

CARLOS YOUNG, PLAINTIFF AND APPELLANT, VS. FRANCISCO M. BLANCO, DEFENDANT AND APPELLEE. LUZON SURETY CO., INC., SURETY AND APPELLEE.

G.R. No. 44843. November 17, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

In August, 1935, the plaintiff filed a petition in the Court of First Instance of Manila for the issuance of an alias writ of execution of the judgment rendered by said court in civil case No. 43649, not on the property of the defendant Francisco M. Blanco who turned out to be insolvent, but on that of his surety, the Luzon Surety Co., Inc. The court denied his petition on September 27, 1935, and likewise denied that filed by him on October 1st, asking that a day be set for the presentation of his evidence to prove damages in the amount of P300, which he claimed to have suffered by reason of the possession by the defendant of the automobile to be discussed later, from May 11, 1933, to April 17, 1935. The plaintiff appealed to this court from the orders denying his two petitions, and now contends in his brief that the lower court committed the following errors, to wit:

"1. The lower court erred in denying, the appellant's motion to be allowed to prove damages against the bond of the Luzon Surety Company by reason of the redelivery to the defendant of the property seized under replevin in this case.

"2. The lower court erred in denying the appellant's motion for a new trial."

The material facts relative to the case, which are not disputed by the parties, may be stated briefly as follows:

On June 20, 1932, the defendant Francisco M. Blanco executed in favor of the plaintiff four promissory notes, each in the sum of P100, excepting the last one which was for P107.77, in substitution for old ones that he had failed to redeem, amounting to P407.77. The four notes were of the same tenor except as to the dates of their respective maturity, which were from month to month counting from July 31, 1932, and they imposed upon the defendant the obligation to pay interest at the rate of 12 per cent per annum, plus a penalty equivalent to 20 per cent of the sums stated therein, in case of default. To secure the payment of said promissory notes, the defendant constituted in favor of the plaintiff a mortgage on a second hand automobile De Soto "6" Sedan, motor No. K-86492, serial No. KL-528-L, which mortgage was duly registered in the office of the register of deeds of the Province of Rizal. The defendant having failed to redeem his promissory notes, the plaintiff, by virtue of the terms of the mortgage constituted in his favor, asked for and obtained from the court the seizure of the above-mentioned automobile. For the purpose of setting aside the writ of seizure, the defendant, jointly with the Luzon Surety Co., Inc. filed a bond in the sum of P800, which was then double the alleged value of the automobile. Under the bond, the two obligors bound themselves to deliver said automobile to the plaintiff, if such delivery should be adjudged by the court at the proper time, or to pay him the value thereof, together with any other sum to which said plaintiff might be entitled, plus the costs. By virtue of the bond so filed, the defendant succeeded in retaining possession of said automobile. After the corresponding trial, judgment was rendered by the court ordering the defendant to

return said automobile to the plaintiff, or otherwise to pay him the sum of P400, the value thereof. From the judgment rendered against him, the defendant appealed to this court but the decision was adverse to him. After the case had been remanded later to the lower court, the judgment was executed and the automobile in question was sold at public auction for the sum of P300. The proceeds of the sale were applied to the partial payment of the judgment obtained by the plaintiff, which amounted to P754.88 including interest, the costs and the penalty, thereby leaving a balance of P454.88 to be paid by the defendant. To recover said balance, the plaintiff sought the issuance of a writ of execution against the defendant, but nothing could be recovered from him because he turned out to be insolvent. It was then that the plaintiff filed his said petition of August, 1985, seeking the issuance of an alias writ against the defendant for the execution of the judgment rendered against him on the property of his surety, the Luzon Surety Co., Inc., with the result hereinbefore stated.

The pertinent part of the bond filed by the defendant and the Luzon Surety Co., Inc. is couched in the following terms:

"Now therefore, we, Francisco M. Blanco of Malabon, Rizal, as principal, and Luzon Surety Company, Incorporated, of Manila, as sureties, in consideration of the above and of the return of said property to said defendant, hereby bind ourselves, jointly and severally, in the sum of eight hundred pesos (P800), Philippine currency, which is double the value of the property as stated in the affidavit of the plaintiff, for the delivery hereof if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and the costs of the action."

As may be seen, the foregoing is entirely in accordance with the provisions of section 267, in connection with section 272, of Act No. 190, which read as follows:

"Sec. 267. Delivery of property to the defendant.—At of the bond so filed, the defendant succeeded in retaining possession of said automobile. After the corresponding trial, judgment was rendered by the court ordering the defendant to return said automobile to the plaintiff, or otherwise to pay him the sum of P400, the value thereof. From the judgment rendered against him, the defendant appealed to this court but the decision was adverse to him. After the case had been remanded later to the lower court, the judgment was executed and the automobile in question was sold at public auction for the sum of P300. The proceeds of the sale were applied to the partial payment of the judgment obtained by the plaintiff, which amounted to P754.88 including interest, the costs and the penalty, thereby leaving a balance of P454.88 to be paid by the defendant. To recover said balance, the plaintiff sought the issuance of a writ of execution against the defendant, but nothing could be recovered from him because he turned out to be insolvent. It was then that the plaintiff filed his said petition of August, 1985, seeking the issuance of an alias writ against the defendant for the execution of the judgment rendered against him on the property of his surety, the Luzon Surety Co., Inc., with the result hereinbefore stated.

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As may be seen, the foregoing is entirely in accordance with the provisions of section 267, in connection with section 272, of Act No. 190, which read as follows:

"Sec. 267. Delivery of property to the defendant.—At any time before the delivery of the property to the plaintiff, as in this section provided, the defendant may, if he do not except to the obligation or sureties of the

plaintiff, require the return thereof, upon delivering to the clerk a written obligation to the plaintiff executed by him, with two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in section two hundred and seventy.

"Sec. 272. Judgment.—After a trial of the issues the court shall find in whom is the right of possession and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same or for the value, in case delivery can not be made, and also for such damages as either party may prove, and for costs."

The material parts of the above-quoted clause of the bond and those of the above-cited sections are purposely underlined so that it may clearly be seen what obligations had been assumed by the obligors under said bond, and what are the obligations imposed by law. It will be seen that the defendant and his surety bound themselves to deliver the automobile to the plaintiff, if such delivery should be adjudged, or otherwise to pay the value thereof, and in each case to answer and to pay to the plaintiff any sum to which he may be entitled, by way of damages, according to his evidence, plus the costs. The legal provision relative to damages and costs ("and also for such damages as either party may prove, and for costs"), is common to the two cases wherein judgment in the alternative must be rendered for the delivery or return of the thing released from seizure, or for the payment of the value thereof in case its delivery or return can no longer be made. This is all the more evident in the present case because, from the time the automobile was returned to the defendant by virtue of his bond on May 11, 1933, to April 17, 1935, when he delivered said automobile to the sheriff for sale at public auction, one year, eleven months and six days elapsed, which lapse of time is more than sufficient to show the deterioration or impairment which it did not fail to suffer during said period.

If the automobile, at the time the defendant and the Luzon Surety Co., Inc. filed the bond, was worth P400, as they so admitted implicitly in their bond, and the proceeds of the sale thereof at public auction were only P300, the conclusion appears evident that the deterioration was worth P100, excluding interest. Therefore, the damages suffered by the plaintiff are equivalent to said sum plus the legal interest thereon and the costs, and nothing more. This being known, it appears that there neither was nor is any necessity for the plaintiff to present evidence on damages, inasmuch as the court had such evidence before it when it issued the orders appealed from.

For all the foregoing, the orders appealed from are hereby reversed, and the Luzon Surety Co., Inc. is ordered to pay to the plaintiff the sum of P100 plus legal interest thereon from September 21, 1935, the date on which it was notified of said plaintiff's motion for the issuance of a writ of execution against it, until fully paid, and to pay the costs of this appeal, without prejudice to any other alias writ of execution that the plaintiff may be able to obtain against the defendant, in case the latter's financial condition should improve, within the period of prescription, for the recovery of any balance still due from him, plus interest thereon. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Laurel, JJ., concur.

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