

ASSOCIATED INSURANCE & SURETY CO., INC., PLAINTIFF AND APPELLANT, VS. BACOLOD-MURCIA MILLING CO., INC., ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 12333. February 28, 1959*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff brought this action before the Court of First Instance of Manila to secure the cancellation of certain surety bonds executed by it in favor of defendant Bacolod-Murcia Milling Co., Inc. or, in the alternative, to order defendants Sixto R. Ruiz and Raymundo D. Dizon to pay to plaintiff the amount of P2,956.60, plus interest thereon, for ultimate delivery to their co-defendant and to order defendants to pay plaintiff's attorney's fees and costs.

The complaint alleges that defendants Sixto R. Ruiz obtained two crop loans in the aggregate amount of P11,626.00 from defendant Bacolod-Murcia Milling Co., Inc., a corporation duly organized under the laws of the Philippines, subject to the condition that he shall post surety bonds to guarantee the payment of 25% of said crop loans; that in compliance with said condition, plaintiff, also a corporation, executed in favor of the milling corporation two surety bonds in the aggregate amount of P2,956.50 for the purpose above-mentioned; that said bonds were executed subject to the following conditions: (1) the creditor shall apply the share of the debtor in the harvest of the crops for which the loans were granted to the liquidation of said loans and no part thereof shall be applied to other indebtedness until the loans have been fully liquidated; (2) the creditor shall not grant any additional loan to the debtor in excess of the latter's share in the crops covered by the bonds without the prior written consent of the surety; and (3) the liability of the surety will terminate upon complete payment of the indebtedness guaranteed by the bonds; that defendant milling company failed to comply with conditions 1 and 2 mentioned above when it granted to the debtor loans in excess of the latter's share in the harvest of the crops covered by the bonds without the written consent of plaintiff, and when it failed to notify plaintiff of the amount the debtor has actually availed himself of the crop loans obtained by him, thereby depriving plaintiff of its right to be apprised of the amount of the loan actually obtained, this notice being necessary to enable plaintiff to take steps to protect its interest; and that in view of the violations of the conditions above-mentioned, plaintiff is deemed to have been relieved of its liability under the bonds.

The complaint, as an alternative cause of action, also alleges that defendant Sixto R. Ruiz, as debtor, and defendant Raymundo D. Dizon, as surety, executed an indemnity agreement in favor of plaintiff to indemnify the latter for any damage it may suffer as a consequence of its having executed the two surety bonds in favor of the milling company mentioned in the preceding paragraph; that defendant milling company notified plaintiff that the debtor has an standing account with said defendant in the amount of P15,285.72 and demanded that it pay its share thereof in the amount of P2,956.50 as agreed upon in the surety bonds, and that in the event plaintiff is compelled to pay to the defendant milling company said amount of P2,956.50, plaintiff would have a valid cause of action against debtor and his surety for the recovery of said amount under the provisions of the indemnity

agreement.

Defendant milling company filed a motion to dismiss on the ground that the complaint fails to state a cause of action against it for the following reasons: there is no allegation in the complaint that plaintiff, as a surety, has paid the obligation it guaranteed, or has been required to pay the same by said defendant. And granting arguendo that the allegations in the complaint regarding breach of the conditions of the surety bonds are true, the same would only be matters of defense which plaintiff could put up should it be made to pay its obligation under the bonds by defendant milling company.

Despite the opposition of plaintiff to this motion to dismiss, the court granted the same in a brief order as follows: "Defendants" motion to dismiss on the ground that plaintiff's complaint states no cause of action being meritorious, the same is granted. This case is hereby dismissed, with costs against the defendants." Hence this appeal.

There is merit in the appeal. While the order of the lower court does not state the reasons why it granted the motion to dismiss, for the same is very laconic, it may however be inferred from its tenor that it agrees to the grounds set forth by defendant milling company in its motion. The reasons advanced for the dismissal of the case are that plaintiff, being a surety of the debtor who obtained two crop loans from the milling company, has not yet incurred any liability under its bonds because the complaint contains no allegation that it has voluntarily paid the obligation or has been made to pay the same to the company in accordance with the terms of the bonds. It is contended that the allegations of the complaint concerning breach of the principal conditions of the bonds on the part of defendant milling company are mere matters of defense which plaintiff could put up when demand for payment is made upon it by the milling company. And these arguments were found by the lower court to be meritorious.

With this we disagree. The purpose of the action is not to dispute the validity of any demand for payment that may have been made upon plaintiff by defendant company on the strength of its liability under the bonds but rather to ask for its release from its liability under the bonds for certain breach of its conditions committed by the milling company, and it is for this reason that the action was brought against the milling company. It is true that, as an alternative action, the debtor and the other surety were also included to exact liability from them under the indemnity agreement, but that is an action distinct and separate from that alleged against the milling company and as such it cannot in any way affect the relation of the latter to the plaintiff. We find therefore immaterial or unnecessary to allege in the complaint that plaintiff has either paid or been required to pay its obligation under the bonds by the creditor considering the nature of the main cause of action. It is sufficient if it alleges therein, as it actually does, that the conditions agreed upon in the bonds had been violated. We therefore conclude that the complaint states a valid cause of action insofar as the milling company is concerned.

The order appealed from is set aside. The case is remanded to the lower court for further proceedings, with costs against appellees.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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