

MANILA SURETY & FIDELITY CO., INC., PETITIONER, VS. COURT OF APPEALS AND WILLIAM H. QUASHA, RESPONDENTS.*G.R. No. 55466. December 03, 1990*

Ponente: PARAS, J.

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This is a petition for review on certiorari of the resolution of the Court of Appeals dated August 5, 1980* in CA G.R. No. 42461 -R entitled "Republic of the Philippines vs. Leon Bessire, et al.", affirming with modification the lower court's judgment dated April 30, 1968** with respect to the payment of 12% interest per annum and denying petitioner's motion for reconsideration dated October 6, 1980.

The facts as found by the Court of Appeals are as follows:

Sometime after 1951, the Republic of the Philippines, thru its Bureau of Internal Revenue, assessed the Bessire Housing Corporation (BESCO) in the amount of P16,840.04 representing percentage taxes for the year 1951. Apparently pressed for payment, the manager thereof (Leon Bessire) executed in personal capacity on October 30, 1956, with Mutual Security Insurance Corporation an "Ordinary Bond for Payment of Taxes", known as MUSIC S-575-A, wherein the parties undertook to jointly and severally pay the Republic the aforementioned assessment in twelve (12) equal installments as scheduled therein. On same day that the bond was posted Leon Bessire, Manila Surety and Corazon Santos Escobar in her personal capacity and as attorney-in-fact of Eduardo Escobar signed an indemnity agreement binding themselves solidarily to indemnify Mutual Security for any damages losses it may sustain as a result of its having consented to become a surety in favor of the Bureau of Internal Revenue (BIR). On December 28, 1936, Leon Bessire paid the first installment of P1,403.34 due on November 30, 1956 and another installment on a later date. He failed to pay the succeeding installments thus prompting the Commissioner of the Internal Revenue to send a letter of February 20, 1958 that unless Mr. Bessire paid P14,035.36 plus the accrued delinquency penalties within 15 days, the bond would be forfeited. A letter of demand was also sent on the same date to Mutual Security. (Rollo, p. 32-33; Petition, Annex A, pp. 2-3)

On May 19, 1958, Atty. William H. Quasha as substitute for Corazon Santos Escobar signed an Indemnity Agreement whereby he undertook to jointly and severally with Leon Bessire and BESCO, indemnify Manila Surety for any damage or loss it may suffer in consequence of its having consented to continue being counter surety upon the indemnity agreement MUSIC S-575-A (Rollo, p. 67; Comment, p. 2). On July 18, 1958 the Acting Commissioner of Internal Revenue acknowledged the payment by Leon Bessire of P300.00 and demanded the full payment of the balance of P13,733.36 on or before July 31, 1958. A letter of demand was also sent to Mutual Security (Rollo, pp. 33-34; Petition, Annex A, pp. 3-4).

On July 31, 1958, Leon Bessire sent a check for P1,403.34 and asked for further time to pay the outstanding balance in view of his financial difficulties. On September 26, 1958, the Acting Commissioner of Internal Revenue wrote Leon Bessire to pay the P12,330.02 in full on or before October 15, 1958 and Mutual Security to do the same or steps for the forfeiture of the bond would be taken (Rollo, p. 34; Petition, Annex A, p. 4).

Leon Bessire made further payments: P400.00 on November 13, 1958; P500.00 on February 13, 1959; P500.00 on May 12, 1959; and P500.00 on October 28, 1959. On April 7, 1960, a letter of demand was again sent to Leon Bessire giving him until April 30, 1960 to pay the balance of P10,430.02 and a letter of substantially the same tenor to Mutual Security. On June 12, 1961, Leon Bessire died. (Rollo, pp. 34-35; Petition, Annex A, pp. 4-5)

On February 9, 1962, the Republic of the Philippines upon the request of the BIR filed a complaint against Leon Bessire and Mutual Security Insurance Corporation (Mutual), to have the surety bond guaranteeing the payment of percentage taxes forfeited and for the said defendants jointly and severally to pay P10,032.02 plus interest at the legal rate and costs (Rollo, p. 31).

On March 7, 1962, Mutual filed its answer with cross claim against Leon Bessire. On July 5, 1963 it filed a third party complaint against petitioner, Manila Surety and Fidelity Co., Inc. (Manila Surety). On July 26, 1963, Manila Surety filed a fourth-party complaint against herein private respondent, William H. Quasha (Rollo, p. 32; Petition, Annex A, p. 2).

After trial on the merits, the lower court, through then Judge Luis B. Reyes, rendered its decision on April 30, 1968, the dispositive portion of which reads:

"Wherefore, judgment is rendered as follows:

"1. Declaring Surety Bond MUSIC S575-A, issued by defendant Mutual Security Insurance Corporation, forfeited and ordering said defendant to pay plaintiff the sum of P10,030.02 plus the legal rate of interest from February 9, 1962, the date of the filing of the suit, until said amount is fully paid, and to pay the costs of this suit.

"2. Ordering third party defendant Manila Surety Fidelity Co. Inc., to pay third party plaintiff Mutual Security Insurance Corporation whatever amount the latter as defendant, is adjudged to pay plaintiff, plus interest at 12% per annum from the date of payment which interest shall be accumulated and added to the principal quarterly and shall earn interest at the same rate, and attorneys' fees equivalent 10% of the total amount due under the surety bond, and

"3. Ordering fourth party defendant to pay and/or indemnify fourth party plaintiff Manila Surety & Fidelity Co., Inc. the amount of the judgment which it is ordered to pay in favor of third party plaintiff Mutual Security Insurance Corporation, with interest thereon at the rate of 12% per annum from July 3, 1963, until fully paid, and the sum equivalent to 10% of the total amount claimed, as and for attorneys' fees.

"The counterclaim of fourth party defendant is dismissed.

"SO ORDERED." (Rollo, p. 68).

Mutual, Manila Surety and Quasha all file their respective appeals to the respondent Court of Appeals which rendered judgment on March 21, 1980 affirming the judgment of the lower court (Petitioner's brief, p. 4). On April 17, 1980, William H. Quasha, private respondent herein, filed a Motion for Reconsideration of the aforementioned judgment alleging as the sole ground therefore that the respondent Court of Appeals erred in affirming without modifying a portion of the decision which ordered fourth party defendant appellant William H. Quasha to pay and/or indemnify fourth party plaintiff appellant Manila Surety the amount of judgment it is ordered to pay third party plaintiff appellant Mutual, with interest thereon at the rate of 12% per annum from July 3, 1963 until fully paid (Petitioner's brief p. 4).

Thereafter or on August 5, 1980, respondent Court of Appeals rendered its questioned Resolution the dispositive portion of which reads:

"Wherefore, our March 21, 1980 decision is hereby modified as follows: number 3, paragraph 1 of the

dispositive portion of the decision appealed from should read:

"3. Ordering fourth party defendant to pay and/or indemnify fourth party plaintiff Manila Surety & Fidelity Co. Inc., the amount of judgment which it is ordered to pay in favor of third party plaintiff Mutual Security Insurance Corporation and the sum equivalent to 10% of the total amount claimed, as and for attorneys' fees.

"The portion which provides for an interest on the amount of judgment at the rate of 12% per annum from July 3, 1963 until fully paid is deleted.

"SO ORDERED." (Rollo, pp. 51-52 Petition, Annex B, pp. 3-4).

On August 25, 1980, herein petitioner Manila Surety filed its Motion for Reconsideration of the aforequoted Resolution, which motion was summarily denied by respondent Court of Appeals in its Resolution dated October 6, 1980 (Rollo, p. 54; Petition, Annex C, p. 1). Hence this petition.

The sole issue to be resolved in this petition is whether or not respondent Quasha's liability to pay the 12% interest in case of default under the Indemnity Agreement arises only after the decision of respondent Court of Appeals becomes final and executory.

The respondent Court of Appeals in its resolution held:

"xxx the amount of liability of both the movant and Manila Surety upon the surety bond is determined only after the decision of the case becomes final and executory. Hence, before the decision becomes final and executory and the extent of the liability of Manila Surety is not yet determined, Manila Surety as co-surety can not demand the 12% per cent interest per annum from the movant co-surety because during this intervening period, there is no liability yet of the movant to pay, hence, there is no interest yet to be reckoned. xxx" (Rollo, p. 51, Petition; Annex B, p. 3).

The petition is impressed with merit.

The Indemnity Agreement, whereby private respondent Quasha bound himself jointly and severally with Leon Bessire and the BESCO in favor of petitioner, provides:

"2. INDEMNITY: To indemnify the COMPANY for any damage, loss, costs, charges, or expenses of whatever kind and nature, including counsel for attorney's fees, which the COMPANY may, at any time, sustain or incur as a consequence of having become surety upon the above-mentioned bond; x x x" (Record on Appeal, p. 77).

In the case of *Associated Insurance & Surety Co. Inc. vs. Wellington Chua, et al.*, 7 SCRA 52 [1963] where a similar provision appears, this Court held:

"x x x The agreement herein sued upon is not only one of indemnity against loss but of indemnity against liability. While the first does not render the indemnitor liable until the person to be indemnified makes payment or sustains loss, the second becomes operative as soon as the liability of the person indemnified arises, irrespective of whether or not he has suffered actual loss." (Underscoring ours)

The next question here is when did the liability of Manila Surety in favor of Mutual arise so as to give rise to the corresponding liability on the part of Quasha vis-a-vis Manila Surety. The Indemnity Agreement whereby Manila Surety undertook to indemnify Mutual provides:

"3. ACCRUAL OF ACTION - Where the obligation involves a liquidated amount, for the payment of which the COMPANY has become legally liable under the terms of the obligation and its suretyship undertaking or by the demand of the obligee or otherwise x x x the undersigned jointly and severally undertake to pay to the COMPANY on the latter's demand the full amount, necessary to discharge the COMPANY's aforesaid

liability; x x x." (Record on Appeal, p. 44) (Underscoring ours)

Clearly, the liability of Manila Surety arose on July 5, 1963, the date on which the third party complaint was filed against it by Mutual, which was the date of judicial demand, and from that point on, it had already incurred liability, thereby giving rise to the concomitant liability of Quasha under his indemnity agreement with Manila Surety. Said indemnity agreement provides:

"3. MATURITY OF THE OBLIGATION UNDER THIS BOND: Said indemnity shall be paid to the COMPANY as soon as it has become liable for the payment of any amount, under the above-mentioned bond, whether or not it shall have paid such sum or sums of money, or any part thereof." (Rollo, p. 56; Petition, Annex D, p. 77-78). (Underscoring ours).

Interpreting a similar provision in an indemnity agreement, this Court held:

"x x x In the indemnity agreement executed by appellant in favor of appellee, there appears the following clause: 'Said indemnity shall be paid to the COMPANY as soon as it has become liable for the payment of any amount under the abovementioned bond, whether or not it shall have paid such sums or sums of money or any part thereof.' It is there said that the liability of appellee as bondsman would attach as soon as it has become liable for the payment of any amount regardless of whether said amount shall have been paid or not. This is the situation that actually obtains here. The NARIC, or its legal successor, the Prisco, has actually filed an action in court demanding payment of the obligation from appellee under the bond it has posted on behalf of both Felicisima Policarpio and Hermina Cruz, which action is more than enough to entitle the appellee to enforce the indemnity agreement executed by appellant. This constitutes the cause of action of appellee in the present case." (Manila Surety & Fidelity Co. Inc. v. Teodulo Cruz, L-10414, April 18, 1958, 103 Phil. 367) (Underscoring ours).

In addition thereto, the indemnity agreement also provides:

"4. INTEREST IN CASE OF DEFAULT: And in case of nonpayment of the said sum or sums of money, an interest of twelve (12%) per cent per annum, which interest, while not paid, shall be liquidated and accumulated monthly to the capital owed by the undersigned, drawing the same interest as the said capital." (Rollo, p. 56; Petition, Annex D, p. 78).

Since respondent Quasha's liability arose on July 5, 1963, the date the third party complaint was filed and the same not having been paid, his liability to pay the 12% per cent interest per annum, in case of default as stated in the aforementioned indemnity agreement also arose.

In the cases of Tagawa vs. Aldanese, 43 Phil. 852, 859 [1922]; Plaridel Surety Insurance Co. vs. P. L. Galang Machinery Co., 100 Phil. 679 [1957], it was held:

"If a surety upon demand fails to pay, he can be held liable for interest, even if in thus paying, the liability becomes more than that in the principal obligation. The increased liabilities is not because of the contract but because of the default and the necessity of judicial collection."

It is a basic and fundamental rule in the interpretation of contract that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning shall control. In order to judge the intention of the parties, their contemporaneous and subsequent acts shall be principally considered. (Mercantile Insurance Co., Inc. vs. Felipe Ysmael, Jr. & Co. Inc., 169 SCRA 66 [1989]; Sy vs. Court of Appeals, 131 SCRA 116 [1984]; GSIS vs. Court of Appeals, et al., 145 SCRA 311 [1986]).

The above-quoted specific provisions of the Indemnity Agreement clearly show that respondent is liable under said provisions. Hence, the stipulation agreed upon by the parties is valid and enforceable (Paramount Surety & Insurance Co., Inc. v. Pastor D. Ago, 171 SCRA 481 [1989]) and obligations arising from contracts have the force

of law (Paramount Surety & Insurance Co., Inc. vs. Pastor D. Ago, 171 SCRA 481 [1989]; Villonco Realty Co. Inc. vs. Bormacheco, 65 SCRA 352 [1975]; Lazo vs. Republic Surety Insurance Co. Inc. 31 SCRA 329 [1970]; Perez Rubio vs. CA; 141 SCRA 488 [1986].

Elucidating further on the obligations of the parties in agreements of this nature, this Court ruled: "The indemnity agreement was not executed for the benefit of the creditors; it was rather for the benefit of the surety and if the latter thought it necessary in its own interest to impose this stipulation, and the indemnitors voluntarily agreed to the same, the court should respect the agreement of the parties and require them to abide by their contract." (Mercantile Insurance Co., Inc. vs. Felipe Ysmael, 169 SCRA 66 [1989]; Security Bank vs. Globe Assurance, 107 Phil. 733 [1960]).

PREMISES CONSIDERED, (1) the instant petition is hereby GRANTED; (2) the appealed resolution of the respondent Court of Appeals is hereby SET ASIDE; (3) the original decision of respondent Court of Appeals dated March 21, 1980 is hereby REINSTATED, with MODIFICATION that the liability of respondent Quasha to pay the 12% interest in case of default be reckoned from July 5, 1963, the date the third party complaint was filed.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Hugo E. Gutierrez, Jr. and concurred in by Justices Pedro D. Cenzon and Mariano Zosa.

** Penned by Judge Luis B. Reyes.

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