

MIRA HERMANOS, INC., PLAINTIFF-APPELLEE, VS. MANILA TOBACCONISTS, INC., ET AL., DEFENDANTS. PROVIDENT INSURANCE CO., DEFENDANT-APPELLANT.

G.R. No. 48979. September 29, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

This appeal has been certified to this Court by the Court of Appeals because it involves only a question of law arising from the following facts:

By virtue of a written contract (Exhibit A) entered into between Mira Hermanos, Inc., and Manila Tobacconists, Inc., the former agreed to deliver to the latter merchandise for sale on consignment under certain specified terms and the latter agreed to pay to the former on or before the 20th day of each month the invoice value of all the merchandise sold during the preceding month. Mira Hermanos, Inc., required of the Manila Tobacconists, Inc., a bond of P3,000, which was executed by the Provident Insurance Co., on September 2, 1939 (Exhibit B), to secure the fulfilment of the obligation of the Tobacconists under the contract (Exhibit A) up to the sum of P3,000.

In the month of October, 1940, the volume of the business of the Tobacconists having increased so that the merchandise received by it on consignment from Mira Hermanos exceeded P3,000 in value, Mira Hermanos required of the Tobacconists an additional bond of P2,000, and in compliance with that requirement the defendant Manila Compañia de Seguros, on October 16, 1940, executed a bond of P2,000 (Exhibit C) with the same terms and conditions (except as to the amount) as the bond of the Provident Insurance Co.

On June 1, 1941, a final and complete liquidation was made of the transactions between Mira Hermanos and the Tobacconists, as a result of which there was found a balance due from the latter to the former of P2,272.79, which indebtedness the Tobacconists recognized but was unable to pay. Thereupon Mira Hermanos made a demand upon the two surety companies for the payment of said sum. The Provident Insurance Co. paid only the sum of P1,363.67, which is 60% of the amount owed by the Tobacconists to Mira Hermanos, alleging that the remaining 40% should be paid by the other surety, Manila Compañia de Seguros, in accordance with article 1837 of the Civil Code. The Manila Compañia de Seguros refused to pay the balance, contending that so long as the liability of the Tobacconists did not exceed P3,000, it was not bound to pay anything because its bond referred only to the obligation of the Tobacconists in excess of P3,000 and up to P5,000. Hence Mira Hermanos, Inc., brought this action against the Manila Tobacconists, Inc., Provident Insurance Co., and Manila Compañia de Seguros to recover from them jointly and severally the sum of P909.12 with legal interest thereon from the date of the complaint.

The controversy is mainly between the two surety companies. In its answer the defendant Manila Compañia de Seguros alleged as a special defense:

"4.—Que la fianza otorgada por esta demandada 'Manila Compania de Seguros', el Octubre de 1940 fue exigida por la demandante solo cuando el importe de las mercancías servidas por esta y pedidas por la demandada

Manila Tobacconists, Inc., excedio de la suma de P3,000 garantizada por la otra demandada Provident Insurance Co.; por lo que quedo entendido entre la demandante y las tres demandadas que la fianza de P2,000 prestada el Octubre de 1940 por esta demandada, 'Manila Compania de Seguros', se limitaba y era para responder solamente del importe de mercancías servidas a la demandada Manila Tobacconists, Inc., en tanto en cuanto el valor de esas mercancías excediese de P3,000 asegurada por la fianza P3,000 de la Manila Tobacconists, Inc."

To that the defendant Provident Insurance Co. replied:

"Que no es verdad el hecho alegado por la demandada 'Manila Compania de Seguros' en el parrafo 4 de su contestacion que dice: 'que quedo entendido entre la demandante y las tres demandadas que la fianza de P2,000 prestada el Octubre de 1940 por esta demandada "Manila Compania de Seguros" se limitaba y era para responder solamente del importe de mercancías servidas a la demandada Manila Tobacconists, Inc., en tanto en cuanto el valor de esas mercancías excediese de P3,000 asegurada por la fianza de P3,000 de la "Manila Tobacconists, Inc." ' "

"Que la demandada, aqui compareciente, nunca ha tenido conocimiento ni menos prestado su consentimiento a esa supuesta inteligencia.

"Que esta demandada no puede ser privada del beneficio de division a que tiene derecho como co-fiador, sin que conste expresamente, por escrito, su conformidad y consentimiento de renunciar a su derecho."

thus there was an issue of fact between the two surety companies, viz.: whether the understanding between the plaintiff and the three defendants was, that the bond of P2,000 given by the Manila Compania de Seguros was limited to and responded for the obligation of the Tobacconists only insofar as it might exceed the amount of P3,000 secured by the bond of the Provident Insurance Co. That issue of fact was decided by the trial court in favor of the contention of the Manila Compania de Seguros; and judgment was rendered by it against the Provident Insurance Co. alone for the amount claimed by the plaintiff.

Appellant's first two assignments of error (the third being a mere consequence of the first two) read as follows:

"1. El juzgado inferior incurrio en error al hacer caso omiso del beneficio de division reclamado por la demandada Provident Insurance Co. of the Philippines con arreglo a lo dispuesto en el Art. 1837 delCodigo Civil.

"2. El juzgado erro al aplicar, en lugar de lo dispuesto en el Art. 1837 delCodigo Civil, una teoria suya, declarando que la fianza de P3,000.00 prestada por Provident Insurance Co. of the Philippines y la fianza de P2,000 de Manila Compañia de Seguros, cada una tiene una esfera de responsabilidad propia e independiente la una de la otra."

Discussing these two assignments of error jointly, counsel says:

"La unica cuestion que se presenta en esta causa es puramente de derecho. Si el saldo deudor de P2,272.79 que Tobacconists ha dejado de pagar, deben pagarlo en su lugar, los dos fiadores proporcionalmente a la cuantia en que se obligaron o debe pagarlo sola y exclusivamente la fiadora Provident Insurance Co., como ordena la sentencia opelada."

Thus it appears that the issue of fact raised by and between the two surety companies before the trial court and decided by the latter in favor of the appellee Manila Compañia de Seguros is no longer raised before this Court, appellant Provident Insurance Co. having limited the issue in this appeal to whether or not it is entitled to the "benefit of division" provided in article 1837 of the Civil Code, which reads as follows:

"Art. 1837. Should there be several sureties of only one debtor for the same debt, the liability therefor shall be divided among them all. The creditor can claim from each surety only his proportional part unless liability in

solidum has been expressly stipulated.

"The right to the benefit of division against the co-sureties for their respective shares ceases in the same cases and for the same reason as that to an exhaustion of property against the principal debtor."

With particular reference to the second assignment of error, we find that the statement of the trial court to the effect that the bond of P3,000 responded for the obligation of the Tobacconists up to the sum of P3,000 and the bond of P2,000 responded for the obligation of the Tobacconists only insofar as it might exceed P3,000 and up to P5,000, is not a mere theory but a finding of fact based upon the undisputed testimony of the witnesses called by the defendant Manila Compañia de Seguros in support of its special defense hereinbefore quoted. While on its face the bond given by the Manila Compañia de Seguros contains the same terms and conditions (except as to the amount) as those of the bond given by the Provident Insurance Co., nevertheless it was pleaded by the Manila Compañia de Seguros and found proven by the trial court "que la intencion realmente que se habia perseguido, por lo menos en lo que respecta a la Manila Tobacconists, Inc., y la Manila Compañia de Seguros, era la de que esta fianza de P2,000 habria de responder solamente por todo aquello que excediera de los P3,000."

The evidence upon which that finding is based is not only undisputed but perfectly reasonable and convincing. For, as the trial court observed, there would have been no need for the additional bond of P2,000 if its purpose were to cover the first P2,000 already covered by the P3,000 bond of the Provident Insurance Co. Indeed, we might add, if the purpose of the additional bond of P2,000 were to cover not the excess over and above P3,000 but the first P2,000 of the obligation of the principal debtor like the bond of P3,000 which covered only the first P3,000 of said obligation, then it would result that had the obligation of the Tobacconists exceeded P3,000, neither of the two bonds would have responded for the excess, and that was precisely the event against which Mira Hermanos wanted to protect itself by demanding the additional bond of P2,000. For instance, suppose that the obligation of the principal debtor, the Tobacconists, amounted to P5,000; if both bonds were co-extensive up to P2,000—as would logically follow if appellant's contention were correct—the result would be that the first P2,000 of the obligation would have to be divided between and paid equally by the two surety companies, which should pay P1,000 each, and of the balance of P3,000 the Provident Insurance Co. would have to pay only P1,000 more because its liability is limited to the first P3,000, thus leaving the plaintiff in the lurch as to the excess of P2,000. That was manifestly not the intention of the parties. As a matter of fact, when the Provident gave its bond and fixed the premiums thereon it assumed an obligation of P3,000 in solidum with the Tobacconists without any expectation of any benefit of division with any other surety. The additional bond of P2,000 was, more than a year later, required by the creditor of the principal debtor for the protection of said creditor and certainly not for the benefit of the original surety, which was not entitled to expect any such benefit.

The foregoing considerations, which fortify the trial court's conclusion as to the real intent and agreement of the parties with regard to the bond of P2,000 given by the Manila Compañia de Seguros, destroys at the same time the theory of the appellant regarding the applicability of article 1837 of the Civil Code.

That article refers to several sureties of only one debtor for the same debt. In the instant case, altho the two bonds on their face appear to guarantee the same debt co-extensively up to P2,000—that of the Provident Insurance Co. alone extending beyond that sum up to P3,000—it was pleaded and conclusively proven that in reality said bonds, or the two sureties, do not guarantee the same debt because the Provident Insurance Co. guarantees only the first P3,000 and the Manila Compañia de Seguros, only the excess over and above said amount up to P5,000. Article 1837 does not apply to this factual situation.

The judgment of the trial court is affirmed, with the only modification that it shall be entered against the defendants Manila Tobacconists, Inc., and Provident Insurance Co. jointly and severally. Appellant shall pay the costs of this instance.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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