

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SPECIAL FOURTH DIVISION), LUZON SURETY CO., INC., AND ESTANISLAO E. DEPUYOY, TRADING UNDER THE STYLE OF...

G.R. No. L-33174. July 04, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Before Us is a petition for the review on certiorari of the decision of the Court of Appeals promulgated on 12 December 1970 in C.A.-G.R. No. 36615-R[1] affirming, with modification, the decision of the then Court of First Instance (now Regional Trial Court) of Manila, Branch VII, dated 30 September 1959 in Civil Case No. 35163,[2] an action for collection of sum of money filed by petitioner against private respondents. The dispositive portion of the trial court's decision reads:

"IN VIEW WHEREOF:

1. The case against Luzon Surety Co. is dismissed but its counterclaim is also dismissed for lack of sufficient merit;
2. Defendant Estanislao Depusoy is condemned to pay unto the Philippine National Bank the respective sums as principal of P35,000.00, P30,000.00, P10,000.00, and P25,000.00 together with the interests as outlined in the statement of account set forth in the body of this decision. No pronouncements as to costs.

SO ORDERED."[3]

The dispositive portion of the decision of respondent Court of Appeals reads:

"WHEREFORE, with the modification that the defendant Depusoy shall pay 10% interest on the amount of the judgment, the decision of the trial court is hereby affirmed in all other respects. Without pronouncement as to costs."[4]

However, immediately preceding this is a paragraph reading:

"We agree with the appellant that the trial court erred in not sentencing Estanislao Depusoy to pay attorney's fees equivalent to 10% of the amount due. This is expressly provided for in the promissory notes, and as it does not appear to be unreasonable, the stipulations of the parties should be given effect."

As carefully summarized by the Court of Appeals, the relevant facts in this case are as follows:

"On August 6, 1955, Estanislao Depusoy, doing business under the name of E. E. Depusoy Construction, and the Republic of the Philippines, represented by the Director of Public Works, entered into a building contract, Exhibit 2-Luzon, for the construction of the GSIS building at Arroceros Street, Manila, Depusoy to furnish all materials, labor, plans, and supplies needed in the construction. Depusoy applied for credit accommodation with the plaintiff. This was approved by the Board of Directors in various resolutions subject to the conditions

that he would assign all payments to be received from the Bureau of Public Works of the GSIS to the bank, furnish a surety bond, and the surety to deposit P10,000.00 to the plaintiff. The total accommodation granted to Depusoy was P100,000.00. This was later extended by another P10,000.00 and P25,000.00, but in no case should the loan exceed P100,000.00, Exhibits K-1, K-2, K-3 and K-4. In compliance with these conditions, Depusoy executed a Deed of Assignment of all money to be received by him from the GSIS as follows:

‘That I, Estanislao Depusoy, of legal age, Filipino, married to Lourdes G. Gonzales, doing business under the style of E. E. San Beda Subdivision, Manila, for and in consideration of certain loans, overdrafts or other credit accommodations to be granted by the PHILIPPINE NATIONAL BANK, Manila, have assigned, transferred and conveyed and by these presents do hereby assign, transfer and convey unto the said PHILIPPINE NATIONAL BANK, its successors and assigns all payment to be received from my contract with the Bureau of Public Works, Republic of the Philippines date (sic) August 6, 1955.

By virtue of this assignment it is hereby understood that the assignor hereby acknowledges the monies, sums or payments due from the Bureau of Public Works, Republic of the Philippines, and which are hereby assigned to the PHILIPPINE NATIONAL BANK, as monies, sums and payments belonging to the PHILIPPINE NATIONAL BANK, and that any act or misappropriation or conversion which the assignor or the latter's representatives may commit with respect to the said sums, monies and payments will subject the assignor or the latter's representatives to the criminal liabilities imposed by the Penal Code and such other damages which the Civil Code provides.

It is further understood that the PHILIPPINE NATIONAL BANK can collect and receive any and all sums, monies and payments above-mentioned from the Bureau of Public Works, Republic of the Philippines, and for that matter said bank is hereby authorized to indorse for deposit or for encashment any and all checks, treasury warrants, money orders, drafts and other kinds of negotiable instruments that might be issued in connection with the payment herein assigned.

This assignment shall be irrevocable subject to the terms and conditions of the promissory notes, overdrafts and any other kind of documents which the PHILIPPINE NATIONAL BANK have (sic) required or may require the assignor to execute to evidence the above-mentioned obligation.'

Luzon thereafter executed two surety bonds, one for the sum of P40,000.00, Exhibit D, and the other for P60,000.00, Exhibit E. Exhibits D and E, except for the amount, are expressed in the same words as follows:

‘That we, E. E. DEPUSOY CONSTRUCTION CO., of 32 2nd Street, San Beda Subdv., Manila, as principal and LUZON SURETY COMPANY, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as surety, are held and firmly bound unto the PHILIPPINE NATIONAL BANK of Manila in the sum of SIXTY THOUSAND PESOS ONLY (P60,000.00), Philippine Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

The conditions of the obligation are as follows:

WHEREAS, the above bounden principal, on the day of September, 1956 in consideration of a certain loan of (P60,000.00) executed a Deed of Assignment in favor of the Philippine National Bank on all payments to be received by him from the Bureau of Public Works in connection with a contract dated August 6, 1956.

WHEREAS, said PHILIPPINE NATIONAL BANK, requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said Agreement.

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement stipulated in said Agreement then, this obligation shall be null and void;

otherwise, it shall remain in full force and effect.

The liability of LUZON SURETY COMPANY, INC. under this bond will expire January 31, 1957. Furthermore, it is hereby agreed and understood that the LUZON SURETY COMPANY, INC. will not be liable for any claim not discovered and presented to the company within THREE (3) months from the expiration of this bond and that the obligee hereby waives his right to file any court action against the surety after the termination of the period of the three months above mentioned.'

With the consent of Luzon, the bond was extended for another 6 months from January 31, 1957.

Under the credit accommodation granted by the plaintiff bank, Depusoy obtained several amounts from the bank. On January 14, 1957, Depusoy received P50,000.00 from the bank which he promised to pay in installments on the dates therein indicated, Exhibit A. On January 17, 1957, he received another P50,000.00 under the same conditions as the promissory note Exhibit A, except with respect to the time of payment. Under this arrangement all payments made by the GSIS were payable to the Philippine National Bank. The treasury warrants or checks, however, were not sent directly to the plaintiff. They were received by Depusoy, who in turn delivered them to the plaintiff bank. The plaintiff then applied the money thus received, first, to the payment of the amount due on the promissory notes at the time of the receipt of the treasury warrants or checks, and the balance was credited to the current account of Depusoy with the plaintiff bank. A total of P1,309,461.89 were (sic) paid by the GSIS to the plaintiff bank for the account of Estanislao Depusoy, Exhibit 1-Luzon. Of this amount, P246,408.91 were (sic) paid according to Exhibit 1 for the importation of construction materials, and P1,063,408.91 were (sic) received by the Loans and Discounts Department of the plaintiff bank. This amount was disposed off by the plaintiff's Loans & Discounts Department as follows:

- a) P795,976.64 were (sic) credited to the current account of Depusoy with the plaintiff;
- b) P20,000.00 were (sic) credited to the plaintiff's Foreign Department;
- c) P2,552.94 were (sic) credited to the payment of interest; and
- d) P210,000.00 were (sic) applied to the principal of indebtedness. (Exh. N-1).

Depusoy defaulted in his building contract with the Bureau of Public Works, and sometime in September, 1957, the Bureau of Public Works rescinded its contract with Depusoy. No further amounts were thereafter paid by the GSIS to the plaintiff bank. The amount of the loan of Depusoy which remains unpaid, including interest, is over P100,000.00. Demands for payment were made upon Depusoy and Luzon, and as no payment was made, x x x."[5]

herein petitioner filed with the trial court a complaint (Civil Case No. 35163) against Estanislao Depusoy and private respondent Luzon Surety Co. Inc. (LSCI).

After trial on the merits, the trial court rendered a decision the dispositive portion of which is above adverted to.

In dismissing the case as against LSCI, the trial court ruled that the surety bonds it issued, Exhs. "D" and "E":

"x x x guaranteed only the faithful performance of the deed of assignments, Exhibit C, and nothing else. That the bonds were extended by the letters Exhs. E and I did not change their conditions, x x x."[6]

Petitioner appealed from said decision to the Court of Appeals, (C.A.-G.R. No. 36615-R) relying on the following assigned errors:

I

The trial court erred in holding that defendant-appellee Luzon Surety Company, Inc. 'guaranteed only the faithful performance of the deed of assignment, Exh. 'C', and nothing else'; in holding the defense of the appellee Luzon Surety Company, Inc. that there has been no breach of the terms and conditions of the bonds Exhs. 'D' and 'E'; in finding that the 'bonds' can only be therefore understood to guarantee that the payment due from the GSIS to Depusoy would be delivered unto the bank'.

II

The trial court erred in not finding that the bonds (Exhs. 'D' and 'E') should be read jointly with the resolutions approving the loan (Exhs. 'K' to 'K-5'), the promissory notes and the deed of assignment in the determination of the true intent of the parties in the execution of the bonds which are the basis of the liability of the defendant-appellee Luzon Surety Company, Inc., in not considering resolutions Exhs. 'K' to 'K-5'; promissory notes Exhs. 'B', 'G', and 'H' and the deed of assignment, Exh. 'C' as integral parts of the surety bonds Exhs. 'D' and 'E' as therein incorporated by reference in said surety bonds as such necessarily bound the appellee Luzon Surety Company to their terms.

III

The trial court erred in not construing the terms of the bonds in favor of the -plaintiff-appellant PNB and against the defendant-appellee Luzon Surety Company, Inc.

IV

The lower court erred in not holding that the bonds Exhs. 'D' and 'E' and letters of extension Exhs. 'F' and 'I' were compensated surety agreements executed as required by PNB board resolutions Exhs. 'K' to 'K-5' for the purpose of securing the payment to the PNB of the amount advanced by the said bank to the appellee Estanislao Depusoy to finance the construction of the GSIS building subject to the construction contract Exh. '2-Luzon' or Exh. 'O-PNB'; in not finding that Exhs. 'F' and 'I' are indubitable proofs that defendant-appellee Luzon Surety Company, Inc., is liable for the repayment of the P100,000.00 loan and the additional accommodations granted to the defendant-appellee Estanislao Depusoy; and in not finding and holding that Exhs. 'D' and 'E' in the sense that they have been extended so as to secure new accommodations aside from the original obligation mentioned in said bonds.

V

The trial court erred in finding that all payments due from the GSIS construction to Depusoy were actually delivered unto the bank; and in not finding that Depusoy made diversions from these amounts for which the surety should be bound to answer under the terms of its bonds.

VI

The trial court erred in not finding that when appellee Depusoy incurred breach (sic) in his construction contract with the Bureau of Public Works said default on the part of the principal in his contract resulted in a consequent breach of his undertaking under the deed of assignment; and that consequently any breach in the undertaking of the principal in said deed of assignment communicated liability to the surety; in not finding likewise that breach on the part of the appellee Depusoy in his undertaking under the promissory notes meant breach of the terms of the deed of assignment which incorporated said promissory notes and that this breach in the deed of assignment communicated liability to the surety under the terms of the bonds; and that trial court (sic) erred in not finding that there was a breach of the bonds due to the failure of the appellee Luzon Surety Company, Inc. to see to it that the full amount of P1,309,461.89 remitted by the GSIS to the PNB was actually

received by the PNB; in not finding that the PNB did not receive all the amounts still due to the said institutions as remitted by the GSIS under the terms of the deed of assignment.

VII

The trial court erred in not sentencing defendant-appellee Estanislao Depusoy to pay the attorney's fees equivalent to 10% of the amounts due and the costs of the suit.

VIII

The trial court erred in not admitting in the evidence proof of the amount actually received by the foreign department of the PNB and the letter of the GSIS to the PNB as part of the rebuttal evidence of the defendant-appellee (see evidences (sic) offered as part of the record on appeal for purposes of review).

IX

The trial court erred in relying exclusively for its decision on the relation of facts presented by the appellee-Luzon Surety Company; disregarding evidences (sic) presented by the PNB consisting of documentary evidences (sic) disclosing patent facts appearing on the face of said documents and that consequently the decision is not based on the real facts and law of the case; and consequently dismissing the case against the Luzon Surety."[7]

In due course the Court of Appeals rendered the decision adverted to above. In disposing of the assigned errors, it patiently examined and analyzed the facts and made an extensive, exhaustive and well-reasoned disquisition thereon which We deem necessary to quote:

"The assignment of error maybe (sic) reduced into one single question, - what is the obligation of Luzon under the surety bonds, or, stated otherwise, what obligation had been guaranteed by Luzon under the terms of the surety bonds? It is the contention of the plaintiff that the surety bonds, Exhibits D and E, guaranteed the payment of the loans or the debt of Depusoy to the plaintiff to the extent of P100,000.00. Luzon, however, contends that what it guaranteed was the performance of Depusoy of his obligation under the Deed of Assignment, Exhibit C, and not other agreements between Depusoy and the bank. This contention was upheld by the lower court. This, we believe is the correct construction of the surety bonds. Under the surety bonds, Depusoy and Luzon bound themselves to the plaintiff in the sum of P100,000.00. It recited that the principal, Depusoy, and Luzon bound themselves jointly and severally to the PNB under the following conditions: that 'in consideration of a certain loan, Depusoy executed a Deed of Assignment in favor of the PNB on all payments to be received by him from the Bureau of Public Works in connection with a contract of August 6, 1956'; that the PNB required the principal to give a good and sufficient bond to secure the full and faithful performance on his part of said agreement; and that, 'if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions, and agreements stipulated in said agreement, this obligation shall be null and void'. Now, what are the undertakings, covenants, terms, conditions, and agreements stipulated in the said agreement or Deed of Assignment? The undertakings of the principal Depusoy, under the Deed of Assignment, Exhibit C, were to assign, transfer, and convey to the plaintiff bank all payments to be received by Depusoy from the Bureau of Public Works; that Depusoy acknowledged that such sums assigned and received by the plaintiff would belong to the PNB, and if any conversion should be made by the assignor or his representative, he would be criminally liable; that the PNB could collect and receive all sums and monies, and payments, and the bank was authorized to endorse for deposit or for encashment all checks or money orders, or negotiable instruments that it might receive in connection with the assignment. Nowhere in the Deed of Assignment nor in the bonds did Luzon guarantee that Depusoy would pay his indebtedness to the plaintiff and that upon Depusoy's default, Luzon would be liable. When the terms of the agreement are clear, there can be no room for construction. If the intention of the parties, and particularly of Luzon, was to

guarantee the payment of the debt of Depusoy to the plaintiff, the bonds would have recited in its preamble that the principal was indebted to the PNB and that the PNB required the principal to give a good and sufficient bond to secure the faithful performance on his part of the terms of the promissory notes. Instead of doing so, it recited that in consideration of a certain loan, the principal had executed a Deed of Assignment. The recital of the loan in the amount of P40,000.00, Exhibit D and P60,000.00, Exhibit E, is merely a statement of the cause or consideration of the Deed of Assignment and not a statement of the obligation. The Deed of Assignment necessarily was executed for a consideration, otherwise, it would be null and void. The obligation recited in the surety bonds, Exhibits D and E, is not the loan, but the Deed of Assignment; and that precisely was what was guaranteed by Luzon in the bonds, Exhibits D and E, as shown by the following:

- 1) Contrary to the usual practice of the plaintiff, Luzon did not sign the promissory notes, Exhibits A and B;
- 2) Although the resolutions of the Board of Directors required that the surety should make a deposit of P10,000.00, Luzon did not make such a deposit, the verbal testimony of Delfin Santiago, Manager of the Loans and Discounts Department, to the contrary notwithstanding. The documentary evidence was submitted to prove that was the fact;
- 3) Delfin Santiago finally admitted that what was guaranteed was not the loan but the Deed of Assignment.

Delfin Santiago testified as follows:

Q Did you inform the Luzon Surety company, Inc. of your actuation on this fact, that is in your giving Mr. Depusoy portions of the payments made by the GSIS to the Philippine National Bank pursuant to the Deed of Assignment?

A No, because I understand that the Luzon Surety Company, Inc. stands as surety on that assignment on which the full payment of the contract is assigned to the payments. (TSN, p. 54)

x x x

Q Usually, Mr. Santiago, it is the practice of the Philippine National Bank in cases where a surety company guarantees the account of the borrower, the Philippine National Bank requires the surety company to sign the promissory note as a co-maker, is it not?

A In case the condition is approved, the surety I remember very well, the last accommodation given to Mr. Depusoy . . . that was the condition, but the Luzon Surety Company, Inc. did not want to sign, so at the request of the Luzon Surety Company, Inc. and Mr. Depusoy, the approved accommodation was modified in such a way as only to the surety bond.

ATTY. NERI: If Your Honor please. We object to the question, it was not covered by the direct examination.

COURT: Answer.

A Well, apparently that was the intention because you decided to sign jointly and severally the promissory note.

Q And because that was our intention the Philippine National Bank agreed to that desire of Luzon Surety Company, Inc. by issuing only a similar surety bond and not signing as co-maker, and jointly and severally on the promissory note?

ATTY. NERI: Objection Your Honor, the contract is the best evidence.

COURT: Answer.

A As usual, as at the beginning, we take it that your bonding the Deed of Assignment is the understanding that all payments for the whole contract will go to us. (TSN, pp. 55-57, July 21, 1958)

x x x

Q Did you read the terms of the bond?

A Yes, sir, that's right.

Q And you further noted in the bond it merely guaranteed the deed of assignment, is that correct? of Mr. Depusoy?

A Yes, sir.

ATTY. CRUZ: And not this particular loan, is it not?

ATTY. NERI: We refer to the document, Your Honor.

COURT: Sustained.

(TSN, pp. 9-10 June 26, 1959)

x x x

ATTY. NERI: Now, Mr. Depusoy in his testimony stated that when you received these amounts from the GSIS and issued credit memos . . . in favor of Mr. Depusoy, you did not notify the Luzon Surety Company, Inc. of the fact of the issuance of this (sic) credit memos in favor of Mr. Depusoy will you state to this Honorable Court the reason why is that you did not give notice to the Luzon Surety Company, Inc.?

A I did not notify the Luzon Surety Company, Inc. of this transaction because the bond filed by the Luzon Surety Company, Inc., but the terms of the bond filed by Luzon Surety Company is that they understand the transaction of Mr. Depusoy with the Philippine National Bank.

COURT: They understand the transaction to be . . .

WITNESS: . . . The nature of the transaction with Mr. Depusoy in the sense that as we . . . as appearing in this bond Exhibit D . . . all payments to be received by him from the Bureau of Public Works in connection with the contract to secure the full and faithful performance on his part of the said agreement, the agreement referred to is the assignment of payment in connection with the contract of Mr. Depusoy with the GSIS.

(TSN, pp. 27-29 June 1, 1959)

In support of his contention that the surety bond was intended to guarantee the loan, the appellant gave the following grounds or reasons:

1) The resolution of the Board of Directors of the plaintiff approving the loan or credit accommodation to Depusoy required that Depusoy should put up a bond executed by the Luzon Surety Company, Inc., Exhibits K-3, K-4 and K-5. The resolutions of the Board of Directors were unilateral acts of the plaintiff and were conditions imposed upon the debtor, Depusoy. Luzon was not a party to these resolutions and under the rule of *res inter alios acta*, they cannot bind or prejudice Luzon in the absence of evidence that the terms of the resolutions had been brought to the attention of Luzon and that it had acceded thereto. All that the bond stated is that the PNB required the principal to give a good and sufficient bond. There can be no other consideration for the execution of the bonds other than stated thereon in the absence of allegation that they did not express the true intention of the parties.

2) Appellant contends that the promissory notes and the building contract mentioned in the Deed of Assignment became part and parcel of the Deed of Assignment under the principle of incorporation by reference. We agree that the Deed of Assignment became part and parcel of the bond, but to say that all promissory notes, overdrafts, and any other kind of documents which the PNB might require the assignor to

execute to evidence the aforementioned obligation were also incorporated by reference to the surety bond and became obligation of Luzon is to include in the assignment, covenants and obligations beyond the contemplation of the parties. The appellant relies on the last paragraph of the Deed of Assignment which reads: 'This assignment shall be irrevocable and subject to the terms and conditions of the promissory notes, overdrafts, and any other kind of document which the PNB can require or may require the assignor to execute to evidence the above-mentioned obligation'.

It is argued that under this stipulation, Luzon guaranteed the payment of the promissory notes which are the subject of this action and also the building contract between Depusoy, its principal, and the Bureau of Public Works. This is a very far-fetched construction. This paragraph does not impose any obligation upon Depusoy. All that was required of Depusoy was to execute such documents which might be required by the PNB to evidence the Deed of Assignment. The words of the phrase 'subject to' are words of qualification and not of contract (Cox vs. Vat 149, 110 pp. 96-148 CCH 147) and means subject to, meaning under the control, power or dominion or subordinate to and not being words of contract imposing upon defendant no contractual obligation (40 Words & Phrases 386-389). What was evidently intended is the Deed of Assignment when it stated 'subject to the terms and conditions of the promissory notes and overdrafts' was that any amount received by the PNB would be applied to the payment of the promissory notes and overdrafts in accordance with their terms and conditions as they fell due because the Deed of Assignment was executed not for the purpose of making the PNB the owner of all the monies received from the GSIS, but as a security for the payment of the debt of Depusoy arising from the credit accommodation granted to him by the appellant. And that this was the intention is evident from the fact that upon receipt of the treasury warrants and checks from the GSIS, the appellant applied the same to the payment of the debt of Depusoy which was due with interest and the remainder was credited to Depusoy's current account. This balance was subject to the free disposal of Depusoy. Hence, out of the over P1 million received by the Loans & Discounts Department of the appellant, almost P800,000.00 were credited to the current account of Depusoy and only a little over P200,000.00 was applied to his debt. Appellant contends that since in the Deed of Assignment, Depusoy undertook to assign, transfer, and convey to PNB all payments to be received by him from his contract with the Bureau of Public Works, Luzon had thereby guaranteed the faithful performance by Depusoy of his building contract with the Bureau of Public Works, and Depusoy having defaulted in his building contract by reason of which the Bureau of Public Works rescinded the building contract, the PNB did not receive from the GSIS the full contract price of over P2 million. This indeed is a very far-fetched construction of the contract. What was transferred or assigned by Depusoy to the PNB were all payments to be received by him under the contract with the Bureau of Public Works. Necessarily, what was to be received by Depusoy depends upon his performance under the contract. As long as he faithfully performed the contract, he would receive from the GSIS the amount due him. From the moment he defaulted and failed to comply with the terms of the contract, he would receive nothing and he could not assign what he did not have. To argue that under the terms of the Deed of Assignment, Luzon also guaranteed the faithful performance of the building contract of Depusoy with the Bureau of Public Works is fanciful and wishful thinking.

3) Appellant also contends that under Exhibits F and I, it can be seen that what was really intended to be guaranteed by the surety agreement was the payment of the loan. We quote Exhibits F and I.

'Relative to our above-captioned bonds in the amount of P40,000.00 dated May 28, 1956 and September 24, 1956, respectively, please be advised that same is hereby extended for a further period of six (6) months from January 31, 1957. All other terms and conditions of our above-mentioned bonds shall remain the same except the period of expiration hereinabove mentioned. These bonds also cover the new accommodation given our Principal.

Relative to the above numbered bonds, in the amount of P40,000.00 and P60,000.00 dated May 28, 1956 and September 24, 1956, respectively, the account secured thereby having been reduced by virtue of payments made by our principal, which, according to him, has but a balance of P75,000.00 we have the honor to inform you that we are agreeable to the extension of further credit to our principal to the extent of the amount of the said bonds,

under the same terms and conditions thereof.'

At first glance, from the statement in Exhibit F, which reads: 'This bond also covers the new accommodation given our principal', and in Exhibit I, that 'we are agreeable to the extension of further credit to or principal to the extent of the amount of the said bond', it would appear that Luzon was referring to the obligation of Depusoy to pay the loan. But particular attention must be paid to the statement in Exhibit F that 'all of the terms and conditions of our above-mentioned bonds shall remain the same except the period of expiration hereinbelow mentioned'. What was really agreed by Luzon was the extension of the duration of the surety bond, for under the terms of the bonds they expired six months from their respective dates. Any statement in Exhibit I that may be construed as referring to the debt of Depusoy was made only by an Asst. Manager who evidently was not familiar with the terms of the surety bond. It must be noted that the surety bond was executed by CS Rodriguez, General Manager. Moreover, it cannot prevail over the testimony of Delfin Santiago, Manager of the Loans & Discounts Department, that what was guaranteed by the surety bond was the Deed of Assignment.

It is also contended that if what was intended to be guaranteed by Luzon is the Deed of Assignment, the surety bond guaranteed nothing, because with the execution of the Deed of Assignment, nothing thereafter remained to be done. This is not true, for the terms of the Deed of Assignment, Depusoy authorized the PNB to receive all monies due from the Bureau of Public Works and to endorse for deposit all instruments of credit that might be issued in connection with the payments therein assigned. Under this stipulation, Luzon guaranteed that all the monies due Depusoy under his building contract with the Bureau of Public Works should be paid to the PNB. It is true that all the checks and warrants issued by the GSIS were to be made payable to the PNB. But under the arrangement between the PNB, GSIS, and the Bureau of Public Works, and Depusoy, it was Depusoy who received the warrants or checks either from the Bureau of Public Works or from the GSIS, and Depusoy delivered the same to the PNB. The PNB did not take the trouble of going to the GSIS or the Bureau of Public Works to get the checks. One reason because the PNB did not know when any amount would be due. There is nothing then that could prevent an arrangement thereafter between Depusoy and the GSIS, or the Bureau of Public Works to make the checks payable to Depusoy, and Depusoy from forging the signature of the PNB and appropriating the money. This would be a violation of the Deed of Assignment for which Luzon would be liable.

It is not disputed that no payment was made directly to Depusoy after the Deed of Assignment. All amounts due to Depusoy were paid to the PNB for the account of Depusoy. It is true that in accordance with Exhibit M, only P1,063,408.91 were received by the Loans and Discounts Department of the plaintiff bank, and that of the total amount of P1,309,461.89 paid by the GSIS, P246,062.98 were paid for the importation of construction materials. As to the so-called 10% retention fund, there is no evidence that the Bureau of Public Works had retained any amount. In any case what was assigned was 'all payments to be received' under the building contract, and the 10% retention was not to be received by Depusoy until certain conditions had been met.

In its eighth assignment of error, the appellant contends that the lower court in not admitting proof of the amount actually received by the PNB and the letter of the GSIS, Exhibit Q (sic). Aside from the purely technical reason for their rejection, their admission cannot affect the result. Exhibit Q is a letter of the General Manager of the GSIS to plaintiff advising plaintiff of the rescission of the building contract. Exhibits Q, P, P-1 and P-2 are statements of the amounts received by plaintiff's foreign department. There is no evidence that the GSIS had paid any amount to Depusoy in violation of the Deed of Assignment. Not a single cent had been received directly by Depusoy from the GSIS or the Bureau of Public Works.

x x x

We agree with the appellant that the trial court erred in not sentencing Estanislao Depusoy to pay attorney's fees equivalent to 10% of the amount due. This is expressly provided for in the promissory notes, and as it does not appear to be unreasonable, the stipulation of the parties should be given effect." [8]

Its motion for reconsideration[9] having been denied by the respondent Court of Appeals in its resolution of 1 February 1971,[10] petitioner filed the instant petition on 3 March 1971 asserting therein that:

"x x x the Decision and the Resolution of respondent COURT (Annexes A and B) are both not in accord with the evidence, the law, and jurisprudence on the matter.

I. THE SURETY BONDS COVER THE PRINCIPAL LOANS, THE SURETY THEREBY BECOMING LIABLE UPON DEFAULT OF THE LATTER.

II. EVEN ASSUMING ARGUENDO THAT THE BONDS SECURE ONLY THE DEED OF ASSIGNMENT, STILL THE SURETY IS LIABLE FOR FAILURE OF THE PRINCIPAL TO COMPLY WITH THE TERMS OF SUCH DEED.

III. THE DISPOSITIVE PORTION OF THE DECISION SHOULD BE AMENDED TO THE END THAT PRIVATE RESPONDENTS BE ADJUDGED LIABLE FOR ATTORNEY'S FEES."[11]

In support of its petition, petitioner practically summoned the same arguments which it relied upon before the Court of Appeals.

On 3 March 1971 private respondent filed a motion to dismiss the petition[12] on the following grounds:

1. That the petition is without merit;
2. That the questions raised therein are too unsubstantial to require consideration; and
3. That the questions raised are factual.

In the resolution of 8 March 1971 this Court dismissed the petition for being factual and for lack of merit;[13] however, upon motion for reconsideration,[14] this Court reconsidered the resolution and gave due course to the petition.[15] The petitioner was then required to submit its Brief,[16] which it complied with on 12 July 1971.[17] Private respondent LSCI filed its brief on 10 August 1971.[18] Private respondent Depusoy did not file any.

Except for the third assigned error, We find no merit in this petition. The issues raised are factual.

The findings of facts of the Court of Appeals can withstand the most incisive scrutiny. They are sufficiently supported by the evidence on record and the conclusions drawn therefrom do not justify a departure from the deeply rooted and well settled doctrine that findings of facts of the Court of Appeals are conclusive on this Court,[19] considering that the recognized exceptions thereto[20] do not come to the rescue of petitioner.

We are in full accord with the conclusion of the trial court and the Court of Appeals that the bonds executed by private respondent LSCI were to guarantee the faithful performance of Depusoy of his obligation under the Deed of Assignment and not to guarantee the payment of the loans or the debt of Depusoy to petitioner to the extent of P100,000.00. The language of the bonds is clear, explicit and unequivocal. It leaves no room for interpretation. Article 1370 of the Civil Code provides:

"If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

Besides, even if there had been any doubt on the terms and conditions of the surety agreement, the doubt should be resolved in favor of the surety. As concretely put in Article 2055 of the Civil Code, "A guaranty is not presumed, it must be expressed and cannot extend to more than what is stipulated therein."

In the recent case of Umali, et al. vs. Court of Appeals, et al.,[21] We reiterated the unrippled rule that the liability of the surety is measured by the terms of the contract, and, while he is liable to the full extent thereof, such

liability is strictly limited to that assumed by its terms.[22]

In *La Insular vs. Machuca Go Tanco, et al.*, supra., this Court held:

"It is undoubtedly true that the law looks upon the contract of suretyship with a jealous eye, and the rule is settled that the obligations of the surety cannot be extended by implication beyond its specified limits.

Article 1827 of the Civil Code so discloses (*Uy Aloc vs. Cho Jan Ling*, 27 Phil. Rep., 427); and with this doctrine the common law is accordant. As was said by Justice Story in *Miller vs. Stewart* (9 Wheat, 680; 6 L. ed., 189):

'Nothing can be clearer, both upon principles and authority, than the doctrine that the liability of a surety is not to be extended, by implication, beyond the terms of his contract. To the extent and in the manner, and under the circumstances pointed out in his obligation, he is bound, and no farther.'

As earlier adverted to, there is merit in the third assigned error. The paragraph immediately preceding the decretal portion of the decision of respondent Court of Appeals reads as follows:

"We agree with the appellant that the trial court erred in not sentencing Estanislao Depusoy to pay attorney's fees equivalent to 10% of the amount due. This is expressly provided for in the promissory notes, and as it does not appear to be unreasonable, the stipulation of the parties should be given effect."

The dispositive portion of the questioned decision should then be modified in the sense that the "10% interest" indicated therein should be considered and understood as and for attorney's fees.

WHEREFORE, with the above modification, the Decision of the Court of Appeals of 12 December 1970 in C.A.-G.R. No. 36615-R is AFFIRMED, with costs against petitioner.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Annex "A" of Petition; Rollo, 63-82; per Associate Justice Jose N. Leuterio, concurred in by Associate Justices Antonio G. Lucero and Edilberto Soriano.

[2] Per then Judge Magno S. Gatmaitan; Record on Appeal, 42-54.

[3] Record on Appeal, 54.

[4] Rollo, 84.

[5] Rollo, 66-69.

[6] Record on Appeal, 49-50.

[7] Rollo, 63-65.

[8] Rollo, 70-82.

[9] Id., 91-105.

[10] Id., 84.

[11] Id., 22-23.

[12] Rollo, 6-11.

[13] Id., 130.

[14] Id., 139.

[15] Resolution of 13 April 1971.

[16] Id., 159.

[17] Id., 164.

[18] Id., 167.

[19] Chan vs. Court of Appeals, 33 SCRA 737; Manlapaz vs. Court of Appeals, 147 SCRA 236; Chua Giok Ong vs. Court of Appeals, 149 SCRA 119; Francisco vs. Mandi, 152 SCRA 711; Dihiansan vs. Court of Appeals, 153 SCRA 712; Remalante vs. Tibe, et al., 158 SCRA 138.

[20] Summarized in Remalante vs. Tibe et al.; supra, as enunciated in Joaquin vs. Navarro, 93 Phil. 257; Luna vs. Linatok, 74 Phil. 15; Buyco vs. People, 95 Phil. 253; De la Cruz vs. Sosing, 94 Phil. 26; Castillo vs. Court of Appeals, 124 SCRA 808; Casica vs. Villaseca, 101 Phil. 1205; Evangelista vs. Alto Surety and Ins. Co. Inc., 103 Phil. 401; Sacay vs. Sandiganbayan, 142 SCRA 593; Salazar vs. Gutierrez, 33 SCRA 242.

[21] G.R. No. 89561, 13 September 1990.

[22] Government vs. Herrero, 38 Phil. 410; La Insular vs. Machuca Go-Tanco, et al., 39 Phil. 571; Luzon Surety Co., Inc. vs. Teodoro, 101 Phil. 684; Magdalena Estates Inc. vs. Rodriguez et al., 125 Phil. 115; Zenith Insurance Corporation vs. Court of Appeals, et al., 119 SCRA 485; and Philippine Commercial and Industrial Bank vs. Court of Appeals, et al., 159 SCRA 24.

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