Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-27800. May 16, 1978]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE, *plaintiff-appellee, vs.* **ARSENIO OLMOS and ASSOCIATED INSURANCE & SURETY CO., INC.,** *defendants*, **ASSOCIATED INSURANCE & SURETY CO., INC.,** *defendant-appellant.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SURETYSHIP; SURETY BOND; SURETIES LIABLE AS PER AGREEMENT.** — Where the creditor grants the principal debtor an extension of time to pay his indebtedness in installments with the proviso that default of the principal debtor on one installment would render the sureties liable for the unpaid balance, and the principal debtor subsequently defaults, the surety shall be immediately liable not only for the installment due but for the balance of the whole amount due and still unpaid.

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATE OFFICERS; RIGHTS AND DUTIES; GENERAL MANAGER NEEDS NO SPECIAL AUTHORITY TO ENFORCE A BOARD RESOLUTION.** — The refusal by the General Manager of the Sweepstakes Office to accept payment by the surety to cover the installment of the principal debtor did not need the authority of the Board of Directors as he was merely enforcing a resolution of the Board.

APPEARANCES OF COUNSEL

Felixberto V. Castillo for appellant.
Sofronio Calusin for appellee.
Reynaldo D. Pacheco for defendant Arsenio Olmos.

D E C I S I O N

FERNANDEZ, *J.*:

In Civil Case No. 32592 entitled "*Philippine Charity Sweepstakes Office, plaintiff, versus Arsenio Olmos and*

Supreme Court E-Library

Associated Insurance & Surety Co., Inc., defendants," the Court of First Instance of Manila, Branch XX, rendered its decision, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered, as follows:

(1) In Civil Case No. 32592, ordering the defendants, jointly and severally, to pay plaintiff —

(a) under the first cause of action, the sum of ₱14,970.20, with interest thereon at the legal rate from August 5, 1955, until fully paid;

(b) under the second cause of action, the sum of ₱4,969.10, with interest thereon at the legal rate from August 5, 1955, until fully paid;

(c) under the third cause of action, the sum of ₱4,969.10, with interest thereon at the legal rate from August 5, 1955, until fully paid;

(d) under the fourth cause of action, the sum of ₱14,913.55, with interest thereon at the legal rate from October 20, 1955, until fully paid;

(e) under the fifth cause of action, the sum of ₱800.00 for attorney's fees and other expenses of litigations; and

(f) the costs of this suit.

(2) Relative to the Cross-Claim and Third-Party Complaint of cross-claimant and third-party plaintiff Associated Insurance & Surety Co. Inc., ordering cross-defendant Arsenio Olmos and third-party defendant Asuncion B. Tiongson to pay, jointly and severally, the Associated Insurance & Surety Co. Inc., the total amount of ₱39,839.95 due plaintiff, with the corresponding interest that may be due to said plaintiff; the sum equivalent to five per cent (5%) of the amount of ₱39,839.95, for attorney's fees; and the costs.

(3) Dismissing the Cross-Claim against cross-defendant Associated Insurance & Surety Co., Inc. of defendant Arsenio Olmos, contained in his Answer to plaintiff's Complaint.

x x x x x x x x x

Supreme Court E-Library

SO ORDERED.

Manila Philippines, March 5, 1962.

s/t/ LUIS B. REYES
Judge"[1]

The defendant, Associated Insurance & Surety Co., Inc., appealed to the Court of Appeals where the case was docketed as CA-G. R. No. 30995-R.

The appellant assigns the following errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT THE TENDER OF PAYMENT MADE BY THE APPELLANT THROUGH ITS LETTER EXH. '3-ASSOCIATED' ON SEPTEMBER 7, 1956, NOT IN COMPLIANCE WITH RESOLUTION NO. 39 OF THE BOARD OF DIRECTORS OF PLAINTIFF-APPELLEE.

II

THE LOWER COURT ERRED IN HOLDING THAT THE GENERAL MANAGER OF PLAINTIFF-APPELLEE HAD THE AUTHORITY TO REFUSE PAYMENT TENDERED BY THE APPELLANT.

III

THE LOWER COURT ERRED IN RENDERING JUDGMENT AGAINST THE APPELLANT."[2]

In a resolution promulgated on May 26, 1967, the Court of Appeals elevated the case to the Supreme Court "Considering that the findings of fact made by the lower court are not controverted by the defendant and considering further that the lone issue raised by defendant in its brief is one that calls for a legal interpretation of the terms and conditions of Resolution No. 39 which was unanimously passed by the Board of Directors of plaintiff on February 9, 1956, *i.e.*, whether or not the general

---

[1] Record on Appeal pp. 154-157. *Rollo*, p. 14.

[2] Brief for the Associated Insurance & Surety Co., Inc., pp. 1-2. *Rollo*, p. 37.

Supreme Court E-Library

manager of plaintiff was justified in refusing to accept the tender of payment made by defendant on September 7, 1956 x x x."[3]

According to the appellant "The facts were those stated in the decision of the lower court. There was no dispute, therefore, as to the facts found by the lower court."[4]

The facts, as found by the trial court, are:

"The bases of the Complaint in Civil Case No. 32592 are: (1) AISCO BOND NO. RU-2928, for the amount of ₱15,000.00 (Exh. 'A'); (2) AISCO BOND NO. RU-2929, for the amount of ₱5,000.00 (Exhibit 'B'); (3) AISCO BOND NO. RU-2951, for the amount of ₱5,000.00 (Exhibit 'C'); and (4) AISCO BOND NO. RU-4053, for the amount of ₱15,000.00 (Exhibit 'D'). The genuineness and due execution of the four bonds are not denied under oath by the defendants in their Answers.

The common provisions of the four bonds are, as follows:

'We ARSENIO OLMOS, x x x, as principal, and the ASSOCIATED INSURANCE & SURETY CO., INC., x x x, as surety, are held jointly and severally and firmly bound unto the PHILIPPINE CHARITY SWEEPSTAKES OFFICE, x x x, as CREDITOR, in the penal sum of _____, Philippine Currency, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally and firmly by these presents:

'WHEREAS, the above bounden PRINCIPAL desires to purchase on credit Philippine Charity Sweepstakes tickets not exceeding in value of the amount of this bond, for the purposes of reselling the same as PROVINCIAL DISTRIBUTOR of the Philippine Charity Sweepstakes Office, with the condition that all tickets issued to said PRINCIPAL cannot be returned and shall be considered sold, and that an accounting therefor and payment thereof shall be made not later than ten (10) days after the corresponding draw, unless sooner demanded by the PHILIPPINE CHARITY SWEEPSTAKES OFFICE and;

---

[3] *Rollo*, pp. 55-67.

[4] Brief for the Associated Insurance & Surety Co., Inc., p. 1, *Rollo*, p. 37.

Supreme Court E-Library

'WHEREAS, the PHILIPPINE CHARITY SWEEPSTAKES OFFICE requires the PRINCIPAL to give a good and sufficient bond in the amount above-determined to secure the full and complete payment of his accounts and the faithful performance of the terms and conditions provided for in the contract of said PRINCIPAL with the same;

NOW, THEREFORE, the SURETY, jointly and severally with the PRINCIPAL, agrees and warrants to the CREDITORS the prompt payment of any and all outstanding and unpaid accounts and obligations of the PRINCIPAL as and when they become due; and in case of default of the said PRINCIPAL in the payment of his accounts and obligations or in case he should fail to respond promptly to any lawful demand made by the CREDITORS, the SURETY shall pay to the CREDITOR, its heirs, successors, and assigns, all outstanding accounts and obligations of the PRINCIPAL whether due or not due, and guarantees to indemnify the CREDITOR and keep it indemnified and hold and save it harmless, charges and expenses of whatever kind and nature which the same shall, or may, at any time sustain or incur in consequence of any delinquency or failure of the PRINCIPAL to pay his accounts and obligations and to fulfill and of the terms and conditions stipulated in his contract with the CREDITOR, and, furthermore, the SURETY expressly accepts that its liability on this bond is solidary and direct and exigible immediately upon default of the PRINCIPAL, and shall not be contingent upon the pursuit by the CREDITOR, its heirs, administrators, and assigns, of whatever, remedies it or they may have against the PRINCIPAL, Provided, That if Mr. ARSENIO OLMOS, as PRINCIPAL, shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions stipulated in his contract with the PHILIPPINE CHARITY SWEEPSTAKES OFFICE, then this obligation under this bond shall be null and void; otherwise this bond shall remain in full force and effect and whatever amounts the PRINCIPAL owes the PHILIPPINE CHARITY SWEEPSTAKES OFFICE, shall be paid by the ASSOCIATED INSURANCE & SURETY CO., INC., plus interest at the legal rate from the time of default.

"This undertaking is intended to be complete and perfect surety to the extent of the amount of this bond for any indebtedness or liability of the PRINCIPAL to the CREDITOR, Provided, that acceptance by the PHILIPPINE CHARITY SWEEPSTAKES OFFICE or payment made by the PRINCIPAL on his accounts after default shall not

Supreme Court E-Library

change, alter or amend the joint and solidary liability of the PRINCIPAL and the SURETY and shall not release the SURETY'S obligations under this bond. Any extension of the period of time which may be granted by the PHILIPPINE CHARITY SWEEPSTAKES OFFICE to the PRINCIPAL should be considered as hereby given, and any modifications of the contract with the PRINCIPAL shall be considered as hereby authorized, with the express consent of the SURETY.

x x x x x x x x x

In his Answer with Cross-Claim, defendant, Arsenio Olmos admits certain allegations of the Complaint, under the First Cause of Action, among which are as follows:

'4. That on June 21, 1955, Arsenio Olmos, as Principal, and defendant Associated Insurance & Surety Co., Inc., as surety, executed AISCO Bond No. RU-2928 in the penal sum of ₱15,000.00 whereby they bound themselves, jointly and severally, to indemnify plaintiff for any damage, losses, charges and expenses of whatever kind and nature up to the said sum of ₱15,000.00 which plaintiff may incur by reason of the failure on the part of the said principal to pay his accounts and obligations and to fulfill any of the terms and conditions of his contract as distributor of sweepstakes tickets of plaintiff, x x x.

'5. That on June 25, 1955, defendant Arsenio Olmos obtained on credit from plaintiff 476 booklets of sweepstakes tickets for the July 17, 1955 draw with a total value of ₱14,970.20;

'6. That one of the terms and conditions of the said bond Annex 'A', is that all tickets obtained by credit by defendant Arsenio Olmos shall be considered sold and can not be returned and that he would pay and render an accounting of the same to plaintiff not later than ten (10) days after the corresponding draw unless sooner demanded by plaintiff.'

In the same Answer of said defendant, he admits certain allegations of the Complaint, under the Second Cause of Action, among which are as follows:

'10. That on June 25, 1955, defendant Arsenio Olmos obtained on credit sweepstakes tickets from plaintiff for the July 17, 1955 draw with a total value of ₱4,969.10;

Supreme Court E-Library

'1. That one of the terms and conditions of the said bond, Annex 'B', is that all tickets obtained on credit by defendant Arsenio Olmos shall be considered sold and can not be returned and that he would pay and render an accounting of the same to the plaintiff not later than ten (10) days after the corresponding draw unless sooner demanded by plaintiff.'

He also admits certain allegations of the complaint, under the Third Cause of Action, among which are as follows:

'15. That on June 29, 1955, defendant Arsenio Olmos obtained on credit from plaintiff, sweepstakes tickets for the July 17, 1955 draw with a total value of ₱4,969.10;

'16. That one of the terms and conditions of the said bond, Annex 'C', is that all tickets obtained on credit by defendant Arsenio Olmos shall be considered sold and cannot be returned and that he would pay and render an accounting of the same to the plaintiff not later than ten (10) days after the corresponding draw unless sooner demanded by plaintiff;

He also admits certain allegations of the Complaint, under the Fourth Cause of Action, among which are as follows:

'20. That on August 17, 23, 24 & 27, 1955, defendant Arsenio Olmos obtained on credit, sweepstakes tickets from plaintiff for the September 18, 1955 draw, with a total value of ₱14,994.00. However, having been given a credit balance from the June 26, 1955 draw in the sum of ₱62.45 the total value of said sweepstakes tickets was reduced to ₱14,931.55;

'21. That one of the terms and conditions of the said bond Annex 'D', is that all tickets obtained on credit by defendant Arsenio Olmos shall be considered sold and cannot be returned and that he would pay and render an accounting of the same to the plaintiff not later than ten (10) days after the corresponding draw unless sooner demanded by plaintiff.'

One of the special affirmative defenses of defendant Arsenio Olmos is that the contract between him and the plaintiff has been novated by Board Resolution No. 39, passed on February 9, 1956, by the Board of Directors of plaintiff corporation.

Resolution No. 39 of the Board of Directors of plaintiff corporation reads as follows:

Supreme Court E-Library

'Resolution No. 39 Passed on February 9, 1956.

'The Board was informed that the Plaridel Surety and Insurance Company, Inc. and the Associated and Surety Co. Inc., in their letters dated February 8, 1956 and February 7, 1956, respectively, indicated their conformity to the proposal of Mr. Arsenio Olmos to pay his ticket accounts which are guaranteed by bonds issued by said companies in installments at graduated rates as specified in his letter dated January 31, 1956. Member Millar stated that in most cases filed in Court against bonding companies and their principals for the collection of ticket accounts due to the failure of the principals to pay and refusal of the Sureties to make good their guaranty in accordance with the terms of their bonds, the Office encountered unavoidable delay before the cases are finally disposed of and determined by the Court; and that the proposal to allow Mr. Olmos to pay within a shorter period of time may afterall necessitate the collection through Court litigation. So that, if the proposal of Mr. Olmos would be granted, he urged that it be granted subject to the condition that if he fails to pay one installment as it falls due in accordance with his aforementioned letter of January 31, 1956, the Philippine Charity Sweepstakes Office can proceed immediately to collect the balance of the whole amount due and still unpaid from his Sureties.

'On motion duly seconded, the Board resolved to grant the request of Mr. Olmos to pay his accounts in the total amount of ₱49,825.45 plus interest at the legal rate from the date of default, at graduated rates per month as follows:

'(1) ₱20.00 a month for the first six months beginning three months after January 31, 1956 or May, 1956;

'(2) ₱500.00 a month for the next six months beginning November, 1956;

'(3) ₱1,000.00 a month for the next six months beginning May, 1957; and

'(4) ₱2,000.00 a month beginning November 1957, until the balance is fully paid.

'Provided, however, that should Mr. Olmos fail to pay any of the installments specified above on the dates they respectively

Supreme Court E-Library

fall due, the Sweepstakes Office shall take immediate necessary steps for the collection of the remaining balance still unpaid from the corresponding Surety companies. Carried unanimously.'" (Exhibit '1-Asso.')

Plaintiff presented documentary evidence to prove the pertinent allegations of its Complaint against defendant Associated Insurance & Surety Co., Inc., which consists of sales invoices (Exhibits 'A-1' to 'A-5'), to prove the fact of delivery of sweepstakes tickets to defendant Arsenio Olmos sold to him on credit under AISCO Bond No. RU-2928 (Exhibit 'A'); sales invoice (Exhibit 'B-1), showing the quantity of sweepstakes tickets obtained by defendant Arsenio Olmos on credit under AISCO Bond No. RU-2929 (Exhibit 'B'); sales invoices (Exhibits 'C-1' to 'C-2') showing the quantity of sweepstakes tickets obtained on credit by defendant Arsenio Olmos under AISCO Bond No. RU-2951 (Exhibit 'C'); sales invoices (Exhibits 'D-1' to 'D-11'), showing the quantity of sweepstakes tickets obtained on credit by defendant Arsenio Olmos under AISCO Bond No. RU-4053 (Exhibit 'D'); power of attorney executed by defendant Arsenio Olmos in favor of his son, Antonio Olmos (Exhibit 'E'), showing authority of Antonio Olmos to receive the sweepstakes tickets for his principal, which he obtained from plaintiff corporation; the statement of account, dated December 3, 1956 (Exhibit 'G'), showing the account of defendant Arsenio Olmos in relation to the bonds executed by defendant Associated Insurance and Surety Co., Inc.; letter of demand (Exhibit 'H'); and the stamp (Exhibit 'H-1'), showing receipt of said letter by the legal counsel of defendant Associated Insurance & Surety Co., Inc.

Defendant Arsenio Olmos did not present evidence to substantiate the allegations of his Answer with Cross-Claim. However, the principal defense of defendant Arsenio Olmos, which is alleged in his Answer, is adopted by defendant Associated Insurance & Surety Co., Inc. in its Answer.

In its Answer with Counterclaim and Third-Party Complaint, defendant Associated Insurance & Surety Co., Inc. alleges, as regards the first, second, third and fourth causes of action, that the plaintiff granted extension to defendant Arsenio Olmos and allowed him to pay his accounts on installments at graduated rates per month, as stated in the second paragraph of Resolution No. 39; that, by way of separate, special and affirmative defenses, (1) as first defense, the Complaint states no cause of action; (2) as second defense, plaintiff having granted extensions and renewals in the payments of the

Supreme Court E-Library

accounts of defendant Arsenio Olmos, the surety bonds posted by it are extinguished and it is relieved from liability; (3) as third defense, it was not in default in the payment of the installment of account of defendant Arsenio Olmos in accordance with the terms and conditions of Board Resolution No. 39 of plaintiff corporation; that for the first time, it was notified by the General Manager of plaintiff, by means of his letter of September 6, 1956, that defendant Arsenio Olmos had not paid his August, 1956 installment in the amount of ₱200; that upon receipt of said letter, it tendered payment on September 7, 1956, in the sum of ₱200 for August, 1956, installment of the accounts of defendant Arsenio Olmos; that the General Manager of plaintiff, in his letter of September 22, 1956, rejected the check for ₱200; that the tendered payment of the said sum of September 7, 1956, was in compliance with the Board Resolution No. 39; and that whatever is the balance of the accounts defendant Arsenio Olmos was not due, payable and demandable and, therefore, the action is premature; and (4) as fourth defense, plaintiff being an entity created by law can only act through its Board of Directors; that the General Manager of plaintiff has no power or authority to reject the payment of ₱200 to cover the installment for August, 1956, of the accounts of defendant Arsenio Olmos tendered by defendant surety company on September 7, 1956; and that only the Board of Directors of plaintiff can reject the tendered payment made by defendant surety company.

The evidence of defendant Associated Insurance & Surety Co., Inc. consists of its letter, dated September 7, 1956 (Exhibit '3-Asso.'), sending therewith S.B.T.C. Check No. 513348-B (Exhibit '3-Asso.'), for ₱200.00, to cover the August installment on the account of defendant Arsenio Olmos; cash voucher for ₱200.00 in payment of installment due on account for the month of August, 1956 (Exhibit 3-Asso.'); Check No. 513485-B, dated October 1, 1956, for ₱200.00, payable to plaintiff corporation (Exhibit '4-Asso.'); cash voucher for ₱200.00 in payment of installment due for the month of September, 1956 (Exhibit '4-Asso.'); Check No. 513514-B, dated October 5, 1956, for ₱200.00 in favor of plaintiff corporation (Exhibit '5-Asso.'); cash voucher for ₱200.00 for partial refund of deposit payable — payment of October, 1956, installment (Exhibit '5-Asso.'); Check No. 536878, dated November 6, 1956, for ₱200.00 in favor of plaintiff corporation (Exhibit '6-Asso.'); cash voucher for ₱200.00 in partial refund of deposit payable — payment of November installment (Exhibit '6-A-Asso.'); and the letter of the General Manager of plaintiff corporation to defendant Associated Insurance & Surety Co., Inc., dated December 5, 1956 (Exhibit '7-Asso.'), stating therein that the remittance of

Supreme Court E-Library

₱600.00, which was being returned, would be accepted by plaintiff if the ₱10,000.00 be remitted or paid to it as required in the resolution of the Board of Directors of October 5, 1956."[5]

This appeal has no merit.

The tender of payment by the defendant-appellant, Associated Insurance and Surety Co., Inc., of the installments not paid on the date when they fell due is not a valid defense. Under Resolution No. 39 of the Board of Directors of the plaintiff-appellee, Philippine Charity Sweepstakes Office, once the defendant Arsenio Olmos has defaulted in the payment of a single installment, the balance of the whole amount due and still unpaid may be recovered from the appellant sureties. Said Resolution No. 39 specifically provides that should defendant Arsenio Olmos fail to pay any of the installments on the dates they respectively fell due, the plaintiff-appellee shall have the right to take immediate and necessary steps for the collection from the sureties of Arsenio Olmos the balance of the whole amount due and still unpaid. It was not necessary that the appellant, Associated Insurance and Surety Co., Inc., be notified of the default of the defendant Arsenio Olmos in the payment of the installments.

The refusal of the General Manager of the plaintiff-appellee to accept the payment of ₱200.00 to cover the installment of August 1956 of the accounts of Arsenio Olmos did not need the authority of the Board of Directors. Said General Manager was merely enforcing Resolution No. 39.

The lower court did not err in rendering judgment against the appellant.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the defendant-appellant, Associated Insurance and Surety Co., Inc..

SO ORDERED.

Teehankee (Chairman), Makasiar, Santos, and *Guerrero, JJ.*, concur.

---

[5] Record on Appeal, pp. 124-139. *Rollo*, p. 14.