

TORIBIO TEODORO, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 45277. April 12, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The only legal question involved in the present appeal is the true construction of paragraph (n) of section 1449 of the Revised Administrative Code which imposes a documentary stamp tax on bonds therein covered.

The material facts of the case at bar, as stipulated by the parties, are the following: From January, 1932, up to May 21, 1934, the plaintiff Toribio Teodoro was, and still is, the owner of the shoe factory called "Ang Tibay," and in the course of his business during said period 717 applications for credit accounts duly signed by the respective buyers and guarantors, were presented to plaintiff's office and accepted by him. Said applications are of the following tenor:

"Date _____

"ANG TIBAY

"Shoe and Slipper Factory

"Manila

"DEAR SIRS:

"I have the honor to apply for a thirty-day credit account in your store up to P _____. If this application meets with your approval, I agree to pay my account when it falls due.

"Yours truly,

"I guarantee payment of the total amount owed by the purchaser.

"Guarantor"

The Collector of Internal Revenue, the defendant, acting under the provisions of section 1449 (n) of the Revised Administrative Code, imposed upon, assessed against, and demanded from the plaintiff the sum of P358.50 as documentary stamp taxes on the aforesaid 717 applications. The plaintiff paid the said sum of P358.50 under written protest. The defendant overruled the protest and refused to return to the plaintiff the amount paid, as a result of which the complaint before us was filed. As the judgment rendered by the court on May 20, 1936, was adverse to the plaintiff, the instant appeal was taken.

The appellant contends that a simple contract of guaranty, such as the one executed in the credit application herein involved, is not an indemnity bond which is burdened by a tax in paragraph (n) of section 1449 of the Revised Administrative Code.

There is here an erroneous assumption: the appellant believes that the only bond burdened by the documentary stamp tax is the indemnity bond. This is not correct because paragraph (n) of section 1449 of the Revised Administrative Code refers not only to indemnity bonds but to all other bonds of any description. Said paragraph states:

"(n) On each bond for indemnifying any person, firm, or corporation who shall become bound or engaged as surety for the payment of any sum of money or for the due execution or performance of the duties of any office or position or to account for money received by virtue thereof, and on all other bonds of any description, except such as may be required in legal proceedings or are otherwise provided for herein, fifty centavos."

The appellant also erred in contending that the words underlined by us, "and on all other bonds of any description," refer to the same indemnity bond, for the reason that, in such case, said words would be meaningless and altogether unnecessary. When the law, in imposing the documentary stamp tax on indemnity bonds, expressly speaks of all other bonds of any description, it clearly indicates its intention to include all other bonds which are not for indemnity.

The appellant alleges that "bond" is a written obligation under seal and then points out the distinction between the words "bondsman" and "guarantor," citing the case of *Castellvi de Higgins and Higgins vs. Sellner* (41 Phil., 142).

The decision of this court in the case just cited gives us the refutation of appellant's contention. The decision in said case in part states:

"Turning back again to our Civil Code, we first note that according to article 1822 'By fianza (security or suretyship) one person binds himself to pay or perform for a third person in case the latter should fail to do so.' But 'If the surety binds himself in solidum with the principal debtor, the provisions of Section fourth, Chapter third, Title first, shall be applicable.' What the first portion of the cited article provides is, consequently, seen to be somewhat akin to the contract of guaranty, while what is last provided is practically equivalent to the contract of suretyship." (*Castellvi de Higgins and Higgins vs. Sellner*, supra, p. 145.)

Therefore, if according to the credit application the "guarantor" secures the payment of the total amount owed by the purchaser, the result is that there is a contract of guaranty under article 1822 of the Civil Code and the interpretation given by this court to said article.

Wherefore, the court did not err, as alleged by the appellant, in holding that the applications in question were bonds within the meaning of section 1449 (n) of the Revised Administrative Code and accordingly each subject to the documentary stamp tax of fifty centavos.

The judgment of the court is affirmed, with costs against the appellant. So ordered.

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

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