

**CONSUELO P. PICZON, RUBEN O. PICZON AND AIDA P. ALCANTARA,
PLAINTIFFS AND APPELLANTS, VS. ESTEBAN PICZON AND
SOSING-LOBOS & CO., INC., DEFENDANTS AND APPELLEES.**

G.R. No. L-29139. November 15, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision of the Court of First Instance of Samar in its Civil Case No. 5156, entitled Consuelo P. Piczon, et al. vs. Esteban Piczon, et al., sentencing defendants-appellees, Sosing Lobos and Co., Inc., as principal, and Esteban Piczon, as guarantor, to pay plaintiffs-appellants "the sum of P12,500.00 with 12% interest from August 6, 1964 until said principal amount of P12,500.00 shall have been duly paid, and the costs."

After issues were joined and at the end of the pre-trial held on August 22, 1967, the trial court issued the following order:

"When this case was called for pre-trial, plaintiffs and defendants through their lawyers, appeared and entered into the following agreement:

1. That defendants admit the due execution of Annexes 'A' and 'B' of the complaint;
2. That consequently defendant Sosing-Lobos and Co., Inc. binds itself to the plaintiffs for P12,500.00, the same to be paid on or before October 31, 1967 together with the interest that this court may determine.

That the issues in this case are legal ones namely:

- (a) Will the payment of twelve per cent interest of P12,500.00 commence to run from August 6, 1964 when plaintiffs made the first demand or from August 29, 1956 when the obligation becomes due and demandable?
- (b) Is defendant Esteban Piczon liable as a guarantor or a surety?

That the parties are hereby required to file their respective memorandum if they so desire on or before September 15, 1967 to discuss the legal issues and therewith the case will be considered submitted for decision.

WHEREFORE, the instant case is hereby considered submitted based on the aforesaid facts agreed upon and upon submission of the parties of their respective memorandum on or before September 15, 1967.

SO ORDERED." [1] (Record on Appeal pp. 28-30)

Annex "A", the actionable document of appellants reads thus:

"AGREEMENT OF LOAN
KNOW YE ALL MEN BY THESE PRESENTS:

That I, ESTEBAN PICZON, of legal age, married, Filipino, and resident of and with postal address in the municipality of Catbalogan, Province of Samar, Philippines, in my capacity as the President of the corporation

known as the 'SOSING-LOBOS and CO., INC.,' as controlling stockholder, and at the same time as guarantor for the same, do by these presents contract a loan of Twelve Thousand Five Hundred Pesos (P12,500.00), Philippine Currency, the receipt of which is hereby acknowledged, from the 'Piczon and Co., Inc.' another corporation, the main offices of the two corporations being in Catbalogan, Samar, for which I undertake, bind and agree to use the loan as surety cash deposit for registration with the Securities and Exchange Commission of the incorporation papers relative to the 'Sosing-Lobos and Co., Inc.,' and to return or pay the same amount with Twelve Per Cent (12%) interest per annum, commencing from the date of execution hereof, to the 'Piczon and Co., Inc., as soon as the said incorporation papers are duly registered and the Certificate of Incorporation issued by the aforementioned Commission.

IN WITNESS WHEREOF, I hereunto signed my name in Catbalogan, Samar, Philippines, this 28th day of September, 1956.

(Sgd.) ESTEBAN PICZON"

(Record on Appeal, pp. 6-7)

The trial court having rendered judgment in the tenor aforequoted, appellants assign the following alleged errors:

"I

THE TRIAL COURT ERRED IN ORDERING THE PAYMENT OF 12% INTEREST ON THE PRINCIPAL OF P12,500.00 FROM AUGUST 6, 1964, ONLY, INSTEAD OF FROM SEPTEMBER 28, 1956, WHEN ANNEX 'A' WAS DULY EXECUTED.

"II

THE TRIAL COURT ERRED IN CONSIDERING DEFENDANT ESTEBAN PICZON AS GUARANTOR ONLY AND NOT AS SURETY.

"III

THE TRIAL COURT ERRED IN NOT ADJUDICATING DAMAGES IN FAVOR OF THE PLAINTIFFS-APPELLANTS." (Appellants' Brief, pp. a to b.)

Appellants' first assignment of error is well taken. Instead of requiring appellees to pay interest at 12% only from August 6, 1964, the trial court should have adhered to the terms of the agreement which plainly provides that Esteban Piczon had obligated Sosing-Lobos and Co., Inc. and himself to "return or pay (to Piczon and Co., Inc.) the same amount (P12,500.00) with Twelve Per Cent (12%) interest per annum commencing from the date of the execution hereof", Annex A, which was on September 28, 1956. Under Article 2209 of the Civil Code "(i)f the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum." In the case at bar, the "interest agreed upon" by the parties in Annex A was to commence from the execution of said document.

Appellees' contention that the reference in Article 2209 to delay incurred by the debtor which can serve as the basis for liability for interest is to that defined in Article 1169 of the Civil Code reading thus:

"Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extra judicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

is untenable. In *Quiroz vs. Tan Guinlay*, 5 Phil. 675, it was held that the article cited by appellees (which was Article 1100 of the Old Civil Code read in relation to Art. 1101) is applicable only when the obligation is to do something other than the payment of money. And in *Firestone Tire & Rubber Co. (P.I.) vs. Delgado*, 104 Phil. 920, the Court squarely ruled that if the contract stipulates from what time interest will be counted, said stipulated time controls, and, therefore interest is payable from such time, and not from the date of the filing of the complaint (at p. 925). Were that not the law, there would be no basis for the provision of Article 2212 of the Civil Code providing that "(I)nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point." Incidentally, appellants would have been entitled to the benefit of this article, had they not failed to plead the same in their complaint. Their prayer for it in their brief is much too late. Appellees had no opportunity to meet the issue squarely at the pre-trial.

As regards the other two assignments of error, appellants' pose cannot sustained. Under the terms of the contract, Annex A, Esteban Piczon expressly bound himself only as guarantor, and there are no circumstances in the record from which it can be deduced that his liability could be that of a surety. A guaranty must be express, (Article 2055, Civil Code) and it would be violative of the law to consider a party to be bound as a surety when the very word used in the agreement is "guarantor."

Moreover, as well pointed out in appellees' brief, under the terms of the pre-trial order, appellants accepted the express assumption of liability by Sosing-Lobos & Co., Inc. for the payment of the obligation in question, thereby modifying their original posture that inasmuch as that corporation did not exist yet at the time of the agreement, Piczon necessarily must have bound himself as insurer.

As already explained earlier, appellants' prayer for payment of legal interest upon interest due from the filing of the complaint can no longer be entertained, the same not having been made an issue in the pleadings in the court below. We do not believe that such a substantial matter can be deemed included in a general prayer for "any other relief just and equitable in the premises", especially when, as in this case, the pre-trial order does not mention it in the enumeration of the issues to be resolved by the court.

PREMISES CONSIDERED, the judgment of the trial court is modified so as to make appellees liable for the stipulated interest of 12% per annum from September 28, 1956, instead of August 6, 1964. In all other respects, said judgment is affirmed. Costs against appellees.

Fernando, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

[1] Annex "B" is a document entitled "Mutual Quit Claims. Cessions and Amicable Settlement" under which the right of action of Piczon and Co., Inc. under Annex "A" was transferred to the heirs of Alejandro Piczon who are the appellants.

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