

FRANCISCO AGCAOILI, PLAINTIFF AND APPELLANT, VS. JOSEFA LUENGO VDA. DE AGCAOILI, MELQUIADES IBANEZ, CESAE L. AGCAOILI AND OSCAR L. AGCAOILI, DEFENDANTS AND APPELLEES.

G .R. No. L-3331. September 28, 1951

Ponente: TUASON, J.

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TUASON, J.:

Josefa Luengo Vda. de Agcaoili and her husband, Romarico Agcaoili, now deceased, executed the promissory note attached to the complaint as Annex "A", whereby they acknowledged that they owed Francisco Agcaoili, plaintiff and Romarico's brother, P6.050. Melquiades Ibanez signed the instrument to guarantee that the debtors should pay. ("Me constituyo fiador de que los esposos Romarico Agcaoili y Josefa Luengo de Agcaoili, pagaran la deuda arriba mencionada.") The date of the instrument was November 30, 1943 but there were allegations in the complaint that the amount was the total of smaller sums, all of which had been obtained from the plaintiff before the outbreak of the war.

Romarico Agcaoili having died, Cesar L. Agcaoili and Oscar L. Agcaoili as well as Josefa Luengo Vda. de Agcaoili and Melquiades Ibanez were made defendants in this action, filed to collect the above-mentioned sum of money, Romarico Agcaoili's sons filed a joint answer and Josefa Luengo Vda. de Agcaoili and Melquiades Ibanez each a separate one.

Josefa L. Vda. de Agcaoili alleged that the action was premature, in that the debt in question was payable 90 days after the treaty of peace in the Far East was signed, and only in the event that Romarico Agcaoili could collect his back pay from the Government as engineer of the Budget Commission. She also pleaded the moratorium law.

Melquiades Ibanez also invoked the moratorium law, and alleged, besides, that as shown in the document, he was only a guarantor and, as such, "his liability, at most, is secondary, in the sense that all properties of the spouses aforementioned should be first exhausted before he could be held liable for the said indebtedness."

Cesar L. Agcaoili and Oscar L. Agcaoili protested that they were not liable for their father's debt, as they had not inherited, nor did they have in their possession, any property of the deceased. As an alternative defense, they alleged that the obligation was not yet due "for the reason that World War II has not yet been officially terminated and thus peace and order have not yet been fully restored;"

In an amended answer, Josefa L. Vda. de Agcaoili made allegations regarding the nature of the transaction between her husband and the plaintiff, and the amount her husband had actually received, which she said was only P1,000.00. The conclusions we have reached on the main averments in the answers make it unnecessary, if not inexpedient, to consider these supplementary allegations in this decision.

The Honorable Antonio Belmonte, trial Judge, found and ruled as follows:

The defense regarding the moratorium law was untenable because the debt was a pre-war obligation, and the defendants had failed to prove that they had filed war damage claims.

The defense that the action was premature because a treaty of peace had not been formally concluded was upheld.

Melquiades Ibanez' plea that he was a mere guarantor was also sustained. And so was the defense put up by Romarico's children that they were not liable for the payment of their father's debt.

There was no express pronouncement as to the nature or extent of the widow's liability on the promissory note. But it would seem that the court below was of the opinion that the action against her was abated by the death of her husband, as may be gathered from the dispositive paragraph of the decision ordering the dismissal of the case and directing the plaintiff to proceed according to Section 2 of Rule 75 of the Rules of Court.

Only the plaintiff has appealed. Not having appealed, the defendants are presumed to have abided by the judgement which declared that the moratorium law was inapplicable to the facts of this case.

On the character of Melquiades Ibanez' status, the appellant contends that this defendant is a surety. It is enough to read the contract in order to arrive at the conclusion reached by the lower court, that Ibanez was only a guarantor. This is obvious from the word "fiador" in and the context of Annex "A".

Fiador is denned in the Real Academia Castellana as "persona que fia a otra para la seguridad de aquello a oue esta obligada." And according to Article 1822 of the Civil Code, "By guaranty (fianza in the Spanish text) one person binds himself to pay or perform for a thirdperson in case the latter should fail to do so," unless, according to the second paragraph of the same article and Article 1137, the guarantor (fiador) expressly binds himself in solidumwith the principal debtor. (Machetti vs. Hospicio de San Jose and Fidelity & Surety Co., 43 Phil. 298; Castellvi de Higgins and Higgins vs. Sellner, 41 Phil., 142.) By the terms of the agreement, Ibanez, so far from obligating himself primarily, stated that the debtors would pay. This being the case, Ibanez', liability as contended by this defendant, is secondary, so that all the properties of the principals should first be exhausted before his own could be levied upon, not to say that there should be a judgment against them.

With reference. to the deceased's children's plea we gather from the appellant's brief that he does not question the judgment absolving these two defendants. Thus his counsel says: "As to whether the action against the heirs of Romarico Agcaoili is premature or not, we will not argue with, the trial court, for as the heirs alleged that they did not inherit anything, it is useless to proceed against them, and it would be just a waste of money and added expense on the part of the plaintiff to proceed against the estate or heirs of an insolvent."

Coming to the liability of Josefa Luengo Vda. de Agcaoili we are of the opinion that the trial court erred in holding that the claim against her as well as the claim against her husband should be made in the decedent's estate under section 2, Rule 75 of the Rules of Court.

It is expressly stated in Annex "A" that the wife bound herself jointly and severally with her husband. Her liability, then, is independent of and separate from her husband's; and under the law and well-established jurisprudence, when the obligation is a solidary one, the creditor may bring his action in toto against any of the debtors obligated in solidum. This rule is too familiar to practitioners to require citation of authorities.

The objection that the action was prematurely brought was well taken. The note provided that it was to fall due "dentro de Noventa (90) dias desde c[ue se flrme el tratado de Paz de la presente guerra en al Extremo Oriente," Without deciding whether this clause contemplates the signing of the treaty of peace by the representatives of the signatory nations or the ratification thereof by their governments, it is a fact of which, the courts may take notice that neither one nor the other had taken place when the present suit was commenced, the plaintiff then had no cause of action. The Japanesesurrender to the allied nations on the Battleship Missouri in September, 1945, which terminated the hostilities was not a peace treaty.

In summary, the appealed decision conforms to the law and the facts, except that the remedy against Josefa Luengo is not by way of a claim in and against her husband's estate. She may be sued singly on the note Exhibit "A" in an ordinary action. This error however does not affect the result of the decision.

With the modification and understanding above stated, the judgment will be affirmed in all its parts, with costs against the appellant.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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