

**VISAYAN SURETY & INSURANCE CORPORATION, PLAINTIFF
AND APPELLEE, VS. FRUCTUOSA TABARES, PANFILO SABELLANO,
AND ROMAN A. CRUZ, DEFENDANTS. ROMAN A. CRUZ, APPELLANT.**

G.R. No. 45122. May 05, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the codefendant Roman A. Cruz from the decision rendered in the case by the Court of First Instance of Manila, which sentenced him to pay, jointly and severally with the other defendants Fructuosa Tabares and Panfilo Sabellano, the plaintiff the sum of P2,511.84, plus 15 per cent of said amount by way of attorney's fees, with legal interest thereon from the filing of the complaint, and the costs.

The action is based upon a written bond, signed and executed by the appellant and the above-named defendants in favor of the plaintiff Visayan Surety & Insurance Corporation, the conditions of which read:

"Exhibit A

"P. O. Box 2030

Telephone 4-99-64

"VISAYAN SURETY & INSURANCE CORPORATION

Manila , P. I.

"AMOUNT OF BOND.—The undersigned jointly and severally hereby apply to Visayan Surety & Insurance Corporation, hereinafter to be known as the corporation, to be guarantors of a Bond in the sum of five thousand three hundred pesos (P5,300), in favor of The Bachrach Motor Co., Inc., a duplicate of which bond is attached hereto and made a part hereof.

"In consideration of this guaranty, the undersigned, jointly and severally agree to pay to the corporation the sum of * * * in advance as premium of * * * and for each period of * * * or fraction thereof until said bond or renewal, or substitution of same be cancelled in full by the person or entity guaranteed thereby, or by competent court.

"INDEMNITY: To indemnify the corporation of any loss,

costs, payments and expenses of whatever class and nature including 15 per cent interest of the amount claimed for fees of counselors and lawyers that may be maintained or employed by the corporation at any time as a result of having guaranteed the above-mentioned bond or renewal or substitution of the same upon request of one or all of the signers.

"EXPIRATION OF OUR OBLIGATIONS AS CONTRACTED HEREWITH: The said indemnity will be paid to the corporation ns soon as it becomes liable for the payment of any amount under the above-mentioned bond, whether the said amount or amounts or parts thereof have been paid or not.

"INCONTESTABILITY OF PAYMENTS MADE BY THE CORPORATION: Whatever payment or disbursement made by the corporation with reference to the above-mentioned bond whether in the belief that the corporation was obliged to make the payment or not or in the understanding that the payment was made in order to prevent greater losses or obligations for which the corporation may be liable by virtue of being responsible under the above-mentioned bond, will not be disputed by the undersigned who bound themselves to indemnify the corporation of any and all such payments.

"WAIVER OF VENUE OF ACTION: It is hereby agreed upon by and between the undersigned that any question which may arise between them by reason of this document and which has to be submitted for decision to courts of justice shall be brought before the court of competent jurisdiction in the City of Manila, waiving for this purpose any other proper venue.

"CANCELLATION OF BOND BY THE CORPORATION: The corporation may at any time cancel the above-mentioned bond subject to any of responsibility arising previous to the date of cancellation, refunding that proportion of the premium not earned on the date of cancellation.

"Dated at Manila, this 1st day of February, 1934.

(Sgd.) "F. Tabares

(Name)

" 207 Gastambide St. , Sampaloc

(Address)

(Sgd.) "PANFILO SABELLANO

(Name)

"Rainbow Taxicab Co.

(Address)

(Sgd.) "Roman A. Cruz

(Name)

"2024 Herran, Paco

(Address)

"Signed in the presence of:

Illegible

"Firm names and/or signatures of individuals to be affixed in the presence of witnesses. Corporation must affix their corporate seal."

The parties submitted the case to the court upon the following stipulation of facts:

"Both parties agree on the following facts:

"1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands with its central office at Cebu, Cebu, and a branch office in the City of Manila, authorized to engage in fidelity and surety business;

"2. That the defendants, on February 1, 1934, executed jointly and severally in the City of Manila a bond or undertaking for the sum of five thousand three hundred pesos (P5,300) in favor of the plaintiff in consideration of a promissory note for a similar amount executed by the plaintiff jointly and severally with defendants Fructuosa Tabares and Panfilo Sabellano in favor of Bachrach Motor Company, in the City of Manila, copy of which bond or undertaking is hereto attached as Exhibit A. The promissory note executed by the plaintiff jointly and severally with the defendants Tabares and Sabellano in favor of the Bachrach Motor Co., is also attached as Exhibit B;

"3. That the plaintiff paid P2,511.84 which includes interests, on account of the promissory note Exhibit B executed in favor of Bachrach Motor Company, and the defendants Tabares and Sabellano on account of the said promissory note paid P1,200, so that said promissory note there is a remainder of P1,588.16 excluding interests;

"4. As the remainder referred to in the preceding paragraph became matured and not yet paid by the plaintiff, the latter was sued by Bachrach Motor Co., and said remainder amounts to P1,596.81 including interests, plus twenty-five (25%) per cent as attorney's fees;

"5. That on May 12, 1934, the plaintiff Visayan Surety and Insurance Corporation entered into a contract with the defendants Tabares and Sabellano, the original of which is hereto attached as Exhibit C;

"6. That by virtue of said contract Exhibit C, defendants Tabares and Sabellano proceeded to convert, and did convert, into auto-calesas four of the Austin cars which were pledge as guarantee by said Tabares and Sabellano in favor of Bachrach Motor Co., and that two of said auto-calesas were actually registered and operated in the name and under the certificate of Gaskell, Esteva and Batista, by defendants Tabares and Sabellano beginning June 8, 1934;

"7. That the defendants Tabares and Sabellano, by virtue of a letter, a signed carbon copy of which is hereto attached as Exhibit D, requested the Visayan Surety and Insurance Corporation to pay the expenses incident to the conversion of the four Austin cars into auto-calesas, but the said Corporation, believing itself not bound to pay, did not pay;

"8. That the defendants Fructuosa Tabares and Panfilo Sabellano, with the exception of two auto-calesas which were operated beginning June 8, 1934, did not operate the remaining four auto-calesas within the period of

thirty days stipulated in the agreement Exhibit C;

"9. That in spite of repeated demands made by the plaintiff to that effect, defendants Tabares and Sabellano never turned over to ft the proceeds of the operation of the said two auto-calesas;

"10. That when Bachrach Motor Co. foreclosed the mortgage of the ten Austin cars, the purchase price of which is the subject matter of promissory note Exhibit B, the defendants Tabares and Sabellano voluntarily turned over the said ten cars to Bachrach Motor Co.;

"11. That the said ten Austin cars were sold at a public auction in the amount of P170 in favor of the highest bidder, the Bachrach Motor Co., and that the bid was made by an agent of the Visayan Surety and Insurance Corporation in behalf of the Bachrach Motor Company;

"12. That at the trial of this case the parties will confine themselves to proving whether or not the certificate of public convenience owned by Gaskell, Esteva and Bautista was ever purchased by defendants Fructuosa Tabares and Panfilo Sabellano, and the reason why the defendants Tabares and Sabellano were not able to convert into auto-calesas the remaining two Austin cars."

The foregoing stipulation was subsequently amended by the addition of the following:

"Both parties agree to amend paragraph 11 of the agreement of facts in the sense that instead of ten Austin cars, it be made to appear therein eight (8) Austin cars; and that two of the said Austin cars, excluding the 8 referred to in paragraph 11, are now in the possession of M. Neshino, a Japanese carpenter, who claims said cars for services rendered in the construction of the bodies of the four auto-calesas converted."

Under the stipulation of facts the court found that the plaintiff had already paid to Bachrach Motor Co., Inc., on account of the note which it signed with the defendants Tabares and Sabellano, the sum of P2,511.84, including stipulated interest, and that the unpaid balance amounts to P1,596.81, including interest, plus 25 per cent of this amount by way of attorney's fees, to recover which Bachrach Motor Co., Inc., brought suit against the plaintiff, which is still pending decision; that Bachrach Motor Co., Inc., foreclosed the mortgage on the automobiles, having purchased the same at public auction as the highest bidder for the sum of P170, and that under Act No. 4122, Bachrach Motor Co., Inc., can no longer recover the unpaid balance of the note from the plaintiff, nor is the latter bound to pay the same. Upon this ground, it ordered the defendants, including the appellant, to pay only the amount which the plaintiff had advanced, namely, the sum of P2,511.84.

The appellant contends that the court erred: (1) in not holding that he only guaranteed the obligation contracted by his co-defendants Fructuosa Tabares and Panfilo Sabellano by virtue of the note which they executed in favor of Bachrach Motor Co., Inc.; (2) in not holding that the contract entered into between the plaintiff and the defendants Tabares and Sabellano was novated by them without his knowledge or consent as guarantor; (3) in rendering judgment against him, and (4) in denying his motion for a new trial.

The appellant contends that he signed the bond Exhibit A only as guarantor of his comakers Tabares and Sabellano, and in support of his theory he points to the circumstance that his signature is found on the left side of the page and not on the right side where his said co-makers signed. The argument is so weak that it hardly deserves serious consideration. To determine the capacity in which a person intervenes in a written contract, we do not ascertain the place where his signature is found but the text and precise conditions in which the document is couched. In like manner, where the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its stipulations shall be followed; and if the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail. (Article 1281, Civil Code.) The terms of the bond clearly state that the appellant bound himself jointly and severally with Tabares and Sabellano to pay to the plaintiff any amount which the latter may, in turn, be bound to pay to Bachrach Motor Co., Inc., by virtue of

the note for P5,300, Exhibit B. Nowhere in its text is there any expression which suggests even remotely that appellant's intention was to bind himself subsidiarily and only in the event that his comakers be insolvent; on the contrary, the phrase "jointly and severally" means that he answers personally and directly for the obligation created under the contract. It is true that the contract is one of guaranty and in this sense the appellant intervened therein as guarantor, but the liability which he contracted is solidary in character, hence, he answers directly and personally for the entire obligation (articles 1137, 1138, 1837, Civil Code).

The appellant contends In his second assigned error that the contract entered into between the plaintiff, on the one hand, and Tabares and Sabellano, on the other, on May 12, 1934, novated the contract of guaranty which he signed. The first of these contracts had for its sole purpose to lift the attachment which the, plaintiff levied on the ten automobiles operated by Tabares and Sabellano and to make it easy for the latter to pay what the plaintiff had advanced to Bachrach Motor Co., Inc., on account of the note, it having been further stipulated that if the then defendants punctually paid the installments which they undertook to pay, the plaintiff would ask for the dismissal of this suit, otherwise the proceedings would go forward. Both by its purpose and by its terms, that contract did not operate as a novation of the contract of guaranty. Neither do the terms thereof contain any stipulation substantially contrary to or amendatory of the clauses of the contract of guaranty. To extinguish an obligation by another which substitutes it, it is necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect. (Article 1204, Civil Code.)

The appellant alleges that the contract entered into on May 14, 1934, Exhibit C, substantially modified the note, Exhibit B, because under it the four Austin cars were conveyed to the plaintiff and the remaining six to Tabares and Sabellano. It will be noted, however, that this agreement in no wise alters substantially the aforesaid note because in the latter there is no contrary stipulation with respect to said automobiles. According to the note, the ten automobiles already belonged to Tabares and Sabellano by virtue of a deed of sale, and the note was executed ostensibly to answer for the unpaid balance of the price of said automobiles. There is nothing in the note which prohibits Tabares and Sabellano, as owners of the automobiles, to dispose thereof in the manner they did in the contract Exhibit C.

The last assigned errors are merely a corollary of the preceding ones and, therefore, need not be discussed further.

In view of the foregoing considerations, and the errors attributed to the judgment not having been committed, the same is affirmed, with the costs of this instance to the appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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