

MANILA SURETY & FIDELITY CO., INC., PETITIONER, VS. DR. ANTONIO VILLARAMA, ATTY. FLORANTE C. ROQUE, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 12165. April 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

To secure the return of his truck seized by lawful order of the court in Civil Case No. 71769 of the Court of First Instance of Manila, entitled "Uy Han, plaintiff, versus Antolin Torralba, et al., defendants", defendant Antolin Torralba filed a bond in the sum of P10,000.00 subscribed by the Manila Surety & Fidelity Co., Inc., conditioned on "the delivery, of said property to the plaintiff if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the said defendants in this action". This bond (Exh. A) was not executed and delivered until after Antolin Torralba, as principal, and Antonio Villarama and Florante C. Roque, as sureties, had accomplished an Indemnity Agreement (Exh. B) in favor of the bonding company, the pertinent portions of which read as follows:

"AMOUNT OF THE BOND: The undersigned jointly and severally apply to the MANILA SURETY & FIDELITY, CO., INC., herein denominated the COMPANY to become surety upon a bond in the sum of PESOS TEN THOUSAND ONLY (P10,000.00) Philippine Currency, in favor of UY HAN a duplicate of which bond, pertaining to BOND FOR THE RETURN OF PROPERTY SEIZED is hereto attached and made a part hereof.

"In consideration of the responsibility undertaken by the COMPANY, for the original bond, and for any renewal, extension or substitution thereof, the undersigned, jointly and severally bind themselves, in favor of the said COMPANY, in the following terms:

"PREMIUM: (a) To pay the sum of PESOS TWO HUNDRED ONLY (P200.00) Philippine Currency, in advance as premium thereof for every period of One (1) year or any part of said period, for any renewal, extension or substitution thereof that is in effect, to be computed from this date, until the above mentioned bond is completely cancelled by the person or entity in whose behalf the bond is executed, or by a court of competent jurisdiction.

"INDEMNITY: (b) To indemnify the COMPANY for any damage, loss, costs, charges, or expenses of whatever kind and nature, including counsel or attorney's fees, which the COMPANY may, at any time, sustain or incur, as a consequence of having become surety upon the above mentioned bond; said attorney's fees shall not be less than fifteen (15%) per cent of the total amount claimed in any action which the Company may institute against the undersigned in Court.

"MATURITY OF THE OBLIGATION UNDER THIS BOND: (c) 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.

"UNQUESTIONABILITY OF THE PAYMENTS AND DISBURSEMENTS MADE BY THE COMPANY:

(e) Any payment or disbursement made by the COMPANY on account of the above-mentioned bond, either in the belief that it was bound to make said payment or disbursement, or in the belief that the payment or disbursement, was necessary or expedient, in order to avoid greater losses or obligations for which it would be liable under the above mentioned bond, shall be final and shall not be questioned by the undersigned who hereby agree to indemnify, jointly and severally, to the COMPANY, for each and everyone of said payments and disbursements.

"WAIVER: The undersigned hereby waive all the rights, privileges, and benefits that they have or may have under Articles 1849, 1850, 1851, 1852, and 1863 of the Civil Code.

"CANCELLATION OF THE BOND BY THE COMPANY: The Company may at any time, cancel the aforesaid bond subject to any liability which might have accrued prior to the date of cancellation, refunding the proportionate amount of the premium therefor unearned at the date of the cancellation.

"RENEWALS, ALTERATIONS AND SUBSTITUTIONS; The undersigned hereby empower and authorize the COMPANY to grant or consent to the granting of any extensions, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to, and to execute or consent to the execution of any substitution for said bond with the same or different conditions and parties, and the undersigned hereby hold themselves jointly and severally liable to the COMPANY for the original" bond hereinabove mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof, until the full amount including principal, interest, premium coats and other expenses due to the COMPANY thereunder is fully paid.

"Dated at Manila, this 5th day of January, 1946."

Thereafter, judgment was rendered in said Civil Case No. 71769 in favor of therein plaintiff by Han and against defendant Antolin Torralba. The latter appealed to the Court of Appeals. On January 28, 1949, the Court of Appeals, affirming the decision of the court a quo, ordered defendant Torralba to return to Uy Han the truck in question or its value of P5,000.00, plus damages in the sum of P50.00 a day from October 25, 1945 to December 3, 1946, or a total amount of P23,000.00 and costs. The said decision having become final and executory, a writ of execution Was issued by the Court of First Instance of Manila against Antolin Torralba and the Manila Surety & Fidelity Co., Inc. As the surety company made payments to Uy Han on April 9, 1949, May 11, 1949 and June 4, 1949 in the total sum of P10,000.00, it then demanded reimbursement from Antonio Villarama and Florante Roque, the sureties to the counter-bond. Upon their refusal to make the corresponding payments, as stipulated in the indemnity agreement, the surety company filed a complaint in the Court of First Instance of Manila (Civil Case No. 9825) against Antolin Torralba, Antonio Villarama and Florante Roque, for the recovery of the sum of P10,000.00 with interest thereon at 12 % per annum from June 4, 1949, plus attorney's fees and costs. Later, and at the instance, of the plaintiff, Antolin Torralba, who died on May 29, 1948, was dropped from the complaint as party-defendant.

Defendants Villarama and Roque filed separate answers each disputing plaintiff's claim for reimbursement, contending that their, obligation under the indemnity agreement, executed in 1946, was only for one year; that defendant Villarama affixed his signature to the agreement during a political campaign and under the impression that his obligation thereunder would only be for one year; that defendant Roque signed the same document in Villarama's office, while on official visit to the latter, likewise in the belief that the bond would be for one year. As special defenses, defendants claimed that the extension of the period of the counter-bond without their consent released them from liability, and that, as the subject matter of the complaint consisted of a money claim against the deceased principal Antolin Torralba, the court had no jurisdiction to entertain the same because such claim must be presented in the proceedings for the settlement of the estate of the deceased. Thereafter, the case was duly heard.

On October 23, 1953, the court rendered judgment dismissing the complaint and exonerating therein defendants from any liability on the ground that there was no evidence that the bond was renewed, extended or substituted after one year from January 6, 1946, the date of its execution. On appeal by the Surety Company, the Court of Appeals, similarly finding no proof that there was a renewal or extension of the agreement after it expired in 1947, affirmed the decision of the lower court. The procedural question concerning jurisdiction of the court to entertain plaintiff's claim was also disposed of by the Court of Appeals by holding that the ruling of this Court, depriving the ordinary courts jurisdiction over cases involving money claims against deceased persons, applies only in those instances where testate or intestate proceedings for the settlement of the estate of the deceased have been instituted or commenced, in which event, the money claim must be presented in the said proceeding. As there is no showing in the case at bar that there was ever such a proceeding wherein claims against the deceased Antolin Torralba could be filed, the Court of Appeals ruled that the ordinary court has jurisdiction to entertain the said claims.

It is this decision of the Court of Appeals that the Surety Company asks us to review by means of the instant petition for certiorari.

Although not raised by petitioner Surety Company in its brief (the same being favorable to its cause), but because the Court of Appeals has given a somewhat equivocal interpretation of our ruling on the matter, we take the initiative of passing upon the question of the jurisdiction of the court a quo to take cognizance of the action, raised by herein respondents in the lower court.

Rule 87 of the Rules of Court provides :

"SEC. 6. Where the obligation of the decedent is joint and several with another debtor the claim shall be filed against the decedent as if he were the only debtor without prejudice to the right of the estate to recover contribution from the other debtor. In a joint obligation of the decedent, the claim shall be confined to the portion belonging to him."

Construing Section 698 of the Code of Civil Procedure from whence the aforequoted provision was taken, this Court held that where two persons are bound in solidum for the same debt and one of them dies, the whole indebtedness can be proved against the estate of the latter; the decedent's liability being absolute and primary; and if the claim is not presented within the time provided by the rules,[1] the same will be barred as against the estate.[2] It is evident from the foregoing that Section 6, of Rule 87 provides the procedure should the creditor desire to go against the deceased debtor, but there is certainly nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or some or all of them simultaneously.[3] There is, therefore, nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed.

The remaining, in fact the only question raised in this case, is whether herein respondents Antonio Villarama and Florante C. Roque may be held answerable for the reimbursement of the amount the Surety Company paid to the plaintiff in Civil Case No. 71769.

Respondents do not question the validity and due execution of the indemnity agreement (Exh. B). In resisting the claim of petitioner, however, they maintain that their liability under the said indemnity agreement was only for one year from January 5, 1946, and since the payments were made by the Surety Company three years thereafter,

without said agreement having been renewed or extended, as found by the trial court and the Court of Appeals, or, as contended by the respondents, extended without their consent, said Company has no right to demand reimbursement from them. On the other hand, petitioner submits that the indemnity bond (Exh. B) subscribed by the respondents, is not limited to one year, but is co-extensive with the principal bond (Exh. A) and specifically subject to the same conditions provided in the latter. We incline to agree with the petitioner.

It must be remembered that the original bond (Exh. A) was filed purposely to insure the delivery (by Torralba) of the truck to Uy Han, should such delivery be adjudged in Civil Case No. 71769, and to guarantee payment of any amount that the court may require defendant Torralba to make. In consideration of the responsibility assumed by the surety Company under the said original bond, defendant Torralba and the herein respondents jointly and severally undertook to indemnify the surety Company for whatever payment it may make under said original bond, and to pay the Surety Company an annual premium of P200.00 "until the above-mentioned (original) bond is completely cancelled by the person or entity in whose behalf the bond is executed, or by a court of competent jurisdiction". There is no question that pursuant to a final decision in Civil Case No. 71769, the Surety Company paid Uy Han a total sum of P10,000.00 in 1949, and that when said payments were made, the original bond (Exh. A) was not yet cancelled. Respondents, nonetheless, insist that their liability as sureties to the counter-bond was only limited to one year, because that is allegedly their understanding with the principal. A reading of the indemnity agreement, however, yields no provision supporting their contention. The agreement is explicit: the signatories thereto bound themselves to the terms thereof until the original bond is cancelled. In other words, the indemnity agreement stands as long as the original bond exists. The one-year period mentioned therein refers not to the duration or lifetime of the bond, but merely to the payment of premiums, and, consequently, does not affect at all the effectivity or efficacy of such bond.^[4] Admittedly, and respondents capitalize on this to bolster their theory that the agreement expired after one year, only the initial payment or premium for 1946 had been paid. But such non-payment alone of the premiums, for the succeeding years (1947), 1948 and 1949) does not necessarily extinguish or terminate the effectivity of the counter-bond, in the absence of an express stipulation in the contract making such non-payment of premium a cause for the extinguishment or termination of the undertaking. Actually, therefore, there is no necessity for an extension or renewal of the agreement because by specific provision thereof, the duration of the counter-bond was made dependent upon the existence of the original bond (Exh. A).

On the other hand, even granting *arguendo* that respondents signed the instrument in the belief and upon the principal's misrepresentation that their liability thereunder would only be for one year, such fact can not also be favorably considered, on their behalf. The disputed indemnity agreement had been presented to respondents for their signatures. They could have read it and been informed that the nature and extent of the undertaking is not as simple as the principal would put it, had they wanted to. Instead, they chose to rely completely on the information furnished by the principal and affixed their signatures to the instrument without so much as knowing the exact terms thereof. That they discovered too late their error can hardly be blamed on anybody. Prudence would dictate a man to acquaint himself first with the "fine prints" of a contract before stamping his approval thereto. As it is, the fact remains that respondents signed the agreement binding themselves to indemnify the company for whatever payment it may make under the original bond. Their having signed the instrument without fully knowing its contents, when they could have easily done so, cannot be considered to have vitiated their consent and make their act involuntary.

Wherefore, the decision sought to be reviewed is hereby set aside. Respondents Antonio Villarama and Florante C. Roque are required to pay petitioner, jointly and severally, the sum of P10,000.00 with interest thereon at 12% per annum from December 6, 1949 until fully paid, and an amount equivalent to 15% of P10,000.00 as stipulated attorney's fees. Costs are taxed against respondents Villarama and Roque. So ordered.

Paras, C. J., Montemayor, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concur.
Benzon, Bautista Angelo and Reyes, J.B.L., JJ., took no part.

[1] Rule 87, Section 2.

[2] Jaucian vs. Querol, 38 Phil., 707.

[3] Art. 1216, new Civil Code; Molina vs. De la Riva, 7 Phil., 345; Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil., 406; La Yebana vs. Valenzuela, 67 Phil., 482; Chunaco vs. Tria, 63 Phil., 500.

[4] China Insurance & Surety Co. vs. Dy Chong, et al., 68 Phil., 189.

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