

ANDRES ZAPANTA, PLAINTIFF AND APPELLEE, VS. EDUARDO DE ROTAECHE, ATTORNEY IN FACT OF ANGEL ORTIZ, DEFENDANT AND APPELLANT.

G.R. No. 6910. January 09, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 4th of August, 1909, the plaintiff commenced the present action in the Court of First Instance of the Province of Sorsogon, for the purpose of recovering the sum of P9,687.86, as damages occasioned by the defendant to", the plaintiff, caused by an illegal execution and sale of the property of the plaintiff by the defendant.

On the 24th of August, 1909, the defendant filed a demurrer to said complaint, alleging that the facts therein stated were insufficient to constitute a cause of action and were vague and unintelligible, which demurrer was, on the 6th of November, 1909, overruled; whereupon the defendant filed a general denial.

After hearing the evidence, the Honorable Jose C. Abreu, judge, on the 22d of April, 1910, rendered a judgment in favor of the plaintiff and against the defendant, for the sum of P3,707.26, with legal interest from the date of the commencement of the present action.

From that judgment the defendant appealed and made the following assignments of error:

"I. The court erred in declaring that the agreement of November 29, 1904, entered into between Andres Zapanta as one party and Ramon Echevarria, attorney in fact for F. Suarez, as the other party, which is attached hereto as Exhibit A of the complaint, has rendered null and void the judgment pronounced in civil case No. 56 of the Court of First Instance of Sorsogon, wherein the commercial firm 'Viuda e Hijos de F. Suarez' was the plaintiff and Andres Zapanta the defendant, and that by virtue of said agreement the said firm renounced execution by legal means of the judgment rendered in its favor, stipulating that in case of nonfulfillment of said agreement on the part of Andres Zapanta, said commercial firm would have to proceed again to a new civil trial in order to enforce payment of the said judgment.

"II. The court erred in rendering judgment against Don Angel Ortiz.

"III. The court erred in not granting the new trial requested by the attorney for Angel Ortiz, in accordance with law, and especially for the reason that the facts held in the judgment were not sufficiently justified by the evidence."

With reference to the first assignment of error above noted, the following facts appear to be undisputed:

First. That on the 22d of August, 1904, Ramon Echevarria, as legal representative of the firm, "Viuda e Hijos de F. Suarez," commenced an action in the Court of First Instance of the Province of Sorsogon, against the plaintiff herein (Andres Zapanta) for the purpose of recovering the sum of 7,179.48 pesos Mexican currency.

Second. That on the 25th of October, 1904, after the trial of said cause, the said court rendered a judgment in favor of the plaintiff and against the said defendant (Andres Zapanta), for the said sum of 7,179.48 pesos Mexican currency; that said sum of 7,179.48 pesos Mexican currency reduced to Conant equaled the sum of P6,353.52.

Third. That on the 29th of November, 1904, the plaintiff herein and the defendant entered into the following agreement or contract with reference to the said judgment for the sum of 7,179.48 pesos Mexican currency (P6,353.52):

"I, Andres Zapanta, married, of legal age, and resident of Sorsogon, capital of the Province of Sorsogon, Philip-pine Islands, make known by these presents:

"First. That I am indebted, and so acknowledge, to the commercial firm 'Viuda e Hijos de F. Suarez,' in the sum of six thousand three hundred fifty-three pesos and fifty-two centavos (P6,353.52), as declared in the judgment rendered in civil suit No. 56, filed in the Court of First Instance of this province by the representative of said firm.

"Second. That as I am unable to pay said amount now in a lump sum, I promise to pay at the end of each month to the said commercial firm 'Viuda e Hijos de F. Suarez,' the sum of one hundred fifty pesos (P150), which payment shall be made for the first time at the end of the present month.

"Third. That the sum owed and acknowledged shall bear interest at the rate of three per centum per annum, which shall diminish in relative proportion with the amount that will each month be paid by me on account.

"I, Ramon Echevarria, as representative of the firm called 'Viuda e Hijos de F. Suarez,' of Sorsogon, accept the propositions above set forth by Andres Zapanta, with the proviso that in case of nonfulfillment of his promise, said commercial firm shall be at liberty to enter suit against him.

"In witness whereof, we sign the present instrument in Sorsogon, this 29th of November, 1904.

"VIUDA E HIJOS DE F. SUAREZ.

(Sgd. by power of attorney.)

"R. ECHEVARRIA.

(Sgd.) "ANDRES ZAPANTA."

Fourth. That under and by virtue of said agreement mentioned in the foregoing paragraph, the plaintiff (Zapanta), continued to make payments until he had paid the sum of P3,699.37, leaving a balance due on the 31st of March, 1909, of the sum of P2,939.79. (See Exhibit No. 1.)

Fifth. That by reason of the failure of the plaintiff to punctually comply with the provisions of said agreement, the defendant herein, on the 31st of March, 1909, sued out a writ of execution for the purpose of recovering the balance due upon said judgment of 7,179.48 pesos Mexican currency; that by virtue of said execution, the sheriff of the Province of Sorsogon attached and sold practically all of the property which the plaintiff had in said province, amounting in value to P3,707.26.

Under these facts, in relation with the said first assignment of error, we have the questions presented:

- (a) What was the effect of said agreement mentioned in said paragraph 3, upon the judgment of the court rendered on the 25th of October, 1904, for the sum of 7,179.48 pesos Mexican currency?
- (b) Did said agreement have the effect of merging the said judgment? and
- (c) Did the defendant, for a failure to comply with the said agreement, have a right to an execution under said judgment?

The contention of the plaintiff, which was sustained by the lower court is, that that provision of the agreement quoted in paragraph 3 above, "said commercial firm shall be at liberty to enter suit against him," had the effect of extinguishing the rights of the defendant in the said judgment of the 25th of October, 1904; in other words, that by virtue of said agreement, all of the rights and obligations of the respective parties to said judgment had been merged in said agreement; that if the plaintiff should fail to comply with the conditions of said agreement, the only remedy of the defendant was to commence an action against him upon said contract; that the defendant, by virtue of said agreement, had lost his right to a writ of execution under said judgment (October 25, 1904).

A final judgment is one of the most solemn obligations incurred by parties known to the law. The Civil Code, in article 1156, provides the method by which all civil obligations may be extinguished. One of the methods recognized by said code for the extinguishment of obligations is that by novation. (Civil Code, arts. 1156, 1203 to 1213.) In order, however, that an obligation shall be extinguished by another obligation (by novation) which substitutes it, the law requires that the novation or extinguishment shall be expressly declared or that the old and new obligations shall be absolutely incompatible. (Civil Code, art. 1204.) In the present case, the contract referred to does not expressly extinguish the obligations existing in said judgment. Upon the contrary it expressly recognizes the obligations existing between the parties in said judgment and expressly provides a method by which the same shall be extinguished, which method is, as is expressly indicated in said contract, by monthly payments. The contract, instead of containing provisions "absolutely incompatible" with the obligations of the judgment, expressly ratifies such obligations and contains provisions for satisfying them. The said agreement simply gave the plaintiff a method and more time for the satisfaction of said judgment. It did not extinguish the obligations contained in the judgment, until the terms of said contract had been fully complied with. Had the plaintiff continued to comply with the conditions of said contract, he might have successfully invoked its provisions against the issuance of an execution upon the said judgment. The contract and the punctual compliance with its terms only delayed the right of the defendant to an execution upon the judgment. The judgment was not satisfied and the obligations existing thereunder still subsisted until the terms of the agreement had been fully complied with. The Plaintiff was bound to perform the conditions mentioned in contract punctually and fully, in default of which the defendant was remitted to the original rights under his judgment.

The contract was not a new and independent obligation expressly extinguishing the judgment; neither were its terms incompatible with the obligations of the judgment. It was simply another method of satisfying the judgment. The judgment was not extinguished. Its enforcement by the methods provided for by law was only delayed during a strict compliance with the terms of the contract. (Ives vs. Phelps, 16 Minn., 407; Brown vs. Feeter, 7 Wendell (N. Y.), 301; Plunkett vs. Block, 117 Ind., 14; Terrett vs. Brooklyn Improvement Co., 87 N. Y., 92; Maute vs. Gross, 56 Pa. St., 250; 94 Am. Dec, 62.)

Between the civil and common law, with reference to the extinguishment of one obligation by the creation of another, there seems to be no difference. Under both systems of jurisprudence, in order to extinguish one obligation by the creation of another, the extinguishment must be made to clearly appear. In our opinion, in the present case the new contract did not expressly extinguish the obligations of the judgment, neither are the terms of said contract "absolutely incompatible" with the obligations of said judgment.

Under the view which we have taken of the first assignment of error, we deem it unnecessary to discuss the second and third assignments of error.

Our conclusion is, therefore, that when the plaintiff failed to comply with the conditions of said contract, the defendant had a right to resort to the methods provided by law for the satisfaction of the obligations created by said judgment.

The judgment of the lower court is therefore hereby reversed, and the defendant is hereby released from any obligation under the complaint, and without any finding as to costs, it is so ordered.

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

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