THE NATIONAL CITY BANK OF NEW YORK, PLAINTIFF AND APPELLANT, VS. YEK TONG LIN FIRE & MARINE INSURANCE CO., DEFENDANT AND APPELLEE.

G.R. No. L-8369. April 20, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The present case is closely related to Civil Case No. 4178 of the Court of First Instance of Pampanga where Cu Unjieng e Hijos brought an action against the Mabalacat Sugar Company (later to be referred to as Mabalacat Sugar) to foreclose real estate and chattel mortgages. The present action, however, was brought in the Court of First Instance of Manila because both the plaintiff National City Bank of New York (later to be referred to as Bank) and the defendant Yek Tong Lin Fire & Marine Insurance Co. (later to be referred to as Insurance Company) are residents of Manila. Plaintiff Bank is appealing from a decision of the Manila court dismissing its complaint for "the recovery of a sum of money from the defendant insurance company as surety on a receiver's bond. The appeal originally taken to the Court of Appeals was later certified to us as involving only questions of law and jurisdiction. There is no dispute as to the facts as found by the trial court presided by Judge Manuel P. Barcelona, except on one point (paragraph 6) of its findings regarding the supposed discharged of Rafael Fernandez as receiver of the Mabalacat Sugar. We reproduce said findings of the trial court, to wit:

- That on or about May 3, 1929, in civil case No. 4178 of the Court of First Instance of Pampanga, entitled "Cu Unjieng e Hijos, plaintiff, versus The Mabalacat Sugar Company, Philippine National Bank and Sui Liong & Co., Inc., defendants," the aforesaid plaintiffs, Cu Unjieng e Hijos, applied for and secured the appointment of Rafael Fernandez as receiver therein of the properties of the defendant Mabalacat Sugar Company. In view thereof, the said Rafael Fernandez, as principal, and the defendant in the present case, Yek Tong Lin Fire & Marine Insurance Company, as surety, executed three bonds totalling in all P100,000 wherein they jointly and severally undertook to respond to the defendants Mabalacat Sugar Company, et al. for the payment ,of the "dafios y perjuicios que el Sr. Rafael Fernandez en su concepto de depositario de los bienes de The Mabalacat Sugar Company, con su negligencia, abandono u otro motivo inexcusable se causen en los bienes de que es depositario." (Exhibits A, A-l to A-5);

- On December IS, 1930, the aforesaid Rafael Fernandez in his capacity as such receiver of the Mabalacat Sugar Company issued sugar quedan No. 306 for 380,000 piculs of centrifugal sugar in favor of one Amando L. Santos and on December 25, 1930 and February 17, 1931, he, Rafael Fernandez, further issued two additional sugar quedans Nos. 307 and 324 for 530,434 and 544,345 piculs of centrifugal sugar, respectively, both in favor of Teodoro Santos. Subsequently, but previous to April 15, 1931, the above-mentioned Amando L. Santos and Teodoro Santos assigned and transferred said three sugar quedans to Rafael Fernandez in the latter's private individual capacity;

- Sometime between April 15 and May 15, 1931, the plaintiff National City Bank of New York, a foreign banking

corporation, duly authorized to transact business in the Philippines, with principal office in the City of Manila, granted to Rafael Fernandez, in his individual capacity, certain over-draft credit facilities, up to the amount of P900.000, in consideration of which the aforesaid Rafael Fernandez pledged to the plaintiff National City Bank of New York as security for the payment of said over-draft credit facilities, among other properties, the three sugar quedans Nos. 306, 307 and 324 of the Mabalacat Sugar Company above referred to, which, as stated before, were signed and transferred to him by Amando L.Santos and Teodoro Santos.

- On July 7, 1931, the plaintiff National City Bank of New York entered into a contract with the Malabon Sugar Company wherein the latter agreed to purchase from the former the sugar represented by the above-mentioned sugar quedans Nos. 306, 307 and 324 originally issued by the aforesaid Rafael Fernandez in his capacity as receiver of the Mabalacat Sugar Company, provided that payment thereof should be made after said Malabon Sugar Company shall have received the sugar covered by said quedans, but shortly thereafter Mr. A. C. Hall of Smith Bell & Company, which was then the General Manager of the Malabon Sugar Company, learned from an unimpeachable source, i.e., from no other than Rafael Fernandez himself, that the sugar quedans Nos. 306, 307 and 324 in question were no good, meaning that the centrifugal sugar represented by said quedans did not exist;

- The total value of the sugar represented by the aforesaid quedans Nos. 306, 307 and 324 at the time they were pledged was ,P11,611.O3;

- On July 24, 1931, Rafael Fernandez was discharged as receiver of the Mabalacat Sugar Company (Exhibits A-7 and A-S) and the Court appointed Francisco Baltazar as the receiver of the Mabalacat Sugar Company after having filed that same day a bond for P503000 and taken his oath of office as receiver. (Exhibits A-9 to A-ll); (THIS IS THE FINDING DISPUTED BY THE APPELLANT BANK)

- On August 1, 1931, Rafael Fernandez was declared an insolvent debtor by the Court of First Instance of Manila in insolvency proceedings No. 40007. In said insolvency proceedings the plaintiff National City Bank of New York filed its claim against Rafael Fernandez for the amount of P61,811.54, including the value of the three sugar quedans in question, to wit, P11,611.03 (Exhibit D, Annex A) ;

- As of January 27, 1941, of the credit facilities granted by the plaintiff National City Bank of New York to Rafael Fernandez the latter still owed P56,301.64, plus the interest thereon at the rate of 9% per annum from October 26, 1939. On April 4, 3 941, however, the receiver of the insolvency of Rafael Fernandez paid the plaintiff National City Bank of New York the amount of P725.05. (Exhibit D, Annex A);

- Civil Case No. 4178 of the Court of First Instance of Pampanga mentioned above wherein Rafael Fernandez was appointed as receiver with the defendant Yek Tong Lin Fire & Marine Insurance Company as surety on the receiver's bond, was terminated on June 29, 1940, the date when the Supreme Court promulgated its decision in the aforesaid case;

- On June 14, 1935, the plaintiff National City Bank of New York made demand (Exhibit E) upon the defendant Yek Tong Lin Fire & Marine Insurance Company for the payment of P11,611.06, which represents the value of the sugar quedans Nos. 306, 307 and 324, but the defendant has failed to pay, so that on July 24, 1936, said plaintiff National City Bank of New York instituted the instant action against the aforesaid defendant Yek Tong Lin Fire & Marine Insurance Company;

The trial court on the basis of its finding's dismissed plaintiff's complaint as well as defendant's counterclaim with costs against plaintiff. The dismissal was based on three grounds. First, that inasmuch as Fernandez had already been discharged as receiver, his bond filed by himself and by the defendant Insurance company must necessarily have also been discharged since there was nothing more to guarantee unless the order discharging Fernandez

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provided otherwise. Second, that Fernandez pledged to the Bank the three quedans in question in his private capacity to secure a personal loan and so the insurance company may not be held responsible therefor on its bond and furthermore, the condition of the said bond was that it would answer for any damage that Fernandez as receiver may cause to the properties of the Mabalacat Sugar of which he was receiver, due to his inexcusable negligence, abandonment or any other cause, and the complaint does not allege, much less prove that the Mabalacat Sugar had suffered any damages on account of the acts of the receiver. And third, that the trial court had no jurisdiction for the reason that since the case involved the bond filed by and for the receiver, the receivership court (Pampanga), had exclusive jurisdiction.

As regards the first ground of dismissal, we agree with counsel for appellant that Fernandez was not really discharged as a receiver in the sense that he was relieved of any obligation or responsibility in connection with his acts as receiver, or that he was given a clearance. What really happened was that when some of the creditors of Fernandez brought an action in Manila to declare him an insolvent, Cu Unjieng e Hijos, plaintiff in the receivership case, asked the Pampanga court to relieve or replace Fernandez as receiver which was done and Francisco Baltazar was appointed in his place. A receiver may be discharged and relieved of all his responsibilities and obligations as such only after the receivership ends and he files his final report and accounts and the same are approved by the court. It is then and, only then that he may be considered discharged and his bond cancelled. But as already stated, the order of the Pampanga court of July 24, 1931 merely relieved Fernandez as receiver not because his work as receiver had been terminated and he had satisfactorily accounted and answered for all his acts as receiver, but by reason of the institution of the insolvency proceedings against him in Manila, because it was improper or inadvisable for him to continue as such receiver. And to show that he had not been relieved and discharged as a receiver and that his bond filed by him and the insurance company subsisted, even after his relief as receiver, it was ruled by this tribunal in Cu Unjieng e Hijos vs. Mabalacat Sugar Company, G. R. No. 42381 that where at the instance of the Mabalacat Sugar the receivership court appointed an accountant to go over and revise the accounts of Fernandez as receiver, the P800 fee of said accountant was chargeable against the bond of the insurance company because is the words of this Court "the payment of his fee will damage the property of the receivership in the sum of P800 and if Fernandez cannot pay that sum it is just and right that his bond should respond for its payment."

With respect to the third: ground, we also agree with appellant that the trial court had jurisdiction over this case. It is true that ordinarily, a claim against a receiver's bond is filed before the receivership court and with its prior consent. This is because said court is in a better position to know the facts in the receivership case; that it was the court that determined the amount and the conditions of the bond and finally approved it; and possibly to avoid multiplicity of suits. Where, however, the receivership case has already been terminated, it may be different. There could no longer be any reason for requiring that any action on the bond be filed before the same receivership court. In that case, we see no reason why any action on the receiver's bond, assuming of course that it is still subsisting, may not be filed in the territory where the parties reside.

In the case of National City Bank of New York vs. Yek Tong Lin Fire & Marine Insurance Co. (the very same parties in the present case), 57 Phil., 544, a similar action, possibly on the same receivership bond but probably on another cause of action, was filed in Manila. The trial court in said case sustained the demurrer based on jurisdiction on the ground that the leave of court of Pampanga which appointed the receiver was not obtained, and that besides, a party aggrieved by an act of the receiver should take the matter to the same court which appointed the receiver (this on the basis of the case of De la Riva vs. Molina, et al., 32 Phil., 277). Because plaintiff in said case failed to amend its complaint, the case was dismissed. The order of dismissal was, however, reversed by this Tribunal which said that the rule enunciated in the case of De la Eiva vs. Molina, et al.. supra, is good only when the receivership was still pending, but inasmuch as the receivership of Fernandez was already terminated, there

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was no reason for applying the rule already mentioned. So, it would seem that the jurisdiction of the Manila court over an action on a bond filed by and for a receiver appointed by the receivership court in Pampanga was sustained. In the present case, the receivership case in Pampanga has long been terminated. We see neither advantage nor necessity for requiring that the present action be filed in Pampanga when both parties, plaintiff and defendant reside in Manila. We are therefore, of the opinion that the trial court had jurisdiction.

We, however, cannot agree with appellant that plaintiff has a cause of action against defendant insurance company and can go directly against the bond it had filed for Fernandez as receiver. Section 178 of the Code of Civil Procedure provides as follows:

> "SEC. 178. Oath and obligation of Receivers.—Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties approved by the court or judge, execute Nat'l. City Bank of New York vs. Yek Tong Li% Fire & Marine Ins. Co. an obligation to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein."

The Pampanga receivership court which received and approved the bond of Fernandez as receiver filed by the defendant insurance company must have directed that such bond be executed to or in favor of the Mabalacat Sugar, because the bond itself provides the following:

> "Para responder al pago de los danos y perjuicios que el Sr. Rafael Fernandez en su concepto de depositaries de los bienes de The Mabalacat Sugar Co. con su negligencia, abandono u otro motivo inexcusable se causen en los bienes de que es depositario."

In other words, the bond was filed not for the benefit of the one who may suffer damage by any misbehaviour, negligence or abandonment of the receiver, but only of the Mabalacat Sugar; and only for any damage that may be caused to the properties of said Mabalacat Sugar. Altho the three false quedans in questions were issued by Fernandez in his capacity as receiver and that he may be held liable for their issuance as such receiver, and that third parties like the plaintiff Bank had been damaged by such act of the receiver by having relied upon said quedanss, still, there is no bond for the benefit of said third parties against which they may go to recoup their losses for the reason that the only bond filed by and for Fernandez as a receiver wag executed to the Mabalacat Sugar and to respond only to any damage caused to its properties by the acts of the receiver. The plaintiff's complaint does not allege, neither has said plaintiff proved any damage caused to the properties of the Mabalacat Sugar. We, therefore, believe that plaintiff-appellant has no cause of action against defendant-appellee.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs. This is without prejudice to any action which plaintiff may file against the proper party.

Paras, C. J., Bengzon, Reyes, A., Jugo, Bautista, Angelo, Labrador, Concepcion, Reyes, J. J. L., and Endencia, JJ., concur.

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