

U.P. RECREATION CLUB, INC., PLAINTIFF AND APPELLANT, VS. ALTO SURETY & INSURANCE CO., AND NEREO ANDOLONG, DEFENDANTS AND APPELLEES.*G. R. No. 11181. September 17, 1958*

Ponente: FELIX, J.

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The U.P. Recreation Club, Inc., a duly organized corporation existing under the laws of the Philippines, is the owner of a recreation establishment located within the compound of the University of the Philippines in Diliman, Quezon City, known as the U.P. Recreation Club. On October 29, 1953, the aforesaid corporation and Nereo Andolong entered into a contract whereby the former leased the said establishment to the latter together with the equipment therein on a month-to-month basis for the sum, of P800 a month commencing on December 1, 1953. To answer for any unpaid rental or claim which the lessor might later on have against the lessee, the latter posted a bond in the sum of P9,600, subscribed by the Alto Surety & Insurance Co., Inc., or equivalent to the rentals for one year. It appears, however, that as of December 1, 1954, of the total rental due the lessor, the lessee had paid only the sum of P6,200, thus leaving a balance of P3,400. As both the lessee and the surety failed to settle the said unpaid obligation despite repeated demands, the lessor filed on December 20, 1954, a complaint with the Court of First Instance of Manila (Civil Case No. 24912) against Nereo Andolong and the Alto Surety & Insurance Co., Inc., praying that defendants be ordered to pay, jointly and severally, the unpaid rentals amounting to P3,400 with 5 interest thereon from the filing of the complaint; P1,000 as actual damages; for attorney's fees and costs.

Defendant surety then filed a cross-claim against Nereo Andolong and a third-party' complaint against Narciso Guison, Claro R. Pinga and Melencio Nadonga who, with the cross-defendant, were parties to an indemnity agreement protecting said surety from whatever damages it may sustain by reason of the surety bond; and with a prayer that the said cross and third-party defendants be ordered to reimburse the surety company of whatever amount it may be required to pay as a consequence of plaintiff's complaint, with interest at the rate of 12 per cent per annum, attorney's fees and costs. The surety company also filed an answer to the complaint admitting some of the allegations thereof and denying the others.

Although defendant Nereo Andolong was duly summoned in this case, he did not file any answer to the complaint nor took part in the proceedings thereof. He was practically in default but no court order was issued to that effect.

The records show that despite the existence of this complaint, the lessee retained possession of the premises until September 30, 1955. For this occupation of the place for the second year, which incidentally was no longer covered by a bond, the lessee became deficient in the payment of the rentals in the sum of P3,500, because for the occupation of the premises for 10 months (from December 1, 1954, to September 30, 1955), he paid only the sum of P4,500. By reason of this deficiency, the lessor filed an amended complaint (more of a supplemental complaint), praying for judgment against Nereo Andolong alone for the unpaid rentals corresponding to the period of from December 1, 1954, to September 30, 1955 amounting to P3,500, with interest from the filing of the

original complaint.

On April 4, 1956, after hearing, the Court rendered judgment on the first cause of action of original complaint condemning defendants Nereo Andolong and Alto Surety & Insurance Co., Inc., jointly and severally, to pay plaintiff the sum of P3,400.00 with interest at 6 per cent per annum from the date of the filing of the complaint, plus P500.00 as attorney's fees and costs. Judgment on the cross claim and third-party complaint was rendered in favor of the surety company against Nereo Andolong, Narcisa Guison and Claro Pinga for any amount which said surety may actually pay to plaintiff. The third party complaint against Melencio Nadonga was dismissed without prejudice, it appearing that said third-party defendant was not duly summoned. And as defendant Nereo Andolong was not served with a copy of the amended complaint because he could nowhere be found, the said amended or supplemental complaint was dismissed without prejudice.

On April 21, 1956, Alto Surety & Insurance Co., Inc., filed a motion for reconsideration praying that the decision be modified by absolving said defendant from any liability for the reason that as the lease was on month-to-month basis, a series of unpaid rentals becomes a running account and, therefore, any payment that the lessee may have made should be applied to the earlier or older accounts. And since defendant Andolong had made a total payment of P10,700 which is more than the amount guaranteed by the bond, the said defendant could no longer be held answerable for any liability of the principal. Furthermore, the surety continued, the fact that on September 30, 1955, defendant Andolong had executed a promissory note in favor of plaintiff for the payment of the total amount of P6,900, representing the aggregate unpaid rentals, fortified its contention that the surety had been relieved of its obligation under the bond.

On June 15, 1956, the Court issued an order modifying its previous decision by absolving the surety company from any liability for the reason that it had the right to insist on applying the payments made by its co-defendant to earlier debts. As plaintiff's motion for reconsideration of said order was denied by the Court the former appealed to this Court raising only questions of law.

There is no controversy that of the rentals for 1954 due and demandable, the lessee was able to pay only P6,200 leaving a balance of P3,400. The lessor tried to recover the same from the lessee and the surety by instituting Civil Case No. 24912 of the Court of First Instance of Manila on December 20, 1954. The lessee, notwithstanding the institution of such action, managed to retain possession of the premises up to September 30, 1955. For this occupancy, said lessee paid only the sum of P4,500 or incurring another deficiency in the sum P3,500. Thus, the lessor amended its original complaint by demanding from the lessee alone payment of this later unpaid obligation. The surety company in disclaiming liability for the first cause of action, i.e., the unpaid rentals for 1954, maintains that the amount which the lessee, had paid in 1955, amounting to P4,500, should first be applied to the satisfaction of the deficiency for 1954, it being an earlier debt, and as said amount more than satisfies the unpaid rental for that year, said defendant should be relieved from any liability. It is clear, therefore, that the only issue presented by the instant appeal deals with the application of payments.

The theory advanced by the surety that the monthly rentals for the use of the premises, brought about by a single transaction, are in the nature of running accounts during the whole period of the occupation thereof, and that the payments made during the whole period of occupancy should be applied to prior unpaid monthly rentals, is in Our opinion, untenable. While the Civil Code gives to the debtor the right to provide for the application of payments where he has various debts of the same kind in favor of one and the same creditor, which right must be exercised at the time he effects the payment (Art. 1252), in the absence or failure of the debtor to exercise such right, the creditor is empowered to make the application of the payments made by the debtor as he deems it fit. It is true that our law is silent as to who has the right to exercise such privilege when the debtor does not avail of it, but the American jurisprudence on the matter sustains the general rule that if a debtor fails to exercise his right of

directing the manner in which a payment is to be applied, the creditor may make the application as he may see fit (40 Am. Jur., 796, citing the case of National Bank vs. Mechanics' Nat. Bank, 94 U.S. 437, 24 L. ed. 176; Jones vs. United States, 7 How 681, 12 L. ed. 870; United States vs. Irving, 1 How 250, 11 L. ed. 120, and others), and in such manner as is beneficial to himself (United States vs. Giles, 9 Cranch (US) 212, L. ed. 708; Beck vs. Haas, 111 Mo 264, 20 SW 19, 33 Am St Rep 516). While this rule is not absolute but subject to certain limitations, We find that under the circumstances of this case, the application of the payments made in 1954 for the rentals due in that year and the appropriation of the payments effected in 1955 for the rentals due in the latter year, are neither illegal, unjust nor inequitable.

Furthermore, it must be remembered that the payment of the rentals for the duration of the period of from December 1, 1953, to November 30, 1954, was secured by a bond. After the expiration of said period and in view of the fact that the lessee was behind in his payment to some P3,400, the lessor sought recovery of the same by instituting Civil Case No. 24912 of the Court of First Instance of Manila on December 20, 1954. Hence, as of that date, the account due and demandable from defendants was then determined and liquidated. The fact that the lessee remained in the premises and continued occupying the same with the apparent acquiescence of the lessor despite the existence of said civil action, cannot have the effect of relieving the surety of his obligation for which it was already brought to court. Nor can it be considered or work as a continuation or extension of the lifetime of the lease contract. An essential term or condition of the aforementioned lease agreement is the posting of a bond to secure the payment of the rentals for one year, and defendant surety makes no pretense that a second bond was ever filed nor a new contract executed to cover the period of from December 1, 1954, to September 30, 1955. Consequently, the conclusion is inevitable that the lessee's occupancy of the property is not governed by one and the same transaction, for the possession thereof in 1955 is entirely separate and independent from and not covered by the contract of lease executed on October 29, 1953, which apparently was designed to be for only one year, as the bond executed only covered that period.

It is contended that as the obligation secured by a surety is most onerous to the debtor, the same should receive prior consideration. On this matter, American jurisprudence provides otherwise. It has been held that since the general rule is that a creditor, upon receiving payments from his debtor without any direction- as to their application, may apply them to any legal debt which he holds against his debtor, a creditor holding secured and unsecured claims may apply an undirected payment to an unsecured claims (Cain vs. Vogt, 138 Iowa 631, 116 NW 786, 128 Am. St. Rep. 216; Wilkes vs. Kitchen 187 Ky. 211, 218 SW 718, citing RCL, and others).

On the other hand, the Civil Code says: .

"Art. 1254. When the payment cannot be applied in accordance with the preceding rules or application cannot be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

and this provision cannot be applied to the instant case for two cogent reasons: (1) because the payments were made by the debtor Nereo Andolong and not by the surety company; and (2) because the indebtedness by reason of non-payment of the rentals due in the year 1954 is not more onerous to the debtor than the indebtedness due in 1955.

The surety likewise asserts that the execution by the lessee of a promissory note dated September 30, 1955, in favor of the lessor promising to pay on or before October 15, 1955, his obligation amounting to P6,900 representing the balance of his account with the corporation, relieved said surety from its liability as its consent was not obtained; and that under this new agreement, it cannot be held answerable. In response to this contention suffice Us to state that the instant action is not one for recovery under the promissory note, but one based on the lease agreement and that the claim of herein appellant against the surety was not for the entire obligation of Nereo

Andolong but for said surety's liability under the bond, which as We have already stated, was liquidated and demanded on December 20, 1955.

Wherefore, and on the strength of the foregoing considerations, the order of the Court of June 15, 1956, absolving the surety company from any liability as well as the order denying plaintiff's motion for reconsideration, thereof, are hereby set aside and the original decision revived. With costs against appellee Alto Surety & Insurance Co., Inc. It is so ordered.

Endencia, J., concurs.

Bautista Angelo, J., concurs in the result

CONCURRING

REYES, A., J.: .

I concur in the result.

It appears that the lease here in question was "on a month to month basis commencing on December 1, 1954" at a stipulated rental of P800 a month, payable in advance within the first five days of each calendar month and secured by a surety bond for the first twelve months of the lease. As the lessee failed to pay rent after September, 1954, the lessor brought suit on December 21 of that year to recover the rents due up to that time, but allowed the lease to continue until September 30, 1955, receiving monthly rentals after December 1, 1954 for the continued occupancy of the premises.

As I see it, the basic question for determination is whether the sums paid by the lessee after December 1, 1954 should be applied to the monthly rentals accruing after that date, as contended by the lessor, or to the unpaid rents of the preceding twelve months, as contended by the surety.

I agree with the majority that the lessor's contention is the one that should be upheld.

It appears from the evidence that what the lessee had been paying to the lessor after December 1, 1954, was "for the lease of the premises for the second year", i.e., for the continuation of the lease after the first twelve months. This is clear from the following excerpt from the testimony of the president of plaintiff corporation:

"Q.—Just how much payment did he (the lessee) make after December 1, 1954.

"A.—He was paying on the second year of the lease. He paid for the lease of the premises for the second year the amount of P6,100.00.

This testimony is un rebutted. It is also believable because, after the lessee had been failing to pay rent during the first twelve months of the lease, it is not likely that the lessor would permit it to continue occupying the leased premises without paying the rents corresponding to the second year of the lease. The lessor did not have to worry about the rents corresponding to the first "twelve months because payment thereof was secured by a surety bond.

Under Article 1252 of the new Civil Code, it is the privilege of the debtor who has various debts of the same kind in favor of the same creditor to declare at the time of making the payment to which of those debts the payment must be applied. As the debtor in the present case chose to exercise that privilege by paying the rents' corresponding to the second year of the lease, it is not for the surety company now to say that the payment should be applied to the unpaid rents of the previous year. That would be depriving the debtor of the right granted him by law. Moreover, the surety can have no real cause for complaint because, anyway, it is protected by a counterbond.

Paras, C. J., Bengzon and Padilla, JJ., concur.

CONCURRING AND DISSENTING

REYES, J. B. L.,

I concur in the main opinion that the payments made by the lessee during 1955 should not be applied to the deficit incurred during the first period, specially because the 1955 rentals were not within the twelve months contemplated by the guaranty, and accrued after action had been filed against the guarantor. While no application of payments was made expressly by the debtor, the creditor could make it by stating the fact on the corresponding receipt, and there is no showing that the receipts allocated the 1955 payments to the prior debt. The rule invoked by the surety on running accounts applies only when neither debtor nor creditor have made any application of the payment made; but the burden of evidencing that failure is on the surety, being part of its defense.

In previous decisions of this Court it has been ruled that compensated sureties like appellant are neither favorites of the law nor entitled to the beneficent presumptions designed to lighten the burden of an uncompensated guarantor.

I do not agree, however, to the pronouncement in the main decision that the guaranteed obligation of the debtor (rentals for 1954) is not more onerous to the debtor than the debts without security or guaranty. I submit that a guaranteed obligation is more onerous, because the debtor may be sued by the guarantor ahead of the creditor (see Art. 2071, new Civil Code); hence, the debtor may have to defend two suits. As stated by Manresa's Commentaries (8 Manresa, Vol. I, 5th Ed., 603),

"Atiendo al gravamen, la deuda garantida es mas onerosa que la simple."

Concepcion, J., "concur.

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