

ANTONIO ISIDORO, PLAINTIFF AND APPELLANT, VS. FULGENCIO DAGDAG, ETC., ANG CHI, THE SHERIFF OF MANILA, AND RIZAL SURETY & INSURANCE CO., DEFENDANTS AND APPELLEES.*G.R. No. 49004. November 29, 1943*

Ponente: OZAETA, J.

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This case was submitted to and decided by the trial court upon a stipulation of facts the gist of which is as follows:

The defendant, Fulgencio Dagdag, against whom judgment for a sum of money had been obtained in the municipal court of Manila by the defendant Ang Chi since August 28, 1940, was in October of the same year awarded a contract by the City of Manila for the supply of 500 police buckles at the total price of P710.60. On October 22, 1940, he entered into a written agreement with the plaintiff Antonio Isidoro whereby the latter advanced to him P300 as capital with which to carry out his said contract with the City, on condition that the two of them would split the profit to be realized from said contract after deducting the expenses. The agreement was ratified before a notary public. After the contract was fulfilled in December 1940, and when the City was about to pay to the defendant Fulgencio Dagdag the sum of P710.60, the defendant Ang Chi, having procured a writ of execution of his judgment against Dagdag, caused the sheriff of the City of Manila to garnish P526.71 of said amount to satisfy said judgment. Dagdag gave his conformity to the garnishment, but the plaintiff Antonio Isidoro filed with the sheriff a third-party claim, alleging that by virtue of his said agreement with Dagdag he was the owner of P625 out of the said sum of P710.60. Ang Chi, however, insisted on the levy and posted an indemnity bond of P550 executed by the defendant Rizal Surety & Insurance Company; whereupon the sheriff, who apparently had received the P710.60 from the City, paid out to the execution creditor Ang Chi the sum of P518.40, retaining P8.31 as his fees and turning over the balance of P183.89 to the defendant Dagdag.

Shortly thereafter, the plaintiff brought this action against Fulgencio Dagdag, Ang Chi, the sheriff of Manila, and the Rizal Surety & Insurance Company to recover from them the sum of P505.30 as his share in the proceeds of Dagdag's contract with the City under his notarial agreement with Dagdag herein before mentioned, P300 being his capital and P205.30 his share of the profit. The defendant Dagdag offered no defense but let judgment by default be entered against him. The other defendants resist plaintiff's claim, contending that it is not preferred over the credit of Ang Chi against Dagdag, which was evidence by a final judgment. The trial court sustained that contention and awarded judgment in favor of the plaintiff against Fulgencio Dagdag alone for the sum of P505.30, with legal interest thereon from the date of the complaint, and dismissed said complaint as to the other defendants. Hence this appeal.

Altho in his separate answer the defendant Ang Chi alleged as a special defense that the agreement between the plaintiff and Fulgencio Dagdag was simulated, fictitious, and fraudulent, that defense was later abandoned, for no attempt was made to prove it during the trial. In the absence of such proof, and under the facts stipulated, there can be no question but that the plaintiff-appellant did really advance the sum of P300 to the defendant Fulgencio

Dagdag for the purpose and under the condition mentioned in said agreement. That being the case, it seems clear to us that appellant was a co-owner of the proceeds of Dagdag's contract with the City to the extent of P505.30. Since Dagdag, Ang Chi's judgment debtor, was not the owner of that amount (P505.30), it could not be subjected to the payment of his debt. It is immaterial that the agreement between the plaintiff and the defendant Fulgencio Dagdag regarding the financing of the latter's contract with the City was not recorded. Neither is it material that the City dealt with Fulgencio Dagdag alone. The stubborn fact remains that the money with which Dagdag fulfilled his contract with the City belonged to the plaintiff, and before the proceeds of said contract became payable, Dagdag had lawfully ceded to the plaintiff so much thereof as was necessary to compensate the latter for his advances with the resulting profit. Under the jurisprudence established by this Court a bona fide sale and transfer of real property, altho not recorded, is good and valid against a subsequent attempt to levy execution on the same property by a creditor of the vendor. That ruling applies with equal, if not greater, force to the sale of personal property or the cession of a personal right. The question involved herein is not one of preference of credits but the legality of the levy of execution on the funds which belonged jointly to the plaintiff and the defendant Dagdag. It seems to us too plain for argument that said levy was valid only as to the portion pertaining to the judgment debtor Dagdag and void as to that pertaining to the plaintiff. Dagdag's consent to the levy could not invest it with validity, for he could not dispose of what was not his.

The judgment appealed from is modified in the sense that all the defendants shall jointly and severally pay to the plaintiff the sum of P505.30, with legal interest thereon from January 25, 1941, the date of the filing of the original complaint in the municipal court, and with costs in the three instances, it being understood, however, that the liability of the defendant Rizal Surety & Insurance Company shall not exceed P550, the amount of its bond.

Yulo, C. J., Moron, Paras, and Bocobo, JJ., concur.

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