

H. P. L. JOLLYE, PLAINTIFF AND APPELLANT, VS. EMETERIO BARCELON AND LUZON SURETY COMPANY, INC., DEFENDANTS. LUZON SURETY COMPANY, INC., APPELLEE.

G.R. No. 45213. May 24, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

Plaintiff attempted to recover from defendants the sum of P7,500 with legal interest from August 28, 1936, when he filed his complaint, besides the costs of the suit, basing his claim upon the facts which he averred in said pleading and hereafter to be mentioned. He contended that said defendants were bound to pay him the sum referred to, jointly and severally.

Upon the trial of the case, after defendants had filed their respective answers, the Court of First Instance of Manila where it was commenced, rendered judgment, sentencing defendant Emeterio Barcelon to pay plaintiff the amount claimed, with legal interest. It, however, dismissed the case as to the defendant Luzon Surety Company, declaring that the obligation assumed by said defendant, as surety, has been extinguished, and that said defendant is accordingly no longer subject to any liability. From the judgment thus rendered by said court, plaintiff took an appeal and, in his brief, maintains that the court erred: (1) in declaring that the surety bond, Exhibit B, executed by the Luzon Surety Company in his favor, lapsed after twelve months from its execution; and (2) in denying his motion for new trial.

The facts alleged by plaintiff and established at the trial are briefly as follows: Through his agent, Felicisimo Santiago, plaintiff bought from defendant Emeterio Barcelon, on February 13, 1933 seventy-five shares of stock of the North Electric Company, a corporation duly organized and engaged in business having its principal office in the City of Manila. Said 75 shares of stock were represented by two certificates, certificate No. 2 for twenty-five shares and certificate No. 19 for fifty shares. When the sale took place, defendant Barcelon executed¹ the document appearing of record as Exhibit A, reading as follows:

"DEED OF SALE OF SHARES OF CAPITAL STOCK OF THE NORTH ELECTRIC COMPANY

"For and in consideration of the sum of seven thousand five hundred pesos (P7,500) which I have this day received from Mr. H. P. L. Jollye, I, Emeterio Barcelon, owner of seventy-five shares of capital stock of the North Electric Company (Certificate No. 38 [2-19] for 75 shares), do hereby sell, transfer and convey unto the said H. P. L. Jollye, his heirs, successors and assigns, the aforesaid shares and do hereby warrant that I have good and sufficient title on them.

"It is agreed between the parties hereto that should any judgment in the case there is against Vicente Diosomito in the Court of First Instance of Cavite invalidate my title to the shares herein sold, I hereby obligate myself to give the money back to Mr. H. P. L. Jollye; and for the purpose of guaranteeing the fulfillment of this obligation, I have caused the Luzon Surety Company to issue in favor of the said H. F. L. Jollye, his heirs, successors and assigns, a surety bond in the sum of P7,500 a copy of which is attached hereto and made part

hereof as Schedule A; it being understood, however, that all expenses in connection with the said bond shall be borne and paid by the beneficiary Mr. H. P. L. Jollye, his heirs, successors or assigns.

In witness whereof, I have hereunto signed this document, in this City of Manila, this 13th day of February, 1933.

(Sgd.) "EMETERIO BARCELON

"In the presence of:

(Sgd.) "R. J. GONZALEZ

"F. SANTIAGO"

Since according to the said document Exhibit A, the seventy-five shares of stock in question which were sold by Barcelon to plaintiff, were at the time subject of suit in civil case No. 2525 of the Court of First Instance of Cavite, entitled "Toribia Uson, plaintiff, vs. Vicente Diosomito, defendant", the two, Barcelon and the herein plaintiff, agreed that the first would execute, as he in fact did, in favor of the latter a surety bond in an amount equal to what was then given to him in payment of the seventy-five shares of stock in order to secure the return of said sum in the event that Vicente Diosomito from whom Barcelon had acquired them should lose in said case. Pursuant to that agreement, Barcelon and defendant Luzon Surety Company, Inc., the latter in its capacity as surety, executed in favor of plaintiff Exhibit B, reading as follows:

"SURETY BOND

"Know all men by these presents:

"That we, Emeterio Barcelon of No. 16 Brixton Hill, Manila, as principal, and Luzon Surety Company, Inc., a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, as sureties, are held and firmly bound unto H. P. L. Jollye of Manila, P. I. in the sum seven thousand five hundred only (P7,500), Philippine currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

"The conditions of this obligation are as follows:

"Whereas, the above bounden principal, on 13th day of February, 1933 entered into an agreement with H. P. L. Jollye of Manila, P. I., to fully and faithfully refund to said Mr. H. P. L. Jollye the above stated sum of P7,500 representing the purchase price of the 75 shares of the capital stock of the North Electric Company (certificate No. 38) paid by said Mr. H. P. L. Jollye to the undersigned principal, Mr. Emeterio Barcelon, in the event the title thereto of said Mr. Barcelon is invalidated by any judgment which may be rendered by the court in the case now pending in the Court of First Instance of Cavite against Vicente Diosomito or in the event that any of the warranties contained in that certain deed of sale executed by the undersigned principal on this 13th day of February, 1933, be invalidated, a copy of which is hereto attached and made an integral part hereof, marked Exhibit A.

"Whereas, said H. P. L. Jollye requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said agreement.

"Now therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements stipulated in said agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

"The liability of Luzon Surety Company, Inc., under this bond will expire twelve (12) months from date hereof.

"In witness whereof, we have set our hands and signed our names on this 13th day of February, 1933.

(Sgd.) "EMETERIO BARCELON

"Principal

"LUZON SURETY COMPANY, INC.

(Sgd.) "EULOGIO RODRIGUEZ

"Manager

"Surety

"In the presence of:

(Sgd.) "C. G. RAMOS

"Witness to principal

(Sgd.) "ILLEGIBLE

"Witness to surety"

Upon the commencement of case No. 2525 above-mentioned in the early part of January, 1932, Toribia Uson, as plaintiff, secured a writ of preliminary attachment against Vicente Diosomito and by virtue of that writ the seventy-five shares of stock in question, which then still appeared in the books of the North Electric Company in the name of and as belonging to Diosomito, were attached. Thereafter, judgment was rendered against him in said case, sentencing him to pay the plaintiff Uson the sum of P2,300. As this judgment became final because he did not take any appeal, the corresponding writ of execution was thereafter issued. After the giving of the prescribed notices, the sheriff sold the attached seventy-five shares of stock to Toribia Uson as the highest bidder at the public sale. However, when she appeared in the offices of the North Electric Company with the certificate of sale issued in her favor by the sheriff, to ask for the transfer of her name of the aforesaid certificates Nos. 2 and 19 which represented the seventy-five shares of stock sold to her by the sheriff, she discovered that the same had already been cancelled because another had been issued in their place, being at first certificate No. 38 in favor of Emeterio Barcelon, and subsequently, certificate No. 47 in favor of the herein plaintiff. This was due to the fact that Diosomito, the former owner of the shares of stock aforementioned, sold them to Barcelon, although he had been informed that they had been attached in the case brought against him by Toribia Uson (civil case No. 2525) because he had been timely notified of the attachment and because that fact was also noted in certificates Nos. 2 and 19 and in the books of the North Electric Company.

In view of this fact, Toribia Uson, who insisted on the validity and force of her right as a purchaser in good faith of the aforementioned shares of stock, commenced civil case No. 2816 in the Court of First Instance of Cavite, against Vicente Diosomito, Angel Limjoco, Emeterio Barcelon, H. P. L. Jollye, and the North Electric Company, to secure a judicial determination of who among them had the right of ownership over said shares. The court decided the case in her favor, declaring that she was their real owner and ordering accordingly the North Electric Company to cancel certificate No. 47 with which certificates Nos. 2 and 19 were substituted and to issue a new one in favor of Toribia Uson as evidence of her right over said shares. The court reserved to H, P. L. Jollye, defendant and appellant in this case, the right to recover from Emeterio Barcelon the amount of P7,500 for which he had bought the shares, and to Barcelon the right in turn to recover from Vicente Diosomito what he had paid the latter therefor. The judgment by which all this was ordered, was appealed to this court, but was affirmed in its entirety.

Desiring to recover the P7,500 he had paid Barcelon, appellant now brings his action against the surety of said defendant, which is the appellee, Luzon Surety Company, Inc.

It will be noted that the last clause of the surety bond executed by the appellee in favor of the appellant clearly says:

"The liability of Luzon Surety Company, Inc., under this bond will expire twelve (12) months from date hereof." The date to which the aforesaid clause refers is February 13, 1933.

It is the law that in every contract, the parties may establish any pacts, clauses and conditions they may deem advisable, provided, they are not contrary to law, morals or public order (art. 1255 of the Civil Code), and that if the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its wording shall be followed (art. 1281 of the Civil Code).

There is certainly nothing in the clause referred to of the surety bond, Exhibit B, nor in the others which it contains, that is contrary to law, morals or public order. The acts provided therein by reason of which the contract of suretyship was executed could have taken place within the stipulated period of twelve months. Hence, the parties fixed that period exactly at twelve months, limiting thereby the obligation of the appellee to answer for the payment to the appellant of the aforesaid sum of P7,500 to not more than the stipulated period. The clauses of a contract of suretyship, as has been said on more than one occasion, determine the degree of liability of the surety (*Government of the Philippine Islands vs. Herrero*, 38 Phil., 410), which must not be extended by mere implications beyond the clear terms of the contract. The surety must only be bound in the manner and to the extent, and under the circumstances which are set forth or which may be inferred from the contract of suretyship (*La Insular vs. Machuca Go-Tauco and Nubia Co-Siong*, 39 Phil., 567; *Solon vs. Solon*, 38 Off. Gaz., 2015).

Furthermore, as it was and is known that the appellee is a corporation created and organized exclusively to engage in the business of giving bonds upon a fixed premium or interest, which is of course limited to the rate determined by law, it must necessarily subsist on the income it derives through said means. From this it follows that it did not bind itself, which appellant knows, to answer to any one beyond the one year period of the contract. To bind it for a longer time, he should have renewed the contract, Exhibit B; and appellant neither asked for a novation nor paid the necessary premium to extend it for one, two or three more years.

Accordingly, the first error attributed to the lower court has no merit, and as the second error is no more than a consequence of the first, consideration thereof is unnecessary.

The judgment appealed from being in accordance with law in view of the foregoing considerations, it is affirmed in its entirety, with costs against the appellant. So ordered.

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

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