

**CAPITAL INSURANCE & SURETY CO., INC., HEREIN
REPRESENTED BY ITS GENERAL AGENT, THE PAN AMERICAN
INSURANCE AGENCIES, INC., PLAINTIFF-APPELLANT, VS.
RONQUILLO TRADING AND JOSE L. ...**

G.R. No. L-36488. July 25, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us for review is a decision of the Court of First Instance of Manila affirming a judgment of the City Court of Manila dismissing the plaintiff-appellant's complaint for sum of money. The case was originally appealed to the Court of Appeals but was certified to us on a finding that only questions of law are raised.

Capital Surety and Insurance Co., Inc., thru its general agent, executed and issued a surety bond in the amount of \$14,800.00 or its peso equivalent in behalf of Ronquillo Trading and in favor of S.S. Eurygenes, its master, and/or its agents, Delgado Shipping Agencies. The bond was a guarantee for any additional freight which may be determined to be due on a cargo of 258 surplus army vehicles consigned from Pusan, Korea to the Ronquillo Trading on board the S.S. Eurygenes and booked on said vessel by the Philippine Merchants Steamship Company, Inc.

In consideration for the issuance by the appellant of the aforesaid surety bond the appellees executed an indemnity agreement whereby among other things, they jointly and severally promised to pay the appellant the sum of P1,827.00 in advance as premium and documentary stamps for each period of twelve months while the surety bond was in effect.

On April 30, 1963 or about five (5) days before the expiration of the liability on the bond, P.D. Marchessini and Co., Ltd. and Delgado Shipping Agencies, Inc., filed Civil Case No. 53853 in the Court of First Instance of Manila against the Philippine Merchants Steamship Co., Inc., Jose L. Bautista, doing business under the name and style of "Ronquillo Trading", and the herein appellant Capital Insurance & Surety Co., Inc. for the sum of \$14,800.00 or its equivalent in Philippine currency, the loss they allegedly suffered as a direct consequence of the failure of the defendants to load the stipulated quantity of 406 U.S. surplus army vehicles. The appellant was made party defendant because of the bond it posted in behalf of the appellees.

Upon the expiration of the 12 months life of the bond, the appellant made a formal demand for the payment of the renewal premiums and cost of documentary stamps for another year in the amount of P1,827.00.

The appellees refused to pay, contending that the liability of the appellant under the surety bond accrued during the period of twelve months the said bond was originally in force and before its expiration and that the defendants-appellees were under no obligation to renew the surety bond.

The appellant, therefore, filed a complaint to recover the sum of P1,827.00 against the appellees in the City Court of Manila. As earlier stated, the city court rendered judgment absolving the appellees from the complaint.

The appellant appealed the judgment to the Court of First Instance of Manila where the decision of the city court was affirmed and the complaint dismissed.

Its motion for reconsideration having been denied, appellant filed the instant appeal with the following lone assignment of error:

"THE TRIAL COURT ERRED IN HOLDING THAT ONCE SURETY'S LIABILITY UNDER THE BOND HAS ACCRUED, DEFENDANTS-APPELLEES ARE UNDER NO OBLIGATION TO PAY THE PREMIUMS AND COSTS OF DOCUMENTARY STAMPS FOR THE SUCCEEDING PERIOD THAT IT IS IN EFFECT."

The appellant contends that the conclusion of the trial court that "once surety's liability under the bond has accrued, defendants are under no obligation to pay the premiums and cost of documentary stamps for the succeeding period that it is in effect by reason of existing obligation of surety under the bond" is erroneous because it contradicts the provision of the indemnity agreement which provides:

"PREMIUMS.— As consideration for the Surety, the undersigned, jointly and severally, agree to pay the COMPANY the sum of ONE THOUSAND EIGHT HUNDRED ONLY (P1,800.00) PESOS, Philippine Currency, in advance as premium thereof for every . . . twelve (12) months or fraction thereof, while this bond or any renewal or substitution thereof is in effect."

According to the appellant, it can be deduced that the payment of renewal premiums should depend upon the life and effectivity of the bond and not on the accrual of its liability. It states that as long as the bond is in full force and effect, the principal should pay the corresponding renewal premium and should continue to do so even if the liability on the bond has accrued, otherwise, surety companies will be at the mercy of their principals because while their liability continues to subsist as long as their accrued liability is not determined, or as long as the court has not determined their liability, which may take years, the principals pay no consideration for the use of their bond. And if the case is decided against appellant thereby holding its bond liable, it must pay the face value of its bond, and yet it is barred from collecting any consideration for the use of its bond during the pendency of the case.

The appellees countered that the only purpose of Civil Case No. 53853 was to enforce a liability which existed even before the bond was executed. The bond was given to secure payment by appellees of such additional freight as would already be due on the cargo when it actually arrived in Manila. The bond was not executed to secure an obligation or liability which was still to arise after its twelve month life. While it is true that the lower court held that the bond was still in effect after its expiry date, the effectivity was not due to a renewal made by the appellees but because the surety bond provided that "the liability of the surety will not expire if, as in this case, it is notified of an existing obligation thereunder". The meaning of the bond's still being in effect is that, the suit on the bond instituted by the obligees prior to the expiration of the "liability" thereunder was only for the purpose of enforcing that liability and amounted to notice to appellant of an already existing or accrued liability so as not to let that liability lapse or expire and thereby bar enforcement.

We agree with the contention of the appellees. It must be noted that in the surety bond it is stipulated that the "Liability of surety on this bond will expire on May 5, 1963 and said bond will be cancelled 15 days after its expiration, unless surety is notified of any existing obligations thereunder." Under this stipulation the bond expired on the stated date and the phrase "unless surety is notified of any existing obligations thereunder" refers to obligations incurred during the term of the bond.

Furthermore, under the Indemnity Agreement, the appellees "agree to pay the COMPANY the sum of ONE THOUSAND EIGHT HUNDRED ONLY (P1,800.00) Pesos, Philippine Currency, in advance as premium thereof

for every twelve (12) months or fraction thereof, while this bond or any renewal or substitution there of is in effect." Obviously, the duration of the bond is for "every twelve (12) months or fraction thereof, while this bond or any renewal or substitution is in effect." Since the appellees opted not to renew the contract they cannot be obliged to pay the premiums. More specifically, where a contract of surety is terminated under its terms, the liability of the principal for premiums after such termination ceases notwithstanding the pendency of a lawsuit to enforce a liability that accrued during its stipulated lifetime.

WHEREFORE, the appeal is dismissed for lack of merit. The decision of the court a quo is affirmed.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and Relova, JJ., concur.
Vasquez, J., on leave.

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