

WARNER, BARNES & CO., LTD., PLAINTIFF AND APPELLEE VS. LUZON SURETY CO., INC., DEFENDANT AND APPELLANT.*G.R. No. L-6637. September 30, 1954*

Ponente: PARAS, C.J.

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On September 17, 1952, the plaintiff, Warner, Barnes & Co., Ltd., filed a complaint in the Court of First Instance of Negros Occidental against the defendant, Luzon Surety Co., Inc., for the recovery of the sum of P6,000, plus the costs and P1,500 for attorney's fees. The basis of the complaint was a bond in the sum of P6,000 filed by Agueda Gonzaga as administratrix of the Intestate Estate of Agueda Gonzaga on or about January 6, 1951, in Special Proceedings No. 452 of the Court of First Instance of Negros Occidental, the condition being that said bond would be void if the administratrix "faithfully prepares and presents to the Court, within three months from the date of his appointment, a correct inventory of all the property of the deceased which may have come into his possession or into the possession of any other person representing him according to law, if he administers all the property of the deceased which at any time comes into his possession or into the possession of any other person representing him; faithfully pays all debts, legacies, and bequests which encumber said estate, pays whatever dividends which the Court may decide should be paid, and renders a just and true account of his administrations to the Court within a year or at any other date that he may be required so to do, and faithfully executes all orders and decrees of said court." It was alleged in the complaint that the plaintiff had a duly approved claim against the Estate of Agueda Gonzaga in the sum of P6,485.02, plus 2 per cent annual interest compounded monthly from October 1, 1941; that the administratrix violated the conditions of her bond "(a) by failing to file an inventory of the assets and funds of the estate that had come into her hands, more particularly, the sum of P67,861.22 that she had received from the United States Philippine War Damage Commission; (b) by failing to pay or discharge the approved claim of the plaintiff; (c) by failing to render a true and just account of her administration in general, and of the said war damage payments in particular."; that the defendant, as surety in the bond, failed to pay to the plaintiff, notwithstanding the latter's demand, the sum of P6,000, in partial satisfaction of plaintiff's unpaid claim which, after deducting the sum of P3,000 previously paid upon account by the administratrix, amounted to P8,186.68 as of August 31, 1952.

The defendant filed an answer setting up the special defenses that the complaint did not state a cause of action; that its maximum liability under the surety bond is P6,000; that if it were not for the untimely death of the judicial administratrix, she would have been able to fully comply with her duties and obligations; that the administratrix, up to her death, had not yet been authorized by the court in Special Proceedings No. 452 to pay plaintiff's claim; that the defendant's liability had been extinguished; that damages or attorney's fees cannot be recovered under the surety bond.

On January 6, 1953, the plaintiff filed a motion for summary judgment, alleging that "the special defenses relied upon by the defendant in her Answer raise only questions of law, and the plaintiff believes that said defendant cannot produce counter-affidavits that would raise any genuine issues as to any material facts." This motion was

accompanied by Exhibits "A" to "H", Exhibits "A" being an affidavit of Atty. Luis G. Hilado who signed the complaint.

As the defendant did not file counter-affidavits so as to raise genuine issues as to any material fact, although a copy of the motion for summary judgment was served upon it eleven days prior to the date of the hearing thereon, the Court of First Instance of Negros Occidental rendered on January 17, 1953, a summary judgment sentencing the defendant to pay to the plaintiff the sum of P6,000, P900 for attorney's fees, plus the costs. From this judgment the defendant appealed.

Under the first assignment of error, the appellant contends that the lower court had no jurisdiction to pass upon its liability under the bond in question, because it is only the probate court that can hold a surety accountable for any breach by the administratrix of her duty, citing the case of *Mendoza vs. Pacheco*, 64 Phil, 134. It is, however, noteworthy that while the citation is to the effect that the probate court has jurisdiction over the forfeiture or enforcement of an administrator's bond, it was not held therein that the same matter may not be litigated in an ordinary civil action brought before the court of first instance.

Under the second assignment of error, the appellant claims that there are genuine controversies between the parties litigant, and that, contrary to the allegations of the complaint, the administratrix made a return to the court of the war damage payments she received; the administratrix cannot be charged with having failed to pay plaintiff's claim because there is no showing that she was ever authorized to pay approved claims; the administratrix may be presumed to have rendered an accounting of her administration, likely in 1948, in accordance with section 8 of Rule 86 of the Rules of Court. In answer, it is sufficient to state that the allegations that the administratrix failed to file an inventory, to pay the plaintiff's claim, and to render a true and just account of her administration, are factual and remained uncontroverted by counter-affidavits which the appellant could have easily filed.

It is also argued for the appellant that the supporting affidavit Exhibit "A" is insufficient, being signed merely by the lawyer, and not by a party to the case or an officer of the plaintiff firm. This is without merit, since Exhibit A contains an express statement that the affiant, Atty. Luis G. Hilado, had "personal knowledge of the facts" alleged therein; and this cannot be negated by appellant's speculation to the contrary.

Under the third and fourth assignments of error, it is insisted for the appellant that the bond in question was executed in favor of the Republic of the Philippines and that the proper procedure would seem to be that it might be enforced in the administration proceedings where it was filed. This view is likewise not tenable. Though nominally payable to the Republic of the Philippines, the bond is expressly for the benefit of the heirs, legatees and creditors of the Estate of the deceased Aguedo Gonzaga. There is no valid reason why a creditor may not directly in his name enforce said bond in so far as he is concerned.

Under the fifth assignment of error, it is alleged that the plaintiff should have first filed a claim against the Estate of the deceased administratrix Agueda Gonzaga, in conformity with section 6 of Rule 87 of the Rules of Court providing that "Where the obligation of the decedent is joint and several with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor." Apart from the fact that his defense was not pleaded either in a motion to dismiss or in the answer and was therefore waived (section 10, Rule 9 of the Rules of Court), it appears that even as late as September 17, 1952, when the present complaint was filed, (more than two years after the death of Agueda Gonzaga), there were no proceedings for the administration of her estate, with the result that section 6 of Rule 87 loses its applicability. Moreover, it is to be noted that the appellant had also chosen to file a third-party complaint in the present case against Romualdo Araneta, joint and several counter-guarantor of the deceased

administratrix, instead of presenting a claim against the latter's estate.

In its sixth assignment of error, the lower court is alleged to have erred in sentencing the appellant to pay attorney's fees in the sum of P900, in excess of the limit of its bond. This contention is tenable. Under section 3 of Rule 36 of the Rules of Court, a summary judgment may be rendered upon proper motion except as to the amount of damages.

There being no proof regarding the amount of attorney's fees claimed by the plaintiff, no judgment thereon may be rendered herein. It is, however, argued by the counsel for appellee that said fees are in pursuance of article 2208 of the Civil Code, providing that attorney's fees cannot be recovered except "where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim"; and it alleged in the complaint that the appellant had so acted in this case. While the provision cited authorizes the collection of attorney's fees under the situation contemplated herein, it does not dispense with the effect of section 3 of Rule 36.

Wherefore, it being understood that the defendant-appellant is sentenced to pay to the plaintiff-appellee only the sum of P6,000.00 plus the cost, the same is hereby affirmed.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

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