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SECOND DIVISION

[G.R. Nos. L-21901 and L-21996. June 27, 1978]

REPARATIONS COMMISSION, *plaintiff-appellants, vs.* **UNIVERSAL DEEP-SEA FISHING CORPORATION and MANILA SURETY AND FIDELITY CO., INC.,** *defendants-appellants.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT OF PAYMENT; RULES ON APPLICATION OF PAYMENT; ARTICLES 1252 AND 1254 OF THE CIVIL CODE DO NOT APPLY TO A PERSON WHOSE OBLIGATION AS A MERE SURETY IS BOTH CONTINGENT AND SINGULAR.**— The rules contained in Articles 1252 to 1254 of the Civil Code apply to a person owing several debts of the same kind to a single creditor. They cannot be made applicable to a person whose obligation as a mere surety is both contingent and singular.

2. **ID.; CONTRACTS; A PERSON WHO SIGNED INDEMNITY AGREEMENTS IN HIS INDIVIDUAL CAPACITY IS PERSONALLY LIABLE: CASE AT BAR.**— Pablo S. Sarmiento appears to have signed the indemnity agreement twice — the first, in this capacity as acting general manager of UNIVERSAL, and the second, in his individual capacity.

D E C I S I O N

CONCEPCION, JR., *J.*:

Appeal of the defendant Universal Deep-Sea Fishing Corporation, defendant and third-party plaintiff Manila Surety and Fidelity Co., Inc., and third-party defendant Pablo Sarmiento from the decision of the Court of First Instance of Manila, the dispositive portion of which reads as follows:

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"WHEREFORE, judgment is rendered as follows:

"1. The defendant Universal Deep-Sea Fishing Corporation is hereby sentenced to pay the plaintiff the sum of ₱100,242.04 in the first cause of action, ₱141,343.45 in the second cause of action and ₱54,500.00 in the third cause of action, all with interest at the rate of 6% per annum from August 10, 1962, the date of the filing of the complaint, until fully paid;

"2. Defendant Manila Surety & Fidelity Co., Inc., is hereby sentenced to pay the plaintiff jointly and severally with defendant Universal Deep-Sea Fishing Corporation, the sum of ₱53,643.00 in the first cause of action, ₱68.777.77 in the second cause of action and ₱54,508.00 in the third cause of action;

"3. Defendant Universal Deep-Sea Fishing Corporation and Pablo Sarmiento are hereby sentenced to pay, jointly and severally, the Manila Surety & Fidelity Co., Inc., the sum of ₱53.643.00 and ₱68,777.77 with interest thereon at the rate of 12% per annum from August 10, 1962 until fully paid plus ₱2,000.00 as attorney's fees;

"4. Defendant Universal Deep-Sea Fishing Corporation is hereby sentenced to pay the Manila Surety & Fidelity Co., Inc., the sum of ₱54,508.00 with interest thereon at the rate of 12% per annum from August 10, 1962, until fully paid;

"5. Defendant Universal Deep-Sea Fishing Corporation shall pay the costs."[1]

It is not disputed that the Universal Deep-Sea Fishing Corporation, hereinafter referred to as UNIVERSAL for short, was awarded six (6) trawl boats by the Reparations Commission as end-user of reparations goods. These fishing boats, christened the M/S UNIFISH 1, M/S UNIFISH 2, M/S UNIFISH 3, M/S UNIFISH 4, M/S UNIFISH 5, and M/S UNIFISH 6, were delivered to UNIVERSAL two at a time, f.o.b. Japanese port.

The M/S UNIFISH 1 and M/S UNIFISH 2, with an aggregate purchase price of ₱536,428.44, were delivered to UNIVERSAL on November 20, 1958, and the contract of Conditional Purchase and Sale of Reparations Goods, executed by and between the

[1] Record on Appeal, pp. 239-240.

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parties on February 12, 1960, provided among others, that "the first installment representing 10% of the amount or FIFTY THREE THOUSAND SIX HUNDRED FORTY TWO PESOS AND EIGHTY FOUR CENTAVOS (₱53,642.84) shall be paid within 24 months from the date of complete delivery thereof, the balance shall be paid in the manner herein stated as shown in the Schedule of Payments",[2] .x x x to wit:

"TOTAL F.O.B. COST — ₱536,428.44
AMOUNT OF 1st INSTALLMENT (10% of F.O.B. COST) — ₱53,642.84

DUE DATE OF 1st INSTALLMENT — May 8, 1961
TERM: Ten (10) EQUAL YEARLY INSTALLMENTS
RATE OF INTEREST: THREE PERCENT (3%) PER ANNUM.

No. of Installments	*Date Due*	*Amount*
1	May 8, 1962	₱56,597.20
2	May 8, 1963	₱56,597.20
3	May 8, 1964	₱56,597.20
4	May 8, 1965	₱56,597.20
5	May 8, 1966	₱66,597.20
6	May 8, 1967	₱56,597.20
7	May 8, 1968	₱56,597.20
8	May 8, 1969	₱56,597.20
9	May 8, 1970	₱56,597.20
10	May 8, 1971	₱56.597.20"

To guarantee the faithful compliance with the obligations under said contract, a performance bond in the amount of ₱53,643.00, with UNIVERSAL as principal and the Manila Surety & Fidelity Co., Inc., as surety, was executed in favor of the Reparations Commission.[3] A corresponding indemnity agreement was executed to indemnify the surety company for any damage, loss charges, *etc.*, which it may sustain or incur

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[2] Exhibit "A".

[3] Exhibit "B".

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as a consequence of having become a surety upon the performance bond.[4]

The M/S UNIFISH 3 and M/S UNIFISH 4, with a total purchase price of ₱687,777.76 were delivered to UNIVERSAL on April 20, 1959 and the Contract of Conditional Purchase and Sale of Reparations Goods, dated November 25, 1959,[5] provided that "the first installment representing 10% of the amount or SIXTY-EIGHT THOUSAND SEVEN HUNDRED SEVENTY-SEVEN PESOS AND SEVENTY-SEVEN CENTAVOS shall be paid within 24 months from the date of complete delivery thereof, the balance shall be paid in the manner herein stated as shown in the Schedule of Payments, x x x," to wit:

"TOTAL F.O.B. COSTS - ₱687,777.76
AMOUNT OF 1st INSTALLMENT (10%
of F.O.B. COST) — P68,777.77
DUE DATE OF 1st INSTALLMENT — July, 1961
TERM: Ten (10) EQUAL YEARLY INSTALLMENTS
RATE OF INTEREST: THREE PERCENT (3%)
PER ANNUM.

No. of Installments	*Date Due*	*Amount*
1	July, 1962	₱72,565.68
2	July, 1963	₱72,565.68
3	July, 1964	₱72,565.68
4	July, 1965	₱72,565.68
5	July, 1966	₱72,565.68
6	July, 1967	₱72,565.68
7	July, 1968	₱72,565.68
8	July, 1969	₱72,565.68
9	July, 1970	₱72,565.68
10	July, 1971	₱72,565.68"

A performance bond in the amount of ₱68,777.77, issued by the Manila Surety & Fidelity Co., Inc., was also submitted to

[4] Exhibit "16-B-Surety".

[5] Exhibit "C".

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guarantee the faithful compliance with the obligations set forth in the contract,[6] and indemnity agreement was executed in favor of the surety company in consideration of the said bond.[7]

The delivery of the M/S UNIFISH 5 and M/S UNIFISH 6 is covered by a contract for the Utilization of Reparations Goods (M/S "UNIFISH 5" and M/S "UNIFISH 6") executed by the parties on February 12, 1960,[8] and the Schedule of Payments attached thereto, provided, as follows:

"AMOUNT OF 1st INSTALLMENT (10% of F.O.B. COST) — ₱54,500.00
DUE DATE OF 1st INSTALLMENT — Oct. 17, 1961
TERM: TEN (10) EQUAL YEARLY INSTALLMENTS
RATE OF INTEREST: THREE PERCENT (3%) PER ANNUM.

No. of Installments	*Date Due*	*Amount*
1	Oct. 17, 1962	₱57,501.57
2	Oct. 17, 1963	₱57,501.57
3	Oct. 17, 1964	₱57,501.57
4	Oct. 17, 1965	₱57,501.57
5	Oct. 17, 1966	₱57,501.57
6	Oct. 17, 1967	₱57,501.57
7	Oct. 17, 1968	₱57,501.57
8	Oct. 17, 1969	₱57,501.57
9	Oct. 17, 1970	₱57,501.57
10	Oct. 17, 1971	₱57,501.57"[9]

A performance bond in the amount of ₱54,500.00 issued by the Manila Surety & Fidelity Co., Inc.,[10] was submitted, and an

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[6] Exhibit "D".

[7] Exhibit 14-Surety.

[8] Exhibit "E".

[9] Part. 5 of Affirm. Defense of UNIVERSAL, Record on Appeal, p. 152.

[10] Exhibit "F".

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indemnity agreement was executed by UNIVERSAL in favor of the surety company.[11]

On August 10, 1962, the Reparations Commission instituted the present action against UNIVERSAL and the surety company to recover various amounts of money due under these contracts. In answer, UNIVERSAL claimed that the amounts of money sought to be collected are not yet due and demandable. The surety company also contended that the action is premature, but set up a cross-claim against UNIVERSAL for reimbursement of whatever amount of money it may have to pay the plaintiff by reason of the complaint, including interest, and for the collection of accumulated and unpaid premiums on the bonds with interest thereon. With leave of courts first obtained, the surety company filed a third-party complaint against Pablo S. Sarmiento, one of the indemnitors in the indemnity agreements. The third-party defendant Pablo S. Sarmiento denied personal liability claiming that he signed the indemnity agreements in question in his capacity as acting general manager of UNIVERSAL. After appropriate proceedings and upon the preceding facts, the trial court rendered the judgment herein before stated. Hence, this appeal.

(1) The principal issue for resolution is whether or not the first installments under the three (3) contracts of conditional purchase and sale of reparations goods were already due and demandable when the complaint was filed. UNIVERSAL contends that there is an obscurity in the terms of the contracts in question which were caused by the plaintiff as to the amounts and due dates of the first installments which should have been first fixed before a creditor can demand its payment from the debtor. To be explicit, counsel points to the Schedule of Payment attached to, and forming a part of, the contract for the purchase and sale of the M/S UNIFISH 1 and M/S UNIFISH 2 which states that the amount of first installment is ₱53,642.84 and the due date of its payment is May 8, 1861. However, the amount of the first of the succeeding itemized installments is ₱56,597.20 and the due date is May 8, 1962. In the case of the M/S UNIFISH

[11] Exhibit 15-Surety.

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3 and M/S UNIFISH 4, the first installments are ₱68,777.77 and due in July, 1961 and ₱72,565.68 and due in July, 1962, respectively. In the contract for the purchase and sale of the M/S UNIFISH 5 and M/S UNIFISH 6, the amounts indicated as first installments are ₱54,500.00 and ₱57,501.57, and the due dates of payment are October 17, 1961 and October 17, 1962, respectively.

The terms of the contracts for the purchase and sale of the reparations vessels, however, are very clear and leave no doubt as to the intent of the contracting parties. Thus, in the contract concerning the M/S UNIFISH 1 and M/S UNIFISH 2, the parties expressly agreed that the first installment representing 10% of the purchase price or ₱53,642.84 shall be paid within 24 months from the date of complete delivery of the vessel or on May 8, 1961, and the balance to be paid in ten 10% equal yearly installments. The amount of ₱56,597.20 due on May 8, 1962, which is, also claimed to be a "first installment," is but the first of the ten (10) equal yearly installments of the balance of the purchase price. In the case of *Reparations Commission vs. Northern Lines, Inc., et al.*,[12] where the Schedule of Payments, likewise on RC-LEGAL DEPT FORM NO. 1, also allegedly indicated two (2) due dates for the payment of the first installment, the Court said:

"(a) The major premise in appellants' process of reasoning is that the first installments due on April 25, 1963, and May 26, 1963, are 'first installments, although they are not so designated in the schedule appended to each of the contracts between the parties. Appellants, moreover, assume that the 'first' installment is *included* in the 'ten (10) equal yearly installments' mentioned *subsequently* to said 'first' installment. In fact, however, only *one* installment is labelled as 'first' in each one of said schedules, and that is the installment due on 'April 25, 1962' — as regards M/S Don Salvador or Magsaysay — and that due on 'May 26, 1962' — as regards M/S Don Amando or Estancia. The schedules do *not* describe the 'ten (10) equal yearly installments' — *following* the one characterized therein as 'first' — meaning 'number,' not order or sequence, of installments — and the

[12] L-24835, July 31, 1970, 34 SCRA 203.

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numerals 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 written before each of said 'ten 110) equal yearly installments' *following* the 'first' to accrue after the due date of said 'first' installment. Just the same, the parties have not so described (as 'first') — in the schedules forming part of their contracts — the installments numbered '1' in the list contained in each. Moreover, considering that the words 'TERMS: Ten (10) EQUAL YEARLY INSTALLMENTS,' appear *after* the lines reading: 'AMOUNT OF 1st INSTALLMENT (10% OF F.O.B. COSTS) ₱174,761.42' and 'DUE DATE OF 1st INSTALLMENT April 25, 1962' (or May 26, 1962) and that, *subsequently* to said 'TERM: Ten (10) EQUAL YEARLY INSTALLMENTS,' there is a list of ten (10) equal yearly installments, it is clear that the latter do *not* include the one designated as 'first' installment.

x x x x x x x x x

"(b) The pertinent part of Section 12 of Rep. Act No. 1789, pursuant to which the vessels in question were sold to the Buyer, reads:

> 'x x x Capital goods x x x disposed of to private parties as provided for in subsection (a) of Section two hereof shall be sold on a cash or credit basis, under rules and regulations as may be determined by the Commission. Sales on a credit basis shall be payable in installments: *Provided*, That the first installment shall be paid within twenty-four months after complete delivery of the capital goods and the balance within a period not exceeding ten years, xxx plus the service provided for in section ten thereof; *Provided, further*, That the unpaid balance of the price thereof shall bear interest at the rate of not more than three percent per annum . x x x.'

"It should be noted that, pursuant to the schedules attached to the contracts with the Buyer, the 'complete delivery' of the vessels took place on April 25, and May 26, 1960, respectively, so that *the 24 months fixed by law for the payment of the 'first' installment expired on April 25, 1962 and May 26, 1962*, which are the very dates stated in the aforementioned schedules for the payment of the respective '1st' installments. What is more, in view of said legal provision, the Commission *had no authority* to agree that the 1st installment shall be paid on any later date, and the Buyer must have been aware of this fact. Hence, the parties could not have intended the first installments to become due on April 25, and May 26, *1963*. It is, likewise, obvious — particularly when considered in relation

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to the provision above quoted — that the 'ten (10) equal yearly installments,' mentioned in the schedules, refer to the '*balance*' of the price to be paid by the buyer, *after* deducting the 'first' installment, so that, altogether there would be 'eleven' installments, namely, the 'first', which would be the 10% of the F.O.B. cost of the vessel — as agreed upon between the Governments of the Philippines and Japan — and 'ten (10) yearly installments,' representing the balance of the amount due to the Commission from the Buyer, including the interest thereon."

Viewing the contracts between the parties in the light of the foregoing exposition, the first installment on the M/S UNIFISH 1 and M/S UNIFISH 2 of the amount of ₱53,642.84 was due on May 8, 1961, while the first installments on the M/S UNIFISH 3 and M/S UNIFISH 4, and the M/S UNIFISH 5 and M/S UNIFISH 6 in the amounts of ₱68,777.77 and ₱54,500.00 were due on July 31, 1961 and October 17, 1961, respectively. Accordingly, the obligation of UNIVERSAL to pay the first installments on the purchase price of the six (6) reparations vessels was already due and demandable when the present action was commenced on August 10, 1962. Also due and demanded from UNIVERSAL were the first of the ten (10) equal yearly installments on the balance of the purchase price of the M/S UNIFISH 1 and M/S UNIFISH 2 in the amount of ₱56,597.20 and ₱72,565.68 on the M/S UNIFISH 3 and M/S UNIFISH 4. The first accrued on May 8, 1962, while the second fell due on July 31, 1962.

(2) The claim of the surety company to the effect that the trial court erred in not awarding it the amount of ₱7,251.42, as premiums on the performance bonds, is well taken. The payment of premiums on the bonds to the surety company had been expressly undertaken by UNIVERSAL in the indemnity agreements executed by it in favor of the surety company. The premium is the consideration for furnishing the bonds and the obligation to pay the same subsists for as long as the liability of the surety shall exist.[13] Hence, UNIVERSAL should pay the amount of ₱7,251.42 to the surety company.

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[13] *Arranz vs. Manila Surety & Fidelity Co.*, 101 Phil. 272.

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(3) The surety company also claims that the trial court erred in not applying the amount of ₱10,000.00, paid as down payment by UNIVERSAL, to the Reparations Commission, to the guaranteed indebtedness. According to the surety company, under Article 1254 of the Civil Code, where there is no imputation of payment made by either the debtor or creditor, the debt which is the most onerous to the debtor shall be deemed to have been satisfied, so that the amount of ₱10,000.00 paid by UNIVERSAL as down payment on the purchase of the M/S UNIFISH 1 and M/S UNIFISH 2 should be applied to the guaranteed portion of the debt, thus releasing part of the liability; hence, the obligation of the surety company shall be only ₱43,643.00, instead of ₱53,643.00.

The rules contained in Articles 1252 to 1254 of the Civil Code apply to a person owing several debts of the same kind to a single creditor. They cannot be made applicable to a person whose obligation as a mere surety is both contingent and singular,[14] which in this case is the full and faithful compliance with the terms of the contract of conditional purchase and sale of reparations goods. The obligation included the payment, not only of the first Installment in the amount of ₱53,643.00, but also of the ten (10) equal yearly installments of ₱56,597.20 per annum. The amount of ₱10,000.00 was, indeed, deducted from the amount of ₱53,643.00, but then the first of the ten (10) equal yearly installments had also accrued; hence, no error was committed in holding the surety company to the full extent of its undertaking.

(4) Finally, We find no merit in the claim of the third-party defendant Pablo S. Sarmiento that he is not personally liable having merely executed the indemnity agreements[15] in his capacity as acting general manager of UNIVERSAL. Pablo S. Sarmiento appears to have signed the indemnity agreement twice — the first, in this capacity as acting general manager of UNIVERSAL, and the second, in his individual capacity.

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[14] *Socony-Vacuum Corp. vs. Leon Miraflores*, 67 Phil. 304.

[15] Exh. 14-Surety and Exh. 16-Surety.

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The indemnity agreements in question state the following, among others:

"In consideration of the responsibility undertaken by the Company, for the original bond, and for any renewal extension or substitution thereof, the undersigned, jointly and severally, bind themselves in favor of the said COMPANY in the following terms:

xxx xxx xxx

"Dated at City of Manila, this _____ day of July 1969.

600 Cottage 3, Aguinaldo Compound, Echague, Manila		UNIVERSAL DEEP-SEA FISHING CORP.
	BY:	s/PABLO S. SARMIENTO t/PABLO S. SARMIENTO Signature
Address		s/PABLO S. SARMIENTO t/PABLO S. SARMIENTO Signature."

Besides, the "acknowledgment" stated that "Pablo S. Sarmiento for himself and on behalf of Universal Deep-Sea Fishing Corporation" personally appeared before the notary and acknowledged that the document is his own free and voluntary act and deed.

WHEREFORE, the judgment appealed from is hereby affirmed with the modification that the UNIVERSAL Deep-Sea Fishing Corporation is further ordered to pay the Manila Surety & Fidelity Co., Inc., the amount of ₱7,251.42 for the premiums and documentary stamps on the performance bonds. Appellants shall pay proportionate costs.

SO ORDERED.

Antonio, Aquino, Santos, and *Guerrero, JJ.*, concur.

Fernando (Chairman) and *Barredo, JJ.*, took no part.