

THE COSMOPOLITAN INSURANCE CO., INC., PLAINTIFF AND APPELLEE VS. ANGEL B. REYES, DEFENDANT AND APPELLANT.

G.R. No. L-20199. November 23, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Court of First Instance of Manila and certified to us by the Court of Appeals as it involves only a question of law, ordering appellant Angel B. Reyes to pay the appellee Cosmopolitan Insurance Co., Inc., the sum of P10,645.38 plus fifteen (15) per cent thereof, for attorney's fees.

Indeed, the question presented is whether, under the Indemnity Agreement of the parties, the appellee, as surety, can demand indemnification from appellant Reyes as principal, upon the latter's default, even before the former has paid to the creditor.

It appears that appellee Cosmopolitan Insurance Co., Inc., filed a bond in favor of the Collector of Internal Revenue to secure the payment in stated installments of the total amount of P25,422.85, which appellant Reyes owed for income tax for the years 1950, 1951, 1952 and 1953. In consideration of the bond, appellant Reyes in turn signed an Indemnity Agreement whereby he bound himself, among other thing,-

"2) INDEMNITY: - To indemnify the COMPANY upon its demand and keep it indemnified for and to hold and save it harmless from and against, any and all payments, damages, costs, losses, penalties, charges and expenses of whatever kind and nature which the COMPANY as such surety shall or may, at any time make, sustain, incur and/or suffer or for which it has or may become liable to the obligee, and to pay an additional amount as attorney's fees equal to 20% of the amount due to the COMPANY by virtue hereof which in no case shall be less than P50.00 and which shall be payable whether or not the case be extra-judicially settled, it being understood that demand made upon anyone of the undersigned herein is admitted as demand made on all of the signatories hereof;

"3) Accrual of Action: Notwithstanding the provisions of the next preceding paragraph where the obligation involves a liquidated amount for the payment of which the COMPANY has become legally liable under the terms of the obligation and its suretyship undertaking, or by the demand of the obligee or otherwise and the latter has merely allowed the COMPANY a term or extension for payment of the latter's demand the full amount necessary to discharge the COMPANY'S aforesaid liability irrespective of whether or not payment has actually been made by the COMPANY, the COMPANY for the protection of its interest may forthwith proceed against the undersigned or either or them by court action or otherwise to enforce Payment, even prior to making payment to the obligee which may hereafter be done by the COMPANY;"

It is not denied that because of appellant Reyes' failure amount of P10,645.38 became due and that, as a result, appellee Cosmopolitan Insurance Co., Inc., became liable on its bond.

Appellant Reyes assails, however, the valxidity of paragraph 3 of the Indemnity Agreement, which he contends is contrary to public policy. He argues that under Article 2071 of the Civil Code, when the debt has become demandable "the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall

protect him from any proceedings by the creditor and from the danger of insolvency of the debtor" but not an action for indemnification.

Elucidating further, the appellant raises the point that there is absolutely no authority in any existing law allowing any person in his capacity as guarantor, as in this case, to obtain, to recover, or to receive by way of money judgment from the debtor the amount due to the creditor. The appellant further argues: What security does appellant have, once the amount has been received by appellee from appellant, that the same would be paid to the Collector of Internal Revenue?

All these points are squarely answered by the doctrine or principle laid down by this Court in the case of *Security Bank vs. Globe Assurance*, 58 Off. Gaz. 3708 (April 30, 1962), where a similar indemnity agreement of the parties is involved. In this case, the Supreme Court held that:

"The stipulation in the indemnity Agreement allowing the surety to recover even before it paid the creditor is enforceable. In accordance therewith, the surety may demand from the indemnitors even before paying the creditors."

In the case of *Alto Surety and Insurance Co., Inc. vs. Aguilar, et al.*, G. R. No. L-5625, March 16, 1954, the Court laid down the following ruling:

"The contention of appellant's that the action of appellee (surety company) is premature or that complaint fails to state a cause of action because it does not allege that the appellee has paid to the bank the balance of their obligation, cannot be sustained. This belied not only by the allegations of the complaint but also by the agreement entered into between the appellants and the appellee in favor of the bank. Thus it appears from the complaint that the renewed promissory note became due and payable on May 27, 1950 without the spouses having paid any amount on the account in spite of the repeated demands, as a consequence of which plaintiff surety became liable to pay the bank the amount of P1,150.00 plus interests, under the terms of the Indemnity Agreement, the liability of the former as surety became immediately demandable upon occurrence of the latter's (spouses) default."

Even after analyzing the provisions of the contract entered into between the parties, we are of the opinion that they do not in any way militate against the public good or that they are contrary to the policy of the law.

The other point raised by the appellant is that the attorney's fees awarded to the plaintiff are unreasonable or unconscionable. This is also untenable. It is significant that the appellant did not raise the issue of attorney's fees in his answer. Furthermore, we are of the opinion that the award of fifteen (15) per cent attorney's fees in this case is not unreasonable. In fact, in one case before the court of Industrial Relations (*Cruz vs. Court of Industrial Relations et al.*, G. R. No. L-18277, August 31, 1963), this Court sustained the award of attorney's fees to the petitioner computed at thirty (30) per cent, as reasonable.

In view of the foregoing, the decision of the Court of First Instance is hereby affirmed. Without costs.

Bengzon, C. J., Bautista Angelo, Concepción, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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