

**SECURITY BANK & TRUST CO., INC., EXECUTOR AND APPELLEE,
VS. GLOBE ASSURANCE CO., INC., CLAIMANT AND APPELLANT.***G.R. No. 13708. April 27, 1960*

Ponente: BENGZON, J.

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In this testate proceeding, Globe Assurance Co., Inc., hereinafter called the claimant, filed against the deceased Vicente L. Legarda, three monetary claims: the first, for an unpaid promissory note; the second, in connection with the indemnity agreement, in favor of claimant, signed by the deceased with Gustavo Sancho and Jose S. Sarte; and the third, in connection with another indemnity agreement, in favor of claimant signed by the deceased together with Jose Robles and Magno Romasanta.

After a proper hearing, the Manila court of first instance, in its order of August 29, 1957, awarded claimant the sum of P250.00 only on account of its first claim; but it dismissed the second and third claims. The claimant appealed in due time, and here insists on the second and third claims, without questioning the court's action on its first claim.

It appears that on December 5, 1955, Gustavo Sancho, Vicente L. Legarda and Globe Assurance Co., Inc., signed a 90-day promissory note in favor of Philippine National Bank for the sum of P8,000.00[1] Although the note was a joint and several obligation, Globe Assurance Co. signed it merely as a surety to induce it to stand as such surety, Gustavo Sancho, Vicente L. Legarda and Jose Sarte executed on December 2, 1955, an indemnity agreement whereby they bound, themselves, jointly and severally, to indemnify said Company for any damages, prejudice, etc. it may sustain or incur, "as consequence of having executed the above-mentioned Bond" (the parties called the note a "Bond"). The agreement further provided:

"The said indemnities will be paid to the COMPANY as soon as demand is received from the creditor, or as soon as it becomes liable to make payment of any sum under the terms of the above-mentioned Bond, its renewals, extension or substitutions, whether the said sum or sums or part thereof, have been actually paid or not. * * *"

It is not denied that the bond became due and payable on March 4, 1956, but up to the time of the claim's presentation (December 1956) it was unpaid.

In opposing this claim, Legarda's judicial administrator alleged it had no information sufficient to form a belief as to the truth of claimant's averments. And his surviving widow, added the further objection that the claim was a mere "contingent claim" which may not be charged to, or collected from, the estate of the deceased. She pointed out, and it is undenied, that Globe Assurance had not yet paid any amount of money to Philippine National Bank to discharge the bond.

In reply to this contention, claimant invoked the paragraph hereinbefore quoted wherein Legarda and companions had agreed to pay it "as soon as it becomes liable to make payment of any sum under the Bond whether the said sum has been actually paid or not."

Upholding the opposition, the Manila court opined that the stipulation cited by claimant contravenes public policy and good morals, and is therefore void. Consequently, as previously stated, it denied this second claim.

Herein lies the main issue in this appeal.

In the light of our pronouncements in *Alto Surety vs. Aguilar*, L-5625, March 16, 1954, we must now decide for the claimant. Therein, we clearly held that similar stipulations are enforceable, that in accordance therewith, the surety may demand from indemnitors even before paying the creditors.

Supposing the surety will not pay the creditor after getting money from the indemnitors? That is not the concern of the courts. The indemnity agreement was not executed for the benefit of the creditors; it was rather for the benefit of the surety, and if the latter thought it necessary in its own interest to impose this stipulation, and the indemnitors voluntarily agreed to the same, the courts should respect the agreement of the parties—and require them to abide by their contract.[2] Specially so in this case, where the claimant had made the assurance "that it would be perfectly alright * * * if the court would order the payment of the sum claimed directly to the obligees concerned, excepting attorneys fees."

For these reasons, we rule in favor of claimant on this second claim.

In connection with the third claim, it appears that in April 1954, *Globe Assurance Co. Inc.*, bound itself as surety for the repayment of two loans totalling P6,000.00 contracted by *Jose Robles* with *Macario Cuerpocruz* as creditor; that the loans were not paid at maturity; that action for collection was instituted, resulting in a judgment condemning *Jose Robles* and *Globe Assurance Co.* jointly and severally, "to pay unto plaintiff the sum of P6,000.00, with 12% interest from April 13, 1954 until fully paid, plus 2% of P6,000.00 as liquidated damages; plus the sum of P1,500.00 as attorney's fees, plus the costs. But the liability of the *Globe Assurance Co., Inc.* shall not be beyond P6,000.00."

It also appears that, *Vicente L. Legarda*, *Jose Robles* and *Magno Romasanta* executed in favor of herein claimant two indemnity agreements to keep it free from loss or damage resulting from its having acted as surety of the above loans totalling P6,000.00. These agreements contained clauses identical to the one discussed in the second claim.

This third claim was rejected in the court below on the same grounds for rejecting the second claim: *Globe Assurance* had not yet paid the creditor, and the stipulation in the indemnity agreement allowing the surety to recover even before it paid the creditor was null and void. In view of the reasons already stated in discussing the second claim, we must again hold the rejection to be erroneous, and allow the claimant to recover.

Wherefore, the appealed order is affirmed as to the first claim, but reversed as to the second and third claims. The estate is hereby required to pay on the second claim. P8,000.00 with interest at 8% from March 4, 1956, plus attorney's fees of 15% of that amount[3] and also to pay P6,000.00 on the third claim, plus attorney's fees of 15% of such amount,[4] In accordance with the claimant's manifestation, payment of the P8,000.00—debt and interest shall be made directly to *Philippine National Bank* and of the P6,000.00—debt to *Macario Cuerpocruz*. The fees shall be paid to appellant. Appellee shall pay costs. So ordered.

Paras, C. J. Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

Padilla and Reyes, J.B.L., took no part.

[1] Interest at 8% from maturity until paid

[2] This is similar to insurance against liability, not merely against damage. See Sec. 90, Insurance Act.

[3_4] As stipulated in the indemnity agreement.

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