

J. V. HOUSE, PETITIONER, VS. SIXTO DE LA COSTA, JUDGE OF FIRST INSTANCE OF MANILA, BRANCH V, ET AL., RESPONDENTS.

G.R. No. 46534. October 16, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The petitioner, plaintiff in a civil case against C. P. Bush and George Upton for the recovery of a sum of money, obtained a preliminary attachment of certain properties of the latter. Three days thereafter, Bush and Upton secured the discharge of the attachment of these properties by filing a bond posted by Far Eastern Surety & Insurance Co., Inc., on August 25, 1934, for P2,000, the condition of the bond being that, should the plaintiff and petitioner House obtain a judgment against C. P. Bush, the latter would return to the Sheriff of Manila the properties discharged from attachment and, should he fail to do so, the Far Eastern Surety & Insurance Co., Inc., would pay the value thereof.

On September 1st following, the petitioner House and C. P. Bush entered into an agreement, without the knowledge or consent of the Far Eastern Surety & Insurance Co., Inc., whereby Bush delivered to the petitioner, together with other properties, those discharged from attachment to be sold at public auction. The petitioner was the highest bidder in this sale and the properties were adjudicated to him.

Eventually the petitioner obtained judgment against C. P. Bush for the amount of P2,000, and the same not having been satisfied, he asked for execution against Far Eastern Surety & Insurance Co., Inc., as surety of C. P. Bush in the discharge of the properties from the attachment. The court denied this petition.

The petitioner alleges that the court exceeded and abused its discretion in so ruling.

From the foregoing it appears that the petitioner and C. P. Bush, under the agreement of September 1st, substantially altered their juridical relations as to the properties discharged from attachment and for the delivery of which Far Eastern Surety & Insurance Co., Inc., was a surety, which alteration necessarily released the latter from its obligations as such surety. The properties discharged from attachment having been turned over to the petitioner and thereafter publicly sold and adjudicated to him under the said agreement, the obligation of C. P. Bush to return the properties to the Sheriff, in satisfaction of the judgment in favor of the petitioner, was extinguished and compliance therewith became impossible by petitioner's own act, thereby resulting in the release of the surety from its obligation to pay the value of said properties (articles 1184 and 1847 of the Civil Code).

The petition is denied, with the costs to the petitioner. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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