

**MANILA SURETY & FIDELITY COMPANY, INC.,
PLAINTIFF-APPELLEE, VS. RODOLFO R. VELAYO,
DEFENDANT-APPELLANT.**

G.R. No. L-21069. October 26, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal from a judgment of the Court of First instance of Manila (Civil Case No.-49435) sentencing appellant Rodolfo Velayo to pay appellee Manila Surety & Fidelity Co., Inc. the sum of P2,565.00 with interest at 12-1/2% per annum from July 13, 1954; P120.93 as premiums with interest at the same rate from June 13, 1954; attorneys' fees in an amount equivalent to 15% of the total award, and the costs.

Hub of the controversy are the applicability and extinctive effect of Article 2115 of the Civil Code of the Philippines (1950).

The uncontested facts are that in 1953, Manila Surety & Fidelity Co., upon request of Rodolfo Velayo, executed a bond for P2,800.00 for the dissolution of a writ of attachment obtained by one Jovita Granados in a suit against Rodolfo Velayo in the Court of First Instance of Manila. Velayo undertook to pay the surety company an annual premium of P112.00; to indemnify the Company for any damage and loss of whatsoever kind and nature that it shall or may suffer, as well as reimburse the same for all money it should pay or become liable to pay under the bond including costs and attorneys fees.

As "collateral security and by way of pledge" Velayo also delivered four pieces of jewelry to the Surety Company "for the latter's further protection", with power to sell the same in case the surety paid or become obligated to pay any amount of money in connection with said bond, applying the proceeds to the payment of any amounts it paid or will be liable to pay, and turning the balance, if any, to the persons entitled thereto, after deducting legal expenses and costs (Rec. App. pp. 12-15).

Judgment having been rendered in favor of Jovita Granados and against Rodolfo Velayo, and execution having been returned unsatisfied, the surety company was forced to pay P2,800.00 that it later sought to recoup from Velayo; and upon the latter's failure to do so, the surety caused the pledged jewelry to be sold, realizing therefrom a net product of P235.00 only. Thereafter and upon Velayo's failure to pay the balance, the surety company brought suit in the Municipal Court. Velayo countered with a claim that the sale of the pledged jewelry extinguished any further liability on his part under Article 2115 of the 1950 Civil Code, which recites:

"ART. 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary."

The Municipal Court disallowed Velayo's claims and rendered judgment against him. Appealed to the Court of First Instance, the defense was once more overruled, and the case decided in the terms set down at the start of this opinion.

Thereupon, Velayo resorted to this Court on appeal.

The core of the appealed decision is the following portion thereof (Rec. Appeal pp. 71-72):

"It is thus crystal clear that the main agreement between the parties is the Indemnity Agreement and if the pieces of jewelry mentioned by the defendant were delivered to the plaintiff, it was merely as an added protection to the latter. There was no understanding that, should the same be sold at public auction and the value thereof should be short of the undertaking, the defendant would have no further liability to the plaintiff. On the contrary, the last portion of the said agreement specifies that in case the said collateral should diminish in value, the plaintiff may demand additional securities. This stipulation is incompatible with the ideal of pledge as a principal agreement. In this case, the status of the pledge is nothing more nor less than that of a mortgage given as a collateral for the principal obligation in which the creditor is entitled to a deficiency judgment for the balance should the collateral not command the price equal to the undertaking.

It appearing that the collateral given by the defendant in favor of the plaintiff to secure this obligation, has already been sold for only the amount of P235.00, the liability of the defendant should be limited to the difference between the amounts of P2,800.00 and P235.00 or P2,565.00."

We agree with the appellant that the above quoted reasoning of the appealed decision is unsound. The accessory character is of the essence of pledge and mortgage. As stated in Article 2085 of the 1950 Civil Code, an essential requisite of these contracts is that they be constituted to secure the fulfillment of a principal obligation, which in the present case is Velayo's undertaking to indemnify the surety company for any disbursements made on account of its attachment counterbond. Hence, the fact that the pledge is not the principal, agreement is of no significance nor is it an obstacle to the application of Article 2115 of the Civil Code.

The reviewed decision further assumes that the extinctive effect of the sale of the pledged chattels must be derived from stipulation. This is incorrect, because Article 2115, in its last portion, clearly establishes that the extinction of the principal obligation supervenes by operation of imperative law that the parties cannot override:

"If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary."

The provision is clear and unmistakable, and its effect can not be evaded. By electing to sell the articles pledged, instead of suing on the principal obligation, the creditor has waived any other remedy, and must abide by the results of the sale. No deficiency is recoverable.

It is well to note that the rule of Article 2115 is by no means unique. It is but an extension of the legal prescription contained in Article 1484(3) of the same Code, concerning the effect of a foreclosure of a chattel mortgage constituted to secure the price of the personal property sold in installments, and which originated in Act 4110 promulgated by the Philippine Legislature in 1933.

WHEREFORE, the decision under appeal is modified and the defendant absolved from the complaint, except as to his liability for the 1954 premium in the sum of P120.93, and interest at 12-1/2% per annum from June 13, 1954. In this respect the decision of the Court below is affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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