

RADIO CORPORATION OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JESUS R. ROA ET AL., DEFENDANTS. RAMON CHAVEZ, ANDRES ROA AND MANUEL ROA, APPELLANTS.

G.R. No. 42829. September 30, 1935

Ponente: GODDARD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42829/>

GODDARD, J.:

This is an appeal from a decision of the Court of First Instance of the City of Manila the dispositive part of which reads:

"In view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Radio Corporation of the Philippines and against the defendants Jesus R. Roa, Ramon Chavez, Andres Roa and Manuel Roa: (a) Ordering the defendant Jesus R. Roa to pay to the plaintiff the sum of P22,935, plus P99.64, with legal interest thereon from the date of the filing of the complaint until fully paid; (b) that upon failure of the defendant Jesus Roa to pay the said sum indicated, the chattel described in the second cause of action shall be sold at public auction to be applied to the satisfaction of the amount of this judgment; (c) that the defendants Jesus R. Roa, Ramon Chavez, Andres Roa and Manuel Roa pay jointly and severally to the plaintiff the amount of P10,000; (d) and that Jesus R. Roa pay to the plaintiff the amount equivalent to 10 per cent of P22,935, as attorney's fees, and that all the defendants in this case pay the costs of this action."

The defendants Ramon Chavez, Andres Roa and Manuel Roa have appealed from the judgment against them for P10,000 and costs. These appellants make the following assignments of error:

"1. The court below erred in not finding that the balance of the total indebtedness became immediately due and demandable upon the failure of the defendant Jesus R. Roa to pay any installment on his note.

"2. The court below erred in not finding that defendant Jesus R. Roa defaulted in the payment of the installment due on February 27, 1932, and that plaintiff corporation gave him an extension of time for the payment of said installment.

"3. The court below erred in not finding that the extension of time given to defendant Jesus R. Roa for the payment of an overdue installment served as a release of defendant sureties from liability on all the subsequent installments.

"4. The court below erred in not finding that the sureties were discharged from their bond when the plaintiff authorized Jesus R. Roa to remove the photophone equipment from Cagayan, Misamis Oriental, to Silay, Occidental Negros, without the knowledge or consent of said sureties.

"5. The court below erred in condemning Ramon Chavez, Andres Roa and Manuel Roa to pay jointly and severally the sum of P10,000 to the Radio Corporation of the Philippines."

The defendant Jesus R. Roa became indebted to the Philippine Theatrical Enterprises, Inc., in the sum of P28,400 payable in seventy-one equal monthly installments at the rate of P400 a month commencing thirty days after December 11, 1931, with five days grace monthly until complete payment of said sum. On that same date the

Philippine Theatrical Enterprises, Inc., assigned all its rights and interest in that contract to the Radio Corporation of the Philippines.

The paragraph of that contract in which the accelerating clause appears reads as follows:

"In case the vendee-mortgagor fails to make any of the payments as hereinbefore provided, the whole amount remaining unpaid under this mortgage shall immediately become due and payable and this mortgage on the property herein mentioned as well as the Luzon Surety Bond may be foreclosed by the vendor-mortgagee; and, in such case, the vendee-mortgagor further agrees to pay the vendormortgagee an additional sum equivalent to 25 per cent of the principal due and unpaid as costs, expenses and liquidated damages, which said sum, shall be added to the principal sum for which this mortgage is given as security, and shall become a part thereof."

On March 15, 1932, Erlanger & Galinger, Inc., acting in its capacity as attorney-in-fact of the Radio Corporation of the Philippines wrote the following letter (Exhibit 13) to the principal debtor Jesus R. Roa:

"MR. JESUS R. ROA

Cagayan, Oriental Misamis

"Attention of Mrs. Amparo Chavez de Roa

"DEAR SIR: We acknowledge with thanks the receipt of your letter of March 9th together with your remittance of P200 for which we enclose receipt No. 7558/ We are applying this amount to the balance of your January installment.

"We have no objection to the extension requested by you to pay theyfrebruary installmenj/by the first week of April. We would, however, urge you to make every efforts to bring the account up-to-date as we are given very little discretion by the RCP in giving extension of payment.

"Very truly yours,

"RADIO CORP. OP THE PHIL.

"BY: ERLANGER & GALINGER, INC.

(Sgd.) "H. N. SALET

"Vice-President"

Under the above assignments of error the principal question to be decided is whether or not the extension granted in the above copied letter by the plaintiff, without the consent of the guarantors, the hereof appellants, extinguishes the iatter's liability not only as to the installments due at that time, as held by the trial court, but also as to the whole amount of their obligation. Article 1851 of the Civil Code leads as follows:

"Art. 1851. An extension granted to the debtor by the creditor, without the consent of the guarantor, extinguishes the latter's liability."

This court has held that mere delay in suing for the collection of the debt does not release the sureties. (Sons of I. de la Rama vs. Estate of Benedicto, 5 Phil., 512; Banco Espanol Filipino vs. Donaldson Sim & Co., 5 Phil., 418; Manzano vs. Tan Sunco, 13 Phil., 183; Hongkong & Shanghai Banking Corporation vs. Aldecoa & Co., 30 Phil., 255.) In the case of Villa vs. Garcia Bosque (49 Phil., 126, 134, 135), this court stated:

"* * * The rule at 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. * * *

"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 to the creditor the right to treat and declare all of said instalments as immediately due. If the stipulation had been to the effect that the failure 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 article 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 latter instalments shall be ipso facto accelerated by default in the payment of a prior instalment, but only that it shall give the creditor the 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 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."

The stipulation in the contract under consideration, copied above, is to the effect that upon failure to pay any instalment when due the other instalments ipso facto become due and payable. In view of the fact that under the express provision of the contract, quoted above, the whole unpaid balance automatically becomes due and payable upon failure to pay one instalment, the act of the plaintiff in extending the payment of the instalment corresponding to February, 1932, to April, 1932, without the consent of the guarantors, constituted in fact an extension of the payment of the whole amount of the indebtedness, as by that extension the plaintiff could not have filed an action for the collection of the whole amount until after April, 1932. Therefore appellants' contention that after default of the payment of one instalment the act of the herein creditor in extending the time of payment discharges them as guarantors in conformity with articles 1851 and 1852 of the Civil Code is correct.

"It is a familiar rule that if a creditor, by positive contract with the principal debtor, and without the consent of the surety, extends the time of payment, he thereby discharges the surety, * * * The time of payment may be quite as important a consideration to the surety as the amount he has promised conditionally to pay. * * * Again, a surety has the right, on payment of the debt, to be subrogated to all the rights of the creditor, and to proceed at once to collect it from the principal; but if the creditor has tied his own hands from proceeding promptly, by extending the time of collection, the hands of the surety will equally be bound; and before they are loosed, by the expiration of the extended credit, the principal debtor may have become insolvent and the right of subrogation rendered worthless. It should be observed, however, that it is really unimportant whether the extension given has actually proved prejudicial to the surety or not. The rule stated is quite independent of the event, and the fact that the principal is insolvent or that the extension granted promised to be beneficial to the surety would give no right to the creditor to change the terms of the contract without the knowledge or consent of the surety. Nor does it matter for how short a period the time of payment may be extended. The principle is the same whether the time is long or short. The creditor must be in such a situation that when the surety comes to be substituted in his place by paying the debt, he may have an immediate right of action against the principal. The suspension of the right to sue for a month, or even a day, is as effectual to release the surety as a year or two years." (21 R. C. L., 1018-1020.)

Plaintiff's contention that the enforcement of the accelerating clause is potestative on the part of the obligee, and not self-executing, is clearly untenable from a simple reading of the clause copied above. What is potestative on the part of the obligee is the foreclosure of the mortgage and not the accelerating clause.

Plaintiff-appellee contends that there was no consideration for the extension granted the principal debtor. Article 1277 of the Civil Code provides that "even though the consideration should not be expressed in the contract, it shall be presumed that a consideration exists and that it is licit, unless the debtor proves the contrary." It was incumbent upon the plaintiff to prove that there was no valid consideration for the extension granted.

In view of the foregoing the judgment of the trial court is reversed as to the appellants Ramon Chaves, Andres Roa and Manuel Roa, without costs.

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

Judgment reversed as to appellants.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.