

THE COMMONWEALTH OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. THE FAR EASTERN SURETY & INSURANCE COMPANY, DEFENDANT AND APPELLANT.

G.R. No. L-979. April 13, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

The Court of Appeals forwarded this case because the issues raised are questions of law. Appellant itself admits the substantial correctness of the findings of the trial judge as follows:

"On August 20 and October 1, 1935, the Vda. de Tiu Seng and Tan Kiang, a sociedad en comandita, as principal and the Far Eastern Surety & Insurance Co., Inc., as surety, executed two bonds (Exhibits 'A' and 'A-1') by which they bound themselves jointly and severally to pay the government the sum of P10,000, which was the amount due from Tiu Seng (for the sake of brevity we shall use the name Tiu Seng for the Vda. de Tiu Seng and Tan Kiang) as internal revenue taxes and surcharge. These bonds were filed before the indebtedness was accurately ascertained. It was afterwards found by the Collector of Internal Revenue that the amount due from Tiu Seng was P30,512.64. Demand for payment of this amount was made, but without success. However, a compromise was effected on November 6, 1936, by which the tax due was reduced to P12,874.17. Tiu Seng proposed to the Collector that said amount be paid on installments as follows: P2,874.17 on January 30, 1937, and the balance of P10,000 on monthly payments of P500 each, beginning February 17, 1937. Finally, it was agreed that the payment be made as follows: P2,874.17 on January 20, 1937 and the balance of P10,000 within a period of 10 months at the rate of P1,000 per month. Under this agreement, Tiu Seng has paid the Collector the total amount of P11,644.12, leaving a balance of P1,230.05, the amount which the plaintiff now seeks to recover from the defendant, the Far Eastern Surety & Insurance Co., Inc.

"The issue in this case is whether said sum of P1,230.05 is covered by the two bonds above mentioned."

Within the framework of the above statement of facts attorney for appellant vigorously argues the proposition that it merely guaranteed the payment of P10,000 to the Commonwealth of the Philippines (now the Republic), without undertaking to pay any balance of the obligation of the principal debtor, and that after such sum had been fully satisfied, as in this case, it had no further liability. It is an admitted circumstance that Tiu Seng had delivered, after the execution of the bonds, the total amount of P11,644.12 to the Bureau of Internal Revenue.

It must be observed, however, at this juncture that the trial judge upheld the plaintiff's contention that the amounts paid should be applied first to the unsecured portion of Tiu Seng's liability, thus leaving unpaid and covered by the bonds the sum of P1,230.05, which may legally be collected from defendant as a solidary surety.

Appellant's proposition, which is the crux of this appeal, would undoubtedly be unassailable had all the payments been made specifically on account of the debt secured by the bond. But although it is agreed that the payments were made on account of taxes there is no proof as to the imputation thereof. This point is decisive; for, in effect Tiu Seng had two liabilities to the Commonwealth: one for the sum not covered by the bonds and another for the sum secured thereby. Parenthetically it should be observed that under the law (Article 1826, Civil Code) the

obligation of the guarantor may be less than that of the principal.

The problem is, consequently, one concerning the application of payments. And the rules to be invoked are:

"A person owing several debts of the same kind to a single creditor may declare, at the time of making a payment, to which of them it is to be applied.

"If the debtor should accept from the creditor a receipt which recites the application to be given the payment, he cannot contest it, unless there should be ground for treating the contract as void." (Article 1172, Civil Code.)

"When the payment cannot be applied in accordance with the preceding rules, that which, among the matured debts, is the most burdensome to the debtor shall be deemed paid.

"If such debts should be equally burdensome, the payment shall be applied to all of them pro rata." (Article 1174, Civil Code.)

Manresa, commenting on Article 1174, says that when a person has two debts, one as sole debtor and another as solidary co-debtor his more onerous obligation to which first payments are to be applied is the debt as sole debtor. (Cod. Civil, Vol. VIII, 4th Ed. p. 290). That view is exactly what this Court followed in *Hongkong and Shanghai Banking Corporation vs. Aldanese* (48 Phil., 990) on which the trial judge relied correctly. No difference is perceivable between this litigation and the *Aldanese* case. In both the problem of application of payments is involved. This Court has held:

"Where in a bond the debtor and surety have bound themselves solidarily, but limiting the liability of the surety to a lesser amount than that due from the principal debtor, any such payment as the latter may have made on account of such obligation must be applied first to the unsecured portion of the debt, for, as regards the principal debtor, the obligation is more onerous as to the amount not secured." (*Hongkong & Shanghai Banking Corporation vs. Aldanese*, 48 Phil., 990.)

No valid reason has been demonstrated to justify departure from the above ruling.

Judgment affirmed, with costs, provided that the money shall be turned over by defendant-appellant to the Republic of the Philippines as the successor of the Commonwealth. So ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

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