

CONNELL BROS. CO., LTD., Plaintiff-Appellant

v.

**JOSE M. MANGLONA, d/b/a MANGLONA'S STORE,
Defendant-Appellee**

Civil Appeal No. 175

Appellate Division of the High Court

January 5, 1978

Appeal questioning refusal to issue writ of execution upon auto. The Appellate Division of the High Court, Nakamura, Associate Justice, held that lower court properly found auto to be a necessary item and therefore exempt from execution.

1. Judgments—Execution in Aid of—Exempt Items

Lower court properly found that auto was a necessary item and exempt from execution in aid of judgment under statute where judgment debtor had two farms in different locations, worked nights in a third location and there was no public transportation.

2. Appeal and Error—Evidence—Supporting Evidence

Appellate function is to determine whether there is any evidence supporting the judgment, not to decide what appellate court would hold under the evidence.

Counsel for Appellant:

MICHAEL A. WHITE

Counsel for Appellee:

WILLIAM D. SABO, *Public Defender's Office*

Before BURNETT, *Chief Justice*, BROWN, *Associate Justice* and NAKAMURA, *Associate Justice*

NAKAMURA, *Associate Justice*

On March 3, 1976, upon stipulation of the parties, the Trial Division of the High Court entered Judgment in favor of plaintiff, the appellant herein, and against defendant, the appellee herein, in the amount of \$6,699.00, together with plaintiff's costs and disbursements in the amount of \$1.20, together with interest on the total of the foregoing at the rate of six per cent (6%) per annum from the date of Judgment.

The Judgment not having been satisfied, the appellant filed a Motion for Order in Aid of Judgment on October 20, 1976. A hearing on said Motion was held on November 9, 1976, before Associate Justice Williams. By an Order dated November 10, 1976, the Court ordered appellee to turn over to the appellant a combination record player and radio which the appellee owned at the value of four hundred dollars (\$400.00). The appellee was further ordered to pay the sum of twenty-five dollars (\$25.00) per month commencing on November 30, 1976, with a like payment on the 31st of every month thereafter until the Judgment was satisfied. The Court, however, refused to order a levy and execution upon a certain 1971 Ford Pinto automobile and a refrigerator owned by the appellee.

On November 26, 1976, counsel for the appellant filed a timely Notice of Appeal, alleging that the refusal to issue a Writ of Execution upon the 1971 Ford Pinto automobile was without authority at law. He filed his brief on May 17, 1977, and the counsel for appellee filed his brief on July 19, 1977. Hearing on the subject appeal was heard on November 8, 1977, and both counsel made oral arguments before this Court in support of their positions.

The only relevant issue in this appeal is whether the Trial Court erred when it found that the automobile was a

necessary item under 8 TTC § 61(2) and, as such, exempt from levy and execution.

The transcript of the proceedings of the Trial Court reveals that Justice Williams found the following facts:

1) Appellee had two farms at two different locations—one in Kagman and the other one in San Vicente;

2) Appellee also worked at night at Sablan Construction Company as a security guard six nights a week; and

3) There was no public transportation, taxis or buses, on the island, particularly at night. (Tr., at p. 22.)

Based on these findings, the Trial Division found that appellee's automobile was a necessary item for appellee to carry on his occupations, and therefore exempt from levy and execution under 8 TTC § 61(2).

[1, 2] Even though the evidence presented in support for exemption was sketchy, we find, however, that there were adequate facts to support the Judgment. It is not the function of the Appellate Court to decide what it would hold under the evidence. The Appellate function is to determine whether there is any evidence supporting the judgment. *Henos v. Kaiko*, 5 T.T.R. 352, 356.

In view of the foregoing, the Judgment of the Trial Court is hereby⁴ AFFIRMED.