

ROSA VILLA Y MONNA, PLAINTIFF AND APPELLEE, VS. GUILLERMO GARCIA BOSQUE ET AL., DEFENDANTS. GUILLERMO GARCIA BOSQUE, F. H. GOULETTE, AND R. G. FRANCE, APPELLANTS.*G. R. No 24543. July 12, 1926*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by Rosa Villa y Monna, widow of Enrique Bota, for the purpose of recovering from the defendants, Guillermo Garcia Bosque and Jose Pomar Ruiz, as principals, and from the defendants R. G. France and F. H. Goulette, as solidary sureties for said principals, the sum of P20,509.71, with interest, as a balance allied to be due to the plaintiff upon the purchase price of a printing establishment and bookstore located at 89 Escolta, Manila, which had been sold to Bosque and Ruiz by the plaintiff, acting through her attorney in fact, one Manuel Pirretas y Monros. The defendant Ruiz put in no appearance, and after publication judgment by default was entered against him. The other defendants answered with a general denial and various special defenses. Upon hearing the cause the trial judge gave judgment in favor of the plaintiff, requiring all of the defendants, jointly and severally, to pay to the plaintiff the sum of P19,230.01, as capital, with stipulated interest at the rate of 7 per centum per annum, plus the further sum of P1,279.70 as interest already accrued and unpaid upon the date of the institution of the action, with interest upon the latter amount at the rate of 6 per centum per annum. From this judgment Guillermo Garcia Bosque, as principal, and R. G. France and F. H. Goulette, as sureties, appealed.

It appears that prior to September 17, 1919, the plaintiff, Rosa Villa y Monna, viuda de E. Bota, was the owner of a printing establishment and bookstore located at 89 Escolta, Manila, and known as La Flor de Cataluña, Viuda de E. Bota, with the machinery, motors, bindery, type material, furniture, and stock appurtenant thereto. Upon the date stated, the plaintiff, then and now a resident of Barcelona, Spain, acting through Manuel Pirretas, as attorney in fact, sold the establishment above-mentioned to the defendants Guillermo Garcia Bosque and Jose Pomar Ruiz, residents of the City of Manila, for the stipulated sum of P55,000, payable as follows: Fifteen-thousand pesos (P15,000) on November 1, next ensuing upon the execution of the contract, being the date when the puytnasers were to take possession; ten thousand pesos 10,000) at one year from the same date; fifteen thousand pesos P15,000) at two years; and the remaining fifteen thousand pesos (P15,000) at the end of three years. By the contract of sale the deferred instalments bear interest at the rate of 7 per centum per annum. In the same document the defendants France and Goulette obligated themselves as solidary sureties with the principals Bosque and Ruiz, to answer for any balance, including interest, which should remain due and unpaid after the dates stipulated for payment of said instalments, expressly renouncing the benefit of exhaustion of the property of the principals. The first instalment of P15,000 was paid conformably to agreement.

In the year 1920, Manuel Pirretas y Monros, the attorney in fact of the plaintiff, absented himself from the Philippine Islands on a prolonged visit to Spain; and in contemplation of his departure he executed a document, dated January 22, 1920, purporting to be a partial substitution of agency, whereby he transferred to "the mercantile

entity Figueras Hermanos, or the person, or persons, having legal representation of the same," the powers that had been previously conferred on Pirretas by the plaintiff "in order that," so the document runs, "they may be able to effect the collection of such sums of money as may be due to the plaintiff by reason of the sale of the bookstore and printing establishment already mentioned, issuing for such purpose the receipts, vouchers, letters of payment, and other necessary documents for whatever they shall have received and collected of the character indicated."

When the time came for the payment of the second instalment and accrued interest due at that time, the purchasers were unable to comply with their obligation, and after certain negotiations between said purchasers and one Alfredo Rocha, representative of Figueras Hermanos, acting as attorney in fact; for the plaintiff, an agreement was reached, where Bgueras Hermanos accepted the payment of P5,800 on November 10, 1920, and received for the balance five promissory notes payable, respectively, on December 1, 1920, January 1, 1921, February 1, 1921, March 1, 1921, and April 1, 1921. The first three of these notes were in the amount of P1,000 each, and the last two for P2,000 each, making a total of P7,000. It was furthermore agreed that the debtors should pay 9 per centum per annum on said deferred instalments, instead of the 7 per centum mentioned in the contract of sale. These notes were not paid promptly at maturity but the balance due upon them was finally paid in full by Bosque on December 24, 1921.

About this time the owners of the business La Flor de Cataluña, appear to have converted it into a limited partnership under the style of "Guillsrno Garcia Bosque, S. en C.," and presently a corporation was formed to take over the business under the name "Bota Printing Company, Inc." By a document executed on April 21, 1922, the partnership appears to have conveyed all its assets to this corporation for the purported consideration of P15,000. Meanwhile they seven notes representing the unpaid balance of the second instalment and interest were falling due without being paid. Induced by this dilatoriness on the part of the debtor and supposedly animated by a desire to get the matter into better shape, M. T. Figueras entered into the agreement attached as Exhibit 1 to the answer of Bosque. In this document it is recited that Guillermo Garcia Bosque, S. en C, is indebted to Rosa Villa, viuda de E. Bota, in the amount of P32,000, for which R. G. France and F. H. Goulette are bound as joint and several sureties, and that the partnership mentioned had transferred all its assets to the Bota Printing Company, Inc., of which one George Andrews was a principal stockholder. It is then stipulated that France and Goulette shall be relieved from all liability on their contract as sureties and that in lieu thereof the creditor, Dona Rosa Villa y Monna, accepts the Bota Printing Company, Inc., as debtor to the extent of P20,000, which indebtedness was expressly assumed by it, and George Andrews as debtor to the extent of P12,00.0, which he undertook to pay at the rate of P200 per month thereafter. To this contract the name of the partnership Guillermo Garcia Bosque, S. en C, was affixed by Guillermo Garcia Bosque while the name of the Bota Printing Company, Inc., was signed by G. Andrews, the latter also signing in his individual capacity. The name of the plaintiff was affixed by M. T. Figueras in the following style: "p.p. Rosa Villa, viuda de E. Bota, M. T. Figueras, party of the secbnd part."

No question is made as to the authenticity of this document or as to the intention of Figueras to release the sureties; and the latter rely upon the discharge as a complete defense to the action. The defendant Bosque also relies upon the same agreement as constituting a novation such as to relieve him from personal liability. All of the defendants furthermore maintain that even supposing that M. T. Figueras lacked authority to novate the original contract and discharge the sureties therefrom, nevertheless the plaintiff has ratified the agreement by accepting part payment of the amount due thereunder with full knowledge of its terms. In her amended complaint the plaintiff asserts that Figueras had no authority to execute the contract containing the release (Exhibit 1) and that the same had never been ratified by her.

The question thus raised as to whether the plaintiff is bound by Exhibit 1 constitutes the main controversy in the case, since if this point should be determined in the affirmative the plaintiff obviously has no right of action

against any of the defendants. We accordingly address ourselves to this point first.

The partial substitution of agency (Exhibit B to amended complaint) purports to confer on Figueras Hermanos or the person or persons exercising legal representation of the same all of the powers that had been conferred on Pirretas by the plaintiff in the original power of attorney. This original power of attorney is not before us, but assuming, as is stated in Exhibit B, that this document contained a general power to Pirretas to sell the business known as La Flor de Cataluña upon conditions to be fixed by him and power to collect money due to the plaintiff upon any account, with a further power of substitution, yet it is obvious upon the face of the act of substitution (Exhibit B) that the sole purpose jtfas to authorize Figueras Hermanos to collect the balance due to the plaintiff upon the price of La Flor de Cataluña, the sale of which had already been effected by Pirretas. The words of Exhibit B on this point are quite explicit ("to the end that the said lady may be able to collect the balance of the selling price of the Printing Establishment and Bookstore above-mentioned, which has been sold to Messrs. Bosque and Pomar"). There is nothing here that can be construed to authorize Figueras Hermanos to discharge any of the debtors without payment or to novate the contract by which their obligation was created. On the contrary the terms of the substitution shows the limited extent of the power. A further noteworthy feature of the contract Exhibit 1 has reference to the personality of the purported attorney in fact and the manner in which the contract was signed. Under the Exhibit B the substituted authority should be exercised by the mercantile entity Figueras Hermanos or the person duly authorized to represent the same.

In the actual execution of Exhibit 1, M. T. Figueras intervenes as purported attorney in fact without anything whatever to show that he is in fact the legal representative of Figueras Hermanos or that he is there acting in such capacity. The act of substitution conferred no authority whatever on M. T. Figueras as an individual. In view of these defects in the granting and exercise of the substituted power, we agree with the trial judge that the Exhibit 1 is not binding on the plaintiff. Figueras had no authority to execute the contract of release and novation in the manner attempted; and apart from this it is shown that in releasing the sureties Figueras acted contrary to instructions. For instance, in a letter from Figueras in Manila, dated March 4, 1922, to Pirretas, then in Barcelona, the former stated that he was attempting to settle the affair to the best advantage and expected to put through an arrangement whereby Dona Rosa would receive P20,000 in cash, the balance to be paid in instalments, "with the guaranty of France and Goulette." In his reply of April 29 to this letter, Pirretas expresses the conformity of Dona Rosa in any adjustment of the claim that Figueras should see fit to make, based upon payment of P20,000 in cash, the balance in instalments payable in the shortest practicable periods, it being understood, however, that the guaranty of Messrs. France and Goulette should remain intact. Again, on May 9, Pirretas repeats his assurance that the plaintiff would be willing to accept P20,000 down with the balance in interest-bearing instalments "with the guaranty of France and Goulette." From this it is obvious that Figueras had no actual authority whatever to release the sureties or to make a novation of the contract without their additional guaranty.

But it is asserted that the plaintiff ratified the contract (Exhibit 1) by accepting and retaining the sum of P14,000 which, it is asserted, was paid by the Bota Printing Co., Inc., under that contract. In this connection it should be noted that when the firm of Guillermo Garcia Bosque, S. en C, conveyed all its assets on April 21, 1922, to the newly formed corporation, Bota Printing Co., Inc., the latter obligated itself to pay all the debts of the partnership, including the sum of P32,000 due to the plaintiff. On April 23 thereafter, Bosque, acting for the Bota Printing Co., Inc., paid to Figueras the sum of P8,000 upon the third instalment due to the plaintiff under the original contract of sale, and the same was credited by Figueras accordingly. On May 16. a further sum of P5,000 was similarly paid and credited; and on May 25, a further sum of P200 was likewise paid, making P14,000 in all. Now, it will be remembered that in the contract (Exhibit 1), executed on May 17, 1922, the Bota Printing Co., Inc., undertook to pay the sum of P20,000; and the parties to the agreement considered that the sum of P13,800 then already paid by the Bota Printing Co., Inc., should be treated as a partial satisfaction of the larger sum of P20,000 which the Bota

Printing Co., Inc., had obligated itself to pay. In the light of these facts the proposition of the defendants to the effect that the plaintiff has ratified Exhibit 1 by retaining the sum of P14,000, paid by the Bota Printing Co., Inc., as above stated, is untenable. By the assumption of the debts of its predecessor the Bota Printing Co., Inc., had become a primary debtor to the plaintiff, and she therefore had a right to accept the payments made by the latter and to apply the same to the satisfaction of the third instalment of the original indebtedness.

Nearly all of this money was so paid prior to the execution of Exhibit 1 and although the sum of P200 was paid a few days later, we are of the opinion that the plaintiff was entitled to accept and retain the whole, applying it in the manner above stated. In other words the plaintiff may lawfully retain that money notwithstanding her refusal to be bound by Exhibit 1.

A contention submitted exclusively in behalf of France and Goulette, the appellant sureties, is that they were discharged by the agreement between the principal debtor and Figueras Hermanos, as attorney in fact for the plaintiff, 'whereby the period for the payment of the second instalment was extended, without the assent of the sureties, and new promissory note for the unpaid balance were executed in the manner already mentioned in this opinion. The execution of these new promissory notes undoubtedly constituted an extension of time as to the obligation included therein, such as would release a surety, even though of the solidary type, under article 1851 of the Civil Code. Nevertheless it is to be borne in mind that said extension and novation related only to the second instalment of the original obligation and interest accrued up to that time. Furthermore, the total amount of these notes was afterwards paid in full, and they are not now the subject of controversy. It results that the extension thus effected could not discharge the sureties from their liability as to other instalments upon which alone they have been sued in this action. The rule that an extension of time granted to the debtor by the creditor, without the consent of the sureties, extinguishes the latter's liability is common both to Spanish jurisprudence and the common law; and it is well settled in English and American jurisprudence that where a surety is liable for different payments, such as instalments of rent, or upon a series of promissory notes, an extension of time as to one or more will not affect the liability of the surety for the others. (32 Cyc, 196; JHopkirk vs. McConico, 1 Brock., 220; 12 Fed. Cas., No. 6696; Coe vs. Cassidy, 72 N. Y., 133; Cohn vs. Spitzer, 129 N. Y. Supp., 104; Shephard Land Co. 'vs. Banigan, 86 R. I., 1; I. J. Cooper Rubber Co. vs. Johnson, 133 Tenn., 562; Bleeker vs. Johnson, 190 N. W., 1010.) The contention of the sureties on this point is therefore untenable.

There is one stipulation in the contract (Exhibit A) which, at first blush, suggests a doubt as to the propriety of applying the doctrine above stated to the case before us. We refer to clause (f) which declares that the non-fulfilment on the part of the debtors of the stipulation with respect to the payment of any instalment of the indebtedness, with interest, will give the creditor the right to treat and declare all of said instalments as immediately due. If the stipulation had be to pay any instalment when due would ipso facto cause the other instalments to fall due at once, it might be plausibly contended that after default of the payment of one instalment the act of the creditor in extending the time as to such instalment would interfere with the right of the surety to exercise his legal rights against the debtor, and that the surety would in such case be discharged by the extension of time, in conformity with articles 1851 and 1852 of the Civil Code. But it will be noted that in the contract now under consideration the stipulation is not that the maturity of the later instalments shall be ipso facto accelerated by default in the payment of a prior instalment, but only that it shall give the creditor a right to treat the subsequent instalments as due; and in this case it does not appear that the creditor has exercised this election. On the contrary, this action was not instituted until after all of the instalments had fallen due in conformity with the original contract. It results that the stipulation contained in paragraph (f) does not affect the application of the doctrine above enunciated to the case before us.

Finally, it is contended by the appellant sureties that they were discharged by a fraud practised upon them by the plaintiff in failing to require the debtor to execute a mortgage upon the printing establishment to secure the debt

which is the subject of this suit. In this connection it is insisted that at the time France and Goulette entered into the contract of suretyship, it was represented to them that they would be protected by the execution of a mortgage upon the printing establishment by the purchasers Bosque and Pomar. No such mortgage was in fact executed and in the end another creditor appears to have obtained a mortgage upon the plant which is admitted to be superior to the claim of the plaintiff. The failure of the creditor to require such a mortgage is alleged to operate as a discharge of the sureties. With this insistence we are unable to agree, for the reason that the proof does not show, in our opinion, that the creditor, or her attorney in fact, was a party to any such agreement. On the other hand it is to be collected from the evidence that the suggestion that a mortgage would be executed on the plant to secure the purchase price and that this mortgage would operate for the protection of the sureties came from the principal and not from any representative of the plaintiff.

As a result of our examination of the case we find no error in the record prejudicial to any of the appellants, and the judgment appealed from will be affirmed. So ordered, with costs against the appellants.

Avanceña, C. J., Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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