

PHILIPPINE INTERNATIONAL SURETY CO., INC. PLAINTIFF AND APPELLEE, VS. FAUSTO GONZALES, ET AL., DEFENDANTS, SERVANDO DE LOS ANGELES, DEFENDANT AND APPELLANT.

G.R. No. L-15868. October 31, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by Servando de los Angeles from a decision of the Court of First Instance of Manila, in effect affirming that of the Municipal Court of Manila, sentencing him and his co-defendant, Fausto Gonzales, to pay to plaintiff Philippine International Surety Co., Inc., the sum of P500, with interest thereon at the rate of 12% per annum, computed and compounded quarterly from June 24, 1954, plus a sum equivalent to 15% of the amount due as and for attorney's fees, and the costs of both instances.

In March, 1954, Fausto Gonzales as principal, and plaintiff as surety, executed, in favor of the Equitable Banking Corporation, a promissory note (Exhibit A) for P500, payable ninety (90) days after date. In consideration of the obligation thus assumed by plaintiff, said Fausto Gonzales, appellant Servando de los Angeles, and Pablo Galang and Leon Macose, executed an indemnity agreement (Exhibit B) in favor of plaintiff, which indemnity agreement included a real estate mortgage on two (2) small parcels of land of Macose, situated in the Province of Rizal. When Gonzales failed to pay his obligation to the bank, upon maturity of said note, its amount was debited against plaintiff's current account in said bank, and plaintiff demanded reimbursement from Gonzales, De los Angeles, Galang and Macose (Exhibits D and D-1). The demand not having been heeded, plaintiff instituted against them the present action, in the Municipal Court of Manila, for the recovery of said sum of P500, plus interest, attorney's fees and costs, as stipulated in the indemnity agreement. In due course, said court rendered the decision, aforementioned against Gonzales and De los Angeles, but, dismissed the case, on plaintiff's motion, as against Galang and Macose who could not be summoned, despite efforts allegedly exerted to locate them. De los Angeles appealed to the court of first instance, which, after appropriate proceedings, rendered the decision adverted to above.

Appellant maintains that the court of first instance erred in deciding the case on the merits, due process having been denied by the municipal court, and the proceedings therein being, therefore, null and void, so that the court of first instance should have remanded the case to said municipal court for trial de novo. In support of this pretense, appellant alleges that, when this case was called for trial in said municipal court, plaintiff did not show up; that, accordingly, appellant moved for the dismissal of the case, and then, he and his counsel left the courtroom; that, seemingly, plaintiff appeared later and then presented its evidence, in the absence of appellant and his counsel, who were, as a consequence, denied due process; and that, on appeal, the court of first instance should have declared that the decision of the municipal court was null and void and remanded the case to the lower court for further proceedings, in accordance with law.

The evidence of record, however, does not bear out appellant's pretense. What is more, it appears that after the

rendition of the decision of the municipal court, appellant filed therein a motion for new trial solely upon the following grounds, to wit: (a) that, when the case was called for trial, the court had no jurisdiction over the persons of Galang and Macose, they not having been summoned as yet; and (b) that plaintiff's petition for dismissal of the case as regards said defendants might indicate a fraudulent combination to secure a judgment against appellant. Had the latter been denied his day in court, as contended by him, he would have surely so alleged in his aforementioned motion for new trial. The absence therein of any such allegation negates appellant's contention.

At any rate, even if the case had been heard under the circumstances now averred by appellant, said motion for new trial based upon grounds other than the alleged denial of his day in court, implied a waiver of his right thereto. Indeed, the main facts upon which plaintiff's action is based are incontrovertible. The execution of the promissory note Exhibit A and of the indemnity agreement Exhibit B are admitted by appellant. The non-payment of said note, the demands made by plaintiff upon the parties to said indemnity agreement, and the failure of such parties to pay the plaintiff are, likewise admitted by appellant. Hence, he did not file any answer in the municipal court. Moreover, he does not claim that he could have disproved plaintiff's main allegations or could have established facts that would have offset such allegations. His very evidence in the court of first instance, consisting exclusively of his own testimony, does not have either effect. Hence, appellant's aforementioned pretense is devoid of merit.

It is next urged by him that the lower court erred in not ordering that Galang and Macose be summoned and in not holding that plaintiff may not split the action under the indemnity agreement Exhibit B by choosing to sue him and securing a judgment against him, to the exclusion of the other guarantors under said agreement. This contention is, likewise, untenable. The record before us shows that efforts had been made to locate and summon Galang and Macose, and to no avail. Moreover, the obligation assumed by appellant and his co-guarantors, Galang and Macose, under the aforementioned indemnity agreement is joint and several. As correctly stated in the decision of the court of first instance:

"* * * Precisely because the obligation assumed by appellant and his co-signers is joint and several or in solidum, each is answerable for the whole obligation, with the right to seek contribution from the co-debtors, Pablo Galang and Leon Macose and/or full reimbursement from Faustino Gonzales (See Arts. 1216, 1217, Civil Code; Molina vs. De la Riva, 7 Phil. 345; National Bank vs. Confesor, 37 Off. Gaz. 2395; Ferrer vs. Lopez, 56 Phil. 592; Chunaco vs. Tria, 63 Phil. 500). * * * It may not be amiss to add that plaintiff has full discretion in selecting whom to sue or include as defendant (Vano vs. Alo, 95 Phil., 495; 50 Off. Gaz., 3576). * * * The remedy of appellant is to bring in Leon Macose and Pablo Galang as third-party defendants for contribution and to file crossclaim against Fausto Gonzales (Arts. 1217 & 1222, C. C, Wilson vs. Berkenkotter, 92 Phil., 918; 49 Off. Gaz. 1410; Bank of P. I. vs. McCoy, 52 Phil. 831), neither of which remedy appellant availed. As to the alleged fraudulent combination, the same is purely conjectural; and at any rate, it could not constitute a defense of appellant against the claim of plaintiff."

Wherefore, the decision appealed from is hereby affirmed, with costs against Servando de los Angeles. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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