

CENTRAL SURETY & INSURANCE COMPANY, PETITIONER, VS. C.N. HODGES AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-28633. March 30, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari from a decision of the Court of Appeals, the dispositive part of which reads as follows:

"WHEREFORE, in view of the foregoing considerations, the decision appealed from is modified and judgment is hereby rendered against Central Surety & Insurance Company:

"(a) To pay plaintiff C. N. Hodges the sum of P17,826.08 with interest thereon at the rate of 12% per annum from October 24, 1955 until fully paid;

"(b) To pay plaintiff C. N. Hodges the sum of P1,551.60 as attorney's fees; and

"(c) To pay the costs."

The main facts are not disputed. Prior to January 15, 1954, lots Nos. 1226 and 1182 of the Cadastral Survey of Talisay, Negros Occidental, had been sold by C. N. Hodges to Vicente M. Layson, for the sum of P43,000.00, payable on installments. As of January 15, 1954, the outstanding balance of Layson's debt, after deducting the installments paid by him prior thereto, amounted to P15,516.00. In order that he could use said lots as security for a loan he intended to apply from a bank, Layson persuaded Hodges to execute in his (Layson's) favor a deed of absolute sale over the properties, with the understanding that he would put up a surety bond to guarantee the payment of said balance. Accordingly, on the date above-men-tioned, Layson executed, in favor of Hodges, a promissory note for P15,516.00, with interest thereon at the rate of 1% per month, and the sum of P1,551.60, for attorney's fees and costs, in case of default in the payment of the principal or interest of said note. To guarantee the same, on January 23, 1954, the Central Surety and Insurance Company - hereinafter referred to as petitioner - through the manager of its branch office in Iloilo, Mrs. Rosita Mesa, executed in favor of Hodges the surety bond Annex B, which was good for twelve (12) months from the date thereof.

When Layson defaulted in the discharge of his aforesaid obligation, Hodges demanded payment from the petitioner, which, despite repeated extensions of time granted thereto, at its request, failed to honor its commitments under the surety bond. On October 24, 1955, Hodges commenced, therefore, the present action, in the Court of First Instance of Iloilo, against Layson and petitioner herein, to recover from them, jointly and severally, the sums of P17,826.08, representing the principal and interest due up to said date, and P1,551.60, as attorney's fees. In his answer to the complaint, Layson admitted the formal allegations and denied the other allegations thereof.

Having failed to file its answer within the reglementary period, the petitioner was, on January 18, 1956, declared in default. When the case was called for trial, insofar as Layson was concerned, the latter did not appear, and Hodges was allowed to introduce his evidence. Then the trial court rendered a partial decision against Layson,

petitioner having, in the meantime, filed a motion to set aside the order of default, which motion was still pending resolution. Thereafter, said motion was denied, and upon presentation of the evidence of Hodges against herein petitioner, judgment was rendered against the latter as prayed for in the complaint. Thereupon, petitioner filed a motion for reconsideration and a motion for relief under Rule 38. Acting thereon, His Honor, the trial Judge, later set aside its decision against the petitioner and admitted its answer, attached to the motion to set aside the order of default.

In its answer, petitioner disclaimed liability under the surety bond in question, upon the ground: (a) that the same is null and void, it having been issued by Mrs. Rosita Mesa after her authority therefor had been withdrawn on March 15, 1952; (b) that even under her original authority, Mrs. Mesa could not issue surety bonds in excess of P8,000.00 without the approval of petitioner's main office, which was not given to the surety bond in favor of Hodges; and (c) that the present action is barred by the provision in the surety bond to the effect that all claims and actions thereon should be filed within three (3) months from the date of its expiration on January 23, 1955. Petitioner, moreover, set up a counterclaim for damages.

In due course, thereafter, the trial court rendered a decision:

"a) Condenando a la demandada Central Surety & Insurance Co. que pague al demandante la desde la P8,000.00 con intereses legales a contar desde la fecha de la demanda -- 24 de Octubre de 1955;

"b) Condenando a la misma demandada que pague al demandante la suma de P600.00 en concepto de honorarios de abogado; y

"c) Condenando, ademas, a la misma demandada que pague las costas del juicio."

Hodges appealed to the Court of Appeals (CA-G.R. No. L-24684-R) from this decision, insofar as it limited petitioner's liability to P8,000.00. Petitioner, also, appealed to said Court upon the ground that the trial court had erred: (a) in holding petitioner liable under a contract entered into by its agent in excess of her authority; (b) in sentencing petitioner to pay Hodges the sum of P8,000.00 with interest thereon, in addition to attorney's fees and the costs; and (c) in "not awarding" petitioner's counterclaim.

After appropriate proceedings, the Court of Appeals rendered the decision above referred to, from which petitioner has appealed to this Court, alleging that the Court of Appeals has erred: (1) in finding that petitioner "was liable on a bond issued by an agent whose authority x x x had already been withdrawn and revoked"; (2) "in applying the rule on implied admission by reason of failure to deny under oath the authenticity of a pleaded document"; and (3) "in not considering the legal effect of the waiver contained in the disputed bond and in not disposing of this case under the light of such waiver."

The first assignment of error is predicated upon the fact that prior to January 23, 1954, when the surety bond involved in this case was executed, or on March 15, 1952, petitioner herein had withdrawn the authority of its branch manager in the City of Iloilo, Mrs. Rosita Mesa, to issue, inter alia, surety bonds and that, accordingly, the surety bond, copy of which was attached to the complaint as Annex B, is null and void. On this point, the Court of Appeals had the following to say:

"x x x we are of the opinion that said surety bond is valid. In the first place, there appears to be no showing that the revocation of authority was made known to the public in general by publication, nor was Hodges notified of such revocation despite the fact that he was a regular client of the firm. And even if Hodges would have inquired from Mrs. Mesa as to her authority to issue said bond, we doubt if she would disclose the contents of the letter of March 15, 1952 in view of Central Surety's claim that she was committing irregularities in her remittances to the main office. Secondly, some surety bonds issued by Mrs. Mesa in favor of Hodges after her authority had allegedly been curtailed, were honored by the Central Surety despite the fact that these were not

reported to the main office at the time of their issuance. These accounts were paid on January 31, 1957, to wit: Felicito and Libertad Parra issued on August 16, 1952; Estrella Auayan issued on November 16, 1953; Dominador Jordan issued on August 26, 1953; and Ladislao Lachica issued on February 28, 1953. (Exhs. F, G, H, I and J). By these acts Central Surety ratified Mrs. Mesa's unauthorized acts and as such it is now estopped from setting forth Mrs. Mesa's lack of authority to issue surety bonds after March 15, 1952. It has been held that although the agent may have acted beyond the scope of his authority, or may have acted without authority at all, the principal may yet subsequently see fit to recognize and adopt the act as his own. Ratification being a matter of assent to and approval of the act as done on account of the person ratifying, any words or acts which show such assent and approval are ordinarily sufficient. (*Sta. Catalina vs. Espitero*, CA-G. R. No. 27075-R, April 28, 1964, citing *IV Padilla*, CIVIL CODE, 1959 ed., pp. 478-479; *Roxas vs. Villanueva*, CA-G. R. No. 18928-R, June 20, 1958). Moreover, the revocation of agency does not prejudice third persons who acted in good faith without knowledge of the revocation. (*Joson vs. Garcia*, CA-G. R. No. 29336-R, Nov. 19, 1962)."

Indeed, Article 1922 of our Civil Code provides:

"If the agent had general powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons."

It is not disputed that petitioner has not caused to be published any notice of the revocation of Mrs. Mesa's authority to issue surety bonds on its behalf, notwithstanding the fact that the powers of Mrs. Mesa, as its branch manager in Iloilo, were of a general nature, for she had exclusive authority, in the City of Iloilo, to represent petitioner herein, not with a particular person, but with the public in general, "in all the negotiations, transactions, and business wherein the Company may lawfully transact or engage in", subject only to the restrictions specified in their agreement, copy of which was attached to petitioner's answer as Annex 3.1 Contrary to petitioner's claim, Article 1922 applies whenever an agent has general powers, not merely when the principal has published the same, apart from the fact that the opening of petitioner's branch office amounted to a publication of the grant of powers to the manager of said office. Then, again, by honoring several surety bonds issued in its behalf by Mrs. Mesa subsequently to March 15, 1952, petitioner induced the public to believe that she had authority to issue such bonds. As a consequence, petitioner is now estopped from pleading, particularly against a regular customer thereof, like Hodges, the absence of said authority.

Let us now take up the third assignment of error and defer, until after the same has been disposed of, the consideration of the second assignment of error.

Under the third assignment of error, petitioner maintains that, having been instituted on October 24, 1955 - or nine (9) months after the expiration of petitioner's surety bond on January 23, 1955 - the present action is barred by the provision in said bond to the effect that it:

"x x x will not be liable for any claim not discovered and presented to the Company within three (3) months from the expiration of this bond and that the obligee hereby waives his right to file any court action against the surety after the termination of the period of three months above-mentioned."

Interpreting an identical provision,² this Court has, however, held "that the three-month period" prescribed therein "established only a condition precedent, – not a limitation of action," and that, when a claim has been presented within said period, the action to enforce the claim may be "filed within the statutory time of prescription." This view was clarified in a subsequent case,³ in the sense that the above-quoted provision was "x x x merely interpreted to mean that presentation of the claim within three months was a condition precedent to the filing of a court action. Since the obligee in said case presented his claim seasonably although it did not file the action within the same period, this Court ruled that the stipulation in the bond concerning the limitation being ambiguous, the

ambiguity should be resolved against the surety, which drafted the agreement, and that the action could be filed within the statutory period of prescription."¹

In the case at bar, it is not contended that Hodges had not presented his claim within three (3) months from January 23, 1955. In fact, he had repeatedly demanded from petitioner herein compliance with its obligations under the surety bond in question, and, in reply to such demands, petitioner asked extensions of time, on January 29, February 16, March 15, May 3, June 16, July 1 and 15, and October 15, 1955.² After thus securing extensions of time, even beyond three (3) months from January 23, 1955, petitioner cannot plead the lapse of said period to bar the present action.

The second assignment of error assails the finding of the Court of Appeals to the effect that the petitioner is liable for the full amount of the surety bond - despite the fact that it exceeded the sum of P8,000.00 and hence, required, for its validity and binding effect as against petitioner herein, the express approval and confirmation of its Manila office, which were not secured - in view of petitioner's failure to deny under oath the genuineness and due execution of said bond, copy of which was attached to the complaint. It is true that, pursuant to section 8 of Rule 8 of the Rules of Court:

"When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused."

We have, however, held that:

"x x x where a case has been tried in complete disregard of the rule and the plaintiff having pleaded a document by copy, presents oral evidence to prove the due execution of the document as well as the agent's authority and no objections are made to the defendant's evidence in refutation, the rule will be considered waived."¹

The reason for such view was explained by this Court as follows:

"Before entering upon a discussion of the questions raised by the assignments of error, we may draw attention to a matter which has not been mentioned either by counsel or by the court below, but which, to prevent misunderstanding, should be briefly explained: It is averred in the complaint that it is accompanied by a copy of the contract between the parties (Exhibit A) which copy, by the terms of the complaint, is made a part thereof. The copy is not set forth in the bill of exceptions and aside from said averment, there is no indication that the copy actually accompanied the complaint, but an examination of the record of the case in the Court of First Instance shows that a translation of the contract was attached to the complaint and served upon the defendant. As this translation may be considered a copy and as the defendant failed to deny its authenticity under oath, it will perhaps be said that under section 103 of the Code of Civil Procedure the omission to so deny it constitutes an admission of the genuineness and due execution of the document as well as of the agent's authority to bind the defendant. (Merchant vs. International Banking Corporation, 6 Phil., 314.)

"In ordinary circumstances that would be true. But this case appears to have been tried upon the theory that the rule did not apply; at least, it was wholly overlooked or disregarded by both parties. The plaintiffs at the beginning of the trial presented a number of witnesses to prove the due execution of the document as well as the agent's authority; no objections were made to the defendant's evidence in refutation and no exceptions taken; and the matter is not mentioned in the decision of the trial court.

"The object of the rule is 'to relieve a party of the trouble and expense of proving in the first instance an alleged fact, the existence or nonexistence of which is necessarily within the knowledge of the adverse party, and of

the necessity (to his opponent's case) of establishing which such adverse party is notified by his opponent's pleading.' (Nery Lim-Chingco vs. Terariray, 5 Phil., at p. 124.)

"The plaintiff may, of course, waive the rule and that is what he must be considered to have done in the present case by introducing evidence as to the execution of the document and failing to object to the defendant's evidence in refutation; all this evidence is now competent and the case must be decided thereupon. x x x. Nothing of what has here been said is in conflict with former decisions of this court; it will be found upon examination that in all cases where the applicability of the rule has been sustained the party invoking it has relied on it in the court below and conducted his case accordingly."¹

In the case at bar, the parties acted in complete disregard of or wholly overlooked the rule above-quoted. Hodges had neither objected to the evidence introduced by petitioner herein in order to prove that Mrs. Mesa had no authority to issue a surety bond, much less one in excess of P8,000.00, and took no exception to the admission of said evidence. Hence, Hodges must be deemed to have waived the benefits of said rule and petitioner herein cannot be held liable in excess of the sum of P8,000.00.

WHEREFORE, with the modification that petitioner's liability to Hodges is limited to said sum of P8,000.00, the appealed decision of the Court of Appeals should be, as it is hereby affirmed in all other respects, without costs.

IT IS SO ORDERED.

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

1 Tolentino, Vol. 5, Civil Code of the Philippines, 1959 ed., p. 372, citing 3 Valverde 628.

2 Pao Chuan Wei v. Nomorosa, 103 Phil. 57, 61-62.

3 Zabaljaurregui v. Luzon Surety Co., L-16251, Aug. 31, 1963.

1 Underscoring ours.

2 Exhibits C and C-1 to C-7.

1 Yu Chuck v. "Kong Li Po", 46 Phil. 608.

1 Supra, at pp. 612-613.

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