

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. THE VISAYAN SURETY & INSURANCE CORPORATION, DEFENDANT AND APPELLANT.

G.R. No. 46193. October 10, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Judgment having been rendered by the Court of First Instance of Cebu in civil case No. 10433, ordering the Visayan Surety and Insurance Corporation to pay certain sums of money to the Pacific Commercial Company and to the claimants to be enumerated hereinbelow, said defendant appealed from the judgment and assigns in its brief six alleged errors claimed by it to have been committed by the court, of which the third involves the supposed unconstitutionality of Act No. 3688 and the fourth raises the question of lack of jurisdiction of the court over the person and the subject matter of the litigation.

Said case was commenced through a complaint filed on October 23, 1934, by the Pacific Commercial Company in the name of the Government of the Philippine Islands, pursuant to the provisions of Act No. 3688, for the recovery of a certain sum of money from the defendant, upon a bond filed by the latter in favor of the Government of the Philippine Islands to answer for the full and faithful performance of the contract executed by M. de los Reyes for the construction of a causeway and landing at the Port of Santa Fe, Bantayan Island, Province of Cebu, and to answer for the payment of all obligations for materials used and labor employed in said construction. Upon the filing of the complaint, the court ordered, in compliance with the provisions of said Act, that all the creditors of the contractor for labor employed and materials used by him in the construction of said causeway and landing be notified of their right to intervene in this action on or before February 13, 1935, for the recovery of their credits, directing to that effect the publication of the order in the newspaper "The Advertiser", of general circulation in Cebu, once a week for three successive weeks, the last publication to be made not less than three months before the date above-indicated.

On December 17, 1934, the Luzon Lumber Company entered its appearance, seeking payment of the sum of P629.10 plus interest thereon at 12 per cent per annum from September 30, 1933, for materials furnished to said contractor. On January 23, 1935, Jose Ibanez also entered his appearance in the case, seeking payment of the sum of P243, likewise for materials furnished. On May 10, 1935, Yutivo Sons Hardware Company entered its appearance to claim the sum of P1,320 also for materials. This claim was later reduced to the sum of P996.32, plus interest thereon at 12 per cent and an additional 20 per cent attorney's fees and costs. After the evidence for the claimants had been presented, the attorney for the defendant filed a motion asking for the dismissal of the case on the ground that there was no cause of action and that the court had no jurisdiction over the same. Said motion having been denied and the defendant having been ordered to present its evidence within five (5) days, its attorney gave notice of his refusal to present said evidence. On January 30, 1936, the court rendered the judgment appealed from, ordering the defendant to pay to the Pacific Commercial Company the sum of P681.37 with legal interest thereon from December 21, 1934; to the Luzon Lumber Company, the sum of P526.39 with legal interest thereon

from December 18, 1934; to Jose Ibañez, the sum of P203.32, with legal interest thereon from January 23, 1935; and to Yutivo Sons Hardware Company, the sum of P946.32, with legal interest thereon from May 11, 1935, plus the additional sum of P189.26 for attorney's fees and costs.

The alleged lack of jurisdiction of the court is rather a consequence deduced by the appellant from the first alleged error attributed to the court, which error is made to consist in the alleged failure of the court to dismiss the complaint on the ground that the claimants did not follow the procedure prescribed by Act No. 3688 in bringing the action against the defendant in the name of the Government of the Philippine Islands. This alleged error is based on the following reasons:

- (a) That the filing of the action is premature.
- (b) That the proper procedure for using the name of the Government of the Philippine Islands in bringing the action has not been followed.
- (c) That personal notice has not been given to the creditors.
- (d) That the notice has not been published in some newspaper.
- (e) That the order of October 23, 1934, is illegal, and
- (f) That the contractor M. de los Reyes has not been joined as party defendant.

(a) As to the premature filing of the complaint, the appellant contends that, the work under said contract having been completed on May 19, 1934, and accepted on July 8, 1934, when the complaint was filed on October 23, 1934, the period of six months had not yet elapsed and the Government, in accordance with the provisions of Act No. 3688, had not yet brought an action or expressly waived its right to bring an action upon the penal bond of the defendant, nor had the claimants applied to the Department of Public Works for a copy of the contract and of the bond in order to be authorized to bring the action in the name of the Government of the Philippine Islands.

It is a fact, however, that on September 10, 1934, the district engineer of Cebu, Alejo Aquino, addressed a letter (Exhibit C) to the Pacific Commercial Company at Cebu, stating that, with reference to its unpaid claim against the contractor Marciano de los Reyes, and at the request of the Director of Public Works, it was advised to bring its civil action in court upon the penal bond executed by the Visayan Surety and Insurance Corporation as security of the contract entered by Reyes with the Government. Even without having to decide whether or not said letter in fact amounts to an express waiver on the part of the Government of its right to bring an action for damages against the contractor within the period of six months, under the provisions of said Act No. 3688, there is, however, a fact which completely overcomes the defendant's objection, and it is that, more than six months having elapsed with excess from the acceptance of the work on July 8, 1934, up to the time the decision in this case was rendered on January 30, 1936, without the Government having filed any claim against the appellant during all that time or later, up to this date, it is evident that the Government, by reason of the long time that elapsed, has lost its right to claim damages against the contractor or his surety, the Visayan Surety and Insurance Corporation, with preference over the herein claimants-appellees. It is that preferred right which the law attempts to preserve in favor of the Government within the period of six months following the acceptance of the completed work, and that is the reason behind the provision that nobody, without an express waiver of the Government, may bring an action in the name of the Government against the contractor and his sureties.

(b) This court is of the opinion that the foregoing refutes the second ground alleged to the effect that due procedure for using the name of the Government of the Philippine Islands in the filing of the complaint had not been followed. The only thing to be added is that the office of the district engineer of Cebu is the representative at

Cebu of the Government Bureau of Public Works, and it was said office that had the construction of the Santa Fe causeway and landing at Bantayan under its charge, direction and supervision, as proven by the uncontradicted testimony of Pedro Principe, chief clerk of the office of the engineer of Cebu, who has charge and supervision over the records and files of said office. The above-stated communication, Exhibit C, of the district engineer of Cebu, Alejo Aquino, should therefore be considered as a communication backed up by the authority of the Director of Public Works.

(c) The appellant argues in the third ground of its first assignment of alleged error that personal notice has not been given to all the creditors. With respect to this point, as the court very well stated, any objection in this respect cannot be of benefit to the defendant. The legal provision requiring such notice is for the protection of the creditors of the contractor. The true parties who may raise such objection would only be the creditors adversely affected.

(d) The appellant further contends that, according to Act No. 3688, the notice should be published in some newspaper of general circulation, and the order of the court, according to it, was published in only one newspaper "The Advertiser". This court is of the opinion that this is sufficient because, although there may be more than one newspaper in Cebu, the law does not require the publication to be made in more than one newspaper but only in some newspaper.

(e) The court's order of October 23, 1934, whereby notice was given to the contractor's creditors for materials furnished or for labor employed that they could intervene in order to claim their respective credits, is alleged to be illegal for having fixed February 13, 1935, as the last day for the presentation of the claims, while Act No. 3688 provides that the claims may be presented at any time within one year from the acceptance of the work. If there were any anomaly in the order in question, it would not be the defendant who would be entitled to allege the same in its favor, because it has not all been prejudiced by said order, and the only one who might complain against it would be some creditor who was unable to present his claim by reason of the shortening of the period fixed by law.

It is contended that the publication of the order in question is something that vests the court with jurisdiction to try the present case, and said order being null and void ab initio, the court has not acquired jurisdiction in this case. The order of the court having been published in the manner prescribed by law, this court is of the opinion that the law has been substantially-complied with, although the period fixed for the presentation of claims has been reduced by some months. The objection of the defendant should all the more be considered without merit because no creditor has been excluded. The claim of Yutivo Sons Hardware Company was presented after February 13, 1935, but it was, however, admitted by the court, in spite of the opposition filed by the appellant. It is argued that the period for the presentation of claims has not been extended after February 13, 1935, and that the extension of said period without publication of the order of extension destroys the jurisdiction of the court over the subject matter of the litigation. This court is of the opinion that once the jurisdiction of the court is acquired by the publication of the order of October 23, 1934, any extension of the period, provided it be within the same period of one year fixed by law for the presentation of the claims, is no longer jurisdictional.

(f) Another alleged ground for the first error is that the contractor M. de los Reyes has not been joined as party defendant. The allegation of this supposed defect is without merit and to refute it suffice it to call attention to the fact that, according to the surety bond, the contractor M. de los Reyes and the defendant bound themselves jointly and severally in favor of the Government and of any other person, partnership or corporation, who might furnish labor and materials to the contractor, in the sum of P7,270, and according to the provisions of articles 1330 and 1831 of the Civil Code, the defendant, as surety, may be compelled to pay to the claimants without first having all the property of the principal debtor exhausted when, as it happens in this case, the defendant has bound itself

jointly and severally with the contractor (*Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil., 406; *Inchausti & Co. vs. Yulo*, 34 Phil., 978; *Jaucian vs. Querol*, 38 Phil, 707; *Ferrer vs. Lopez and Santos*, 56 Phil., 592).

The case of *Uy Tam and Uy Yet vs. Leonard* (30 Phil., 471) is cited by the appellant for the purpose of showing, as may be inferred from that part of the decision in said case underlined by said appellant, that as the persons who furnished materials to the contractor were not parties to the contract of suretyship, they have no right of action against the surety. If this is the appellant's contention, attention is invited to the provisions of Act No. 3688, under which the penal bond in question was executed by the appellant, which expressly provide that "any person, company or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the Government of the Philippine Islands on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, * * *."

And according to the same surety bond, the appellant, as hereinbefore stated, bound itself to pay to the Government and to any person, partnership, or corporation that has supplied the contractor with labor or materials, their credits to the extent of the amount stated in said bond.

Another of the supposed errors assigned by the appellant consists, as contended by it, in the alleged failure of the court to hold that Act No. 3688 is unconstitutional and that the penal bond executed by it is null and void. The appellant, arguing on this alleged error, contends that Act No. 3688 compels the contractor to file a penal bond not only in favor of the Government but also in favor of the persons supplying the contractor with labor and materials in cases of public works. This, according to it, constitutes class legislation on the ground that it does not afford the same privilege to persons furnishing labor and materials to contractors in private works. It also contends that said law impairs the obligations of contracts inasmuch as it grants favors to persons who are not parties to the contract, as are the ones furnishing labor and materials to the contractor.

This court is of the opinion that both contentions are untenable. The Government, by means of said law, compels all those entering into a contract with it for the prosecution of public works, to execute a bond under certain terms and conditions, without exempting from this obligation any contractor, whatever his class and rank in society, if he has to undertake some work for the Government. The Government is protecting itself when, pursuant to said law, it requires the execution of the bond to secure faithful compliance with the obligations of the contractor in the performance of the works, and is also protecting itself when, in accordance with the same law, it extends the bond in favor of third persons who might have some claim by reason of the labor and materials used in the building or work of the same Government. The same privilege is not made to extend to contractors of private works because said contractors should know how to protect themselves in the most appropriate manner they deem convenient for their interests. And it cannot be said that the law in question impairs contractual obligations by favoring persons who are not parties to the contract of suretyship, because the law does not produce the effect of changing or altering the terms of an obligation so contracted, but has for its object to determine beforehand the effects of the bond with respect to third persons who may later have some interest in the works by reason of the labor or materials furnished. And in this respect, the law is not unconstitutional.

"Impairment of Obligation.—a. In General.—Any enactment of a legislative character is said to 'impair' the obligation of a contract which attempts to take from a party a right to which he is entitled by its terms, or which deprives him of the means of enforcing such a right. But it may be said in general that a law which does not strike at the vitality of a contract either by altering its terms or preventing its preservation and enforcement does not impair its obligation. * * *" (12 C. J., 1056.)

"A law does not impair the obligation of a contract within the meaning of the Constitution, if neither party m

relieved thereby from performing anything of that which he obligated himself to do. But if either party is absolved from performing any of these things, such obligation is impaired, whether absolution is affected, directly and expressly or indirectly, and only as the result of some modification of the legal proceedings for enforcement." (State ex rel. National Bond & Security Co. vs. Krahmer, 106 Minn., 422; 117 N. W., 780; 21 L. R. A. [N. S.], 157. Footnote, I Cooley's Constitutional Limitations, p. 583, 8th ed.)

In the light of the above-quoted doctrines, this court does not see how the appellant can contend that Act No. 3688 impairs the obligation of a contract, when said law does not take from it any right derived from the bond nor deprive it of the means of enforcing some of its right.

Another alleged error attributed to the court by the appellant is that, according to it, it has not been proven that the materials taken from the claimants were used in the contract secured by it. The court found it to have been proven satisfactorily that the materials furnished by the claimants to the contractor were used by the latter in the construction of the work contracted. This court is of the opinion that this conclusion is warranted by the evidence.

Finding no merit either in the other errors assigned by the appellant, the judgment appealed from is affirmed, with costs to said appellant. So ordered.

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

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