

MALAYAN INSURANCE CO., INC., PLAINTIFF AND APPELLEE, VS. CATALINA V. YANDOC, BIENVENIDO YANDOC AND ANTONIA Y. PAEZ, DEFENDANTS AND APPELLANTS.*G.R. No. 14395. September 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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Direct appeal from a decision of the Court of First Instance of Manila ordering defendants Catalina V. Yandoc, Bienvenido Yandoc and Antonia Y. Paez to reimburse plaintiff Malayan Insurance Co., Inc. the attorney's fees and other expenses in the amount of P11,554.00 which it had incurred as defendant in a previous suit instituted by Hilaria Uy Isabelo against all the parties herein, with 12 % interest thereon from filing of this suit until full payment, attorney's fees of P2,000.00 and costs.

From the stipulation of facts, it appears that, for and in consideration of P29,440.00, Catalina V. Yandoc, with the consent of her husband Bienvenido Yandoc, and Antonia Y. Paez contracted to sell to Hilaria Uy Isabelo a parcel of land in Baguio City. The vendors promised that on or before January 31, 1951, they would deliver to the vendee clean title to the property, complete construction of the roads and improvements thereon, and comply with all ordinances of Baguio City. To insure compliance with these three conditions, the vendee required the vendors to post a bond of P30,000.00. However, the bond (Exhibit A) executed by the surety company, Malayan Insurance Co., Inc., guaranteed solely that clean title to the property would be delivered to the vendee, without specifying the date of delivery. In consideration of the obligation under-taken by the surety company upon the bond, Paez executed a deed of indemnity (Exhibit C) ; and Yandoc executed a deed of counter-guaranty with mortgage over the land subject of the contract to sell (Exhibit B).

At the request of Uy Isabelo dated January 29, 1951 (Exhibit 3), the surety company cancelled the bond and released the mortgage (Exhibit 6). Subsequently, in the Court of First Instance of Baguio, Uy Isabelo sued Yandoc and Paez for rescission of the contract to sell (Civil Case No. 233). The surety company was impleaded as defendant, but it denied liability on the cancelled bond. After hearing, the court rescinded the contract; declared Yandoc and Paez liable to Uy Isabelo for the principal sum of P29,440.00 and P10,000.00 as liquidated damages, and held the surety company liable on the P30,000.00 bond (Exhibit D). On appeal, the Court of Appeals absolved the surety company from liability, but affirmed with modifications the judgment against Yandoc and Paez, which decision is now final (CA-G. R. No. 8801; Exhibit E).

On October 15, 1956, the surety company demanded from Yandoc and Paez reimbursement of its expenses in the aforesaid litigation (Exhibit F). Upon their refusal to pay (Exhibit G), the surety company filed the present suit against them and Bienvenido Yandoc in the Court of First Instance of Manila which rendered the appealed decision upon the stipulation of facts and additional evidence submitted herein.

The appeal turns on the question of whether appellee's expenses in the previous litigation must be reimbursed by appellants.

Where the indemnity agreement comprehends attorney's fees, the principal must reimburse the surety for such fees and other expenses it incurred in defending a suit arising from the bond, regardless of whether the suit is meritorious or not (42 C. J. S. 586-587; U. S. Fidelity and Guaranty Co. vs. Garrett, et al., 152 S. E. 772). The attorney's fees to be incurred by the surety cannot be limited to suits probably well founded in fact, since legal services are naturally required to ascertain the facts and to meet the allegations made; nor are they confined to cases well founded in law, for the surety is entitled to legal advice on the question of his legal liability on the face of the complaint and to services in presenting the proper issue of law in defense (Kilgore vs. Union Indemnity Co., 132 So. 901).

Appellants covenanted "to indemnify the surety company for any damage, prejudice, loss, costs, payments, advances and expenses of whatever kind and nature, including counsel or attorney's fees, which the surety company may, at any time, Sustain or incur, as a consequence of having executed the abovementioned bond" (Exhibits B and C.) Appellee is entitled to be reimbursed only if the expenses were incurred as a consequence of the execution of the bond. When an event is followed in natural sequence by a result which it is adapted to produce, or aid in producing, that result is a "consequence" of the event (In re Benson, 62 P 2d 962; Hill vs. Day, 199 A. 920). As long as the bond remained valid and outstanding, any action brought thereon whether meritorious or groundless, is a consequence of the execution thereof, for it can be reasonably anticipated that the creditor might sue on the bond. And since the surety needs legal help to determine its liability on the bond, it must be reimbursed for attorney's fees it had incurred.

But inasmuch as the bond herein was cancelled at the express request of Uy Isabelo, then there was no longer reason to expect that she would later on file suit thereon. Her suit against the surety company did not directly result from the execution of the bond, but is attributable purely to her own manifest bad faith. The appellate court absolved the surety company from liability on the bond because the same had been cancelled. Even if the bond was outstanding, appellants complied with its condition when they sent title to the property by mail to Uy Isabelo on February 22, 1951. Prior even to this date, Uy Isabelo had requested appellee to cancel the bond, informing it that it had no obligations thereon (Exhibit 3). The condition of the bond was fulfilled but appellants failed to perform all the conditions of the contract to sell, so Uy Isabelo filed the previous action against them. But with full knowledge that she had utterly no cause of action against appellee, she still impleaded it as party defendant.

Appellee was aware that it was Uy Isabelo who should be held liable for its expenses in the suit. Indeed, it included in its answer to the complaint, a counterclaim for attorney's fees of P1,000.00; and, on appeal, prayed that Uy Isabelo be ordered to pay it P10,000.00 as attorney's fees, which counterclaim and prayer were not granted. Appellee did not make a crossclaim against appellants, a circumstance, which though not decisive of appellee's right to reimbursement, is nevertheless indicative of its belief that appellants should not be held responsible for the amounts it spent in the previous suit.

As provided in the indemnity agreement, appellee could cancel the bond, "subject to any liability which might have accrued prior to the date of cancellation." If no liabilities are outstanding at the time of cancellation, then the surety company cannot be held liable on the bond, and it cannot ask for reimbursement from the principals whose obligation to indemnify the surety company arises only "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 abovementioned bond." No demand was made by Uy Isabelo for compliance with the provisions of the bond. On the contrary, when she asked for cancellation of the bond, she informed appellee that "the terms and conditions stipulated in your above bond have been fully and faithfully performed by the abovebonded principals and that you, as surety, therefore, have no outstanding obligation or liabilities thereunder" (Exhibit 3). Because appellee never became liable on the bond, appellants' obligation to pay the aforesaid indemnities did not mature.

Wherefore, the appealed decision is reversed, and appellee's complaint dismissed, without pronouncement as to costs.

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

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