

JOHN NORTHCOTT, PLAINTIFF AND APPELLANT, VS. A. S. CANON ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 10001. September 03, 1915

Ponente: CARSON, J.

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CARSON, J.:

The only question which it is necessary to discuss on this appeal is whether the defendant sureties on the bond of A. S. Canon are liable for certain advances made to him while acting as agent for the West Coast Life Insurance Company, and for certain expenditures incurred by the company or its general manager in connection with the agency, under the terms of a fidelity bond executed by them upon his appointment as an agent of the company.

The pertinent provisions of the bond are as follows:

"Whereas the said A. S. Canon, who has been or is about to be appointed an agent of the company, covenants with the company that he will faithfully account for and pay to the company all moneys, securities, and things of value of every description payable to or the property of the company, that may come into his possession or control, whether by way of advances or in any manner whatsoever, and will faithfully discharge his duties as agent and conform to the company's by-laws, rules, and regulations, and such instructions as he may from time to time receive relating to his duties as agent."

The advances in question on this appeal are certain sums of money advanced to Canon against future unearned commissions. The expenditures for which appellant seeks to hold the bondsmen liable are for the most part medical fees paid out by the company to their medical examiners, the amount of which, it would appear, the company claimed the right to deduct from commissions earned by the agent. There is no question raised on this appeal as to the liability of the sureties for premiums actually collected by the agent which he may have failed to pay over to the company. We agree with the trial judge that under the terms of the bond the sureties cannot be held liable for loans of money advanced to the agent under a general agreement that such loans were for his personal use, and to be repaid by him out of his earnings; nor for expenses lawfully incurred in behalf of the agency and actually paid by him or by any other person for him. Under the covenant of the bond the sureties did not undertake to secure the payment of any debt which the agent might contract, or any expense which he might incur in the course of his employment. They merely guaranteed that he would faithfully account for and pay to the company moneys, etc., "payable to or the property of the company," that might come into his possession or control, "whether by way of advances or in any way whatsoever." Money advanced the agent for his personal use by way of an "advance loan" ceased to be the property of the company when the advance was made, the liability of the borrower not being to return the money actually received, but to repay an equal amount in accordance with the stipulation at the time when the advances were made.

Of course, the company or its manager might have stipulated that the moneys advanced to the agent should be used only for the necessary expenses of the agent in the course of his employment and that its expenditure should be accounted for by him, with the understanding that any unexpended balance would be returned to the company, all expenditures to be charged against his future earnings. Under such a conditional advance of funds the agent

would doubtless be required to account to the company for all expenditures, and under the terms of the bond the sureties would, perhaps, be liable for his failure so to do, and might be required to refund any part of such advances not satisfactorily accounted for. But even in that event they would not be liable for moneys so advanced and actually expended and accounted for. The covenant of the bond manifestly contemplates merely the failure to account for, or the misappropriation of moneys, securities, etc, payable to, or the property of the company; and any money expended and accounted for under the conditions indicated would cease to be payable to, or the property of the company, the effect of the lawful expenditure of such money being to convert the conditional advance into an absolute one. It may be that the reference in the covenant to moneys coming into the possession of the agent "by way of advances" may have been made in anticipation of the execution of some such contract with reference to advances to be made the agent, but there is nothing in the record which would justify us in holding that any such agreement was actually entered into. On the contrary, the record seems to disclose that the advances made to the agent were in truth "advance loans" with the sole condition that the company was given the right to deduct the amount of such loans from any future commissions to which he might be entitled.

As to the cash expended by the company or its general manager on behalf of the agency, it is very clear that it does not represent money payable to, or the property of the company, which came into the possession or control of its agent. Doubtless the agent is liable to reimburse the company under his contract for the amount of such expenditures, but there is nothing in the covenant of the bond which would render the sureties liable therefor. To hold otherwise would be to convert what was evidently intended to be a bond merely to secure the faithful accounting for and payment of funds of the company coming into the hands of the agent, into a guaranty of the successful and profitable conduct of his agency, and of the payment of any indebtedness which he might see fit to contract to the company. Manifestly such was not the intention of the sureties, nor was it contemplated by the parties to the surety contract.

No serious attempt was made to hold the sureties liable under the general provisions of the bond covenanting the faithful discharge of his duties by the agent, and it is not necessary to discuss or decide any of the questions which might arise under that clause of the contract. It is sufficient to say that there is nothing in this record which would sustain a judgment for damages for its breach. The judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Trent, and Araullo, JJ., concur.

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