7 Phil. 345

[G.R. No. 3412. January 19, 1907]

RAFAEL MOLINA Y SALVADOR, PLAINTIFF AND APPELLEE, VS. ANTONIO DE LA RIVA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

On the 18th of April, 1905, the Court of First Instance of the city of Manila rendered judgment in favor of the plaintiff Rafael Molina y Salvador and against the defendant Antonio de la Riva, in the sum of 33,659.03 pesos, Mexican currency, equivalent to P30,052.70, Philippine currency, with interest thereon at the rate of 5 per cent per annum from the 27th of July, 1903, and the costs of proceedings, which judgment was thereafter affirmed by this court, with the modification that the defendant should pay to the plaintiff the sum of P28,049.19, Philippine currency, with the interest due and to become due at the rate of 5 per cent per annum from the 27th of July, 1903, until fully paid, without any special provision as to the costs of this instance.

On the 21st of April, 1906, the court below ordered the execution of the said judgment, which was returned unsatisfied, no property of the defendant subject to execution having been found. Counsel for plaintiff then asked the court to require the sureties of the defendant, Enrique F. Somes and Roberto Spalding, to show cause why execution should not issue against them.

The said sureties having appeared and been heard, the court ordered that execution issue against the said Somes and Spalding as such sureties. From this order of the court the sureties appealed and have brought the case to this court by bill of exceptions. The case having been duly argued and submitted to this court, we make the following decision:

The appellant sureties assign as error in the first place, that the order appealed from was issued against them, notwithstanding the fact that they indicated certain property belonging to the defendant, the principal debtor, and in the second place that the court held that the

property so indicated by them did not belong to Antonio de la Riva because there was a lien upon it created by law, and the same being in the hands of a receiver could not be used to satisfy the said judgment. In support of the first assignment, they alleged that under the terms of the bond the joint liability stipulated therein only extends to the sureties, the defendant, Antonio de la Riva, continuing to be the principal debtor. Appellants also rely upon the provisions of articles 1830, 1831, and 1832 of the Civil Code in order to show that the sureties can not be compelled to pay the creditor until application has been previously made of all the property of the debtor.

But appellants' conception as to the joint liability stipulated in the bond is wholly erroneous, as the said bond reads as follows: "Know all men by these presents that we, Antonio de la Riva, a resident of Bato, Catanduanes, as principal, and Roberto Spalding and Enrique Somes, as sureties, do hereby acknowledge ourselves (all three) to be jointly and *severally* bound unto the said Rafael Molina y Salvador in the sum of 17,500 dollars, United States currency, for the payment of which we truly and faithfully bind ourselves, jointly and *severally*, our heirs, assigns, and representatives." Therefore, it appearing that the joint liability was equally incurred by the principal and his two sureties, the court below did not commit the first of the errors assigned. And, inasmuch as, according to article 1831, "the application (*excusion*) can not take place when the surety has jointly bound himself with the debtor," and according to paragraph 2, article 1822, "if the surety binds himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first of this book," which section fourth refers to joint and several obligations, article 1144, which provides that a creditor may sue any of the joint debtors, or all of them simultaneously, being included therein, it is not necessary to pass upon the second error assigned by the appellant.

Moreover the nature of the bond is very plain. Its heading reads as follows: "Appellant's bond to stay execution of judgment." This bond is, therefore, a judicial bond, and article 1856 of the Civil Code provides that a judicial surety can not demand a levy on the property of the principal debtor.

We accordingly affirm the order of the court below with the costs of this instance. After the expiration of ten days let judgment be entered in accordance herewith and the case be remanded to the court below for execution. So ordered.

Torres, Carson, Willard, and *Tracey, JJ.,* concur.

Date created: May 29, 2014