

MANILA TERMINAL CO., INC., PLAINTIFF AND APPELLEE, VS. JESUS O. HIPONIA, ET AL., DEFENDANTS. FAR EASTERN SURETY & INSURANCE CO., INC., DEFENDANT AND APPELLANT.

G. R. No. L-10793. May 24, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila sentencing Jesus O. Hiponia and the Far Eastern Surety & Insurance Co., Inc. to pay plaintiff, jointly and severally, the sum of P2,778.90, plus legal interest thereon from December 21, 1949, and dismissing the cross-complaint of said company with respect to its co-defendant, Juan C. Capalad. The Manila Terminal Co., Inc., hereinafter referred to as plaintiff, was a contractor and operator of the government arrastre service in the port of Manila, while Jesus O. Hiponia was a custom broker engaged in brokerage business in the City of Manila. To expedite the delivery of goods, wares and merchandise to Hiponia in connection with his customs brokerage business, plaintiff required that he posts arrastre bonds to secure the payment of arrastre charges that may be due against him. In compliance with this requirement, Hiponia posted on March 6, 1947 an arrastre bond executed by the Philippine Guaranty Co., Inc. in the amount of P5,000, to expire on December 31, 1947 to guarantee the payment of "all arrastre and other charges that may have accrued or may be due on all and every goods, "wares and merchandise which may be imported into, or exported from, the Philippine Islands" by Hiponia "upon export and import permits issued to him."

On April 8, 1947, plaintiff again required Hiponia to post a second arrastre bond and the same company again issued a second arrastre bond in the amount of P10,000 in favor of plaintiff under the same terms and conditions set forth in the first arrastre bond. As plaintiff required Hiponia to post another arrastre bond, on May 29, 1947, the Far Eastern Surety & Insurance Co., Inc. posted the third bond in the amount of P5,000 under the same terms and conditions set forth in the first and second bonds.

It appears that Hiponia failed to pay plaintiff the arrastre and other charges in the amount of P11,2315.58 over a period of from March 6, 1947 to December 31, 1947 and so it required Hiponia and the sureties to pay the same. Out of said claim, the Philippine Guaranty Co., Inc. paid the sum of P8,486.68 and Hiponia the sum of P50, leaving a balance of P2,778.90. It is this balance which plaintiff now seeks to collect from the Far Eastern Surety Insurance Co., Inc. primarily and, in the alternative, from the Philippine Guaranty Co., Inc., jointly and severally, with Jesus O. Hiponia.

Defendant Hiponia, having failed to answer,, was declared in default. The two sureties filed their respective answers after their motions to dismiss were denied by the court. On August 14, 1950, the Far Eastern Surety & Insurance Co., Inc. filed an amended answer with a view to including a cross-complaint against Jesus O. Hiponia and Juan C. Capalad based on the fact that they executed in its i'avor an indemnity agreement to indemnify it against any damage which it may sustain for haying issued an arrastre bond in behalf of. Jesus O. Hiponia. Hiponia did not answer this cross-complaint. On his part, Capalad answered alleging that he only acted as a

witness in said indemnity agreement and so he cannot be held liable. After trial, the court rendered judgment as stated in the early part of this decision.

After this case was taken to the Court of Appeals, the latter certified the case to us on the ground that the question raised on appeal is purely one of law.

The only question involved in this appeal is whether appellant may be held answerable for the balance of P778.90 as part of the arrastre charges which Hiponia had failed to pay to plaintiff under its bond executed on May 29, 1947, it appearing that the same can be fully covered by the two bonds previously executed by the other surety in favor of the plaintiff.

It appears that three arrastre bonds were executed in favor of appellee to guarantee all arrastre charges that may be due from Hiponia and which he may fail to pay to appellee: one for P5,000 dated March 6, 1947 executed by the Philippine Guaranty Co., Inc.; another for P10,000 executed by the same company on April 8, 1947, and a third for P5,000 executed on May 29, 1947 by the Far Eastern Surety & Insurance Co., Inc. It also appears that the total arrastre charges that accrued in favor of appellee amounts to P11,315.58 and that, while the Philippine Guaranty Co., Inc. paid its proportionate share of P8,486.68 under its bonds, the Far Eastern Surety & Insurance Co., Inc. refused to pay the balance of P2,778.90.

The refusal of this company to pay this balance is predicated on two grounds: (1) when it executed its bond on May 29, 1947, it did so with the understanding that it will only be liable thereon after the first two bonds previously executed would be found insufficient to pay the charges that may be due from Jesus O. Hiponia, and (2) the balance of P2,778.90 due from Hiponia had already accrued when it executed said bond and, therefore, the same is not covered by it since it cannot be given a retroactive effect.

The first ground does not find support in the evidence. There is nothing in the bond executed by appellant from which it may be inferred that it undertook to answer for the arrastre charges that may be due from Hiponia only in case the two bonds previously executed would be insufficient to cover them. On the contrary, that undertaking appears to be distinct and separate from the undertaking of the other surety and it should therefore be considered exclusively according to its terms and conditions. In this respect, we find correct the following findings of the court *quo*:

* * * A perusal of Exhibit 'C' reveals the fact that the Far Eastern Surety & Insurance Company, Inc. bound itself to pay, jointly and severally with Jesus O. Hiponia, all arrastre and other charges that may have arisen or which may fall due on all and every goods, ware and merchandise which may be imported into, or exported from the Philippines by Jesus O. Hiponia up to December 31, 1947. It does not mention anything about the arrastre bonds, Exhibits 'A' and 'B' executed by plaintiff Philippine Guaranty Company, Inc. It cannot, therefore, be claimed that the liability assumed by the surety under Exhibit 'C' is a subsidiary to the liability assumed by the surety in Exhibits 'A' and 'B'. The relationship between the parties as follows: Hiponia and the Philippine Guaranty Company, Inc. are solidarily liable to the plaintiff for arrastre charges up to December 31, 1947 in the sum of P15,000. Hiponia and the Far Eastern Surety & Insurance Company, Inc., in a separate and independent obligation, are solidarily liable in favor of the plaintiff for arrastre charges up to December 31, 1947 in the sum of P5,000. But the surety in Exhibits 'A' and 'B' has nothing whatsoever to do with, the liability of the surety in Exhibit 'C'. Likewise, the surety in Exhibit 'C' has nothing to do with the liability of the surety in Exhibits 'A' and 'B.'"

The second ground requires an examination of the bond executed by appellant, the pertinent portion of which we quote:

"The condition of this bond is such, that if the above-bounden principal shall well and truly pay, or cause to be

paid unto the above-named MANILA TERMINAL company, inc., all the arrastre and other charges that may have arisen or due on all and every goods, wares and merchandises which may be imported into or exported from the Philippine Islands by the above-bounden principal upon export or import permits issued to him, then this obligation shall be void; otherwise to remain in full force and effect."

Before we proceed, a little digression is necessary on the nature and extent of the liability of a surety. In *El Vencedor vs. Canlas*, 44 Phil., 699, this Court said: "The rule is well known that a bond or contract of suretyship is strictly construed and cannot be extended beyond its specified limits (Civil Code, Article 1827). It is not retrospective and no liability attaches for defaults occurring before it is entered into unless an intent to be so liable is indicated." In a later case, this Court also said: "Bonds or other contracts of suretyship are ordinarily not to be construed as retrospective, but that rule must yield to the intention of the contradicting parties as revealed by the evidence, and does not interfere with the application of the ordinary tests and canons followed in the interpretation of other contracts" (*Bank of the Philippine Islands vs. Foerster*, 49 Phil., 843).

Considering that the arrastre charges which are now demanded from appellant had already accrued when the company executed its bond on May 29, 1947 in favor of appellee, it follows that in line with the principle above enunciated, appellant cannot be held liable therefor, because its bond cannot be given a retroactive effect unless an intent to be so liable clearly appears from the evidence. Here such intention does not appear clear. While the bond states that it shall answer for "all the arrastre and other charges that may have arisen or due" from the principal debtor, such sentence is however qualified by the following words "on all and every goods, wares and merchandise which may be imported into, or exported from, the Philippine Islands", which give the connotation that the undertaking only covers charges that may accrue in the future. (Italics supplied) The least that we can say is that the wording of the bond is ambiguous or equivocal and as such it cannot be considered as an exception to the rule. And considering that a contract of suretyship is strictly construed against the creditor when the intention of the parties is not clearly expressed, we have no other alternative than to hold that appellant is not liable for the payment of the amount claimed in the complaint. In this respect, we find erroneous the decision of the lower court.

The decision appealed from should therefore be modified in the sense that the action should be dismissed in so far as appellant is concerned. The rest of the decision as regards defendant Jesus O. Hiponia should stand. No pronouncement as to costs.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Conception, Reyes, J.B.L., and Endencia, JJ., concur.

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