

**STANDARD OIL CO. OF NEW YORK, PLAINTIFF AND APPELLANT, VS. CHO SIONG ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 29588. December 29, 1928*

Ponente: AVANCEÑA, C.J.

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These two cases, 29588 and 29753 were jointly prosecuted in the court below and only one judgment was rendered in both.

In case 29588, the plaintiff, Standard Oil Co. of New York, sued the defendants, Cho Siong and Ong Guan Can, for the amount of P2,197.42, with interest, plus P750 as attorney's fees. The trial court ordered the defendants Cho Siong and Ong Guan Can to pay the plaintiff the amount of P64.46, with legal interest from the date when the complaint was filed until full payment, plus P200 by way of attorney's fees; and defendant Cho Siong to pay the plaintiff the sum of P2,132.96, with legal interest thereon from the date when the complaint was filed until fully paid, plus P500 as attorney's fees.

On January 27, 1926, the plaintiff and defendant Cho Siong entered into a contract whereby Cho Siong obligated himself to sell as agent, plaintiff's petroleum products. He guaranteed the fulfilment of his obligation by giving a personal bond in the sum of P3,000, subscribed by Ong Guan Can, and with the sum of P1,000 in cash which he delivered to the plaintiff, with the right to apply it to the payment of any amount in which he might become indebted. Cho Siong also bound himself to pay such attorney's fees, costs, and other expenses, as might be occasioned the plaintiff should it be under the necessity of filing suit for the recovery of any amount to which it might be entitled pursuant to this contract in a sum equal to 10 per cent of the amount owed.

By virtue of this contract, Cho Siong received from the plaintiff petroleum to the value of P14,136.79, and made good to said plaintiff the total amount of P14,072.33, thus leaving a balance of P64.46 in favor of the plaintiff and against the defendant Cho Siong.

But it appears that on the same day (January 27, 1926), when the plaintiff and defendant Cho Siong entered into the contract of agency and when the other defendant, Ong Guan Can subscribed the P3,000 bond, the defendant Cho Siong signed an instrument in favor of the plaintiff in which he assumed responsibility for all the accounts that might be owing to the plaintiff by the former agent, Tong Kuan, and for all the goods the latter might have in his possession at the time when the agency was transferred to Cho Siong. According to the plaintiff's evidence, the amount then owed by Tong Kuan was P3,132.96. Adding P64.46 to this amount, we have the total debt of P3,197.42. Deducting from this the P1,000 in cash which Cho Siong deposited with the plaintiff to be applied upon his liabilities, it leaves a debit balance of P2,197.42 which is the amount claimed in the complaint.

According to the above, excluding the debt of the former agent Tong Kuan, the only balance against the defendant Cho Siong on his own contract of agency with the plaintiff is the sum of P64.46. Since the plaintiff has the P1,000 belonging to the defendant Cho Siong, which may be applied to the payment of the sums owed by the latter, it follows that, as to Cho Siong's agency, he has incurred no liability, for out of the P1,000 deposited with the

plaintiff he still has P935.54 in his favor. Consequently, Ong Guan Can, as a surety for those debts which Cho Siong might incur upon the contract of agency, does not answer for anything, the principal not having incurred any liability. It is plain under the terms of the bond signed by Ong Guan Can that he did not answer for Cho Siong, save for the latter's acts by virtue of the contract of agency. He cannot be held liable for the debt of agent Tong Kuan which Cho Siong assumed by virtue of another contract of which said Ong Guan Can was not even aware. A contract of suretyship is to be strictly interpreted and is not to be extended beyond its terms.

The amount of P750 for attorney's fees and court costs, which Cho Siong bound himself to pay to the plaintiff, was agreed upon in the contract of agency, and as Cho Siong did not incur any liability with respect to this contract he cannot be ordered to pay this sum.

In the instrument by which Cho Siong assumed the debt of the former agent, Tong Kuan, no stipulation was made as to attorney's fees and as it is on this contract that Cho Siong failed to perform his obligation it is also clear that he is not liable for any amount as attorney's fees.

In view of the foregoing, the appealed judgment is modified as to case No. 29588 and the defendant Cho Siong is ordered to pay the plaintiff the amount of P2,197.42 only, the other defendant Ong Guan Can being relieved from all liability.

In case No. 29753 Ong Guan Can claims the sum of P15,000 from the Standard Oil Co., of New York. In the former case, No. 29588, the Standard Oil Co., of New York secured a preliminary attachment against Ong Guan Can, which was levied on some of his lands. This attachment consisted simply in the annotation thereof in the transfer certificate of title entered on November 17, 1927, which attachment was dissolved and the annotation cancelled on the 19th of the same month. The attachment, therefore, only lasted two days. The amount of P15,000 which Ong Guan Can claims of the Standard Oil Co., of New York is the amount of damages he alleges were, caused him by this attachment.

The trial court finding that no damage proven to have been suffered by Ong Guan Can on account of said attachment, absolved the Standard Oil Co., of New York from this claim in case No. 29753.

Without considering the other question raised in this case, and accepting the trial court's conclusions that no damage was occasioned Ong Guan Can by said attachment which only lasted two days, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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