44 Phil. 378

[G.R. No. 19283. January 26, 1923]

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLANT, VS. MIGUEL BONA AND UNION GUARANTEE CO., LTD., DEFENDANTS AND APPELLEES.

D E C I S I O N

OSTRAND, J.:

This is an action to recover jointly and severally from the principal and the surety upon a replevin re-delivery bond, the sum of P1,919 by way of damages for the deterioration of the thing replevied during the time it remained in possession of the defendant by virtue of the bond.

It appears from the record that on January 19, 1920, the defendant Miguel Bona bought from the plaintiff an automobile for the sum of P5,617.83 payable in twenty-three monthly installments, and that he executed and delivered to plaintiff a promissory note for that sum; that to guarantee the payment of said promissory note the said defendant also gave a chattle mortgage on the automobile; that on account of the failure of the defendant to pay the tenth and subsequent installments of said promissory note, the chattel mortgage was foreclosed and the sheriff of Manila, by virtue of the foreclosure, fixed March 7, 1921, as the date for the public sale of the automobile; that the defendant Bona refused to deliver the automobile to the sheriff of Manila or to the plaintiff herein, which refusal caused the plaintiff to institute replevin proceedings against him, the case being numbered civil case No. 19649 of the Court of First Instance of Manila; that in said civil case No. 19649 the defendant Bona, in order to retain possession of the automobile, filed a re-delivery bond in the sum of P4,000, which bond was subscribed by the other defendant, the Union Guarantee Co., Ltd., by which both defendants bound themselves jointly and severally to deliver said automobile to the plaintiff if such delivery were adjudged, and for the payment of such sum to the plaintiff as

might be recovered against the defendant in the replevin case, together with the costs of action.

It further appears that after trial in said civil case No. 19649, the Court of First Instance on September 29, 1921, rendered a judgment ordering the defendant Bona to deliver the automobile in question to the plaintiff herein and to pay the costs of the action, and that after said judgment became final, the court, on November 1, 1921, issued an order requiring the sheriff of Manila to compel said defendant to deliver the automobile to the plaintiff, pursuant to which order the latter obtained possession of the automobile on November 1, 1921. On November 14, 1921, it was sold by the sheriff at public auction under the chattel mortgage and at which sale it was bid in by the plaintiff for the sum of P147.

The defendant Union Guarantee Co., Ltd., was not made a party in said civil case No. 19649 and it will be noted that there was no alternative judgment for damages.

On November 15, 1921, immediately after the sheriff's sale, the present action was brought upon the re-delivery bond, the plaintiff seeking to recover damages for the deterioration of the automobile during the period between March 15, 1921, the date upon which it was redelivered to Bona, and November 1, 1921, the date upon which Bona delivered it to the sheriff under the judgment in civil case No. 19649. The plaintiff places the amount of such damages at P1,853, the difference between P2,000, the alleged value of the automobile on March 15, 1921, and P147, the price obtained at the sheriff's sale in November of the same year.

After trial, the Court of First Instance held that the deterioration was not covered by the bond, and that no damages had been proven, and rendered judgment in favor of the plaintiff and against the defendants for the sum of only P66, the amount of the costs adjudged against the defendant Bona in civil case No. 19649. From this judgment the plaintiff appeals and maintains that the trial court erred (1) in holding that the plaintiff is not secured by the re-delivery bond furnished in civil case No. 19649 of the Court of First Instance of Manila by Miguel Bona and Union Guarantee Co., Ltd., defendants in this case, against deterioration of the automobile; (2) in holding that, there being no money

judgment against Miguel Bona in said civil case No. 19649, there is no evidence of any liability under the bond for which judgment may be rendered against defendants in this case except that plaintiff is entitled to recover the costs adjudged against defendant Miguel Bona in said civil case No. 19649, amounting to P66; and (3) in denying plaintiff's motion for a new trial.

We do not think the second assignment is well taken and agree with the trial court that the evidence as to the extent of the deterioration of the automobile is insufficient. To show its value at the time of its delivery to the sheriff on November 1st, the plaintiff proved that it brought only P147 at the sale on November 14th. The defendant Bona testified, however, that the automobile at the time of its re-delivery to the plaintiff was worth about P3,500, and, as against this, there is not a word in the record to show that the true value at that time was only P147. Moreover, the automobile was standing outside exposed to the weather during the two weeks from November 1st to November 14th and this may have affected its appearance and sales-value considerably; the defendants cannot, of course, be held liable for its deterioration during that period.

In regard to the first assignment of error, the trial court undoubtedly erred in holding that the re-delivery bond, assuming that it was in conformity with section 267 of the Code of Civil Procedure, did not cover deterioration of the automobile during the period it remained in possession of the defendant Bona by virtue of the bond. The weight of authority is to the effect that though a replevin re-delivery bond does not in terms require the property to be returned in substantially as good a condition as when taken, such an obligation is always implied by law. (Hallidie Machinery Co. *vs*. Whidbey Island Sand & Gravel Co., 73 Wash., 403; Fair *vs*. Citizens' State Bank of Arlington, 69 Kan., 353; Maguire *vs*. Pan-American Amusement Co., 205 Mass., 64.)

But upon the facts in this case, the error is unimportant. This court has already held in the case of Pascua *vs*. Sideco (24 Phil., 26), that "A separate action for the recovery of damages arising out of a replevin suit may not be had, in view of section 272 of the Code of Civil Procedure as amended by section 17 of Act No. 1627, the object being to determine finally all the matters growing out of the controversy in the replevin action and thus prevent a multiplicity of suits."

Circumstances might possibly arise in connection with a replevin suit which might render a separate action for damages proper, but no such circumstances exist in the present case, and the case of Pascua *vs*. Sideco is therefore squarely in point. In the instant case it may also be noted that the plaintiff accepted delivery of the automobile apparently without objection, and that he caused it to be sold and received the proceeds of the sale. In these circumstances, it may well be held that the delivery of the automobile to him was complete, the conditions of the bond fulfilled, and the surety thereby released from liability.

The judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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