

**THE COMMISSIONER OF IMMIGRATION, PLAINTIFF-APPELLANT, VS.
ASIAN SURETY & INSURANCE COMPANY, INC.,
DEFENDANT-APPELLEE.**

G.R. No. L-22552. January 30, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

Appellee Asian Surety & Insurance Co., Inc. would free itself from a liability, clear and undeniable, under a bond executed by it to guarantee that a non-immigrant Chinese student would, within a certain period, leave the country by invoking equity. It turned out that there was an extension of his temporary stay authorized by the Bureau of Immigration without appellee being notified. When the time came for his surrender, he was not immediately available, three days having elapsed before such an event took place. The lower court was impressed by the equitable aspect of the matter and dismissed a complaint for the recovery of the bond. Hence, this appeal by the Commissioner of Immigration. We reverse.

The statement of the case was set forth in the appealed decision thus: "This is an action on a bond filed by defendant [now appellee Asian Surety & Insurance Co., Inc.] in the sum of P7,000 to guarantee that Cua Giok Ke, a Chinese citizen admitted to the Philippines temporarily as a non-immigrant student, 'would actually depart from the Philippines on or before April 7, 1958, or within such period as, in his discretion, the Commissioner of Immigration or his authorized representative may properly allow.' * * *. "[1] It was next noted by the lower court that after April 7, 1958, 'the Bureau of Immigration extended several times the temporary stay of Cua Giok Ke in the Philippines without notifying the de-fendant bonding company.'"[2]

What happened next was set forth thus: "On June 13, 1961, deportation proceedings were instituted against Cua Giok Ke. A warrant for his arrest was also issued by the plaintiff who simultaneously wrote to defendant informing the latter that the 'authorized stay of Cua Giok Ke expired at the end of the 1st semester of the school year 1960-1961' and that since he did not leave the country up to the date of the letter the terms of the bond were violated. Declaring the bond confiscated, plaintiff [appellant Commissioner of Immigration] demanded the payment of P7,000 which represents the amount of the bond.'"[3]

Upon receipt by appellee Asian Surety & Insurance Co., Inc. of the above letter declaring the bond confiscated, it took steps to cause Cua Giok Ke's surrender, which took place on June 16, 1961. Thereafter, appellee wrote to the Commissioner of Immigration on June 22, 1961 with a request for the lifting of the order of confiscation. The request was denied.

The action on the bond followed.[4] As the forfeiture, according to the lower court, was made to depend on the failure of Cua Giok Ke to leave the country upon the expiration of his authorized stay which in its opinion could not be considered a violation of the terms of the bond inasmuch as such failure to depart on said date was the result of the extension of his stay authorized by appellant, appellee Surety Company not being informed thereof, there should be no liability on its part. Such was the conclusion of the lower court.

In the language of the decision: "The Court, therefore, holds that it is neither fair nor just or equitable to penalize the defendant for an omission, which was due to plaintiff's own fault. How could defendant be expected to cause Cua Giok Ke to leave the Philippines upon the expiration of the last extension when defendant was not even aware of said extension. Since this lack of awareness on the part of defendant was due to plaintiff's fault, plaintiff should not be permitted to invoke its own fault as basis for a recovery." [5]

In this appeal, appellant Commissioner of Immigration would stress that appellee's undertaking under the bond is con-tractual in nature. His brief continues: "Plaintiff-appellant has not committed any act in violation of any of its provisions, while on the other hand, defendant-appellee has failed to carry out one of its undertakings in the bond 'that said Cua Giok Ke will actually depart from the Philippines on or before said date so specified or within such period as, in his discretion, the Commissioner of Immigration or his authorized representative may properly allow.' For such breach it is liable under the [terms] and conditions of the bond. No cause for extinguishment of its obligation has arisen, and the trial court erred in can-celling the bond and releasing defendant-appellee from its responsibility." [6]

Appellee could not deny the above stipulation contained in its surety bond to the effect that it had full knowledge that the Chinese national, Cua Giok Ke, was authorized to stay in this country only up to and including April 7, 1958, and it did under-take that he would "actually depart from the Philippines on or before said date so specified, or within such period as, in his discretion, the Commissioner of Immigration or his authorized representative may properly allow; * * *." [7] Appellee did not deny as it could not deny that there was a breach of stipulation. It would stress, however, in support of the decision appealed from, that the various extensions given by appellant to Cua Giok Ke to stay in the Philippines after April 7, 1958 was not only without its knowledge but without its consent. It would argue that it was released from any obligation under such surety bond. [8]

In the light of the above, a reversal of the lower court decision is called for. The admission that there was a failure to live up to the terms of the bond is fatal to the claim for exemption on the part of appellee Asian Surety & Insurance Co., Inc. The obligation under such bond was the law between the parties. It could not thereafter in litigation arising precisely as a result of breach thereof seek refuge in the allegation that there were ex-tensions granted of which it was not notified.

At the most, the plea is equitable in character, and its persuasive value is far from overwhelming. Nor could it be said that appellee was entirely without fault. It was not unaware of its obligation. The terms were quite explicit. Even if it did not know as a matter of fact that there were extensions granted, it could have known by making the appropriate inquiries. That it failed to do.

It must abide then by what was covenanted. What it pro-mised to do, something which it could comply with, should have been lived up to. Since it was not true to its word, it must suffer the consequences. It is as clear as that.

Pastoral v. Mutual Security Insurance Corp., [9] a 1965 decision, is authoritative. In the opinion of this Court, through Justice J. B. L. Reyes, reference was made to earlier decisions, [10] where we have repeatedly announced "that the rule holding sureties to be favorites of the law, and their contracts to be strictissimi juris, does not apply to compensated sureties, * * *."

In the same case, an excerpt from a leading United States Supreme Court opinion was cited with approval. Thus: "'We are familiar with the old rule of strict construction in favor of the surety, based upon the underlying principle that formerly parties became sureties, not for hire but as a matter of accommodation, usually lending their names through motives of friendship, and hence a surety obligation would be construed most strongly in their favor. But the rule 'strictissimi juris' has no application to surety companies, organized for the purpose of conducting an

indemnity business at established rates of compensation.' * * *."

One of the cases cited, *Pacific Tobacco Co. v. Lorenzana*,^[11] is illuminating. Thus: "The rationale of this doctrine is reasonable; an accommodation surety acts without motive of pecuniary gain and, hence, should be protected against unjust pecuniary impoverishment by imposing on the principal duties akin to those of a fiduciary. This cannot be said of a compensated corporate surety which is a business association organized for the purpose of assuming classified risks in large numbers, for profit and on an impersonal basis, through the medium of standardized written contractual forms drawn by its own representatives with the primary aim of protecting its own interests (See Stearn's *The Law of Suretyship*, 4th ed., 402-403). American courts in refusing to apply this rule on compensated sureties have expressed themselves in varying language. Sometimes it is said that a corporate compensated surety is not entitled to the benefits of the rule of *strictissimi juris* * * *; or that the contract is to be construed against the surety and in favor of the promisee * * *; or that the contract is like one of insurance, hence one or the other of the above rules is to be applied * * *, and it was even said: 'The law does not have the same solicitude for corporations engaged in giving indemnity bonds for profit as it does for individual surety who voluntarily undertakes to answer for the obligations of another. Although calling themselves sureties, such corporations are in fact insurers, and in determining their rights and liabilities as the rules peculiar to suretyship apply' * * *."^[12]

It is thus evident that whatever plausibility may attach to the conclusion reached by the lower court, based solely on what was deemed compelling equitable considerations, it lacks support in the applicable codal provisions as well as the doctrinal pronouncements of this Court. Hence its affirmance is not warranted.

One last consideration. The Philippines continues to be vexed by the serious problem of overstaying aliens. Its solution will not be hastened if bonding companies were not constantly made aware that their failure to surrender an alien, who has no further claim to the hospitality of this country, would not, in accordance with their undertaking, be held liable. A policy of leniency, assuming that it is legally allowable, would tend on the contrary to encourage carelessness, not to say collusion, with the aliens who would, in defiance of the applicable law, prolong their stay in the country. That such a result should be avoided should be obvious to all.

WHEREFORE, the decision is reversed, and appellee Asian Surety & Insurance Co., Inc. held liable under the bond according to its terms. The case is remanded to the lower court for further proceedings to determine the liability of third party defendants Cua Chi Ying and Leandro Kuon, against whom a third party complaint was filed by appellee Asian Surety & Insurance Co., Inc. With costs against appellee Asian Surety & Insurance Co., Inc.

Zaldivar, Sanchez, Castro, Capistrano, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., concurs in the foregoing opinion as amplified by that of Justice Dizon.

Reyes, J.B.L., J., concurs with Justice Dizon.

Dizon, J., concurs in a separate opinion.

Makalintal, J., did not take part.

[1] Decision, Record on Appeal, p. 91.

[2] *Ibid*, pp. 91-92.

[3] *Ibid*, p. 92.

[4] *Ibid*, pp. 92-93.

[5] Ibid, pp. 94-95.

[6] Brief for the Appellant, p. 19.

[7] Brief for Defendant-Appellee, p. 5.

[8] Ibid, p. 7.

[9] L-20469, August 31, 1965.

[10] Pacific Tobacco Co. v. Lorenzana, 102 Phil. 234 (1957); Phil. Surety & Ins. Co. v. Royal Oil Products, 102 Phil. 326 (1957); Atkins Kroll & Co. v. Reyes, 105 Phil. 640 (1959).

[11] 102 Phil. 234, 242 (1957).

[12] This last excerpt is from Metropolitan Casualty Ins. Co. v. United Brick and Tile Co., 29 P [2d] 771 (1934).

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CONCURRING OPINION

DIZON, J.:

Appellee's contention - adopted by the lower court - is that it is no longer liable upon its bond because the non-immigrant Chinese student for whom it stood as bonds-man was given extensions of his temporary stay by the Bureau of immigration without appellee being notified or without its knowledge and consent.

Under the provisions of Article No. 2079 of the New Civil Code, an extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. This provision, however, does not apply to appel-lee's case because, under the terms of its bond, it had agreed that the non-immigrant student concerned would depart from the Philippines on or before April 7, 1958 "or within such period as, in his discretion, the Commissioner of immigration or his authorized representative may properly allow" (Underlines supplied). This, in my opinion, amounts to appellee's consent to all the extensions granted to the non-immigrant student already referred to.

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