

**AGRICULTURAL CREDIT & COOPERATIVE FINANCING
ADMINISTRATION (ACCFA), PLAINTIFF-APPELLANT, VS. ALPHA
INSURANCE & SURETY CO., INC., DEFENDANT-APPELLEE,
RICARDO A. LADINES, ET AL., ...**

G.R. No. L-24566. July 29, 1968

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

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

Appeal, on points of law, against a decision of the Court of First instance of Manila in its Case No. 43372, upholding a motion to dismiss.

At issue is the question whether or not the provision of a fidelity bond, that no action shall be had or maintained thereon unless commenced within one year from the making of a claim for the loss upon which the action is based, is valid or void, in view of Section 61-A of the Insurance Act invalidating stipulations limiting the time for commencing an action thereon to less than one year from the time the cause of action accrues.

Material to this decision are the following facts:

According to the allegations of the complaint, in order to guarantee the Asingan Farmers' Cooperative Marketing Association, Inc. (FACOMA) against Loss on account of "personal dishonesty, amounting to larceny or estafa" of its Secretary-Treasurer, Ricardo A. Ladines, the appellee, Alpha Insurance & Surety Company had issued, on 14 February 1958, its bond, No. P-FID-15-58, for the sum of Five Thousand Pesos (P5,000.00) with said Ricardo Ladines as principal and the appellee as solidary surety. On the same date, the Asingan FACOMA assigned its rights to the appellant, Agricultural Credit Cooperative and Financing Administration (ACCFA, for short), with approval of the principal and the surety.

During the effectivity of the bond, Ricardo Ladines converted and misappropriated, to his personal benefit, some P11,513.22 of the FACOMA funds, of which P6,307.33 belonged to the ACCFA. Upon discovery of the loss, ACCFA immediately notified in writing the surety company on 10 October, 1958, and presented the proof of loss within the period fixed in the bond; but despite repeated demands the surety company refused and failed to pay. Whereupon, ACCFA filed suit against appellee on 30 May 1960.

Defendant Alpha Insurance & Surety Co., Inc., (now appellee) moved to dismiss the complaint for failure to state a cause of action, giving as reason that (1) the same was filed more than one year after plaintiff made claim for loss, contrary to the eighth condition of the bond, providing as follows:

"EIGHT. LIMITATION OF ACTION

'No action, suit or proceeding shall be had or maintained upon this Bond unless the same be commenced within one year from the time of making claim for the loss upon which such action, suit or proceeding is based, in accordance with the fourth section hereof.' "

(2) the complaint failed to show that plaintiff had filed civil or criminal action against Ladines, as required by conditions 4 and 11 of the bond; and (3) the Ladines was a necessary and indispensable party but had not been joined a such.

At first, the Court of First Instance denied dismissal; but, upon reconsideration, the court reversed its original stand, and dismissed the complain on the ground that the action was filed beyond the contractual limitation period (Record on Appeal, pages 56-59).

Hence, this appeal.

We find the appeal meritorious.

A fidelity bond is, in effect, in the nature of a contract of insurance a loss from misconduct, and is governed by the same principles of interpretation *Mechanics Savings Bank & Trust Co. vs. Guarantee Company*, 68 Fed. 459; *Chan Wei vs. Nemorosa*, 103 Phil. 57. Consequently, the condition of the bond in question, limiting the period for bringing action thereon, is subject to the provisions of Section 61-A of the Insurance Act (No. 2427), as amended by 4101 of the pre-Commonwealth Philippine Legislature, prescribing that -

"SEC. 61-A. - A condition, stipulation or agreement in any policy of insurance, limiting the time for commencing an action thereunder to a period of less than one year from the time when the cause of action accrues is void."

Since a "cause of action" requires, as essential elements, not only a legal right of the plaintiff and a correlative obligation of the defendant but also "an act omission of the defendant in violation of said legal right" (*Mao Sugar Gen vs. Barrios*, 79 Phil. 666), the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty (in this case, to pay the amount of the bond). The year for instituting action in court must be reckoned, therefore, from the time of appellee's refusal to comply with its bond; it can not be counted from the creditor's filing of the claim of loss for that does not import that the surety company will refuse to pay. In so far, therefore, as condition eight of the bond requires action to be filed within one year from the filing of the claim for loss, such stipulation contradicts the public policy expressed in Section 61-A of the Philippine Insurance Act. Condition eight of the bond, therefore, is null and void, and the appellant is not bound to comply with its provisions.

In *Eagle Star Insurance Co. vs. Chia Yu*, 96 Phil. 696, 701, this Court ruled:

"It may perhaps be suggested that the policy clause relied on by the insurer for defeating plaintiff's action should be given the construction that would harmonize it with section 61-A of the Insurance Act by taking it to mean that the time given the insured for bringing his suit is twelve months after the cause of section accrues. But the question then would be: When did the cause of action accrue? On that question we agree with the court below that plaintiff's cause of action did not accrue until his claim was finally rejected by the insurance company. This is because, before such final rejection, there was no real necessity for bringing suit. As the policy provides that the insured should file his claim, first, with the carrier and then with the insurer, he had a right to wait for his claim to be finally decided before going to court. The law does not encourage unnecessary litigation."

The discouraging of unnecessary litigation must be deemed a rule of public policy, considering the unrelieved congestion in the courts.

As a consequence of the foregoing, condition eight of the Alpha bond is null and void, and action may be brought within the statutory period of limitation for written contracts (*New Civil Code*, Article 1144). The case of *Ang vs. Fult Fire Insurance Co.*, 2 S. C. R. A. 945 (31 July 1961), relied upon by the Court a quo, is no authority against

the views herein expressed, since the effect of Section 61-A of the Insurance law on the terms of the policy or contract was not there considered.

The condition of previous conviction (paragraph b. clause 4, of the contract) having been deleted by express agreement, and the surety having assumed solidary liability, the other grounds of the motion to dismiss are equally untenable. A creditor may proceed against any one of the solidary debtors, or some or all of them simultaneously (Article 1216, New Civil Code).

WHEREFORE, the appealed order granting the motion to dismiss is reversed and set aside, and the records are remanded to the Court of First Instance, with instructions to require defendant to answer and thereafter proceed in conformity with the law and the Rules of Court. Costs against appellee.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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