

INTESTATE ESTATE OF VICTOR SEVILLA, SIMEON SADAYA, PETITIONER, VS. FRANCISCO SEVILLA, RESPONDENT.

G.R. No. 17845. April 27, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

On March 28, 1949, Victor Sevilla, Oscar Varona and Simeon Sadaya executed, jointly and severally, in favor of the Bank of the Philippine Islands, or its order, a promissory note for P15,000.00 with interest at 8% per annum, payable on demand. The entire amount of P15,000.00, proceeds of the promissory note, was received from the bank by Oscar Varona alone. Victor Sevilla and Simeon Sadaya signed the promissory note as co-makers only as a favor to Oscar Varona. Payments were made on account. As of June 15, 1950, the outstanding balance stood at P4,850.00. No payment was thereafter made.

On October 6, 1952, the bank collected from Sadaya the foregoing balance which, together with interest, totalled P5,746.12. Varona failed to reimburse Sadaya despite repeated demands.

Victor Sevilla died. Intestate estate proceedings were started in the Court of First Instance of Rizal, Special Proceeding No. 1518. Francisco Sevilla was named administrator.

In Special Proceeding No. 1518, Sadaya filed a creditor's claim for the above sum of P5,746.12, plus attorneys' fees in the sum of P1,500.00. The administrator resisted the claim upon the averment that the deceased Victor Sevilla "did not receive any amount as consideration for the promissory note," but signed it only "as surety for Oscar Varona".

On June 5, 1957, the trial court issued an order admitting the claim of Simeon Sadaya in the amount of P5,746.12, and directing the administrator to pay the same from any available funds belonging to the estate of the deceased Victor Sevilla.

The motion to reconsider having been overruled, the administrator appealed.[1] The Court of Appeals, in a decision promulgated on July 15, 1960, voted to set aside the order appealed from and to disapprove and disallow "appellee's claim of P5,746.12 against the intestate estate".

The case is now before this Court on certiorari to review the judgment of the Court of Appeals.

Sadaya's brief here seeks reversal of the appellate court's decision and prays that his claim "in the amount of 50% of P5,746.12, or P2,873.06, against the intestate estate of the deceased Victor Sevilla," be approved.

1. That Victor Sevilla and Simeon Sadaya were joint and several accommodation makers of the 15,000.00-peso promissory note in favor of the Bank of the Philippine Islands, need not be essayed. As such accommodation makers, the individual obligation of each of them to the bank is no different from, and no greater and no less than, that contracted by Oscar Varona. For, while these two did not receive value on the promissory note, they executed the same with, and for the purpose of lending their names to, Oscar Varona. Their liability to the bank upon the

explicit terms of the promissory note is joint and several.[2] Better yet, the bank could have pursued its right to collect the unpaid balance against either Sevilla or Sadaya. And the fact is that one of the last two, Simeon Sadaya, paid that balance.

2. It is beyond debate that Simeon Sadaya could have sought reimbursement of the total amount paid from Oscar Varona. This is but right and just. Varona received full value of the promissory note.[3] Sadaya received nothing therefrom. He paid the bank because he was a joint and several obligor. The least that can be said is that, as between Varona and Sadaya, there is an implied contract of indemnity. And Varona is bound by the obligation to reimburse Sadaya.[4]

3. The common creditor, the Bank of the Philippine Islands, now out of the way, we first look into the relations inter se amongst the three cosigners of the promissory note. Their relations vis-a-vis the Bank, we repeat, is that of joint and several obligors. But can the same thing be said about the relations of the three cosigners, in respect to each other?

Surely enough, as amongst the three, the obligation of Varona and Sevilla to Sadaya who paid cannot be joint and several. For, indeed, had payment been made by Oscar Varona, instead of Simeon Sadaya, Varona could not have had reason to seek reimbursement from either Sevilla or Sadaya, or both. After all, the proceeds of the loan went to Varona and the other two received nothing therefrom.

4. On principle, a solidary accommodation maker - who made payment - has the right to contribution, from his co-accommodation maker, in the absence of agreement to the contrary between them, and subject to conditions imposed by law. This right springs from an implied promise between the accommodation makers to share equally the burdens that may ensue from their having consented to stamp their signatures on the promissory note.[5] For having lent their signatures to the principal debtor, they clearly placed themselves - in so far as payment made by one may create liability on the other - in the category of mere joint guarantors of the former.[6] This is as it should be. Not one of them benefited by the promissory note. They stand on the same footing. In misfortune, their burdens should be equally spread.

Manresa, commenting on Article 1844 of the Civil Code of Spain,[7] which is substantially reproduced in Article 2073 [8] of our Civil Code, on this point stated:

"Otros, como Pothier, entienden que, si bien el principio es evidente en estricto concepto juridico, se han extremado sus consecuencias hasta el punto de que estas son contrarias, no solo a la logica, sino tambien a la equidad, que debe ser el alma del Derecho, como ha dicho Laurent.

Esa accion - sostienen - no nace de la fianza, pues, en efecto, el hecho de afianzar una misma deuda no crea ningun vinculo juridico, ni ninguna razon de obligar entre los fiadores, sino que trae, por el contrario, su origen de un acto posterior, cual es el pago de toda la deuda realizado por uno de ellos, y la equidad no permite que los demas fiadores, que igualmente estaban obligados a dicho pago, se aprovechen de ese acto en perjuicio del que lo realizo."

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"Lo cierto es que esa accion concedida al fiador nace, si, del hecho del pago, pero es consecuencia del beneficio o del derecho de division, como tenemos ya dicho. En efecto, por virtud de esta division, todos los cofiadores vienen obligados a contribuir al pago de la parte que a cada uno corresponde. De esa obligacion, contraida por todos ellos, se libran los que no han pagado por consecuencia del acto realizado por el que pago, y si bien este no hizo mas que cumplir el deber que el contrato de fianza le imponia de responder de todo el debito cuando no limite su obligacion a parte alguna del mismo, dicho acto redundo en beneficio de los otros cofiadores, los cuales se aprovechan de el para quedar desligados de todo compromiso con el acreedor."[9]

5. And now, to the requisites before one accommodation maker can seek reimbursement from a co-accommodation maker.

By Article 18 of the Civil Code, in matters not covered by the special laws, "their deficiency shall be supplied by the provisions of this Code". Nothing extant in the Negotiable Instruments Law would define the right of one accommodation maker to seek reimbursement from another. Perforce, we must go to the Civil Code.

Because Sevilla and Sadaya, in themselves, are but co-guarantors of Varona, their case comes within the ambit of Article 2073 of the Civil Code which reads:

"ART. 2073. When there are two or more guarantors of the same debtor and for the same debt, the one among them who has paid may demand of each of the others the share which is proportionally owing from him.

If any of the guarantors should be insolvent, his share shall be borne by the others, including the payer, in the same proportion.

The provisions of this article shall not be applicable, unless the payment has been made in virtue of a judicial demand or unless the principal debtor is insolvent."^[10]

As Mr. Justice Street puts it: "[T]hat article deals with the situation which arises when one surety has paid the debt to the creditor and is seeking contribution from his cosureties."^[11]

Not that the requirements in paragraph 3, Article 2073, just quoted, are devoid of cogent reason. Says Manresa:^[12]

"c) Requisitos para el ejercicio del derecho de reintegro o de reembolso derivado de la corresponsabilidad de los cofiadores. - La tercera de las prescripciones que comprende el artículo se refiere a los requisitos que deben concurrir para que pueda tener lugar lo dispuesto en el mismo. Ese derecho que concede al fiador para reintegrarse directamente de los fiadores de lo que pago por ellos, en vez de dirigir su reclamación contra el deudor, es un beneficio otorgado por la ley solo en dos casos determinados, cuya justificación resulta evidenciada desde luego; y esa limitación está debidamente aconsejada por una razón de prudencia que no puede desconocerse, cual es la de evitar que por la mera voluntad de uno de los cofiadores pueda hacerse surgir la acción de reintegro contra los demás en perjuicio de los mismos.

El perjuicio que con tal motivo puede inferirse a los cofiadores es bien notorio, pues teniendo en primer término el fiador que paga por el deudor el derecho de indemnización contra este, sancionado por el art. 1.838, es de todo punto indudable que ejercitando esta acción pueden quedar libres de toda responsabilidad los demás cofiadores si, a consecuencia de ella, indemniza el fiado a aquel en los términos establecidos en el expresado artículo. Por el contrario, de prescindir de dicho derecho el fiador, reclamando de los cofiadores en primer lugar el oportuno reintegro, estos no tendrían más remedio que satisfacer sus cuotas respectivas, repitiendo después por ellas contra el deudor con la imposición de las molestias y gastos consiguientes.

No es aventurado asegurar que si el fiador que paga pudiera libremente utilizar uno u otro de dichos derechos, el de indemnización por el deudor y el del reintegro por los cofiadores, indudablemente optaría siempre y en todo caso por el segundo, puesto que muchas más garantías de solvencia y mucha más seguridad del cobro ha de encontrar en los fiadores que en el deudor; y en la práctica quedaría reducido el primero a la indemnización por el deudor a los cofiadores que hubieran hecho el reintegro, obligando a estos, sin excepción alguna, a soportar siempre los gastos y las molestias que anteriormente hemos indicado. Y para evitar estos perjuicios, la ley no ha podido menos de reducir el ejercicio de ese derecho a los casos en que absolutamente sea indispensable."^[13]

6. All of the foregoing postulate the following rules: (1) A joint and several accommodation maker of a negotiable promissory note may demand from the principal debtor reimbursement for the amount that he paid to the payee;

and (2) a joint and several accommodation maker who pays on the said promissory note may directly demand reimbursement from his co-accommodation maker without first directing his action against the principal debtor provided that (a) he made the payment by virtue of a judicial demand or (b) the principal debtor is insolvent.

The Court of Appeals found that Sadaya's payment to the bank "was made voluntarily and without any judicial demand," and that "there is an absolute absence of evidence showing that Varona is insolvent". This combination of fact and lack of fact epitomizes the fatal distance between payment by Sadaya and Sadaya's right to demand of Sevilla "the share which is proportionately owing from him".

For the reasons given, the judgment of the Court of Appeals under review is hereby affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Castro, JJ., concur.

[1] CA-G.R. No. 22246-R, "Intestate Estate of the deceased Victor Sevilla: Francisco Sevilla, administrator-appellant, vs. Simeon Sadaya, claimant-appellee".

[2] Section 29, Negotiable Instruments Law; *Acuña vs. Veloso and Xavier*, 50 Phil. 241, 252; *Philippine Trust Company vs. Antigua Botica Ramirez, et al.*, 56 Phil. 562, 565-566, 571. See also: Article 1216, Civil Code.

[3] *Philippine National Bank vs. Masa, et al.*, 48 Phil. 207, 211, *Acuña vs. Veloso and Xavier*, supra; *Daniel on Negotiable Instruments*, 1933 ed., Vol. 3, p. 1598.

[4] Tolentino, *Commentaries and Jurisprudence on Commercial Laws of the Philippines*, Vol. I, p. 255, citing *Blanchard vs. Blanchard*, 201 N.Y. 134, 94 NE 630.

[5] *Daniel on Negotiable Instruments*, id., p. 1597.

[6] *Daniel on Negotiable Instruments*, id., p. 1595; and Footnote 65 x x x:

"The liability of cosureties to each other for contribution is not joint [joint and several] but several", citing *Vansant vs. Gardner*, 240 Ky. 318, 42 S.W. (2nd) 300; *Voss vs. Lewis*, 126 Ind. 155, 25 N.E. 892.

[7] "ARTICULO 1.844 - Cuando son dos o mas los fiadores de un mismo deudor y por una misma deuda, el que de ellos la haya pagado podra reclamar de cada uno de los otros la parte que proporcionalmente le corresponda satisfacer.

Si alguno de ellos resultara insolvente, la parte de este recaera sobre todos en la misma proporcion.

Para que pueda tener lugar la disposicion de este articulo, es preciso que se haya hecho el pago en virtud de demanda judicial, o hallandose el deudor principal en estado de concurso o quiebra."

[8] Article 2073 will hereafter be recited in full.

[9] *Manresa, Comentarios al Codigo Civil Español* [1951 ed] Tomo XII, paginas 337, 338-339; emphasis supplied.

[10] The word quiebra [bankrupt] in the Spanish text of Article 1844 of the Civil Code of Spain is eliminated in Article 2073 of the present Civil Code; emphasis supplied.

[11] *Cacho vs. Valles*, 45 Phil. 107, 110-111, referring to Article 1844 of the Spanish Civil Code, now Article 2073 of the Civil Code.

[12] Manresa, Código Civil Español, Tomo XII, paginas 342-343.

[13] Manresa, id., pp. 342-343.

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