

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF
CUSTOMS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS
AND R & B SURETY AND INSURANCE COMPANY, INC.,
RESPONDENTS.**

G.R. No. 103073. March 13, 2001

Ponente: VITUG, J.

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VITUG, J.:

Submitted for resolution is a motion for reconsideration of the decision, dated 14 September 1999, of the Court. Respondent-movant R & B Surety and Insurance, Inc. ("R & B"), contends that -

"I

"THE SUSPENSION OF ENDELO'S LICENSE TO OPERATE RENDERED THE OBLIGATION TO RE-EXPORT IMPOSSIBLE OF PERFORMANCE AND/OR EQUIVALENT TO CANCELLATION OR REVOCATION OF SAID LICENSE, THEREBY DISCHARGING THE SURETY FROM ITS OBLIGATION.

"II

"ASSUMING ARGUENDO THAT R & B SURETY IS LIABLE, IT IS NOT SOLIDARILY LIABLE WITH THE OTHER SURETY, COMMUNICATIONS INSURANCE COMPANY, INC. (CICI) AS ERRONEOUSLY HELD BY THE RTC.

"III

"IN BOND NUMBERS 0064 AND 0073, R & B SURETY WAS ERRONEOUSLY CHARGED FOR MORE THAN THE FACE VALUE OF THE BOND WHILE IN BOND NUMBER 0067, R & B SURETY WAS MISTAKENLY CHARGED TWICE IN PALPABLE VIOLATION OF SECTION 176 OF THE INSURANCE CODE LIMITING THE SURETY'S LIABILITY TO THE AMOUNT OF THE BOND."[1]

Additionally, respondent argues that it should not be held liable for the payment of legal interest which would increase its liability beyond the amount of the bond.

The Court, in its resolution of 15 November 1999, required the Solicitor General to comment on the motion for reconsideration. In his concluding statement, the Solicitor General stated:

"WHEREFORE, except for its plea for modification of this Honorable Court's Decision on the amount of its liability, it is respectfully prayed that private respondent's Motion for Reconsideration be denied for lack of merit."[2]

Relative to the first ground invoked by movant, suffice it to state that it was not clearly shown that the suspension of Endelo's license had rendered it impossible for Endelo to re-export the articles in question, or that such a suspension had amounted to a cancellation or revocation of its license that could thereby justify a discharge of respondent R & B from its liability. The matter was sufficiently discussed in the Court's decision -

"Admittedly, Endelo's license to operate was suspended sometime in 1970, a fact clearly gleanable from the allegations of Endelo in its Answer to the Complaint, claiming that its failure to export the imported raw materials in its original state or as finished products was due to the suspension of its license to operate allegedly done illegally and unnecessarily by the Board. Such allegation of illegal and unnecessary suspension was, however, not backed by any supporting evidence. Neither is there sufficient proof that the suspension of Endelo's license was made during the two-year period. Much less has it been shown that such suspension prevented it from complying with its obligations under the bonds.

"Records show that the pilferage by Endelo and the subsequent investigation conducted thereon, which resulted in the suspension of its license in 1970, was admitted by Atty. Casareno under cross-examination on October 23, 1986. That the investigation report thereon could not be produced was adequately explained by Atty. Casareno who testified that the investigation report and records pertaining to such investigation have been condemned since the said documents were kept in the custody of the Bureau of Customs only for a period of five (5) years.

"Having relied on the illegality of its suspension by way of defense, Endelo and not petitioner has the burden of proving the same. In addition, Endelo was duty-bound to prove whether or not the suspension of its license was for an indefinite period or merely for a limited time. Despite this well-established rule, the Court of Appeals shifted that burden to the petitioner, and without any sustainable basis, upheld the theory of Endelo that the suspension of its license was invalid. But no such implication can be drawn either from the failure of petitioner to show the propriety of the suspension order or from the mere non-production of the documents or records of the alleged investigation prior to the order of suspension. Further, absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be applied.

"x x x x x x x x

"x x x. What is more, Endelo was not without recourse insofar as its duty to comply with its obligation was concerned. Assuming for the sake of argument that the suspension in question was indeed illegal, records show no effort on the part of Endelo to have the said suspension lifted by the Embroidery and Apparel Control and Inspection Board. As aptly observed by petitioner, such omission has bolstered the submission that the suspension of Endelo's license was proper and the alleged pilferage was the main cause therefor. Moreover, it does not appear that Endelo was precluded from exporting the imported materials subject of the controversy, in their original state, within two (2) years from the time they were deposited in the bonded warehouse of the Bureau of Customs."[3]

Movant next argues that R & B should not be held liable for more than the face value of the bonds. This argument indeed has its merit. Section 176 of the Insurance Code provides:

"SECTION 176. The liability of the surety of sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee, (as amended by P.D. No. 1455)."

The face values of the bonds issued by respondent-movant are hereunder itemized, viz:

R & B Bond

Face Value of the Bond

(1) 0064 dated 20 February 1970

P500,000.00

(2)

0067 dated 18 March 1970 as increased by Bond Indorsement dated 29 April 1970

1,000,000.00

(3)

0067 dated 01 March, 1970 as increased by Bond Indorsement dated 29 April 1970

1,000,000.00

(4) 0073 dated 10 April 1970

500,000.00

P3,000,000.00

The trial court required respondent-movant R & B to pay petitioner the total amount of P4,305,017.00, representing taxes and duties due to it in the four causes of actions covering the four embroidery bonds, which was well above the total face value of the bonds in the sum of P3,000,000.00. R & B's liability should instead be computed thusly:

Duties and Taxes Due Petitioner

R & B Bonds

Amount Due (Legal Interest excluded)

(1) P1,515,798.00 (0064) P500,000.00 P500,000.00

(2) 662,961.00 (0067) 1,000,000.00 662,961.00

(3) 1,200,651.00 (0073) 500,000.00 500,000.00

(4) 925,607.00 (0067) 1,000,000.00 925,607.00

TOTAL P4,305,017.00 P3,000,000.00 P2,588,568.00

plus "legal interest" on the amount due (P2,588,568.00) from the time of the filing of the complaint until fully paid. R & B's claim that it should not be held liable to pay legal interest thereon cannot be sustained since the payment for legal interest is for the incurrance of default and the necessity of judicial collection.[4]

Respondent-movant opines that its liability should be pro-rated with that of CICI since R & B's liability is solidary with that of Endelo and not with CICI. The contention is unacceptable considering that the joint and several liability of the surety (R & B) and the obligor (Endelo) gave petitioner the right to compel performance of the full obligation from both Endelo and R & B or from either of them.[5]

WHEREFORE, the motion for reconsideration is partially granted by modifying the decision of the Regional Trial Court, dated 13 February 1989, limiting the liability of respondent R & B Surety and Insurance, Inc., for duties and taxes due to petitioner only in the amount of P2,588,568.00 plus legal interest thereon, however, from the filing of the complaint until fully paid. The decision of this Court sought to be reconsidered is thusly modified.

SO ORDERED.

Melo, (Chairman, Third Division), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 247- 248.

[2] Rollo, p. 283.

[3] Rollo, pp. 242-244.

[4] Smith Bell and Co., Inc. vs. Court of Appeals, 267 SCRA 530; PNB vs. Luzon Surety, 68 SCRA 206.

[5] Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (New Civil Code)

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