

THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FIDELITY & SURETY COMPANY OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. 26743. October 19, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

The purpose of this action is through the reformation of a written instrument of guaranty upon the ground of mistake—the alleged mistake consisting of the substitution of the words "Laguna Coconut Oil Co." for "Bank of the Philippine Islands"—to obtain for the Bank of the Philippine Islands a judgment for P55,000, with interest, against the Fidelity and Surety Company of the Philippine Islands. The case is an old friend of the courts which has been with us twice before, and which, we are ungracious enough in our welcome to hope, has been seen by the court for the last time.

STATEMENT OF THE CASE

The original action was commenced by the Bank of the Philippine Islands against the Laguna Coconut Oil Co. and the Fidelity and Surety Company of the Philippine Islands on August 25, 1922. The Fidelity and Surety Company interposed a demurrer to the plaintiff's complaint which was sustained by the trial court. The plaintiff thereupon filed an amended complaint. The Fidelity and Surety Company again demurred to the amended complaint, and again it was sustained. Plaintiff appealed to the Supreme Court where the ruling was reversed and the case remanded for further proceedings (44 Phil., 618). Thus ended the preliminary skirmish.

On the return of the record to the lower court, the Fidelity and Surety Company filed an answer. The Laguna Coconut Oil Co. made no defense, and judgment by default was obtained against it. The case was submitted to the court upon a stipulation of facts. Upon the pleadings and the agreed facts, the trial court rendered judgment against the Fidelity and Surety Company of the Philippine Islands for the full amount of the note, with interest. From this judgment, the Fidelity and Surety Company appealed to this court. Here the assignments of error were found to be well taken, for the principal reason that the action involved a reformation of the contract of guaranty, which was not put in issue by the pleadings. Accordingly, the judgment was reversed and the action dismissed, "without prejudice to the bringing of another action upon the same cause." (48 Phil., 5.) Thus ended a major engagement between the parties.

On October 20, 1925, the Bank of the Philippine Islands commenced a new action against the defendant, the Fidelity and Surety Company of the Philippine Islands, in the Court of First Instance of Manila. The defendant demurred. The trial court overruled the demurrer, and the defendant answered. Evidence was produced on behalf of the plaintiff. The judgment was in favor of the plaintiff for the sum of P50,000 plus interest, attorney's fees, and costs. It is from this judgment that the defendant has appealed, assigning six errors which, it is alleged, were committed by the trial court. Our decision should now conclude the judicial warfare.

STATEMENT OF THE FACTS

On April 26, 1920, the Laguna Coconut Oil Co. executed in favor of the Philippine Vegetable Oil Company, Inc., the following promissory note:

"LAGUNA COCONUT OIL CO.

"Vegetable Oil Manufacturers

"Manila, P. I.

"P50,000

"One month after date, we promise to pay to the Philippine Vegetable Company, Inc., or order at the City of Manila, Philippine Islands, the sum of fifty thousand pesos (P50,000) Philippine currency; value received.

"In case of non-payment of this note at maturity, we agree to pay interest at the rate of nine per cent (9%) per annum on the said amount and the further sum of P5,000 in full, without any deduction as and for costs, expenses and attorneys' fees for collection whether actually incurred or not.

"Manila, Philippine Islands, April 26, 1920.

"LAGUNA COCONUT OIL CO.

"By (Sgd.) BALDOMERO COSME

"President"

On May 3, 1920, the Fidelity and Surety Company of the Philippine Islands made a notation on the note reading as follows:

"MANILA, May 3, 1920

"For value received, we hereby obligate ourselves to hold the Laguna Coconut Oil Co. harmless against loss for having discounted the foregoing note at the value stated therein.

"FIDELITY AND SURETY CO. OF THE

PHILIPPINE ISLANDS

"By (Sgd.) J. ELMER DELANEY

"Vice-President

"Cedula F-3447, Jan. 2, 1920, Manila, P. I.

"Attest:

(Sgd.) "A. D. TANNER

"Secretary-Treasurer

"Cedula F-3447, Jan. 2, 1920, Manila, P. I."

On May 4, 1920, the Philippine Vegetable Oil Company endorsed the note in blank and delivered it to the Bank of the Philippine Islands. It is possible that the Philippine Vegetable Oil Company was paid the sum of P50,000 therefor. At least after maturity of the note, demand for its payment was made on the Laguna Coconut Oil Co., the Philippine Vegetable Oil Company, and the Fidelity and Surety Company of the Philippine Islands, all of whom refused to pay, the Laguna Coconut Oil Co. being admittedly insolvent. The correspondence of the bank with the Fidelity and Surety Company is in the record, and is emphasized by the plaintiff as indicative of responsibility assumed by the defendant, but is objected to by the defendant as of minor importance.

The effort of the plaintiff on its last appearance in the trial court was to connect up the promissory note of P50,000 with an existing obligation of the Philippine Vegetable Oil Company in the form of another promissory note. The evidence was also intended to demonstrate that a clear error had been committed when reference was made to the Laguna Coconut Oil Co. in the notation on the note. The plaintiff's theory was confirmed by the trial judge. His Honor emphasized that the note could not have been discounted by the Laguna Coconut Oil Co., and that this must logically have been done by the Bank of the Philippine Islands. Without paying particular attention to certain of the assignment of errors, let us ascertain if this position is tenable, and if the plaintiff has made out its case.

OPINION

According to section 285 of the Code of Civil Procedure, a written agreement is presumed to contain all the terms of the agreement. The Civil Code has articles to the same effect. However, the Code of Civil Procedure permits evidence of the terms of the agreement other than the contents of the writing in the following case: Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings. This provision of our local law was construed by the United States Supreme Court in the well-known case of the Philippine Sugar Estates Development Company vs. Government of the Philippine Islands ([1917], 247 U. S., 385). It was there announced that the courts of equity will reform a written contract where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intent of the parties. It was also stated that the relief by way of reformation will not be granted unless the proof of mutual mistake be "of the clearest and most satisfactory character." The court finally said that the evidence introduced by the appellant met these stringent requirements.

Our local decisions have applied the rule that the amount of evidence necessary to sustain a prayer for relief where it is sought to impugn a fact in a document is always more than a mere preponderance of the evidence. (Centenera vs. Garcia Palicio [1915], 29 Phil., 470; Mendezona vs. Philippine Sugar Estates Development Co. and De Garay [1921], 41 Phil., 475.) Has the plaintiff carried the burden of proof in this manner and to this extent? That is the question.

In reaching out to consider the possibilities of the case, we are first confronted with the language of the court when the case was last here. Mr. Justice Ostrand, in the course of the opinion in that instance, observed: "The writing upon which the action is brought does not in terms show any obligation in favor of the plaintiff and the action can only be maintained upon the theory that the writing does not express the true intent of the parties. We may surmise that the guarantee in question was intended for the benefit of the party who subsequently discounted the note, but we cannot be certain." It was then pointed out that the note may have been merely an accommodation note, and that the guaranty may have been intended for the protection of the maker. However, the parties have not seen fit to take advantage of this suggestion.

An examination of the note and the guaranty discloses that in the notation to the note the word "hold" is interlined. This indicates that the Vice-President of the Fidelity and Surety Company had his particular attention called to the language of the note, and corrected the typewritten matter by inserting in ink the word quoted. That the writer of the notation fell into a further error in obligating the company to the Laguna Coconut Oil Co. may be possible. That the writer may have had in mind to use the words Philippine Vegetable Oil Company, Inc. may also be possible. The names of the two parties before the guarantor were Laguna Coconut Oil Co. and Philippine Vegetable Oil Company, Inc. The guaranteeing company could not very well have assumed that the Bank of the Philippine Islands at a later date was contemplating discounting the note.

It is also apparent on the face of the note that it was to draw interest at maturity. This fact would disprove discount of the note by the Bank of the Philippine Islands on or before May 3, 1920. In truth, it is not certain that the bank ever did discount the note. At least, plaintiff in its second amended complaint averred that the promissory note

"was discounted by the Philippine Vegetable Oil Company, Inc."

The bookkeeping entries of the bank are hardly competent against a stranger to the transaction, such as the defendant in this case. Moreover, it will not escape notice that one entry at least in plaintiff's Exhibit E has been changed by erasing the words "y Fidelity and Surety Co. of the Phil. Islands" and substituting "Philippine Vegetable Oil Co. garantizado p. Fidelity & Surety Co. of the Phil. Islands." The book entries taken at their face value are not conclusive.

The correspondence between the parties fails to disclose either an express or implied admission that the defendant had executed the guaranty in question in favor of the plaintiff bank. There is nothing in these exhibits from which any such admission can be inferred. An attempt to interpret the correspondence merely leads one further into the field of speculation. Yet the rule is that an admission or declaration to be competent must have been expressed in definite, certain, and unequivocal language. (1 R. C. L., 481.) Here the exhibits are couched in language which is neither definite, certain, nor unequivocal for nowhere do they contain an admission of a guaranty made by the defendant company for the protection of the Bank of the Philippine Islands.

To justify the reformation of a written instrument upon the ground of mistake, the concurrence of three things are necessary: First, that the mistake should be of a fact; second, that the mistake should be proved by clear and convincing evidence; and, third, that the mistake should be common to both parties to the instrument. The rule is, as has been above stated, that the mistake must be mutual. There may have been a mistake here. It would, however, seem to be straining the natural course of events to hold the Fidelity and Surety Company of the Philippine Islands a party to that mistake.

It may be that the majority has not approached a decision in this case in a spirit of tolerant sympathy. The plaintiff has filed three distinct and conflicting complaints. It has not remained loyal to any one theory of the case. For instance, it has alleged at various times that the guaranty of the defendant was in favor of the Laguna Coconut Oil Co., and that the guaranty was in favor of the Bank of the Philippine Islands; that the note was discounted by the Philippine Vegetable Oil Company and that the note was discounted by the Bank of the Philippine Islands; that there was no mutual mistake and that there was a mutual mistake. The court was thus justified in its statement when the case was here before when it said: "In view of the fact that the case has been pending for several years, that it has been before this court once before, and that the plaintiff has had ample opportunity to remedy the defect in its pleadings, we would be warranted in definitely absolving the appellant from the complaint, but the majority of the court is of the opinion that the plaintiff should be given another opportunity to prosecute its claim."

With all the various pleadings, all the various incidents, all the various facts, all the various legal principles, and all the various possibilities to the forefront, we cannot bring ourselves to conclude that the plaintiff, by proof of the clearest and most satisfactory character constituting more than a preponderance of the evidence, has established a mutual mistake. Instead, the proof is left far behind that goal.

In accordance with the foregoing, the judgment appealed from will be reversed, and the proceedings definitely dismissed, without special pronouncement as to costs in either instance. This order will also serve to deny the two motions of reconsideration filed by the appellee.

Johnson, Ostrand, Johns, and Villa-Real, JJ., concur.

AVANCEÑA, C. J., STREET, VILLAMOR, and ROMUALDEZ, JJ., dissenting:

In the opinion of the undersigned this is a clear case for reformation of an instrument and enforcement of the same as reformed. The contract which is the subject of the action is found in the indorsement of the defendant Fidelity

& Surety Company appended to a note for P50,000, signed by the Laguna Coconut Oil Co., and payable to the Philippine Vegetable Oil Co., Inc. The indorsement referred to reads as follows:

"MANILA, May 3, 1920

"For value received, we hereby obligate ourselves to hold the Laguna Coconut Oil Co. harmless against loss for having discounted the foregoing note at the value stated therein.

"FIDELITY & SURETY CO. OF THE P. I.

"By J. ELMER DELANEY"

This contract has already been the subject of a former action by the same plaintiff against the same defendant and the Coconut Oil Co.; but in that case reformation of the contract was not sought and this court held that, as the contract did not purport to bind the defendant Surety Company to the Bank of the Philippine Islands, no recovery could be had thereon by the bank. But at the same time the decision was made without prejudice to another action, the idea evidently being that an action could be maintained for the reformation and enforcement of the instrument.

The parties concerned are now before us in an action seeking in effect reformation and enforcement of the contract as reformed, though in the petitory part of the complaint it is not put exactly in that way. Under the facts proved and prayer for general relief, a right to obtain reformation and enforcement of the reformed contract is evident.

An examination of the indorsement, or contract, which is the subject of the action shows that the Fidelity and Surety Company acknowledges that it has received value for placing its signature on said indorsement, thereby nominally obligating itself to hold the Laguna Coconut Oil Co. (sic?) harmless against loss for having discounted the note. Although the mistake is not obvious to the superficial reader, the words used make an impossible situation and completely frustrate the manifest intention of the parties. It is proved as a fact that the Laguna Coconut Oil Co. was debtor to the Philippine Vegetable Oil Co. and that the note to which the indorsement of guaranty is appended was given for that indebtedness. That an error was made in the wording of the indorsement is obvious and undeniable. The intention of the contracting parties could only have been that the Fidelity and Surety Company should hold harmless the person or entity discounting the note. The plaintiff did in fact discount said note on the faith of this indorsement, and the instrument should be reformed so as to give expression to the liability of the defendant company to the bank.

In dealing with this situation, it should not be forgotten that the defendant company evidently intended to obligate itself to someone or other, and the attitude of the court should be favorable to the giving of effect to the intention of the parties rather than favorable to its frustration. By the decision of the court in this case, the Fidelity and Surety Company is entirely free from the obligation of guaranty in respect to this note, although it received value for that very undertaking. We therefore dissent.

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