

THE MUNICIPALITY OF ORION, PLAINTIFF AND APPELLEE, VS. F. B. CONCHA, DOMINGA SAN JOSE AND ANTERO PEREYRA, DEFENDANTS. ANTERO PEREYRA, APPELLANT.

G.R. No. 26671. September 10, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The question presented by this appeal is, whether or not an appeal by one of several persons against whom a judgment has been rendered, requiring them jointly and severally to pay a sum of money and which appeal results in declaring that the appellant is not liable under such judgment, affects the liability of those who did not appeal. Putting the same question in another form: Will the appeal of one of several persons who have been declared jointly and severally liable for the payment of a sum of money affect the liability of his co-judgment debtors in case the appeal results in modifying the judgment of the lower court as to the appellant?

That question is now presented for decision. It arose out of the following undisputed facts:

- (a) That on or about the 9th day of May, 1923, the defendant F. B. Concha entered into a contract with the municipality of Orion for the construction of a schoolhouse to be called the "Arellano Memorial School" in said municipality, of the Province of Bataan.
- (b) That the cost of the construction of said memorial school under said contract was to be P18,000, with the condition that said building was to be completed within the period of 112 days from the 8th day of June, 1923.
- (c) That the contractor F. B. Concha was required to give a bond in the sum of P6,000 for the faithful performance of said contract.
- (d) That in accordance with the requirement of said contract the said F. B. Concha did on the 15th day of May, 1923 (Exhibit D) execute and deliver a bond for the faithful performance of said contract in the sum of P6,000, with his co-defendants Dominga San Jose and Antero Pereyra as bondsmen.
- (e) That the said F. B. Concha not having completed the construction of said memorial school in accordance with the terms of his contract, an action was commenced by the municipality of Orion against him and his co-sureties on the 20th day of June, 1924, for the purpose of recovering damages for his' nonperformance, and prayed for a judgment against him and his co-sureties for the alleged damages. To the complaint filed in that action Dominga San Jose on the 14th day of July, 1924, presented her answer, interposing a general and special defense.
- (f) That on the 16th day of July, 1924, the said Antero Pereyra answered the complaint, and simply denied each and all of the allegations contained therein. Upon the issue thus presented¹ the Honorable Jose M. Quintero, judge, in a carefully prepared opinion, on the 25th day of February, 1925, found the defendants liable for the damages occasioned by the non-performance of the contract by F. B. Concha, and rendered a judgment against him for the sum of P9,245.71, as damages suffered by said municipality, with legal interest from the commencement of said action on the 20th day of June, 1924, and also a judgment jointly and severally against the

bondsmen Dominga San Jose and Antero Pereyra upon their bond, as a part of said damages, in the sum of P6,000 in favor of the said municipality. From that judgment the said Dominga San Jose, after presenting a motion for new trial and excepting to said judgment, perfected an appeal to the Supreme Court.

(g) That upon consideration of the appeal of Dominga San Jose the Supreme Court reversed the judgment rendered by the court a quo and absolved her from all liability under the complaint upon the ground and for the reason that the said municipality had extended the time to the said F. B. Concha for the performance of the said contract, without her knowledge or consent, thereby relieving her from all liability under her bond, without special finding as to costs.[1]

(h) That on the 9th day of April, 1926, a final judgment was rendered and the record was remanded to the court a quo.

(i) On the 14th day of April, 1926, the prosecuting attorney of the Province of Bataan presented a motion in the Court of First Instance, asking that a writ of execution be issued on said judgment against the defendants F. B. Concha and Antero Pereyra, which motion was opposed by the said Antero Pereyra, upon the special ground that the said appeal of Dominga San Jose which resulted in absolving her from all liability under the complaint had the effect also of relieving him from his liability under said judgment. The objection was denied. Against that ruling of the court Antero Pereyra took an exception and perfected the present appeal in due form.

In his only assignment of error the appellant contends that the lower court committed an error in declaring that the judgment against him was still valid and enforceable, notwithstanding the revocation by the Supreme Court of the decision of the lower court against his cosurety Dominga San Jose.

The appellant attempts to show by the citation of numerous authorities that "where there has been a joint judgment or decree against several persons, the effect of an appeal or writ of error by one or more of them, when it is permitted, without the concurrence of the other co-parties, is to carry up the whole case and a reversal will inure to the benefit of all. It is otherwise where the judgment is several, so that it will be reversed only as to the party appealing." The appellant has evidently overlooked in his citations the difference between a "joint judgment" and a "several judgment," which is clearly seen in his own quotation.

In the present case there was a several judgment against the defendants. The judgment was joint and several, which means that they are severally liable. We have made a careful examination of numerous authorities and believe that we are correct in saying that the effect of the appeal by one judgment debtor upon the co-debtors depends upon the particular facts and conditions in each case. The difference in the apparently conflicting opinions may be well illustrated in this very case.

Suppose, for example, that F. B. Concha, the contractor, had appealed from the judgment of the lower court upon the ground that he had either completed his contract within time or that the municipality had suffered no damages whatever, and the Supreme Court had reversed the judgment of the lower court on his appeal. Certainly that judgment would have the effect of relieving the bondsmen from any liability whatever, for the reason that their liability was consequent upon the liability of the contractor; and the court having declared that no liability for damages had resulted from the execution of said contract, then certainly the bondsmen would have been relieved because their liability depended upon the liability of the principal. That example gives us a clear case, showing that the effect of the appeal of one of the judgment debtors would necessarily have the effect of releasing his co-judgment debtors. Upon the other hand, and even in the trial court a judgment might have been rendered against Dominga San Jose for damages and not against Antero Pereyra. Suppose that the municipality had granted the contractor additional time with the consent of the surety Antero Pereyra, and damages had resulted from a failure to complete the contract. In that case the defense of extension of time could not be taken advantage of by

Antero Pereyra. It may also be said that if the extension of time had been made against the consent and without the knowledge of Dominga San Jose, then her defense upon that ground would be available and would be sufficient to relieve her from liability. In the supposed cases the result would be a judgment against Antero Pereyra and in favor of Dominga San Jose. Now, if a judgment might have been rendered against one and in favor of the other in the Court of First Instance, then certainly an appeal by the judgment debtor could have no effect upon those who did not appeal.

And, moreover, suppose the sureties had both appealed from the judgment of the lower court and during the appeal it had been proved conclusively that an extension of time had been given without the consent of one, and with the consent of the other. In that case the Supreme Court would be justified in rendering a judgment against the one who gave his consent and in reversing the judgment as to the other. These examples clearly demonstrate that the reversal of a judgment in favor of several judgment debtors in the same case does not necessarily affect the judgment against the co-judgment debtors in cases where their liability is several.

As we have already said, whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other co judgment debtors depends solely upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all. In the present case the liability of the principal judgment debtor is admitted by him. He did not appeal. The judgment against his co-defendants was several. They are therefore individually liable.

The rule is quite general that a reversal as to parties appealing does not necessitate a reversal as to parties not appealing, but that the judgment may be affirmed or left undisturbed as to them. An exception, to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor. (4 C. J., 1184.)

A reversal of a judgment on appeal is binding on the parties to the suit, but does not inure to the benefit of parties against whom judgment was rendered in the lower court who did not join in the appeal, unless their rights and liabilities and those of the parties appealing are so interwoven and dependent as to be inseparable, in which case a reversal as to one operates as a reversal as to all. (4 C. J., 1206; *Ailing vs. Wenzel*, 133 III, 264-278.) In the case of *Brashear vs. Carlin*, Curator (19 La., 395) a judgment was rendered in the lower court against the principal debtor and his surety to pay damages. The principal debtor alone appealed and the judgment was reversed.

When the question of the liability of the surety under the judgment of the lower court was raised, the court said: "It is obvious, that the judgment of the inferior court could not be reversed as to the principal debtor in this case, and continue in force against the surety. The latter could not remain bound, after the former had been released; although the surety had not joined in the appeal, the judgment rendered in this court enured to his benefit. The obligation of a surety is so dependent on that of the principal debtor, that he is considered in law as being the same party as the debtor in relation to whatever is adjudged, touching the obligation of the latter; provided it be not on grounds personal to such principal debtor; it is for this reason, that a judgment in favor of the principal debtor can be invoked as *res judicata* by the surety."

In the case of *Schoenberger vs. White* (75 Con., 605) a joint judgment was rendered against husband and wife for a sum of money in an action *ex contractu*. The wife appealed. As to the effect of the appeal of the wife upon the liability of both the court said:

"Such a judgment is an entirety, and upon appeal to this court must be affirmed or set aside in toto.

"That the husband was not so made a party does not vary this rule. After the filing of the notice of appeal, he

had the right to be heard in this court as to all the questions brought up for review. As he has not exercised this right, it may be assumed that he is content with the judgment against him as it stands; but he might complain of it, were we to modify it by reducing the amount which it requires his wife to pay, and thus reducing the amount of the contribution which he might be able to call upon her to make, in case he paid all that it requires of him."

After a full consideration of all of the facts and the law applicable thereto in relation with the fact that the liability of the present appellant is a several liability, and considering that the principal debtor has not appealed and the judgment against him has not been modified, we are of the opinion and so decide, that the appeal of Dominga San Jose and the result of that appeal has not affected the several liability of the appellant. Therefore, the judgment appealed from is hereby affirmed, with costs. So ordered.

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

[1] G.R. No. 24732, promulgated March 20, 1926, not reported.

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