

**NATIONAL SHIPYARDS & STEEL CORPORATION,
PLAINTIFF-APPELLEE, VS. CARIDAD J. TORRENTO AND MUTUAL
SECURITY INSURANCE CORPORATION, DEFENDANTS-APPELLANTS.**

G.R. No. 21109. June 26, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On December 5, 1958, defendant Caridad J. Torrento applied with the National Shipyards & Steel Corporation (hereinafter referred to as NASSCO) for the purchase on credit of 60 tons of steel bars, 3/8" deformed or plain, at P430.00 per ton, for a 120-day period.

A contract of purchase and sale was executed on January 13, 1959, but was subsequently amended when plaintiff exhausted its stock of 3/8" plain steel bars. As amended, the quantity of steel bars stated to be 60 metric tons in the original contract was changed to 59.31 metric tons; the price was changed from P430.00 to P435.00 per metric ton; and the specification of the steel bars was also changed from "plain, round or corrugated" to "deformed".

Pursuant to the stipulation in the contract that the value of steel bars sold to defendant Torrento should be secured by a surety bond issued by a reputable bonding company, defendant Torrento as principal and MUTUAL SECURITY INSURANCE CORPORATION, as surety executed in favor of plaintiff a surety bond (S. 1754) on January 23, 1960. When it was noted that the undertaking under the bond was only P25,000.00, whereas the contract called for the payment of P25,800.00, defendant surety executed a supplemental bond increasing the amount to P25,800.00.

On February 6, 1959, when NASSCO could no longer supply the steel bars called for in the contract of purchase and sale inasmuch as its stock of 3/8" deformed steel bars had been exhausted, the plaintiff and defendant Torrento executed a supplemental agreement, the pertinent provisions of which read:

“x x x Whereas the NASSCO has agreed to sell to the vendee and the vendee has agreed to buy from the NASSCO... Fifty Nine and thirty one hundredths (59.31) metric tons of steel bars on credit basis for size and price as follows:

3/8" deformed 20 ft. or

30 ft. at P435.00 per ton

"Whereas, after consummation of said contract, only the following amount of steel bars were delivered to the vendee, as follows:

20.67 M.T. 3/8" deformed

and that there were no more available stock of steel bars of size 3/8" x 20' or 30' deformed.

"Now therefore, for and in consideration of the foregoing premises, the parties hereby agree to modify and/or amend their said contract as follows:

"1. That the NASSCO shall sell to the vendee and the vendee shall buy from the NASSCO, 38.50 tons of steel bars on credit basis subject to availability of stock in the following sizes and prices, to wit:

25 M.T. - 1/2" x 30 deformed

at P440.00 per ton

13.50 M.T. - 5/8" x 30 de-formed at P430.00 per ton

"2. That aside from the above amendment and/or modification, the said contract shall not be affected, altered, or modified in any way."

Pursuant to the contract of purchase and sale and the supplemental contract, NASSCO delivered to defendant Torrento steel bars in the total value of P25,794.09. The 120-day period for payment lapsed. Demand letters were sent, but defendant surety made no reply. Defendant Torrento did not question her liability, but only asked for a 3-month extension to settle her account.

Action was brought to recover the unpaid contract price from defendant Torrento and her surety. On October 18, 1960, the lower court rendered judgment: "ordering the defendants, jointly and severally, to pay the plaintiff the sum of P25,794.09, with interest thereon at the rate of 12% per annum, from August 29, 1959 until full payment, and the costs of suit. On the cross-claim, judgment is hereby rendered, ordering the cross-defendant Caridad J. Torren-to to pay the cross-plaintiff Mutual Security Insurance Corporation whatever sums the latter would pay the plain-tiff by virtue of this judgment, with interest thereon at the rate of 12% per annum, from the date of payment to plaintiff, until full payment, and the costs of this suit."

Defendants interposed an appeal to the Court of Appeals, which later on certified the case to Us on the ground that the errors assigned raise only questions of law.

Appellant Torrento maintains that plaintiff has no cause of action against her for the reason that inasmuch as she had paid the corresponding premium on the surety bond, the right of action, in case of her default, is ex-clusively against her surety. Further, with respect to the cross-claim of the Surety, Torrento claims that it was error for the lower court to take cognizance of the same even before payment by said surety to NASSCO had been made. In other words, Torrento argues that the cause of action alleged in the cross-claim does not arise until after pay-ment has been made by the surety to the plaintiff.

We find both arguments without merit. The surety bond (Exhibit C and C-1) states in very clear terms that both principal and surety are held and firmly bound unto the NASSCO in the sum of P25,800.00 for the payment of which they bind themselves, jointly and severally. "If a person binds himself solidarily with the principal debtor, x x x the contract is called suretyship" (Art. 2047, C.C.), in which case the provisions of the Civil Code with respect to joint and solidary obligations apply; and Article 1216 of the Civil Code provides that "the creditor may proceed against any of the solidary debtors or all of them simultaneously. x x x". It has been repeatedly held that although as a rule sureties x x x are only subsidiarily liable for an obligation, nevertheless, if they bind themselves jointly and severally, or in solidum, with the principal debt-or, the creditor may bring an action against anyone of them, either alone or together with the principal debtor (Molina vs. de la Riva, 7 Phil. 345; Chinese Chamber vs. Pua Te Ching, 16 Phil. 406; La Yebana vs. Valenquela, 67 Phil. 482; Chunaco vs. Tria, 63 Phil. 500).

With respect to the contention that the lower court erred in taking cognizance of the surety's cross-claim, suffice it to say that this point was not raised in the court a quo and, consequently may not be raised for the first time on appeal. Besides, as the lower court also stated in its decision, "defendant Torrento made no effort to dispute this (cross-claim) of defendant surety and did not even bother to cross-examine the witness who identified the said indemnity agreement," which is the basis of the cross-claim.

For its part, appellant surety company maintains that the execution of the supplemental agreement of February 6, 1959 without its knowledge and consent released it from any liability under the surety bond as there was a material alteration of the principal contract. We find the contention without merit. The court *quo* analyzed the factual set-up as follows:

"x x x An examination and comparison of the contract and the supplemental agreement will reveal that the only change or alteration consists of the following: Instead of the original stipulation for the purchase and sale of 3/8, 20' or 30', deformed steel bars, at P435.00 per ton, which kind of steel bars were no longer available in stock, the supplemental agreement provides for the sale by the plaintiff to defendant Torrento of other sizes of deformed steel bars at prices of P430.00 and P440.00 per metric ton. Specifically, the changes are in the diameter of the steel bars which originally was 3/8", to 1/2 and 5/8"; and the price from P435.00 per ton, to P430.00 per ton for the 1/2" bars. The amount of steel bars to be sold to defendant Torrento remained the same. The length and the deformed quality of the bars likewise remained unchanged. It is even specifically provided in Par. 2 of the supplemental agreement that "aside from the above amendments and/or modifications, the said contract (referring to the original contract) shall not be affected, altered or modified in any way." There was no alteration in the principal condition of the contract. The period of payment was not changed, and the amount of the liability of the principal debtor and of the surety was also untouched. There was no added burden imposed upon or assumed by the buyer." (underlining supplied)

The court then concluded:

"x x x In short, the supplemental agreement did not result in the principal debtor's assuming more onerous conditions than those stipulated in the original contract, and for which the surety furnished the bond. There was consequently, no material or essential alteration of the original contract which could result in the release of the surety from the obligation under the said bond."

We see no error in the ruling of the lower court just quoted.

In *Pacific Tobacco Corporation vs. Lorenzana, et al.*, G.R. L-8086, October 31, 1961 it was held: "for purposes of releasing a surety's obligation, there must be a material alteration of the contract in connection with which the bond is given, a change which imposes some new obligation on the party promising or takes away some obligation already imposed, changing the legal effect of the original contract and not merely the form thereof. x x x To allow compensated surety companies to collect and retain premiums for their services and then repudiate their obligations on slight pretexts which have no relation to the risk, would be most unjust and immoral, and would be a perversion of the wise and just rules designed for the protection of voluntary sureties."

While it is the rule that the liability of a surety is limited by the terms of the surety bond fixing its liability and that such liability cannot be extended by implication, it should be noted in the present case that although the technical specifications of the items to be purchased have been changed, it clearly appears that such changes are not substantial and have not added any other liability to that originally assumed. A surety is not released by a change in the contract which does not have the effect of making its obligation more onerous. (*Visayan Distributors Inc. vs. Flores*, 92 Phil. 145).

Wherefore, the appealed decision is hereby affirmed, with costs against defendants-appellants.

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

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