

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. J. AMADO ARANETA, ETC., ET AL. MANILA SURETY & FIDELITY CO., INC., CROSS PLAINTIFF AND APPELLANT VS. J. AMADO ARANETA AN...*G.R. No. 14142. May 30, 1961*

Ponente: PADILLA, J.

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On 22 February 1957 in the Court of First Instance of Manila the Solicitor General, in behalf of the Republic of the Philippines, brought an action against J. Amado Araneta and J. Amado Araneta & Company, Inc., as principals, and the Manila Surety & Fidelity Company, Inc., as surety, to recover from them jointly and severally the sum of P30, as fixed tax upon business due from 1946 to 1948, imposed by section 182, in connection with sections 178 to 180 of the National Internal Revenue Code, as amended; P5,067.42, as 2% tax on P253,370.84, the gross receipts from their business as a common carrier during the said period, pursuant to section 192 of the same Code; and P1,266.86, as 25% surcharge, or a total sum of P6,364.28, the payment of which was guaranteed by a bond (Annex B) executed by the defendant-surety, and 6% interest on the amount of P6,364.28 from 6 December 1951, when the first extrajudicial demand was made, until fully paid. On 12 March 1957 the defendants-principals filed a motion to dismiss the plaintiff's complaint on the ground that its cause of action is barred by the statute of limitations and on 20 March 1957 the plaintiff, an objection thereto. On 23 March 1957 the Court denied the defendants-principals' motion to dismiss.

On 29 March 1957 the defendants-principals filed their answer denying that they had operated their vessel as a common carrier, the truth being that they had used it to ship, goods and cargoes manufactured and sold by them and allied companies owned and/or controlled by them; asserting that granting without admitting that they were liable for common carrier's tax, their gross receipts during the alleged period was P166,299.67 only and not P253,370.24; and that the "Bond to Guarantee Payment of Common Carrier's Tax and Compensating Tax," attached to the complaint as Annex A or to the stipulation of facts filed on 25 February 1958 as Annex B, is not genuine and had not been duly executed because the same had not been approved by the Collector of Internal Revenue; and setting up affirmative defenses that the five-year period of limitation provided for in section 332, paragraph (c), of the National Internal Revenue Code, as amended, already had elapsed, hence the plaintiff's action was barred; and that granting that the said bond was valid, the enforcement of the principal obligation having been barred, it follows that the enforcement of the obligation undertaken in the said bond was also barred. They set up a counterclaim of P2,000 for expenses of litigation and attorney's fees incurred in defending their legal rights. On 30 March 1957 the defendant-surety filed its answer setting up the following affirmative defenses; that the plaintiff's complaint states no cause of action; that its liability under the bond (Annex B) was extinguished by its novation and alteration without its knowledge and consent; that granting that its liability still subsists, the said bond being merely secondary or auxiliary to a principal obligation that could no longer be enforced by reason of prescription, its obligation thereunder could, likewise, no longer be enforced; and that the bond (Annex B), not

having been approved by the Collector of Internal Revenue, was void. As counterclaim, it sought from the plaintiff the sum of P2,500 for expenses of litigation and attorney's fees incurred for the protection of its rights.

On 10 April 1957 the plaintiff answered the defendants' respective counterclaims, alleging that it has a valid cause of action against them and that its complaint was filed pursuant to its policy of collecting long overdue accounts from delinquent taxpayers.

After obtaining leave of court, on 25 May 1957 the defendant-surety filed an amended answer reiterating its denials, affirmative defenses and counterclaim in its first answer and adding or including a cross-claim against the defendants-principals for recovery from the latter of whatever sum of money it might be ordered to pay the plaintiff by judgment of the Court, with interest at the rate of 12% per annum from the date of payment until the sum it shall have paid be fully reimbursed to it by the defendants-principals; of the sum of P3,598.20 as premiums due for the period from 18 September 1949 to 18 March 1957, with interest at the rate of 12% per annum from 16 March 1957 until fully paid; of a sum equivalent to 15% of the total amount claimed as attorney's fees, as agreed upon in the indemnity bond executed by the cross-defendants on 21 March 1949 and accepted by the cross-plaintiff (Annex "1-MSFCI") attached to the amended answer and made a part thereof; and of the costs of the suit with respect to its cross-claim. It prayed further for any other just and equitable relief.

On 10 June 1957 the cross-defendants filed an answer to the cross-complaint of the defendant-surety, denying the truth, genuineness and correctness of the copy of the bond attached to the complaint as Annex A and as Annex B of the stipulation of facts; and claiming that the mere filing of a suit against the cross-plaintiff did not render it liable to pay the alleged tax liability of the cross-defendants; that the bond filed on 18 March 1949 by the cross-plaintiff (Annex B) was null and void, hence the same could not be the basis of the cross-plaintiff's cross-claim against the cross-defendants; that since both of them have denied liability to the plaintiff for any amount, the cross-plaintiff has no cause of action against the cross-defendants; and that the amount of expenses of litigation and attorney's fees claimed by the cross-plaintiff, should there be any, is to be determined by the Court in the exercise of its discretion. As counterclaim, they prayed for recovery from the cross-plaintiff of the sum of P2,000 as expenses of litigation and attorney's fees incurred in defending their rights on the cross-claim.

On 18 June 1957 the cross-plaintiff filed an answer to the cross-defendants' counterclaim denying the allegations therein and setting up a counterclaim to the cross-defendants' counterclaim in the amount of P1,000 as exemplary damages.

On 3 December 1957 the defendants-principals filed a motion to dismiss on the ground of lack of jurisdiction because the case involves a disputed tax assessment; on 9 December 1957 the plaintiff, an "opposition" thereto. On 12 December 1957 the Court denied the motion to dismiss.

On 25 February 1957 the cross-plaintiff and the cross-defendants entered into the following stipulation of facts:

COME NOW, the parties in the cross-complaint represented by their respective counsel and to this Honorable Court respectfully submit the following stipulation of facts:

- That the jurisdictional facts and the capacity of the parties to sue and be sued are admitted;
- That on or about March 18, 1949, cross-defendant J. Amado Araneta and J. Amado Araneta & Co., Inc. (Philippine Shipping Lines) represented by J. Amado Araneta requested the herein cross-plaintiff to post a surety bond in behalf of cross-defendant Philippine Shipping Lines and in favor of the Republic of the Philippines in the amount of P11,814.00 to guarantee the payment of the Common Carrier's Tax and Compensating Tax of the former with the latter, to which request the cross-plaintiff agreed and did in fact post the said bond, the original copy of which is attached as Annex "A" of the Stipulation of Facts entered into with the plaintiff Republic of the Philippines and made an integral part hereof by reference as Annex "1-MSFC";

- That the parties admit the truth of the terms and conditions of said bond;
- That the cross-plaintiff agreed and did in fact post the aforesaid surety bond upon written undertaking of the cross-defendants the original carbon copy of which is hereto attached as Annex "2-MSFCI" and made an integral part of this stipulation of facts obligating themselves to indemnify the cross-plaintiff for any damage, losses, costs, charges or expenses of whatever kind and nature including counsel or attorney's fees which the company may incur at any time as a consequence of having become surety of the above-mentioned bond;
- That the parties admit the truth of the terms and conditions of the said written undertakings marked Annex "2-MSFCI";
- That upon the passage and approval of Republic Act No. 361 on June 9, 1949, exempting from payment of the compensating tax the purchase or receipt of vessels, their equipment and/or appurtenances, from without the Philippines, before or after the taking effect of said Republic Act No. 361, the alleged tax liability of the cross-defendant was reduced by P5,250.00 from the original assessment of P11,814.00 leaving the sum of P6,364.28 only, representing the fixed and common carrier's tax allegedly due the Government;
- That on February 22, 1957, the Republic of the Philippines initiated court proceedings seeking to recover from the cross-defendants as principal and the cross-plaintiff as surety the said sum of P6,364.28 including penalties plus six (6%) percent thereon from December 6, 1951 until fully paid plus costs;
- That in accordance with the indemnity agreement Annex "2-MSFCI", the cross-defendants agreed to indemnify the cross-plaintiff as soon as the latter has become liable for the payment of any amount under the aforementioned bond, whether or not it shall have paid such sum or sums of money, or any part thereof;
- That in spite of repeated demands cross-defendants have failed and refused and still fail and refuse to indemnify the cross-plaintiff the amount claimed for in the cross-plaintiff's complaint;
- That the cross-plaintiff hereby withdraws the second and third causes of action as contained in the cross-claim; and
- That the parties hereto hereby withdraw their respective counterclaims.

which they submitted to the Court (pp. 71-76; 84-91, recs. on app.).

On the same day, 25 February 1957, all the parties to this case submitted to the Court the following stipulation of facts dated 7 February 1957:

COME NOW the parties in the above-entitled case represented by their respective counsel and to this Honorable Court respectfully submit the following stipulation of facts:

- That the jurisdictional facts and the capacity of the parties to sue and be sued are admitted;
- That sometime in 1946, the defendant J. Amado Araneta purchased from the Philippine Shipping Commission, and received delivery of one F. S. vessel for the sum of P120,000.00;
- That during the fourth quarter of 1946 up to and including the fourth quarter of 1947, defendants J. Amado Araneta and/or J. Amado Araneta & Co., operated said F. S. vessel within Philippine waters under the business style "Philippine Shipping Lines" without first providing themselves with the necessary fixed tax C-3-C required by Sec. 182 of the Tax Code;
- That during the above-mentioned period from the fourth quarter of 1946 to the fourth quarter of 1947, said defendants J. Amado Araneta and/or J. Amado Araneta & Co., failed to make a return of gross receipts from the operation of said F. S. Vessel;
- That the Bureau of Internal Revenue conducted an examination of the books of the Philippine Shipping

Lines, as a result of which the Bureau of Internal Revenue assessed defendant in the sums of P6,361.28, as fixed and percentage taxes and surcharge and P5,250.00 as compensating tax and surcharge, or a total of P11,614.28, as evidenced by the letter, dated May 15, 1943, hereto attached as Annex "A" to this stipulation of facts and made an integral part hereof, computed as follows:

Fixed Tax (1946-1948) P 30.00

2% common carrier's tax in accordance with Sec,

192, NIRC, on gross receipt for the same period

in the sum of P253,370.84

5,067.42

25% surcharge

1,266.86

Total P 6,364.28

and an assessment for compensating tax as follows:

2½% on P120,000.00 P 4,200.00

25% surcharge on P4,200.00

1,050.00

TOTAL COMPENSATING TAX DUE P 5,250.00

- That on March 18, 1949, defendants J. Amado Araneta as principal and the Manila Surety & Fidelity Co., Inc. as surety executed "Bond to Guarantee Payment of Common Carriers Tax and Compensating Tax", the original of which is hereto attached to this stipulation of facts as Annex "B" and made an integral part hereof. That the parties admit the truth of the terms and conditions of said bond and the fact that at the lower portion of said bond which reads:

"Approved:

"BIBIANO L. MEER

"Collector of Internal Revenue"

was left unsigned by said official;

- That in view of the enactment of Rep. Act No. 361, the defendant J. Amado Araneta and/or J. Amado Araneta & Co., Inc. sent a letter to the Collector of Internal Revenue dated June 14, 1949, a certified true copy of which is hereto attached with this stipulation of facts as Annex "C" and made an integral part hereof. Said letter was answered by the Collector of Internal Revenue dated June 21, 1949, a certified true copy of which is likewise attached to this stipulation of facts as Annex "D" and made an integral part hereof;

- That plaintiff through the Collector of Internal Revenue sent letters of demand to the defendants J. Amado Araneta and the Manila Surety & Fidelity Co., Inc., dated December 6, 1951 and May 17, 1952, respectively, certified true copies of which are hereto attached to this stipulation of facts as Annexes "E" and "F" and made integral parts hereof. Another set of demand letters dated November 14, 1953, was sent to the defendant J.

Amado Araneta under the firm name of Philippine Shipping Lines and to the Manila Surety & Fidelity Co., Inc. certified true copies of which are likewise hereto attached to this stipulation of facts as Annexes "G" and "H" and likewise made integral parts hereof;

- That on February 3, 1955, the Bureau of Internal Revenue sent another demand letter to the Philippine Shipping Lines. A copy of said letter is hereto attached and made an integral part hereof as Annex I;

- That due to the failure of defendants to comply with the above demands, plaintiff instituted the present action on February 22, 1957, to collect from defendants J. Amado Araneta and/or J. Amado Araneta & Co., Inc., and Manila Surety & Fidelity Co., Inc., jointly and severally the amount of P6,364.28 including penalties plus 6% interest thereon from December 6, 1951, until fully paid, and/or in default thereof, to execute upon the bond (Annex "B") for the satisfaction of the claim.

Wherefore, it is respectfully prayed that the above case be submitted for decision based upon the above stipulation of facts. (pp. 76-101; 66-83, recs. on app.).

On 31 May 1958 the Court rendered judgment holding that the action brought by the plaintiff was for the enforcement of an obligation undertaken by the defendants-principals and the defendant-surety in the bond executed by them in favor of the plaintiff (Annex B); that the action having been brought on 22 February 1957 was within the period of ten years from 18 March 1949, the date of execution of the bond; that the defendants-principals having defaulted in the payment of their tax obligation, which the defendant-surety had guaranteed to pay should the principals fail, the surety's obligation undertaken in the bond became a principal obligation; and that although the Collector of Internal Revenue failed to affix his signature in the bond (Annex B), the latter's acceptance constituted approval thereof, and ordering the defendants, jointly and severally, to pay the plaintiff the sum of P6,364.28, with interest at the rate of 6% per annum from 22 February 1957, the date of the filing of the complaint, until fully paid; and dismissing the defendants' counterclaim against the plaintiff and those against each other as well as the cross-claim by the cross-plaintiff and defendant-surety against the cross-defendants and defendants-principals, without pronouncement as to costs.

On 12 June and 5 July 1958 the defendants filed motions for reconsideration; on 14 June 1958, the cross-defendants, an objection to the cross-plaintiff's motion for reconsideration.

On 27 June and 8 July 1958 the Court denied the defendants' respective motions for reconsideration.

The defendants have appealed separately.

The contention of the appellants-taxpayers (J. Amado Araneta and J. Amado Araneta & Company, Inc.) is that the appellee's cause of action has prescribed, because the action for recovery of internal revenue taxes and surcharge due brought on 22 February 1957, was not commenced within the period of five years after the assessment dated 15 May 1948 had been made (Annex A); that the bond executed by them and the appellant-surety (Manila Surety & Fidelity Company, Inc.) to guarantee payment of the common carrier's tax (Annex B), being merely auxiliary or ancillary to the principal obligation the enforcement of which has prescribed, the enforcement of their auxiliary obligation in the bond also has prescribed; and that the bond (Annex B) is null and void because the same was not approved by the Collector of Internal Revenue.

The ground of the appellant-surety's appeal is that, notwithstanding the fact that the appellants-taxpayers had bound themselves to indemnify it "for any damage, loss, costs, charges, or expenses of whatever kind and nature," as a result of its having executed and filed the bond marked as Annex B (Annex 2-MSFCI), the trial court dismissed its cross-claim against the appellants-taxpayers instead of ordering them to pay it whatever amount it shall have paid to the appellee by virtue of its judgment and the stipulated interests thereon from the date of payment of said amount by the cross-plaintiff to the appellee until full payment thereof by the cross-defendants to

the cross-plaintiff.

The appellants-taxpayers' appeal is without merit. They cannot invoke prescription under the provisions of section 331 of the National Internal Revenue Code, as amended, because the appellee is suing on the bond executed and filed by them and the appellant-surety (Annex B). It must be borne in mind that on 15 March 1948 the Collector of Internal Revenue assessed the appellants-taxpayers for fixed tax upon business due from 1946 to 1948 under the provisions of section 182, in connection with sections 172 to 180, of the National Internal Revenue Code, as amended, and 2% tax on gross receipts from their business as common carrier under those of section 192 of the same Code, and surcharge, all amounting to P6,364.28 (Annex A)[1]; that the appellants-taxpayers requested the Collector of Internal Revenue to be allowed to pay their tax liability in six equal monthly installments beginning 15 April 1949; that the Collector of Internal Revenue granted their request provided a bond to guarantee payment of their tax liability be filed by them (Annex B); that the appellants-taxpayers requested the appellant-surety to underwrite the required bond (Annex 2-MSFCI); and that on 18 March 1949 the appellants-taxpayers and the appellant-surety executed the required bond (Annex B) and submitted it to the Collector of Internal Revenue who received and kept it. The condition of the bond is—

* * * that if the above-bounden Principal (the appellants-taxpayers) truly and faithfully make a prompt and complete payment of the 2% common carrier's tax and compensating tax due on the above-mentioned vessel for the year 1948, in six (6) equal monthly installment commencing on April 15, 1949, as well as all fines and penalties imposed in accordance with the National Internal Revenue Code, then this obligation shall be null and void, otherwise it shall remain in full force and effect. (Annex B).

The appellants-taxpayers failed to pay any of the installments due despite demand (Annexes E, G & I). Hence, the appellee sued on the bond (Annex B) which is a separate and distinct obligation of the parties thereto. For this Court to sustain the appellants' defense of prescription would in effect nullify their undertaking in the bond which was executed and filed by them to lighten their tax obligation or burden by being allowed to pay in six equal monthly installments.

The action to enforce the obligation on the bond executed on 18 March 1949, having been filed in court by the appellee on 22 February 1957, was within the prescriptive period of ten years.

The appellants-taxpayers argument that the bond (Annex B) being ancillary to the principal obligation to pay their tax liability, which already has prescribed, the enforcement of their obligation in the bond also has prescribed, is untenable. What has been said about their claim of prescription against the collection of the tax equally applies to the claim of prescription against the enforcement of the bond obligation or undertaking.

The act of the Collector of Internal Revenue in receiving and keeping the bond, deferring collection of the tax, and suing on the bond (Annex B) upon failure of the appellants-taxpayers to pay the tax, the payment of which is guaranteed by the bond, meant or amounted to approval thereof.

Turning now to the appeal of the appellant-surety, the appellants-taxpayers having bound themselves to the former, as follows:

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 abovementioned 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 abovementioned bond,

whether or not it shall have paid such sum or sums of money, or any part thereof.

INTEREST IN CASE OF DEFAULT: (d) And in the case of non-payment of the said sum or sums of money to the Company by the undersigned, the said undersigned shall pay, upon said sum or sums of money, an interest of twelve (12%) per cent per annum, which interest, while not paid, shall be liquidated and accumulated monthly to the capital owned by the undersigned, drawing the same interest as the said capital.

UNQUESTIONABILITY OF THE PAYMENT AND DISBURSEMENT MADE BY THE COMPANY: (e) Any payment or disbursement made by the COMPANY on account of the abovementioned bond, either in the belief that it was bound to make said payment or disbursement, or in the belief that the payment or disbursement made was necessary or expedient, in order to avoid greater losses or obligations for which it would be liable under the abovementioned 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. (Italics supplied.) Annex "2-MSFCI"

should be ordered to reimburse the appellant-surety for whatever amount it shall have paid to the appellee by virtue of the judgment rendered in this case and to pay the stipulated interest thereon. The premium and attorney's fees sought to be collected by the appellant-surety in the second and third causes of action of its cross-complaint against the appellants-taxpayers have been withdrawn by it (paragraph 10 of the stipulation of facts).

With the foregoing modification, the rest of the judgment appealed from is affirmed, with costs against the appellants-taxpayers.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon and Natividad, JJ., concur.

[1] They were also assessed for an additional amount of P5,250 as compensating tax for the purchase on 20 September 1946 of one FS-158 vessel from the Government Procurement Commission for P120,000. However, upon enactment of Republic Act No. 361 on 9 June 1949, amending section 190 of the National Internal Revenue Code and exempting from the payment of compensating tax the purchase of vessels from without the Philippines, before or after the effectivity of the said amendatory act, the appellee did not press for its collection.

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