

HOSPICIO DE SAN JOSE, REPRESENTED BY THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, PLAINTIFF AND APPELLEE, VS. THE FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS, DEFENDANT AN...

G.R. No. 30247. March 11, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal is taken by the defendant, the Fidelity and Surety Company of the Philippine Islands from the judgment of the Court of First Instance of Manila ordering it to pay the plaintiff Hospicio de San Jose, represented by the Roman Catholic Archbishop of Manila, the amount of P12,800, with legal interest from December 23, 1927, the date on which the complaint was filed, with the costs.

In support of the appeal, the appellant assigns the following alleged errors as committed by the court below in its judgment, to wit:

"1. The lower court erred in awarding judgment upon the stipulated facts, in favor of plaintiff and against defendant.

"2. The lower court erred in refusing to absolve defendant from plaintiff's complaint in accordance with the prayer of defendant's answer.

"3. The lower court erred in holding and concluding as a matter of law, upon the stipulated facts that; the defendant was not relieved from its guaranty.

"4. The lower court erred in concluding that plaintiff's action had not prescribed.

"5. The lower court erred in denying defendant's motion for a new trial."

When the case came up for trial the parties thereto submitted it to the trial court for judgment upon the following agreed statement of facts:

"AGREED STATEMENT OF FACTS

"Come now the parties, plaintiff and defendant, in the above entitled case, through their respective counsel, and to this Honorable Court respectfully submit the following facts to which they have agreed:

"I. That the plaintiff is a Catholic beneficent institution, duly organized and existing in the City of Manila, Philippine Islands and represented by the Roman Catholic Archbishop of Manila, a corporation sole duly organized and existing under and by virtue of the laws of the Philippine Islands; and the defendant is a corporation also organized and existing under and by authority of the laws of the Philippine Islands, with its principal place of business situated in the said City of Manila, Philippine Islands, and engaged in surety business therein.

"II. That one by the name of Romuio Macchetti, who had been a building contractor in the City of Manila, had agreed with the plaintiff by virtue of a written contract executed on July 17, 1916, to build for the latter a concrete building composed of several 'accesorias' to be designated by Nos. 97 and 121 on Calle Rosario, City of Manila, which building was to be constructed in accordance with the plans and specifications set forth in the contract above mentioned, and under the technical supervision of the deceased Don Arcadio Arellano and Arellano Brothers, architects. The contract in question is attached hereto and made a part hereof as Exhibit A.

"III. That it was stipulated in Exhibit A the following:

" 'III. Mr. Romulo Machetti guarantees the exact and faithful fulfillment of the obligations contracted by him in the aforementioned "specifications" with the security of the "Fidelity and Surety Co. of the Philippine Islands," up to the amount of twelve thousand eight hundred Philippine pesos (P12,800); it being understood that if Mr. Romulo Machetti well and faithfully fulfills the obligations contracted by him in the aforementioned "specifications" with the security of the "Fidelity and Surety Co. of the Philippine Islands," up to the amount of twelve thousand eight hundred Philippine pesos (P12,800); it being understood that if Mr. Romulo Machetti well and faithfully fulfills the obligations contracted by him in the specifications and plans attached hereto, the guarantees herein given shall become null and void; otherwise, they shall continue in full force and effect.'

"IV. That the defendant guaranteed in manner following the faithful compliance by Romulo Machetti with the terms, conditions and stipulations set forth in Exhibit A.

" 'MANILA, July 15, 1916

" 'For value received we hereby guarantee compliance with the terms and conditions as outlined in the above contract.

" 'FIDELITY & SURETY CO. OF THE
PHILIPPINE ISLANDS

(Sgd.)" 'OTTO VORSTER

" 'Vice-President

""Attest:

(SGD.) " 'WM. J. O'DONOVAN

'Secretary-Treasurer'

"Said guaranty which appears at the foot of Exhibit A is referred to and made a part hereof as Exhibit A-1.

"V. That thereafter, and on or about the 19th day of October, 1916, plaintiff and said Romulo Machetti entered into an additional contract in writing which said contract is hereto attached and made a part hereof as Exhibit B, by virtue of which the said Machetti undertook and agreed to do and perform work and construction incidental-to-that specified in Exhibit which consisted of building in connection with said 'accesorias' certain 'bodegas' at the rear part of the 'accesorias' to be erected or constructed under the contract Exhibit A, the same to be under the same supervision of the deceased Don Arcadio Arellano and Arellano Brothers, the architects aforementioned ;The defendant above named did not become a party to said conditional agreement Exhibit B as guarantor or otherwise.

"VI. That under the provisions of said contract Exhibit A, said Romulo Machetti had undertaken and agreed to complete the construction of said 'accesorias' and deliver the same to plaintiff within the period of 5 working days, to be computed from the date of the said contract, that is from July 17, 1916, and under the provisions of said agreement Exhibit B had undertaken to complete the said 'bodega' and deliver the same to plaintiff within one month after the date stipulated by the parties for the completion and delivery of the 'accesorias' as provided in

Exhibit A.

"VII. That subsequent to the execution of said Exhibit B and during the course of the construction of said 'accesorias' and 'bodega' by said Machetti, he, the said Machetti, demanded of plaintiff an extension of 25 days within which to complete and deliver the said 'accesorias' and 'bodegas' in accordance with the terms and provisions of said contracts, on account of delay encountered in transporting and delivering sand and gravel to the construction premises, by reason of repair work being conducted by the Manila Electric Company on Calle Rosario in front of the 'accesoria' and 'bodega' premises; that although plaintiff considered that said Machetti could not be delayed thereby for more than ten or twelve days, nevertheless acceded to the demand of said Machetti and agreed to give extension, in so far as the same pertained to the 'accesorias' under the terms, conditions and provisions of said Exhibit A; that said 'accesorias' were not completed in accordance with the plans and specifications of Exhibit A or delivered to plaintiff so completed on the 16th day of February 1917, in accordance with the provisions of said contract Exhibit A as extended; that the 'bodegas' were not completed in accordance with the plans and specifications of said contract Exhibit B or delivered to plaintiff on the 16th day of March, 1917, in accordance with the provisions of said Exhibit B; that in truth and in fact, as was discovered by plaintiff during the month of April, 1917, when the City Engineer went to inspect the work, prior to the issuance of his final certificate, said 'accesorias' and said 'bodegas' were defective and not in accordance with the plans and specifications of said Exhibits A and B, and said Romulo Machetti in neglecting to complete and deliver said 'accesorias' and 'bodegas' in accordance with said contracts Exhibit A as extended and Exhibit B, acted in bad faith; that the construction works were so faulty that the City Engineer thereafter ordered the destruction of those parts thereon in contravention of the plans and specifications, and ordered the reconstruction of same in accordance with said plans and specifications.

"VIII. That said extension of 25 days was granted by plaintiff to said Romulo Machetti to perform the conditions and obligations of Exhibit A on his part to be done and performed was/without the consent of defendant

"IX. That during the month of April, 1917, the plaintiff herein secured the services of one William Odom, a contractor, to complete the reconstruction of said 'accesorias' and 'bodegas' in accordance with the plans and specifications of said contracts; that said 'accesorias' were finally completed and delivered unto plaintiff by said contractor, William Odom, 475 days from February 16, 1917, the last day as stipulated in Exhibit A as extended, that is to say, on the 8th day of June, 1918; that the 'bodegas' were completed and delivered by said William Odom unto plaintiff 475 days from March 16, 1917, the last day stipulated in Exhibit B, that is to say, on July 8th, 1918.

"X. That from time to time during the course of construction under the provisions of said contract Exhibit A as extended, plaintiff made payments to said Romulo Machetti thereunder, and prior to the expiration of the period for the completion of said contract Exhibit A as extended, plaintiff, without the knowledge of defendant, paid unto said Romulo Machetti the full construction price; that from time to time during the construction under the provisions of Exhibit B, plaintiff made various payments unto Romulo Machetti, and on the 16th day of March 1917, and completed all payments to he made by said plaintiff, except the sum of F4,976.08; That all of said payments were made by plaintiff under the impression and belief that the construction works were done in accordance with the plans and specifications set forth in Exhibits A and B on account of the certificates issued by the supervising architects.

"XI. That on February 27, 1918, Romulo Machetti was declared insolvent by this Honorable Court in the matter of the Insolvency of Romulo Machetti, Case' NO. 15867.

"XII. That on November 18, 1922, the plaintiff filed a claim in the above mentioned Insolvency case No. 15867,

to recover the following sums, to wit:

- For damages suffered by the plaintiff due to expenses incurred in correcting the faulty work done by Romulo Machetti on the 'accesorias' described in contract Exhibit A, the correction having been done by Mr. Odom another contractor, and which correction was necessary on account of the negligence, malice and bad faith of said Romulo Machetti whose workmanship was not of the standard required.....P52,669.98

For damages suffered by the plaintiff due to expenses incurred in correcting the faulty work done by Romulo Machetti on the 'bodegas' described in Exhibit B, the correction having been done by Mr. Odom, another contractor, and which correction was necessary on account of the negligence, malice and bad faith of said Romulo Machetti whose workmanship was not of the standard required 4,672.39

Total 57,342.37

- For penalties for the number of days delayed in accordance with the conditions set forth in Exhibits A and B, as follows:

For 475 days from February 16, 1917, to June 8, 1918, at the rate of P150 a day..... 71,250.00

For 475 days from March 16, 1917, to July 8, 1918, at the rate of P50 a day..... 23,750.00
95,000.00 Minus P28,000 received as part rental..... 28,000.00 67,000.00

"XIII. That on July 1, 1926, this Honorable Court rendered judgment approving or allowing the above claim, the dispositive part of which reads thus:

" 'Therefore the claim filed by the Hospicio de San Jose is allowed as an ordinary claim against the insolvent estate of Romulo Madhetti for the sum of P57,342.37 as damages suffered by said claimant by reason of the necessity for reconstructing and completing the faulty work done by said Romulo Machetti on the "accesorias" and "bodegas" of the claimant, and for the sum of P67,000 as the net amount due the claimant under penalty clauses of the contracts, Exhibits A and B with legal interest on said sums from the filing of the claim and for costs.'

"XIV. That the opponents to the above claim appealed to the Supreme Court, but on March 31, 1927, the said Supreme Court affirmed the above quoted judgment rendered by this Honorable Court.

"XV. That on September 1, 1927, the assignee of the said Insolvency case No. 15867, submitted his final account and project of distribution wherein the sum corresponding to the claim of the plaintiff amounted to P4,391.87 only, thereby leaving an unpaid balance of P155,428.56.

"XVI. That on September 27, 1927, this Honorable Court approved the said final account and project of distribution, and the plaintiff acknowledges the receipt from the assignee in the insolvency case No. 15867, of the said sum of P4,391.37.

"XVII. That the plaintiff was and is unable to recover from the insolvent Romulo Machetti the unpaid balance of P155,428.56, in view of the inability to pay by said Romulo Machetti, who has no visible property in the Philippine Islands subject to execution.

"XVIII. That prior to the filing by the plaintiff of its claim hereinabove referred to, in the insolvency case No. 15867 that is, on May 28, 1917, the said Romulo Machetti brought an action in this Honorable Court against the herein plaintiff and defendant, entitled 'Romulo Machetti vs. Hospicio de San Jose etc. and Fidelity & Surety Co. of the Philippine Islands,' civil case No. 15150, and in said action the herein plaintiff filed a cross-complaint on February 7, 1920, against the herein defendant.

"XIX. That on April 30, 1920, this Honorable Court rendered judgment in said case No. 15150 in favor of the [herein plaintiff and against the herein defendant, but on appeal the Supreme Court reversed said judgment decreeing, among other things, the following:

* * *The Fidelity and Surety Company having bound itself to pay only in the event its principal, Machetti, cannot pay it follows that it cannot be compelled to pay until it is shown that Machetti is unable to pay. Such inability may be proven by the return of a writ of execution unsatisfied or by other means, but is not sufficiently established by the mere fact that he has been declared insolvent in insolvency proceedings under our statutes, in which the extent of the insolvent's inability to pay is not determined until the final liquidation of his estate.

" The judgment appealed from is therefore reversed without costs and without prejudice to such right of action as the cross-complainant, the Hospicio de San Jose, may have after exhausting its remedy against the plaintiff Machetti. So ordered.' (See 43 Phil., 297, 301.)

"XX. That this action was instituted by plaintiff against defendant on the 23rd day of December 1927 to recover the sum of P12,800, the amount specified as the bond of defendant, in view of said defendant's refusal and failure to pay the said sum, despite the repeated demands made therefor by the plaintiff.

"XXI. That while plaintiff concedes the truth of the statements set forth in paragraph X herein-above, it objects to the same as evidence in this case, upon the ground and for the reason that the same are immaterial and irrelevant to the issues of this case as well as the same have already been discussed and decided by the court in the insolvency case No. 15867, where the court ruled that, although payments were made by the plaintiff to said Machetti for the work done under the contracts Exhibits A and B, said payments did not relieve said Machetti from responsibility, due to his failure to comply with the plans and specifications of Exhibits A and B and refusal to complete the construction work on time, and as a consequence of which plaintiff maintains that such payments cannot be considered in so far as the liability of defendant under Exhibit A-I is concerned; that plaintiff sustains that the statements set forth in paragraph X herein-above can no longer be the object of discussion in this case because the responsibility of said Machetti is already established and determined by the court in its judgment rendered in Case No. 15867; that plaintiff further objects to the materiality and relevancy of the statements set forth in paragraph X herein-above because defendant did not set up the same as special defense in its answer; that an exception may be reserved to either party affected by an adverse ruling of the court upon plaintiff's objection, and in case said objection be overruled, it is agreed that this court may consider the findings of the Supreme Court in connection with the claim of the plaintiff filed in the insolvency case No. 15867, as the issues are raised by the briefs and memoranda of the parties.

"That while defendant concedes the truth of the statements set forth in paragraphs eighteen and nineteen herein-above, it objects to the same as evidence in this case, upon the ground and for the reason that the same are immaterial and irrelevant to the issues of this case; that an exception may be reserved to either party affected by an adverse ruling¹ of the court upon said objection.

"Wherefore, the parties hereto, having agreed to the above statement of facts, now respectfully request this Honorable Court to decide upon the questions of law arising from said agreed statement of facts, without the introduction of further evidence.

"Manila, May 4.8, 1928. "Feria & Lao "By: (Sgd.) Ramon San Jose "Attorneys for plaintiff "Ross, Lawrence & Selph and Ohnick & McFie "By: (Sgd.) Benj. S. Ohnick "Attorneys for the defendant"

The questions to decide in this appeal are as follows:

- Did the 25 days' extension of the period fixed for the completion of the work granted by the Hospicio de San Jose (St. Joseph's Asylum) to Romulo Machetti without the consent of the latter's surety, the Fidelity and Surety Company of the Philippine Islands, extinguish said surety's responsibility? 2. Did the payment made by the

Hospicio de San Jose to the contractor Romulo Machetti, of the total price of the work before the expiration of the term fixed for the completion thereof, without the knowledge of the surety, the Fidelity and Surety Company of the Philippine Islands, relieve the latter from all liability? 3. Has plaintiff's action to recover the amount of the bond from the defendant prescribed?

With respect to the first question, the relevant portion of the contract of lease of services, Exhibit A, reads as follows:

* * * * *

III. Mr. Romulo Machetti guarantees the exact and faithful fulfillment of the obligations contracted by him in the aforementioned 'specifications' with the security of the 'Fidelity and Surety Co. of the Philippine Islands,' up to the amount of twelve thousand eight hundred Philippine pesos (P12,800); it being understood that if Mr. Romulo Machetti well and faithfully fulfills the obligations contracted by him in the specifications and plans attached hereto, the guarantees herein given shall become null and void; otherwise, they shall continue in full force and effect."

At the foot of said contract, the following guarantee appears:

"MANILA, July 15, 1916

"For value received we hereby guarantee compliance with the terms and conditions as outlined in the above contract.

"FIDELITY & SURETY CO. OF THE PHILIPPINE ISLANDS

(Sgd.) "OTTO VORSTER

"Vice-President

"Attest:

(Sgd.) "WM. J. O'DONOVAN

"Secretary-Treasurer"

It will be seen that the contractor Romulo Machetti only guaranteed in contract Exhibit A, the exact and faithful performance of the obligations contracted by him in accordance with the plans and specifications, offering the security of the Fidelity and Surety Company of the Philippine Islands. The plans and sheef of conditions or specifications [do not state time term within which the work must be completed Inasmuch as suretyship is an accessory contract, and the surety cannot bind himself for more than the principal debtor (art. 1826, Civil Code), and as Romulo Machetti did not offer to give a bond for the exact and faithful fulfillment of the obligation to complete the work within 150 working days, the Fidelity and Surety Company of the Philippine Islands, in consenting to be surety for him, did not bind, and could not have bound itself, to the exact and faithful fulfillment of said obligation.

Therefore, the 25 days' extension granted by the Hospicio de San Jose to Romulo Machetti within which to complete the work, without the consent of the Fidelity and Surety Company of the Philippine Islands, did not extinguish the latter's liability, inasmuch as the obligation it assumed did not extend to answering for the completion of the work within the period stipulated in the contract of lease of services.

With respect to the second question, the surety company not having alleged as a special defence, in its answer to the complaint, the fact of the premature payment, and the plaintiff company having objected in the agreed statement of facts to the admission of the allegation of said premature payment as evidence, the defendant company cannot make use of said defence in this instance.

"As a general rule, the surety must specially plead that he has been discharged by * * * the .relinquishment or loss of securities by plaintiff, * * *. If the surety sets up a discharge by reason of some act of plaintiff which injured him, he must allege the facts which caused such injury, and show the consequent damage. * * * and a plea that the principal has been released must be certain and definite. * * * " (32 Cyc, 130-131.)

As to the third question, while it is true that the plaintiff's right of action against the defendant arose from the time the principal obligor failed to fulfill the obligation guaranteed by said surety, which non-fulfillment took place on February 16, 1917, said surety having presented a cross-complaint demanding the payment of the value of the bond in the case of Machetti vs. Hospicio de San Jose and Fidelity and Surety Company of the Philippine Islands (43 Phil, 297), dated February 7, 1920, that is, within the 10 years fixed by section 43 of the Code of Civil Procedure for the prescription of actions arising from a written contract, and this court having, in reversing the lower court's judgment which adjudicated said sum to the Hospicio de San Jose, reserved to the latter the right to bring- the proper action after having exhausted all the remedies against the principal obligor, Romulo Machetti, then the action of the plaintiff against the defendant for the execution of the bond given by the latter in favor of the former, has not prescribed.

For the foregoing considerations, we are of opinion and so hold: 1. That as the lessee of services, Romulo Machetti, did not offer to guarantee the fulfillment of his obligation to complete the work within the 150 working days, and as the Fidelity and Surety Company of the Philippine Islands did not guarantee the fulfillment of said obligation, the extension of said period by the owner of the work, the Hospicio de San Jose, without the surety's consent, does not relieve the latter of the obligation contracted by it under its bond, which refers to the plans and specifications of the work; 2. As the defendant did not allege in its answer to the complaint, as a special defense, that it was discharged from the obligation contracted by it by virtue of the bond, by the premature payment made by the Hospicio de San Jose to the principal obligatory, Romulo Machetti, of the total price of the work, the defendant cannot set up such defense for the first time in this instance; and 3. The plaintiff having presented a cross-complaint in due time for the recovery from the defendant company, of the value of the bond, and this court having reserved to it the right to bring the instant action, when said cross-complaint was dismissed as premature, the said plaintiff's action has not prescribed.

By virtue whereof, and not finding any error in the dispositive portion of the judgment, the latter is hereby affirmed in all its parts, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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