

THE IMPERIAL INSURANCE, INC., PLAINTIFF-APPELLEE, VS. EMILIA T. DAVID, DEFENDANT-APPELLANT.

G.R. No. L-32425. November 21, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Petition for review on certiorari of the decision rendered by the then Court of First Instance of Manila in Civil Case No. 67713, sustaining the money claims of plaintiff-appellee, The Imperial Insurance, Inc. against defendant-appellant Emilia T. David, based on three (3) different causes of action in the complaint.

The first two causes of action involve the indemnity agreements which defendant-appellant and her deceased husband, Felicisimo V. Reyes, jointly and severally, executed in favor of herein appellee, for and in consideration of two (2) surety bonds underwritten by it to lift the writs of attachment in Civil Case No. Q-5213 of the Rizal Court of First Instance for the amount of P60,000.00, and in Civil Case No. Q-5214, also with the same court for the amount of P40,000.00.

The third cause of action involves accrued premiums and documentary stamps for four (4) years with legal interest thereon from the filing of the complaint also underwritten by appellee.

Records show that Felicisimo V. Reyes and his wife, herein appellant, executed two (2) indemnity agreements in favor of appellee jointly and severally to assure indemnification of the latter for whatever liability it may incur in connection with its posting the security bonds to lift the attachments in Civil Case No. Q-5213 for the amount of P60,000.00, and in Civil Case No. Q-5214 for the amount of P40,000.00, for the benefit of Felicisimo V. Reyes.

Later, Felicisimo V. Reyes and his wife, jointly and severally, executed another indemnity agreement in favor of appellee to assure indemnification of the latter under a homestead bond for the sum of P7,500.00 it had executed jointly and severally with them in favor of the Development Bank of the Philippines. On the same date, Felicisimo V. Reyes and his wife paid to appellee the sum of P153.33 covering the premium and other expenses for the homestead bond on the first year.

Felicisimo V. Reyes died and Special Proceedings No. 1298 of the then Court of First Instance of Bulacan, entitled "In the Matter of the Intestate Estate of Felicisimo V. Reyes," was commenced. His wife, herein appellant, qualified and took her oath of office as the administratrix of said intestate estate. Corresponding notices to creditors were issued and published for three (3) consecutive weeks in the "Manila Chronicle" and were duly posted in the required places.

Meanwhile, judgment was rendered in the aforesaid two cases (Civil Cases Nos. Q-5213 and Q-5214) against the spouses Felicisimo V. Reyes and appellant Emilia T. David which has become final and executory. Writs of execution of the decision on the said cases were returned unsatisfied. As a consequence, judgment was rendered against the surety bonds for the sum of P60,000.00 in Civil Case No. Q-5213 and for the sum of P40,000.00 in Civil Case No. Q-5214.

Appellee made demands on Emilia T. David to pay the amounts of P60,000.00 and P40,000.00 under the surety bonds and arrears in premiums thereon. When appellant David failed to make payments, appellee filed Civil Case No. 67713 in the then Court of First Instance of Manila, Branch I, for collection of sums of money under three (3) different causes of action.

A motion to dismiss was filed by herein appellant on the following grounds, to wit: (1) the court has no jurisdiction over the nature of the action or suit; (2) the complaint states no cause of action; and (3) the plaintiff's causes of action, if there be any, have been barred for its failure to file its claims against the estate of the deceased Felicisimo V. Reyes in due time.

The lower court denied the motion for lack of merit. Thereafter, appellant, as defendant in said Civil Case No. 67713, filed her answer.

After trial, the court rendered judgment ordering defendant Emilia T. David (herein appellant)

1. to pay the plaintiff under the first cause of action, the amount of P60,000.00 with interest at legal rate from the filing of the complaint until full payment shall be effected; and a further sum of P1,522.50 annually from June 20, 1961 until termination of this case, said amount representing premiums and documentary stamps in the surety bond, Exh. "B", with interest at legal rate from the filing of the complaint until full payment is made;
2. to pay the plaintiff under the second cause of action, the amount of P40,000.00 with interest at the legal rate from the filing of the complaint until full payment shall be made; and a further sum of P1,015.00 annually from June 20, 1961 until termination of this case, said amount representing premiums and documentary stamps on the surety bond Exh. "B-1", with interest at the legal rate from the filing of the complaint until full payment is made;
3. to pay the plaintiff under the third cause of action the amount of P153.33 annually for a period of 4 years from June 29, 1962 representing premiums and documentary stamps on the Homestead Bond Exh. "C-1" with interest at the legal rate from the filing of the complaint until full payment is made;
4. to pay the plaintiff in concept of attorney's fees the sum of P20,000.00, representing 20% of the principal claim of plaintiff; plus cost. (pp. 39-40, Rollo)

The principal issue raised by appellant Emilia T. David in this appeal is whether or not the lower court has jurisdiction over plaintiff's causes of action. She contends that appellee's claim should have been presented according to Rule 86 of the Revised Rules of Court and its failure to do so operates to bar its claim forever; that the complaint failed to state a cause of action; that the writ of attachment was improvidently issued; and, that the lower court should have discharged the writs. Further, she argues that the judgment on attorney's fees has neither legal nor factual basis.

We find no merit in this appeal. Under the law and well settled jurisprudence, when the obligation is a solidary one, the creditor may bring his action in toto against any of the debtors obligated in solidum. Thus, if husband and wife bound themselves jointly and severally, in case of his death her liability is independent of and separate from her husband's; she may be sued for the whole debt and it would be error to hold that the claim against her as well as the claim against her husband should be made in the decedent's estate. (*Agcaoili vs. Vda. de Agcaoili*, 90 Phil. 97)

In the case at bar, appellant signed a joint and several obligation with her husband in favor of herein appellee; as a consequence, the latter may demand from either of them the whole obligation. As distinguished from a joint obligation where each of the debtor is liable only for a proportionate part of the debt and the creditor is entitled only to a proportionate part of the credit, in a solidary obligation the creditor may enforce the entire obligation

against one of the debtors.

"Where the obligation assumed by several persons is joint and several, each of the debtors is answerable for the whole obligation with the right to seek contribution from his co-debtors. (Philippine International Surety Co. Inc. vs. Gonzales, 3 SCRA 391)

And, in Manila Surety and Fidelity Co., Inc vs. Villarama, et al., 107 Phil. 891, this Court ruled that the Rules of Court provide the procedure should the creditor desire to go against the deceased debtor, "but there is nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or some or all of them simultaneously. Hence, there is nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed."

ACCORDINGLY, the decision of the court a quo is hereby AFFIRMED in toto with costs against appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

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