

ATKINS, KROLL & CO. INC., PLAINTIFF AND APPELLEE, VS. CELIA REYES, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11936. April 30, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal is taken directly to this Court from the judgment in Civil Case No. 14249 of the Court of First Instance of the City of Manila, wherein the defendants, now appellants, were sentenced as follows:

"(a) Ordering Celia Reyes to pay to the plaintiff the sum of P26,436.00 with interest at 12 per cent, per annum on P3,436.00 from May 22, 1951, and on P23,000.00 from May 24, 1951, until fully paid, plus attorney's fees which the court fixes at P2,500.00;

(b) Ordering Celia Reyes and Alto Surety and Insurance Co., Inc., to pay to the plaintiff, jointly and severally, (the sum of P25,000.00 with interest thereon at 12 per cent per annum from May 24, 1951, until fully paid, plus additional attorney's fees in the sum of P2,500.00, and the cost of suit; * * *" (Rec. App. pp. 125-126.)

The material facts of the case are succinctly stated in the appealed judgment as follows:

"In 1951 and for some time prior to that year, Celia Reyes did business under the trade name "Celia David". On May 18, 1951, she ordered by telephone from Hans Wenger, then the manager of plaintiff's foodstuffs department, 600 cases of 'Luneta sardines for the price of P9,936.00. Wenger routed the corresponding sales order to H. B. Mill, then plaintiff's office and credit manager, who approved the sale on c.o.d. basis. (Exhibit A-Deposition). An invoice covering the transaction was prepared and the sardines were delivered to Celia Reyes. (Exhibit B). Of the agreed price of P9,936.00 Celia Reyes has paid P6,500.00 only (Exhibits 16 and 17), leaving an unpaid balance of P3,436.00.

About May 20, 1951, Celia Reyes again telephoned Wenger and asked for 3,000 cases of 'Modesto, evaporated milk, promising to return the milk when her shipment of 4,500 cases and 500 bundles would arrive. Mill rejected the proposition and Wanger communicated the rejection to her by telephone and informed her that she could have the milk on 'net, cash' basis. She agreed; Wenger prepared a sales invoice for 3,000 cartons of 'Modesto' evaporated milk at P16.00 a carton, or for a total price of P48,000.00. Mill approved the transaction and the corresponding invoice was prepared. (Exhibits A-1, pp. 9-13, 27-30; B-Deposition; and C).

The milk was delivered to Celia Reyes on May 23 and 24, 1951. Jose Techico, plaintiff's collector, went to Celia Reyes to collect after the deliveries of the 600 cases of sardines and 3,000 cases of milk. She had no money and told Techico to return the next day, then the next and again the next, but she still had no money to pay. Mill also demanded payment from her, personally and through the telephone, but she Informed Mill that she had no funds at the time. She visited plaintiff's office on June 13, 1951, and made out a check for P10,000.00 as partial payment on her indebtedness but the check was dishonored for the drawer's insufficiency of funds to meet the amount thereof. The check was intended to cover the cost of the sardines and the balance in the sum of P64.00 as partial payment of the price of the milk. (Exhibits K, O, O-1)

To guaranty payment of the price of the 3,000 cases of 'Modesto' evaporated milk Celia Reyes was required to

put up a surety bond. She did, on July 5, 1951, through defendant Alto Surety and Insurance Co., Inc., but only for P25,000.00. To minimize its loss plaintiff had to be content with the bond." (Rec. App. 113-115).

On July 16, 1951, Atkins, Kroll and Company, Inc., filed suit in the court below to recover the outstanding indebtedness of Celia Reyes and obtained a writ of attachment. Having obtained no satisfaction, it amended the complaint on October 17, 1951 to implead the Alto Surety & Insurance Co., Inc., as additional party defendant, to make effective the performance bond guaranteeing Celia Reyes' debt. The surety company admitted the execution of the bond but defended saying that the bond was not accepted or approved by the creditor, and that its liability depended upon that of the principal debtor Celia Reyes, while the latter in turn, denied liability for the merchandise and counterclaim for damages. Judgment being rendered, after due trial, against both defendants, as previously stated, this appeal was taken.

The appeal of Celia Reyes was, however, dismissed by our resolution of August 29, 1957; hence, only the contentions of the surety need now to be considered.

It is the principal contention of appellant Alto Surety Co. that the bond subscribed by it, with Celia Reyes as principal, was entered into with the understanding that Celia Reyes would be given time to pay her obligations to the plaintiff-appellee, but the latter filed suit shortly after the bond was executed in violation of the understanding. It may have been that Celia Reyes actually hoped that by furnishing the bond, plaintiff would be induced to extend the period for paying her debts; nevertheless, we find nothing in the record to show that this expectation on her part actually was agreed to by the creditor. It is highly significant that the written suretyship agreement makes no mention whatever of any extension of the principal's obligation to pay for the 3000 cases "Modesto" milk she had ordered, nor does it provide that the surety's liability (expressly made solidary with Celia) was conditioned upon her obtaining additional time to make her payments. The conditions of the bond are recited therein (Exhibit G) to be as follows:

"THE CONDITIONS OF THIS OBLIGATIONS ARE AS FOLLOWS:

Whereas, on the 24th day of May, 1951, the above-bounded principal and the company entered into a—C.O.D. Sale per Invoice 16171—copy of which is hereto attached, marked Annex 'A', and made a part hereof;

WHEREAS, the principal is now indebted or otherwise liable to the company under the said agreement; and

WHEREAS, the COMPANY has required the PRINCIPAL to give a good and sufficient bond in the sum of pesos TWENTY-FIVE THOUSAND only (P25,000.00), Philippine Currency to guarantee the payment of all the principal's indebtedness now due or which may hereafter become due and the faithful performance of her duty and obligations under the said agreement of the 24th day of May, 1956, and the other terms and conditions of the said agreement.

NOW, THEREFORE, if the above-bounden PRINCIPAL shall pay all her indebtedness now due or which may hereafter become due to the COMPANY and shall faithfully and truly perform all her obligations under the said agreement of the 24th day of May, 1951, then this obligation shall be null and void, otherwise, it shall remain in full force and effect. * * *". (Appellee's Brief, pp. 8-9)

It is difficult to conceive how such an important condition affecting the surety's liability could be omitted from the terms of the bond prepared by the surety itself; and its absence is strong evidence against the surety's contentions. This finding is corroborated by the fact that when extrajudicial demand for payment was made upon the surety, the latter's written answer (Exhibit I) made no mention whatever of any extended term of payment nor did its answer to the amended complaint interpose that defense.

We have heretofore ruled (*Pacific Tobacco Corp. vs. Lorenzana and Visayan Surety*, 102 Phil., 234 and

Philippine Surety & Ins. Co. vs. Royal Oil Products, 102 Phil., 326), that the strictissimi juris rule of interpretation does not apply to the engagements of corporate sureties engaged in the business of furnishing bonds for compensation, and who are, furthermore, secured from all possible loss by adequate counterbonds. We see no reason for deviating from that norm. We find that the Court below did not err in holding that no extension of the period to pay has been stipulated.

Wherefore, the judgment appealed from is affirmed. Costs in this instance against appellant Alto Surety and Insurance Co. Inc. So ordered.

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

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