

NATIONAL RICE AND CORN CORPORATION (NARIC), PLAINTIFF AND APPELLANT, VS. JUAN ANTONIO, DEFENDANT AND APPELLEE, AND THE CAPITAL INSURANCE & SURETY CO., INC., DEFENDANT AND APPELL...

G.R. No. 11926. June 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

On December 29, 1951 an application made in the name of Juan Antonio to purchase empty sacks payable within 120 days was approved by the National Rice & Corn Corporation—hereinafter referred to as Naric—on condition that the purchaser file a surety bond in the sum of P2,000.00. Said bond was signed on the same date by the Cabanatuan agency of the Capital Insurance & Surety Co., Inc.—hereinafter referred to as the Surety—in the sum of P2,000.00, which was the price of the empty sacks, but it was acknowledged only on January 8, 1952 before Notary Public Mamerto Macapagal. On the same date (Jan. 8, 1952) Juan Antonio and Carmen Loriaga signed jointly and severally in favor of the Surety an agreement to indemnify the latter for whatever costs and damages it may sustain by reason of the surety bond aforesaid. On January 2, 1952 the purchaser received the 2,000 pieces of empty sacks. As only the sum of P160.00 was paid on account of the purchase price within the stipulated period, the present action was commenced on March 6, 1953 against Antonio and the Surety.

The Surety's answer alleged that it was not liable on its bond on the ground that the sacks were delivered by the Naric to Antonio on January 2, 1952, while said bond was notarized and filed with the Naric only on January 8 of the same year. The Surety also filed a cross-claim against its co-defendant on February 24, 1954, and still later, with leave of court, filed a third-party complaint against Carmen Loriaga.

Juan Antonio was declared in default on February 5, 1955. On the other hand, Carmen Loriaga was duly served with summons in connection with the third-party complaint on June 9, 1955, and she was declared in default thereon on July 9, of the same year.

After trial, the court rendered judgment as follows:

"(1) La demandada, Capital Insurance & Surety Co., Inc., debe pagar a la demandante 'NARIC' la suma de P1,840.00, más un interés anual de 6% a contar desde Mayo 3, 1952, sobre dicha suma hasta su completo pago, y otra suma equivalente al 20% la obligación principal de P1,840.00 en concepto de honorarios de abogado después de haberse hecho la debida excusión sobre las propiedades del deudor principal Juan Antonio;

"(2) Los contrademandados Juan Antonio y Carmen Loriaga deben reembolsar e indemnizar mancomunada y solidariamente a la contrademandante y tercera parte demandante, Capital Insurance & Surety Co., Inc., en caso de que esta pagare la obligación a favor de la demandante toda la cantidad que esta haya pagado a la demandante original, mas otra suma adicional equivalente al 15% de toda la cantidad pagada por la contrademandante y tercera parte demandante a favor de la 'NARIC' en concepto de honorarios de abogado, y

al pago de las costas del juicio."

On January 14, 1956 the Surety paid the Naric the total sum of P2,656.62 in satisfaction of the above judgment and the Naric filed the corresponding satisfaction of judgment in the record on January 17. On January 25, 1956 the Surety filed a motion for execution which the trial court granted on January 28

On March 5, 1956 Juan Antonio filed a petition to set aside and declare void the decision of the court for lack of jurisdiction over his person, claiming that he had never been served with summons. He also claimed that he had a good defense because he was not the one who purchased the empty sacks from the Naric nor was he the principal on the surety bond filed by the Surety. Over the objection of the Naric and the Surety, the court granted the petition on March 27, 1956. It also appears that on April 7, 1956, after receiving payment from the Surety, the Naric filed a motion to dismiss the case as against the latter on the ground that judgment against it had already been satisfied and as against Juan Antonio on the ground that plaintiff had the right to dismiss the case because no responsive pleading had yet been filed, but the trial court denied its motion in the same order of March 24.

Thereafter Juan Antonio filed his answer to the complaint and cross-claim.

After due trial, on December 17, 1956 the court rendered the following decision:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment as follows:

- Dismissing the case against Juan Antonio;
- Ordering defendant Capital Insurance & Surety Co., Inc. to pay plaintiff the sum of P2,000.00;
- Ordering Carmen Loriga to pay the Capital Insurance & Surety Co., Inc. whatever amount the latter may pay plaintiff by virtue of this case;
- Ordering the National Rice & Corn Corporation and the Capital Insurance & Surety Co., Inc. for having presented the complaint and cross-claim respectively without cause, jointly and severally to pay Juan Antonio actual damages in the total amount of P600.00, attorney's fees in the amount of P1,000.00, plus moral damages to the extent of P2,000.00 with costs against the Capital Insurance & Surety Co., Inc."

From the above decision the Naric and the Surety appealed. The Naric contends that the trial court erred: (1) in setting aside the first decision of September 10, 1955; (2) in refusing to dismiss the case against Antonio; (3) in considering the report of Martin S. Ramos as expert testimony; and (4) in awarding moral damages, litigation expenses and attorney's fees in favor of Antonio.

For its part, the Surety contends that the lower court erred: (1) in not absolving the Surety from liability; (2) in not sentencing Carmen Loriga to reimburse the Surety all sums the latter was ordered to pay to the Naric, plus 12% interest per annum and attorney's fees; (3) in sentencing the Surety to pay damages, attorney's fees and expenses of litigation; and (4) in rendering judgment against it.

In the light of the facts stated above, we are of the opinion that the lower court erred in setting aside its original decision insofar as it affected the Surety, firstly, because the latter had not filed any motion for relief therefrom; secondly, because the Surety had already satisfied the judgment aforesaid. For the same reasons, it is obvious that the lower court also erred in rendering its decision of December 17, 1956, sentencing the Surety all over again to pay the Naric the sum of P2,000.00.

However, the order of the lower court setting aside its original decision is well founded insofar as it referred to Juan Antonio. The latter's petition for relief was verified and was accompanied by an affidavit of merits showing that he had not been served with summons in accordance with law; that he became aware of the proceedings only during the first week of February, 1956 when he received a copy of the Surety's motion for execution and

approval of its bill of costs; that he had a good defense because he was not the one who bought the empty sacks in question from the Naric, nor was he the one who, with Carmen Loriaga, had entered into an indemnity agreement with the Surety. The lower court, in setting aside the decision as against Antonio found, in effect, that it had not acquired jurisdiction over his person, and that Antonio had a good and valid defense against the claim of the Naric.

Coming now to the merits of the case as between the Naric and the Surety, on the one hand, and Juan Antonio, on the other, we agree with the trial court that the preponderance of the evidence shows that it was not Juan Antonio who applied for the purchase of empty sacks from the Naric, nor was he the one who entered into an indemnity agreement with the Surety; in other words, that his alleged signature, on the application to purchase and on the indemnity agreement are forgeries. Neither the Naric nor the Surety was able to present convincing evidence that it was Juan Antonio who really bought and received the empty sacks and entered into the indemnity agreement mentioned heretofore. It is clear, therefore, that neither the Naric nor the Surety has any cause of action against Juan Antonio, and the decision appealed from must be, as it is hereby affirmed, insofar as it dismisses the case against the latter.

The decision appealed from should also stand insofar as it sentences Carmen Loriaga to pay the Surety whatever amount the latter may pay or may have paid the Naric by virtue of this case, because she did not appeal therefrom.

The appealed decision must be, as it is hereby reversed, however, insofar as it sentences the Naric and the Surety to pay Juan Antonio, jointly and severally, actual damages in the total amount of P600.00, attorney's fees in the amount of P1,000.00, plus moral damages to the extent of P2,000.00, with costs against the Surety.

It is clear from the evidence that Juan Antonio was impersonated in connection with the transaction involved herein. That he incurred expenses and may have undergone moral suffering and anxiety as a result of this litigation cannot be denied, but it is equally clear and true that the Naric and the Surety were as much the victims of fraud by the impersonator as Juan Antonio was, and that neither the Naric nor the Surety acted in bad faith in filing the complaint and the crossclaim mentioned heretofore. At the time they submitted those claims in court, they did not know, or at least, they had no evidence in their hands showing that Juan Antonio's signatures on the application to purchase and the indemnity agreement had been forged. They were, therefore, in the legitimate exercise of a right when they filed their respective claims.

Wherefore, modified as above indicated, the appealed decision is affirmed in all other respects.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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