

**LIGGETT & MYERS TOBACCO CORPORATION, PETITIONER, VS.
ASSOCIATED INSURANCE & SURETY CO., INC., AND
CONSOLIDATED UNDERWRITERS, INC., RESPONDENT.**

G.R. No. L-15643. October 31, 1960

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6ea292aa8bcb/>

BARRERA, J.:

In an agreement dated September 8, 1952, entered between P. C. Aimal and herein petitioner Liggett & Myers Tobacco Corporation (hereinafter referred to as Liggett & Myers), the latter advanced to the former 66 cases of Chesterfield cigarettes, taxes thereon pre-paid, on condition that Aimal would return an equal quantity of fresh Chesterfield cigarettes, free from all taxes and charges, upon arrival of his own order from the Liggett & Myers office in New York. To guarantee the payment of the internal revenue taxes on the 66 cases of cigarettes to be delivered, Aimal, as principal, and the herein respondent Associated Insurance & Surety Co., Inc. (represented by the Consolidated Underwriters, Inc.), as surety, executed a bond in favor of Liggett & Myers in the sum of P14,520.00. Pursuant to said agreement, Aimal delivered to Liggett & Myers all papers covering his said order.

The shipment arrived on November 22, 1953. As Aimal failed to pay the corresponding exchange tax and bank charges on his letter of credit, Liggett & Myers was compelled to remit the sum of P1,107.18 to avoid delay in the processing of the documents. Said company immediately demanded reimbursement of this amount from Aimal. In the meantime, the goods were stored in a bonded warehouse.

On November 25, 1953, Liggett & Myers required Aimal to transmit to the former the sum of P14,520.00; for payment of the taxes due on the merchandise, in order that the same may be withdrawn, from the warehouse, plus the total sum of P1,239.28, representing the bank, brokerage and delivery charges thereon, already advanced and paid for by Liggett & Myers. The surety was accordingly advised of this demand. Owing to his financial difficulties, Aimal, with the conformity of the surety requested for an-extension of 60 days from December 17, 1953 within which to pay the taxes, but he was given (by Liggett & Myers) up to December 14, 1953 for the purpose. In view of his failure to settle the obligation within the extended period, Liggett & Myers instituted an action in the Court of First Instance of Manila (Civil Case No. 21791) on January 25, 1954, demanding from P.C. Aimal and the Associated Insurance & Surety Co., Inc. and/or Consolidated Underwriters, Inc., jointly and severally, the sum of P14,520.00 covered by the bond CUI G-039, representing the tax on the 66 cases of cigarettes; from Aimal alone, the delivery of said 66 cases of fresh Chesterfield cigarettes or their value amounting to P26,400.00, at the rate of P40.00 per thousand cigarettes, plus the sum of P1,626.11, representing bank charges, brokerage fees, storage and insurance charges, also paid by plaintiff on Aimal's shipment of cigarettes; and, from all the defendants, the sum of P2,000.00 for attorney's fees and costs.

Defendants, in their separate answers, denied the averments of the complaint, and the sureties further posted counterclaims against the plaintiff for attorney's fees and costs, and cross-claims against the defendant Aimal, for any amount that they may be adjudged liable to pay, plus attorney's fees, interests and expenses of litigation.

Thereafter, to minimize the damages that might result from the prolonged storage of the cigarettes, plaintiff, with leave of court, paid the required taxes and withdrew the merchandise from the bonded warehouse. Discovering, however, that a great portion thereof was in a deteriorated condition, Liggett & Myers filed an urgent motion praying for authority to sell 61 cases and 3,800 cigarettes at the best price available in the local market, after it had disposed of 4 cases and 6,200 cigarettes at the regular price of P40.00 per thousand cigarettes; and "that the proceeds of said sale be applied by plaintiff to the partial payment of defendant Aimal's obligation to deliver to plaintiff 66 cases of 'fresh' Chesterfield cigarettes or their agreed value of P40.00 per thousand cigarettes." Due notice to this petition was given to Aimal and the surety company by serving each a copy thereof. In its order of August 21, 1954, the court granted the motion "it appearing that no objection had been filed to said motion." Out of the sale of the deteriorated cigarettes, Liggett & Myers realized a total of P15,664.80.

Later, the lower court rendered judgment which, in part, reads:

"* * *. To forestall further losses, plaintiff asked the Court permission, which was granted, to sell the balance of sixty-one cases and 3,800 'Chesterfield' cigarettes. There was no objection to this motion on the part of the defendants. The total proceeds of the sale of Aimal's sixty-six cases of cigarettes is P15,664.80. Deducting this amount of P15,664.80 from the value of the cigarettes which defendant P. C. Aimal received from the plaintiff in the amount of P26,200.00, there would be a difference of P10,735.20. Adding this amount to the specific tax paid by the plaintiff to the Philippine Government and to the bank charges, storage, insurance and miscellaneous charges paid by the plaintiffs, there would be an amount due the plaintiff from Aimal in the sum of P26,987.80 (Exh. X, Deposition)."

* * * * *

"The indemnity agreement executed by defendant P.C. Aimal in favor of his co-defendants must also be respected. Under the circumstances, the Court believes and so holds that the defendant-companies are not liable to pay the amount of the indemnity bond. The surety companies only guaranteed the payment of the specific tax. The proceeds of the sale of the shipment of P. C. Aimal's cigarettes were more than enough to cover the payment of specific tax which plaintiff paid to the government. The surety companies should not be held liable for such other charges as plaintiff may be entitled against defendant P.C. Aimal.

"In view of the foregoing, judgment is thereby rendered, ordering the defendant P.C. Aimal to pay to the plaintiff the amount of P26,987.80, with legal interest from the time of the filing of the instant complaint. He shall also pay attorney's fees in the amount of P2,000.00 and costs.

"The amended complaint is hereby dismissed with respect to the two defendants, Associated Surety and Insurance Cor and Consolidated Underwriters, Inc.

"The counterclaims of the three defendants are hereby dismissed for lack of merit. Likewise the cross-claim against defendant P.C. Aimal is dismissed.

"Defendant P. C. Aimal shall pay the costs.

"So ordered."

Not satisfied with the decision, Liggett & Myers appealed to the Court of Appeals.

On May 26, 1959, the Court of Appeals, affirming the decision appealed from, ruled that the proceeds of the sale of the cigarettes should first be applied to the internal revenue taxes, payment of which was guaranteed by the bond. And as such proceeds of the sale exceed the amount covered, by the bond, the sureties were relieved of liability thereunder. Liggett & Myers filed the instant petition for review questioning the legality of the aforementioned ruling.

Admittedly, Ailmal was under obligation to herein petitioner Liggett & Myers, (1) to deliver 66 cases of Chesterfield cigarettes in good condition; (2) to pay the taxes thereon; and (3) all other charges and fees incidental therewith. Out of necessity, the merchandise was sold at a much lower price, of which, Liggett & Myers was able to realize only P15,664.80. There is no doubt that said amount should be applied to the debtor's obligations. The question now is, to which debt should the amount be applied?

Respondent Surety Company, citing Article 1254 of the Civil Code, maintains that the payment should first be applied to the secured debt, the same being allegedly the more onerous of the obligations; whereas, herein petitioner claims that the unguaranteed portion of the obligations is more burdensome to the debtor. We find no necessity to pass upon the question of which obligation, the secured or unsecured, is more onerous, because, as expressly provided by Article 1254, such issue would only be decisive where payment can not be applied in accordance with the rules immediately preceding said article. This is not so in the instant case, for the reason that Article 1252, quoted below, is herein applicable.

"Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

"If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract."

Commenting on the scope and the interpretation to be given to Article 1172 of the Spanish Civil Code, incorporated in the new Civil Code as Article 1252, Manresa said:

"* * *. First of all, the right to make the application (with all the safeguards made as regards the term) corresponds to the debtor and subsists until he makes the payment, and at the time, if he has not made use of it, it is extinguished and the application becomes subject to legal rules, unless the creditor should determine it and his decision is accepted by the obligor.

"While the exercise of the exclusive right of the debtor to make the application terminates at the moment of payment, on the other hand: the initiative of the creditor may be shown even after the delivery of the receipt, either to make application of the payment if the same has not been done, or to modify what has been stated therein providing of course that he obtains in every case the acceptance of the debtor. The clear basis of this difference is that while the debtor decides for himself, the creditor only proposes and the debtor may or may not agree. The need for the consent of the debtor is clear from the terms of the law which speak of to accept, which supposes the liberty to reject also, and considering that the option corresponds to the debtor, if he says nothing, it is because he accepts the legal solution, which can not be modified without his consent, even if it be tacit, as it is the manner established by law." (8 Manresa 316; italics supplied.)

The debtor in this case (Ailmal) did not exercise the option given to him under the law at the time the payment was made. The records show, on the other hand, that in its urgent motion, Liggett & Myers prayed not only for authority to sell the cigarettes, but also to apply the proceeds of the sale to Ailmal's obligation to deliver the 66 cases of cigarettes or pay their value. To this motion, the debtor offered no objection; as a matter of fact, he merely filed a manifestation reserving the right to prove at the proper time that any and all losses resulting from the deterioration of the merchandise are chargeable to the plaintiff. Neither did the respondent Surety Company object thereto. This acquiescence, by the debtor and his surety, to the application of payment prayed for by the creditor and granted by the court, amounted to an assent to such application^[1] which the debtors (including the surety) may no longer revoke or change^[2]. It is evident, therefore, that the proceeds of the sale should be applied to Ailmal's obligation to pay the value of the 66 cases of cigarettes.

Respondent Surety Company further contends that the internal revenue tax, being a lien on the cigarettes (a specific movable property), the lien should first be paid. Respondent overlooks the fact that the taxes have already been paid by Liggett & Myers and whatever preferential right there is attached to the tax lien has been acquired by subrogation by Liggett & Myers, which undoubtedly, has the privilege to enforce or waive. And since Liggett & Myers has chosen to waive such right by applying the proceeds of the sale to the payment of the other obligation, without objection on the part of the principal debtor and surety, such application can not now be questioned.

Since Liggett & Myers already paid the taxes on the merchandise, payment of which (by the debtor) was secured by the bond CUI G-039, which obligation was not extinguished by the partial payment made by the debtor, the sureties, jointly and severally with said debtor, should be held liable for reimbursement to Liggett & Myers of the sum of P14,520.00 with interest thereon from the date of the filing of the complaint until fully satisfied.

Wherefore, with the above modification, the decision of the Court of Appeals is, in all other respects, affirmed, without prejudice to whatever action the surety company may take to have itself reimbursed of whatever amount it has to pay by virtue of the bond subscribed by it. Costs are taxed against the respondents. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Gutierrez David, and Paredes, JJ., concur.

Decision modified.

[1] Sanz vs. Lavin Brothers, 6 Phil., 299.

[2] Bachrach Garage and Taxicab Co. vs. Golingco, 39 Phil., 912.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.