

JOSE FLORENDO, PLAINTIFF AND APPELLEE, VS. EUSTAQUIO P. FOZ, DEFENDANT AND APPELLEE. JUAN CALVO AND LUIS FOZ, SURETIES OF THE DEFENDANT EUSTAQUIO P. FOZ, APPELLANTS.

G.R. No. 8998. March 19, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Ilocos Sur by the sureties on an appeal bond rendered against them for the sum of P2,000, and from an order for the issuance of an execution thereon.

On the 9th of July, 1910, one Jose Florendo obtained judgment against Eustaquio P. Foz, as follows:

"For the reasons above expressed, the court decrees the specific performance by the defendant of the contract for the purchase and sale of the lands, said defendant to deliver to plaintiff the land described in the complaint; said defendant paying to the plaintiff the rents which he would have received for said lands described in the complaint from the 1st day of July, 1909, until full compliance with this judgment; that from the P4,000 deposited in the provincial treasury of Ilocos Sur there be paid to the Roman Catholic Apostolic Church of Vigan the mortgage now due which the said church holds against the defendant, together with the costs of the action; that the balance of the said P4,000 after satisfying this decree shall be paid to the said defendant."

An appeal was taken from that judgment and, to stay execution, a bond was given with Juan Calvo and Luis Foz as sureties, in which the parties thereto recognized that they were "jointly and severally obligated to said Jose Florendo in the sum of two thousand pesos (P2,000) Philippine currency, for the payment of which well and truly to be made" they bound themselves "jointly and severally." The condition of the obligation was "that the appellant was obligated to the appellee in the sum of P2,000 Philippine currency, for the fulfillment of the judgment appealed from, in case it should be wholly or partly affirmed."

The judgment appealed from was affirmed by the Supreme Court.[1]

On the 20th of May 1912, the Court of First Instance ordered the provincial treasurer, in whose custody the sum of P4,000 mentioned in the judgment then was, to deliver to the clerk of the court the sum of P4,000, at the same time authorizing and ordering said clerk to pay to the Roman Catholic Apostolic Church of Nueva Segovia, or to its representative or attorneys, the sum of P2,920.59, which was the amount of the mortgage held by said church against the defendant Eustaquio P. Foz, together with interest thereon.

On the 24th of June, 1912, the sheriff of Ilocos Sur moved the court for an order requiring the delivery to him of the balance of the P4,000, or the sum of P1,079.41, in part satisfaction of another judgment against said Eustaquio P. Foz obtained on the 7th of March, 1911, in the Court of First Instance of the city of Manila. On the 28th of June, 1912, in pursuance of this motion the court ordered its clerk to deliver to said sheriff for the purpose specified the said sum of P1,079.41, the balance of the said P4,000. This payment was made to the sheriff on the 20th of July, 1912.

On the 22d of July, 1912, the plaintiff in this case moved the court for the issuance of an execution for the recovery of the other sums found by the judgment heretofore referred to as due and owing from the defendant to the plaintiff. In pursuance of this motion the court on the 31st of August, 1912, issued an execution to the sheriff of the city of Manila directing him to seize goods and chattels of Eustaquio P. Foz for the recovery of the sum of P2,294.64. On the 14th of October following, the sheriff of Manila returned the execution nulla bona, stating in his return that Eustaquio P. Foz had no goods or chattels subject to levy and sale. On the 11th of November following, the attorney for the plaintiff moved the court for the issuance of an execution against the property of the sureties, Juan Calvo and Luis Foz, to the extent of P2,000. The said sureties appeared to combat said motion, asked that the execution of the judgment be suspended and that the court declare that the payment of said sum of P1,079.41 to the sheriff of Ilocos Sur for the purposes for which it was paid was illegal and prejudicial to the interests of the sureties. They also prayed that all the goods and chattels of Eustaquio P. Foz be levied upon and sold for the satisfaction of the execution before their property was made subject thereto.

The learned trial court denied these motions and ordered that execution issue against the sureties Juan Calvo and Luis Foz for the satisfaction of the judgment referred to, not to exceed the sum of P2,000, the penalty of the undertaking. This appeal is from that order.

The appellants assign two errors. First, that "the Court of First Instance erred in not declaring invalid and of no force or effect the payment of the sum of P1,079.41 to the sheriff of Ilocos Sur in part satisfaction of the execution issued by the clerk of the Court of First Instance of Manila on the 30th day of April, 1912." Second, that "the court erred in not declaring null and void the undertaking executed by Juan Calvo and Luis Foz jointly and severally with Eustaquio P. Foz upon the ground that said Foz was insolvent at the time of and since the execution of said undertaking."

Speaking of the second alleged error first, we might say that we have been cited to no provision of law, and we know of none, which renders an appeal bond void because the appellant happens to be insolvent at the time the bond is executed. The precise purpose of a bond on appeal is to protect the appellee from the insolvency of the appellant and to assure to him the effective execution of the judgment on the termination of the litigation.

In regard to the first error assigned, the appellants argue that they bound themselves to the fulfillment of the judgment *ip. case* it should be affirmed and that said judgment contained a clause that the balance of the P4,000, after paying the mortgage held by the Roman Catholic Apostolic Church, should be turned over to the appellant in the action in which said judgment was obtained; and that it was a breach of the condition upon which the bond was given to permit that sum to be turned over for the payment of another and different judgment. They also argue that said sum having been paid to a stranger instead of to the defendant and appellant, the execution in all its parts of the judgment appealed from was rendered impossible, the defendant was deprived of certain resources which he otherwise would have had, and the plaintiff and appellee in this case would have collected upon his execution said sum of P1,079.41, thus reducing to that extent the sum which the sureties must pay.

Perhaps the appellants have some grievance at the manner in which the P1,079.41 was handled by the court when we look at the requirements of the judgment for the execution of which they stood guarantors. It is a grievance, however, which, in our judgment, cannot be remedied in this proceeding or on this appeal, even if it be conceded that it have a remedy at all. The sureties bound themselves to the fulfillment of the judgment, not in those particulars in which it was favorable to the appellants, but to those in which it was favorable to the appellee. The appellee, if his judgment should be affirmed, was entitled to receive a certain sum of money, or a sum which, by a subsequent procedure, was made certain. To assure him the payment of this sum, the obligation was incurred by the sureties on the bond. They may have had, generally speaking, strong reasons to believe that in case they were obliged to pay the judgment they would receive the benefit of the sum of P1,079.41, which the court had ordered

to be turned over to the defendant after the payment of the church mortgage. This, however, was merely an expectation, a hope rather than a right. The judgment upon which that sum was paid might have taken preference over the judgment for the payment of which they stood surety. In that event there would have been grave doubt of the efficacy of the order, if contested, that said sum of P1,079.41 be paid upon said judgment, as against the rights of the judgment-creditor upon whose judgment the sum was actually paid. To say the least, the sureties took the chance of having that sum withdrawn from the defendant's resources and paid upon another obligation, or of having it paid to Foz himself for his personal use. As a legal proposition the sureties agreed to see that the judgment appealed from should be paid if affirmed, and that is all that the appellee is asking of them.

The judgment appealed from is hereby affirmed, with costs against the appellants.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur.

[1] 20 Phil. Rep., 388.

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