commentaries to Art. 1174 of that Code (8 Manresa, Vol. I, 5th Ed., p. 603) expressly says:

"Atendiendo al gravamen, la deuda garantida es mas onerosa que la simple."

And this is also the rule in Civil law countries, like France (Dalloz, Jurisprudence Generate Vo. obligation, sec. 2033; Planiol, Traite Elem. (2d Ed). Vol. 2, No. 454) and Louisiana (Caltex Oil & Gas, Co. vs. Smith, 175 La. 678, 144 So. 243; Everett vs. Graye, 3 La. App. 136) : also Italy (7 Giorgi, Teoria delle Obbl. p. 167).

It is thus clear that the payment voluntarily made by appellant was improper since it was not liable under its bond; consequently, it can not demand reimbursement from the counterbondsmen but only from Dy Eng Giok, who was anyway benefited pro tanto by the Surety Company's payment.

The present case is to be clearly distinguished from Hongkong Shanghai Bank vs. Aldanese, 48 Phil., 990, and Commonwealth vs. Far Eastern Surety & Insurance Co., 83 Phil., 305, 46 Off. Gaz. 4879 and similar rulings, wherein the debtor in each case owned the creditor one single debt of which only a portion was guaranteed. In those cases, we have ruled that the guarantors had no right to demand that the partial payments made by the principal debtor should be applied precisely to the portion guaranteed. The reason is apparent: the legal rules of imputation of payments presuppose that the debtor owes several distinct debts of the same nature; and does not distinguish between portions of the same debt. Hence, where the debtor only owes one debt, all partial payments must necessarily be applied to that debt, and the guarantor answers for any unpaid balance, provided it does not exceed the limits of the guaranty. Any other solution would defeat the purpose of the security. In the case before us, however, the guaranty secured the performance by the debtor of his obligation to remit to the distillery

company the proceeds of his sales during the period of the guaranty (August 4, 1951 to August 4, 1952). This obligation is entirely distinct and separate from his obligation to remit the proceeds of his sales during a different period, say before August 4, 1951. The debtor, therefore, actually owed two distinct debts: for the value of his sales before August 4, 1951 and for the import of the sales between that date and August 4, 1952. There being two debts, his partial payments had necessarily to be applied (in the absence of express imputation) first to the obligation that was more onerous for him, which was the one secured by the guaranty.

It is legally unimportant that the creditor should have applied the payment to the prior indebtedness. Where the debtor has not expressly elected any particular obligation to which the payment should be applied, the application by the creditor, in order to be valid and lawful, depends: (1) upon his expressing such application in the corresponding receipt and (2) upon the debtor's assent, shown by his acceptance of the receipt without protest. This is the import of paragraph 2 of Art. 1252 of the New Civil Code:

"If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract."

Ultimately, therefore, the application by a creditor depends upon the debtor acquiescence thereto. In the present case, as already noted, there is no evidence that the receipts for payment expressed any imputation, or that the debtor agreed to the same.

The appellant Surety Company avers that the counter-bondsmen can not question the payment made by it to Destileria Lim Tuaco on the debt of Dy Eng Giok, because their counterbond or indemnity agreement (Annex B, par. 7) provided that:

"INCONTESTABILITY OF PAYMENTS MADE BY THE COMPANY: Any payment of disbursement made by the COMPANY on account of the abovementioned Bond, its renewals, extensions or substitutions, either in the belief that the Company was obligated to make such payment or in the belief that said payment was necessary in order to avoid greater losses or obligations for which the Company might be liable by virtue of the terms of the abovementioned Bond, its renewals, extensions or substitutions shall be final and will not be disputed by the undersigned who jointly and severally bind themselves to indemnify the COMPANY for any and all such payments as stated in the preceding clauses." (Rec. App., p. 11)

We agree with the appellee that this kind of clauses are void and unenforceable, as against public policy, "because they enlarge the field for fraud, because in these instruments the promisor bargains away his right to a day in court and because the effect of the instrument is to strike down the right of appeal accorded by the statute." (see *National Bank vs. Manila Oil Refining Co.*, 43 Phil. 467)

Finding no error in the judgment appealed from, the same is affirmed. Costs against appellant. So ordered.

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

Judgment affirmed.

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