PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. MACAPANGA PRODUCERS INC., DEFENDANT. PLARIDEL SURETY AND INSURANCE CO., DEFENDANT AND APPELLEE.

G.R. No. L-8349. May 23, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal against an order of the Court of First Instance of Manila, Hon. Bienvenido A. Tan, presiding, dismissing the complaint as against Plaridel Surety and Insurance Company.

Complaint is by Philippine National Bank against Macapanga Producers Inc. and Plaridel Surety and Insurance Co. Principal allegations are: On December 26, 1952, Luzon Sugar Company leased a sugar mill located at Calumpit, Bulacan to Macapanga Producers beginning with the crop year 1952-53 at a minimum annual royalty of P50,000, which shall be a lien on the sugar produced by the lessee and shall be paid before sale or removal of sugar from warehouse (copy of lease contract attached as Annex A to the Complaint); on December 26, 1952, Macapanga Producers, as principal, and Plaridel Surety & Insurance, as surety, executed and delivered to plaintiff a performance bond in the amount of P50,000 for the) full and faithful compliance by Macapanga Producers of all terms and conditions of the lease (copy of bond attached as Annex B to Complaint); on December 21, 1953, Luzon Sugar assigned to plaintiff the payment due from Macapanga Producers in the sum of P50,000, representing royalty for the lease of the sugar mill for the crop year' 1952-53 (deed of assignment attached as Annex C to Complaint); plaintiff notified Macapahga Producers and Plaridel Surety & Insurance of said assignment; plaintiff had demanded from Macapanga Producers payment of said royalty of P50,000, but the latter has refused and refuses to make payment; and plaintiff also made demand on Plaridel Surety & Insurance for said payment, but the latter refused and refuses to make payment.

Plaridel Surety & Insurance moved to dismiss the complaint for failure to state cause of action, alleging that it is a guarantor and as such is responsible only if Macapanga Producers has no property or assets to pay its obligation as lessee. Plaintiff opposed the motion calling attention to the provision of the performance bond in which Macapanga Producers and Plaridel Surety & Insurance, the former as principal and the latter as surety, agreed to be held and firmly bound unto Luzon Sugar iir the penal sum of P50,000, "for the payment of which, well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally." Plaintiff contended that, as Plaridel Surety & Insurance bound itself solidarity with Macapanga Producers, it became a surety in accordance with Article 2047, par. 2 of the Civil Code.

The trial court dismissed the complaint against Plaridel Surety & Insurance and subsequently denied a motion to reconsider the order of dismissal.

The action joining Plaridel Surety & Insurance as party defendant is justified by the following provisions and cases:

> "Art. 2047.* * *

> If a person binds himself solidarity with the principal debtor, the provisions of section 4, Charter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship," (Civil Code.)
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> "The sureties on the superedeas bond given in this particular case, were jointly and severally liable with principal debtor and that an execution might issue against their property concurrently with the execution against the property, of the principal." (Molina vs. De la Riva, et al., 7 Phil., 345.)
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> "Article 1822, invoked by the appellant, provides that 'if the surety bound himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first of this book shall be observed,' that is of book fourth of the Civil Code. Section fourth of the chapter title, and book mentioned provides that 'a creditor may sue any of the joint debtor or all of them simultaneously.' vs. Pua Te Ching, 16 Phil., 406.) "As the principal debtor's obligation is valid and has not been satisfied by his estate, and as the defendant sureties bound themselves solidarity, article 1144 of the Civil Code is applicable, which provides, as follows:
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> The creditor may sue any of the solidary debtors or all of them simultaneously. An action instituted against one shall not be a bar to those which may be subsequently brought against the others, as long as the debt has not been entirely satisfied. (Molina vs. De la Riva, 7 Phil., 345; Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil., 406; Inchausti & Co. vs. Yulo, 34 Phil., 978.)" (Ferrer vs. Lopez and Santos, 56 Phil., 592.)

It is also argued on behalf of Flaridel Surety and Insurance that as it was not a party to the assignment, and same was made without its consent, it is, therefore, discharged from its obligation. An assignment without knowledge or consent of the surety is not a material alteration of the contract, sufficient to discharge the surety. (Stearns Law of Suretyship, Elder, fifth edition, p. 113.) There is, besides, no allegation in the complaint, or provision in the deed of assignment, or any change therein that makes the obligation of Plaridel Surety & Insurance more onerous than that stated in the performance bond. Such assignment did not, therefore, release the Plaridel Surety & Insurance from its obligation under the surety bond. (Bank of P. I. vs. Albaladejo y Cia, 53 Phil., 141; Bank of P. I. vs. Goocn, et al., 45 Phil., 514; Visayan Distributors, Inc. vs. Flores, et al., 92 PhiL, 145, 48 Off. Gaz., 4784; Del Rosario vs. Nava, 95 Phil., 637, 50 Off. Gaz., 4189.).

It is lastly contended that as plaintiff or the lessor had a lien in the sugar, produced and failed to proceed against it or enforce such lien, Piaridel Surety & Insurance was released thereby. There is no allegation to this effect in the complaint, that lessor or plaintiff ever had possession or control of the sugar, or ever waived or released the lien thereon. Appellee cannot raise the issue in a motion to dismiss.

The order of dismissal is hereby reversed, and the appellee ordered to answer the complaint, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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