

**IRENEO MIRAFUENTES, ET AL., PLAINTIFFS AND APPELLEE, VS.
VICTORIO SABELLANO, CRISTINO G. ABASOLO AND TEOFILO M.
PEREYRA, DEFENDANTS AND APPELLANTS.**

G.R. No. L-5685. February 25, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

In civil case No. 817 of the Court of First Instance of Misamis Occidental, wherein Ireneo, Sebastian, Timoteo and Zacarias Mirafuentes were the plaintiffs, and Victorio Sabellano was the defendant, a decision was rendered declaring that the plaintiffs were "entitled to redeem the land in question by paying to the defendant the sum of P1,000 in genuine currency" and ordering the defendant, upon payment by the plaintiffs of the amount of P1,000, "to execute a deed of resale of the land in question to the plaintiffs without special pronouncement as to damages and be appointed, and that a writ of possession be issued in immediate execution of the decision, he filed a supersedeas bond for P6,000, with Teofilo Pereyra and Cristino G. Abasolo as sureties, the condition being that "if the said defendant Victorio Sabellano shall well and truly pay or cause to be paid any and all sum or sums which may be or become due by reason of the affirmance of the judgment herein-before mentioned, then this undertaking shall be and become of no further force nor effect; otherwise, the same shall continue in full force and effect and be subject to enforcement in the manner provided by law." In due time the Court of Appeals affirmed in toto the decision of the Court of First Instance of Misamis Occidental.

On September 2, 1949, the plaintiffs filed in the Court of First Instance of Misamis Occidental against Victorio Sabellano, Cristino G. Abasolo and Teofilo Pereyra a complaint for the recovery of damages in the sum of P6,000, for the use and occupation by the defendant Sabellano of the land litigated in civil case No. 817. After hearing, the court rendered a decision sentencing the defendants, jointly and severally; to pay to the plaintiffs the sum of P2,000, with legal interest from the date of the filing of the complaint, but without costs. The court ruled that the supersedeas bond filed by the defendants in civil case No. 817 is answerable for said damages. From this decision the defendants have appealed.

In our opinion, the appellants are not liable. Under section 2, Rule 39, of the Rules of Court, execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part. The bond here in question, undoubtedly executed and filed pursuant to this reglementary provision, was conditioned for the payment by the defendant Victorio Sabellano of any sum which may be due by reason of the affirmance of the decision; and this clearly meant that the measure of the liability was the appealed decision if it should be affirmed. Since the decision of the Court of First Instance in civil case No. 817, which was upheld by the Court of Appeals, did not award in favor of the plaintiffs any damages or costs, and since it is now admitted that said decision had already been executed, there remained nothing to be paid by the defendant Sabellano and therefore by this sureties, the defendants Abasolo and Pereyra. This result is in consonance with section 3 of the Rule 39 which provides that the supersedeas bond "may be executed on motion

before the trial court after the case is remanded to it by the appellate court," thereby assuming that liability under the bond would arise from the appealed judgment in the same case in which it was filed.

There is no merit in appellees' contention that the bond is not entirely judicial, but contractual. The wordings do not expressly make the defendants liable for damages, apart from the adjudication recited in the decision in civil case No. 817.

Wherefore, the appealed decision is reversed and the defendants absolved from the complaint, without costs. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.

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