

**NATIONAL MARKETING CORPORATION, PLAINTIFF-APPELLEE, VS.
GABINO MARQUEZ, ET AL., DEFENDANTS. PLARIDEL SURETY & INSURANCE COMPANY, DEFENDANT-APPELLANT.**

G.R. No. L-25553. January 31, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This Court is prayed by appellant, Plaridel Surety & Insurance Company, to reverse the decision of the Court of First Instance of Manila condemning it to pay to the appellee, National Marketing Corporation, the principal sum of P10,000.00, plus P9,990.91 in accrued interest up to 1 November 1964, and interest thereafter at 7% per annum on the principal and 6% on the accrued interest, together with 10% on the total amount due by way of attorney's fees and costs.

The appeal being made directly to this Supreme Court, the facts found by the court below must be held binding upon this appellant. Such facts are stated in the appealed decision to be as follows (Record on Appeal, pages 18-21):

"From the evidence thus presented, it appears that under the provisions of Executive Order No. 350, Series of 1950, all the properties, rights, obligations, and contracts of the Philippine Relief and Trade Rehabilitation Administration (PRATRA) had been transferred to the Price Stabilization Corporation (PRISCO). Also, by virtue of Republic Act No. 1345, as amended, all rights and contracts of the PRISCO involving real estate, fixed assets and stock in trade had been assumed by herein plaintiff, the NAMARCO.

It also appears that on June 24, 1950, defendant Marquez secured from the PRATRA one (1) tractor and one (1) rice thresher, with a total value of P20,000.00, for which the said defendant paid thereon the sum of P8,000.00 as down payment, thereby leaving a balance of P12,000.00, as evidenced by an invoice marked as Exhibit A.

On the same date, defendant Marquez executed a promissory note in the amount of P12,000.00 payable in installments commencing from June 24, 1951 to June 25, 1952, with interest thereon at the rate of 7% per annum from June 24, 1950 until finally paid, which promissory note is marked in this case as Exhibit B.

It is further stipulated in the aforesaid promissory note that in the event of failure of the said defendant to pay the principal obligation or interest thereon when due and payable, an additional sum equivalent to 10% of the total amount due shall be paid as attorney's fees.

To guarantee full compliance with the afore-mentioned obligation, defendant Marquez, as Principal, and defendant Plaridel Surety & Insurance Company, as surety, executed Guaranty Bond P. S. & I. No. 4220 in favor of the PRATRA, wherein they bound themselves, jointly and severally, to pay the said amount of P12,000.00 (Exhibit C).

In this guaranty bond, the surety expressly waives its right to demand payment and notice of non-payment and agrees that the liabilities of this guaranty shall be direct and immediate and not contingent upon the exhaustion by

the PRATRA of whatever remedies it may have against the principal, and that the same shall be valid and continuous until the obligation so guaranteed is paid in full (Exhibit C-1).

After making partial payments in the sums of P2,870.19 and P326.77 on July 7, 1951 and February 23, 1952, respectively, defendant Marques defaulted in the payment of the other installments, so that the total amount due NAMARCO as of October 31, 1964 is P19, 990.91, re-presenting principal and accrued interest, as shown in a statement of account marked as Exhibit D.

On March 22, 1956, February 16, 1963, June 10, 1964, September 18, 1964 and October 13, 1964, plaintiff demanded from defendants Marquez and Plaridel Surety & Insurance Company payment of their outstanding obligation, as shown in Exhibits E, E-2, E-3, E-4, E-6, E-8, E-10, and E-12. The claim, therefore, of defendant Plaridel Surety & Insurance Company that they never received a demand for payment from plaintiff must necessarily fail, considering that it is clearly shown in registry return receipts marked as Exhibits E-5, E-9, E-11, and E-13 that the same had been received by the addressee.

As the said amount was not paid despite the afore-mentioned demands therefor upon the said defendants, the present action was instituted on December 16, 1964, to enforce collection."

The appellant surety company poses three questions for our resolution:

- (1) Whether the Court of First Instance had original jurisdiction to take cognizance of the suit;
- (2) Whether the plaintiff-appellee's action is barred by prescription;
- (3) Whether the surety's liability can exceed the sum of P12,000.00.

On the first question tendered, appellant surety company argues that since the balance due on the principal of the promissory note guaranteed by it is only P10,000.00, in view of the debtor's payment of P2,000.00 on account of the principal of the loan, jurisdiction lay with the Municipal Court, and not on the Court of First Instance, pursuant to section 44 (c) of the Judiciary Act, as amended by Republic Act No. 3828.

The contention is without merit, for it ignores the fact that upon the terms of the promissory note, Exhibit "B", copy of which was attached to the guaranty bond, as its annex "A", default upon the principal or interest entitled the credi-tor to an additional ten per centum of the total amount due for attorneys' fees and costs of collection. Even disregarding interest overdue and payable, when the complaint was filed the creditor-appellee was entitled to collect no less than P10,000.00 on the loan plus P1,000.00 attorneys' fees, or a total of P11,000.00. The initial limit of the original jurisdiction of the Court of First Instance under Republic Act No. 3828 being -

"all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to more than ten thousand pesos".

the court below did not incur in this error.

The contention that plaintiff-appellee's cause of action against the surety was barred by the statute of limitations in 1964, because the face value of the promissory note fell due on 25 June 1962, is likewise untenable. The course of extinctive prescription was interrupted by the written demands for payment made upon the principal debtor on 22 March 1956, 16 February 1963, and June, September and October of 1964, copies of which were furnished the surety. Article 1115 of the Civil Code of the Philippines prescribes that "the prescription of actions is interrupted – when there is a written extrajudicial demand by the creditor".

The surety avers that a demand upon the debtor is no demand upon the surety, and that the copies of the letters of demand upon the former do not constitute a demand upon the guarantor. This thesis is worthless because (a) the

liability of the appellant was expressly made joint and several by the terms of the guaranty bond, and (b) for the reason that, in the latter document, "the surety also waives its right to demand payment and notice of non-payment" (Bend, paragraph 3). The words "demand payment" vis-a-vis the creditor can only refer to "demand for payment".

Laches not having been invoked as a defense in the court below, the same can not be gone into at this stage of the proceedings. At any rate, the established jurisprudence is that mere delay of the creditor in proceeding against the principal debtor does not release the guarantor (*Lavides vs. Eleazar*, 106 Phil. 576, 579, and cases therein cited), and much less will it relieve a surety, who is solidarily liable with the main debtor.

On the third and last issue, it is enough to remark that while the guarantee was for the original amount of the debt of Gabino Marquez, the amount of the judgment by the trial court in no way violates the rights of the surety. The judgment on the principal was only for P10,000.00, while the remaining P9,990.91 represent the moratory interest due on account of the failure to pay the principal obligation from and after the same had fallen due, and default had taken place. Appellant surety was fully aware that the obligation earned interest, since the note was annexed to its contract, Exhibit "C". The contract of guaranty executed by the appellant Company nowhere excludes this interest, and Article 2055, para-graph 2, of the Civil Code of the Philippines is clearly applicable.

"If it (the guaranty) be simple or indefinite, it shall comprise not only the principal obligation but also all its accessories, including judicial costs, provided with respect to the latter, that the guarantor shall only be liable for those costs incurred after he has been judicially required to pay. " (Emphasis supplied)

Explaining the provisions of Article 1827 of the Civil Code of 1889, couched in terms similar to the one quoted, Manresa, in his Commentaries (Volume 12, Fifth Edition, page 241), says:

"Para dicho caso dispone elCodigo que la extension de esa clase especial de fianzas comprendera, no solo la obligacion principal, sino tambien todos sus accesorios, incluso los gastos del juicio, con la limitacion establecida en el mismo. Ciertoes que con ello se amplian los terminos de la fianza a mas de los limites de la obligacion principal, objeto y motivo de aquella, pero esto depende de los actos del fiador, pues pudiendo este precisar y determinar al constituir la fianza los limites de la misma, restringiendo su responsabilidad unica y exclusiva-mente a los terminos estrictos de la obligacion principal, si no lo hizo asi dejando de utilizar esa restriccion, potestativa en el, debe presumirse que quiso quedar obligado en la forma amplia que en el articulo se establece.

La responsabilidad del fiador, conforme a este precepto, se extiende incluso a los intereses pore razon de mora del deudor. Asi lo ha reconocido la jurisprudencia, declarando que subrogado el fiador en el lugar del deudor para hacer efectiva la obligacion principal contraida, cuando este no la cumple, responde no solo de aquella, sino tambien de sus consecuencias legales, una de ellas, en concepto de indemnizacion de perjuicios, al abono de intereses por razon de mora del citado deudor en el pago de cantidad liquida, segun determinan los articulos 1.101 y 1.108 del Codigo civil, sin que pueda sostenerse que no naciendo la obligacion del fiador hasta que se hace la exclusion de bienes del deudor, no puede aquel incurrir en mora(sentencia de 22 de noviembre de 1916)."

And we have previously ruled that compensated sureties are not entitled to have their contracts interrupted strictissimi juris in their favor (*Leyson vs. Rizal Surety* (1966) 16 SCRA 555; *Pacific Tobacco Corp. vs. Lorenzana*, 102 Phil. 234, 241-242).

WHEREFORE, finding no error in the judgment appealed from, the same is affirmed, with costs against appellant Plaridel Surety and Insurance Company.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo,

JJ., concur.

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