

THE MUNICIPALITY OF LEMERY, PLAINTIFF AND APPELLEE, VS. ANDRES MENDOZA AND SIMEON BLAS, DEFENDANTS AND APPELLANTS.

G.R. No. 23871. December 07, 1925

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of Batangas by the municipality of Lemery for the purpose of recovering jointly and severally of the defendants, Andres Mendoza, as principal, and of Simeon Blas and Mariano Napa, as sureties, the sum of P22,999.99, plus a further penal sum of P4,599.99, with costs. Upon hearing the cause the trial judge gave judgment for the plaintiff in the amounts stated, with costs, and the defendants Mendoza and Blas appealed.

It appears that on September 1, 1920, the municipal council of Lemery, Batangas, adopted a resolution, No. 53, authorizing the letting of the privilege of fishing for bangus in the sea waters within the limits of the municipality for the period of two years, extending from January 1, 1921, to December 31, 1922, inclusive. As the resolution contemplated the letting of this privilege for a longer period than one year it was necessary to obtain the previous approval of the provincial board, in conformity with section 2319 in relation with section 2323 of the Administrative Code; and on October 1, 1920, said provincial board adopted its resolution, No. 740, of the following tenor:

"On motion by member Muñoz,

"The provincial board unanimously approved the resolution No. 53, current series, of the municipal council of Lemery, authorizing the sale on public auction of bangus fishery privilege, said privilege to take effect from January 1, to December 31, 1921, inclusive."

The circumstance that the resolution of the provincial board, in describing the contents of the lease, as embodied in resolution No. 53 of the municipal council of Lemery, used the date "1921," as the terminal, instead of "1922," seems to have passed unnoticed; and the municipal authorities of Lemery, considering resolution No. 53 as approved, proceeded to make public announcement, inviting the submission of bids for the lease of the fishery for the period of two years. When the bids were opened nine offers were found forthcoming. Of these eight were in amounts around P8,000 per year, while the other, the one submitted by Andres Mendoza, was in the amount of P22,999.99 per year. As this bid was by far the most advantageous to the municipality, it was of course accepted.

A formal contract was therefore executed by Zacarias Marasigan, as municipal president, and Andres Mendoza, by which the privilege of fishing for bangus in all the salt waters of the municipality was let to the said Mendoza for the period of two years beginning with January 1, 1921, and ending with December 31, 1922, for the sum of P22,999.99 for each year. This contract (Exhibit D) is dated November 11, 1920.

It appears that in a provincial circular No. 153, series of 1917, of the Executive Bureau, it is declared that in

letting the privilege of fishery the municipal council shall require the successful bidder to supply a bond in a sum double the amount of his liability under his contract, to be executed by two or more persons possessing real property assessed at not less than the amount stated in the bond. Accordingly on December 7, 1920, Mendoza undertook in writing to supply to the municipal president "a bond of P46,000 in favor of the municipality of Lemery" in conformity with the requirement of the above-mentioned circular; and on December 4, 1920, a document was executed by Simeon Blas and Mariano Napa, as bondsmen (Exhibit E). This document is of the following tenor:

"Whereas, Andres Mendoza, resident of the municipality of Lemery, Province of Batangas, Philippine Islands, has leased the privilege of fishing for bangus in the seas comprised in the jurisdictional limits of the municipality of Lemery, Batangas, by virtue of an auction held November 10, 1920, for the value of P23,000, Philippine currency, for the term of two years from the first day of January, 1921, to the 31st of December, 1922;

"Whereas, one of the conditions of the bid approved by the municipal council is (for the bidder) to give bond for double the amount for which said privilege was let, to answer for compliance with the terms of the bid;

"Whereas, said privilege has been awarded for the sum of P23,000, Philippine currency,

"Now, therefore, we, Simeon Blas, resident of the municipality of Malabon, Rizal, and Mariano Napa, resident of the municipality of Lemery, Batangas, and property owners, do hereby obligate ourselves jointly and severally for the payment, to the municipality of Lemery, Batangas, of the sum of P46,000, Philippine currency, in case Andres Mendoza, as grantee of the aforesaid privilege, shall fail to comply with the conditions of the bid, of which we are informed; and we agree moreover not to recede from this undertaking before the expiration of the period of the lease.

"We also state under oath that we are solvent to the said amount of P46,000, Philippine currency, over and above our debts and other obligations.

"In testimony whereof we hereunto set our hands in Malabon, Province of Rizal, this 4th day of December, 1920."

As might have been expected from the disparity between Mendoza's bid and those of his competitors, the privilege which was the subject of the lease was unprofitable to the lessee, and before the first year of the lease had expired he and his sureties were anxious to be rid of the contract. Mendoza apparently thought that he saw a way out in the circumstance that in the resolution No. 740 of the provincial board, approving resolution No. 53 of the municipal council of Lemery, the lease was described as ending December 31, 1921. Mendoza therefore communicated to the municipal council his desire to abandon the lease, on the ground that authority for making the lease for two years had been lacking. Simeon Blas, one of the sureties, also addressed a letter to the council informing it that he would no longer be bound by his contract of suretyship. The municipal council rejected these proposals and announced its intention to insist on the fulfilment of the contract for the full period of two years. But attention having been called to the fact that the period of one year was apparently prescribed in provincial resolution No. 740, the municipal president addressed a letter on the subject to the provincial board; and an examination of the record was made with the result that the provincial board came to the conclusion that the date 1921, had been written by clerical error in resolution No. 740 instead of the date 1922. A resolution was therefore adopted by the provincial board declaring that the date December 31, 1921, had been inserted in resolution No. 740 by clerical error, and in order to rectify this error the secretary was instructed to make a correction of resolution No. 740 by changing the date 1921 to 1922.

It should be stated that the terms of the lease were fully complied with by Mendoza for the year 1921, and the sum of P28,000 was paid by him in satisfaction of the lease for that year. The privilege, however, covered by the lease

was abandoned by the lessee for the year 1922, and it is for the stipulated rental of P22,999.99, with penalty and costs, that the present action was instituted.

In behalf of the defendant-appellants certain contentions are made which are common to the defense of both the principal and the sureties, but the sureties have one ground of defense with which the principal is not connected. We shall therefore first discuss the defenses common to all the appellants.

It is first suggested that the contract is not binding for the reason that the subject of the lease comprises all salt waters within the limits of the municipality; and attention is directed to the first paragraph of section 2321 of the Administrative Code where authority is given to the municipal council to grant the exclusive privilege of fishery "within any definite portion, or area, of the municipal waters." The contention of the appellants on this point is manifestly not well founded. Where the subject of the lease is described as comprising all of the salt waters pertaining to the municipality, this defines the extent of the lease with precision, and that is all that is necessary to make the lease valid so far as description is concerned. It was not intended by section 2321 to prohibit the municipal council from letting all waters suitable for fishing in its limits in a single lease.

In the second place it is insisted that the lease is invalid as to all excess over the period of one year for the reason that the provincial board approved the lease for one year only. We are unable to agree with this contention. We are of the opinion that by its resolution No. 740 the provincial board approved resolution No. 53 of the municipal council of Lemery, which provided for a two-year lease. It is true that in stating the tenor of the lease it is described "as taking effect from January 1, to December 31, 1921, inclusive." The use of the date 1921 in this connection was evidently an error, which has misled nobody, and cannot affect the validity of the lease for two years. In this connection it is well to remember that the provincial board does not legislate directly for the municipalities; nor does it have the power of amending their resolutions. Its function is to approve or disapprove; and there could not have been any intention on the part of the provincial board to amend the resolution of the council by substituting the date 1921 for 1922. Besides, the approval of the provincial board is not necessary for a lease for one year, and if the intention of the provincial board had been to cancel the resolution of the municipal council to let the fishery for only one year, the proper procedure would have been to disapprove resolution No. 53, as involving a lease for a longer period than was advisable. We do not overlook the point that the law requires the previous approval of the provincial board when the lease is to be made for more than one year, and if the error in resolution No. 740 had been vital, the curative resolution adopted later would probably had been without effect. But we consider the situation to be that the provincial board in substance approved resolution No. 53, and the error as to the date did not in our opinion affect the validity of the lease.

Lastly, it is contended that the lease was invalid as lacking the approval of the department head. In this connection reliance is placed upon section 2319 of the Administrative Code where it is said that leases for a period of greater duration than one year shall be let upon the previous approval of the provincial board, under such conditions as shall be prescribed by the department head. It is supposed that the last expression, "under such conditions as shall be prescribed by the department head," requires the submission to him of each particular lease in order that he may make the conditions which shall be embodied in it. This is a mistake. The words quoted were merely intended to authorize the department head to make general regulations for the governance of the municipal authorities in making the lease.

We now come to consider the defense interposed for the sureties arising from the form in which the contract of suretyship is expressed, and particular attention is directed to the words of the first paragraph where it is stated that the principal, Andres Mendoza, had leased the privilege of fishery in question "for the value of P23,000 for the term of two years, to count from the first day of January, 1921, to the thirty-first of December, 1922." These words are relied upon as showing that the principal liability, the subject of the contract of suretyship, was limited

to P23,000. This contention is, in our opinion, well founded. It is true that in the obligating clause farther down the sureties declared themselves bound in the sum of P46,000; but this was because the bond was required to be made in double the amount of the principal liability. The language is quite clear to the effect that the rent to be paid for the privilege of fishery was P23,000 for the full term of two years.

But it is insisted for the plaintiff that the contract is to be read as if the rental had been expressed to be at the rate of P23,000 per annum for a period of two years. We are of the opinion that the words "per annum" cannot be inserted by judicial construction; and no attempt has been made to obtain a judicial reformation of the contract.

As we have previously stated Mendoza has paid to the municipality the full sum of P28,000. In our opinion this discharged the sureties from all further liability. The circumstance that the sum of P23,000 which Mendoza paid may have been applied by the municipality to Mendoza's indebtedness for the first year of the lease is without significance as against the sureties, since the sureties were not parties to the contract of lease (Exhibit D) and are liable only upon the contract of suretyship (Exhibit E), which calls for the payment of only P23,000 by the principal. It is a just rule of jurisprudence, recognized in article 1827 of the Civil Code, that the obligation of a surety must be express and cannot be extended by implication beyond its specified limits.

We do not overlook the fact that the obligating clause in Exhibit E binds the sureties in the amount of P46,000, but, as in all bonds, that obligation was intended as an assurance of the performance of the principal obligation and when the principal obligation was discharged, the larger obligation expressed in the contract of suretyship ceased to have any vitality.

From what has been said it results that while no error was committed by the trial judge in giving judgment against the principal, the sureties should have been absolved.

The judgment appealed from will therefore be affirmed as against Andres Mendoza and reversed as against Simeon Blas, who will be absolved from the complaint, without costs. So ordered.

Johnson, Ostrand, Johns, and Villa-Real, JJ., concur.

DISSENTING

AVANCEÑA, C. J., with whom concur MALCOLM, VILLAMOR and ROMUALDEZ, JJ.:

I do not agree. In my opinion the judgment appealed from must also be affirmed as to the surety Simeon Blas. As stated in the opinion of the majority, the contract between the plaintiff and the defendant Andres Mendoza was for two years at the rate of P22,999.99 per year. The surety Simeon Blas, in securing the fulfilment of the conditions of the contract by Andres Mendoza, knew that this contract was for two years, as clearly stated in the bond which he signed, and besides he also knew that the obligation of the principal obligor, Andres Mendoza, was to pay P22,999.99 per year, for in the bond itself this surety states being aware of the conditions of the contract. Consequently the obligation of the surety Andres Mendoza, according to the terms of the bond, is to answer for the performance of the contract on the part of the principal obligor Andres Mendoza during the whole two-year period fixed by the contract. It is true that through error, perhaps, it was stated in the bond that he was liable only to the amount of P46,000, the amount of the obligation of Mendoza for one year, because it was required that the bond be for double the value of the obligation of the principal obligor. Blas might, perhaps, take advantage of this error to limit his liability to the amount of the obligation of the principal debtor for one year, if the case were concerned with this obligation for two years. He cannot, however, take advantage of this mistake in the instant

case which involves only non-payment for one year which, after all, is one of the two years during which he secured the fulfilment of the contract by the principal debtor Andres Mendoza.

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