

EDWARD J. PFLEIDER, PLAINTIFF AND APPELLEE, VS. THE ASIA LUMBER CO., INC., DEFENDANT AND APPELLANT.*G.R. No. 32924. November 06, 1930*

Ponente: JOHNSON, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This is the second time this case is here on appeal. It was first here on appeal by the defendant from a decision rendered against it by the Court of First Instance of Iloilo, for a sum of money and for payment of rent. This decision was modified by this court, and the amount allowed in favor of the plaintiff was reduced.[1]

Now the case is here again on appeal from a decision of the Court of First Instance of Iloilo denying a motion of the defendant for damages in the sum of P25,000 against the plaintiff, the special deputy sheriff Agapito Carino, and the Philippine Guaranty Co. In its motion the defendant alleged that it suffered said damages through the acts of the sheriff Agapito Carino in executing the judgment theretofore rendered against it and through his negligence in not exercising proper care and diligence for the safe-keeping and preservation of the property levied upon by him. The lower court ordered that Agapito Carino and the Philippine Guaranty Co. be made parties in this claim for damages, but they were neither summoned nor served with a copy of defendant's motion, and did not therefore become parties in this case. The plaintiff answered the motion, denying the allegations therein contained.

Upon the issue thus presented, the motion was heard, and both parties presented evidence in support of their respective claims. After hearing the evidence F. Santamaria, judge, in a very carefully prepared opinion containing a detailed analysis of the testimony of the witnesses pro and con, arrived at the conclusion that the damages suffered by the defendant were caused by its own negligence, and absolved the plaintiff from all responsibility for said damages. The pertinent parts of the decision read as follows:

"Con estos antecedentes a la vista, el Juzgado concluye en que los danos o deterioros en los bienes embargados no son imputables al demandante, sino que fueron el resultado de actos y omisiones de los encargados de la demandada, puestos en el lugar donde se encontraban las propiedades embargadas y que no prestaron el cuidado y diligencia necesarios para la adecuada proteccion y conservacion en buen estado de las referidas propiedades; y si la demandada no pagaba su sueldo ni daba arroz a sus empleados y obreros, como asi lo ha admitido el testigo de la demandada Sixto Villarete, no es de extranar que tales empleados hayan procedido en la forma en que lo nan hecho, abandonado todo cuidado en la conservation de las propiedades de la corporation demandada. Semejante proceder de los empleados o encargados de la demandada podria tener su explicacion en el hecho probado de que, no solamente no recibian su salario en dinero, sino que tampoco lo recibian en arroz, hecho comprobado en los reports Exhibito GGGG; no siendo de extraiiar este abandono, porque asi lo han demostrado los encargados de la demandada, primeramente el Sr. Huggins, despues el llamado Pedring y

ultimamente Sixto Villarete, quien en su declaration prestada en la vista, admiti6 que aun le era en deber por su salario la compania demandada.

"A la corporation demandada le constaba por las notificaciones de embargo Exhibitos 105 y HHHH, que ni el demandante ni el Sheriff Especial Agapito Oarino tomaron posesion de las propiedades embargadas, las cuales continuaban en posesion de dicha demandada para el goce y uso de dichas propiedades; y la cesacion de las actividades y operaciones de la aserradora de la compania demandada, no fue causada por el embargo practicado por el demandante en septiembre de 1927, sino porque la demandada estaba reducida a tal impotencia pecuniaria, que ni siquiera podia enviar a sus obreros el arroz necesario para su comida, ya que no podia pagarles en dinero su sueldo o jornal, y esta ausencia de comida fue la causa de la continua desaparicion de obreros y altos empleados de la corporaci6n demandada, como asi se ha hecho constar en los reports del empleado de la Oficina de Montes Exhibito GGGG.

"Ahora bien; si ninguna action u omisi6n de parte del demandante ha sido la causa de los danos o deterioros sufridos en las propiedades de la demandada y habiendo el Juzgado encontrado que estos danos fueron causados por actos u omisiones de la misma corporation demandada, la conclusion es que el demandante no es responsable de tales danos.

"Por las consideraciones expuestas, el Juzgado absuelve al demandante de la reclamacion por danos interpuesta por la demandada en su morion registrada el 17 de mayo de este ano, reclamacion cuyo sobreseimiento se ordena."

From that judgment the defendant appealed, and now makes the following assignments of error:

"1. The lower court erred in finding that the special deputy sheriff Agapito Carino did not take possession of the property attached, and that he was not responsible for the damages suffered by said property.

"2. The lower court erred in not ordering Agapito Carino and the Philippine Guaranty Co. to pay to the appellant at least the sum of P15,000, representing the amount of the bond filed by them.

"3. The lower court erred in absolving the plaintiff from damages."

That the sheriff did not actually and materially take possession of the property of the defendant, is shown conclusively by Exhibit 105 (Notice of Attachment). From said exhibit it appears that the property was left in the possession, custody and care of the defendant so that it could continue to enjoy the use thereof. Among other things said exhibit states:

"This levy is made with the full and strict understanding that no sale of the property, herein levied upon, will be made until the judgment in the above-entitled case has become final, and with the further understanding that the defendant shall continue to enjoy the use of all of the property herein levied upon, pending final judgment in the above-entitled case; with the further understanding that the undersigned special deputy sheriff shall take possession of the property, herein above levied upon, solely for the purpose of preventing the disappearance or destruction, sale or encumbrance of such property, and for the further purpose of complying with all requirements necessary to make a legal and valid attachment. The defendant, its officers and employees, and all other persons are hereby notified of the levy, herein above described, and are warned not to sell, encumber, destroy, or in any other way dispose of any of the property, herein above levied upon, but to respect this embargo."

The property levied upon having thus been left in the possession and custody of the defendant, any depreciation, deterioration or damages suffered by said property should be borne by the defendant. The plaintiff cannot be held responsible for said damages.

In answer to the second assignment of error, it may be said that Agapito Cariño and the Philippine Guaranty Co.

did not become parties in this case, in spite of the order of the lower court to that effect, because of the appellant's failure to serve upon them a copy of its motion and because of its negligence in not having them summoned by the clerk of court. There is nothing in the record to show that Agapito Carino and the Philippine Guaranty Co. were furnished a copy of said motion, or were summoned by the court to appear and answer said motion. As they were not made parties, clearly they cannot be affected by the judgment rendered in this case.

As to the third assignment of error, it may be said, as we have demonstrated above, that the damages suffered by the property were directly or indirectly caused by the defendant itself or its employees, who were left in the possession and custody of all of said property, as per Exhibit 105, and consequently the plaintiff cannot be held liable for said damages.

The judgment appealed from is in accordance with the facts and the law, and the same should be and is hereby affirmed, with costs. So ordered.

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

[1] Pleider vs. Asia Lumber Co., G. R. No. 28470, promulgated December 29, 1928, not reported.

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