

46 Phil. 796

[ G.R. No. 20144. March 02, 1923 ]

**UNION GUARANTEE CO., LTD., PETITIONER, VS. HONORABLE S. DEL ROSARIO, JUDGE OF FIRST INSTANCE OF MANILA, RICARDO SUMMERS, EX-OFFICIO SHERIFF OF MANILA, AND LIM HONG WAN, RESPONDENTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

This is an action commenced originally in this court for the issuance of a writ of prohibition commanding the Honorable Simplicio del Rosario, Judge of First Instance of Manila, the sheriff of said court, Ricardo Summers, and Lim Hong Wan absolutely to abstain and refrain from proceeding against the petitioner Union Guarantee Co., Ltd., in civil case No. 18074 of said court, wherein Enrique Legarda Koh is plaintiff, Tan Po O, defendant, and said Lim Hong Wan, intervenor. It is also prayed in the petition that the writ of execution issued in that case against the herein petitioner be declared void and of no effect, that it be given such other remedy as may be just and adequate, and that it be allowed its costs, and that an *ex parte* preliminary injunction be issued enjoining the respondents, until further order of this court, from attaching or attempting to attach the properties of the petitioner for the satisfaction of the judgment rendered in said case in favor of Lim Hong Wan.

The writ of preliminary injunction prayed for was issued in the name of this court by one of its members, Mr. Justice James A. Ostrand, on January 2, 1923.

By a resolution of the 9th of said month of January, 1923, the respondents were required to demur to, or answer, the petition and, on the 7th of said month, they filed a demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action.

From the facts alleged in the petition and gathered from the documents attached thereto, the following statement of facts must be made for the better understanding of the question raised by the parties:

Enrique Legarda Koh brought an action for the replevin of an automobile against Tan Po O, which is case No. 18074 of the Court of First Instance of Manila. In the complaint filed therein it was prayed that a writ of replevin be issued and to that end an affidavit and a bond for P3,000 were attached to the complaint, as provided by law in those cases. Lim Hong Wan intervened in the case as a third party claimant and presented for the purpose the corresponding complaint in which he alleges to be the owner of the automobile in question. In view of this third party's claim and in order that the sheriff might proceed with the seizure of the automobile, the plaintiff Enrique Legarda Koh gave an indemnity bond to the sheriff under section 270 of the Code of Civil Procedure. This bond was subscribed by Enrique Legarda Koh as principal and by the Union Guarantee Co., Ltd., the herein petitioner, as surety, and executed in favor of the respondent sheriff (Exhibit A). The Court of First Instance of Manila rendered judgment in favor of the plaintiff, Enrique Legarda Koh, adjudging him to be the owner and adjudicating to him the title to and possession of the automobile in question, but sentencing him to pay the intervenor, Lim Hong Wan, the sum of P1,500, the price of the automobile, with legal interest thereon from the date of the seizure of said property made by the sheriff. On appeal to this court, the decision of the lower court was affirmed without costs.

Subsequently, the intervenor Lim Hong Wan moved the Court of First Instance of Manila to issue a writ of execution upon that judgment against the property of the Union Guarantee Co., Ltd., the herein petitioner, which opposed such motion alleging want of jurisdiction over its person. The respondent Judge, however, issued the writ of execution of said judgment against the property of the petitioner, the Union Guarantee Co., Ltd., which filed a motion for reconsideration, but said motion was denied.

The question at issue is whether by virtue alone of the bond executed and subscribed by the petitioner in favor of the sheriff, in order that the latter might proceed with the seizure of the automobile in question, notwithstanding the claim presented by the intervenor Lim Hong Wan, a writ of execution can be issued against the property of the herein petitioner upon the judgment rendered

against Enrique Legarda Koh as principal in said bond.

In the first place, this bond was executed under the provisions of section 270 of the Code of Civil Procedure which says:

“If the property taken be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer while he has possession of the property, the officer is not bound to keep the property, or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the officer against such claim by an obligation with two sufficient sureties; and no claim to such property or damage for its seizure, by any other person than the defendant or his agent, shall be valid against the officer unless so made. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action.”

Under these provisions and according to the terms of the bond Exhibit A, it was given to indemnify the sheriff against any claim of the intervenor to the property seized or for damages arising from such seizure, which the sheriff was making and for which the sheriff is directly responsible to the third party claimant. And as the judgment sought to be enforced was not rendered against this officer, nor does it appear that any claim whatsoever was presented by the third party claimant against him, there is no ground upon which an execution can, by virtue of such judgment, be issued against the petitioner corporation, for the mere fact of the latter having bound itself in said bond in the manner aforesaid. It must not be forgotten that the bond cannot be extended beyond the bounds of its contents (art. 1827, Civil Code).

In the second place, even supposing that this undertaking were executed by the petitioner directly in favor of the intervenor Lim Hong Wan, or that by virtue thereof said petitioner had become bound to the latter, there can be also no ground for issuing an execution upon such judgment against the property of the surety, inasmuch as it is not a party against whom such judgment was rendered nor was it summoned or judicially cited, nor heard before issuing such execution against its property.

In civil cases we have in this jurisdiction no legal provision making a surety of the kind of the herein petitioner a judgment debtor simply by virtue of the bond.

Even in cases of supersedeas bond to stay execution of judgment, we have held in the case of *Green vs. Del Rosario* (43 Phil., 547) that no execution can be issued against the surety in such bonds without further judicial proceeding.

In the case of *Molina vs. De la Riva* (7 Phil., 345), cited by the respondents in their favor, the bond in question was also to stay execution of a judgment. There, the sureties had been summoned by the court to show cause, if any they had, why the writ of execution should not be issued against them. And only after they had appeared and been heard by the court that the latter ordered that the judgment be understood as against those sureties, which order on appeal to this court was affirmed. There was, therefore, in that case a further proceeding addressed to the sureties themselves before any execution proceeding was had against them, by virtue of the bond executed by them. Nothing of this sort appears to have been done in the present case.

The motion of the intervenor, praying the court for a writ of execution against the herein petitioner, can in no way be held as the further proceeding to which reference was made by us as a prerequisite to the issuance of the writ of execution. Such a proceeding must consist in giving the surety in a positive and direct manner an opportunity to be heard. The supreme court of Spain, in a decision rendered May 29, 1897, held that notice of the complaint is necessary, it not being sufficient that the surety had knowledge of the judicial proceedings that the creditor was pursuing for the collection of his credit, although the latter himself should say so.

The demurrer filed by the respondents is overruled and it is ordered that they answer the complaint within the period fixed by the Rules. So ordered.

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

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