

## **PAO CHUAN WEI, PLAINTIFF AND APPELLANT, VS. REPOSITO NOMOROSA AND GENERAL INDEMNITY CO., INC., DEFENDANTS AND APPELLEES.**

*G.R. No. 10292, February 28, 1958*

Ponente: BENGZON, J.

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### **BENGZON, J.:**

Initiated in the Manila court of first instance, this is a suit to recover on a surety bond executed in plaintiff's favor by Reposito Nomorosa, as principal debtor and General Indemnity Co., Inc., as surety.

Nomorosa died after answering the complaint, and the case against him was dismissed. General Indemnity Co., Inc., pleaded prescription.

After several incidents immaterial at this stage of the proceedings, the controversy was submitted for decision Upon a stipulation of facts the main terms of which ran as follows:

On November 22, 1949 General Indemnity executed the bond Exh. B whereby it guaranteed, as surety, the payment by Reposito Nomorosa of the latter's mortgage debt to plaintiff Pao Chuan Wai in the amount of P2,500.00;

One paragraph of said bond provides:

" \* \* \* Furthermore, it is hereby agreed and understood that the GENERAL INDEMNITY CO., 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 three months above mentioned;"

Nomorosa did not pay the whole debt, there being a balance of P2,282.00;

On February 29, 1950 and March 29, 1950, plaintiff demanded payment of the account from the surety;

Defendant now refuses to pay on the ground that its liability under the bond extended only up to May 22, 1950, but this complaint was filed almost two years after such deadline;

The parties ask the court to decide on "the question as to whether or not the plaintiff has the right to collect from the defendant General Indemnity Co., Inc., the balance remaining unpaid by defendant R. Nomorosa, in the sum of P2,282.00 with 7 per cent interest from January 27, 1949, under the Surety Bond, Exhibit B.

Acting upon the above submission, the trial judge dismissed the case, holding that the action had not been filed "within three months from the expiration of the bond" on or about February 22, 1950. (The suit began in February 1952.)

Pao Chuan Wei appealed in due time. He contends before this Court that his complaint had been seasonably filed, because within three months after the expiration of the bond, he presented to the surety on February 29 and March

29, 1950, the claim for non-performance or non-payment by the principal debtor; and that such presentation rendered the surety liable, it being sufficient compliance with the condition precedent specified in the paragraph of the bond Exh. B herein-above quoted.

The appellee asserts in reply, that presentation of the claim and filing of the action in court must be made within three months after the expiration of the bond.

At first glance and without careful analysis, the last part of the paragraph of the bond herein-above quoted seems to justify appellee's assertion and the lower court's 'dismissal of the proceeding.

However, on second thought and on reading the whole paragraph the probability[1] appears that the parties meant, or the creditor understood, that he "waives his right to file any court action against the surety after the termination of the three-months above mentioned" should he present no claim to the surety within said three-month period. Observe specially that no punctuation separates the first part regarding presentation of claim and the second part regarding waiver. Which is an indication that the second part is a continuation of the first; and the two clauses must be taken together as referring to one topic presentation of claim within three months, and effect of non-presentation, (cf. Art. 1285 of the Civil Code.) The second could not obviously have meant to amend the first part by making it not only a condition precedent but also a limitation of action.

Indeed, as the parties expressly fixed the three month period for presentation of the claim as a condition precedent, they must have intended to give the surety, if the claim is presented within that period, some time to decide whether to pay or not to pay. (Because if it agrees to pay and pays, no complaint need be filed in court.) Now then, if the claim is presented on the 90th or last day, to uphold the contention of appellee would deprive the surety of the chance to decide whether to pay or not to pay, and would compel action on that same day - regardless of the surety's attitude on the matter. That would be non-sensical, to put it strongly.

Again, appellee's contention implies that as the cause of action did not arise until the claim was presented on the last day, such cause of action prescribed on same day—if no complaint was filed on that very day. Evidently, the parties could not have contemplated—and agreed upon—such absurd result or requirement.[2] And yet, if they had knowingly agreed thereto, the agreement is void because it fixed an unreasonable period of prescription for the creditor's right of action.

"In some cases, apparently no longer authoritative precedents, contractual limitation have been regarded as against public policy, and therefore unenforceable in the courts. The prevailing view, however, is that unless it contravenes a valid statute, or unless the time fixed is unreasonably short, such a provision is binding upon the contracting parties." (American Jurisprudence Vol. 3 p. 61.)

"In holding invalid as unreasonable a provision in a bond \* \* \* the court in *Page County vs. Fidelity & D. Co.* (1927) 205 Iowa, 798, 216 N. W. 957, said: 'The proviso under consideration forbids an action for sixty days after default; and likewise forbids an action after the expiration of ninety days from the date of default. This brings upper and nether millstones into close proximity. It reduces the period of limitation to thirty days. This comes very close to an abrogation of the right of action. If the period of limitation can ever be deemed an unreasonable one, this one must be deemed such.' "(121 American Law Reports, Annotated p. 781.)

If it should be argued that the stipulation could be interpreted either as a condition precedent only, or as both condition precedent and prescription, then we would hold it appearing that the bond was executed in a form prepared by the surety company, any ambiguity in the document must be interpreted against it.[3]

In the supposition, however, that the three-month time was actually intended by the parties as both a condition precedent and a limitation period, then the agreement would normally amount to: 45-days for filing claim and the other 45-days for presenting court action. Then the inquiry suggests itself whether 45-days would be a "reasonable

period"; because as stated above, the authorities permit the contracting parties to fix a shorter limitation-of-action-period than that fixed by the statute, provided, it is reasonable (See American Jurisprudence *supra*.)

In an action upon a policy of insurance fixing a three-month period of limitation,[4] this Court impliedly hinting some doubt concerning its reasonableness, did not pass on the point because unnecessary at the time. In a later case, a divided court declared it to be reasonable, following American precedents. (*Teal Motor Co. vs. Orient Insurance Co.* 59 Phil., 809.) Subsequently, however, the Legislature amended the Insurance Law by providing that "any stipulation in any policy of insurance limiting the time for commencing an action thereunder to a period of less than one year from the time the cause of action accrues is void." (Sec. 61-A Insurance Act.)

A surety bond is not, of course, an insurance policy.[5] There are similarities though, between bonding and insurance transactions; so much so that surety companies are placed under the supervision of the Insurance Commissioner. It would be an interesting matter to discuss whether the legislative view as to insurance policies (one-year minimum period) should also be applied to surety bonds issued by licensed surety companies, bearing in mind that in determining the reasonableness of the period fixed by contractual limitation courts "may resort to the standards and analogies of cognate statutes to inform their judgment." [6] This consideration all the more inclines us to the opinion that the bond here in question should receive the interpretation we give to it, namely, that the three-month period established only a condition precedent, -not a limitation of action. And in that light we must hold that inasmuch as plaintiff's claim had been presented to General Indemnity Co., Inc., within the three-months period, and as the action had been subsequently filed within the statutory time of prescription, [7]the case should not have been dismissed.

Wherefore, the appealed decision is reversed, and judgment is hereby entered requiring the defendant General Indemnity Co., Inc., to pay plaintiff the sum of P2,282.00 with 7% interest from January 27, 1949. Costs against appellee in both instances. So ordered.

Paras, C.J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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[1]Which on further examination turns into such certainly as is attainable through judicial process.

[2]Still more absurd if the claim is presented to the surety on the last minute of the last day; because the next minute it prescribes. Any interpretation of the contract which leads to an absurdity should be rejected, and that interpretation which is reasonable and just should be preferred. (*Ferrer vs. Ignacio*, 39 Phil., 446.)

[3]Art. 1288 Civil Code; *Heacock vs. Macondray*, 42 Phil., 205.

[4]*Macia & Co. vs. China Fire Ins. & Co.* 46 Phil., 345, 346, 358.

[5]*Phil. Surety vs. Royal Oil*, 102 Phil., 326.

[6]*South & Central American Com. Co. vs. Panama P. Co.* 142 N. E. 66, 237 N. Y. 287.

[7]Ten years, because the contract is written.

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