

LA YEBANA, CO., INC., PLAINTIFF AND APPELLEE, VS. JULIO L. VALENZUELA, BONIFACIA M. DE VALENZUELA AND RUFINO VALENZUELA, DEFENDANTS. RUFINO VALENZUELA, APPELLANT.

G.R. No. 45413. April 24, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The appeal which led to the elevation of the present case to this court is from the judgment of the Court of First Instance of Bulacan, the dispositive part of which reads as follows:

"In view of all the foregoing, the court renders judgment sentencing the defendants Julio L. Valenzuela and Rufino Valenzuela jointly and severally to pay plaintiff the sum of P1,000 within the period of ninety days, and should they fail to do so the mortgaged property described in Exhibit A shall be sold at public auction and the proceeds therefrom applied to the payment of the aforesaid sum.

"The defendant Julio Valenzuela is further sentenced to pay plaintiff the sum of P3,254.64 representing the balance of his debt not covered by the security given by defendant Rufino Valenzuela, and the costs of the suit." Defendant Rufino Valenzuela interposed said appeal with a view to having the aforementioned judgment reversed.

To arrive at the conclusion which prompted it to render the judgment appealed from the lower court took into account the facts admitted by the parties according to a stipulation which they submitted during trial.

Said stipulation states that Julio L. Valenzuela was made a sales agent of the products of the appellee, La Yebana Co., Inc. His obligation as such, during the existence of the relation between the two as agent and principal, consisted in selling the products of the afore-mentioned company which the latter would deliver to him from time to time upon his request, answering for the value of said products, rendering accounts of the sales, delivering the proceeds thereof, and returning to said company the products which he may have been unable to sell. To guarantee the faithful performance of this obligation, Julio L. Valenzuela executed a bond of P1,000 on December 7, 1931, and signed Exhibit A which is the document embodying said obligation, jointly with the appellant. After the execution of said bond and by virtue of the terms thereof, the appellee delivered to Julio L. Valenzuela, upon his request, goods and merchandise to be sold by him under the conditions hereinbefore mentioned. Upon liquidation of his accounts on July 30, 1935, it was found that Julio L. Valenzuela owed the appellee P6,254.64. As the bond which he had executed with the appellant to answer for his obligation was not sufficient, he was asked to give another security to which he consented, executing for that purpose on the same day, jointly with his wife, Bonifacia Mercado de Valenzuela, the deed of mortgage Exhibit B whereby the two encumbered in favor of the appellee their house on F. Jocson Street No. 74, Interior, in Sampaloc district, Manila, valued at P2,000. Still later they ceded the mortgaged house to the appellee in partial payment of the obligation of the husband, thereby reducing said indebtedness to P4,254.64. After some time Julio L. Valenzuela, his wife and the appellant were asked to pay this balance, the appellee demanding of the appellant that he pay P1,000 of said balance in accordance with the terms of their aforesaid bond Exhibit A. Not having done so, the appellee commenced this

case in the lower court with the result adverted to in the beginning.

In support of his appeal, the appellant contends that the lower court erred (a) in not finding that the execution by the spouses Julio L. Valenzuela and Bonifacia Mercado in favor of the appellee of the deed of mortgage Exhibit B, which took place on July 30, 1935, without his consent or knowledge, had the effect of extinguishing his liability as surety; (b) in not likewise finding that the failure of the appellee to take prompt action against Julio L. Valenzuela upon knowing that said defendant had overdrawn his accounts, operated to grant him more time to straighten them without his (appellant's) consent and immediately had the effect also of extinguishing his obligation as such surety; and (c) in sentencing him, jointly and severally with Julio L. Valenzuela, to pay the appellee the sum of P1,000.

The questions raised by the appellant may be easily resolved by examining and knowing the terms of his bond Exhibit A. They are as follows:

"Know all men by these presents:

"That we, Julio L. Valenzuela, of legal age, married and residing at No. 132 Mangahan, Sampaloc, Manila, as principal, and Rufino Valenzuela, of legal age, widower, and residing at Malolos, Bulacan, as surety, hereby bind ourselves to 'La Yebana Co., Inc.', a corporation duly organized under the laws of the Philippine Islands with its principal office in the City of Manila and hereafter known as the Corporation, in the total sum of one thousand pesos (P1,000), Philippine currency, for the due payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

"Whereas, said principal is a sales agent of the Corporation and as such received and may from time to time in the future receive from said Corporation all goods, merchandise and articles for the purpose of selling them under the duty of returning to said Corporation said goods and merchandise as have not been sold and answering for the value of said merchandise and effects; and

"Whereas, the said surety Rufino Valenzuela is the real owner of real property, located in the barrio of Catmon, municipality of Malolos, Province of Bulacan, Philippine Islands, the description of which is as follows:

" 'A parcel of land (lot No. 2379 of the cadastral survey of Malolos), with its improvements, situated in the municipality of Malolos. Bounded on the NE. by the Sapang Catmon; on the SW. by lot No. 2380; and on the NW. by lot No. 8224. Beginning at a point marked 1 on plan, being S. 20 deg. 09' E., 118.76 m. from B. B. M. No. 23; thence W. 24 deg. 28' E., 40.17 m. to point 2; thence S. 21 deg. 56' E., 1323 m. to point 3; thence S. 6 deg. 28' E., 33.50 m. to point 4; thence N. 70 deg. 27' W., 26.89 m. to the point of beginning; containing an area of five hundred and ninety-seven square meters, more or less. All points referred to are indicated on the plan; bearings true; declination 0 deg. 30' E., date of survey, May 1921 November 1922; segun consta en el certificado original de titulo No. 4153 de la Provincia de Bulacan. Valor amillarado en P2,685.00.'

"And said surety by these presents binds himself that said property with all its improvements shall answer as guarantee for the faithful and exact compliance with the obligations of the sales agent as they appear in said exhibit. Said surety agrees that during the whole period this contract is in force and before any breach thereof, all the real estate taxes which encumber the same shall be paid. He likewise binds himself not to allow that said property or any part thereof be mortgaged or otherwise alienated without the previous written consent of the corporation.

"Wherefore, the conditions of this obligation of suretyship are that if said principal complies well and faithfully with all his obligations in this contract, remitting or delivering to said Corporation all the money which represents the value of said goods as above stipulated, this guaranty shall be null and void; otherwise, it will be enforced in accordance with law.

"It is further agreed that the efficacy and force of this contract shall not be affected by the acceptance of other

guaranties nor by any law or extension for the fulfillment of any obligation herein contracted, said surety hereby making express renunciation of any right or benefit granted by law.

"In testimony whereof, we sign these presents this 7th of December, A. D. 1931, in the City of Manila, Philippine Islands.

(Sgd.) "Rufino Valenzuela

"Surety

(Sgd.) "Julio L. Valenzuela

"Principal

"Signed in the presence of:

(Sgd.) "Manuel Arceo

"Witness

(Sgd.) "Miguel B. Sampan a

"Witness

"(The ratification clause and the annotation of said bond in the Registry of Property of Bulacan have been omitted.)"

It will be noted that the parties who executed the said bond, Julio L. Valenzuela and the appellant, expressly agreed with the appellee that the efficacy thereof could not be affected by the latter's acceptance of other guaranties to secure the faithful compliance by Julio L. Valenzuela with his obligations as sales agent, nor by any extension which the Corporation might grant him to pay his obligation. It will be further noted that the liability of the appellant, under the said bond, is not merely subsidiary or secondary, but joint and several and as primary as that of Julio L. Valenzuela himself. It is not contrary to law, to morals or public order that the parties to a bond make agreements, clauses and conditions of the nature of those appearing in Exhibit A (art. 1255, Civil Code). And if, as in the case now before us, the guarantor binds himself solidarily with the principal debtor to pay the latter's debt to his creditor, he cannot and should not complain that the creditor should thereafter proceed against him to collect its credit. This is because the creditor may proceed against any one of the solidary debtors or against all of them simultaneously, the fact that an action had been instituted or that payment had been enforced against one of them not being a bar thereto so long as there remains a balance to collect (art. 1144, Civil Code). This is also true with respect to the solidary guarantors because under the law, the very fact that they are such solidary guarantors makes them as principally liable as the principal debtors themselves. By the contract of suretyship and guarantee, the law says, one binds himself to pay or perform for another in case the latter does not do so; and if the guarantor binds himself solidarily with the principal debtor, the rule to be observed is that set forth in article 1144 of the said Code. (Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil., 406; Inchausti & Co. vs. Yulo, 34 Phil., 978; Jaucian vs. Querol, 38 Phil., 707; U. S. vs. Varadero de la Quinta, 40 Phil., 48; Castellvi de Higgins and Higgins vs. Sellner, 41 Phil., 142; Clark vs. Sellner, 42 Phil., 384; Bank of the Philippine Islands vs. Albaladejo y Cia., 53 Phil., 141.)

The failure of the appellee to take prompt action against Julio L. Valenzuela upon knowing that he had overdrawn his accounts and to inform the appellant of said fact so as to give him an opportunity to proceed against him, is not tantamount to granting him an extension in the sense intended by article 1851 of the Civil Code, which says: "An extension granted the debtor by the creditor without the consent of the guarantor, extinguishes the guarantee" because the fact is that such extension, which must be more or less express before it may assume the nature of a novation, has not been granted him. Furthermore, as has been held in various cases, the mere fact of not taking

action against a debtor for the collection of a credit for which he must answer, as soon as the obligation becomes due, does not constitute an extension for the fulfillment of said obligation. (*Banco Español Filipino vs. Donaldson, Sim & Co.*, 5 Phil., 418; *Hijos de I. de la Rama vs. Estate of Benedicto*, 5 Phil., 5121; *Hongkong & Shanghai Banking Corporation vs. Aldecoa & Co.*, 30 Phil., 255.) On the other hand, there is nothing in the bond Exhibit A to show that the products or goods which the appellee could deliver to Julio L. Valenzuela should not exceed P1,000 as this was only the amount of the bond. What appears therein is that the appellee did not want to demand a bond of more than P1,000 to answer for the payment of the products or goods which, being of that value, it was to deliver to Julio L. Valenzuela without limiting in any manner the amount of said products and goods. It reserved its right to give him more, or less, this being deducible not only from the second paragraph of the deed of suretyship, but also from the third in which appears the agreement of those who executed the same—among them the appellant—to the effect that the appellee might require and accept other guaranties from the principal debtor.

The appellant's reason for contending that the sureties are released from their obligation if by any act of the creditor they cannot thereafter be subrogated to the rights, mortgages and privileges pertaining to him, according to article 1852 of the Civil Code, has been practically answered. If, however, the foregoing considerations are not yet sufficient to resolve the question, what Falcon, commenting on the article referred to, said may and should be added thereto: "This will happen when the creditor voluntarily cancels a mortgage constituted in his favor, freely renounces some benefit to which the law entitles him, or performs any other similar act by virtue of which the enforcement of the credit is made more difficult, the conditions thereof being changed." (Falcon, *Doctrinal Exposition of the Spanish Civil Law*, volume 4, page 457); and surely nothing of the kind was done by the appellee.

In conclusion, we find that the errors attributed by appellant to the lower court do not exist and his appeal is not well-taken.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

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