

RAMON GONZALES, PLAINTIFF AND APPELLEE VS. GO TIONG AND LUZON SURETY CO., INC., DEFENDANTS AND APPELLANTS.

G. R. No. L-11776. August 30, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Defendants Go Tiong and Luzon Surety Co. are appealing from the decision of the Court of First Instance of Manila, Judge Magno S. Gatmaitan presiding, the dispositive part of which reads as follows:

"In view whereof, judgment is rendered condemning defendant Go Tiong and Luzon Surety Co., jointly and severally, to pay plaintiff the sum of P4,920 with legal interest from the date of the filing of the complaint until fully paid; judgment is also rendered against Go Tiong to pay the sum of P3,680 unto plaintiff, also with legal interest from the date of the filing of the complaint until fully paid. Go Tiong is also condemned to pay the sum of P1,000 as attorney's fees, plus costs."

The appeal was first taken to the Court of Appeals, the latter indorsing the case to us later under the provisions of Section 17 (6) of Republic Act No. 296, on the ground that the issues raised were purely questions of law.

Go Tiong owned a rice mill and warehouse, located at Mabini, Urdaneta, Pangasinan. On February 4, 1953, he obtained a license to engage in the business of a bonded warehouseman (Exhibit N). To secure the performance of his obligations as such bonded warehouseman, the Luzon Surety Co. executed Guaranty Bond No. 294 in the sum of 118,334 (Exhibit O), conditioned particularly on the fulfillment by Go Tiong of his duty or obligation to deliver to the depositors in his storage warehouse, the palay received by him for storage, at any time demand is made, or to pay the market value thereof, in case he was unable to return the same. The bond was executed on January 26, 1953. Go Tiong insured the warehouse and the palay deposited therein with the Alliance Surety and Insurance Company.

But prior to the issuance of the license to Go Tiong to operate as bonded warehouseman, he had on several occasions received palay for deposit from plaintiff Ramon Gonzales, totalling 368 sacks, for which he issued receipts, Exhibits A, B, C, and D. After he was licensed as bonded warehouseman, Go Tiong again received various deliveries of palay from plaintiff, totalling 492 sacks, for which he issued the corresponding receipts, all the deliveries having a grand total of 860 sacks, valued at P8,600 at the rate of P10 per sack.

On or about March 15, 1953, plaintiff demanded from Go Tiong the value of his deposits in the amount of P8,600, but he was told to return after two days, which he did, but Go Tiong again told him to come back. A few days later, the warehouse burned to the ground. Before the fire, Go Tiong had been accepting deliveries of palay from other depositors and at the time of the fire, there were 5,847 sacks of palay in the warehouse, in excess of the 5,000 sacks authorized under his license. The receipts issued by Go Tiong to the plaintiff were ordinary receipts, not the "warehouse receipts" defined by the Warehouse Receipts Act (Act No. 2137).

After the burning of the warehouse, the depositors of palay, including plaintiff, filed their claims with the Bureau of Commerce, and it would appear that with the proceeds of the insurance policy, the Bureau of Commerce paid

off some of the claims. Plaintiff's counsel later withdrew his claim with the Bureau of Commerce, according to Go Tiong, because his claim was denied by the Bureau, but according to the decision of the trial court, because nothing came from plaintiff's efforts to have his claim paid. Thereafter, Gonzales filed the present action against Go Tiong and the Luzon Surety for the sum of P8,600, the value of his palay, with legal interest, damages in the sum of P5,000 and P1,500 as attorney's fees. Gonzales later renewed his claim with the Bureau of Commerce (Exhibit S).

While the case was pending in court, Gonzales and Go Tiong entered into a contract of amicable settlement to the effect that upon the settlement of all accounts due to him by Go Hong, he, Gonzales, would have all actions pending against Go Tiong dismissed. Inasmuch as Go Tiong failed to settle the accounts, Gonzales prosecuted his court action.

For purposes of reference, we reproduce the assignment of errors of Go Tiong, as well as the assignment of errors of the Luzon Surety, all reading thus:

"I. The trial court erred in finding that plaintiff-appellee's claim is covered by the Bonded Warehouse Law, Act 3893, as amended, and not by the Civil Code.

"II. The trial court erred in not exempting defendant-appellant Go Tiong for the loss of the palay deposited, pursuant to the provisions of the New Civil Code."

* * * * *

"I. The trial court erred in not declaring that the amicable settlement by and between plaintiff-appellee and defendant Go Tiong constituted a material alteration of the surety bond of appellant Luzon Surety which extinguished and discharged its liability.

"II. The trial court erred in holding that the receipts for the palay received by Go Tiong, though not in the form of "quedans" or warehouse receipts are chargeable against the surety bond filed under the provisions of the General Bonded Warehouse Act (Act No. 3893 as amended by Republic Act No. 247) as a result of a loss.

"III. The trial court erred in not holding that the plaintiff had renounced and abandoned his rights under the Bonded Warehouse Act by the withdrawal of his claim from the Bureau of Commerce and the execution of the 'amicable settlement'.

"IV. The trial court erred in not holding that the palay delivered to Go Tiong constitutes gratuitous deposit which was extinguished upon the loss and destruction of the subject-matter.

"V. The trial court erred in not declaring that the transaction between defendant Go Tiong and plaintiff was more of a sale rather than a deposit.

"VI. The trial court erred in declaring that the Luzon Surety Co., Inc., had not complied with its undertaking despite the liquidation of all the claims by the Bureau of Commerce.

"VII. The lower court erred in adjudging the herein surety liable under the terms of the Bond."

We shall discuss the assigned errors at the same time, considering the close relation between them, although we do not propose to discuss and rule upon all of them. Both appellants urge that plaintiff's claim is governed by the Civil Code and not by the Bonded Warehouse Act (Act No. 3893, as amended by Republic Act No. 247), for the reason that, as already stated, what Go Tiong issued to plaintiff were ordinary receipts, not the warehouse receipts contemplated by the Warehouse Receipts Law, and because the deposits of palay of plaintiff were gratuitous.

Act No. 3893 as amended is a special law regulating the business of receiving commodities for storage and denning the rights and obligations of a bonded warehouse- man and those transacting business with him.

Consequently, any deposit made with him as a bonded warehouseman must necessarily be governed by the provisions of Act No. 3893. The kind or nature of the receipts issued by him for the deposits is not very material, much less decisive. Though it is desirable that receipts issued by a bonded warehouseman should conform to the provisions of the Warehouse Receipts Law, said provisions in our opinion are not mandatory and indispensable in the sense that if they fell short of the requirements of the Warehouse Receipts Act, then the commodities delivered for storage become ordinary deposits and will not be governed by the provisions of the Bonded Warehouse Act. Under Section 1 of the Warehouse Receipts Act, one would gather the impression that the issuance of a warehouse receipt in the form provided by it is merely permissive and directory and not obligatory:

"SECTION 1. Persons who may issue receipts.—Warehouse receipts may be issued by any warehouseman.", and the Bonded Warehouse Act as amended permits the warehouseman to issue any receipt, thus:

"* * *. 'receipt' as any receipt issued by a warehouseman for commodity delivered to him."

As the trial court well observed, as far as Go Tiong was concerned, the fact that the receipts issued by him were not "quedans" is no valid ground for defense because he was the principal obligor. Furthermore, as found by the trial court, Go Tiong had repeatedly promised plaintiff to issue to him "quedans" and had assured him that he should not worry; and that Go Tiong was in the habit of issuing ordinary receipts (not "quedans") to his depositors.

As to the contention that the deposits made by the plaintiff were free because he paid no fees therefor, it would appear that Go Tiong induced plaintiff to deposit his palay in the warehouse free of charge in order to promote his business and to attract other depositors, it being understood that because of this accommodation, plaintiff would convince other palay owners to deposit with Go Tiong.

Appellants contend that the burning of the warehouse was a fortuitous event and not due to any fault of Go Tiong and that consequently, he should not be held liable, appellants supporting the contention with the ruling in the case of *La Sociedad Dalisay vs. De los Reyes*, 55 Phil. 452, reading as follows:

"Inasmuch as the fire, according to the judgment appealed from, was neither intentional nor due to the negligence of the appellant company or its officials; and it appearing from the evidence that the then manager attempted to save the palay, the appellant company should not be held responsible for damages resulting from said fire. ***."

The trial court correctly disposed of this same contention, thus:

"The defense that the palay was destroyed by fire neither does. the Court consider to be good for while the contract was in the nature of a deposit and the loss of the thing would exempt the obligor in a contract of deposit to return the goods, this exemption from the responsibility for the damages must be conditioned in his proof that the loss was by force majeure, and without his fault. The Court does not see from the evidence that the proof is clear on the legal exemption. On the contrary, the fact that he exceeded the limit of the authorized deposit must have increased the risk and would militate against his defense of nonliability. For this reason, the Court does not follow *La Sociedad vs. De Los Santos*, 55 Phil. 42 quoted by Go Tiong." (p. 3, Decision)

Considering the fact, as already stated, that prior to the burning of the warehouse, plaintiff demanded the payment of the value of his palay from Go Tiong on two occasions but was put off without any valid reason, under the circumstances, the better rule which we accept is the following:

"* * * This rule proceeds upon the theory that the facts surrounding the care of the property by a bailee are peculiarly within his knowledge and power to prove, and that the enforcement of any other rule would impose great difficulties upon the bailors. * * * It is illogical and unreasonable to hold that the presumption of negligence in case of this kind is rebutted by the bailee by simply proving that the property bailed was

destroyed by an ordinary fire which broke out on the bailee's own premises, without regard to the care exercised by the latter to prevent the fire, or to save the property after the commencement of the fire. All the authorities seem to agree that the rule that there shall be a presumption of negligence in bailment cases like the present one, where there is default in delivery or accounting, for the goods is just a necessary one. * * * " (9 A.L.R. 566; see also *Hanes vs. Shapiro*, 84 S.E. 33; *J. Russel Mfg. Co. va. New Haven, S.B. Co.*, 50 N.Y. 211; *Beck vs. Wilkins-Ricks Co.*, 102 S.E. 313; *Fleishman vs. Southern R. Co.*, 56 S.E. 974).

Besides, as observed by the trial court, the defendant violated the terms of his license by accepting for deposit palay in excess of the limit authorized by his license, which fact must have increased the risk.

The Luzon Surety claims that the amicable settlement by and between Gonzales and Go Tiong constituted a material, alteration of its bond, thereby extinguishing and discharging its liability. It is evident, however, that while there was an attempt to settle the case amicably, the settlement was never consummated because Go Tiong failed to settle the accounts of Gonzales to the Tatter's satisfaction. Consequently, said nonconsummated compromise settlement does not discharge the surety:

"A compromise or settlement between the creditor or obligee and the principal, by which the latter is discharged from liability, discharges the, solely, * * *. But an unconsummated * * * agreement to compromise, falling short of an effective settlement, will not discharge the surety." (50 C. J. 185)

In relation to the failure of Go Tiong to issue the warehouse receipts contemplated by the Warehouse Receipts Act, which failure, according to appellants, precluded plaintiff from suing on the bond, reference may be made to Section 2 of Act No. 3893, defining receipt as any receipt issued by a warehouseman for commodity delivered to him, showing that the law does not require as indispensable that a warehouse receipt be issued. Furthermore, Section 7 of said law provides that as long as the depositor is injured by a breach of any obligation of the warehouseman, which obligation is secured by a bond, said depositor may sue on said bond. In other words, the surety cannot avoid liability from the mere failure of the warehouseman to issue the prescribed receipt. In the case of *Andreson vs. Krueger*, 212 N.W. 198, 199, it was held:

"The surety company concedes that the bond which it gave contains the statutory conditions. The statute * * * requires that the bond—'shall be conditioned upon the faithful performance of the public local grain warehouseman of all the provisions of law relating to the storage of grain by such warehouseman.'

"The surety company thereby made itself responsible for the performance by the warehouseman of all the duties and obligations imposed upon him by the statute; and, if he failed to perform any such duty to the loss or detriment of those who delivered grain for storage, the surety company became liable therefor. Where the warehouseman receives grain for storage and refuses to return or pay it, the fact that he failed to issue the receipt, when the statute required him to issue on receiving it, is not available to the surety as a defense against an action on the bond. The obligation of the surety covers the duty of the warehouseman to issue the prescribed receipt, as well as the other duties imposed upon him by the statute."

We deem it unnecessary to discuss and rule upon the other questions raised in the appeal. In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Padilla, Reyes, A., Bautista Angelo, Concepcion, Endencia, Reyes, J. B. L., and Felix, JJ., concur.

Bengzon, J., concurs in the result.

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