

**PARAMOUNT SURETY & INSURANCE CO., INC.,
PLAINTIFF-APPELLEE, VS. PASTOR D. AGO AND IWAI & COMPANY, LTD., DEFENDANTS-APPELLANTS.**

G.R. No. L-38669. March 31, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision of the then Branch VIII, Court of First Instance of Manila[*] in Civil Case No. L-4955 entitled "Paramount Surety & Insurance Co., Inc. vs. Pastor D. Ago & Iwai & Company, Ltd., Cross-Claim-ant v. Pastor D. Ago, Cross-Defendant."

The dispositive portion of the trial court's decision reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court finds for plaintiff Paramount Surety & Insurance Co., Inc. and orders defendants Pastor D. Ago and Iwai & Company, Ltd. to pay said plaintiff, jointly and severally:

(a) P1,237.50 as accrued pre-miums from February 29, 1960, to November 29, 1960, with 12% per annum from the filing of the ins-tant complaint on January 29, 1962 until fully paid.

(b) P1,965.00, representing bank interests paid by plaintiff to the China Banking Corporation, also with 12% per annum from the institution of the present complaint until fully paid;

(c) P63.66, the cost of documen-tary stamps; and

(d) Twenty (20%) percent of the total of the above-mentioned amounts, as attorney's fees, plus the costs.

"In view of the conclusion thus reached, the respective counterclaims of the defendants, as well as the cross-claim, are hereby dismissed for lack of merit.

"SO ORDERED." (Record on Appeal pp. 76-77)

The undisputed facts of this case are as follows:

On August 2, 1959, Pastor D. Ago and Iwai & Co., Ltd. a partnership duly organized and existing under the laws of Japan and doing business in the Philippines, obtained a loan evidenced by a 90-day promissory note in the sum of P50,000.00 from the China Banking Corporation with Paramount Surety & Insurance Co., Inc. as co-maker for the accommodation of Pastor D. Ago and Iwai & Co., Ltd. Paramount consented to act as such on the consideration that the latter (defendants) shall pay it the sum of P2,250.00 as premium for every period of 90 days or fraction thereof from August 7, 1959 until the promissory note or any of its renewals, substitutions or extensions is finally can-celled by the China Banking Corporation. It appears that the promissory note was finally cancelled by the China Banking Corporation on November 29, 1960. But defendants-accommodated parties failed to pay the accrued premiums with interest thereon, from February 29, 1960 to November 29, 1960 (Record on

Appeal, pp. 2-3).

After failure of the accommodated parties to pay their obligations despite repeated demands, Paramount Surety & Insurance Co., Inc. filed with the Court of First Instance, Branch VIII of Manila, on January 29, 1962 a complaint for collection of a sum of money, against defendants Pastor D. Ago & Iwai & Company, Inc. relative to said promissory note of defendants for P50,000.00 in favor of the China Banking Corporation, which plaintiff signed as co-maker for the defendants. Plaintiff seeks to recover the aforesaid unpaid premiums in the amount of P4,237.50 with 12% interest per annum from the filing of the instant complaint, plus the sum of P1,965.00 representing bank interests debi-ted by the China Banking Corporation against plaintiffs' current account with said Bank and the sum of P63.66 for documentary stamps, as well as 20% of the total obligation aforementioned, by way of attorney's fees (Record on Appeal, pp. 1-22).

After pleadings were filed in the lower court, the parties filed the following stipulation of facts on February 28, 1966:

"STIPULATION OF FACTS

COME NOW the parties in the above--entitled case, by their undersigned counsel, and to this Honorable Court respectfully submit the following partial stipulation of facts, to wit:

1. That the parties admit their respective capacity to sue and be sued under the complaint;
2. That on or about August 7, 1959, defendants Pastor D. Ago and Iwai & Co. Ltd. obtained a loan in the amount of P50,000.00 from the China Banking Corporation on a thirty (30) days term, which loan is evidenced by a Promissory Note hereto attached as Annex "A";
3. That defendant requested, on the same date, the herein plaintiff to act as their co-maker of the afore-mentioned Promissory Note, Annex 'A', and the plaintiff consented and did in fact sign as co-maker as shown by said Annex 'A' upon the written undertaking having been executed by the defendants Pastor D. Ago and Iwai & Co., Ltd. as contained in the Indemnity Agree-ment hereto attached as Annex 'B';
4. That the Promissory Note, Annex A, which matured on November 5, 1959, was renewed on the same date due to non-payment and the maturity date thereof fell on December 20, 1959 as evidenced by a Promissory note hereto attached as Annex C;
5. That upon request made by the defendant Pastor D. Ago in his letter dated December 16, 1959, copy of which is hereto attached as Annex D, with the conformity of plaintiff and defendant Iwai & Co., Ltd., the Promissory Note (Annex C) was again renewed due to non-payment as per Promissory Note dated February 1, 1960, true copy of which is hereto attached as Annex E, and the maturity date of said last note being February 29, 1960; and
6. That in his letter dated February 29, 1960, defendant Pastor D. Ago, with the conformity of plaintiff and the defendant Iwai & Co., Ltd. requested again for another renewal due to non-payment which was granted by the Bank as evidenced by a Promissory note for forty-five (45) days, true copy of which is hereto attached as Annex F, with April 14, 1960 as the maturity and due date." (Rec. on Appeal, pp. 46-48).

For failure of plaintiff and its counsel to appear for trial despite due notice, as early as May 30, 1966, the court upon motion of the defendants who waived their counterclaims provided the complaint is dismissed, issued an order dated July 1, 1966 dismissing the complaint as well as the counterclaim contained in the answer of defend-ants, without prejudice and without pronouncement as to costs (Record on Appeal, pp. 49-50).

On July 25, 1966, the trial court on motion of the plaintiff, reconsidered the aforestated order of dismissal and set it aside.

On June 18, 1967, the trial court rendered the herein questioned decision.

Defendants Pastor D. Ago and Iwai & Co., Ltd. appealed the decision to the Court of Appeals.

Defendant Ago filed on March 28, 1968 his brief while plaintiff-appellee submitted its brief on May 9, 1968. However, the appeal interposed by cross-claimant Iwai & Co., Ltd. was dismissed by the Court of Appeals for failure to file appellant's brief without prejudice to the appeal of defendant Pastor D. Ago (Records, p. 24).

The Court of Appeals in its resolution promulgated on April 18, 1974, pursuant to the provision of Section 17 in relation to Section 31 of the Judiciary Act as amended, and Section 3 of Rule 50 of the Rules of Court, certified the instant case to the Supreme Court on the ground that "the case is submitted on a stipulation of facts and will depend upon the proper construction or interpretation of certain documentary evidence which falls within the exclusive jurisdiction of the Supreme Court." (Rollo, pp. 30-31)

A careful examination of the records show that the respondent Ago and Iwai & Company signed the promissory note in conjunction with the pertinent provisions of their Indemnity Agreement, which provides:

"PREMIUM: — To pay the COMPANY the sum of Two Thousand Two Hundred Fifty Only (P2,250.00) in advance and as premium therefor, for each period of ninety days or fractional part thereof, to be computed from this date, said amount to be payable on or before the day of every such period or fractional part thereof, until said Bond, or any renewal, extension, alteration or substitution thereof, be cancelled in full by the person or entity in whose favor it was made, by a court of competent jurisdiction. (Underscoring supplied). x x x (Record on Appeal, Decision, p. 72).

"INDEMNITY. — To indemnify and make good to the Company, jointly and severally, any damages, prejudice, loss, costs, payments, advances and expenses of whatever kind and nature, including attorney's fees and legal costs, which the COMPANY may, at any time, sustain or incur, as well as to reimburse to said COMPANY all sums and amounts of money which the COMPANY or its representatives shall or may or cause to be paid or become liable to pay, on account of or arising from the execution of the abovementioned bond or any extension, renewal, alteration, or substitution thereof made at the instance of the under-signed or anyone of them. x x x (Record on Appeal, Decision, pp. 72-73).

"INCONTESTABILITY OF PAYMENTS MADE BY THE COMPANY: — Any payment or disbursement made by the COMPANY x x x either in the belief that the COMPANY was obligated to make such payment or in the belief that said payment was necessary or expedient in order to avoid greater losses or obligation for which the Company might be liable x x x shall be final and shall not be disputed by the undersigned who hereby jointly and severally bind themselves to indemnify the COMPANY of any and all such payments, as stated in the preceding clauses. x x x (Record on Appeal, Decision, p. 73).

"ATTORNEY'S FEES: — In the event an action is instituted for the recovery of any amount under this bond application and/or such bond as the COMPANY may execute pursuant to the terms hereof or under any extension, renewal x x x the undersigned hereby agree and obligate themselves, jointly and severally, to pay unto the COMPANY, as and for attorney's fees, a sum equivalent to twenty (20%) per cent of the amount claimed by the COMPANY, in such action, the same to be due and payable irrespective of whether the case is settled judicially, however, that said attorney's fees shall in no case be less than P200.00." (Record on Appeal, Decision, p. 74).

"It is a basic and fundamental rule in the interpretation of contract that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning shall control x x x. In order to judge the intention of the parties, their contemporaneous and subsequent acts shall be principally considered." (Sy v. Court of Appeals, 131 SCRA 116, GSIS v. CA et al., 145 SCRA 311).

Further, the basic rule in the interpretation of pleadings is that, "pleadings (should) be liberally construed so as to

do substantial justice” (Rule 6, Section 15).

The above-quoted specific provisions of the Indemnity Agreement clearly show that respondents are liable under said provisions. Hence, the stipulation agreed upon by the parties is valid and enforceable (*Compana Maritima v. Central Bank*, 141 SCRA 142, 365), and obligations arising from contracts have the force of law (*Villonco Realty Co., v. Bormaheco*, 65 SCRA 352; *Lazo v. Republic Surety and Insurance Co., Inc.*, 36 SCRA 437, *Perez Rubio v. CA*, 141 SCRA 488).

As aptly stated by the lower court, plaintiff is entitled "legally and morally to recover from the defendants the amount claimed in the complaint." Ago's contention that "he is not liable thereto because plaintiff was to blame for not paying the bank immediately of the value of the promissory note when the same became due and payable," is untenable. So is the pretension of Iwai & Co., Ltd. that it could not be bound because it signed the documents in question upon the request of Ago "without investigating the matter" and "without reading the contract." (Record on Appeal, pp. 74-75).

There is no dispute that the defendants Pastor D. Ago and Iwai & Co., obtained the loan of P50,000.00 from the China Banking Corporation and are therefore, under the terms and conditions of said contract, liable under the Indemnity Agreement signed by them for accrued premiums, interest and expenses of whatever kind including attorney's fees. Undeniably, the intent of the parties has been shown unmistakably with clarity and specificity by the language used therein.

WHEREFORE, the appealed decision of the trial court is hereby Affirmed in toto.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

[*] Presided over by Hon. Manuel P. Barcelona.

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