

[G.R. Nos. 18774 and 18876. March 27, 1923]

EL VENCEDOR, PLAINTIFF AND APPELLEE, VS. JUAN S. CANLAS, JOSE S. GALANG, MELCHOR DULAY, ALFONSO ROSARIO, DOMINGO PAYAUAN, AND DOMINGO MATABANG, DEFENDANTS AND APPELLANTS.

D E C I S I O N

OSTRAND, J.:

It appears from the evidence that during the period from October, 1919, to November, 1920, the defendant, Juan S. Canlas, was the agent of the plaintiff for the sale of merchandise in the Province of Pangasinan on a commission basis. On June 30, 1920, an accounting was had between the plaintiff and Canlas from which it resulted that the latter had failed to pay the plaintiff for merchandise of the value of P5,039.67. Canlas maintained that his failure to pay was due to the fact that he had sold some of the goods on credit and had been unable to collect the accounts from the customers, but the plaintiff company insisted that he had no authority to sell on credit and therefore was indebted to them for the amount of the outstanding accounts. The plaintiff thereupon refusing to continue to furnish Canlas merchandise for sale unless he gave a bond, Canlas induced his codefendants to become his sureties and on September 10, 1920, the following bond was executed:

"Know all men by these presents, That we, Melchor Dulay, Ildefonso Rosario, Domingo Payauan and Domingo Matabang, of age, married and residents of San Carlos, Pangasinan, hereby bind ourselves, our heirs, executors and administrators, jointly and severally on this bond in the sum of Two Thousand Five Hundred Pesos (P2,500), Philippine currency, in favor of El Vencedor, a corporation whose corporate existence and right to sue are hereby admitted, which sum we, our heirs, executors and administrators, hereby

agree to pay to *El Vencedor*, its successors and assigns in due form.

“The condition of this obligation is the following: Whereas the firm, *El Vencedor*, has appointed Juan S. Canlas, of Dagupan, its agent in the Philippine Islands in its business of selling goods belonging to the said *establishment*, now therefore, if the said *Juan S. Canlas* shall faithfully fulfill his duties as such agent and render a true account, and make exact payment of all such funds, goods, documents and any other things belonging to the said establishment, *El Vencedor*, as may on any occasion come into his possession or under his control, then the foregoing obligation shall become null and void; otherwise it shall have full force and effect.

“It is hereby specially stipulated that the undersigned expressly waive all the benefits provided for by law, and agree that in the event of the failure of the said Juan S. Canlas faithfully to fulfill his duties as agent, or to render an exact account of all such funds, goods, documents and any other things pertaining to the firm, *El Vencedor*, as may on any occasion have come into his possession or under his control, the said firm, *El Vencedor*, may immediately proceed against them or each of them indiscriminately without the necessity of first exhausting all the remedies provided by law or part thereof against said *agent*.

“It is also hereby stipulated that the undersigned bind themselves jointly and severally not to withdraw this bond without giving three months’ previous notice to *El Vencedor* at its office in Manila, of their intention to withdraw and cancel the same, it being distinctly understood that unless such notice is given, this bond shall have full force and effect.

“In testimony whereof, we sign these presents in San Carlos, Pangasinan, this 10th day of September, 1920.

(Sgd.) “MELCHOR DULAY

“F-1679155—4-29-20, San Carlos, Pangasinan

(Marked.) “DOMINGO PAYAUAN

"F-1672444—1-3-20, San Carlos, Pangasinan

(Sgd.) "ILDEFONSO ROSARIO

"F-1672704—1-9-20, San Carlos, Pangasinan

(Sgd.) "DOMINGO MATABANG

"F-1672410—1-2-20, San Carlos, Pangasinan"

(Signed by two witnesses and acknowledged before a notary public.)

On the 15th of the same month the defendant Galang executed the following document in favor of the plaintiff:

"Know all men by these presents;

"Whereas Mr. Juan S. Canlas was appointed travelling agent of *El Vencedor*, a commercial house of this city of Manila, to offer for sale the goods and merchandise of the said house;

"Whereas the said Juan S. Canlas, in his capacity as travelling agent, will have to take with himself some samples of the goods and merchandise of the aforesaid house;

"Whereas the said house requires of said Juan S. Canlas the giving of a bond in the amount of P1,500 to guarantee the return to said house of any such goods and merchandise which the said agent may have in his possession;

"Now, therefore, I, Jose S. Galang, attorney and notary practicing in this City of Manila, and owner of the Galang Pharmacy of this same city, the value of which is estimated at P3,000, hereby bind myself as surety and guarantor of the said Juan S. Canlas to become liable in case of his inability to pay any such damages as the house may suffer by reason of his failure to return such goods and merchandise, as the said principal, Juan S. Canlas, may be legally obliged to return.

"In witness whereof, I sign these presents in this City of Manila this 15th

day of September, 1920.

(Sgd.) "JOSE S. GALANG
"Attorney and Notary Public
"1331 Misericordia,
Manila"

It does not appear from the evidence that at the time of executing the undertakings above quoted the sureties had knowledge of the fact that Canlas was at that time indebted to the company in any sum whatever. Subsequent to the execution of the bonds the plaintiff furnished Canlas merchandise to the value of P194.99 for which he has failed to account.

The present action was instituted February 25, 1921, and the sureties on both bonds were made defendants. After trial, the court below rendered judgment against Juan S. Canlas for the sum of P5,039.67, with interest at 10 per cent per annum from the 26th day of February, 1921, and with the costs, holding the defendants Melchor Dulay, Alfonso Rosario, Domingo Payauan and Domingo Matabang liable as sureties, jointly and severally, for the sum of P2,500 and the defendant Galang, likewise as surety, for the sum of P1,500, the full amount of his bond. From this judgment air of the defendant sureties appeal, two bills of exceptions being presented, one by the appellant Galang and one by the other appellants and numbered R. G. 18876 and R. G. 18774, respectively, in this court.

The principal question involved in the two appeals is whether the bonds can be considered retrospective so as to respond for the debts contracted by Juan S. Canlas previously to the execution of the bonds. The court below held that they are retrospective; this court takes the opposite view.

The rule is well known that a bond or contract of suretyship is strictly construed and cannot be extended beyond its specified limits. (Civil Code, art. 1827.) It is not retrospective and no liability attaches for defaults occurring before it is entered into unless an intent to be so liable is indicated. (32 Cyc., 74, 75 and authorities there cited; 21 R. C. L., 979.)

We find nothing in the bonds in question which indicates that they were intended to be retrospective. There is nothing in the documents to show that

Canlas had entered upon the performance of his agency previously to their execution or that he was indebted to his principal at that time; and the sureties, as far as the documents show, had a right to rely on the presumption that their suretyship was prospective and to assume that the samples, merchandise, and accounts, for which they bound themselves to respond, related to future transactions.

It appears from the record that practically all the samples delivered to Canlas have been returned to the plaintiff and a minority of the court, including the writer, think that Galang's contract of suretyship relates only to samples and does not embrace merchandise delivered to Canlas for sale. The majority of the court are, however, of the opinion that the bond covers both samples and ordinary merchandise.

As stated above, the value of the merchandise furnished Canlas subsequent to the execution of the bonds, and not accounted for by him, is P194.99, and we hold that this is the only amount for which the appellants are liable as sureties on the bonds in question.

The judgment appealed from is therefore modified and it is ordered that the defendants-appellants Jose Galang, Melchor Dulay, Alfonso Rosario, Domingo Payauan, and Domingo Matabang, jointly and severally, pay to the plaintiff the sum of P194.99, with interest at the rate of 10 per cent per annum from February 25, 1921, and with the costs, reserving to said defendants their rights of contribution and their recourse to the principal Canlas. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, and Johns, JJ., concur.
Romualdez, J., did not take part.

