

MERCANTILE INSURANCE CO., INC., PETITIONER, VS. HON. COURT OF APPEALS AND REPARATIONS COMMISSION, RESPONDENTS.*G.R. No. 85647. April 22, 1991*

Ponente: FELICIANO, J.

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In this Petition for Review on Certiorari, petitioner Mercantile Insurance Co., Inc. ("Mercantile") seeks to annul and set aside a Decision of the Court of Appeals in C.A.-G.R. No. 03337 entitled "Reparations Commission vs. Jose G. Lopez, et al.," dated 31 August 1988. In that Decision, the Court of Appeals affirmed the decision of the Regional Trial Court, National Capital Region, in Civil Case No. 78198 dated 7 February 1983 which held petitioner liable under a performance bond posted to secure performance by Jose Lopez of the terms and conditions of a Contract of Conditional Purchase and Sale of reparations goods which Jose Lopez had entered into with respondent Reparations Commission ("Repacom").

The background facts follow:

On 6 February 1964, the Philippine Government represented by the Repacom in Japan and Jose Lopez entered into a Procurement Contract with Japanese suppliers for the acquisition of a fishing vessel, later named M/V "Jolo Lema," priced at US\$174,900.00. On 28 August 1964, pursuant to the Protocol of Delivery signed in Japan, the "Jolo Lema" was delivered to Jose Lopez.

On 24 September 1964, Jose Lopez posted a bond guaranteed by petitioner Mercantile in favor of Repacom. In that bond, Lopez undertook to pay Repacom the amount of P68,385.90 in the event of his failure to comply with any of his obligations under the Contract of Conditional Purchase and Sale.[1]

Meanwhile, on 23 February 1965, the then Court of First Instance of Manila issued a writ of preliminary injunction in Civil Case No. 58907 entitled "Marcelo Lapeña v. Reparations Commission," a case where Jose Lopez was an intervenor. The writ enjoined Repacom from requiring Lopez to post a bond in an amount greater than ten percent (10%) of the purchase price computed at the "preferred" rate of exchange (RP P2.00 = U.S. \$1.00) or P34,900.00.

On 2 March 1965, Repacom and Lopez entered into a Conditional Contract of Purchase and Sale[2] covering the vessel "Jolo Lema" for US\$179,000.00 or its peso equivalent at the "preferred" rate of exchange, without prejudice to re-adjustment should the Supreme Court confirm that the imposition of the free market rate of exchange was proper or valid. The Contract mentioned the "date of complete delivery as: 28 August 1964." The Schedule of Payments, attached to the Contract, provided for a down payment of P17,490.00; set the amount of the "first installment without interest" as P34,980.00; set the due date of the first installment (without interest) as 28 August 1965, and the due date of the first installment with interest in the amount of P36,966.57 as 28 August 1966. The "Terms and Conditions" of the Contract, inter alia, provided that:

"x x x should the Conditional Vendee fail to pay any of the yearly installments when due, or utilize the goods

for any illegal purpose or purposes other than that for which the goods have been produced, or otherwise fail to comply with any of the terms and conditions of this contract or with any of the applicable provisions of the Reparations law and/or of the Rules and Regulations promulgated pursuant thereto, then the Conditional Vendor is hereby given the option to either rescind the contract upon notice to the Conditional Vendee in which case all sums already paid by the Conditional Vendee shall be forfeited as rentals in favor of the Conditional Vendor, and also that the Conditional Vendee shall deliver peacefully to the Conditional Vendor the property, subject of this contract or sue for specific performance in which case the whole amount remaining unpaid in this contract shall immediately become due and payable."

Among the other obligations undertaken by Lopez under the Contract was the posting of a performance bond in favor of Repacom to secure Lopez' compliance with his obligations. The Contract made reference to the Mercantile bond in the following manner:

"Parties herein hereby make of record that the Conditional Vendee has posted performance bond No. 200 issued by Mercantile Insurance Co., Inc. in the amount of Pesos Sixty-Eight Thousand Three Hundred Eighty Five and Ninety Centavos (P68,385.90) x x x." [3]

Lopez failed to pay the first installment without interest on its due date despite repeated demands made on him. Repacom then demanded payment from Mercantile but the latter also refused to pay. Thereupon, on 28 August 1965, Repacom confiscated the Mercantile bond and demanded payment of the amount of P68,386.90 covered by the bond.

Subsequently, Lopez posted EGCI Bond No. 65-1103 dated 20 November 1965 in the amount of P36,906.51, issued by Eagle Guaranty Co., Inc. ("Eagle") in favor of Repacom to secure compliance by Lopez of his obligations under the Contract of Conditional Purchase and Sale.[4]

The first installment with interest in the amount of P36,906.51 under the Schedule of Payments fell due on 28 August 1966. Despite repeated demands made by Repacom, Lopez refused to pay that installment. Notice was sent to Eagle who likewise refused to pay. Thereupon, Repacom confiscated EGCI Bond No. 65-1103.

On 21 July 1966, Lopez leased the fishing boat to one Tomas Velasco. The latter used the boat, not for fishing but for transporting cargo. Two months later, on 19 September 1966, the fishing boat, while still under lease to Velasco, was seized by a combined team of the National Bureau of Investigation ("NBI"), RASAC, PC Agents and Davao City policemen at Batjak Wharf, Sasa Port, Davao City on a charge of smuggling copra and coffee beans from Indonesia.

On 14 February 1967, Repacom instituted an action in the then Court of First Instance of Manila against Mercantile, Eagle and Jose Lopez for the collection of the unpaid purchase price of the fishing vessel M/V "Jolo Lema" as well as for interest, liquidated damages, attorney's fees and costs. This case was, however, dismissed upon motion of Repacom.

On 17 November 1969, Repacom commenced another suit against the same parties for the same cause of action as that pleaded in the earlier action.

On 27 October 1972, defendant-appellant Mercantile filed an Amended Answer and set up a counter-claim for 1/2 of the salvage fees of Luzon Stevedoring Corporation, alleging that Repacom was obliged to share in the payment of such fees.

On 7 February 1983, the lower court rendered a decision which, among other things, directed petitioner Mercantile to pay Repacom the amount it had guaranteed to pay under its bond, i.e., P68,365.90, plus interest thereon at the rate of six percent (6%) per annum from 28 August 1965 until fully paid. The trial court also

dismissed Mercantile's counter-claim against Repacom by reason of *res judicata*. The court stated that since Repacom was not impleaded in Civil Case No. 75663 the decision of which had already become final and executory. Mercantile's claim against Repacom was already barred by prior judgment.

Mercantile appealed to the Court of Appeals. On 31 August 1988, the Court of Appeals affirmed Mercantile's liability under its bond as well as the dismissal of its counter-claim against Repacom.

In assailing the Decision of the Court of Appeals, petitioner claims in the present Petition for Review that the appellate court erred in disregarding the writ of preliminary injunction issued in *Lapeña v. Repacom* which allegedly releases petitioner from its obligation under the bond. Petitioner makes an issue of the fact that the price of the vessel was reduced as a result of the issuance of the writ. Petitioner calls attention to the posting of the Eagle bond subsequent to the issuance of the writ and concludes that it was to guarantee payment of the ten percent (10%) of the reduced price of the vessel that the Eagle bond was posted, and that the Mercantile bond was accordingly released. It is further contended that petitioner's bond could not have secured Lopez' obligation under the Contract of Conditional Purchase and Sale since the latter was concluded after petitioner's bond had been issued. Petitioner argues that the Mercantile bond guaranteed only the procurement contract entered into prior to the issuance of the writ of preliminary injunction, and that the writ of preliminary injunction in effect had made the Mercantile bond unenforceable.

We cannot sustain petitioner's contentions.

The writ of preliminary injunction issued by the trial court in the case *Lapeña v. Repacom* read as follows:

"It is hereby ordered by the undersigned Judge of the Court of First Instance that, until further orders, you, the said Reparations Commission and all your attorneys, representatives, agents, and any other person assisting you, refrain from requiring the herein intervenor to pay the inspection fee, Bank Commission and other incidental charges at the free-market rate of exchange of the Philippine Peso to the U.S. Dollar and the difference in the down payment between the so-called free market rate and the preferred rate of exchange which has already been paid by the intervenor; from specifying in the Contract of Conditional Purchase and Sale which the intervenor is required to sign the peso value of the fishing boat with accessories above-mentioned at a rate of exchange other than the preferred rate and from requiring said intervenor to secure and post the required insurance coverage and 10% performance bond at the so-called free market rate of exchange as requisite to the delivery of the fishing boat with accessories referred to above."[5]

A reading of the foregoing shows that the writ merely suspended the imposition or application of the free market rate of exchange by enjoining respondent Repacom from requiring Jose Lopez to pay his obligations under the Contract of Conditional Purchase and Sale at a rate of exchange other than the preferred rate. Nothing in the writ mandates or implies that petitioner would be released from its obligation. It is of no moment that the purchase price of the vessel was reduced. The said reduction was merely a result of the conversion of the price of the vessel "Jolo Lema" in U.S. Dollars to Philippine Pesos using the preferred rate of exchange instead of the free market rate of exchange which was originally intended by the parties. Such was merely an adjustment of the peso value of the vessel; the dollar value thereof remained at US\$174,900.00 and the required amount of the performance bond was still ten percent (10%) of US\$174,900.00.

The reduction of the peso purchase price did not extinguish Mercantile's commitments under the bond. It must be recalled that under its bond Mercantile undertook to secure ten percent (10%) of the purchase price of the vessel which at that time was pegged at P683,859.00 after converting the dollar price into the corresponding peso price using the free market rate of exchange. With the adjustment of the vessel's peso price mandated by the writ of preliminary injunction, Mercantile's undertaking to pay a certain number of pesos under certain conditions was adjusted downward but not extinguished.

We also find no merit in petitioner's contention that it did not secure Lopez' obligations in the Contract of Conditional Purchase and Sale since the Mercantile bond was posted before said Contract was entered into. We noted earlier that that Contract made express reference to the Mercantile bond. That reference confirmed that the Mercantile bond was posted pursuant to one of Lopez' undertakings under that Contract, i.e., to post a performance bond to secure fulfillment of his obligations. There can be no doubt therefore that the parties intended the Mercantile bond to answer for Lopez' undertakings under the Contract of Conditional Purchase and Sale. We find unpersuasive petitioner's submission that the said bond was posted to secure performance of the procurement contract primarily because the said contract did not need any security. It must be noted that Lopez acquired the vessel from the Japanese suppliers through the instrumentality of the Repacom. The procurement contract was not between Repacom and Lopez; rather, it was between Repacom and Lopez, on the one hand, and the Japanese suppliers, on the other hand. Furthermore, if the Mercantile bond was truly to secure the procurement contract, then it should have been made in favor of the Japanese suppliers, not Repacom.

In his testimony, Lopez also tried to show that the performance bond was to secure delivery of the vessel from Japan to the Philippines.[6] It appears from the records that it was Lopez who effected transfer of the vessel from Japan to the Philippines.[7] We do not, nevertheless, believe that the Mercantile bond was for the purpose alleged by Lopez. Such testimony was contradicted by the fact that the "Jolo Lema" was completely delivered to the control of Lopez on 28 August 1964 while the Mercantile bond was posted on 24 September 1964, after the vessel had already been placed in Lopez' control and brought by him to the Philippines.

The fact that subsequent to the execution of the Contract of Conditional Purchase and Sale, Lopez posted another bond, the Eagle bond, does not by itself suggest that there was a novation of Mercantile's obligation through a substitution of the debtor. The general rule is that novation is never presumed; it must always be clearly and unequivocally shown.[8] Thus, "the mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility, does not constitute novation, and the creditor can still enforce the obligation against the original debtor." [9] In the case at bar, the records do not at all show any express intention of the parties to extinguish the Mercantile bond. The original relationship between Jose Lopez, Mercantile and Repacom remained unchanged despite the posting of the Eagle bond, there having been no agreement between Repacom, Jose Lopez and Eagle to release Mercantile from the latter's obligation under its bond. Neither can Mercantile allege incompatibility between the Mercantile bond and the Eagle bond. The bonds do not appear to contradict each other; rather, the Eagle bond appears to be a supplement to the Mercantile bond, i.e., as providing an additional surety. The rule is that "in a case of subjective novation through a change in the person of debtor, it is not enough that the juridical relation between the original parties is extended to include a third person, as this constitutes only an increase in the number of persons liable to the obligee. It is essential that the old debtor be released from the obligation and the third person take his place in the relation. If the older debtor is not released, there is no novation; the third person becomes merely a co-debtor, surety or co-surety." [10]

It may be worthwhile to note that the Eagle bond was posted by Lopez only on 26 November 1965 in the amount of P36,906.51 when the Mercantile bond had already been forfeited or confiscated by respondent Repacom for failure or refusal of Jose Lopez and Mercantile to pay the first installment without interest which fell due on 28 August 1965. The Eagle bond was later confiscated by Repacom for, among other reasons, failure or refusal of Jose Lopez and Eagle to pay the first installment with interest which fell due on 28 August 1966.

As to petitioner's contention that its counter-claim against Repacom is not barred by prior judgment, suffice it to say that we find no error in the appellate court's ruling that since Repacom was not impleaded in Civil Case No. 75663, and since the decision there had already become final and executory, *res judicata* had set in to bar a finding

of liability on the part of Repacom. The principle of res judicata applies not only to issues discussed in the decision but "as to any other matter that could have been raised in relation thereto. (Section 48 [b], Rule 39, Revised Rules of Court.)"

WHEREFORE, premises considered, the Court Resolved to DENY the Petition for lack of merit and to AFFIRM the Decision of the Court of Appeals dated 31 August 1988. No pronouncement as to costs.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Exhibit "E" – Repacom, Records v. III, p. 121.

[2] Exhibit "6" – Mercantile, Records v. II, p. 113.

[3] Contract of Conditional Purchase and Sale, p. 3; Exhibit "6" – Mercantile v. II, p. 115.

[4] Exhibit "F" – Repacom, Records v. II, p. 123.

[5] Exhibit "5" – Mercantile, Records v. II, p. 140.

[6] TSN, 3 July 1975, p. 9.

[7] Id., pp. 10-11.

[8] Martinez v. Cavives, 25 Phil. 591 (1913).

[9] Magdalena Estates, Inc. v. Rodriguez, et al., 18 SCRA 967 (1966); Straight v. Haskell, 49 Phil. 614 (1926).

[10] Cochingyan v. R&B Surety, 151 SCRA 339 (1987).

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