12 Phil. 414

[G.R. No. 4648. January 08, 1909]

CLAUS SPRECKELS ET AL., PLAINTIFFS AND APPELLEES, *VS*. D. H. WARD ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

CARSON, J.:

This action was brought by the plaintiffs to recover the sum of $2,676.36, United States currency with interest thereon from March 1, 1903, on a bond executed by the defendants in March, 1904. The defendant, D. H. Ward, was not within the jurisdiction of the court when this action was instituted, and not having been served with summons, he did not enter an appearance nor file an answer. The case came on for trial, and judgment was rendered against the defendants, Lionel D. Hargis and E. M. Bachrach, jointly and severally, for the sum of P5,252.72, Philippine currency, with interest at 8 per cent per annum from March 1, 1903, until paid. From this judgment Bachrach and Hargis appealed.

It appears that in March, 1904, there was pending in the Court of First Instance of the city of Manila, an action bearing registry No. 2550, wherein Claus Spreckels and Wm. G. Irwin, who alleged that they were partners doing business in Honolulu under the firm name of Spreckels & Co., were plaintiffs, and D. H. Ward was defendant; that Ward, desiring to leave the Islands, arranged with the plaintiffs for a continuance of the cause for a period of six months, and in consideration of plaintiff's consent to the continuance, Ward, with the appellants Bachrach and Hargis, as sureties, executed a bond for the payment of any judgment which might finally be rendered in favor of the plaintiffs. Judgment was rendered in that cause on July 16, 1906, in favor of the plaintiffs therein and against the defendant Ward, for the sum of P5,795.72, with interest thereon at 8 per cent per annum, from the 10th day of March, 1904, and costs. Upon this judgment execution was issued and returned unsatisfied, whereupon demand was made upon appellants Bachrach and Hargis to pay the amount specified in the bond, and this action was filed upon their failure so to do.

The following is a copy of the bond which is set out in full, because our ruling upon one of appellants' assignments of error rests upon its precise language when examined together with the title of the cause wherein it was executed, and the allegations of the complaint:

> "United States of America, Philippine islands. In the Court of First Instance of the city of Manila. Claus Spreckels et al., plaintiffs, *vs*. D. Ward, defendant.
>
> "Know all men by these presents, that we, D. Ward, as principal, and E. M. Bachrach and Lionel D. Hargis, as sureties, are hereby jointly and severally bound and obligated unto Claus Spreckels & Co. for the payment of the sum of two thousand six hundred seventy-six and 36-100 (P2,676.36) dollars, U. S. currency, together with interest thereon at the rate of 8 per cent per annum from March 1, 1903, well and truly to be paid unto Claus Spreckels & Co., of the city of Honolulu, Hawaii.
>
> "The condition of this obligation is such that:
>
> "Whereas, the principal and defendant in the above entitled cause of action desires that the trial of said cause be postponed for a period of six months; and
>
> "Whereas, the above-named plaintiffs, through their attorneys, eonsent to the postponement of said trial for said period of six months upon the condition that said D. Ward give a bond for the payment of the judgment, if any, rendered in the above-entitled cause of action against the defendant and principal D. Ward.
>
> "Now, therefore, if said defendant and principal, D. Ward, shall well and truly pay unto Claus Spreckels & Co. the full amount of the judgment which may be rendered against the above-named D. Ward, in favor of the plaintiffs in the above-entitled action, then this bond shall be null and void; otherwise to remain in full force and effect.
>
> (Sgd.) "D. H. WARD,
> "E. M. BACHRACH,
> "LIONEL D. HARGIS.
>
> "PHILIPPINE ISLANDS, *City of Manila, ss*.
>
> "…… E. M. Bachrach,and…… being duly sworn, each for

himself and not one for the other, deposes and says: That he is one of the sureties whose name is affixed to the foregoing bond; that he has executed the same as his free and voluntary act and deed; and that he is solvent in the sum named therein over and above all just debts and liabilities, and over and above all property exempt from execution.

"The above parties exhibited to me their personal cedulas, being No. A214018 issued by the city assessor and collector of the city of Manila, on November 18, 1903, and No. .....issued by the city assessor and collector of the city of Manila, on..... 1903, respectively.

(Sgd.) "E. M. BACHRACH.
"LIONEL D. HARGIS.

"Subscribed and sworn to before me this.....day of March,1904."

The first ground upon which appellants, rely for a reversal of the judgment against them in the lower court is that the evidence of record fails to establish the fact that the plaintiffs in this case, Claus Spreckels and Wm. G. Irwin, are the same as Claus Spreckels & Co. in whose favor the bond in question was executed.

The only evidence introduced at the trial to prove the identity of the plaintiffs in this action with the person or persons in whose favor the bond in question was executed is the original record in the former case including the bond itself. We think, however, that in the absence of proof to the contrary, this evidence sufficiently establishes their identity. The plaintiffs in this case are Claus Spreckels and Wm. G. Irwin, who allege that they are partners doing business in Honolulu under the firm name of Spreckels & Co. The plaintiffs in the former case were Claus Spreckels and Wm. G. Irwin, who alleged that they were partners doing business in Honolulu under the firm name of Claus Spreckels & Co. The identity of names raises a presumption of identity of persons, which, if not rebutted by proof to the contrary, becomes satisfactory, in accordance with the provisions of subsection 23 of section 334 of the Code of Civil Procedure. The bond was executed in favor of Claus Spreckels & Co., and keeping in mind the fact that the bond was executed in the course of the proceedings in the former case in consideration of a concession by the plaintiffs therein, we think that an examination of the language of the bond, and especially of the condition therein which makes express reference to "the above-named plaintiffs" (manifestly referring to the plaintiffs in the action in the course of which the bond was executed, and whose names

appear as plaintiffs in the title prefixed to the bond), leaves no room for doubt that the name of Claus Spreckels &'Co., in whose favor the bond was executed, was inserted in the bond by the defendants to designate the plaintiffs in that action and none other. The plaintiffs in that action being the same as the plaintiffs in the present action, we think the evidence of record sufficiently establishes the fact that the bond was executed by the defendants in favor of the plaintiffs in this action. It will be noted that in arriving at this conclusion, we have not deemed it necessary to look to the decision and judgment in the former action, wherein it is set out as a finding of fact that the plaintiffs were partners doing business under the firm name of Claus Spreckels & Co., and we agree with appellant Hargis that, had it been necessary so to do, there might well be a question whether the findings of fact in the decision of the former case are binding upon him in this case, he not having been a party to that action.

In this connection it will be well to dispose of the point raised by the appellant Hargis, as to the right of plaintiffs to maintain this action and to have judgment in their favor, they having failed to establish by affirmative evidence their allegation that they are partners doing business under the firm name of Claus Spreckels & Co. Hargis in his answer denied plaintiffs' allegation as to the partnership, and alleged that "Claus Spreckels & Co." is an unregistered corporation, and if we understand his contention aright, it rests on two grounds: first, that, in conformity with the provisions of the Corporation Law, the complaint should have been dismissed on the failure of plaintiffs to introduce evidence to prove that "Claus Spreckels & Co." is not an unregistered foreign corporation; and, second, that judgment should have been rendered in favor of defendants on plaintiffs' failure to establish the allegation of partnership.

So far as this defendant's contention rests on the provisions of section 69 of the Corporation Law, which denies to unregistered foreign corporations the right to maintain suits for the recovery of any debt, claim, or demand, it is sufficient to say that these provisions do not impose upon all plaintiff-litigants the burden of establishing by affirmative proof that they are not unregistered foreign corporations. That fact will not be presumed by the courts without some evidence tending to establish its existence. The plaintiffs are Claus Spreckels and Win. G. Irwin, who appear to be natural persons, and as such are entitled to institute any proper action in the courts in these Islands, and this defendant having failed to introduce any evidence whatever in support of his allegation that either the plaintiffs, or "Claus Spreckels & Co."'are in reality an unregistered foreign corporation, the trial court properly declined to dismiss the complaint on this ground.

As to the second contention, it is to be observed that the allegation that plaintiffs are partners doing business under the firm name of Claus Spreckels & Co. is merely descriptive, and it having been proven that the bond was executed by the defendants in favor of the plaintiffs, the allegation as to the fact that they are partners doing business under the firm name of "Claus Spreckels & Co.," is immaterial, and failure to establish this fact in no wise affects their right to judgment in this case.

The principal ground upon which both appellants rely for a reversal of the judgment rendered in the lower court is that it appears from the record that the original case, No. 2550, was continued with the consent of plaintiffs therein after the expiration of the stipulated continuance of six months in consideration of which the bond was executed, without the express consent of the applicants, so that final judgment was not entered until the 17th day of July, 1906; and this notwithstanding the alleged fact that at the expiration of the six months' postponement originally agreed upon, the defendant Ward had returned to the Islands, and had in the Islands property sufficient to satisfy the judgment had such judgment been secured forthwith and execution issued thereon: Appellants lay special stress on an agreement of the parties in the original action for a continuance for an indefinite time entered into in January, 1906, which was the basis upon which the trial court issued the following order:

> "This case having been set for trial on this day, and the parties having agreed to the postponement of such trial for an indefinite time, the same is hereby continued until the next term of court. So ordered."

It is contended that the agreement to continue the trial for an indefinite time, in effect amounted to an extension of time to the original debtor to pay the promissory note, recovery of payment of which was the basis of the former action, and that this extension of time operated to release the appellants from the obligation of their bond.

Many American cases are cited in support of this contention, but we think that the authorities relied upon shed little light on the question under consideration, being for the most part limited to a discussion of the varying phases of the doctrine whereby, in certain cases, endorsers on negotiable instruments, and sureties on obligations to pay money are released where the payee or obligee in such instruments extends the time of payment without the consent of the endorser or surety. The appellants can not be considered in any sense as sureties on the promissory note which was sued on in the original action. Their

obligation as sureties, is to pay the amount of the judgment in the original action in the event of the failure of their principal so to do, and is in many respects similar to that in an appeal or stay bond; and there being no question of an extension of the time to the principal creditor to pay the judgment *after it was obtained*, neither the cases cited nor the provisions of article 1851 of the Civil Code relied upon by appellants are applicable to the true issue involved.

There was no condition in the bond releasing the securities in the event that judgment was not obtained within a fixed period or in the event of failure to exercise diligence in the prosecution of the action, and in our opinion the execution of the bond in no wise deprived the parties to the original action of the right to do everything which is usually or necessarily done in the course of such proceed- ings. The court had the power upon the application of either party to grant continuances irrespective of the agreement of parties; and in the absence of allegation and proof of fraud or collusion between the plaintiffs and the defendant in the original action, we are of opinion that the fact that continuances were granted upon the stipulations of the parties was in no sense a violation of the obligation of the bond, for the undertaking of the sureties clearly and necessarily contemplated the possible exercise of the right to make such stipulations. It would be unreasonable and absurd to hold that the plaintiffs in the former action in agreeing to a continuance for the convenience of the defendant therein, agreed to sacrifice or surrender any of their rights as litigants in the proceedings had after the period of the agreed upon continuance had expired, and in the absence of a stipulation to the contrary they were clearly entitled to seek or to grant such further continuances as might be convenient or necessary. (Pearl *rs* Wellman, 11 111., 352; Railsback *vs*. Greve, 58 Ind., 72; Bailey *vs*. Rosenthal, 56 Mo., 385; Howell *vs*. Alma Milling Co., 3(J Neb., 80.)

Cases may perhaps arise wherein an unexplained continuance for an indefinite time might be sufficient to raise a presumption of fraud or collusion and to discharge the securities on such a bond as the one under consideration; and it is possible that mere failure to prosecute the action for a long period of time might operate, in some cases, to release securities on a bond of this nature, where the delay is so great as to justify a finding of a violation of an implied obligation upon the plaintiff to prosecute his claim with reasonable diligence; but in the case at bar, wherein there is no allegation in the pleadings of bad faith, collusion or fraud, and wherein the continuance more especially complained of only resulted in a delay of a few months, and the case was prosecuted to judgment in a little over two years, we are of opinion that neither of these reasons operated to release the securities, and that any loss incident to such delay, was necessarily contemplated in the undertaking.

What has been said disposes of all the points raised by appellants, and counsel for plaintiffs not having raised any objection in the court below to the provision of the judgment granting to the defendants the *beneficio de excusion*, to which it is suggested they are not entitled, the judgment of the trial court is affirmed with costs against the appellants. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and *Tracey, JJ.*, concur.

Date created: May 13, 2014