

PEDRO C. PASTORAL, PETITIONER, VS. MUTUAL SECURITY INSURANCE CORPORATION AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-20469. August 31, 1965

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9fe01d290c5c/>

REYES, J.B.L., J.:

Petition by Pedro C. Pastoral for the review and reversal of a decision of the Court of Appeals (in its Case CA-G. R. No. 29180-R), that absolved the Mutual Security Insurance Corporation of its liability to the said petitioner, reversing the decision of the Court of First Instance of Manila.

The facts are stated by the Court of Appeals to be as follows:

"It appears that on and from October 1, 1957, plaintiff Pedro C. Pastoral leased a crane to defendant Mapada & Company, Inc., at a monthly rental of P900.00, Exhibit A. The contract provides that if the crane be not returned 10 days after notice therefor, defendant will pay plaintiff P15,000 as the value of the crane. In compliance with paragraph 2(b) of Exhibit A, defendant on October 22, 1957, put up a surety bond, Exhibit B, in the amount of P15,000 executed by appellant Mutual Security Insurance Corporation to fully and faithfully guarantee compliance by defendant of all conditions and obligations under the lease contract. Upon request of defendant which was expecting some money from the construction contract with the government about the end of November, plaintiff deferred its collection of rentals for the months of October and November, 1957 until the beginning of December; but when, no payment was made despite demands, plaintiff advised, and demanded payment from, the surety company on December 5, 1957, Exhibit C. Up to the date of the trial and despite numerous demands by plaintiff, defendant failed to pay any rental (except P2,000 in March 1958 from the Bureau of Public Highways) nor to return the crane to plaintiff.

After trial, judgment was rendered in favor of plaintiff and against the defendants, ordering the latter solidarily to pay to the plaintiff the sum of P7,700 as unpaid rentals up to and including the month of September, 1958 when the complaint was filed plus P900 as monthly rental from the month of October, 1958 until the crane is actually returned, or in default thereof to pay to plaintiff the sum of P15,000 for the crane, provided that the amount for which appellant Mutual Security Insurance Corporation shall be liable shall not exceed the sum of P15,000; and to pay the costs.

Only the surety company appealed, urging that the trial court erred in not holding that it was released from liability under the surety bond which had become null and void from the failure of plaintiff to report within five days to appellant the violation of the lease contract.

The Contract of Lease of Construction Equipment, Exhibit A, provides inter alia: '2. That the lessee obligates to pay a monthly rental of Nine Hundred Pesos (P900) Philippine Currency, payable At the residence of the LESSOR * * *'; while the surety bond, Exhibit B, after guaranteeing compliance with the lease contract provides: 'Any violations of said contract will be reported to the herein Surety Company within (5) days, otherwise, this bond will be null and void'."

Upon the facts above narrated, the Court of Appeals decided that Pastoral's failure to notify the surety of the principal's defaults between October 6-10 and November 6-10, 1957, and in notifying the surety only on December 5, 1957, constituted a violation of the conditions of the bond that exonerated the surety from liability.

Unable to obtain reconsideration of the decision, Pastoral resorted to this Court.

We find the appealed decision to be in error.

On the basis that Pastoral received a copy of the bond (containing the requirement to notify the surety of any default within 5 days) only on November 21, 1957—and this date is not seriously disputed—Pastoral's obligation to notify it within five (5) days of the defaults in the payment of the first two monthly rentals, falling due in late October and early November, had become impossible of performance, so that compliance with the 5-day notice requirement had become excused for those two months. No reason is shown why Pastoral should anticipate that the surety would impose this condition when the lease contract merely required that lessee Mapada & Co., Inc. should furnish a surety bond. That Pastoral knew nothing about such a condition before November 21 is further emphasized by the fact that in late October or early November he agreed with Mapada & Co., Inc., to defer payment of the October and November rental to the end of November.

By imposing on Pastoral the condition of notifying it within 5 days of default, the surety company made it necessary that Pastoral should accept the bond; and Pastoral could not do so before learning of it.

This Court has ruled that where the guaranty requires action by the creditor before the obligation becomes fixed, it is not binding until accepted *National Bank vs. Garcia*, 47 Phil. 662; *Texas Co. (Phil.) Inc., vs. Alonso*, 73 Phil. 90. The rule is grounded on common sense; otherwise, the debtor and the guarantor could easily defraud the creditor by inserting in the bond conditions that would render it nugatory.

The suretyship contract, therefore, was not perfected, and was not binding on Pastoral until November 21, 1957, when he received copy thereof and tacitly accepted it. By then two defaults had already occurred (even disregarding the extension agreement of October 31, hereinafter discussed); and Pastoral was in no position to give notice of them within 5 days after default, as required by the bond, because the latest default happened on November 5. The 5-day period to notify expired November 10, and Pastoral only learned of the existence of the condition on November 21. *Ad impossibilia nemo tenetur*. In fact, by not notifying Pastoral earlier, the surety must be deemed to have waived the condition as to rentals already due, since a condition is deemed fulfilled when the obligor voluntarily prevents its fulfillment (Civ. Code, Art. 1186).

The Court of Appeals held that Pastoral was duty-bound to know and secure copy of the surety contract within a reasonable time from its execution on October 22, 1957, and that not having done so, he was chargeable with its contents. We find no justification for this pronouncement. If any one was obligated to notify Pastoral of the conditions attached to the bond, that one was the guarantor. Pastoral was not obligated to inquire, since his assent to the condition was necessary; and if no acceptable bond was forth-coming, he could always rescind the lease of the machinery to Mapada & Co., Inc., and recover his crane.

The Court of Appeals further held that the act of Pastoral in granting to the debtor on October 31, 1957 time up to the end of November, 1957 to pay the rentals that fell due on the first five days of October and November, without the surety's consent, constituted a material alteration that discharged the surety. We agree with appellant that this view is untenable. When Pastoral agreed on October 31 that the October and November rentals be paid at the end of November, he had not yet accepted the terms of the respondent's bond, since he only learned of them on November 21. On the latter date, the debtor was not yet in default, because the extension given had wiped out the previous failures to pay on October 5 and November 5. The first default after the bond had become effective

in law (on November 21) occurred on the last day of November, and Pastoral gave notice thereof to the surety on the 5th of December, within the five-day period prescribed by the bond.

A contract of guaranty or suretyship is only prospective, and not retroactive, in operation (*Socony Vacuum Corp. vs. Miraflores*, 67 Phil. 304; *El Vencedor vs. Canlas*, 44 Phil. 699; *Asiatic Petroleum Co. vs. De Pio*, 46 Phil. 167), unless a contrary intent is clearly shown. Consequently, Pastoral was entitled to assume that the notice provided by the surety bond did not, and was not intended to, include any defaults incurred prior to his acceptance. The surety, which drafted the bond, could have expressly provided, if so chose, that the five-day notice therein provided should extend to the amounts of falling due in October 5 and November 5, but the surety failed to do so, and can not blame Pastoral therefor.

The fault in the reasoning of the Court of Appeals lies in its assumption that the surety bond became effective immediately, without taking into account that the five-day notice provision required the creditor's assent to become elective and binding. This assent could not be given before November 21, when Pastoral learned of the condition for the first time and tacitly agreed to it, as shown by his notice to the surety on December 5, that the principal debtor had defaulted.

It is worth stressing here that this Court has repeatedly decided (*Pacific Tobacco Co. vs. Lorenzana and Visayan Surety*, 102 Phil. 234; *Phil. Surety vs. Royal Oil Products*, 102 Phil. 3236; *Atkins Kroll & Co. vs. Reyes*, 105 Phil. 640) that the rule holding sureties to be favorites of the law, and their contracts to be *strictissimi juris*, does not apply to compensated sureties, following *United States Fidelity & Guaranty Co. vs. Golden Pressed & Fire Brick Co.*, 191 U. S. 416, 48 L. Ed. 242:

"We are familiar with, the old rule of strict construction in favor of the surety, based upon the underlying principle that formerly parties became sureties, not for hire but as a matter of accommodation, usually lending their names through motives of friendship and hence the surety obligation would be construed most strongly in their favor. But the rule "*strictissimi juris*" has no application to surety companies, organized for the purpose of conducting an indemnity business at established rates of compensation".

and which, it may be added, protect themselves against loss by exacting adequate counterbonds.

Wherefore, the decision of the Court of Appeals is reversed, and that of the Court of First Instance of Manila is upheld and confirmed. Respondent-appellee Mutual Security Insurance Corporation shall pay the costs in all instances.

Bengzon, C. J., Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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.