

**GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
REPRESENTED BY THE BUREAU OF SUPPLY COORDINATION,
PLAINTIFF?APPELLEE, VS. MARCELINO TIZON, ET AL.,
DEFENDANTS. CAPITAL INSURANCE &...**

G.R. No. 22108. August 30, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

Appeal from an order of the Court of First Instance of Manila, dated September 11, 1963, ex-punging from the record of the case the answer of the Capital Insurance & Surety, Co., Inc. and re-manding said record to the City Court of Manila for execution against the Surety of the decision rendered by the latter court.

It appears that in a bidding conducted by the Bureau of Supply Coordination of the Department of General Services, for the supply of "one (1) Baylift portable heavy-duty truck and auto lift, fully air operated, 500 lbs. capacity, and two (2) Baylift Ramps, U.S. manufacture", Tizon Engineering, of which Marcelino Tizon was the sole owner and proprietor, won the bid, having offered the lowest bid of P4,000.00. To guarantee faithful performance of the conditions of the bid, the Bureau of Supply Coordination required Tizon Engineering to give a bond in the sum of P10,000.00. On September 12, 1958, the Surety issued its bond for the said amount in favor of the Republic of the Philippines. Tizon Engineering failed to comply with the conditions of the bid, failing as he did to deliver the equipment called for in the Buy-er's order No. 42546 of the Bureau of Supply, constraining the latter to purchase the equipment from Fema Trad-ing, the second lowest bidder, resulting in a loss of P2,975.00 to the Government. Notwithstanding demands made by the Bureau of Supply on defendants Marcelino Tizon and the Surety to pay said amount, they failed and refused. Hence, complaint was filed in the City Court of Manila by the Republic of the Philippines to recover the said sum with legal interests, plus attor-ney's fees and costs.

Defendant Tizon averred in his answer that: (a) "the alleged bidding conducted by the Bureau of Supply is in utter disregard and wanton violation of the Rules and Regulations of the said office"; (b) "that assum-ing that a corresponding buyer's order was prepared, the same was not delivered to and duly received by him, such that there has never been a binding contract between plaintiff and the answering defendant; further-more, the plaintiff deliberately failed to notify the answering defendant as to the acceptance of his bid, thus again violating the Rules and Regulations men-tioned above"; (c) that the bond issued by the Surety "answers only (for) those contracts legally entered in-to by the herein defendants with the Bureau of Supply, and certainly not those contracts and/or bids which are of doubtful legality, as in the present case".

The defendant Surety, in answer to the complaint, admitted having executed a bond in favor of the Repub-lic of the Philippines for the purpose as therein stated, but denied "that it failed and refused to pay the demand (of the plaintiff), the truth of the matter being that its co-defendant, Marcelino Tizon, doing business under the name of Tizon Engineering, has put it on notice not to settle the claim because he is not in any way whatsoever liable to plaintiff". As cross-claim against defendant Tizon, the Surety asser-ted that if it is made liable to the plaintiff on

its bond, Marcelino Tizon should be ordered to make the corresponding reimbursement, with interest of 12%, plus attorney's fees.

After trial, judgment was rendered in favor of the plaintiff and against the defendants, ordering the latter to pay, jointly and severally, the sum of P2,972.00 with legal interests from November 12, 1960, and the costs of suit. On the cross-claim of the Surety, defendant Tizon was ordered to reimburse the cross-plaintiff of whatever amount the latter might have paid to the plaintiff, plus P100.00 as attorney's fees.

Only defendant Tizon appealed from the decision to the Court of First Instance of Manila.

Within fifteen days from receipt of notice from the clerk of the Court of First Instance of Manila, that the case has been received and docketed in said court, the defendants, Tizon and the Surety, each filed separate manifestations that they were reproducing their respective answers filed in the City Court.

On August 29, 1963, the plaintiff filed a motion praying "(a) To strike out the answer filed by the Surety reproducing its answer filed in the City Court; (b) To remand the case to the City Court, as concerns the Surety, for execution of the judgment rendered in said court."

The Surety opposed the motion on two grounds: (a) that although it did not appeal from the decision of the inferior court, the appeal interposed by its co-defendant inured to its benefit, because the obligation sued on "is so dependent on that of the principal debtor, that the Surety is considered in law as being the same party in relation to whatever is adjudged, touching the obligation of its co-defendant"; and (b) the appeal of its co-defendant, the principal debtor, "should be considered in law as to include the defendant Surety, in view of the latter's cross-claim against the former". The opposition was over-ruled in the order appealed from.

The issue at this instance is whether an appeal by one of the parties sentenced to pay solidarily a sum of money, inures to the benefit of the other who did not appeal. The pronouncements in the case of Municipality of Orion vs. Concha, 50 Phil. 682, pro-vide ample guideposts in the resolution of the issue at bar. In said case this Court held:

"The judgment was joint and several, which means that they are severally liable. We have made a careful examination of numerous authorities and believe that we are correct in saying that the effect of the appeal by one judgment debtor upon the co-debtors depends upon the particular facts and conditions in each case. The difference in the apparently conflicting opinions may be well illustrated in this very case.

"Suppose, for example, that F.B. Concha, the contractor, had appealed from the judgment of the lower court upon the ground that he had either completed his contract within time or that the municipality has suffered no damages whatever, and the Supreme Court had reversed the judgment of the lower court on his appeal. Certainly that judgment would have the effect of relieving the bondsmen from any liability whatever, for the reason that their liability was consequent upon the liability of the contractor; and the court having declared that no liability for damages had resulted from the execution of said contract, then certainly the bondsmen would have been relieved because their liability depended upon the liability of the principal. That example gives us a clear case, showing that the effect of the appeal of one of the judgment debtors would necessarily have the effect of releasing his co-judgment debtors.

x x x x x

"As we have already said, whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other co-judgment debtors depends solely upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all. x x x.

"The rule is quite general that a reversal as to parties appealing does not necessitate a reversal as to parties not

appealing, but that the judgment may be affirmed or left undisturbed as to them. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor. (4 C. J. 1184)

"A reversal of a judgment on appeal is binding on the parties to the suit, but does not inure to the benefit of parties against whom judgment was rendered in the lower court who did not join in the appeal, unless their rights and liabilities and those of the parties appealing are so interwoven and dependent as to be inseparable, in which case a reversal as to one operates as a reversal as to all. (4 C.J., 1206; Alling vs. Wenzel, 133 Ill., 264-278.)

"In the case of *Brashear vs. Carlin*, Curator (19 La. 395) a judgment was rendered in the lower court against the principal debtor and his surety to pay damages. The principal debtor alone appealed and the judgment was reversed. When the question of the liability of the surety under the judgment of the lower court was raised, the court said:

'It is obvious, that the judgment of the inferior court could not be reversed as to the principal debtor in this case, and continue in force against the surety. The latter could not remain bound, after the former had been released; although the surety had not joined in the appeal, the judgment rendered in this court enured to his benefit. The obligation of a surety is so dependent on that of the principal debtor, that he is considered in law as being the same party as the debtor in relation to whatever is adjudged, touching the obligation of the latter; provided it be not on grounds personal to such principal debtor; it is for this reason, that a judgment in favor of the principal debtor can be invoked as *res judicata* by the surety.'

"In the case of *Schoenberger vs. White* (75 Con. 605) a joint judgment was rendered against husband and wife for a sum of money in an action *ex contractu*. The wife appealed. As to the effect of the appeal of the wife upon the liability of both, the court said:

'Such a judgment is an entirety, and upon appeal to this court must be affirmed or set aside in toto.

'That the husband was not so made a party does not vary this rule. After the filing of the notice of appeal, he had the right to be heard in this court as to all the questions brought up for review. As he has not exercised this right, it may be assumed that he is content with the judgment against him as it stands; but he might complain of it, were we to modify it by reducing the amount which it requires his wife to pay, and thus reducing the amount of the contribution which he might be able to call upon her to make, in case he paid all that it requires of him.'"

In the case of *Philippines International Co., Inc. vs. Commissioner of Customs*, L-22709, December 17, 1966, this Court, speaking through Chief Justice Concepcion, sanctioned the view, albeit impliedly, that under a given set of facts, the appeal of the principal debtor, if successful, may inure to the benefit of the surety. Held this Court in that case:

"Although the appeal taken from said decision by the importer (principal debtor) might have, perhaps, inured to the benefit of the surety, if, the result of that appeal had been favorable to said importer, the fact is he had failed in his appeal."

Solution of the question posed in this appeal hinges on the nature of the obligation assumed by the Surety under its bond. As Article 1222 of the new Civil Code provides:

"A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible."

Pertinent parts of the surety bond provides:

"That we, Tizon Engineering, as principal, and the Capital Insurance & Surety Co., Inc., as surety, x x x are held and firmly bound unto the Republic of the Philippines, in the penal sum of P10,000.00, for the payment of which sum, well and truly to be made, we bind ourselves, Jointly and Severally, by these presents.

"Whereas, the principal agrees to comply with all the terms and conditions of the proposal with the Bureau of Supply;

"NOW THEREFORE, the conditions of this obligations are such that if the above bounden principal shall, in case he becomes the successful bidder in any of the proposal of the Bureau of Supply - (a) accept a contract with the Republic of the Philippines, represented by the Bureau of Supply; (b) faithfully and truly performs in good faith the contract; (c) to pay to the Republic of the Philippines, in case of delay and/or default in the execution of the contract, any loss or damage which the latter may suffer by reason thereof, not to exceed the sum of P10,000.00, Philippine currency, then this obligation shall be void, other-wise it shall remain in full force and effect."

It thus appears that the Surety bound itself, jointly and severally, with the principal obligor to pay the Republic of the Philippines any loss or damage the latter may suffer, not exceeding P10,000.00, "in case of delay and/or default in the execution of the contract".

However, although the defendants bound themselves in solidum, the liability of the Surety under its bond would arise only if its co-defendant, the principal obligor, should fail to comply with the contract. To paraphrase the ruling in the case of Municipality of Orion vs. Concha, the liability of the Surety is "consequent upon the liability" of Tizon, or "so dependent on that of the principal debtor" that the Surety "is considered in law as being the same party as the debtor in relation to whatever is adjudged, touching the obligation of the latter"; or the liabilities of the two defendants herein "are so inter-woven and dependent as to be inseparable". Changing the expression, if the defendants are held liable, their liability to pay the plaintiff would be solidary, but the nature of the Surety's undertaking is such that it does not incur liability unless and until the principal debtor is held liable.

True, it is that the Surety did not appeal the decision of the inferior court to the Court of First Instance, and on account of its failure to appeal, it lost its personality to appear in the latter court or to file an answer therein. However, this may be, it is not certain at this stage of the proceeding that the Surety's liability unto plaintiff has attached. The principal debtor has asserted on appeal that it has no liability whatsoever to the plaintiff, and, if this assertion be proven and sustained, the reversal of the judgment of the inferior court would operate as a reversal on the Surety, even though it did not appeal, in view of the dependency of its obligation upon the liability of the principal debtor. The principal debtor might succeed in his appeal; in such eventuality, the judgment of the inferior court could not continue in force against the Surety. Consequently, it is premature at this juncture to execute said judgment against the Surety.

The situation of the Surety may be likened to that of a defaulting defendant whose right is protected under Section 4, Rule 18 of the Rules of Court as follows:

"Judgment When Some Defendants Answer and Others make Default. - When a complaint states a common cause of action against several defendants, some of whom answer, and the others fail to do so, the court shall try the case against all upon the answer thus filed and render judgment upon the evidence presented. The same procedure applies when a common cause of action is pleaded in a counterclaim, crossclaim and third-party claim."

Albeit it may not personally be allowed to file an answer in the Court of First Instance, having failed to interpose an appeal, the Surety can rely on the answer of its co-defendant and derive benefit therefrom if the judgment on appeal should turn out to be favorable to the answering defendant (Castro vs. Peña, 80 Phil. 488, 502).

The decision in *Ishar Singh vs. Liberty Insurance Corp. and Leonardo Anne, et al.*, (third-party defendants in the third-party complaint of Liberty Insurance Corp.), L-16860, July 31, 1963, relied upon by the appellee, is not applicable to the facts of the case at bar. In said case, Liberty Insurance Corp. was the only defendant and the decision was against said defendant alone. The third-party defendants were impleaded as such upon the third-party complaint filed against them by the Liberty Insurance Corp. And as stated in the decision in said case, "the record does not disclose whether the third-party defendants filed an answer to the third-party complaint or not". Moreover, the liability of the third-party defendants to the third-party plaintiff stemmed from the indemnity agreement executed by them in favor of the Liberty Insurance Corp., and the third-party defendants did not have privity to contract with the creditor Ishar Singh.

Upon the foregoing considerations, that portion of the appealed order remanding the record of the case to the City Court of Manila for execution of the decision of said court is hereby set aside, without costs.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.
Concepcion, C.J., on official leave of absence.

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