

ENRIQUE F. SOMES, PLAINTIFF AND APPELLEE, VS. RAFAEL MOLINA Y SALVADOR ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5160. February 03, 1910*

Ponente: MORELAND, J.

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The contract out of which this action indirectly springs was executed between the defendant Molina as vendor and the defendant De la Riva as vendee on the 27th day of July, 1903, and was for the sale and transfer of an extensive hemp, copra, and merchandise business, with its accessories, consisting of certain launches, buildings, and real estate, situated in the Island of Catanduanes, as well as a large amount of bills receivable and outstanding accounts due from the local patrons of and dealers with the establishment sold. The purchase price of said property was P134,636.12, Mexican currency, to be paid by De la Riva in four equal installments; the first payment to be made at the time of the execution of the document, the second payment one year from the date thereof, the third payment at the end of two years from that date, and the fourth payment at the end of three years from that date, with interest at the rate of 5 per cent per annum to be paid at the end of each year.

No payment was made by De la Riva under said contract except the first payment, which was made at the date of the execution of the contract.

On the 18th day of April, 1905, said Molina obtained against said De la Riva a judgment in the Court of First Instance for the amount of the second installment due under said contract. An appeal was taken from said judgment by De la Riva, and the Supreme Court affirmed the judgment on the 22d day of March, 1906.[1] On the 23d day of November, 1905, the defendant Molina recovered against the defendant De la Riva another judgment in the Court of First Instance upon the third installment due under said contract. An appeal was taken from that judgment and the same was affirmed by the Supreme Court on the 5th day of January, 1907.[2] On the 19th day of February, 1907, the said Molina obtained another judgment against De la Riva in the Court of First Instance for the recovery of the fourth and last installment due under said contract. Executions were issued under said judgments on the 21st day of April, 1906, the 19th day of February, 1907, and the 19th day of February, 1907, respectively. Said executions were placed in the hands of the sheriff of the city of Manila and the sheriff of the Province of Albay, and all of the property of the defendant De la Riva was levied upon under said executions, which levies still remain in force, the property not having been sold pursuant thereto.

When the defendant De la Riva made his appeal from the judgment in the first case above referred to, No. 3402, he filed a supersedeas bond, signed by himself, as principal, and by Messrs. Somes and Spalding as sureties, the three binding themselves de mancomun et in solidum. The judgment in question was eventually satisfied out of the property of Somes, who thereupon became a creditor of De la Riva for the amount of the judgment in said case No. 3402. Molina, having collected the amount of his judgment in case No. 3402, remained a creditor of De la Riva for the amount of his judgments in the other two cases, numbered, respectively, 3829 and 4766. It became apparent that De la Riva's property was insufficient to discharge all of these obligations, and the question of preference, if any, among the judgments arose.

In his complaint in this action *Somes* asserts that the judgment rendered in case No. 3402 is senior to those rendered in cases Nos. 3829 and 4766; that he, having paid, as surety for *De la Riva*, the judgment of *Molina* against the latter, is entitled to be subrogated to the rights and privileges of *Molina*, including a right of seniority of the judgment in case No. 3402.

This action was brought by the surety, *Somes*, for the purpose of having this court declare that the plaintiff is entitled to the subrogation above indicated as against not only the defendant *De la Riva* but also against the defendant and creditor *Molina*; and also that this court decide and decree that, having been so subrogated, the plaintiff shall enjoy the right of preference in satisfying his debt out of the property of *De la Riva*, as against *Molina*, the holder of the other two judgments in cases Nos. 3829 and 4766.

It must be remembered, in the first place, that the contract of purchase and sale, which is the basis of the various suits and proceedings between the parties, including the cause at bar, is a public document, executed as such by the parties thereto with all the formalities required for such purpose by the law. This being so, it is evident that, under the provisions of article 1924, subdivision 3, of the Civil Code, preference is determined by the date of the public document and not by the dates of the judgments secured by virtue of it. The public document, for the purposes of said section, is not merged in any judgment obtained under it, and its date, rather than the dates of the judgments recovered by virtue of it, determines the priority of those judgments as to preference. There can, therefore, be no preference among the judgments in question. The debtor's property is divided among them pro rata, should such property be insufficient to pay them in full.

It must be borne in mind, in the second place, that the three judgments really constitute one debt. They are but parts of a whole, namely, P134,636.12. They are simply installments of one debt, the consideration of the contract of purchase and sale. That contract is an indivisible contract and its consideration single and entire. (*Roberts vs. Beatty*, 21 Am. Dec, 410, 418; *Alcott vs. Hugus*, 105 Pa. St., 350; *Cherry Valley Iron Works vs. Florence Iron River Co.*, 64 Fed. Rep., 569; *Norrington vs. Wright*, 115 U. S., 188, 203; *Stein vs. Steamboat Prairie Rose*, 93 Am. Dec, 631, and cases there cited). This being the case, the question to be determined here, viz, the right of the plaintiff to subrogation, is brought squarely within the well-established doctrine that the surety can not exercise the rights conferred by subrogation until the debt which the principal debtor owes to the creditor is fully paid. (Supreme court of Spain, July 9, 1897 (No. 37) ; *Wilcox vs. Bank*, 7 Allen, 270; *London & N. W. American Mortgage Company vs. Fitzgerald*, 55 Minn., 71; *Lumbermen's Ins. Co. vs. Sprague*, 59 Minn., 208; 27 Am. & Eng. Ency. L., 205, and cases cited). These holdings clearly require that *Molina* must be paid not only judgment No. 3402, but also judgments Nos. 3829 and 4766, before the plaintiff can exercise any rights obtained under subrogation. The result thus obtained conforms to justice and equity.

This doctrine is also clearly laid down in article 1213 of the Civil Code, which is quite decisive of this case.

It is, therefore, adjudged and decreed:

First. That there exists no preference among the judgments in actions Nos. 3402, 3829, and 4766, referred to in this action. They all stand on an equal footing.

Second. That the plaintiff herein is entitled to subrogation in the judgment obtained in action No, 3402, but he may not exercise the rights conferred by such subrogation until the defendant *Molina* has been fully paid judgments in actions Nos. 3829 and 4766.

Third. That so much of the judgment of the court below as is inconsistent herewith is hereby reversed.

Fourth. That there is no special finding as to the costs of this appeal.

Arellano, C. J., Torres and Mapa, JJ., concur.

[1] 6 Phil. Rep., 12.

[2] 7 Phil. Rep., 302.

DISSENTING:

CARSON, J.:

I dissent.

I agree with the majority opinion that, under the provisions of article 1924 of the Civil Code, preference in the distribution of the fund of the principal debtor in the case at bar is to be determined by the date of the public instrument evidencing his indebtedness, and not by the date of the various judgments secured by virtue of it; that there can, therefore, be no preference among the judgments in question; that "the debtor's property should be divided among them pro rata, should such property be insufficient to pay them in full;" and that "the plaintiff herein is entitled to subrogation in the judgment obtained in action No. 3402." But I do not agree with the majority that he is not entitled "to exercise the rights conferred by such subrogation until the defendant Molina has been fully paid the judgments in actions Nos. 3829 and 4766."

This latter proposition is avowedly based on the general rule laid down by the English and American authorities that "a surety can not exercise the rights conferred by subrogation until the debt which the principal debtor owes to the creditor is fully paid." It is always dangerous, however, to apply a general rule to a particular case without keeping in mind the reason for the rule, because, if under the particular circumstances the reason for the rule does not exist, the rule itself is not applicable, and reliance upon the rule may well lead to error.

An examination of the cases cited in the majority opinion in support of the rule, satisfies me that the reason for the rule as therein applied is that where the creditor extends the credit, relying on the goods of the principal debtor, and in addition upon the security offered by the surety, or where for any other reason he has an equitable right so to rely on both the principal debtor and the surety for the payment of the entire debt due him by the principal debtor, the equitable doctrine of subrogation should not be permitted to operate so as to deprive the creditor of his right, under such circumstances, to have recourse to all the goods of the principal debtor and in addition to have recourse to the security given by the surety, so far as may be necessary to secure full payment of his debt. But the reason of the rule does not necessitate or justify the postponement of the sureties' right of subrogation until the creditor has been paid any other debt of the principal debtor than the very debt for the payment of which, by necessary implication or express agreement, it was understood that the creditor should have the right to rely upon the security offered by the surety, in addition to the property of the principal debtor.

Thus if the surety in the case at bar had been an indorser on one of several notes for the various installments in which the original indebtedness of the principal debtor was to be paid, so that the creditor, in extending the credit for the entire indebtedness, had a right to rely not merely on the goods of the principal debtor, but in addition upon the goods of the surety to the extent of the note indorsed by him, then, manifestly, the indorser would not be equitably entitled to subrogation until the entire indebtedness had been paid. Such were the precise facts in the case of *Lumbermen's Ins. Co. vs. Sprague* (59 Minn., 208), cited in the majority opinion in support of the doctrine; and, indeed, I think an examination of all the cases cited in support of the rule will disclose the existence

of a state of facts as to which the reason for the rule, as above set out, justified and required its application.

But no such reason for the rule or its application exists in the case at bar. The only obligation assumed by the surety on the" appeal bond given in action No. 3402 was that he would respond for the payment of the judgment in that action. No more than this was required of him or could have been required of him. For the payment of the judgment in that action the judgment creditor had the right to rely not only on the goods of the principal debtor but in addition on the security offered by the surety, and if the surety had paid merely a part of that judgment he could not equitably demand that for the recovery from the principal debtor of the amount so paid he should be permitted to exercise his right of subrogation before the judgment was wholly satisfied. This would be a proper case for the application of the rule. But as to the installments of the original debt, represented by judgments No. 3829 and No. 4766, the surety assumed no obligation whatever when he executed the appeal bond from judgment No. 3402. His assumption of the joint obligation with the principal debtor to pay the judgment in case No. 3402 was in no sense an agreement that he would aid the debtor in the payment of other judgments which the creditor might secure for installments of the original indebtedness which had not yet become due and payable; nor could the judgment creditor demand that, as to the installments for which those judgments were thereafter given, he should be placed in a better position than he was before the appeal was allowed from judgment No. 3402. There might well have been a valid defense to the action to recover the installment reduced to judgment in action No. 3402, and no defense as to the other installments, and the law gave to the judgment debtor the right to have his appeal heard and execution stayed in that action without giving additional security for the payment of the other installments of the debt. Yet the effect of the application of the rule by the majority in this case is to construe the bond executed by the surety to stay execution on the judgment appealed from, as though it were intended not only to secure that judgment, but also as an additional security for the other installments of the debt and the judgments taken therefor.

That this is the effect will become very clear if we suppose that the three installments of the original indebtedness under consideration had been assigned by the creditor to A, B, and C; that A had reduced his claim against the principal debtor to judgment; that the principal debtor believing that he had a good cause of defense against the claim of A were to undertake to appeal from the judgment in favor of A. Is it not manifest that under such circumstances the debtor would have a perfect right to appeal the judgment in favor of A and to secure a stay of execution upon that judgment by giving to A a bond to secure the ultimate payment of his judgment, without at the same time giving additional security to B and C to secure the payment of the installments assigned to them? Before the appeal from A's judgment, A, B, and C were each equally entitled to payment of their claims from the goods of the common debtor, or, in other words, to receive one-third of the proceeds, if the common debtor's goods were sold for the payment of their claims and were found insufficient to satisfy these claims in full. But the effect of the application of the rule laid down in the majority opinion is to require the surety to bind himself for the payment not only of A's judgment, but to agree that when the appeal is granted and execution on A's judgment stayed, B and C will thereafter each be entitled to receive one-half of the proceeds of the sale of the debtor's property instead of one-third upon which alone they had a right to rely before the principal debtor took his appeal from A's judgment.

The equitable doctrine of subrogation as laid down in English and American jurisprudence was borrowed originally from the civil law, and, as might be expected, both the doctrine and its essential incidents are very clearly enunciated in the Spanish Civil Code, which is so largely based on the Civil Law. (See arts. 1209-1213.) Article 1213 is as follows:

"A creditor, to whom a partial payment has been made, may exercise his right to recover the rest, with preference to him who may have been subrogated in his place by virtue of partial payment of the very credit."

This is the identical doctrine upon which the English and American cases cited in the majority opinion are based, and it is to be observed that the Spanish legislator carefully emphasizes the provision that the preference secured to the creditor exists only as to "the very credit" (*el mismo credito*), a partial payment of which is the basis of the right of subrogation which it is sought to assert.

In the case at bar, I think it is clear that the "very credit" (*el mismo credito*) and the "only credit" for the payment of which in whole or in part the creditor had any right to look to the surety was the judgment in action No. 3402, which was appealed. And this "credit" having been paid in full, the provisions of article 1213 are clearly inapplicable for the purpose of giving the creditor the preference which he seeks. For some purposes it may be admitted and is undoubtedly true that all of the installments were but parts of a single whole, to wit, the total indebtedness evidenced by the notarial instrument setting out the original indebtedness; but the only "credit" as to which, by the nature of the contract set out in the appeal bond and of the relations of the various parties thereto, the surety was in anywise bound, was the judgment in action No. 3402. It was the only credit by reference to which he became obligated, and in thus obligating himself the law did not require nor could the creditor require that the security given by the surety would necessarily be applied so as to give additional security to the creditor for the payment of other claims against the principal debtor. As between the creditor and the principal debtor, all the installments in question may be deemed to be parts of a single whole, but in a matter wherein the respective rights of the surety, the creditor, and the principal debtor are under consideration, the credit reduced to judgment in action No. 3402 was wholly independent of and distinct from the remaining installments of the original indebtedness. So far as their relations were jointly affected the only credit and the total credit involved was the judgment credit established in that action. And the surety having paid that judgment in full, so that the question is not one of partial payments, the creditor has no right of preference under the provisions of article 1213 of the code.

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