

**PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, PETITIONER, VS.
THE HONORABLE COURT OF APPEALS & ALPHA INSURANCE
AND SURETY COMPANY, INC., RESPONDENTS.**

G.R. No. L-34959. March 18, 1988

Ponente: CORTES, J.

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CORTES, J.:

On January 7, 1966, Philippine Commercial and Industrial Bank (PCIB) filed a complaint against Alpha Insurance and Surety Co., Inc. (ALPHA), Community Builders, Inc. and Filadelfo Rojas in the Court of First Instance (CFI) of Manila. The complaint alleged that Community Builders and Rojas borrowed P150,000 from PCIB, that ALPHA issued Surety Bond No. G-1689 in the amount of P50,000 to guarantee payment of the loan, and that upon maturity the defendants failed to pay.

In its answer with cross-claim against Community Builders and Rojas, ALPHA admitted having issued Surety Bond No. G-1689 but alleged that the P150,000 debt had been paid by virtue of the assignment by Rojas to PCIB of his receivables from the Armed Forces of the Philippines. As special defense, ALPHA alleged that the promissory note evidencing the loan is dated later than the surety bond which was issued for an amount less than the debt. (The promissory note is dated September 26, 1962 while the surety bond is dated August 22, 1960.)

During the pre-trial, Rojas and Community Builders failed to appear; hence, they were declared as in default. ALPHA reiterated its defenses stated above, namely, (1) that the bond was issued for less than the amount of the debt, (2) that it was issued earlier, and (3) that the debt had been paid.

These were reflected in the following pre-trial order dictated by the trial judge in open court:

At the pre-trial conference, the parties agreed that the defendants Filadelfo Rojas and Community Builders Co., Inc. secured a loan from the plaintiff in the amount of P150,000 for which they executed a promissory note dated September 26, 1962. In order to secure the payment of this obligation which was to mature January 24, 1963, the defendants assigned their receivables based on three contracts which they had with the Armed Forces of the Philippines, plus the surety bond issued by the defendant Alpha Insurance & Surety Co., Inc. in the amount of P50,000. Notwithstanding repeated demands and the expiration of the promissory note, the defendants failed to pay their obligation.

The defendants Filadelfo Rojas and Community Builders have been declared as in default for failure to appear at the pre-trial conference.

The remaining defendant Alpha Insurance and Surety Co., Inc. now contends that it is not bound by the surety bond for the reason that it was issued for less than the amount of the plaintiff's claim and that the same was issued prior to the execution of the promissory note, and that the obligation had already been fully paid by the assignment of the receivables.

The issue, therefore, is whether the defendants have already paid the amount stated in the promissory note by virtue of the assignment aforesaid.

On the basis of this issue, let the trial hereof on the merits be, as it is hereby, set for December 19, 1966, at 8:30 a.m.

SO ORDERED.

After trial, the CFI rendered judgment in favor of PCIB and against Rojas, Community Builders and ALPHA, ordering them to pay P50,000 plus attorney's fees and costs. The Court further ordered defendants Rojas and Community Builders to pay the remaining P100,000.

Rojas and Community Builders appealed to the Court of Appeals. However, since their counsel could not be served with the notice to file brief, their appeal was dismissed.

ALPHA likewise appealed to the appellate court which reversed the decision of the CFI on the ground that it was not shown that the surety bond bears any relation to the promissory note. Hence, this petition, PCIB raising a purely procedural issue. Petitioner contends that the appellate court erred in ruling in favor of ALPHA on the basis of a question of fact which had not been raised before the CFI and which is not within the issues raised in the pleadings, nor in the pre-trial order.

The issue raised calls for a determination of whether or not the relation of the surety bond to the promissory note was ever raised as an issue in the Answer filed by ALPHA or in the pre-trial conference held between the parties.

The pertinent allegation in PCIB's complaint reads:

3. That in conjunction with the aforesaid promissory note entered into by and between the plaintiff and the defendants Filadelfo Rojas and Community Builders Co., Inc., as principals and the Alpha Insurance and Surety Co., Inc., as surety, executed jointly and severally in the City of Manila, Philippines, Alpha Bond No. G-1689 in the amount of P50,000 to guarantee the payment by the said principals of their obligation to the plaintiff in accordance with the terms and conditions recited in the said promissory note, copy of the surety bond is attached hereto as Annex "B" and made integral part hereof by reference;

while the corresponding denial in the answer of ALPHA states:

3. (Defendant) ADMITS the material allegations of paragraph 3 of the complaint in so far as the same refers to its surety bond (Annex "B") only; that it has no knowledge nor information sufficient to form a belief as to the truth of the rest of the averments therein concerning the promissory note (Annex "A"), hence, it specifically denies the rest of the allegations having reference to the promissory note;

PCIB contends that paragraph (3) of the complaint states three material facts which are separable from each other, to wit:

(a)

That defendants Filadelfo Rojas and Community Builders Co., Inc., as principals, and respondent Alpha Insurance and Surety Co., Inc., as surety, executed Surety Bond No. G-1689 (Annex "B" of the complaint);

(b)

That the said surety was executed to guarantee the payment of the promissory note (Annex "A" of the complaint); and

(c)

That the guarantee thus made secures the performance of the obligations of Filadelfo Rojas and Community Builders Co., Inc. as set forth or recited in the promissory note (Annex "A" of the complaint).

It is asserted that since the answer of ALPHA "admits the allegations of paragraph (3) of the complaint in so far as the same refers to its surety bond," then what was admitted was not only the execution of the surety bond but also that the surety bond was issued to secure the promissory note. Hence, the answer did not raise any issue as to the relation of the security bond to the promissory note.

One basic rule in interpretation of pleadings is that "pleadings (should) be liberally construed to do substantial justice." [Rule 6, Sec. 15.] Constructions which result in absurdity must also be avoided. If we construe paragraph 3 of the answer together with paragraph 2 in which ALPHA denied knowledge of the debt contracted by Rojas and Community Builders, which debt was evidenced by the promissory note, it is clear that ALPHA could not have admitted that the surety bond it issued secured the payment of the debt. It would have been inconsistent for ALPHA to claim in paragraph 2 that it was unaware of the debt, and then to admit in paragraph 3 that the surety bond it issued was executed to secure the debt. In fact, a reading of the suretyship contract readily shows that it was executed on August 22, 1960 to secure the P50,000 discounting line credit accommodation granted by PCIB to Community Builders. At the time Surety Bond G-1689 was executed, the promissory note for P150,000 dated September 26, 1962 was not yet executed. The Court thus rules that paragraph 3 of the answer of ALPHA merely admitted the execution of Surety Bond No. G-1689, but did not admit, nay, denied, that said bond secured the debt of Rojas and Community Builders. In view of the specific denial, the relation of the bond to the debt was properly raised as an issue in the Answer.

We next consider the pre-trial order.

PCIB calls the attention of this Court to that portion of the pre-trial order which reads:

The issue, therefore, is whether the defendants have already paid the amount stated in the promissory note by virtue of the assignment aforesaid.

and contends that since the trial court has so limited the issue, then ALPHA can no longer raise the defense that the bond bears no relation to the promissory note.

The pertinent provision of the Rules of Court provides:

Sec. 4. Record of pre-trial results. - After the pre-trial the court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of action, unless modified before trial to prevent manifest injustice. (Underscoring supplied.)

While the rule provides that the pre-trial order of the court "controls the subsequent course of action," it is categorical that the issues for trial must be limited to "those not disposed of by admissions or agreements of counsel." In other words, the court has no discretion to exclude from trial issues not resolved by voluntary agreement between the parties.

The pre-trial order clearly states that ALPHA claimed that "it is not bound by the surety bond for the reason that it was issued for less than the amount of the plaintiff's claim and that the same was issued prior to the execution of the promissory note." This particular issue not having been disposed of by admissions or agreements during the pre-trial, it remained a proper subject of litigation. In fact, this particular issue was raised by respondent ALPHA not only in its brief filed with the Court of Appeals, but even before the trial court, in its Memorandum and Motion for Reconsideration.

One other important aspect of this case compels the Court to affirm the decision of the Court of Appeals insofar as it absolves ALPHA from any liability to PCIB. Even as appellate courts do not normally consider those errors not properly assigned or specified, the rule is not without qualification. As the Court stated in *Insular Life Assurance Co., Ltd. Employees Association-NATU v. Insular Life Assurance Co., Ltd., et al.* [G.R. No. L-25291, March 10, 1977, 76 SCRA 50, 61-62]:

. . . (T)he Supreme Court has ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case. This Court, thus, has the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend.

The same also applies to issues not specifically raised by the parties. The Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination. Where the issues raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them.

This qualification applies to the instant case.

It is basic that liability on a bond is contractual in nature and is ordinarily restricted to the obligation expressly assumed therein. The extent of a surety's liability is determined only by the clause of the contract of suretyship. It cannot be extended by implication, beyond the terms the contract. [*Zenith Insurance Corp. v. CA et al.*, No. 57957, December 29, 1982, 119 SCRA 485.]

In the case at bar, Surety Bond No. G-1689 was executed to secure a discounting line of credit accommodation granted by PCIB to Community Builders Co., Inc. in the amount of P50,000.

PCIB contends that the loan evidenced by the promissory note signed by Filadelfo Rojas, both in his personal capacity and as President of Community Builders, was granted in line with the credit accommodation secured by the surety bond; hence, ALPHA is liable for the debt.

Note however that by the express terms of Surety Bond No. G-1689, ALPHA bound itself to pay the discounting line of Community Builders only which has a personality distinct and separate from Rojas. The promissory note, on the other hand, was signed both by Rojas and by Community Builders. Also, the amount of the credit line which ALPHA agreed to secure was only P50,000; whereas, the promissory note was for P150,000. Clearly therefore, the debt on which PCIB bases its action is not within the purview of the Surety Bond No. G-1689. Thus, even granting that Rojas and Community Builders offered Surety Bond No. G-1689 as security for the P150,000 debt, ALPHA, which merely undertook to secure a P50,000 credit line of Community Builders, cannot be held answerable for the debt.

WHEREFORE, the petition is hereby DENIED. The appealed decision is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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