

FLORENTINA DE GUZMAN, AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE DECEASED SANTIAGO LUCERO, PLAINTIFF AND APPELLEE, VS. ANASTACIO R. SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 45571. June 30, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant from the decision of the Court of First Instance of Nueva Ecija which sentenced him to pay the plaintiff the sum of P3,665.55, plus legal interest thereon from February 10, 1932, until fully paid, and the costs.

On October 28, 1924, Jerry O. Toole, Antonio K. Abad and Anastacio R. Santos, the defendant, formed a general mercantile partnership under the style Philippine-American Construction Company, with a capital of P14,000, P10,000 of which were taken by way of loan from Paulino Candelaria. The partnership and the copartners undertook and bound themselves to pay, jointly and severally, the said indebtedness in or before June, 1925. Having violated the conditions of the contract executed for the purpose, Paulino Candelaria brought civil case No. 3838 of the Court of First Instance of Nueva Ecija on May 15, 1925, against the Philippine-American Construction Company and its copartners, for the recovery of the loan, plus interest thereon and stipulated attorney's fees. On January 25, 1926, the said court rendered judgment therein sentencing all the defendants to pay the plaintiff, jointly and severally, the sum of P9,317, with legal interest thereon from the filing of the complaint, plus P500 as liquidated damages and P1,000 as attorney's fees. On appeal this judgment was affirmed by this court on December 17, 1926 (G. R. No. 26131). A writ of execution of the affirmed judgment having been issued, the herein plaintiff, in her capacity as judicial administratrix of the deceased Santiago Lucero, on February 10, 1932, paid to the creditor Paulino Candelaria the sum of P5,665.55 on account of the judgment.

Upon the filing of the complaint in civil case No. 3838, Paulino Candelaria obtained a writ of attachment against the then defendants by virtue of which the sheriff attached properties of Jerry O. Toole valued at P50; of Antonio K. Abad valued at P12,150; and of Anastacio R. Santos valued at P2,733. No property of the partnership Philippine-American Construction Company was attached. In view of these attachments, the Philippine-American Construction Company moved for the discharge of the attached properties and offered to post a bond for P10,000. The court granted the motion and fixed the bond at the amount offered. On May 29, 1925, the Philippine-American Construction Company, as principal, then represented by the partner Antonio K. Abad, and Santiago Lucero and Meliton Carlos, as guarantors, executed a bond for P10,000 in favor of Paulino Candelaria for the lifting of the attachment under section 440 of the Code of Civil Procedure. In the bond thus executed, the defendant Anastacio R. Santos neither intervened nor signed individually, but Abad testified that the former was the one who induced him to get the signature of Lucero by taking advantage of his good relations with him. Upon the approval of the bond, the attachment was discharged and the attached properties were returned to their owners.

After the issuance of the writ for the execution of the judgment rendered in civil case No. 3838, the sheriff returned the same with the statement that the writ could not be executed as he found no property of the judgment debtors. In view of this, Paulino Candelaria moved for the issuance of a writ of execution against the guarantors of the defendants. The court granted the motion and issued a writ of execution against the plaintiff, as judicial administratrix of the deceased Santiago Lucero, and the other guarantor Meliton Carlos. The plaintiff tenaciously refused to pay the judgment obtained by Paulino Candelaria, but after all her efforts had failed, she was eventually compelled to pay to said creditor the sum of P5,565.55; the co-guarantor Meliton Carlos also paid upon the bond signed by him the sum of P5,135. The plaintiff and Carlos later recovered from Antonio K. Abad, one of the defendants in the said civil case, the sum of P3,800 which they divided equally. It thus appears that the payment made by the plaintiff to Candelaria was reduced to the sum of P3,665.55. The plaintiff, in her said capacity, demanded of the defendant Anastacio R. Santos the return of the aforesaid sum and, upon the latter's refusal, she brought the action which culminated in the appealed judgment.

The four errors assigned by the appellant raise only one legal question, namely, whether under the proven facts admitted by the parties, he is bound to pay to the plaintiff what the latter had advanced to Paulino Candelaria upon the bond which the deceased Santiago Lucero had executed. The appellant vigorously insists that he is not so bound under the law, because he neither applied for nor intervened in the bond in any capacity. It is beyond question that the appellant neither intervened nor signed the bond which was filed to discharge the attachment of the properties of the judgment debtors, but it is clear, and this is admitted, that the bond was filed to release the attached properties, it was approved by the court and it resulted in the discharge of the attachment and the return of the attached properties to their respective owners. When the sheriff attempted to execute the judgment and looked for the discharged properties, he found that they had disappeared, for which reason the court subsequently issued a writ of execution against the guarantors. As a result of this last execution, the plaintiff was forced to pay and in fact paid the said sum to the creditor Candelaria. Now, then, under article 1822 of the Civil Code, by guaranty one person binds himself to pay or perform for a third person in case the latter should fail to do so; and article 1838 provides that any guarantor who pays for the debtor shall be indemnified by the latter even should the guaranty have been undertaken without the knowledge of the debtor. In the present case, the guarantor was the deceased Santiago Lucero, now represented by the plaintiff in her capacity as judicial administratrix, and the debtor is the defendant-appellant. Applying the provision of the last cited article, it is obvious that the appellant is legally bound to pay what the plaintiff had advanced to the creditor upon the judgment, notwithstanding the fact that the bond had been given without his knowledge.

The obligation of the appellant to pay the plaintiff what the latter had advanced is further sanctioned by the general provisions of the Civil Code regarding obligations. Article 1158 provides that "payment may be made by any person, whether he has an interest in the performance of the obligation or not, and whether the payment is known and approved by the debtor or whether he is unaware of it. Any person who makes a payment for the account of another may recover from the debtor the amount of the payment, unless it was made against the express will of the latter. In the latter case he' can only recover from the debtor in so far as the payment has been beneficial to the latter." According to this legal provision it is evident that the plaintiff-appellant is bound to pay to the plaintiff what the latter had advanced to the creditor upon the judgment, and this is the more so because it appears that although Lucero executed the bond without his knowledge, nevertheless he did not object thereto or repudiate the same at any time. From the proven facts it cannot logically be deduced that the appellant did not have knowledge of the bond, first, because his properties were attached and the attachment could not have been levied without his knowledge, and, secondly, because the said properties were returned to him and in receiving them he was necessarily apprized of the fact that a bond had been filed to discharge the attachment.

The appellant questions the application by the court of article 127 of the Code of Commerce, overlooking article

128. This assignment of error is of no consequence and does not affect the result of the case. As already stated, the rights of the parties must be governed by the aforesaid articles of the Civil Code. Assuming the inapplicability of article 127 of the Code of Commerce, in view of the fact that the action is not addressed to the appellant as general partner of the Philippine-American Construction Company, it nevertheless appears that his liability to the plaintiff, as debtor in solidum of Paulino Candelaria, is recognized and countenanced by articles 1158 and 1838 of the Civil Code.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the defendant-appellant. So ordered.

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

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