

BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALBALADEJO Y CIA., S. EN C, ET AL., DEFENDANTS. ISIDRO MARTINEZ, DEFENDANT AND APPELLANT.

G.R. No. 30490, March 27, 1929

Ponente: OSTRAND, J.

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OSTRAND, J.:

On September 27, 1919, the defendant, 'Albaladejo & Co., a limited copartnership, obtained a current account credit to the amount of no more than P100,000 from the Bank of the Philippine Islands at the interest rate of 8 per cent per annum. To secure the credit, Florencio Gordillo and Isidro Martinez, on September 30, 1919, executed the following bond:

"BANK OF THE PHILIPPINE ISLANDS

"BOND

"Know all men by these presents, that we, Albaladejo y Compania, S. en C, a copartnership with principal place of business in the town of Legaspi, Province of Albay, P. I., as principal, and Messrs. Gordillo and Isidro Martinez, both of legal age and residents of Manila, P. I., as sureties, are hereby held and bound into the Bank of the Philippine Islands, of Manila, P. I, in the sum of one hundred thousand pesos (P100,000), Philippine currency, for the payment of which well and truly to be made, we hereby jointly and severally, bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents.

"The conditions of this obligation are such, that:

"Whereas the said Bank of the Philippine Islands has advanced to the said Albaladejo y Compania, S. en C, by way of a credit in current account, the sum of one hundred thousand pesos (P100,000) ;

"Now therefore, if the said Albaladejo y Companuz, S. en C, shall duly pay, or cause to be paid, to the said Bank of the Philippine Islands, three months after demand, the said sum of one hundred thousand pesos (P100,000), and shall duly pay or cause to be paid quarterly, on the last days of March, June, September and December of each year, until the principal and interest are paid in full, interest on said sum and on all sums from time to time remaining unpaid at the rate of eight per cent (8%) per annum, then this obligation shall be void, otherwise it shall remain in full force and effect.

"In witness whereof, we have hereunto set our hands at Manila, P. I., this 30th day of September, 1919.

"ALBALADEJO Y COMPAÑIA, S. EN C.

"By (Sgd.) PEDRO ALBALADEJO

"Obligado principal

"FLORENCIO GORDILLO

"Fiador

"ISIDRO MARTINEZ

"Fiador

"Witnesses:

"EM. S. REYES

"V. G. OPRECIO"

(ACKNOWLEDGMENT)

On April 16, 1920, the bank increased the rate of interest to 9 per cent per annum. The plaintiff's Exhibit C indicates that interest was paid up to December 31, 1920, when the capital of the debt amounted to P100,681.68, and after which date the payments ceased.

Failing to meet their obligations to the bank, the present action was brought on January 15, 1925, against Albaladejo & Co. and the members-of the partnership, Pedro Albaladejo, Mariano Albaladejo, and Angel Suarez, together with the sureties, Florencio Gordillo and Isidro Martinez, for the recovery of the sum of P136,536.26, the amount then due the bank for the capital and the accrued interest at 9 per cent.

During the pendency of the action, Albaladejo & Co., as well as the partners of the company, were declared insolvent and subsequently discharged from their debts, and as a consequence, the present case was dismissed as against Albaladejo & Co., Mariano Albaladejo, Pedro Albaladejo, and Angel Suarez, leaving only Florencio Gordillo and Isidro Martinez as defendants.

Upon trial the court below rendered judgment in favor of the Bank of the Philippine Islands and against Florencio Gordillo and Isidro Martinez, jointly and severally for the sum of P136,533.26, with interest at 9 per cent per annum from the 1st of January, 1921, and with the costs. From this judgment only Isidro Martinez appealed and now presents the following assignments of error:

"The lower court erred:

"1. In holding that it is the duty of the sureties to investigate the account of the principal debtors with the bank and ask if it would grant an extension of time for the payment of the loan, and that if the said sureties are not agreeable to the extension they should have so informed the creditor bank.

"2. In not holding that the facts of the case constitute a valid novation of the contract between the debtors and the bank which releases the sureties from the obligation under the former agreement.

"3. In not holding that the extension granted by the bank to the principal debtors for the payment of the loan, without the consent of the sureties extinguishes the latter's liability."

The first assignment of error is well taken but is of no importance as far as this case is concerned. The expressions referred to in the assignment are merely obiter dicta and are not the basis of the decision of the court below.

The second assignment of error is rather indefinite, but from the argument of counsel, we gather that it has reference to the fact that the plaintiff bank increased the interest rate from 8 per cent to 9 per cent per annum without the express consent of the sureties. Taking this fact in connection with the extension of time alleged to have been made by the bank, and discussed under the third assignment of error, counsel for the defendant argues that these circumstances worked a novation of the original contract and released the sureties from their obligations upon their bond.

This contention cannot be successfully maintained. There is no sufficient evidence in the record to show that the bank actually extended the time for the payment of the debt, but the appellant maintains that the long delay on the part of the bank in enforcing its rights against the debtors is equivalent to an extension of the time. Such is not the case. Beginning with the case of *Banco Espanol Filipino vs. Donaldson Sim & Co.* (5 Phil., 418), this court has

consistently held that delay in proceeding against the principal debtor does not discharge the sureties from their liability. In the case of *Clark vs. Sellner* (42 Phil., 384), action was deferred for over four years, but the sureties were nevertheless held liable. As said in 21 R. C. L., 1032:

"It is a general principle that a creditor is under no obligation to be actively diligent in pursuit of his principal debtor. He may forbear the prosecution of his claim, and remain inactive, without impairing his right to resort to the surety, particularly when his forbearance amounts to no more than mere inaction or passivity. Therefore the mere neglect of a creditor to sue or to attempt to collect a debt at the time it falls due does not discharge the sureties, although the principal had ample means at the time, and subsequently became insolvent. Similarly, mere passiveness, or mere delay in the prosecution of an execution against the principal debtor after judgment, will not discharge the surety. The principle under consideration, however, comprehends something more than mere passivity or inaction resulting from negligence. Thus, a gratuitous indulgence of the principal, whether extended at his request or without it, and whether it is yielded by the creditor from sympathy and from an inclination to favor him, or is the result of mere passiveness, will not operate to discharge the surety. Stated broadly the principle is that passiveness or indulgence on the part of the creditor will not discharge a surety, unless he omits to do, when required by the surety, what the law or his duty enjoins him to do, or unless he neglects, to the injury of the surety, to discharge his duty in any matter in which he occupies the position of a trustee for the surety. Mere delay or negligence in proceeding against the principal will not discharge a surety unless there is between the creditor and principal debtor a valid and binding agreement therefor, one which tends to prejudice him, or to deprive him of the power of obtaining indemnity by presenting a legal obstacle, for the time, to the prosecution of an action on the original security. Positive and wilful interference by a creditor, embarrassing the recovery of the claim against the principal, will, however, release the surety. In some jurisdictions, moreover, the duty of active diligence in the prosecution of suits, or of execution against the principal, can be devolved on the creditor by the surety, if he desires, by requesting it. Also, of course, if a delay in calling on the principal for the money is the result, of fraud, the surety will be exonerated. In extension of the principle that the mere delay of the creditor to proceed against the principal will not discharge the surety, it has been held that the surety is not discharged, even if the delay of the creditor is such that his remedy against the principal becomes barred by limitation."

It has also uniformly been held that increases of interest rates on the debt do not affect the original obligation of the sureties, though they may not be bound by the increase. *Bank of the Philippine Islands vs. Gooch and Redfern* (45 Phil., 514.)

From what has been said, it follows that the appellant, jointly and severally with the other surety, Florencio Gordillo, is liable to the extent of P100,000, with interest at the rate of 8 per cent per annum.

The appealed judgment is therefore modified by limiting the plaintiff's recovery to the sum of P100,000 with interest at the rate of 8 per cent per annum from the first day of January, 1921, until paid. In every other respect, the judgment of the court below is affirmed with the costs of this instance against the appellant. So ordered.

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

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