

MANILA SURETY & FIDELITY CO., INC., PLAINTIFF AND APPELLEE, VS. TEODULO M. CRUZ, DEFENDANT AND APPELLANT.

G. R. No. 10414. April 18, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a replevin case instituted by plaintiff against defendant to recover possession of certain personal properties described in paragraph 2 of the complaint. In his answer, defendant set up certain special defenses and a counterclaim.

The court after hearing rendered judgment declaring plaintiff entitled to the possession of the properties involved and ordering defendant to pay damages in the sum of P500.00, plus the costs of suit. Defendant took the case directly to this Court on the plea that the only questions he would raise are of law.

The facts found by the court a quo are: On November 10, 1949 defendant executed a deed of chattel mortgage in favor of plaintiff in consideration of the latter having posted two bonds in behalf of Herminia Cruz and Felicisima Policarpio in favor of the National Rice and Corn Corporation. These bonds were issued pursuant to certain indemnity agreements executed by Herminia Cruz, Felicisima Policarpio and defendant Cruz in favor of plaintiff on the same day, November 10, 1949.

On October 20, 1950, the Price Stabilization Corporation, as legal successor of the National Rice and Corn Corporation, filed Civil Case No. 12379 in the Court of First Instance of Manila seeking to make the Manila Surety and Fidelity Co., Inc., liable on the bond it has posted on behalf of Felicisima Policarpio in the sum of P2,472.75. Subsequently, or on November 8, 1950, the Price Stabilization Corporation filed also Civil Case No. 12510 of the same court seeking to make the same company liable on the bond it has posted on behalf of Herminia Cruz for P2,472.75. Before Cruz could be served with summons, the latter case was dismissed without prejudice to its reinstatement.

On May 23, 1952, the personal properties mortgaged to plaintiff were levied on by virtue of a writ of execution issued in Civil Case No. 846 of the Court of First Instance of Rizal, entitled Jose Estrada vs. Teodulo M. Cruz. Upon learning of said levy in execution, plaintiff on May 29, 1952, presented a third party claim based on the deed of chattel mortgage executed in its favor by the defendant. Thereupon, the sheriff of Rizal informed the plaintiff in Civil Case No. 846 that in view of said third party claim he would release the properties levied upon to the claimant unless an indemnity bond be posted in his favor. On May 31, 1952, defendant bound himself to settle Civil Case No. 12379 with the Naric authorities on or before June 9, 1952 with the express stipulation that plaintiff may take possession of the mortgaged properties should he fail to effect the settlement. However, defendant failed to effect such settlement and merely obtained a postponement of the trial. On June 11, 1952, plaintiff requested the sheriff to effect the delivery to it of the properties covered by the mortgage. But despite the rights asserted by plaintiff under the letter agreement approved by defendant and as a third party claimant and chattel mortgagee, the defendant refused to deliver the properties.

On June 13, 1952, the court issued a warrant for the seizure of the properties. On April 27, 1954, the Naric demanded payment of the unsettled accounts of certain bonded rice dealers among whom were Herminia Cruz for P2,672.75 and Felicisima Policarpio for P1,472.75. The demand was followed by a reminder from the Insurance Commissioner to plaintiff to pay P12,732.00 on the Naric bonds. Accordingly, plaintiff made several payments to the Naric on the accounts of those bonded rice dealers including the sum of P100.00 on the account of Felicisima Policarpio and the sum of P500.00 on the account of Herminia Cruz.

Appellant's main assignment of error is predicated on the fact that the action instituted against him by appellee is premature because the principal debtors for whom appellee had posted a bond have not yet been made actually liable for any obligation to the Naric as in fact its claim is still being disputed in Civil Case No. 12379 of the Court of First Instance of Manila. The same is true, it is claimed, with regard to the liability of Herminia Cruz involved in Civil Case No. 12510 of the same court.

There is no merit in this contention. In the indemnity agreements executed by appellant in favor of appellee, there appears the following clause: "Said indemnity shall be paid to the company as soon as it has become liable for the payment of any amount, under the above mentioned bond, whether or not it shall have paid such sum or sums of money, or any part thereof." This clause is clear enough to be disputed. It is there said that the liability of appellee as bondsman would attach as soon as it has become liable for the payment of any amount, regardless of whether said amount shall have been paid or not. This is the situation that actually obtains here. The Naric, or its legal successor, the Prisco, has actually filed an action in court demanding payment of the obligation from appellee under the bond it has posted on behalf of both Felicisima Policarpio and Herminia Cruz, which action is more than enough to entitle appellee to enforce the indemnity agreements executed by appellant. This constitutes the cause of action of appellee in the present case (*Alto Surety & Insurance Company vs. Aguilar*, G. R. No. L-5625, promulgated March 16, 1954).

Appellant also argues that the trial court should have dismissed the case on the ground of novation of the under-taking assumed by appellee in behalf of its principal debtors in favor of the Naric which has the effect of relieving appellant from his liability under the indemnity agreement.

To have a clear view of the factual background giving rise to this claim of appellant, a few facts need be stated. The Naric was the creditor which delivered rice and corn commodities on credit to Felicisima Policarpio and Herminia Cruz. These two obliged themselves to pay their obligations within seven days from delivery. Appellee is the surety company which undertook to pay the Naric in the event that the two debtors should fail to pay their obligations on their dates of maturity. These two debtors, together with appellant, in turn bound themselves to indemnify appellee for all losses and damages which said appellee may sustain by reason of its having posted the surety bond in favor of the Naric. Subsequent to the institution of the two suits by the Naric against appellee, the Insurance Commissioner intervened and prevailed upon appellee to make partial payments on account of the obligations of its bonddees in favor of the Naric. And the appellee obligingly agreed to do so by making partial payments in behalf of its bonddees, including Felicisima Policarpio and Herminia Cruz. These payments however were within the amounts covered by the indemnity agreements signed by appellant. It is now claimed that these partial payments amounted to a novation of the original obligations of said debtors which has the effect of discharging appellant from his liability to the surety.

This contention is untenable. What was actually done by appellee was not to change the nature of the obligations of the principal debtors, nor modify the terms of the bond posted by appellee, but merely to make partial payments of the accounts in order to accede to the demand of the Insurance Commissioner to ease up the situation of the Naric. In other words, the nature of the liability of the principal debtors remained the same, with the only difference that certain payments were made in advance within the framework of the indemnity agreements.

Certainly, such payments can not have the effect of discharging appellant from his liability because in the indemnity agreements he signed, he assumed to pay and make good "any damage, loss, costs, charges or expenses of whatever kind and nature, including counsel or attorneys' fees, which the company may, at any time, sustain or incur, as a consequence of having become surety" upon the surety bonds.

Appellant finally argues that the trial court should have declared itself without jurisdiction to act on the claim of appellee because the same has arisen in Civil Case No. 846 of the Court of First Instance of Rizal where appellee intervened as third party claimant to obtain possession of the properties levied on by the sheriff by virtue of the writ of execution issued in said case.

This claim is also not well taken. Under the procedure provided for in the Rules of Court, after a third party claim has been asserted and the plaintiff fails to post the indemnity bond in favor of the sheriff, the duty of this officer is to release the property from his custody and relinquish it to the third party claimant whose preferential right must have been recognized by the plaintiff. In this particular case, appellee, it is true, asserted its third party claim to the property but the sheriff did not continue with his custody thereof in view of the failure of the plaintiff to put up the bond required by the rule. The result was that the property never came under the jurisdiction of the court cognizance of said case. Instead the property continued in possession of appellant who refused to relinquish it in spite of its commitment to do so both under the chattel mortgage agreement as well as under the compromise he subsequently entered into with appellee relative to the possession of the property. There was therefore no occasion for appellee to intervene in said Civil Case No. 846, while on the other hand the adamant attitude of appellant in clinging to the property gave sufficient justification to appellee to institute the present action.

Another factor which removes any doubt as to the right of appellee to take possession of the property in question is the contents of the letter agreement of May 31, 1952, to which appellant gave his conformity, which in part provides:

"* * * in view of your request that we hold in abeyance action on the matter to give you an opportunity to settle the pending case between the NARIC and Felicisina Policarpio, where our Company is sued as surety, we are willing to give you a last and final opportunity to effect such settlement not later than June 10, 1952, it being understood that upon your failure to effect such settlement for any reason whatsoever we shall proceed to take over your properties through the help of the Sheriff of Rizal, with your express conformity, considering such a step as a mere continuation of the turning over to us of said properties as third party claimant in the aforesaid Civil Case No. 846."

Whereof, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

Concepcion, J., concurs in the result.

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