

UY SOO LIM, PLAINTIFF AND APPELLANT, VS. CHOA TEK HEE, DEFENDANT AND APPELLANT.

G.R. No. 9997. November 24, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 31st day of March, 1913, the plaintiff commenced an action against the defendant in the Court of First Instance of the city of Manila. After the issue was joined and the trial had, the Honorable Simplicio del Rosario rendered a judgment upon the 30th day of March, 1914. From that judgment both the plaintiff and defendant appealed to this court.

The lower court ordered the execution of the judgment unless the defendant should present a bond in the sum of P33,000. The bond was given. The appeal was perfected. The record was received in the office of the clerk of the Supreme Court on the 8th day of June, 1914. The said bond, which was given by the defendant-appellant to perfect his appeal from the judgment of the lower court, was signed by one Emiliano Carruncho.

On the 8th day of October, 1914, the said Emiliano Carruncho presented a motion in this court, praying that the bond be canceled and that he be relieved from responsibility upon the same. Said motion was heard on the 19th day of October, 1914. The attorneys for the plaintiff and defendant, respectively, appeared and opposed the granting of said motion. Emiliano Carruncho did not appear at the hearing of said motion, personally or by attorney.

Under these facts we have the question presented whether or not a person who has signed an appeal bond for the purpose of preventing the execution of a judgment during the pendency of an appeal, can be relieved from liability upon it by a motion. A bond is a contract. It is a contract defeasable upon condition subsequent. For example, it is a conditional promise (contract) by A to pay a sum of money, to do an act, or a forbearance, which promise may be defeated by a performance by A of the condition. The promise imposes a penalty for the nonperformance of the condition which is the real purpose of the contract (bond). Liability attaches at once in case of a failure to comply with the condition. A bond given for the purpose of perfecting an appeal and to prevent the execution of a judgment of the lower court, is a contract and is just as binding upon the parties, subject to the conditions named in it, as any other contract. The parties thereto have no more right to be relieved from liability upon such a contract than they have in any other contract, without performing the conditions named. Relief from liability under a bond can only be had in accordance with the methods and for the reasons provided for by law, by which they may be relieved in ordinary contracts. They must pursue the same methods by which they may be relieved from liability under other contracts. The fact that an agreement existed (as is alleged in the present case, with the person who was primarily obligated to perform the conditions of the bond) by which the surety was to be relieved at a certain time or upon certain conditions, which were not mentioned in the bond, is not sufficient to relieve him from liability upon said bond, without the consent of the person for whose benefit the bond was given.

For the reasons above stated, the motion is denied.

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

Moreland, J., concurs in the result.

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