

**ROSARIO GUANZON, ASSISTED BY HER HUSBAND VICENTE MARTIR,
PLAINTIFF AND APPELLEE, VS. GRACIANO RIVERA, DEFENDANT
AND APPELLANT.**

G. R. No. 39634. February 27, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal from the decision of the Court of First Instance of the Province of Occidental Negros, the dispositive part of which reads as follows:

"En su virtud, con la desestimacion de la contrademanda, se condena al demandado a pagar a la demandante la suma de ocho mil setecientos cincuenta y cuatro pesos con ochenta y cuatro centavos (P8,754.84), moneda filipina, con sus intereses legales de 6 por ciento anual desde el 12 de enero de 1929 hasta su completo pago, más las costas del juicio."

The defendant-appellant makes the following assignments of error:

"El Juzgado a quo erro:

"1. Al prescindir en su sentencia la fuerza legal y probatoria del contrato Exhibit 5, y al no declarar en la misma que toda la obligacion pueuniaria de Graciano Rivera a la Kabancalan Sugar Co., Inc., por cuya deuda salio de fiadora la demandante, fue asumida por Jose Rivera la responsabilidad de pagar a la acreedora o a su causahabiente que es la demandante como fiadora y tenedora de aquel credito por haber ella pagado la deuda a la Corporacion acreedora.

"2. Al declarar en su sentencia implicitamente que despues de perfeccionado el contrato Exhibit 5 todavia debe Graciano Rivera cierta cantidad no obstante haberse traspasado toda su cuenta a las cuentas del contrademandado Jose Rivera en los libros de la acreedora Kabancalan Sugar Co., Inc.

"3. Al no condenar y ordenar al contrademandado Jose Rivera que entregue al demandado apelante, 369.40 picos de azucar, centrifugado de los 615.40 picos que dicho Jose Rivera percibio como producto de las siembras de cana dulce del demandado en los terrenos arrendados por este.

"4. Al no absolver al demandado de la demanda de la demandante y al conceder la ejecucion de la sentencia apelada, no obstante la pendencia de esta apelacion."

On the 8th of April, 1921, the defendant Graciano Rivera obtained a loan of P5,000 from the Kabancalan Sugar Co., Inc., of Occidental Negros, with interest at the rate of 12 per cent per annum (Exhibit A). On the same date the plaintiff Rosario Guanzon, who at that time was unmarried, executed Exhibit B by virtue of which she obligated herself, jointly and severally, with the defendant to pay the above-mentioned sum and the interest thereon to the Kabancalan Sugar Co., Inc. The obligation of the defendant became due on the 30th of June, 1922, but there was an option given the defendant to extend the time of payment for one year more. The principal debtor, the defendant, failed to pay the amount due with interest thereon and on the 12th day of January, 1929

(Exhibit C), the total amount of his indebtedness had reached the sum of P8,754.84. The plaintiff Rosario Guanzon, as a part of her obligation set forth in Exhibit B, had mortgaged certain real property to the Kabancalan Sugar Co., Inc., and, in order to prevent the foreclosure of that mortgage, she was obliged to pay the sugar company the sum of P8,754.84 (Exhibit F).

This case was brought on February 16, 1929, by Rosario Guanzon and her husband Vicente Martir for the purpose of collecting from Graciano Rivera the sum she had paid the Kabancalan Sugar Co., Inc.

On or before the 1st day of January, 1921, the plaintiff Rosario Guanzon and the defendant Graciano Rivera entered into a contract of lease whereby the former ceded to the latter certain parcels of her land for which the latter agreed to pay an annual rental of P800; the first annual payment to be made in advance on the 1st day of January, 1921, and the other annual payments on the 1st day of each succeeding year during the term of the contract. The defendant failed to pay the agreed rent, except for a payment of P200, for the years 1923 and 1924. On May 9, 1924, the plaintiff filed a case in the justice of the peace court of Kabancalan, Province of Occidental Negros, in which she prayed for the ejectment of the defendant from the possession of said lands and that he be sentenced to pay her the sum of P1,400, the balance due from him as rent for the years mentioned above. The decision of the justice of the peace court was in favor of the plaintiff. The defendant appealed to the Court of First Instance of Occidental Negros and that court affirmed the decision of the justice of the peace and ordered the ejectment of the defendant from the lands in question and sentenced him to pay the plaintiff the sum of P1,400 as rent corresponding to the years 1923 and 1924; the costs in both instances and such other amounts as might become due and payable up until the time the defendant vacated said lands.

On the 8th day of May, 1924, the plaintiff entered into a contract with Jose Rivera whereby she leased the same lands to the latter, contingent upon the result of a suit to be filed against Graciano Rivera. These lands were among those mortgaged by the plaintiff in favor of the Kabancalan Sugar Co., Inc. as security for the payment of the debt of the defendant. In view of this Jose Rivera obligated himself to pay Rosario Guanzon 4 per cent of the total harvest of sugar cane which said lands might produce during the term of the rental contract and furthermore promise to procure the exclusion of said lands from the mortgage in favor of the Kabancalan Sugar Co., Inc., by looking for other securities, in substitution thereof, which would satisfy the mortgage creditor and cause it to cancel the mortgage upon the lands leased to him.

The defendant relies principally upon this document of lease, which is Exhibit 5 of the defense, and claims that by virtue of this contract Jose Rivera accepted and assumed the responsibility of the defendant to pay his debt to the Kabancalan Sugar Co., Inc., and that the plaintiff therefore has no right of action against him although she had paid the P8,754.84 which he owed to said company.

The defendant furthermore claims that the Kabancalan Sugar Co., Inc., tacitly agreed to accept Jose Rivera as the one responsible for the payment of his debt by virtue of the fact that under date of June 30, 1927, the following entry appears in the books of said company under an account in the name of Jose Rivera: "Por transferencia saldo de Graciano Rivera, P7,246.76". The books of the company, however, show that this transfer from the account of Graciano Rivera to that of Jose Rivera was cancelled and retransferred to the account of the former on January 19, 1928, six months and nineteen days after said entry.

Roman Belzunce was the manager of the Kabancalan Sugar Co., Inc., during the years 1927 and 1928. At the time this case was tried he was in Spain and his deposition was taken and duly admitted as evidence. He testified as follows:

"8. While I was Manager, the Kabancalan Sugar Company did not release Graciano Rivera of any debt or obligation until Rosario Guanzon, guarantor of Graciano Rivera, settled the account for him.

"9. He never gave the company any money or other valuable consideration.

"10. Such transfer was made to the account of Jose Rivera through a clerical error by one of the Company's employees without the knowledge, so far as I know, of either Graciano or Jose Rivera, and without consulting them orally or in writing. This error is probably due to the fact that there were three or four planters with the name 'Rivera', and further Jose Rivera was leasing the land which Graciano formally contracted for with Rosario Guanzon.

"11. The transfer was made back to the account of Graciano Rivera by myself as soon as I discovered the error and both transfers were made without the knowledge of either of them. The company regularly sent quarterly statements of debit balances due with the request that planters signify their approval or disapproval within ten days. A notice of debit balance was sent to Graciano Rivera showing the status of his account after the second transfer was made and he never voiced any disapproval.

"12. With regard to Graciano Rivera's allegations that he was released from obligation after the transfer to Jose Rivera's account, I have to say that such a statement and any basis for such a belief are completely false."

It is absurd to believe that the Kabancalan Sugar Co., Inc., intended to release the defendant Graciano Rivera from his obligation to pay back the sum he had borrowed just because Rosario Guanzon had leased her land to Jose Rivera after the defendant had failed to live up to his contract of lease. If that company had released Graciano Rivera, the principal, it might have found it very difficult if not impossible, to collect from Rosario Guanzon. Furthermore, so far as the record shows, Jose Rivera never obligated himself in any way to the sugar company. The execution of the contract of lease (Exhibit 5) between Rosario Guanzon and Jose Rivera did not benefit that company.

It is equally absurd to believe that Rosario Guanzon intended to release Graciano Rivera from his obligation to the sugar company when she executed the contract of lease (Exhibit 5). As we have seen she filed suit against him on May 9, 1924, the day following the execution of Exhibit 5. It is evident that she desired to secure a tenant who would pay rent and oust one who had failed to pay and to secure a tenant who promised to look for other security, satisfactory to the sugar company, to substitute for the mortgage she had given to guarantee the payment of the debt of the defendant Graciano Rivera.

It is true that the defendant testified that Roman Belzunce, the manager of the sugar company, told him that Jose Rivera had accepted and assumed the payment of his debt with the consent and approval of Rosario Guanzon and her husband. But Belzunce testified that the statements of Graciano Rivera "in this regard are false" (Deposition, Exhibit FF). It is evident from the decision appealed from that the trial court did not believe this testimony of the defendant. Its absurdity is apparent. Releases from solemn written agreements are not made in that manner.

When novation consists in the substitution of a debtor in place of the original one, it must be accomplished by an agreement between the creditor, the original debtor and the new debtor, or, when such substitution is made without the knowledge of the original debtor, the agreement to that effect must be between the creditor and the new debtor.

Article 1205 of the Civil Code reads: "Novation which consists in the substitution of a new debtor in the place of the original one may be made without the knowledge of the latter, but not without the consent of the creditor."

Article 1204 of the Civil Code reads: "In order that an obligation may be extinguished by another which substitutes it, it shall be necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect."

Exhibit 5 is not an agreement between the creditor, Kabancalan Sugar Co., Inc., the original debtor, Graciano

Rivera, and the alleged substitute debtor, Jose Rivera. Neither is it an agreement between the creditor company and the alleged substitute debtor, Jose Rivera.

This being true we must inevitably conclude that Exhibit 5, a contract of lease between Rosario Guanzon and Jose Rivera, has not extinguished the contract between the Kabancalan Sugar Co., Inc. and the defendant Graciano Rivera.

The trial court rightly dismissed the cross-complaint of the defendant in which he prayed that the plaintiff and Jose Rivera, the latter was brought into this case by defendant's cross-complaint, be sentenced to pay him, jointly and severally, the sum of P31,699.47 and that the plaintiff Rosario Guanzon be sentenced to pay him an additional sum of P19,350, both amounts by way of alleged damages suffered by defendant by reason of his having been deprived of the possession of the parcels of land leased to him by the plaintiff. As we have seen he was ousted by due process of law for failure to fulfill the obligations he assumed by virtue of the contract of lease executed between him and the plaintiff.

The judgment of the trial court is affirmed with costs against the defendant in both instances.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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