

## ESTATE OP K. H. HEMADY, DECEASED, VS. LUZON SURETY CO., INC. CLAIMANT AND APPELLANT.

*G.R. No. L-8437. November 28, 1956*

Ponente: REYES, J.B.L., J.

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### REYES, J.B.L., J.:

Appeal by Luzon Surety Co., Inc., from an order of the Court of First Instance of Rizal, presided by Judge Hermogenes Caluag, dismissing its claim against the Estate of K. H. Hemady (Special roceeding No. Q-293) for failure to state a cause of action.

The Luzon Surety Co. had filed a claim against the Estate based on twenty different indemnity agreements, or counter bonds, each subscribed by a distinct principal and by the deceased K. H. Hemady, a surety solidary guarantor) in all of them, in consideration of the Luzon Surety Co.'s of having guaranteed, the various principals in favor of different creditors. The twenty counterbonds, or indemnity agreements, all contained the following stipulations:

"Premiums.—As consideration for this suretyship, the undersigned jointly and severally, agree to pay the COMPANY the sum of \_\_\_\_\_(P\_\_\_\_\_ ) pesos, Philippines ' Currency, in advance as premium there of for every \_\_\_\_\_ months or fractions thereof, this \_\_\_\_\_ or any renewal or substitution thereof is in effect.

Indemnity.—The undersigned, jointly and severally, agree at all times to indemnify the company and keep it indemnified and hold and save it harmless from and against any and all damages, losses, coats, stamps, taxes, penalties, charges, and expenses of whatsoever kind and nature which the company shall or may, at any time sustain or incur in consequence of having become surety upon this bond or any extension, renewal, substitution or alteration thereof made at the instance of the undersigned or any of them or any order executed on behalf of the undersigned or any of them; and to pay, reimburse and make good to the company, its successors and assigns, all sums and amount of money which it or its representatives shall pay or cause to be paid, or become liable to pay, on account of the undersigned or any of them, of whatsoever kind and nature, including 15% of the amount involved in the litigation or other matters growing out of or connected therewith for counsel or attorney's fees, but in no case less than P25. It is hereby further agreed that in case of extension or renewal of this \_\_\_\_\_we equally bind ourselves for the payment thereof under the same terms and conditions as above mentioned without the necessity of executing another indemnity agreement for the purpose and that we hereby equally waive our right to be notified of any renewal or extension of this \_\_\_\_\_ which may be granted under this indemnity agreement.

Interest on amount paid by the Company.—Any and all sums of money so paid by the company shall bear interest at the rate of 12% per annum which interest, if not paid, will be accumulated and added to the capital quarterly order to earn, the same interests as the capital and the total sum thereof, the capital and interest, shall be paid to the Company as soon as the Company shall have become liable therefore, whether it shall have paid out such sums of money or any part thereof or not.

\* \* \* \* \*

Waiver.—It is hereby agreed upon by and between the undersigned that any question which may arise between them by reason of this document and which has to be submitted for decision to Courts of Justice shall be brought before the Court of competent jurisdiction in the City of Manila, waiving for this purpose any other venue. Our right to be notified of the acceptance and approval of this indemnity agreement is hereby likewise waived.

\* \* \* \* \*

Our Liability Hereunder.—It shall not be necessary for the Company to bring suit against the principal upon his default, or to exhaust the property of the principal, but the liability hereunder of the undersigned indemnitor shall be jointly and severally, a primary one, the same as that of the principal, and shall be exigible immediately upon the occurrence of such default." (Rec. App. pp. 98-102.)

The Luzon Surety Co., prayed for allowance, as a contingent claim, of the value of the twenty bonds it had executed in consideration of the counterbonds, and further asked for judgment for the unpaid premiums and documentary stamps affixed to the bonds, with 12 per cent interest thereon

Before answer was filed, and upon motion of the administratrix of Hemady's estate, the lower court, by order of September 23, 1953, dismissed the claims of Luzon Surety Co., on two grounds: (1) that the premiums due and cost of documentary stamps were not contemplated under the indemnity agreements to be a part of the undertaking of the guarantor (Hemady), since they were not liabilities incurred after the execution of the counter-bonds; and (2) that "whatever losses may occur after Hemady's death, are not chargeable to his estate, because upon his death he ceased to be guarantor."

Taking up the latter point first, since it is the one more far reaching in effects, the reasoning of the court below ran as follows:

"The administratrix further contends that upon the death of Hemady, his liability as a guarantor terminated, and therefore, in the absence of a showing that a loss or damage was suffered, the claim cannot be considered contingent. This Court believes that there is merit in this contention and finds support in Article 2046 of the new Civil Code. It should be noted that a new requirement has been added for a person to qualify as a guarantor, that is: integrity. As correctly pointed out by the Administratrix, integrity is something purely personal and is not transmissible. Upon the death of Hemady, his integrity was not transmitted to his estate or successors. Whatever loss therefore, may occur after Hemady's death, are not chargeable to his estate because upon his death he ceased to be a guarantor.

Another clear and strong indication that the surety company has exclusively relied on the personality, character, honesty and integrity of the now deceased K. H. Hemady, was the fact that in the printed form of the indemnity agreement there is a paragraph entitled 'Security by way of first mortgage, which was expressly waived and renounced by the security company. The security company has not demanded from K. H. Hemady to comply with this requirement of giving security by way of first mortgage. In the supporting papers of the claim presented by Luzon Surety Company, no real property was mentioned in the list of properties mortgaged which appears at the back of the indemnity agreement." (Rec. App., pp. 407—408).

We find this reasoning untenable. Under the present Civil Code (Article 1311), as well as under the Civil Code of 1889 (Article 1257), the rule is that:-

"Contracts take effect only as between the parties, their assigns and heirs, except in the case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law."

While in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, the principle remains intact that these heirs succeed not only to the

rights of the deceased but also to his obligations. Articles 774 and 776 of the New Civil Code (and Articles 659 and 661 of the preceding one) expressly so provide, thereby confirming Article 1311 already quoted.

"Art. 774.—Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law."

"Art. 776,—The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death."

In *Mojica vs. Fernandez*, 9 Phil. 403, this Supreme Court ruled:

"Under the Civil Code the heirs, by virtue of the rights of succession are subrogated to all the rights and obligations of the deceased (Article 661) and can not be regarded as third parties with respect to a contract to which the deceased was a party, touching the estate of the deceased (*Barrios vs. Dolor*, 2 Phil. 44).

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"The principle on which these decisions rest is not affected by the provisions of the new Code of Civil Procedure, and, in accordance with that principle, the heirs of a deceased person cannot be held to be "third persons" in relation to any contracts touching the real estate of their decedent which comes in to their hands by right of inheritance; they take such property subject to all the obligations resting thereon in the hands of him from whom they derive their rights."

(See also *Galasinao vs. Austria*, 51 Off. Gaz. (No. 6) p. 2874 and *de Guzman vs. Salak*, 91 Phil., 265).

The binding effect of contracts upon the heirs of the deceased party is not altered by the provision in our Rules of Court that money debts of a deceased must be liquidated and paid from his estate before the residue is distributed among said heirs (Rule 89). The reason is that whatever payment is thus made from the estate is ultimately a payment by the heirs and distributees, since the amount of the paid claim in fact diminishes or reduces the shares that the heirs would have been entitled to receive.

Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors. The rule is a consequence of the progressive "depersonalization" of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions? From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position; barring those rare cases where the obligation is strictly personal, i.e., is contracted *intuitu personae*, in consideration of its performance by a specific person and by no other. The transition is marked by the disappearance of the imprisonment for debt.

Of the three exceptions fixed by Article 1311, the nature of the obligation of the surety or guarantor does not warrant the conclusion that his peculiar individual qualities are contemplated as a principal inducement for the contract. What did the creditor Luzon Surety Co. expect of K. H. Hemady when it accepted the latter as surety in the counterbonds? Nothing but the reimbursement of the moneys that the Luzon Surety Co. might have to disburse on account of the obligations of the principal debtors. This reimbursement is a payment of a sum of money, resulting from an obligation to give; and to the Luzon Surety Co., it was indifferent that the reimbursement should be made by Hemady himself or by some one else in his behalf, so long as the money was paid to it.

The second exception of Article 1311, p. 1, is intransmissibility by stipulation of the parties. Being exceptional and contrary to the general rule, this intransmissibility should not be easily implied, but must be expressly established, or at the very least, clearly inferable from the provisions of the contract itself, and the text of the

agreements sued upon nowhere indicate that they are non-transferable.

"(b) Intransmisibilidad por pacto.—Lo general es la transmisibilidad de derechos y obligaciones; le excepcion, la intransmisibilidad. Mientras nada se diga en contrario impera el principio de la transmision, como elemento natural a toda relacion juridical salvo las personalisimas. Asi, para la no transmision, es menester el pacto expreso, porque si no, lo convenido ehre partes trasciende a sus herederos.

Siendo estos los continuadores de la personalidad del causante, sobre ellos recaen los efectos de los vinculos juridicos creados por sus antecesores, y para evitarld, si asi se quiere, es indispensable convention terminante en tal sentido.

Por su esencia, el derecho y la obligacion tienden a ir mas alia de las personas que les dieron vida, y a ejercer presion sobre los sucesores de esa persona; cuando no se quiera esto, se impone una eetipulacion limitativa expresamente de la transmisibilidad o de cuyos tirminos claramente se deduzca la concrecion a del concreto a las mismas personas que lo otorgan." (Scaevola, Oodigo Civil, Tomo XX, p. 541-542) (Italics supplied.)

Because under the law (Article 1311), a person who enters into a contract is deemed to have contracted for himself and his heirs and assigns, it is unnecessary for him to expressly stipulate to that effect; hence, his failure to do so, is no sign that he intended his bargain to terminate upon his death. Similarly, that the Luzon Surety Co., did not require bondsman Hemady to execute a mortgage indicates nothing more than the company's faith and confidence in the financial stability of the surety, but not that his obligation was strictly personal.

The third exception to the transmissibility of obligations under Article 1311 exists when they are "not transmissible by operation of law". The provision makes reference to those cases where the law expresses that the rights or obligations are extinguished by death, as is the case in legal support (Article 300), parental authority (Article 327), usufruct (Article 603), contracts for a piece of work (Article 1726), partnership (Article 1830 and agency (Article 1919). By contract, the articles of the Civil Code that regulate guaranty or suretyship (Articles 2047 to 2084) contain no provision that the guaranty is extinguished upon the death of the guarantor or the surety.

The lower court sought to infer such a limitation from Art. 2056, to the effect that "one who is obliged to furnish a guarantor must present a person who possesses integrity, capacity to bind himself, and sufficient property to answer for the obligation, which he guarantees. It will be noted, however, that the law requires these qualities to be present only at the time of the perfection of the contract of guaranty. It is self-evident that once the contract has become perfected and binding, the supervening incapacity of the guarantor would not operate to exonerate him of the eventual liability he has contracted; and if that be true of his capacity to bind himself, it should also be true of his integrity, which is a quality mentioned in the article alongside the capacity.

The foregoing concept is confirmed by the next Article 2057, that runs as follows:

"ART. 2057.—If the guarantor should be convicted in first instance of a crime involving dishonesty or should become insolvent, the creditor may demand another who has all the qualifications required in the preceding article. The case is excepted where the creditor has required and stipulated that a specified person should be guarantor."

From this article it should be immediately apparent that the supervening dishonesty of the guarantor (that is to say, the disappearance of his integrity after he has become bound) does not terminate the contract but merely entitles the creditor to demand a replacement of the guarantor. But the step remains optional in the creditor: it is his right, not his duty; he may waive it if he chooses, and hold the guarantor to his bargain. Hence Article. 2057 of the present Civil Code is incompatible with the trial court's stand that the requirement of integrity in the guarantor or surety makes the latter's undertaking strictly personal, so linked to his individuality that the guaranty automatically terminates upon his death.

The contracts of suretyship entered into by K. H. Hemady in favor of Luzon Surety Co. not being rendered intransmissible due to the nature of the undertaking, nor by the stipulations of the contracts themselves, nor by provision of law, his eventual liability thereunder necessarily passed upon his death to his heirs. The contracts, therefore, give rise to contingent claims provable against his estate under section 5, Rule 87 (2 Moran, 1952 ed., p. 437; *Gaskell & Co. vs. Tan Sit*, 43 Phil. 810, 814).

"The most common example of the contingent claim is that which arises when a person is bound as surety or guarantor for a principal who is insolvent or dead. Under the ordinary contract of suretyship the surety has no claim whatever against his principal until he himself pays something by way of satisfaction upon the obligation which is secured. When he does this, there instantly arises in favor of the surety the right to compel the principal to exonerate the surety. But until the surety has contributed something to the payment of the debt, or has performed the secured obligation in whole or in part, he has no right of action against anybody—no claim that could be reduced to judgment. (*May vs. Vann*, 15 Pla., 553; *Gibson vs. Mithell*, 16 Pla., 519; *Maxey vs. Carter*, 10 Yarg. [Tenn.J, 531 *Reeves vs. Pulliam*, 7 Baxt. [Tenn.], 119; *Ernst vs. Nou*, 63 Wis., 134.)"

For defendant administratrix it is averred that the above doctrine refers to a case where the surety files claims against the estate of the principal debtor; and it is urged that the rule does not apply to the case before us, where the late Hemady was a surety, not principal debtor. The argument evinces a superficial view of the relations between parties. If under the *Gaskell* ruling, the Luzon Surety Co., as guarantor, could file a contingent claim against the estate of the principal debtors if the latter should die, there is absolutely no reason why it could not file such a claim against the estate of Hemady, since Hemady is a solidary co-debtor of his principals. What the Luzon Surety Co. may claim from the estate of a principal debtor it may equally claim from the estate of Hemady, since, in view of the existing solidarity, the latter does not even enjoy the benefit of exhaustion of the assets of the principal debtor.

The foregoing ruling is of course without prejudice to the remedies of the administratrix against the principal debtors under Articles 2071 and 2067 of the New Civil Code.

Our conclusion is that the solidary guarantor's liability is not extinguished by his death, and that in such event, the Luzon Surety Co., had the right to file against the estate a contingent claim for reimbursement. It becomes unnecessary now to discuss the estate's liability for premiums and stamp taxes, because irrespective of the solution to this question, the Luzon Surety's claim did state a cause of action, and its dismissal was erroneous.

Wherefore, the order appealed from is reversed, and the records are ordered remanded to the court of origin, with instructions to proceed in accordance with law. Costs against the Administratrix-Appellee. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Felix, JJ., concur.

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