

DOMINGO BAUTISTA, PLAINTIFF AND APPELLANT, VS. JOSE M. BARREDO, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-20653. April 30, 1965*

Ponente: BAUTISTA ANGELO, J.

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In Civil Case No. 1636 of the Court of First Instance of Rizal, Domingo Bautista obtained a judgment against the Philippine Ready Mix Concrete Company, Inc. in the amount of P104,000.00 (should be P100,000.00) of which the company only paid the sum of P54,000.00 leaving a balance of P46,000.00. To effect payment of this balance writs of garnishment were served on different persons one of whom was Jose M. Barredo in his capacity as sublessee of an Osgood shovel crane belonging to the Philippine Ready Mix Concrete Company, Inc. ordering Barredo to pay to the Sheriff of Manila instead of said company all the rentals that may accrue under the lease in favor of the latter.

From May 6 to May 27, 1953, Barredo made several payments in the aggregate amount of P1,800.00 to Bautista in obedience to the writ of garnishment served upon him, refused to make any further payment on the strength of an agreement he had with Bautista that upon the Payment of said amount he would no longer molest him.

On February 10, 1954, in the same Case No. 1636, on Motion of Bautista, the court a quo issued an order declaring Barredo in contempt of court and ordering his arrest unless he pays either to Bautista or to the court the sum of P6,600.00 being the rentals that allegedly accrued when the writ of garnishment was served upon him. On February 19, 1954, Barredo appealed the order to the Court of Appeals and in order to stay its effect pending appeal, he filed a bond in the sum of P7,000.00 which was subscribed by the State Bonding and Insurance Company, Inc. The appeal was found to be meritorious and the Court of Appeals set aside the aforesaid order reserving to Bautista whatever action he may desire to take to enforce any indebtedness that may still be due him. And acting conformably to this reservation, Bautista commenced the present action before the same court on May 31, 1958 impleading Jose M. Barredo and the State Bonding and Insurance Company, Inc. based not only on the liability assumed by the former under the writ of garnishment served on him in Civil Case No. 1036, but on the supersedeas bond subscribed by the latter to stay the order of arrest issued against Barredo when the latter appealed from said order to the Court of Appeals.

After the parties had submitted a stipulation of facts on the strength of which they submitted the case for decision, the court a quo rendered judgment on February 18, 1960 dismissing the complaint against both defendants for lack of merit. Whereupon, plaintiff took the present appeal which was certified to us on the ground that the only questions involved are of law.

In dismissing the case against defendant Jose M. Barredo the court a quo took the view that he could not be impleaded on the basis of the judgment rendered in Civil Case No. 1630 for the reason that he was not a party therein upon the theory "that an action on the judgment cannot be maintained against one not a party or not bound by it." Thus, the court a quo said on this point.

"The procedure taken by the plaintiff in going after defendant Barredo on the judgment rendered in Civil Case No. 1636 is, in the opinion of the Court, not the proper one as defendant Barredo was never a party in the afore-mentioned case, and it is elementary that an action on the judgment cannot be maintained against one not a party or not bound by it."

While it is true that defendant Jose M. Barredo was not a party in Civil Case No. 1636 when it was instituted by appellant against the Philippine Ready Max Concrete Company, Inc., however, jurisdiction was acquired over him by the court and he became a virtual party to the case when, after final judgment was rendered in said case against the company, the sheriff served upon him a writ of garnishment in behalf of appellant. Thus, as held by this Court in the case of *Tayabas Land Company vs. Sharruf*, 41 Phil., 382, "the proceeding by garnishment is a species of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. By means of the citation, the stranger becomes a forced intervenor; and the court, having acquired jurisdiction over him by means of the citation, requires him to pay his debt, not to his former creditor, but to the new creditor, who is creditor in the main litigation." Moreover, Barredo was impleaded herein not on the basis of any liability assumed by him under the judgment rendered in said case but rather on the strength of the writ of garnishment served upon him because of his liability to a party whose indebtedness was then the subject of execution. There is, therefore, merit in the complaint filed against Barredo and, hence, the court a quo erred in dismissing it merely on a matter of procedure.

The situation is different with regard to defendant State Bonding and Insurance Company, Inc. which was absolved from liability by the court a quo. It should be recalled that when Barredo appealed the order for his arrest unless he pays the sum of P6,000.00 to the Court of Appeals he put up a bond to stay the order pending appeal which was subscribed by the State Bonding and Insurance Company, Inc. The liability of this company was expressed in the contract as follows:

"The condition of this obligation is such that if the appeal of Jose M. Barredo be decided against him and he abides by and performs, the judgment or order, then this bond shall be null and void; otherwise, it shall remain in full force and effect."

And in absolving the company, the court a quo made the following comment:

"The above cited provisions of the bond indubitably shows that defendant company's liability is predicated on the happening of two events: (1) that the appeal is decided against defendant Barredo and (2) that defendant Barredo does not abide by and perform the judgment or comply with the same. This means that even if the appeal were decided against Barredo and the latter complies with the judgment, the bonding company would still be free from liability. In the present case, the appeal was decided in favor of Barredo, thus it becomes indubitable that the principal condition of the contract that is an adverse judgment against Barredo will not happen and such being so therefore the liability of defendant had been extinguished."

We find no flaw in the foregoing finding since it appears that the liability of the bondsman is predicated upon the condition that the appeal of Barredo be decided against him and the decision was in his favor. Hence, by the very wording of the bond, because of the non-fulfillment of the condition, the same became null and void and without effect.

WHEREFORE, the decision appealed from insofar as the State Bonding and Insurance Company, Inc. is hereby affirmed. The decision insofar as defendant Jose M. Barredo is concerned is hereby reversed. The case is remanded to the court a quo with the directive that it decides the case with regard to Barredo on the merits. No pronouncement as to costs.

Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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