

HIJOS DE F. ESCAÑO, INC., PLAINTIFF-APPELLEE, VS. JOAQUIN LAO GOO, DEFENDANT-APPELLANT.*G.R. No. 47963. March 14, 1941*

Ponente: LAUREL, J.

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On April 7, 1938, the plaintiff-appellee, Hijos de F. Escano, Inc., brought an action against Joaquin Lao Goo in the Court of First Instance of Leyte for the recovery of a certain sum of money.' In the complaint, the plaintiff alleged that the defendant, on different occasions during the years 1927, 1928 and 1929, received from its branch office at Maasin, Leyte, several amounts totalling P4,000, which, by a promissory note (Exhibit B) dated October 22, 1929, he bound himself to pay on or before October 20, 1932; that, although said obligation had fallen due, defendant refused to settle the same, and prayed for a writ of attachment and an entry of judgment against the defendant for the sum of P4,000 with interest from October 20, 1932, besides damages and costs.

After trial, the lower court, on June 6, 1939, rendered its decision, the dispositive portion of which recites: "In view of the foregoing, the Court enters judgment in favor of the plaintiff, Hijos de F. Escano, Inc., and against the defendant, Joaquin Lao Goo, hereby ordering the latter to pay the former the sum of four thousand pesos (P4,000) plus the legal interests thereon from October 20, 1932, and costs."

Defendant presented a motion for a new trial which was denied on August 12, 1939. He excepted and appealed and here assigns the following errors:

"1. El Juzgado inferior incurrió* en error al admitir el Exhibito B como prueba de una supuesta deuda del demandado no garantizada.

"2. El Juzgado inferior también incurrió en error al no declarar impropio e ilegal el embargo preventivo trabado contra los bienes del demandado, por haberse obtenido el mismo con malicia y sin causa suficiente.

"3. Por último, el Juzgado inferior asimismo incurrió en error al no sobreseer la demanda, y al no conceder la nueva vista solicitada por el demandado."

Under the first assignment of error, appellant contends that the lower court erred in not holding that the credit in Question was guaranteed by his life insurance policy and emphasizes, in support, paragraphs 3 and 4 of Exhibit B.

Without here deciding whether the defendant-appellant could legally encumber his Policy No. 100324 with the West Coast Life Insurance Company as a collateral security, the consent of his beneficiary, Nicanor Lao Hing Chong, not appearing upon the record, we are of the opinion that paragraphs 3 and 4 of the promissory note (Exhibit B) do not constitute a valid assignment of any interest in said policy which could give the creditor-appellee a good lien for the amount of his claim. By the two clauses adverted to, nowhere does it appear that Joaquin Lao Goo ceded or conveyed any right or interest in the policy to the appellee. Upon the other hand, it is evident that Exhibit B embodies only a promise by the debtor to apply "al pago de mi deuda arriba mencionada cualquiera cantidad que yo pudiere cobrar de la compañía aseguradora al o después del vencimiento de mi

pdliza." This view is further explained by paragraph 5 of Exhibit B, wherein the defendant-appellant acknowledges that, should he be unable to pay the sum owed by him on October 20, 1932, appellee "pueda entablar una acci6n contra mi por el cobro de mi deuda, y en caso de que dicha compania obtuviera una sentencia favorable, ella podra pedir la ejecuci6n de la sentencia contra todos los bienes que tuviere."

Defendant-appellant likewise impugns the action of the court below in issuing the writ of attachment. Under section 426 of the Code of Civil Procedure (now section 3 of Rule 59 of the New Rules of Court), a judge or justice of the peace shall grant an order of attachment when it is made to appear to the judge or justice of the peace by the affidavit of the plaintiff, or of some other person who knows the facts, that a sufficient cause of action exists, and that the case is one of those mentioned in section four hundred and twenty-four, and that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the plaintiff above all legal set-offs or counterclaims is as much as the sum for which the order is granted. The requirements of said section 426 are well met in the instant case. There is here a good cause of action, the case is one which is specifically contemplated in section 424 of the Code of Civil Procedure, and finally, there does not exist any security sufficient to answer for the claim of the plaintiff. Under these circumstances, the action of the lower court must be sustained. (*Central Capiz vs. Salas*, 43 Phil., 930.)

The third error assigned needs no consideration.

The appealed decision is hereby affirmed, with costs against the appellant. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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