

WALKER RUBBER CORPORATION, PETITIONER, VS. NEDERLANDSCH INDISCHE & HANDELSBANK, N. V. AND SOUTH SEA SURETY & INSURANCE CO., INC., RESPONDENTS.*G. R. No. 12502 and G. R. No. 12512. May 29, 1959*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12502-2/>**LABRADOR, J.:**

The Nederlandsch Indische Handelsbank, N. V., hereafter called the bank, brought this action in the Court of First Instance of Manila against the South Sea Surety & Insurance Company, Inc., hereafter called the surety company, to collect the amount of P14,000 on a performance bond, jointly and severally executed by the surety company with the Walker Rubber Corporation, hereafter designated as vendee, in favor of the Associated Finance Company, Inc., hereafter designated as vendor. The performance is to secure payment of the sum of P14,000, the price of 100,000 pounds of camel back rubber which vendor had agreed to sell to vendee. The complaint alleges that the bank relied on the written assurance of the surety that the latter would pay for the draft covering the rubber sold in the event that drawee (vendee) would fail to pay said draft on its due date, and that vendee failed to pay said draft upon presentation. The defendant surety answered the complaint, alleging that the vendee had complied with its undertaking with the vendor; that the bank could not have relied on the defendant surety's assurance in discounting the draft as it had already been accepted by the drawee when the surety agreed to secure its payment; that the vendee did not violate the terms or default in any of its undertakings with the vendor; that the vendor released the vendee of any and all liability arising from the acceptance of the draft and that the bond was executed solely for the benefit of the vendor. In its answer the surety presents a third-party complaint against the Walker Rubber Corporation, vendee, and Chua Chuy, indemnitor, both of whom had executed an indemnity agreement with the surety, and prays that if it is declared liable for the draft, then that the vendee and Chua Chuy should reimburse to it the amount of the judgment.

The Court of First Instance rendered judgment sentencing the surety to pay to the bank the amount of P14,000, with interest, and at the same time ordered the Walker Rubber Corporation and Chua Chuy to reimburse all amounts that the surety shall pay to the plaintiff bank, plus attorney's fees and costs.

The case was appealed to the Court of Appeals, and the latter affirmed the judgement of the Court of First Instance. It also dismissed a cross-claim filed by the third party defendant Chua Chuy against the other third-party defendant Walker Rubber Corporation for lack of evidence. This appeal by certiorari is against this judgment of the Court of Appeals. The facts found by said court are as follows:

"In accordance with a contract of sale (Exh. E-I) entered into on March 4, 1949 between the Associated Finance Co., Inc., and the Walker Rubber Corporation, the former drew a draft (Exh. A) on the latter, on March 4, 1950 for W.4,000 payable sixty days after sight or, to be exact, on May 3, 1950, representing the value of 100,000 pounds of camelback rubber which formed a part of goods and articles mortgaged by the Associated Finance 'Co., Inc., in favor of the Nederlandsch Indische & Handelsbank. Said draft bore on its face its acceptance by the drawee, the Walker Rubber Corporation, dated March 4, 1950.

"On March 5, 1949, the Walker Rubber Corporation, as principal, and the South Sea Surety & Insurance Co., Inc., as surety, executed a performance bond for the due and full observance of all the covenants, conditions and agreements set forth in said contract of sale on condition, among others, that the liability of the surety thereon should expire on March 5, 1950 and the same would be cancelled ten days after its expiration unless the surety was notified in writing of any existing obligation thereunder.

"Upon presentation of said draft to the Nederlandsch Indische & Handelsbank for discount, said bank addressed a letter on March 15, 1950 to the South Sea Surety & Insurance Co., Inc., requesting information whether it would consider the said draft as being covered by its performance bond and if so, whether it would be in order for the bank to present the draft to said surety company for immediate payment in the event the drawee fail to honor same on its due date, viz: May 5, 1950, to which the South Sea Surety & Insurance Co., Inc., answered on March 16, 1950 that it would consider the draft for P14,000 in order and that the same could be presented to it for payment should drawee fail to honor it, advising the bank, however, that any draft drawn subsequent to March 15, 1950 would not be considered as within the terms of the performance bond in question.

"On April 18, 1950, Nederlandsch Indische & Handelsbank authorized the Luzon Brokerage Co., Inc., to deliver to Francisco Sycip, the president of the Associated Finance Co., Inc., 100,000 pounds of the camelback rubber stored in its Echague bodega, Warehouse No. 2 (Exh. H). By means of an undated letter addressed to the Luzon Brokerage Co., Inc., the Associated Finance Co., Inc., and the Walker Rubber Corporation, Cebu City, made a demand on the Luzon Brokerage Co., Inc., for the delivery to Mr. Francisco Sycip, of the balance of 100,000 pounds of camelback rubber, as per delivery order issued by the Nederlandsch Indische & Handelsbank dated March 17, 1950 (Exh. I).

"On its due date, the draft (Exh. A) was refused payment by the Walker Rubber Corporation of Cebu City and the corresponding protest for non-payment was made in due time (Exh. E). On May 4, 1950, the Bank of the Philippine Islands, through the manager of the local branch of Cebu City, to which the draft (Exh. A) was referred for collection returned it to the Nederlandsch Indische & Handelsbank with the advice that the Walker Rubber Corporation, Cebu City, dishonored said draft, claiming that their liability thereunder has been released by virtue of an agreement entered into between them and the drawers and charged the bank for their commission and airmail postage the sum of P18 (Exh. D),

"On April 10, 1950, the Associated Finance Co., Inc., and the Walker Rubber Corporation, represented by their respective Presidents, Francisco Sycip and Jose Tan Yaotin, entered into an agreement whereby the Associated Finance Co., Inc., assumed and took delivery of the undelivered balance of camelback rubber and further assumed the full responsibility of the P14,000 draft thereby releasing and discharging the Walker Rubber Corporation from the liability as acceptor of said draft, and rescinding and declaring null and void the contract of sale entered into between them (Exh. 3-Walker)."

Only the vendee Walker Rubber Corporation and indemnitor Chua Chuy have filed petitions for certiorari. In their joint brief, they make eleven assignments of error. But in their Memorandum in lieu of oral argument, they re-embodied their previous assignments of error into three only as follows:

"Whether or not the respondent bank, which claimed to have discounted the draft, Exhibit A, but admitting, however, not to have paid for it, or not to have credited its drawer, the Associated Finance Co., Inc., for its value, could be considered a holder in due course thereof. Petitioners contend that said respondent bank was never a holder in due course of said draft.

"Whether or not respondent bank was an immediate party to said draft, and whether or not said respondent bank was the beneficiary of the performance bond, Exhibit F, or Exhibit 1-South Sea Surety. Petitioners claim that respondent bank was a remote party or a stranger to the transaction covered by said draft and that said performance bond was exclusively for the benefit of the beneficiary named therein, the Associated Finance

Co., Inc.

"Whether or not respondent South Sea Surety & Insurance Co., Inc., has the right to be indemnified by petitioners for whatever sums of money it would be made to pay to respondent bank as a consequence of the guaranty respondent surety made in favor the respondent bank on account of the performance bond in favor of the Associated Finance Co., Inc., without the knowledge or consent of petitioner Walker Rubber Corporation, the principal named in said performance bond. Petitioners contend that respondent surety has no right to be reimbursed for what it would be made to pay to respondent bank as a consequence of the former's guaranty to the latter, without the knowledge or consent of petitioners."

The first assignment of error raises the question as to whether or not the bank is a holder in due course. The Court of Appeals found that the draft, Exh. A, represents the value of 100,000 pounds of camelback rubber, which form part of the goods and articles mortgaged by the vendor in favor of the bank; that on April 18, 1950, upon demand made by the vendor and the vendee, the bank authorized the Luzon Brokerage Company to deliver to the President of the vendor company said 100,000 pounds of camelback rubber then stored in its Echague bodega No. 2. The bank had a lien of mortgage on the 100,000 pounds of camelback rubber. When the bank parted with the possession thereof by delivery to the vendee, by reason of the sale, it relinquished its right over said rubber. Valuable consideration or value in general terms may be some right, interest, profit or benefit to the party who makes the contract, or some forbearance, detriment, loss, responsibility, etc. on the other side (Story on Promissory Notes, Sec. 186, cited in Tolentino on Commercial Laws of the Philippines, Vol. I, p. 244). For the bank in the case at bar the relinquishment of its possession and lien over the, rubber is its consideration for the draft and the performance bond executed to guarantee the payment of the draft.

It can not be contended, therefore, that the sight draft, Exh. A, was delivered by the vendor to' the bank for collection merely, because by the delivery of the 100,000 pounds of camelback rubber mortgaged to it, the bank released its lien over said rubber. The delivery to the vendee of the rubber and the release thereof from the bank's possession is the consideration for the draft, and said consideration made the holder thereof, the bank, a holder of the draft in due course for value.

It is stated on behalf of petitioners that if the face value of the draft had been deducted by the bank from the mortgage obligation of the drawer-vendor, the bank would have truly lost the value of the draft, but it is argued that the camelback rubber did not belong to the bank and the mortgage thereon did not make the bank owner thereof. In answer to this contention, it may be stated that the mortgage was as good, if not better than ownership itself. By virtue of the mortgage, the bank could have caused the rubber to be sold to satisfy the debt covered by the mortgage, and if the proceeds are insufficient it could have demanded a deficiency judgment that could . be enforced against any other property of the mortgage.

The above answers also the additional claim that in-as much as the bank did not deduct the amount of the draft from the mortgage obligation and neither did it credit the amount thereof with the vendor, the bank did not lose anything and, therefore, has not parted with any consideration for the draft. We also call attention to the fact that once the draft came into the possession of the bank, the latter asked from the surety if the performance bond that it had executed in favor of the vendor includes the surety's obligation to pay the value of the draft, and the surety promptly answered in the affirmative, that it would pay the draft if the same is dishonored upon presentation. The bank only authorized the delivery and parted with the possession of the 100,000 pounds of camelback rubber only upon the assurances of the surety that the draft was covered by the performance bond that it had executed and that it would pay the draft if dishonored.

An examination of the pleadings will disclose that the action of the bank against the surety was predicated mainly on the acceptance of liability on the draft made expressly by the surety. This is the basis of the action and of the

decision. The release of the rubber from the control of the bank and the delivery thereof to vendee was due, not only to the draft, but by the express agreement of the surety to be liable for the draft on its performance bond.

It is further argued that the bank had not accepted the draft as partial payment of the mortgage, nor had it credited the mortgagor with the amount thereof. In answer thereto, the bank alleges that it intended to credit the amount of the draft after its collection. The argument of petitioners rests merely on the premise that the bank was merely an agent for collection, which is not true or correct. The argument would be true if the bank were so, but as we have indicated, it actually had an interest in the rubber sold and delivered by it and the parting with the rubber was a sufficient consideration for the holding of the draft.

In the second assignment of error, it is again argued that the parties to the draft were the drawer-vendor and the acceptor-vendee, and that unless the bank acquired the draft for value the parties to said draft, the drawer' and the acceptor, could cancel the liability created thereunder. This argument again fails to take into consideration the fact that the bank parted with the possession of the 100,000 pounds of camelback rubber, by reason of the draft and the acceptance by the surety of liability under its performance bond, in case the draft is not paid in presentation.

It is further argued that the performance bond, Exh. F, was executed by the surety for the benefit of the vendor. This was the original purport or intent of the performance bond, but then the surety, upon a written request of the bank if it would consider the draft covered by the performance bond, agreed expressly in writing that the payment of the draft was covered by the same bond. The argument is to no avail in view of the express acceptance by the surety of liability under its performance bond, in case the draft was not paid upon presentation. For clarity the letter of the bank, Exh. B is as follows:

"South Sea Surety & Ins. Co., Inc.

Manila

Gentlemen:

Performance Bond issued by your goodselves and Messrs. Walker

Rubber Corporation of Cebu in favour of Messrs. Associated

Finance Co., Inc. of Manila under date of March 5, 1949.

Messrs. Associated Finance Co., Inc., Manila, have presented to us for discount the following draft:

drawers— Ass. Finance Co., Inc.

drawees— The Walker Rubber Corp., Cebu

amount— P.4,000—(pesos fourteen thousand only)

date of draft—March 4, 1950

tenor of draft—60 days after sight

draft accepted by—Walker Rubber Corporation

date of acceptance—March 4, 1950

accepted due date—May 3, 1950

Before discounting the draft we shall be pleased to hear from you whether you consider the said draft as being covered by the captioned performance bond and if so, whether it will be in order for us to present the draft to your goodselves for immediate payment in, the event of drawees failing to honour the draft on due date, viz. May 3, 1950.

For the sake of convenience you may wish to confirm these points to us by returning to us the attached duplicate of the present, duly provided with your authorized signature.

Yours very truly,

Nederlandschb Indische

Handelsbank, N. V.
Established at Amsterdam
Manila Agency in Liquidation
"(SGD) Wilmer"

(pp. 48-49, R.O.A.)

and the answer thereto of the surety is as follows:

"Nederlandsch Indische Handelsbank, N. V.
Manila, Philippines.

Dear Sir:

In connection with your letter of March 15, 1950, regarding performance bond issued by us in behalf of Walker Rubber Corporation and in favor of the Associated Finance Co., Inc., on March 5, 1949, please be informed that we consider the draft for Fourteen Thousand (P14,000.00) Pesos, mentioned therein to be in order and that you can present same to us for payment should the drawee fail to honor same. However, any draft drawn subsequent to March 5, 1950 will not be considered as within the terms of the performance bond in question.

Very truly yours,

SOUTH SEA SURETY &
INSURANCE CO., INC.
BY: ILLEGIBLE
Vice-Pres. & Assistant
"General Manager"

(p. 50, R.O.A.)

In the third assignment of error it is claimed that the petitioners, vendee and indemnitor, were not notified and were not aware of the acceptance of liability by the surety or its letter to the bank, Exh. C, and did not consent thereto. This claim is unfounded. Before the performance bond was executed the parties thereto already knew that the performance bond was to cover the sight draft, Exh. A, because it was known that the rubber was mortgaged to the bank and under the latter's control, and payment of the draft must first be secured before the bank would release the rubber from its mortgage. Thus,, the performance bond expressly provides that its purpose was to guarantee the payment of the sight draft:

"Whereas, the contract requires the above bounden Principal to give a good and sufficient bond in the above-stated sum to secure the full and faithful fulfillment on its part of said contract, particularly the payment of trust receipt, sixty (60) days sight draft. documents against acceptance, payable to the Nederlandsch Indische & Handelsbank, N. V., Manila.

"The liability of the surety on this bond will expire on March 5, 1950, and said bond will be cancelled ten (10) days after its expiration unless the surety is notified in writing of any existing obligation thereunder." (p. 6, Annex A-Petition)

When the petitioners offered the indemnity agreement, they must have known that the surety was to guarantee payment of the sight draft, because the above statement was put in the performance bond. There was no need, therefore, of notification to petitioners of the surety's acceptance because the bond expressly mentions that the principal beneficiary of the bond is the bank.

We find no error in the judgment appealed from, and we hereby affirm it, with costs. So ordered.

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

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