

LUZON SURETY CO., INC., PLAINTIFF-APPELLANT, VS. THE CITY OF BACOLOD, ROMEO GUANZON, IN HIS CAPACITY AS MAYOR OF THE CITY OF BACOLOD AND PORFIRIO T. DE LEON, IN HIS CAPACITY AS...

G.R. No. L-23618. August 31, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

On July 1, 1962 the city council of the City of Bacolod approved Ordinance 158, series of 1962.[1] Pursuant to the said ordinance the plaintiff Luzon Surety Co., Inc. was required to pay a fixed annual license fee of P300 and to apply for and obtain from the City Mayor a permit (upon payment of the sum of 20 to the City Treasurer).[2] In 1963 the plaintiff started to pay the said fees, but under protest.

On February 13, 1964 the plaintiff filed a complaint with the Court of First Instance of Negros Occidental, assailing the ordinance as "illegal, invalid and unconstitutional," and asking for the refund of the amount of P430 it had previously paid under protest. The plaintiff alleged, inter alia, that the Bacolod city council exceeded the power and authority granted to it by law in approving the said ordinance, as the latter contravenes section 2, sub-section (j) of Republic Act 2264[3] which prohibits cities from taxing insurance companies.

The defendants contended, however, that Commonwealth Act 326, as amended, otherwise known as "The Charter of the City of Bacolod," grants the city council the power to enact ordinances intended to regulate and fix the amounts of permit and license fees, and that moreover the ordinance in question does not violate section 2, sub-section (j) of the Local Autonomy Act because the plaintiff is a surety company and not an insurance company.

On July 25, 1964 the lower court adjudged the plaintiff as a surety company and not an insurance company and, therefore, as not entitled to claim exemption from the effects of the controverted ordinance, which it declared valid, legal and constitutional.

The plaintiff's appeal to this Court poses in issue the validity of the specific portions of the ordinance (see footnote 2) prescribing fixed annual license and permit fees for "Fiadores (Casas y Companias)," insofar as these provisions are construed by the City of Bacolod to include surety companies within their purview and intendment, the plaintiff insisting that a surety company is an insurance company, that no distinction of consequence exists between the two, and that therefore the plaintiff falls within the Mantle of the exemption afforded by section 2, sub-section (j) of the Local Autonomy Act, which explicitly prohibits chartered cities from levying or imposing "taxes of any kind on banks, insurance companies and persons paying franchise tax." (emphasis Supplied)

The defendants, on the other hand, while admitting that plaintiff is a surety company, nevertheless insist that fundamental distinctions exist between a surety company and an insurance company, and that the plaintiff, its principal business being one of surety ship does not fall under the exemption granted section 2, sub-section (j) of

the Local Autonomy Act, the exemption exclusively being applicable only to companies doing purely insurance business.

Resolution of this appeal requires a determination of whether a surety company is an insurance company within the meaning and intendment of section 2, sub-section (j) of the Local Autonomy Act, both parties being in agreement that the license fee in question is in the nature and concept of a tax.

No doubt surfaces as to the power of chartered cities to tax under the Local Autonomy Act. This Court has consistently upheld the "doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover everything, excepting those which are mentioned therein, subject only to the limitation that the tax so levied is for 'public purposes, just and uniform'." [4]

The hereunder quote the pertinent provisions of the Local Autonomy Act:

"Section 2. Any provision of the law to the contrary notwithstanding, all chartered cities ... shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, ... Provided, however, That no city ... may levy or impose any of the following:

* * *

"(j) Taxes of any kind on banks, insurance companies, and persons paying franchise tax; ..."

Is the word "fiadores," as used in item B -17 of article 1 of section 3 of the ordinance, comprehended within the meaning of the term "insurance companies" as used in section 2(j) of the Local Autonomy Act?

To begin with, we look to the provisions of Act 2427, as amended (otherwise known as "The Insurance Act"). Section 170 thereof provides that "for the purpose of this chapter [captioned INSURANCE COMPANIES] unless the context otherwise requires the terms 'company' or 'insurance company' shall include all corporations, associations, partnerships, or individuals engaged as principals in the insurance business, excepting fraternal and benevolent orders and societies." Section 194 of the same Act provides as follows: "Corporations formed or organized to save any person or person or other corporation harmless from loss, damage or liability arising from any unknown or future or contingent event, or to indemnify or to compensate any person or persons or other corporation for any such loss, damage, or liability or to guarantee the contractual obligations or debts of others, shall be known as Insurance Corporations for the purposes of this chapter."

Let us now examine authoritative definitions of the word "fiador." Robb's Dictionary of Legal Terms (1966), p. 56, gives the word "fiador" this meaning: "bondsman, surety; guarantor, bailor, backer." The New Revised Velasquez Spanish and English Dictionary (1965) states that a "fiador" is "1. One, who trusts another 2. Bondsman, guarantor, surety, or one who becomes security for another." 36A C. J. S. 375 has this to say on the meaning of the word "fiador": "In Spanish law, surety." XVI Enciclopedia Juridica Española 233 describes "fiador" as "El que responde de la obligacion ajena, tomando sobre si el cumplimiento de ella para el caso de que no la cumpla el que contrajo." In our own jurisprudence, "fiador" is defined in the Real Academia Castellana as 'persona que fia a otra para la seguridad de aquello a que esta obligada.'" [5]

We now turn to American jurisprudence.

The Cyclopedia of Insurance Law [6] states:

"A class of contracts written by guaranty or surety companies, and generally designated as guaranty insurance, comprises principally contract, credit, fidelity, title, bond, and security guaranty generally. Contracts of this kind are now almost universally regarded as those of insurance where the underwriter engages in the business for profit, especially since the terms of such contracts usually closely resemble the essential elements of an

insurance contract."

On the business of fidelity guaranty, the same authority declares that "contracts of fidelity guaranty are contracts of indemnity, and, where the business of underwriting is undertaken for pro-fit, are essentially insurance contracts, which, like other con-tracts of insurance, are construed against the insurer." [7] On the business of contract guaranty, the same authority, comments that "the general rule that the bonds of guaranty and surety com-panies, who engage in the business for profit, are essentially insurance contracts and are governed by the rules of construction applicable thereto, rather than by the rules applicable to strict or pure contracts of suretyship, applies to bonds guaran-teeing the carrying out or performance of contrasts to do a particular act or carry out a particular project." [8]

An American case [9] resolved, with meticulous care, the problem of whether a surety company engages in insurance bu-siness for purposes of taxation. The American Surety Company, required by the laws of the State of Tennessee to pay privilege taxes based on its gross premiums, brought suit against the In-surance Commissioner denying its liability for the payment of the taxes, contending it was not an insurance company. The Su-preme Court of Tennessee rejected this contention on the basis of its finding that the American Surety Company was authorized to conduct the business of "guaranteeing the fidelity of persons holding places of public and private trust, the performance of contracts other than insurance policies, and executing or guaran-teeing bonds and undertakings required or permitted in all ac-tions or proceedings or by law allowed," and ruling that the contracts thus authorized to be made by the American Surety Com-pany are contracts of insurance and the making of them is insu-rance business, as defined by the statutes of the State and the common law. The court, in support of its opinion, quoted Frost's Law of Guaranty Insurance, thus:

"In view of all that has been said in this immediate connection, can it be affirmed that fidelity, commercial, and judicial bonds or poli-cies, as issued by the so-called surety compa-nies, constitute contracts of insurance within the legal signification of that term? The answer to the foregoing query must be unqualifiedly in the affirmative."

Thus, the conclusion seems rather irresistible that the plaintiff, which is the holder of a "Certificate of Authority" (issued by the Insurance Commissioner) [10] as a "fire, marine, earthquake, typhoon, tidal wave, riot, flood, civil commotion, war, civil war, revolutions, rebellions, military or usurped power, use & occupancy, storm, bombardment, invasion, insurrection, motor car, burglary, accident, and fidelity insu-rance company," and is authorized "to become a surety upon official recognizances, stipulations, bonds and undertakings," [11] (a) is engaged in the insurance business, and (b) is an insurance company within the intendment of section 2(j) of the Local Autonomy Act.

We therefore hold that the plaintiff is not liable for the payment of the annual license fee of P300 imposed by the ordi-nance in question.

As to the P20 annual permit fee, it is our view and we so hold that the plaintiff was correctly adjudged liable for the payment thereof. The authority of the City of Bacolod to require persons and entities engaged in and conducting any business within its jurisdictional territory to obtain permits and pay the corresponding permit fees, is specifically granted by paragraph (ee) of section 17 of Commonwealth Act 326 (known as "The Char-ter of the City of Bacolod"), approved on June 18, 1938, which empowers the city council "to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants." [12] In requiring permits and the payment of nominal regulatory permit fees, the ordinance itself invokes police power, stating explicitly that permits are necessary "for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in

the business therein specified.”

ACCORDINGLY, the judgment a quo is set aside, and another is hereby entered (1) declaring that the item "B-17 Fia-dores (Casas y Companias)... P300.00" of Article 1 of Section 3 of Ordinance 158, series of 1962, of the respondent City of Bacolod does not embrace within its purview, and is not applicable to, surety companies and corporations, such as the Luzon Surety Company, Inc., and (2) ordering the respondent City to refund to the Luzon Surety Company, Inc. all sums of money the latter has paid in virtue of the implementation and enforcement of the said item by the respondent City. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] "An Ordinance Fixing the Classification and Schedule of Fees for the Issuance of Permits and Licenses and the Conduct Thereof for the Opening, Practice, Exercise, Conduct and/or Establishment of any Profession, Act or Trade, Business, Occupation or Calling or Industry Within the Jurisdictional Territory of the City of Bacolod." The complete text of this prolix ordinance is reproduced on pp. 5 to 91 of the Record on Appeal.

[2] The pertinent portions of the ordinance read as follows:

"Section 1. - License, Permit Fees, Application Collections thereof, and other purposes. Article 1. - A License or Permit Fee must first be paid before any business, trade, occupation or profession, or industry hereinbelow specified can be lawfully began, established, conducted, exercised, or pursued, said business, trade, occupation or profession, or industry is payable for every separate or distinct establishment or place or location where business, trade, occupation or profession, or industry, or line of any of them, does not become exempt by being conducted with some other business, trade, occupation or profession, or industry, for which such license has been paid.

* * *

"Article 2. Permits necessary. - It shall be unlawful for any person or entity to conduct or engage in any of the businesses, trades, or occupations enumerated herein, and other businesses, trades, or occupations for which a permit is required for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the business therein specified, without first having obtained a permit therefor from the Mayor and the necessary license from the City Treasurer.

* * *

"Article 4. Fees. - There shall be paid to the City Treasurer for every permit issued by the Mayor for that business, trade or occupation hereinbelow enumerated, as in this Ordinance provided, an annual [permit] fee in accordance with the following schedule:

* * *

83. All other business, trade or occupation not mentioned

in this ordinance, except those upon which the City

is not empowered to license or to tax P20.00

* * *

"Section 3. Fixed Annual Fees.

"Article 1. For purpose of the collection of fixed annual fees for the exercise, conduct, establishment, occupation or profession, or industry as hereinabovestated and which are not subject to fees based on gross sales or output realized by the exercise or conduct of said business, trade, occupation or profession, or industry, the following schedule shall be observed and followed:

* * *

FIXED ANNUAL FEES

AGENCIAS

"P-17 Fiadores (Casas y Cornpanias). P 300.00"

[3] "An Act Amending the Laws Governing Local Governments by Increasing their Autonomy and Reorganizing Provincial Governments" (otherwise known as the Local Autonomy Act).

[4] Niniay Mining Company vs. Municipality of Roxas, Province of Palawan, L-20125, July 20, 1965; C. N. Hodges vs. Municipal Board of the City of Iloilo, et al., L-18276, Jan. 12, 1967; Ormoc Sugar Company vs. Municipal Board of Ormoc City, et al., L-24322, July 21, 1967.

[5] Agcaoili vs. Vda. de Agcaoili, 90 Phil. 100.

[6] George C. Couch, Cyclopedia of Insurance Law, p. 45.

[7] *ibid.*, pp. 40-41.

[8] *ibid.*, p. 24.

[9] American Surety Company of New York vs. Folk, Insurance Commissioner, 135 SW 778.

[10] Record on Appeal, pp. 98-99.

[11] Record on Appeal, pp. 101-104.

[12] Cf. section 2238 of the Revised Administrative Code which provides: "General power of council to enact ordinances and make regulations. - The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the business therein specified." and for the protection of property therein." This provision of law, to the extent and scope of its terms, delegates police power to municipal corporations.

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