

**ASSOCIATED INSURANCE & SURETY COMPANY, INC., PLAINTIFF
AND APPELLEE, VS. WELLINGTON CHUA, ET AL., DEFENDANTS,
RAMON Y. SY, DEFENDANT AND APPELLANT.**

G. R. No. L-15656. January 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal by defendant Ramon Y. Sy from the decision of the court of First Instance of Manila of May 15, 1959, ordering him "to pay unto plaintiff for the sole benefit of the Government of the Philippines the sum of P1,000.00 with interest of 12% per annum, the interest to be computed from the time of actual payment by Associated (Insurance & Surety Co., Inc.) unto the Republic of the Philippines of said sum of money" and furthermore ordering said appellant, in any case, to pay to plaintiff-appellee the sum of P200.00 as attorney's fees, without pronouncement as to costs.

The facts are not disputed. On July 29, 1955 appellee put up a bail bond in the sum of P1,000.00 for the provisional liberty of one Wellington Chua, who was accused in Criminal Cases No. 31951 and 31952 of the Court of First Instance of Manila. An indemnity agreement in favor of appellee was in turn signed by appellant, jointly and severally with Chua, for the same sum of P1,000.00, the pertinent terms of which agreement are as follows:

"2. Indemnity: To indemnify the COMPANY upon its demand and keep it indemnified for and to. hold and save it harmless from and against any and all payments, damages, costs, losses, penalties, charges and expenses of whatsoever kind and nature which the COMPANY as such surety shall or may, at any time make, sustain, incur and/or suffer or for which it has or may become liable to the obligee, and to pay an additional amount as attorney's fees equal to 20% of the amount due to the COMPANY by virtue hereof which in no case shall be less than P50.00 and which shall be payable whether or not the case be extrajudicially settled, it being understood that demand made upon anyone of the undersigned herein is admitted as demand made on all of the signatories hereof;

"3, ACCRUAL OF ACTION: Notwithstanding the provisions of the next preceding paragraph, where the obligation involves a liquidated amount for the payment of which the COMPANY has become legally liable under the term of the obligation and its suretyship undertaking, or by the demand of the obligee or otherwise and the latter has merely allowed the COMPANY a term or extension for payment of the latter's demand the full amount necessary to discharge the COMPANY'S aforesaid liability irrespective of whether or not payment has actually been made by the COMPANY, the COMPANY for the protection of its interest may forthwith proceed against the undersigned or either of them by court action or otherwise to enforce payment, even prior to making payment to the obligee which may hereafter be done by the COMPANY."

Chua failed to appear in court for trial, by reason of which the bail bond was ordered confiscated on February 27, 1956 and judgment was rendered thereon against the bondsman on the following September 1. A writ of execution was thereafter issued to enforce the judgment, but was not carried out when appellee was allowed to put

up a property bond in favor of the Republic of the Philippines to guarantee its aggregate liabilities in connection with several criminal cases, amounting to over P73,000.00.

After judgment on the bond was rendered as aforesaid appellee filed the present action against appellant on the indemnity agreement he had signed. The parties entered into a stipulation of facts, after which the decision now sought to be reviewed was handed down.

Appellant has raised two points in this appeal. The first is that the stipulation in the indemnity agreement allowing appellee to proceed against appellant for indemnification even prior to actual satisfaction of the judgment on the bond is void, being contrary to public policy and morals, because it would enable appellee to enrich itself unjustly at appellant's expense in the event that the accused Wellington Chua is finally apprehended and the liability of appellee on the bond filed by it is reduced. The point is not well taken. The situation envisaged by appellant, as correctly stated by the court, is a contingency that may not happen at all; and if it should ever happen it does not mean that the indemnitor Ramon Sy would be without protection. Besides, it is specifically stated in the judgment appealed from that the payment of the sum of P1,000.00 shall be for the benefit of the government.

The agreement here sued upon is not only one of indemnity against loss but of indemnity against liability. While the first does not render the indemnitor liable until the person to be indemnified makes payment or sustains loss, the second becomes operative as soon as the liability of the person indemnified arises irrespective of whether or not he has suffered actual loss.

The next point of appellant is that appellee has yet no cause of action against him for the reason that the latter's liability on the bond is still unliquidated within the meaning of clause 3 of the indemnity agreement herein-before quoted. The contention is not correct. Appellee's liability is already liquidated and in fact has been the subject of final judgment and of a writ of execution, although as far as the record shows the execution has not yet been carried out. It is one thing to say that appellee's liability on the bond may possibly be reduced should the principal, Wellington Chua, be apprehended and surrendered to the proper court and a different thing altogether to say that the same is unliquidated. This Court has had occasion to decide the same question now before us in the case of *Alto Surety Insurance Inc., vs. Alejandro Andan*, L-8961 promulgated November 28, 1956. In that case, upon facts similar to those obtaining here, the trial court dismissed the complaint filed by the surety company against the indemnitor on the ground that since the plaintiff had not yet satisfied the judgment rendered against it for the amount of the bond, it had no cause of action against the defendants-indemnitors. Upon Appeal, this Court reversed the judgment, upholding in effect the validity of the indemnity contract.

The judgment appealed from is affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes J. B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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