

**THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC.,
PLAINTIFF AND APPELLANT, VS. EUGENIO B. RAMOS AND PILAR
MIRANDA, DEFENDANTS AND APPELLEES.**

G.R. No. 20978. February 28, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Associated Reclamation & Development Corporation executed on March 29, 1961 a promissory note for P11,765 in favor of General Acceptance & Finance Corporation. Philippine American General Insurance Co., Inc., on the same date, executed a surety bond in the amount of P11,765 to secure payment of the aforementioned promissory note. Subsequently, on April 5, 1961, the spouses Eugenio Ramos and Pilar Miranda signed a counter-guaranty agreement with real estate mortgage, in favor of Philippine American General Insurance Co., Inc., against its liability under the surety bond. The next day, April 6, 1961, the Ramos spouses and Associated Reclamation & Development Corporation executed an indemnity agreement in favor of Philippine American General Insurance Co., Inc., thereunder binding themselves "jointly and severally" to indemnify the Philippine American General Insurance Co., Inc., for whatever it may suffer under its aforesaid surety bond.

Philippine American General Insurance Co., Inc., on November 3, 1961, filed a complaint in the Court of First Instance of Bataan against the Ramos spouses. Attached to the complaint, as parts thereof, were (1) the surety bond agreement of March 29, 1961, and (2) the counter-guaranty with real estate mortgage agreement of April 5, 1961. Plaintiff alleged that Associated Reclamation & Development Corporation failed to pay its obligation under the promissory note, as a result of which plaintiff paid its liability under its surety bond in the sum of P11,765. It therefore asked that defendants be ordered jointly and severally to pay plaintiff P11,765 with the stipulated 12% per annum interest, plus attorney's fees and costs. In the event of non-payment thereof within 90 days from service of judgment, it was further prayed that the mortgaged property be sold to realize the aforesaid sum and costs, with a deficiency judgment if necessary.

Defendants on January 26, 1962 filed a motion to dismiss, asserting that the complaint stated no cause of action. It was contended that under the Agreement of Counter- Guaranty with Real Estate Mortgage, the defendants were guarantors only so that plaintiff must first exhaust the properties of the principal debtor, Associated Reclamation & Development Corporation, before proceeding against defendants.

Plaintiff thereafter filed, on February 10, 1962, an amended complaint. Incorporated thereto and made parts of said amended complaint were (1) the surety bond agreement, as Schedule A; (2) the indemnity agreement of April 6, 1961, as Schedule B; and (3) the Agreement of Counter-Guaranty with Real Estate Mortgage, as Schedule C. It prayed for the same relief as the original complaint.

Sustaining the ground of defendants' motion, the Court of First Instance issued an order on August 31, 1962 dismissing the case. Said court ruled that under Schedules B and C of the amended complaint, defendants cannot be made liable without first proceeding against Associated Reclamation & Development Corporation.

Plaintiff appealed directly to this Court, no factual question involved.

For purposes of a motion to dismiss, allegations of the complaint are deemed true (Castelvi Raquiza vs. Ofilada, L-17182, September 30, 1963). Assuming, therefore, that, as alleged in the amended complaint, the parties concerned executed the agreements of surety (Schedule A), indemnity (Schedule B) and counter-guaranty with real estate mortgage (Schedule C) ; that the principal obligation consisting in the promissory note was not paid upon maturity; and that plaintiff as surety had paid the obligation thereunder, does plaintiff have a cause of action so as to proceed against defendants without first proceeding against Associated Reclamation & Development Corporation?

Schedule B, the indemnity agreement, reads in part as follows:

"Know All Men by These Presents, that,

"We, the undersigned Associated Reclamation & Development Corp. represented by its President, Antonio R. Banzon, and Eugenio B. Ramos and P. Miranda, jointly and severally bind ourselves unto The Philippine American General Insurance Company, Inc., a corporation duly organized and existing under and by virtue of the laws of the Philippines, with head office at Manila, Philippines, hereinafter called the COMPANY, in the consideration of it having become SURETY upon a bond in the sum of pesos eleven thousand seven hundred sixty five * * * (P11,765.00), Philippine Currency, in favor of General Acceptance & Financing Corporation in behalf of Associated Reclamation & Development Corporation . . . subject to the following terms and conditions:

* * * * *

"Indemnity.—The undersigned agree at all times to jointly and severally indemnify the Company and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature which the Company shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to * * *

* * * * *

"Our Liability Hereunder.—It shall not be necessary for the COMPANY to bring suit against the principal upon his default, or exhaust the property of the principal, but the liability hereunder of the undersigned indemnitors shall be jointly and severally, a primary one, the same as that of the principal, and shall be exigible immediately upon the occurrence of such default" (Record on Appeal, pp. 48-50, 53-54, italic supplied.)

It is clear from the foregoing that the amended complaint sufficiently states a cause of action against defendants. For the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously (Art. 1216, New Civil Code). It should not be overlooked, also, that the above-quoted indemnity agreement could not have been modified by Schedule C, the counter-guaranty agreement since the former was executed one day after the latter.

Finally, even under Schedule C, the defendants as counter-guarantors are not entitled to demand exhaustion of the properties of the principal debtor. For Schedule C is a counter-guaranty with real estate mortgage. It is accepted that guarantors have no right to demand exhaustion of the properties of the principal debtor, under Article 2058 of the New Civil Code, where a pledge or mortgage has been given as a special security (*Saavedra vs. Price*, 68 Phil. 688; *Southern Motors vs. Barbosa*, 99 Phil., 263; 53 Off. Gaz., 137).

Wherefore, the order appealed from is hereby reversed and set aside and the case is remanded to the court a quo for further proceedings. Costs against defendants-appellees. SO ORDERED.

Bengzon, C. J. Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Order reversed.

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