

**THE CAPITAL INSURANCE & SURETY CO., INC.
PLAINTIFF-APPELLEE, VS. CENTRAL AZUCARERA DEL DANAOS,
DEFENDANT-APPELLANT, CENTRAL AZUCARERA DEL DANAOS,
THIRD-PARTY PLAINTIFF-APPELLANT, ...**

G.R. No. L-30770. April 07, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

This appeal by Central Azucarera del Danao, certified to us by the Court of Appeals in the resolution of June 27, 1969,[1] calls for the interpretation of an agreement between appellant Central Azucarera del Danao, the Philippine National Bank [PNB], Talisay-Silay Milling Co., Inc. and J. Amado Araneta.

Entered into on March 3, 1960, subject Compromise Agreement provides for the termination of the pending suits and countersuits between PNB as bank creditor on the one hand and Central Azucarera del Danao, debtor, on the other hand.[2]

The Agreement involves a transfer and conveyance of stock ownership, with the PNB exchanging its shares of stocks in Bacolod Murcia Milling Co. Inc. and in Ma-ao Sugar Central Co. for the controlling shares of Talisay-Silay Milling Co. Inc. in Central Azucarera del Danao, consisting of not less than 93% of the latter's paid-up capital stock[3] to forestall the intended foreclosure by PNB of Central Azucarera del Danao.[4] However, in acquiring the majority holdings in Central Azucarera del Danao, PNB, at the instance of its chairman and president, sought to protect itself from assuming payment of money claims rumored to have been fraudulently incurred, the use thereof having been diverted without benefit to Central Azucarera del Danao. Consequently, in drawing up subject Agreement, PNB insisted on the inclusion of paragraphs 9 and 10, to wit:

"9) That all obligations of Central Azucarera del Danao incurred before the date of this agreement but not those incurred by the Bank during the period when the Central Azucarera of Danao was under the management of the BANK in favor of trade creditors for supplies, equipment, fuel and spare parts, outstanding in the books of Danao shall be listed and itemized and only such items as are approved and acknowledged by the BANK shall be considered as legitimately incurred and due for payment by Danao;

This provision, however, shall not apply to Central Azucarera del Danao's account with the Philippine National Bank and the Development Bank of the Philippines (formerly R. F. C.) full responsibility for which shall remain with Central Azucarera del Danao;

10) That any or all obligations purporting to be of Central Azucarera del Danao but not appearing in the books thereof nor acknowledged as in paragraph 9 above shall be borne and paid for by Talisay-Silay Central and/or Mr. J. Amado Araneta."

After the Agreement had taken force and effect, a complaint for collection of sum of money was filed by Capital Insurance and Surety Co., Inc. against Central Azucarera del Danao. It alleged that on various dates during the period from 1954 to 1961, defendant Central Azucarera del Danao secured from Capital Insurance different fire

and marine cargo insurance policies and surety bonds with total premiums amounting to P57,323.71[5] and that said amount had remained unsatisfied, defendant Central Azucarera del Danao having failed to pay plaintiff Capital Insurance, despite its repeated demands thereon.

In its Answer, defendant Central Azucarera del Danao disclaimed any liability for the unpaid P57,323.71 worth of premiums, invoking the provisions of the above-quoted paragraphs 9 & 10 of subject Agreement. It theorized that pursuant to said paragraphs 9 & 10, all the corporate liabilities of Central Azucarera del Danao incurred before the PNB acquired the 93% shares of stock of Talisay-Silay Milling Co., Inc. in accordance with the aforementioned settlement shall be borne and paid for by the Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta. Defendant explained that in this instance, since the fire and marine cargo insurance policies and surety bonds were acquired prior to the stock ownership swap deal between PNB and Talisay-Silay Milling Co., Inc., satisfaction of the unpaid premium shall be borne by Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta to the exclusion of defendant Central Azucarera del Danao.

Having thus shifted the burden of paying the P57,323.71 worth of premiums on Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta, who were both not impleaded in the main case for collection of a sum of money, defendant Central Azucarera del Danao, with leave of court, filed a third-party complaint praying that third-party defendants Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta be ordered to indemnify third-party plaintiff for whatever the latter may be held accountable for in case the trial court rules in favor of plaintiff Capital Insurance Co., Inc.

Third party defendants Talisay-Silay Milling Co., Inc. and Mr. J. Amado Araneta, by way of special defense in their "Answer to Third-Party Complaint," stated that the provisions of paragraphs 9 & 10 of subject agreement are not applicable in the present case. They contended that the obligation to pay P57,323.71 premiums was not one of the obligations contemplated under paragraph 9, for which third-party defendants had by agreement bound themselves to pay. According to the third-party defendants, paragraph 9, involved only those obligations incurred by Central Azucarera del Danao in favor of trade creditors for supplies, equipment, fuel, and spare parts. Obviously, argued third-party defendants, payment of premiums did not fall under this enumeration. Thus, Central Azucarera del Danao was solely liable for the payment of the P57,323.71 premiums.

Furthermore, third-party defendants opined that neither could they be compelled under the provisions of paragraph 10 to assume payment of the P57,323.71 premiums. The requisite conditions in paragraph 10 required that only obligations not appearing in the books of Central Azucarera del Danao nor those acknowledged, as in paragraph 9 would be paid by third party defendants. These conditions, claimed third party defendants, had not been met or fulfilled under the circumstances of the case. It was their theory that these two conditions provided in paragraph 10 must concur before they could be held liable for payment of said amount. But considering that the obligation in question actually appeared in the books of Central Azucarera del Danao, thus leaving unsatisfied the first of the two conditions, third-party defendants concluded that they were not accountable for the unpaid premiums.

On August 22, 1963, plaintiff Capital Insurance and defendant Central Azucarera del Danao agreed to a "Stipulation of Facts" where the latter admitted having secured subject insurance policies without having paid the premiums thereof, now sought to be collected by plaintiff Capital Insurance.

Trial of the case on the merits then commenced, until its final disposition by way of a decision dated March 30, 1964, holding as follows:

"WHEREFORE, judgment is hereby rendered, ordering the defendant Central Azucarera del Danao to pay to plaintiff the amount of P53,360.54 with legal interest from the filing of plaintiff's complaint on June 18, 1962

until paid; plus the additional amount of P3,000.00 by way of damage as and for reasonable attorney's fees for plaintiff's counsel; and to pay the costs of this suit.

The third-party complaint of third-party plaintiff Central Azucarera del Danao against third parties defendant Talisay-Silay Milling Co. Inc., and J. Amado Araneta, is hereby dismissed, with costs against the third-party plaintiff."

The trial court found untenable Central Azucarera del Danao's contention that pursuant to the Agreement of March 3, 1960, Talisay-Silay Milling Co., Inc., and/or Mr. J. Amado Araneta had, by substitution, become the new debtors of plaintiff Capital Insurance & Surety Co., Inc. In this jurisdiction, explained the lower court, an obligation extinguished by novation thru substitution of debtor necessitates consent of the creditor. Absent the creditor's consent, as in the case of plaintiff Capital Insurance & Surety Co., Inc., the original debtor, defendant Central Azucarera del Danao was still liable to fulfill its obligation.

With respect to the third-party complaint, lower court dismissed the same thereby disallowing third party plaintiff Central Azucarera del Danao from recovering indemnity from third party defendants, Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta on the basis of the Agreement of March 3, 1960, particularly under paragraphs 9 and 10 thereof.

According to the court below, paragraph 9 is restrictive in scope, as it refers only to those obligations prior to the Agreement of March 3, 1960 and incurred from trade creditors for supplies, equipment, fuel and spare parts. The exclusive enumeration of these items precluded payment of premiums as one such obligation under paragraph 9.

On the other hand, the trial court explained that under paragraph 10, Talisay-Silay Milling Co., Inc. and/or Mr. Amado Araneta shall assume the obligations of Central Azucarera del Danao but only with respect to those obligations not appearing in the books thereof nor acknowledged as in paragraph 9. Elucidating further, the trial court said that the parties' use of the term "nor" defined in the Webster dictionary as a conjunction which means "and not", "likewise not" reveals the intention of holding liable Talisay-Silay Milling Co. Inc. and/or Mr. J. Amado Araneta, upon the concurrence of the above-mentioned conditions. This must be so, said the trial court, since paragraph 10 may otherwise be read as follows:

"10) That any or all obligations purporting to be of Central Azucarera del Danao but not appearing in the books thereof AND NOT /nor/ acknowledged as in paragraph 9 above shall be borne and paid for by Talisay-Silay Central and/or J. Amado Araneta."

On the basis of the foregoing, the trial court ruled that since it is clear that the obligation in favor of Capital Insurance and Surety Co., Inc. was admittedly recorded in the books of Central Azucarera del Danao, contrary to the first condition precedent under paragraph 10, third party defendants Talisay-Silay Milling Co., Inc. and/or Mr. J. Amado Araneta could not be adjudged responsible for payment of subject premiums.

Having failed to prevail over third-party defendants. Central Azucarera del Danao elevated the case before the Court of Appeals which certified the same to this Court, the issue involved herein being a pure question of law.

For our determination then are the following issues: (a) whether or not Central Azucarera del Danao, is directly liable to pay Capital Insurance and Surety Co., Inc., the amount sued for; (b) if so, whether or not it can recover indemnity from Talisay-Silay Milling Co. Inc. and/or Mr. J. Amado Araneta on the basis of paragraphs 9 and 10 of the March 3, 1960 Agreement.

We resolve both issues in the affirmative. This Court is not the least persuaded with appellant Central Azucarera del Danao's contention that pursuant to the March 3, 1960 Agreement, all its corporate liabilities incurred prior thereto shall be borne and paid for by Talisay-Silay Milling Co., Inc., and/or Mr. J. Amado Araneta, to the

exclusion of appellant. As against Capital Insurance and Surety Co., Inc., Central Azucarera del Danao cannot invoke by way of defense the March 3, 1960 Agreement to evade liability. The binding effect of the March 3, 1960 Agreement does not extend to those not parties to the contract, Capital Insurance & Surety Co., Inc. in this instance.[6] Thus, Article 1311, Civil Code of the Philippines provides, *inter alia*:

"ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent."

x x x x

Capital Insurance & Surety Co., Inc., cannot, therefore, be prejudiced by the terms of the March 3, 1960 Agreement. Insofar as the insurance company is concerned, Central Azucarera del Danao is and shall remain to be its debtor until payment is made.

This ruling, however, should not be construed as a bar to Central Azucarera del Danao's right to be indemnified by Talisay-Silay Milling Co. Inc. and/or Mr. J. Amado Araneta, under paragraphs 9 & 10 of the March 3, 1960 Agreement aforequoted.

According to Central Azucarera del Danao, common to both disputed paragraphs is the condition precedent requiring approval by PNB of the accounts and obligations incurred by it before PNB's management thereof, prior to making itself liable. Consequently, contrary to the lower court's opinion mere entry in its books is not enough to bind Central Azucarera del Danao, for had it been so intended, PNB would not have insisted on including in paragraph 10, the phrase "such as in paragraph 9", which qualifies the kind of acknowledgement or acceptance required before any unpaid account could be borne by Central Azucarera del Danao.

We find Central Azucarera del Danao's interpretation correct and convincing. In so holding, this Court finds support in Article 1370 of the Civil Code, the provisions of which are explicit on the correct interpretation of a contract, to wit:

"ART. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (1281)"

The facts of the case before us show every indication of the contracting parties' conflicting interpretation of paragraphs 9 & 10.

Judicial determination of the parties' intention is thus, inevitable. To ascertain the same, the contemporaneous and subsequent acts of the parties shall be considered.[7] It should be recalled that at the time PNB acquired Central Azucarera del Danao from Talisay-Silay Milling Co., Inc. the identities of its creditors were not yet disclosed because at the time the settlement was reached, the books of Central Azucarera del Danao, then in the possession of Talisay-Silay Milling, Co., Inc. and/or Mr. J. Amado Araneta as President of petitioner, had not yet been turned over to PNB. Apprehensive and wary of a sudden emergence of unknown creditors after its actual takeover of Central Azucarera del Danao, PNB's representatives insisted on the insertion of paragraphs 9 and 10 in the proposed Agreement of March 3, 1960 to protect the bank from the assumption of all unsettled obligations of Central Azucarera del Danao, especially fraudulent claims.

It is thus illogical to hold liable, without a right to indemnification, as the lower court did, Central Azucarera del Danao, just because the unsettled obligation of P57,323.71 worth of premiums was recorded in its books. For if

this were the case, there would have been no need for PNB's insistence on the inclusion of paragraphs 9 and 10 in the March 3, 1960 Agreement. Without these paragraphs, the possibility of opening the floodgates to all kinds of creditors, legitimate or not, as long as Central Azucarera del Danao's books reflect certain debts owing to them, may well come to pass. Thus, to adopt the interpretation of the lower court would frustrate the will or intent of the parties. It was too literal an approach for the lower court to consider the word "nor" as the "key to the intention of the parties" and therefrom provide direction for interpretation of paragraph 10. The phraseology of paragraph 10 cannot be made to control when already, its true meaning may be gleaned from the unrebutted testimonies of PNB representatives.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** subject to the modification that Central Azucarera del Danao, defendant in Civil Case No. 50688 is thus ordered to **PAY** Capital Insurance and Surety Co., Inc., the sum of P57,323.71 which is the value of unpaid premiums and documentary stamps, with legal interest computed from the time of filing of the complaint on June 18, 1962 up to the actual payment thereof, plus the additional amount of P5,000.00 representing attorney's fees; and to pay the costs of this suit.

On the other hand, Talisay-Silay Milling Co., Inc., and Mr. J. Amado Araneta, third-party defendants to the third-party complaint below are solidarily liable to **INDEMNIFY** Central Azucarera del Danao, in the amount of P57,323.71 with legal interest from the time of the filing of the third-party complaint up to the actual payment thereof.

SO ORDERED.

Bidin, Davide, Jr., and Melo, JJ., concur.
Feliciano, J., (Chairman), in the result.

[1] Rollo, page 204

[2] "Agreement" paragraph No. 3, Record on Appeal pp. 23 & 24.

[3] "Agreement" paragraphs 1 & 2, Record on Appeal pages 22 - 23.

[4] "Motion to Dismiss Third Party Complaint", Record on Appeal pages 33-34.

[5] Annex A of Complaint

[6] *Pedro Martinez v. Antonio Ramos*, in his own behalf and as administrator of the estate of his father Julian Ramos, defendant and appellant and Alejandia Ramos, defendant and appellee [No. 9417 December 4, 1914, 28 Phil. 589]

[7] Article 1371, Civil Code - *Universal Textile Mills, Inc., and Patricio Lim v. National Labor Relations Commission, Associated Labor Unions - TUCP and Universal Textile Mills Workers Union - ALU* [G.R. No. 87245, April 6, 1990 184 SCRA 273]; *Jose Javier and Estrella F. Javier v. Court of Appeals and Leonardo Tiro* [G.R. No. 48194, March 15, 1990 183 SCRA 270]

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