

ALFONSO GABALDON CO., PETITIONER, VS. THE HON. COURT OF APPEALS AND ORIENTAL ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. 94979, August 11, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

In this petition for review of the decision of the Court of Appeals (CA) dated August 17, 1990[2] in CA-G.R No. 12057, entitled "Carmen Soco, joined by her husband, Lorenzo Ong, Plaintiffs-Appellees versus Jesus Y. Go, doing business under the style 'GOJESCO' and Oriental Assurance Corporation, Defendants-Appellants. Oriental Assurance Corporation, Third-Party Plaintiff-Appellant, versus Alfonso Gabaldon Co, et al., Third-Party Defendants-Appellees," petitioner ALFONSO GABALDON CO seeks to be absolved from liability under the Deed of Indemnity executed by him and others in favor of private respondent ORIENTAL ASSURANCE CORPORATION (ORASCO). We deny his plea.

On February 13, 1979, Jesus Go, a contractor doing business under the name and style of GOJESCO CONSTRUCTION, entered into a Construction Agreement[3] with Carmen Soco for the construction of a three-storey commercial building at 1844 Taft Avenue, Pasay City. To guarantee the faithful performance of his obligation thereunder, Go was required to submit a performance bond in the amount of Four Hundred Thousand Pesos (P400,000.00), equivalent to the sum advanced by Soco under the Agreement.

Accordingly on February 14, 1979, GOJESCO CONSTRUCTION, as principal, and ORASCO, as surety, executed a Performance Bond,[4] holding themselves jointly and severally liable to Carmen Soco and to any individual, firm, partnership, corporation or association supplying the principal with labor or materials, in case of non-compliance by said principal with the terms and conditions of the Construction Agreement in the penal sum of Four Hundred Thousand Pesos Only (P400,000.00).

In connection with said Performance Bond, a Deed of Indemnity dated February 15, 1979,[5] which date is now the subject of controversy, was executed by GOJESCO Construction represented by Jesus Go as manager, herein petitioner Alfonso Gabaldon Co and Ang Chu in their individual and personal capacities, in favor of ORASCO, undertaking, inter alia, to "indemnify ORASCO for any damages, payments, advances, prejudices, loss costs and expenses of whatever kind and nature, including counsel or attorney's fees, which the Company may, at any time, sustain or incur, as a consequence of having executed the above-mentioned Bond, its renewals, extensions, modifications or substitutions x x x."

The dreaded eventuality happened. Jesus Go was unable to strictly comply with the approved building plan specifications and failed to complete the construction of the building within schedule despite two (2) extensions given him. Carmen Soco extrajudicially filed her claim against the Performance Bond, but ORASCO refused to honor her claim. She was thus compelled to institute a complaint for collection of a sum of money against Jesus Go and ORASCO.[6]

ORASCO, in turn, filed a Third-Party Complaint[7] against petitioner Alfonso Gabaldon Co, Jesus Go and Ang Chu for their liability under the Deed of Indemnity.

Jesus Go filed his Answer with Counterclaim[8] to Soco's complaint, but, except for the May 22, 1981 hearing, failed to attend the other hearings. Third-Party Defendant Ang Chu neither filed an Answer nor attended any of the scheduled hearings despite due notice. Both Go and Ang Chu were declared as in default for failure to appear at the pre-trial conference on September 9, 1981.[9] Only petitioner Alfonso Gabaldon Co was thus left to litigate against ORASCO in the Third-Party Complaint.

After trial on the merits, the lower court rendered judgment[10] in favor of Carmen Soco in the main complaint. In the Third-Party Complaint, it found petitioner Alfonso Gabaldon Co liable under the Deed of Indemnity and, accordingly, ordered him to pay ORASCO such sums of money as ORASCO might be ordered to pay to Carmen Soco, including attorney's fees.

Alfonso Gabaldon Co moved for reconsideration, raising the following arguments: (1) that he was not in the country when the Deed was purportedly executed; (2) that in spite of the fact that he was out of the country when the Deed was purportedly executed, still the evidence for the third-party plaintiff attempted to point with certainty that the document was notarized in the presence of all the signatories therein; (3) that the testimony of Atty. Ruiz should not be given credence; and (4) that it was Jesus Y. Go who placed his name in the Deed of Indemnity.[11] The motion was opposed by ORASCO.

In the meantime, Carmen Soco moved for execution pending appeal, which was granted by the trial court in an Order dated September 18, 1985[12], over the opposition of ORASCO. The Writ of Execution Pending Appeal[13] was issued the following day, September 19, 1985.

ORASCO filed a Motion to Fix Amount of Supersedeas Bond, even as it moved for reconsideration of the September 18, 1985 Order granting the Motion for Execution Pending Appeal. On September 30, 1985, the trial court issued an Order,[14] fixing the amount of the Supersedeas Bond at P600,000.00, upon the filing of which the Order dated September 18, 1985 would be considered withdrawn and the writ thereby issued quashed.

On the same day, September 30, 1985, the trial court rendered an Amended Decision,[15] dismissing the Third-Party Complaint. The amended portion reads:

"x x x. This Deed of Indemnity suffers from a defect in the sense that defendant Co who appears to be a co-signor therein was not in the Philippines on February 15, 1979, the date (said Deed of Indemnity) was alleged to have been signed by him. It was clearly testified to that Alfonso Gabaldon Co was then in Taiwan, he having left Manila on February 14, 1979 and returned on February 24, 1979.

Third-Party Defendant Co repudiated his signature appearing on Exhibit '4' Oriental for the reason that he could not have been in Manila then in as much as he had left on February 14, 1979 and returned only on February 24, 1979. This Court therefore finds Third-Party defendant Co not bound by the Deed of Indemnity, he not having signed it."

On appeal by ORASCO, however, the Court of Appeals found the dismissal of the Third-Party Complaint erroneous. The lower court's decision was accordingly modified, as follows:

"PREMISES CONSIDERED, the decision appealed from is hereby MODIFIED and, as a consequence, this Court renders judgment:

1. Dismissing defendant's counterclaim;
2. Sentencing defendants JESUS Y. GO and the ORIENTAL ASSURANCE CORPORATION, jointly and

severally, to pay to plaintiff the amount of P400,000.00 with legal interest thereon from October 29, 1980;

3. Further sentencing defendant JESUS Y. GO to pay the plaintiff the sum of P90,000.00 representing penal charges for 180 days delay at the rate of P500.00 a day;

4. Further sentencing defendant JESUS Y. GO to pay the plaintiff the amount equivalent to twenty-five (25%) percent of the total sum collected, as and for attorney's fees; and,

5. Declaring third-party defendant Alfonso Gabaldon Co liable in accordance with the terms and conditions of the Deed of Indemnity, dated February 15, 1979, entered into by him with Oriental Assurance Corporation as President of Hot Point Plastic Products as well as in his individual personal capacity;[16]

6. Finally, sentencing defendant JESUS Y. GO to pay the cost of suit.

SO ORDERED."

Only petitioner Alfonso Gabaldon Co appealed from the foregoing judgment; hence, the appellate court's ruling, in so far as ORASCO's liability is concerned, has become final and executory.

The core issue in this petition for review is whether or not the petitioner, Alfonso Gabaldon Co, was a signatory to the Deed of Indemnity so as to make him liable thereunder.

The issue raised is factual. As a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. This Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below. This rule, however, is not without exceptions, one of which is when there is a conflict between the factual findings of the Court of Appeals and the trial court which necessitates a review of such factual findings.[17] Such is the case at bench.

The ruling of the trial and appellate courts on the liability of petitioner Alfonso Gabaldon Co rested primarily on their respective findings as to when the Deed of Indemnity was signed. The lower court gave full faith and credence to the date "February 15, 1979" appearing on the Deed of Indemnity as its date of execution. It having been indubitably shown by the evidence presented[18] that petitioner Alfonso Gabaldon Co was out of the country on February 15, 1979, having left the Philippines for Taiwan on February 14, 1979, and returning only on February 24, 1979, the lower court ruled that petitioner Alfonso Gabaldon Co could not have signed the Deed of Indemnity on February 15, 1979. That being the case, he could not be made liable under the Deed of Indemnity.

The appellate court, on the other hand, disregarded the date "February 15, 1979" stated in the Deed of Indemnity as its execution date, and gave faith and credence instead to the testimony of Atty. Alejandro Ruiz, Jr. that the Deed of Indemnity was signed in his presence in the office of ORASCO on February 13, 1979; that after the signing, he was given said Deed for notarization; that he brought the Deed to his office located at the BPI Building at Plaza Cervantes, where he notarized the same; that due to oversight, the document was not immediately entered in the notarial register by his secretary; that such entry was made by his secretary only on February 15, 1979, which date his secretary affixed on the document.[19]

Found corroborative of Atty. Ruiz' testimony was the testimony of Norma Saclolo, officer-in-charge of the Bonding Department of ORASCO, who testified that Gabaldon Co was present at the signing of the Deed of Indemnity at the ORASCO office.[20]

We have thoroughly reviewed the records of the case and found the mass of evidence supporting the conclusion reached by the appellate court that the Deed of Indemnity was executed on February 13, 1979.

The testimony of Mrs. Norma Saclolo placed the execution of the Deed of Indemnity prior to the issuance of the

Performance Bond dated February 14, 1979. Mrs. Saclolo testified that she was the one who prepared the Performance Bond in favor of Mrs. Carmen Soco. She explained that per company requirement, before a bond was issued, especially where the amount involved was big, the applicant was required to have a co-signor, who must personally appear at the ORASCO office. She stated that in the case under consideration, that requirement was complied with, as evidenced by the Deed of Indemnity, which was signed by petitioner Alfonso Gabaldon Co as a co-signor. She categorically stated that petitioner Alfonso Gabaldon Co appeared at the ORASCO office and there signed the Deed of Indemnity.[21]

Her testimony is corroborated in the Deed of Indemnity itself which, by the tenor of its first paragraph, was also an application for the issuance of a performance bond, thus:

"AMOUNT OF THE BOND. - The undersigned, jointly and severally, hereby apply to the ORIENTAL ASSURANCE CORPORATION, hereinafter to be known as the COMPANY to execute as surety for our accommodation, jointly and severally, with GOJESCO CONSTRUCTION represented by Mr. Jesus Y. Go, Manager, Mr. Alfonso Gabaldon Co and Mr. Ang Chu and in their individual and personal capacity a Bond in the amount of FOUR HUNDRED THOUSAND ONLY PESOS (P400,000.00) Philippine Currency, in favor of Mrs. Carmen Soco, a duplicate of which Bond is attached hereto and made a part hereof, and of any renewal, extensions, modifications or substitution thereof.[22]

The Deed of Indemnity, being an application for the performance bond, must of necessity precede the issuance of the latter on February 14, 1979.

That the Deed of Indemnity was executed prior to the issuance of the Performance Bond on February 14, 1979 is further demonstrated by the notation found on the upper right-hand corner of the Performance Bond reading: "Please Refer to: ORASCO Bond No. G(16)00081".[23] ORASCO Bond No. G(16)00081 is none other than the subject Deed of Indemnity. Such reference could only lead to the conclusion that at the time of the issuance of the Performance Bond on February 14, 1979, the Deed of Indemnity [ORASCO Bond No. G(16)00081] was already in existence, as it does not appear logical or possible for the Performance Bond to refer to another document with such specificity if the latter had not yet been executed on said date.

In light of these evidence indubitably showing that the Deed of Indemnity was executed on February 13, 1979, we are satisfied with the explanation given by Atty. Ruiz on how the date "February 15, 1979" came to be affixed on the document as its date of execution.

Moreover, we have carefully and painstakingly compared petitioner Alfonso Gabaldon Co's signature appearing on the Deed of Indemnity with his specimen signatures[24] and like the appellate court, found them to be identical. We entertain no doubts whatsoever that petitioner Alfonso Gabaldon Co signed the subject Deed of Indemnity as a co-signatory and may, therefore, be held liable thereunder.

WHEREFORE, the instant petition is hereby DENIED. The decision dated August 17, 1990 of the Court of Appeals in CA-G.R. No. 12057 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Feliciano, (Chairman), Melo, and Vitug, JJ., concur.

[1] The title has been corrected to its present form as the petition for review erroneously carried the title of the case as docketed in the Court of Appeals, thus: "CARMEN SOCO, joint by her husband, LORENZO ONG, Plaintiffs-Appellees, versus JESUS Y. GO, doing business under the style 'GOJESCO' and ORIENTAL ASSURANCE CORPORATION, Defendants-Appellants. ORIENTAL ASSURANCE CORPORATION,

Third-Party Plaintiff-Appellee, versus ALFONSO GABALDON CO, ET AL., Third-Party Defendants-Appellants."

[2] Penned by CA Associate Justice Serafin V.C. Guingona and concurred in by CA Associate Justices Gloria C. Paras and Bonifacio A. Cacdac, Jr.

[3] Exhibits "A"- "A-3", Folder of Exhibits for Plaintiff, pp. 8-11.

[4] Exh. "B", Folder of Exhibits for Plaintiff, p. 12.

[5] Exh. "4", Folder of Exhibits for Defendants.

[6] Docketed as Civil Case No. 8546-P in the Regional Trial Court, Branch CX, Pasay City, Original Records, pp. 1-7.

[7] Original Records, pp. 62-65.

[8] Ibid., pp. 96-99.

[9] Order dated September 9, 1981, Original Records, p. 106.

[10] Penned by Judge Manuel V. Romillo, Jr., Original Records, pp. 262-276.

[11] Motion for Reconsideration, Original Records, pp. 273-284.

[12] Original Records, p. 313.

[13] Ibid., pp. 314-315.

[14] Ibid., p. 324.

[15] Ibid., pp. 326-327.

[16] Underscoring supplied.

[17] Gaw v. Intermediate Appellate Court, G.R. No. 70451, March 24, 1993, 220 SCRA 405.

[18] Consisting of the record of arrival and departure of the Commission of Immigration and Deportation presented by its employee, Benjamin Ledesma, Jr. in obedience to a subpoena duces tecum (Exh. "1" (Co), Folder of Exhibits for the Defendants); as well as the stamps on Co's passport of the immigration authorities of the countries visited by Co during said period, (Exhs. "2-E-a" (Co), "2-E-b" (Co), "2-F" (Co), "2-F-1" (Co), "2-F-2", Folder of Exhibits for the Defendants).

[19] TSN, March 6, 1985, pp. 7-14.

[20] Ibid., February 4, 1983, p. 13.

[21] Ibid., pp. 5-8; 11-13.

[22] Underscoring supplied. Exh. "4" (Oriental), Folder of Exhibits for the Defendants.

[23] Exh. "B", Folder of Exhibits for the Plaintiff.

[24] Exhs. "3" (Co) - "3-D", Folder of Exhibits for the Defendants.

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