

**THE HONGKONG & SHANGHAI BANKING CORPORATION,
PLAINTIFF AND CROSS-DEFENDANT, VS. VICENTE ALDANESE,
DEFENDANT AND CROSS-PLAINTIFF AND APPELLEE, VAMENTA
& CO., ISIDORO & VAMENTA AND...**

G.R. No. 22071. October 09, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

There arrived at the port of Manila on October 15, 1919, certain merchandise consigned to the Hongkong & Shanghai Banking Corporation.

Before the receipt of the bill of lading of the merchandise, Messrs. Vamenta & Co. and Isidoro Vamenta declared that the value of said merchandise was P6,854.40, and succeeded in withdrawing the merchandise from the customhouse by giving a bond executed by the Union Guarantee Co., Ltd., as surety for the sum of ₱9,450, promising to present the bill of lading within four months from the date of said bond. This period expired without said bill of lading having been presented, notwithstanding the repeated demands made for the purpose.

The herein plaintiff corporation presented said bill of lading, with the invoice annexed thereto, according to which the value of the merchandise in question was P18,681.60, and claimed it from the Collector of Customs, but the latter could not deliver the same, having delivered it previously to Vamenta & Co. and Isidoro Vamenta as above stated, and an action was brought against him by the herein plaintiff.

At the instance of the Collector of Customs, Vamenta & Co., Isidoro Vamenta and the surety company, the Union Guarantee Co., Ltd., were included as defendants, against whom, as well as against the plaintiff, said Collector of Customs filed a cross-complaint.

After trial, the Court of First Instance of Manila rendered judgment, the dispositive part of which is as follows:

"The defendant Vicente Aldanese, in his capacity as Collector of Customs, is sentenced to pay the Hongkong & Shanghai Banking Corporation the sum of \$9,340.80, United States currency, with costs. Messrs. Vamenta & Co., Isidoro Vamenta and Union Guarantee Co., Ltd., are sentenced to pay the same sum to Mr. Vicente Aldanese in his aforesaid capacity, with the costs. In the event that the Union Guarantee Co., Ltd., be compelled to pay the whole or any part of the said sum to the defendant Mr. Aldanese by reason of insolvency or inability to pay of Messrs. Vamenta & Co. and Isidoro Vamenta, the latter are sentenced to pay said surety company all such sum as it may have paid as aforesaid, together with the costs. Each and every payment to be made under this judgment shall be with legal interest at the rate of 6 per centum per annum from April 29, 1920."

This judgment became final, except as to the Union Guarantee Co., Ltd., which appealed from said judgment, as a result of which a decision was rendered by this court, containing the following disposition:

" * * * We think that this case requires further evidence, and to do justice to all the parties interested, we have

decided to remand the record to the court of origin in order that the proper party may introduce competent evidence as to the existence, conditions and amount of the alleged bond given by the Union Guarantee Co., Ltd. "The judgment appealed from is reversed and this cause ordered remanded to the court below for the holding of a new trial for the purposes above indicated * * *." [1]

The Collector of Customs had already paid to the herein plaintiff the sum of P20,334.91 as the value of the merchandise in question, with interest thereon in compliance with the judgment above set out.

The cause having been remanded to the court below, according to the judgment of this court, new trial was held there, whereat the bond given by Vamenta & Co. and Isidoro Vamenta and the Union Guarantee Co., Ltd., was presented as evidence. The latter company did not introduce any evidence. In compliance with the judgment rendered against him, Isidoro Vamenta paid the Collector of Customs P8,000 on account. After a hearing, the court sentenced Vamenta & Co., Isidoro Vamenta and the Union Guarantee Co., Ltd., to pay the Collector of Customs jointly and severally the balance of P20,334.91 paid by said Collector of Customs, after deducting the P8,000 paid to the latter by Isidoro Vamenta, that is, the sum of P12,334.91 with, legal interest upon the P20,334.91 paid by the Collector of Customs, computed from October 24, 1921, when said payment was made, and with interest also at the legal rate on the sum of P12,334.91 from August 30, 1922, the day next following the payment of the P8,000 by Isidoro Vamenta.

In said judgment, the Union Guarantee Co., Ltd., was sentenced as aforesaid, but only up to the amount of the bond given, that is, up to the sum of P9,450.

The Union Guarantee Co., Ltd., appeals from this judgment, assigning thereto the following errors, to wit: (a) The fact that it was sentenced to pay the aforesaid sum; and (b) the denial of its motion for new trial.

In support of the first assignment of error, the appellant alleges that the defendant Aldanese is not entitled to recover, because the money paid by him is not his but of the Government. It must be noted that the judgment appealed from is in favor of "Mr. Aldanese in his capacity as Collector of Customs," and not as a private individual. The appellant also alleges that the liability of Vamenta & Co. and Isidoro Vamenta being joint and several, the P3,000 paid by Isidoro Vamenta must be applied upon the bond for P9,450 by them. And deducting said P8,000 from the amount of the bond, there remains only the sum of P1,450 to be paid by the appellant.

The fact, however, is that Vamenta & Co. and Isidoro Vamenta incurred and recognized the obligation to indemnify the Collector of Customs, defendant herein, for what he has paid, amounting to P20,334.91; and on account of said liability, Isidoro Vamenta paid said Collector of Customs the sum of P8,000.

There remains, therefore, the sum of P12,334.91 for which the Collector of Customs has the right to be reimbursed. To determine who are liable for this sum and to what extent, the following must be borne in mind:

For the total sum of P20,334.91, Vamenta & Co. and Isidoro Vamenta are liable although jointly and severally with the herein appellant up to the sum of P9,450, the amount of the bond given by them.

From the standpoint of view of Vamenta & Co. and Isidoro Vamenta, their liability in connection with said total sum is more onerous with regard to the amount for which they are liable alone and separately from the surety the Union Guarantee Co., Ltd., that is, the sum of P10,884.91. To this amount, therefore, must the payment of P8,000 made by them be applied, for it is so provided by article 1174 of the Civil Code.

Therefore, Vamenta & Co., Isidoro Vamenta and the Union Guarantee Co., Ltd., are jointly and severally liable for the balance of P12,334.91 up to the sum of P9,450, Vamenta & Co. and Isidoro Vamenta being liable only for the remaining sum, that is, P2,884.91.

As this is the result arrived at in the judgment appealed from, we see no reason for altering it.

The assignments of error not being of any merit, the judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avancena, Villamor, and Ostrand, JJ., concur.

[1]Hongkong & Shanghai Banking Corporation vs. Aldanese and Union Guarantee Co. (46 Phil., 713).

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