

CHINA INSURANCE AND SURETY COMPANY, INC., PLAINTIFF AND APPELLANT, VS. Y. CHONG, SY YAM AND PEDRO MARQUEZ LIM, DEFENDANTS AND APPELLEES.

G.R. No. 45530. May 25, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the plaintiff from the decision of the Court of First Instance of Manila rendered in the case, dismissing the complaint, with costs.

The plaintiff, which is a corporation organized under existing laws and engaged in the bond business, commenced the action against the defendants to recover the premiums on the counterbond which they executed, corresponding to the period from April 2, 1935 until April 2, 1937, amounting to P480, plus stipulated interest at 12 per cent per annum. The defendants did not deny the existence and authenticity of the counterbond signed by them, but alleged as special defense that the bond executed by the plaintiff, which in this case was the obligation guaranteed by the counterbond, had ceased to exist as it has been cancelled before the date the premiums became due. The case was tried and decided upon the following:

"STIPULATION OF FACTS

"Come now the parties in the above-entitled case, by their respective undersigned counsels, and hereby respectfully submit the facts in this case as follows:

"1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with its head office at Manila, Philippine Islands, and duly authorized to enter into suretyship business;

"2. That the defendants are all of legal age, and reside as follows:

Pedro Marquez Lim J. Ma. Basa, Iloilo , Iloilo

Sy Yam Bio

Do.

Y. Chong La Paz , Iloilo , Iloilo

"3. That under date of March 28, 1934, the defendants jointly and severally executed a bond application and counter surety in favor of the plaintiff, the original of which is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit A of the plaintiff;

"4. That pursuant to, and in consideration for, the execution by the defendants of the said bond application and counter surety, Exhibit A, the plaintiff executed, as surety, with the defendant Y. Chong, as principal, in favor of the Government of the Philippine Islands, as required by the Bonded Warehouse Act No. 3893, a bond in the amount of P12,000, the original of which bond is hereto attached and made an integral part of this

Stipulation of Facts, as Exhibit B of the plaintiff;

"5. That in accordance with the bond application and counter surety, Exhibit A, and as consideration for the suretyship applied for therein, the defendant Y. Chong paid to the plaintiff, on April 2, 1934, the sum of P240 as premium on the said counterbond for a period of 12 months beginning from April 2, 1934 and expiring on April 2, 1935. Copy of the official receipt for the said payment of P240 is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit C of the plaintiff;

"6. That before April 2, 1935, the plaintiff sent on March 18, 1935, a rush renewal notice to the defendant Y. Chong at La Paz, Iloilo, Iloilo, demanding a remittance for P241.20 to cover premium and documentary stamps for the renewal of the bond, Exhibit B, for another period of one year or fractional part thereof, unless the said bond was to be discontinued and definitely cancelled. A copy of this renewal notice is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit D of the plaintiff;

"7. That again under date of April 9, 1935, another rush renewal notice of the same tenor as Exhibit D was sent to the defendant Y. Chong by the plaintiff. Copy of this second renewal notice is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit 'E' of the plaintiff;

"8. That the defendant Y. Chong had not answered either one of the said renewal notices;

"9. That under dates of May 10 and May 28, 1935, the plaintiff wrote to its Iloilo agent, Mr. Eriberto Gonzales, in Iloilo, Iloilo, requesting that payment of the renewal premium in connection with the bond Exhibit B, as already demanded of the defendant Y. Chong in the rush renewal notices Exhibits D and E, be expedited. Copies of the said letters are hereto attached and made integral parts of this. Stipulation of Facts, as Exhibits F and G of the plaintiff, respectively;

"10. That on July 16, 1935, the plaintiff wrote to the defendant Y. Chong at La Paz, Iloilo, Iloilo, calling attention to the two renewal notices, Exhibits D and E, and requesting that the said defendant remit the sum of P241.20 representing the renewal premium and documentary stamps due on the renewal of the bond Exhibit B commencing from April 2, 1935. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit H of the plaintiff;

"11. That under date of July 31, 1935, plaintiff's agent in Iloilo, Mr. Eriberto Gonzales, wrote to the plaintiff advising the plaintiff that he had interviewed the defendant Y. Chong with respect to the renewal of the bond Exhibit B, and that Mr. Y. Chong informed him that the said bond had 'already been taken by the Visayan Surety & Insurance Corporation.' A copy of the said letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit I of the plaintiff;

"12. That on August 5, 1935, the Bureau of Commerce wrote to the plaintiff inquiring whether the defendant Y. Chong had already paid his renewal premium on the renewal of the bond Exhibit B. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit J of the plaintiff;

"13. That on August 7, 1935, the plaintiff answered the letter of the Bureau of Commerce of August 5, 1935, Exhibit J, advising the Bureau of Commerce that the defendant Y. Chong had not yet paid the corresponding renewal premium, and requesting that as the defendant Y. Chong had, from information, already substituted the said bond Exhibit B by another bond from another surety company, the said bond Exhibit B should be released and cancelled by the Bureau of Commerce. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit K of the plaintiff;

"14. That on August 9, 1935, the Bureau of Commerce answered the above-cited letter of August 7, 1935, Exhibit K, advising the plaintiff that the said Bureau could not release the plaintiff's bond Exhibit B for cancellation for the reason that the defendant Y. Chong had not yet filed a substitute bond. Copy of this letter hereto attached and made an integral part of this Stipulation of Facts, as Exhibit L of the plaintiff;

"15. That under date of August 19, 1935, the plaintiff wrote to the defendant Y. Chong, reiterating its demand made in its letter of July 16, 1935, Exhibit H, that the said defendant pay the renewal premium and documentary stamps due on the renewal of the bond Exhibit B. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit M of the plaintiff;

"16. That under date of August 19, 1935, the plaintiff wrote to its agent in Iloilo, Iloilo, Mr. Eriberto Gonzales, enclosing copy of the letter of the Bureau of Commerce under date of August 9, 1935, Exhibit L, and copy of the letter of August 19, 1935, to Mr. Y. Chong, Exhibit M. Copy of this letter to Mr. Eriberto Gonzales is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit N of the plaintiff;

"17. That under date of September 14, 1935, the plaintiff sent another letter to the defendant Y. Chong reiterating its demand for the payment of the amount of P241.20 covering renewal premium and costs of documentary stamps on the renewal of the bond Exhibit B, from April 2, 1935. Copy of this letter of September 14, 1935 of the plaintiff to the defendant Y. Chong is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit O of the plaintiff;

"18. That another demand letter of the same tenor as Exhibit O was sent to the defendant Y. Chong by the plaintiff on November 1, 1935. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit P of the plaintiff;

"19. That another demand letter to the same effect as Exhibit P, was sent on November 29, 1935 by plaintiff's attorney, Mr. Segundo L. Gonzales. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit Q of the plaintiff;

"20. That under date of December 7, 1935, the defendant Y. Chong replied to the said letter, Exhibit Q, of Mr. Segundo L. Gonzales. Copy of this reply is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit R of the plaintiff. This was the first letter and communication received by the plaintiff from the defendant. The copy of the letter sent by the Bureau of Commerce to the defendant Y. Chong under date of August 9, 1935, and the answer of the defendant to the said letter under date of August 14, 1935, both of which letters are referred to in the second paragraph of the defendant's letter of December 7, 1935 to Mr. Gonzales, Exhibit R, are hereto attached and made integral parts of this Stipulation of Facts, as Exhibits R-1 and R-2 of the plaintiff, respectively;

"21. That under date of December 11, 1935, the plaintiff wrote to the Bureau of Commerce requesting information as to whether it was true that the plaintiff's bond Exhibit B had already been substituted by a bond of the Visayan Surety & Insurance Corporation for the same amount as the said bond Exhibit B ever since February 2, 1935, as stated by the defendant Y. Chong, and requesting the cancellation and return to the plaintiff of its bond Exhibit B, in the event that the said information was true. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit S of the plaintiff;

"22. That under date of December 17, 1935, the Bureau of Commerce wrote to the plaintiff answering its letter of December 11, 1935, Exhibit S, stating that according to the record of the said Bureau the bond Exhibit B had not been withdrawn or cancelled. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit T of the plaintiff;

"23. That under date of May 4, 1936, the plaintiff wrote another letter to the Bureau of Commerce requesting information as to whether it already had the necessary information under which the bond Exhibit B could be cancelled. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit U of the plaintiff;

"24. That on May 14, 1936, the Bureau of Commerce answered the above-mentioned letter of May 4, 1936, Exhibit U, again informing the plaintiff that the said Bureau had not yet received the desired information from its Iloilo agent stating at the same time that the said Bureau had written Mr. Pedro Lagniten at Iloilo requesting

the immediate submission of the report on the bond of the defendant, Y. Chong. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit V of the plaintiff and copy of the letter of the Bureau of Commerce to Mr, Lagniten, referred to in the said letter Exhibit V, is also hereto attached and made an integral part of this Stipulation of Facts, as Exhibit V-1 of the plaintiff;

"25. That by virtue of the stipulation in the bond application and counter surety Exhibit A, the plaintiff charges renewal premiums corresponding to 2 years on the said bond amounting to P480;

"26. The said amount of P480 is computed as follows:

April 2, 1935 to April 2, 1936 P240.00

April 2, 1936 to April 2, 1937 240.00

Total 480.00

"27. That the plaintiff had paid as attorney's fees in connection with the present complaint the sum of P50;

"28. That the defendants, notwithstanding repeated demands made upon them by plaintiff for payment, had not paid the above amounts totalling P480, plus the corresponding interest of 12 per cent thereon commencing from the respective dates the said amounts fell due, nor the sum of P30 as attorney's fees mentioned above;

"29. That notice of release and cancellation of the bond, Exhibit B, was received by the plaintiff for the first time from the Bureau of Commerce and Industry by letter from the said Bureau, under date of August 19, 1936, in which the manager of the plaintiff was advised that the said bond Exhibit B had been cancelled by the said Bureau in accordance with the plaintiff's request of May 4, 1936. Copy of this letter is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit V-2 of the plaintiff;

"30. That under date of February 1, 1936, the defendant Y, Chong, as principal, and the Visayan Surety & Insurance Corporation, as surety, executed in favor of the Government of the Philippine Islands, a bond in the sum of P6,000, Philippine currency, a true and exact copy of which bond is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit 1 of the defendant;

"31. That the said bond Exhibit 1 was filed by the defendants with the branch office of the Bureau of Commerce and Industry in the municipality of Iloilo, Province of Iloilo, on February 2, 1935.

"32. A copy of Commerce Administrative Order No. 11, issued by the Department of Agriculture and Commerce, Bureau of Commerce, at Manila, P. L., under date of November 19, 1934, whose subject is: 'Regulations for the Business of Receiving Rice for Storage Under the Bonded Warehouse Act (Act No. 3893 of the Philippine Legislature, approved November 16, 1931)', is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit W of the plaintiff. Attention is respectfully called to page 4, subdivision III, entitled 'Bonds', of the said Commerce Administrative Order No. 11, Exhibit W;

"33. Copy of Commerce Memorandum Order No. 79, issued by the Department of Agriculture and Commerce, Bureau of Commerce, dated January 10, 1936, whose subject is: 'Cancellation of bonds of licensees running bonded warehouses', is hereto attached and made an integral part of this Stipulation of Facts, as Exhibit X of the plaintiff;

"34. That the defendant Y. Chong filed an affidavit for the first time as required by the above-mentioned rules and regulations of the Bureau of Commerce, Exhibits W and X above referred to, under date of May 12, 1936, subscribed and sworn to before notary public, in and for the municipality of Iloilo, Province of Iloilo, Mr. Leoncio P. Gellada, Doc. No. 4, page 2, book I, series of 1936;

"Wherefore, the plaintiff and the defendants, by their respective undersigned counsels, hereby respectfully submit the foregoing Stipulation of Facts together with the exhibits hereinabove mentioned as integral parts of

the said Stipulation of Facts, and as parts of the respective proofs of the parties presenting the same, for admission and for the consideration of this Honorable Court in the decision of the issues involved in the instant case."

"Manila, October 21, 1936.

(Sgd.) "JOSE F. OROZCO
Counsel for the defendants
Manila

"ARANETA, ZARAGOZA & ARANETA

By: (Sgd.) "J. ANTONIO ARANETA
Counsel for the plaintiff
Insular Life Bldg., Manila"

The plaintiff attributes to the appealed decision the following errors: (1) in holding that the mere execution and filing of the new bond by the defendant Y. Chong discharged the plaintiff from further liability arising from the bond which he signed, which resulted in the loss of its right to collect the premiums claimed; (2) in not holding that, the bond put up by the plaintiff having been cancelled by the Bureau of Commerce and Industry on June 19, 1936, only, the defendants, under the express terms of the counterbond filed by them, are under a duty to pay the premiums corresponding to the two years mentioned in the complaint; (3) in not holding that the delay in the cancellation of the bond filed by the plaintiff was due to the negligence of the defendant Y. Chong, consisting in his noncompliance with the rules adopted by the Bureau of Commerce and Industry regarding the cancellation of bonds, and (4) in not granting the motion for new trial of the plaintiff and in not rendering judgment in its favor.

The only legal question that calls for answer in this appeal is whether, under the terms of the counterbond, Exhibit A, and the stipulated and admitted facts, the defendants are bound to pay to the plaintiff the premiums claimed by the latter on the bond which it, in turn, signed in favor of the Government of the Philippines to guarantee faithful performance by Y. Chong of the provisions and conditions imposed by the Bonded Warehouse Act, No. 3893. The trial court answered the question in the negative and adversely to the plaintiff, being of the opinion, upon an interpretation of the contracts, that the counterbond had expired since February 2, 1935, the date when the new bond, executed on the 1st of the same month by the Visayan Surety & Insurance Corporation, was filed by Y. Chong with the branch office of the Bureau of Commerce and Industry in Iloilo. This conclusion is plainly erroneous because under its terms the counterbond did not expire one year after its execution, but was in full force and effect during all the time that the bond executed by the plaintiff in favor of the Government for the sum of P12,000, Exhibit B, was in force. In other words, the counterbond was valid and subsisting until the bond was cancelled by the Bureau of Commerce and Industry, in Manila, and the cancellation took place on January 19, 1936 only (Exhibit V-2). In weighing the facts and in applying the law, there was evidently a confusion of ideas, the period of one year for the payment of premiums having been mistaken for the period or duration of the counterbond. The premiums were collected for one year in advance, but the counterbond had been executed to be in force until the cancellation of the bond which, in turn, had no fixed period but may be cancelled at any time at the discretion of the Director of the Bureau of Commerce and Industry.

Another consideration taken into account in dismissing the action is that, from the filing of the new bond, Exhibit 1, the plaintiff already ceased to run any risk, hence, its right to collect premiums also ceased from that time. This is not correct. The plaintiff could have been compelled to pay the amount of its bond if the conditions thereof had been infringed during all the time that it was in force or while it had not been cancelled. Under the terms of the bond the plaintiff was bound to pay the P12,000 should its conditions be violated while it had not been cancelled by the Bureau of Commerce and Industry.

The correctness of the amount of the premiums due and claimed is not open to question as the defendants bound to pay them for every year that has expired or fraction thereof

The foregoing impliedly resolves the second assignment of error, and as to the third, we agree that one of the reasons why the plaintiff's bond was not immediately cancelled was the omission by the defendant Y. Chong to file the affidavit of cancellation required by the rules adopted by the Bureau of Commerce and Industry.

The plaintiff also claims P50 for attorney's fees. We are unwilling to award this penalty because it is not clearly stipulated in the counterbond. On the other hand, the bond filed was not executed but cancelled, and from what appears of record, there was no need for litigation to obtain the cancellation.

In view of the foregoing, the appealed judgment is reversed, and the defendants are ordered to pay to the plaintiff, jointly and severally, the sum of P480, with interest at 12 per cent per annum on one-half thereof from April 2, 1935, and on the other-half from April 2, 1936, plus costs in this instance. So ordered.

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

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