

TUASON, TUASON, INC., PLAINTIFF AND APPELLEE, VS. ANTONIO MACHUCA, DEFENDANT AND APPELLANT.*G.R. No. L-22177. December 02, 1924*

Ponente: AVANCEÑA, C.J.

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TUASON, TUASON, INC., PLAINTIFF AND APPELLEE, VS. ANTONIO MACHUCA, DEFENDANT AND APPELLANT. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } .style1 {color: #FF0000

By giving a bond in the sum of P9,663 executed by "Manila Compania de Seguros," the Universal Trading Company was allowed by the Insular Collector of Customs to withdraw from the customhouse sundry goods imported by it and consigned through the Bank of the Philippine Islands. Subsequently, the Bank of the Philippine Islands claimed the value of the goods, and the Insular Collector of Customs obligated the "Manila Compania de Seguros" to pay the sum of P9,663, the amount of the bond. Before paying this amount to the Insular Collector of Customs, the "Manila Compania de Seguros" obtained from the Universal Trading Company and Tuason, Tuason & Co., a solidary note for the sum of P9,663 executed by said companies in its favor. Before signing said note, Tuason, Tuason & Co., in turn, caused the Universal Trading Company and its president Antonio Machuca, personally, to sign a document (Exhibit B), wherein they bound themselves solidarily to pay, reimburse, and refund to the company all such sums or amounts of money as it, or its representatives, may pay or become bound to pay, upon its obligation with "Manila Compania de Seguros," whether or not it shall have actually paid such sum or sums or any part thereof. The Universal Trading Company having been declared insolvent, "Manila Compania de Seguros" brought an action in the lower court against Tuason, Tuason & Co. to recover the value of the note for P9,663 and obtained final judgment therein, which was affirmed by this court on appeal, for the total sum of P12,197.27, which includes the value of the note with interest thereon.[1] Subsequently, all the rights of Tuason, Tuason & Co. were transferred to the plaintiff Tuason, Tuason, Inc.

Later on Tuason, Tuason, Inc., brought this action to recover of Antonio Machuca the sum of P12,197.27 which it was sentenced to pay in the case filed against it by "Manila Compania de Seguros plus P3,000 attorney's fees, and P155.92 court's costs and sheriff's fees, that is, a total of P15,353.19, together with P1,180.46 as interest upon the sum of P15,353.19 at the rate of 10 per cent per annum from October 8, 1922, to July 8, 1923, and interest on the sum of P16,535.65 at the rate of 10 per cent from July 8, 1923, until this sum was paid, and, in addition the sum of P1,653.65 for attorney's fees in this case. For its cause of action, the plaintiff alleges that it had paid "Manila Compania de Seguros" the sum of P12,197.27, the amount of the judgment against it. The dispositive part of the judgment appealed from is as follows:

"Judgment is rendered against the defendant Antonio Machuca, and he is hereby ordered to pay the plaintiff company the sum of fifteen thousand three hundred fifty-three pesos and nineteen centavos (P15,353.19), with

compound interest thereon at the rate of ten per cent (10%) per annum, to be computed quarterly, that is, one thousand one hundred eighty pesos and forty-six centavos (P1,180.46), which is ten per cent interest on the amount of fifteen thousand three hundred fifty-three pesos and nineteen centavos (P15,353.19) from October 8, 1922, to July 8, 1923, and ten per cent on the sum of sixteen thousand five hundred thirty-three pesos and sixty-five centavos (P16,533.65) from July 8, 1923, until full payment, to be computed quarterly, besides the sum of one thousand six hundred fifty-three pesos and sixty-five centavos (P1,653.65), which is ten per cent (10%) on the amount due and the interest thereon, which said defendant promised to pay as penalty and attorney's fees in the event of a suit being necessary to recover the debt, and the costs. So ordered."

It appears from the evidence that what the plaintiff alleges to be a payment made to "Manila Compania de Seguros" for the satisfaction of the judgment rendered in favor of the latter is the execution by Albina Tuason of a document Exhibit D in favor of "Manila Compania de Seguros." In this document Albina Tuason declares that she assumes and makes hers the obligation to pay the amount of said judgment to "Manila Compania de Seguros" within one year and mortgages a property described in the document as security for this obligation. This obligation of Albina Tuason was accepted by the "Manila Compania de Seguros," in the following terms: "I accept the foregoing security executed by Miss Albina Tuason in favor of 'Manila Compania de Seguros.'" It, thus, appears that the plaintiff has not in fact paid the amount of the judgment to "Manila Compania de Seguros." The action brought by the plaintiff is that which a surety, who pays the debt of the debtor, is entitled to bring to recover the amount thus paid (art. 1823, Civil Code). It is evident that such a payment not having been made, the alleged cause of action does not exist.

The plaintiff company argues that, at all events, it is entitled to bring this action under article 1843 of the Civil Code, which provides that the surety may, even before making payment, bring action against the principal debtor. This contention of the plaintiff is untenable. The present action, according to the terms of the complaint, is clearly based on the fact of payment. It is true that, under article 1843, an action lies against the principal debtor even before the surety pays the debt, but it clearly appears in the complaint that this is not the action brought by the plaintiff. Moreover this article 1843 provides several cumulative remedies in favor of the surety, at his election, and the surety who brings an action under this article must choose the remedy and apply for it specifically. At any rate this article does not provide for the reimbursement of any amount, as is sought by the plaintiff.

But although the plaintiff has not as yet paid "Manila Compania de Seguros" the amount of the judgment against it, and even considering that this action cannot be held to come under article 1843 of the Civil Code, yet the plaintiff is entitled to the relief sought in view of the facts established by the evidence. The plaintiff became bound, by virtue of a final judgment, to pay the value of the note executed by it in favor of "Manila Compania de Seguros." According to the document executed solidarily by the defendant and the Universal Trading Company, the defendant bound himself to pay the plaintiff as soon as the latter may have become bound and liable, whether or not it shall have actually paid. It is indisputable that the plaintiff became bound and liable by a final judgment to pay the value of the note to "Manila Compania de Seguros."

The defendant also contends that the document executed by Albina Tuason in favor of "Manila Compania de Seguros" assuming and making hers the obligation of Tuason, Tuason & Co., was a novation of the contract by substitution of the debtor, and relieved Tuason, Tuason & Co. from all obligation in favor of "Manila Compania de Seguros." As to this, it is enough to say that if this was what Albina Tuason contemplated in signing the document, evidently it was not what "Manila Compania de Seguros" accepted. As above stated, "Manila Compania de Seguros" accepted this document only as additional security for its credit and not as a novation of the contract.

Our conclusion is that the plaintiff has the right to recover of the defendant the sum of P9,663, the value of the note executed by the plaintiff in favor of "Manila Compailia de Seguros" which the plaintiff is under obligation to

pay by virtue of a final judgment. We do not believe, however, that the defendant must pay the plaintiff the expenses incurred by it in the litigation between it and "Manila Compania de Seguros." That litigation was originated by the plaintiff having failed to fulfill its obligation with "Manila Compania de Seguros," and it cannot charge the defendant with the expenses which it was compelled to make by reason of its own fault. It is entitled, however, to the expenses incurred by it in this action brought against the defendant, which are fixed at P1,653.65 as attorney's fees.

The judgment appealed from is modified, and the defendant is sentenced to pay the plaintiff the sum of P9,663, with interest thereon at the rate of 10 per cent per annum from July 19, 1923, when the complaint was filed until full payment thereof, plus the sum of P1,653.65 for attorney's fees, without special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

[1] R. G. No. 18101, promulgated July 10, 1922, not reported.

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