

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CARLOS HERNANDEZ, ET AL., ACCUSED. GLOBE ASSURANCE CO.,
INC., BONDSMAN AND APPELLANT.**

G.R. No. L-13291. August 27, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

In the Manila court of first-instance, Globe Assurance Co., Inc., subscribed a surety bond of P10,000 for the provisional liberty of the accused To Lion, alias Co Te Hua. Subsequently, for its failure to produce the said accused, judgment was entered confiscating the bond after proper proceedings. However, upon motion of the surety satisfactorily explaining the reasons for its failure and the efforts it had exerted to produce the body of its principal, the court by order dated December 14, 1956, reduced its liability on the bond to P500.00 only, "provided that the same is immediately paid".

In compliance with such order, the surety on December 28, 1956, handed to the Sheriff its check upon People's Bank & Trust Co. But on January 15, 1957, the Sheriff made his return advising the court of his inability to cash the check in view of the garnishment, in other cases, of the surety's bank funds. Promptly on the next day, i. e. on January 16, 1957, Globe Assurance Co. tendered to the Sheriff its check on Equitable Banking Corporation, which check was duly cashed. That should have ended the matter.

However, on March 25, 1957, acting on the Sheriff's return, and without notice to the surety, the court rescinded its order of December 14, 1956, on the ground that payment had not been made "immediately", and then declared the liability of the surety to be P10,000.00 in accordance with the terms of the bond.

Having failed to obtain a reconsideration, Globe Assurance appealed to this Court, ascribing error to the decree of rescission and arguing that said order of December 14, 1956, could not be validly rescinded after it had been fulfilled, after payment of P500.00.

The sole question here is whether the amount of P500.00 had been "immediately paid" pursuant to the order of December 14, 1956. Obviously, if it had been so paid in January 1957, the court had no power to rescind it in March 1957; at least, discretion has been abused. In the absence of a clear indication, we think the order should be understood to require payment "immediately after it becomes final" because the surety could elect to appeal. When did such order become final? Fifteen days after notice. (Sec. 6, Rule 118) The surety claims that it received notice on December 23, 1956; but it does not challenge the Sheriff's return stating that "on December 15, 1956, I demanded from the Globe Assurance Co., Inc., Manila, the payment of said reduced bond of P500.00."

For the purposes of this decision, we may assume the 15-day period began on December 15, 1956. Therefore, the surety's obligation arose on December 31, 1956.

On December 28, 1956, three days ahead of deadline its first check was delivered. Unfortunately, the check "bounced" but right after knowing the dishonor, the surety delivered on January 16, 1957, another check which

was cashed in due course. Payment is deemed effected as of January 16, 1957.[1]At first glance, it would seem as if payment had been actually made sixteen days after the deadline (December 31, 1956 to January 16, 1957). However, in justice and equity, the period between December 28, 1956, and January 15, 1957—when the first check was in the hands of the Sheriff for collection— should be excluded,[2] specially so because the delay may not be charged to the surety inasmuch as it has affirmed under oath without contradiction, that on the day it issued the check, it had no knowledge of the garnishment. Had the Sheriff acted earlier,[3] the check might have been paid if presented before the garnishment, (we do not know when such garnishment had been levied) or it might have been substituted or redeemed earlier.

So, such period (December 28 to January 15) of eighteen days deducted, the payment on January 16, 1957, came on time.

All the above of course assumes that, under the terms of the order, payment had to be made necessarily on the sixteenth day after notice.

Yet the surety could very well take the position that "paid immediately after the order became final" does not necessarily require payment on the same day, December 31, but payment within a reasonable time or without undue delay which in some instances include "within two days" after due date; even a period of seven days[4] according to circumstances.

The Solicitor-General urges that "whether a bail bond upon which there is default, should be declared forfeited to its full amount or in a lesser amount, rests largely in the discretion of the court" of first instance in this case. We agree.[5] But once it has fixed a lesser amount, it may not ad libitum and without cause require full payment of the bond. To do so, would constitute abuse of discretion, corrigible on appeal.

Wherefore, upholding this appellant, we revoke the lower court's order of March 25, 1957, and hereby declare the surety's liability to have been fully discharged upon payment of the amount of P500.00. No costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Barrera, JJ., concur.

[1] 70 C. J. S. p. 235; Hale vs. Bohannon, 241 Pac. (2d) 4; Ogier vs. Pacific Oil, etc. 288 Pac. (2d) 101; Pariz vs. Carolina Builders Corp. 92 S. E. (2d) 405.

[2]* * * the delivery of promissory notes payable to order or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed * * *. In the meantime, the action derived from the original obligation shall be held in abeyance."

[3] A check must be presented for payment "within a reasonable time (Sec. 186, Negotiable Instruments Law) which in some cases meant within two days. (Gordon vs. Levine, 194 Mass. 418, 80 N. E. 585; Herman vs. Coban, 128 Ala. 491; 119 So. Rep. 1.).

[4] 2 days—Bachrach vs. British American, 17 Phil., 565; Salloy vs. Smith, 23 S. E. (2d) 6; 201 S. C. 338;

5 days—Barron vs. Bason, 25 So. (2d) 188; 199 Miss. 739; Guerra vs. State, 234 S. W. (2d) 866;

7 days—National Labor Relations Board vs. Giannasca, 119 Feb. (2d) 756.

[5] People vs. Reyes, 48 Phil., 139.

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