

DOMINGO FERRER ET AL., PLAINTIFFS AND APPELLEES, VS. JOSE S. LOPEZ, DEFENDANT AND APPELLANT.

G.R. No. 46264. October 03, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is one of a series of cases which had been elevated to this court on appeal, for the purpose of determining the liability of Jose S. Lopez on the bond given by him to secure the faithful performance of Patricio Alino, judicial administrator of Tasiana Ferrer. (Civil case No. 20022, Court of First Instance of Manila.) In Ferrer vs. Lopez and Santos (56 Phil., 592), we held:

"The appellants maintain that the plaintiff's claim, not having been filed with the committee, cannot be the subject matter of the present complaint. This contention is untenable. The claim has been filed with the committee in due time. And 'if a valid presentation of a claim has once been made, a change in the administration by the appointment of another representative does not necessitate a second presentation.' (24 C. J., 319, citing *Floyd v. Clayton*, 67 Ala., 265; *McHardy v. McHardy*, 7 Fla., 301; *Miller v. Lewiston Nat. Bank*, 18 Ida., 124; 108 Pac, 901; *Cochran v. Germania Bank*, 10 Ky. L., 449; *Matter of Hallenbeck*, 119 App. Div., 757; 104 N. Y. S., 568 [mod. on other grounds 195 N. Y., 143; 88 N. E., 16; 133 Am. S. R., 782]; and *Parks v. Lubbock* (Civ. A.), 50 S. W., 466.) With greater reason may it be said that the change of one of the members of the committee on claims and appraisals does not necessitate a second filing of the claim."

* * * * *

"It is true that section 695 of the Code of Civil Procedure provides that one having a claim against a deceased's estate that must be decided by the committee, who, after the publication of the notice required, fails to file it, shall lose the right to enforce said claim or to plead it in counter-claim in any case, except those specified in the Code (with reference to contingent claims).

"But the court having held that the amount in question is a part of the debt of the later administrator, Patricio Alino, we believe its filing with the committee was not for the purpose of having said body decide whether or not it was to be accepted, but merely for purposes of classification. (24 C. J., 332; *Brennan v. Brennan*, 65 Cal., 517; 4 Pac, 561; *Darling v. McDonald*, 101 111., 370; *Manning v. Mayes*, 79 Tex., 653; 15 S. W., 638; *Ryans v. Boogher*, 169 Mo., 673; 69 S. W., 1048; *In re Richardson*, 97 Wash., 488; 166 Pac, 776.) And further, inasmuch as the claim in question was duly filed with the committee, this legal provision is not applicable. It follows from all this that the obligation of the later administrator, Patricio Alino, as principal, was not extinguished, and therefore, the accessory obligation of the sureties was likewise not extinguished.

"We are therefore of the opinion that, as the principal debtor's obligation is valid and has not been satisfied by his estate, and as the defendant sureties bound themselves solidarily, article 1144 of the Civil Code is applicable, which provides as follows:

" 'The creditor may sue any of the solidary debtors or all of them simultaneously. An action instituted against one shall not be a bar to those which may be subsequently brought against the others, as long as the debt has

not been entirely satisfied.' *Molina vs. De la Riva*, 7 Phil., 345; *Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil., 406; *Inchausti & Co. vs. Yulo*, 34 Phil., 978.)"

And following the decision in the above-cited case, we also held Jose S. Lopez liable in the same capacity in the other cases subsequently decided by this court. (*Ferrer vs. Lopez*, G. R. No. 44841; *Ferrer vs. Lopez*, G. R. No. 45199; *Ferrer vs. Lopez*, G. R. No. 45257.)

Pending, however, the determination of the issues raised by the appellant Lopez in this case, he filed, on February 1, 1939, a motion for a new trial alleging:

"2. Que la responsabilidad que se exige del demandado en este asunto es la de un fiador solidario, por virtud de una fianza por la cantidad de P7,000 prestada en beneficio de un tal Patricio Alino como administrador judicial que fue este del Intestado de su difunta esposa Tasiana Ferrer.

"3. Que antes de entablarse la demanda objeto de esta causa el aqui demandado como tal fiador pago la cantidad de P2,376.24 en cumplimiento de sentencias firmes dictadas en las demandas entabladas por Antonia Ferrer (56 Phil., 592), y por Raymunda Ferrer, (G. R. No. 41166), en relacion con la referida fianza prestada por el compareciente en beneficio de Patricio Alino.

"4. Que, recientemente, o sea el dia 3 de enero de 1939, cuando esto asunto ya estaba ante este Hon. Tribunal pendiente de inclusion en el calendario, el aqui compareciente, como consecuencia de la misma fianza arriba mencionada, pago la suma de P5,194.98 en virtud de sentencias firmes dictadas en los asuntos entablados por Raymunda Ferrer, como administrador del Intestado de Sabina Ferrer, No. 47225, por Mariano Ferrer, No. 47224 y por Florencio Ferrer No. 47223, todos del Juzgado de Primera Instancia de Manila.

"5. Que dicha cantidad de P5,194.98 pagada el dia 3 de enero de 1939, unida a la de P2,376.24 pagada anteriormente por el aqui demandado-apelante, hace un total de P7,571.22.

"6. Que las cantidades pagadas por el demandado-apelante ya exceden del importe de su fianza, la cual, como ya se ha dicho mas arriba, era de P7,000 solamente.

"7. Que en el asunto que ahora tiene el Hon. Tribunal Supremo bajo su consideracion se trata de cobrar del demandado fiador la cantidad adicional de P2,376.24, la cual ya esta fuera del importe de la susodicha fianza.

"8. Que el pago hecho por el aqui demandado-apelante el dia 3 de enero de 1939 constituye un nuevo hecho que debe ser tenido en cuenta por este Hon. Tribunal.

"9. Que el articulo 1827 delCodigo Civil, dispone que 'la fianza no se presume, debe ser expresa y no puede extenderse a mas de lo contenido en ella.'

"10. Que en virtud de las disposiciones de dicho articulo delCodigo Civil, el aqui demandado-apelante no puede ser obligado a pagar ninguna cantidad que exceda de la suma de P7,000 que es el importe de la fianza por el prestada.

"11. Que, como ya se ha dicho mas arriba, el aqui demandado-apelante ya ha hecho pagos que montan a la suma de P7,571.22, y todos dichos pagos de la presente causa, y en virtud de sentencias firmes dictadas por este Honorable Tribunal Supremo.

"12. Que los pagos hechos por el aqui compareciente hechos recientemente son de tal indole que darian lugar probablemente a otro resultado."

By resolution of February 13, 1939, this court ordered that the motion be answered by the plaintiffs-appellees who objected to the concession of a new trial. Nevertheless, this court, on August 24, 1939, required the defendant-appellant, Jose S. Lopez, to attach to his motion receipts or documents evidencing payments alleged to have been made by him, indicating, specifically, the dates and amounts of such payments and the cases where the

payments were made, as alleged by him in paragraphs 3, 4, and 5 of his motion. Accordingly, the defendant-appellant submitted the required documents from which it appears that he has already made a total payment amounting to P8,228.34.

Without making any pronouncement as to the correctness of this amount or as to the weight that should be attached to the documents and receipts appended to the motion, considering the fact that the defendant-appellant, as bondsman, obligated himself to the amount of only P7,000 and that his liability should not be made to exceed the amount of his bond, in the interest of justice (*Singh vs. Tan Chay*, 51 Phil., 259; *Tirso Garcia vs. Lim An*, G. R. No. 44404, resolution of August 25, 1938), the decision of the lower court is hereby set aside and the case remanded to the Court of First Instance of Manila, with instruction that it reopen the case for the sole purpose of determining whether the defendant-appellant, Jose S. Lopez, had made the payments alleged to have been effected by him, receiving evidence to that effect, and passing upon the admissibility of the evidence thus to be presented, giving the parties ample opportunity to be heard and to present their respective evidence on this point and, thereafter, that it render judgment according to law. Without special pronouncement as to costs. So ordered.

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

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