669 Phil. 205

SECOND DIVISION

[G.R. No. 165487, July 13, 2011]

COUNTRY BANKERS INSURANCE CORPORATION, PETITIONER, VS. ANTONIO LAGMAN, RESPONDENT.

D E C I S I O N

PEREZ, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision [1] and Resolution [2] of the Court of Appeals dated 21 June 2004 and 24 September 2004, respectively.

These are the undisputed facts.

Nelson Santos (Santos) applied for a license with the National Food Authority (NFA) to engage in the business of storing not more than 30,000 sacks of *palay* valued at P5,250,000.00 in his warehouse at *Barangay* Malacampa, Camiling, Tarlac. Under Act No. 3893 or the General Bonded Warehouse Act, as amended, [3] the approval for said license was conditioned upon posting of a cash bond, a bond secured by real estate, or a bond signed by a duly authorized bonding company, the amount of which shall be fixed by the NFA Administrator at not less than thirty-three and one third percent (33 1/3%) of the market value of the maximum quantity of rice to be received.

Accordingly, Country Bankers Insurance Corporation (Country Bankers) issued Warehouse Bond No. 03304 [4] for P1,749,825.00 on 5 November 1989 and Warehouse Bond No. 02355 [5] for P749,925.00 on 13 December 1989 (1989 Bonds) through its agent, Antonio Lagman (Lagman). Santos was the bond principal, Lagman was the surety and the Republic of the Philippines, through the NFA was the obligee. In consideration of these issuances, corresponding Indemnity Agreements [6] were executed by Santos, as bond principal, together with Ban Lee Lim Santos (Ban Lee Lim), Rhosemelita Reguine (Reguine) and Lagman, as co-signors. The latter bound themselves jointly and severally liable to Country Bankers for any damages, prejudice, losses, costs, payments, advances and expenses of whatever kind and nature, including attorney's fees and legal costs, which it may sustain as a consequence of the said bond; to reimburse Country Bankers of whatever amount it may pay or cause to be paid or become liable to pay thereunder; and to pay interest at the rate of 12% per annum computed and compounded monthly, as well as to pay attorney's fees of 20% of the amount due it. [7]

Santos then secured a loan using his warehouse receipts as collateral. [8] When the loan matured, Santos defaulted in his payment. The sacks of *palay* covered by the warehouse receipts were no longer found in the bonded warehouse. [9] By virtue of

the surety bonds, Country Bankers was compelled to pay P1,166,750.37. [10]

Consequently, Country Bankers filed a complaint for a sum of money docketed as Civil Case No. 95-73048 before the Regional Trial Court (RTC) of Manila. In his Answer, Lagman alleged that the 1989 Bonds were valid only for 1 year from the date of their issuance, as evidenced by receipts; that the bonds were never renewed and revived by payment of premiums; that on 5 November 1990, Country Bankers issued Warehouse Bond No. 03515 (1990 Bond) which was also valid for one year and that no Indemnity Agreement was executed for the purpose; and that the 1990 Bond supersedes, cancels, and renders no force and effect the 1989 Bonds. [11]

The bond principals, Santos and Ban Lee Lim, were not served with summons because they could no longer be found. [12] The case was eventually dismissed against them without prejudice. [13] The other co-signor, Reguine, was declared in default for failure to file her answer. [14]

On 21 September 1998, the trial court rendered judgment declaring Reguine and Lagman jointly and severally liable to pay Country Bankers the amount of P2,400,499.87. [15] The dispositive portion of the RTC Decision [16] reads:

> WHEREFORE, premises considered, judgment is hereby rendered, ordering defendants Rhomesita [sic] Reguine and Antonio Lagman, jointly and severally liable to pay plaintiff, Country Bankers Assurance Corporation, the amount of P2,400,499.87, with 12% interest from the date the complaint was filed until fully satisfied plus 20% of the amount due plaintiff as and for attorney's fees and to pay the costs.
>
> As the Court did not acquire jurisdiction over the persons of defendants Nelson Santos and Ban Lee Lim Santos, let the case against them be DISMISSED. Defendant Antonio Lagman's counterclaim is likewise DISMISSED, for lack of merit. [17]

In holding Lagman and Reguine solidarily liable to Country Bankers, the trial court relied on the express terms of the Indemnity Agreement that they jointly and severally bound themselves to indemnify and make good to Country Bankers any liability which the latter may incur on account of or arising from the execution of the bonds. [18]

The trial court rationalized that the bonds remain in force unless cancelled by the Administrator of the NFA and cannot be unilaterally cancelled by Lagman. The trial court emphasized that for the failure of Lagman to comply with his obligation under the Indemnity Agreements, he is likewise liable for damages as a consequence of the breach.

Lagman filed an appeal to the Court of Appeals, docketed as CA G.R. CV No. 61797. He insisted that the lifetime of the 1989 Bonds, as well as the corresponding Indemnity Agreements was only 12 months. According to Lagman, the 1990 Bond was not pleaded in the complaint because it was not covered by an Indemnity Agreement and it superseded the two prior bonds. [19]

On 21 June 2004, the Court of Appeals rendered the assailed Decision reversing and setting aside the Decision of the RTC and ordering the dismissal of the complaint filed against Lagman. [20]

The appellate court held that the 1990 Bond superseded the 1989 Bonds. The appellate court observed that the 1990 Bond covers 33.3% of the market value of the *palay*, thereby manifesting the intention of the parties to make the latter bond more comprehensive. Lagman was also exonerated by the appellate court from liability because he was not a signatory to the alleged Indemnity Agreement of 5 November 1990 covering the 1990 Bond. The appellate court rejected the argument of Country Bankers that the 1989 bonds were continuing, finding, as reason therefor, that the receipts issued for the bonds indicate that they were effective for only one-year.

Country Bankers sought reconsideration which was denied in a Resolution dated 24 September 2004. [21]

Expectedly, Country Bankers filed the instant petition attributing two (2) errors to the Court of Appeals, to wit:

A.

> THE HONORABLE COURT OF APPEALS seriously erred in disregarding the express provisions of Section 177 of the insurance code when it held that the subject surety bonds were superseded by a subsequent bond notwithstanding the non-cancellation thereof by the bond obligee.

B.

> The honorable court of appeals seriously erred in holding that receipts for the payment of premiums prevail over the express provision of the surety bond that fixes the term thereof.[22]

Country Bankers maintains that by the express terms of the 1989 Bonds, they shall remain in full force until cancelled by the Administrator of the NFA. As continuing bonds, Country Bankers avers that Section 177 of the Insurance Code applies, in that the bond may only be cancelled by the obligee, by the Insurance Commissioner or by a competent court.

Country Bankers questions the existence of a third bond, the 1990 Bond, which allegedly cancelled the 1989 Bonds on the following grounds: First, Lagman failed to produce the original of the 1990 Bond and no basis has been laid for the presentation of secondary evidence; Second, the issuance of the 1990 Bond was not approved and processed by Country Bankers; Third, the NFA as bond obligee was not in possession of the 1990 Bond. Country Bankers stresses that the cancellation of the 1989 Bonds requires the participation of the bond obligee. *Ergo*, the bonds remain subsisting until cancelled by the bond obligee. Country Bankers further assert that Lagman also failed to prove that the NFA accepted the 1990 Bond in replacement of the 1989 Bonds.

Country Bankers notes that the receipts issued for the 1989 Bonds are mere evidence of premium payments and should not be relied on to determine the period of effectivity of the bonds. Country Bankers explains that the receipts only represent the transactions between the bond principal and the surety, and does not involve the NFA as bond obligee.

Country Bankers calls this Court's attention to the incontestability clause contained in the Indemnity Agreements which prohibits Lagman from questioning his liability therein.

In his Comment, Lagman raises the issue of novation by asserting that the 1989 Bonds were superseded by the 1990 Bond, which did not include Lagman as party. Therefore, Lagman argues, Country Bankers has no cause of action against him. Lagman also reiterates that because of novation, the 1989 bonds are neither perpetual nor continuing.

Lagman anchors his defense on two (2) arguments: 1) the 1989 Bonds have expired and 2) the 1990 Bond novates the 1989 Bonds.

The Court of Appeals held that the 1989 bonds were effective only for one (1) year, as evidenced by the receipts on the payment of premiums.

We do not agree.

The official receipts in question serve as proof of payment of the premium for one year on each surety bond. It does not, however, automatically mean that the surety bond is effective for only one (1) year. In fact, the effectivity of the bond is not wholly dependent on the payment of premium. Section 177 of the Insurance Code expresses:

> Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, **except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety**: *Provided*, That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond: *Provided, however,* That if the non-acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected. (Emphasis supplied)

The 1989 Bonds have identical provisions and they state in very clear terms the effectivity of these bonds, *viz*:

> NOW, THEREFORE, if the above-bounded Principal shall well and truly deliver to the depositors PALAY received by him for STORAGE at any time that demand therefore is made, or shall pay the market value therefore in case he is unable to return the same, then this obligation shall be null and void; otherwise it shall remain in full force and effect and may be enforced in the manner provided by said Act No. 3893 as amended by Republic Act No. 247 and P.D. No. 4. **This bond shall remain in force until cancelled by the Administrator of National Food Authority**. [23]

This provision in the bonds is but in compliance with the second paragraph of Section 177 of the Insurance Code, which specifies that a continuing bond, as in this case where there is no fixed expiration date, may be cancelled only by the obligee, which is the NFA, by the Insurance Commissioner, and by the court. Thus:

> In case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

By law and by the specific contract involved in this case, the effectivity of the bond required for the obtention of a license to engage in the business of receiving rice for storage is determined not alone by the payment of premiums but principally by the Administrator of the NFA. From beginning to end, the Administrator's brief is the enabling or disabling document.

The clear import of these provisions is that the surety bonds in question cannot be unilaterally cancelled by Lagman. The same conclusion was reached by the trial court and we quote:

> As there appears no record of cancellation of the Warehouse Bonds No. 03304 and No. 02355 either by the administrator of the NFA or by the Insurance Commissioner or by the Court, the Warehouse Bonds are valid and binding and cannot be unilaterally cancelled by defendant Lagman as general agent of the plaintiff. [24]

While the trial court did not directly rule on the existence and validity of the 1990 Bond, it upheld the 1989 Bonds as valid and binding, which could not be unilaterally cancelled by Lagman. The Court of Appeals, on the other hand, acknowledged the 1990 Bond as having cancelled the two previous bonds by novation. Both courts however failed to discuss their basis for rejecting or admitting the 1990 Bond, which, as we indicated, is bone to pick in this case.

Lagman's insistence on novation depends on the validity, nay, existence of the allegedly novating 1990 Bond. Country Bankers understandably impugns both. We see the point. Lagman presented a mere photocopy of the 1990 Bond. We rule as inadmissible such copy.