

**[ G.R. No. L-6383-84. December 19, 1953 ]**

**FILEMON SANTOS AND FRANCISCO FRIAS, PETITIONER VS. HON. M. M. MEJIA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, LIBERATO AVECILLA AND THE CAPITAL INSURANCE & SURETY CO., INC. REPRESENTED BY ENRIQUE MELENCIO, BRANCH MANAGER IN CABANATUAN CITY, RESPONDENTS.**

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

**PADILLA, J.:**

Civil case No. 702 of the Court of First Instance of Nueva Ecija is an action brought by Liberato AVECILLA against Francisco Frias and Filemon Santos to annul Torrens certificate of title No. 459 issued upon a homestead patent, while civil case No. 756 of the same court is an appeal from a judgment by the justice of the peace court of Bongabon in an action for unlawful entry brought by Francisco Frias against Liberato AVECILLA. While the two cases were pending, Francisco Frias and Filemon Santos, defendants in civil case No. 702, filed a petition for contempt against Liberato AVECILLA, on the ground that pursuant to the order of the court of 25 May 1951 Liberato AVECILLA was to vacate the land involved in the litigation after the expiration of fifteen days from the date of the order which were granted to give the parties an opportunity to come to an amicable settlement, and that Liberato AVECILLA and his laborers despite the lapse of the fifteen-day period and without the parties having come to an amicable settlement within the said period, continued to occupy the land. On 25 June, upon agreement of the parties the court ordered Liberato AVECILLA to file a bond in the sum of P4,000 in favor of Francisco Frias and Filemon Santos within ten days from the date of the order, withheld action on the motion for contempt. On 5 July, Liberato AVECILLA and the Capital Insurance & Surety Co., Inc. executed and filed a bond which in

words and figures is as follows:

That we  
Liberato Avecilla as principal, and THE CAPITAL INSURANCE & SURETY  
CO., INC., a corporation duly organized and existing under and by  
virtue of the laws of the Philippines, as surety, are held and firmly  
bound unto Filemon Santos et al., defendants in civil case No. 702, CFI  
(N. E.) in the sum of FOUR THOUSAND PESOS (P4.000 Philippine currency),  
for the payment of which, well and truly to be made, we bind ourselves,  
our heirs, executors, administrators, successors and assigns, jointly  
and severally, firmly by these presents.

THE CONDITIONS OF THESE OBLIGATIONS ARE AS FOLLOWS:

Upon agreement of the parties, the plaintiff is hereby ordered to file  
a bond of FOUR THOUSAND PESOS (P4,000) in favor of the defendants  
within ten (10) days from today, otherwise he will be ordered to leave  
the land; and action on the motion filed by the defendants for contempt  
against the plaintiff is hereby held in abeyance.

SO ORDERED.

City of Cabanatuan, June 25, 1951.

ENRIQUE  
MAGLANOC  
*Judge*

WHEREAS,

the Court of First Instance requires said principal to give a good and  
sufficient bond in the above stated sum to secure the full and faithful  
performance on his part of said obligation.

NOW,

THEREFORE, if the above bounden principal shall in all respect duly and  
fully observe and perform all and singular the aforesaid covenants,  
conditions and agreement to the true intent and meaning thereof, then  
this obligation shall be null and void, otherwise to remain in full

force and effect.

Liability of surety on this bond will expire on THIRTY DAYS and said bond will be cancelled 10 DAYS after its expiration, unless surety is notified of any existing obligations thereunder.

IN WITNESS WHEREOF, we have set our hands and signed our names on the 5th day of July, 1951.

LIBERATO  
AVECILLA  
(Principal)

IN THE PRESENCE OF:  
SOFRONIO OLIVEROS  
MAMERTO M. MACAPAGAL

THE CAPITAL INSURANCE &  
SURETY CO., INC.  
DR. ENRIQUE M.  
MELENCIO  
In Charge,  
Cabanatuan Branch

(The acknowledgments before the notary public, jurat and approval by the presiding judge follow)

(Exhibit D)

The two cases were heard and judgment was rendered on 27 March 1952, amended by another dated 13 May, dismissing the complaint in civil case No. 702 with costs against Liberato AVECILLA and ordering him in the other case (No. 756) to pay yearly to Filemon Santos the sum of P1,633.80 and to Francisco Frias the sum of P1,529.52 beginning from the agricultural year 1950-1951 until Liberato AVECILLA vacates or returns the possession of the parts of the parcel of land involved in the litigation. On 19 May, the parties were notified of the amended judgment of 13 May and as none of them appealed therefrom, the same became final and executory. The writ of execution issued on 25 June

1952 against Liberato Avecilla having been returned unsatisfied, on 1 September, Francisco Frias and Filemon Santos moved for an *alias* writ of execution of the judgment against Liberato Avecilla and the Capital Insurance & Surety Co., Inc. The motion was objected to by the Capital Insurance & Surety Co., Inc., in so far as it concerned the surety, on the ground that the bond was for one year only and was to be cancelled ten days after its expiration unless the surety was notified of any existing obligation thereunder. The court denied the petition for execution against the surety company. Hence this petition to compel the respondent court to issue a writ of execution against the Capital Insurance & Surety Co., Inc.

In the surety bond

it is stipulated that the "Liability of (the) surety on this bond will expire on THIRTY DAYS and said bond will be cancelled 10 DAYS after its expiration, unless (the) surety is notified of any existing obligations thereunder." The bond executed on 5 July 1951 was extended to 4 July 1952 "and to be cancelled 10 days thereafter unless notified of any obligation."

It is contended that being a judicial bond it must answer for the principal's liability that may be adjudged by the court in the case where it is filed and that the time limitation of the surety's obligation under the bond is unauthorized and illegal. The bond was executed and filed to forestall the issuance of a mandatory injunction against Liberato Avecilla and it was a sort of a counter bond filed by him conditioned that he would pay all damages which the adverse parties might suffer by reason of the continuance during the action of the acts complained of.<sup>[1]</sup> The bond executed and filed in these cases is not as that described and provided for in the rule referred to but merely one for the sum of P4,000 and for a limited time. The surety was not bound to execute a bond if it did not wish to. If the bond executed and filed was defective, the parties in whose favor it was executed should have objected to it. This the obligees failed to do. There is no rule of court which requires a surety to execute a bond which would answer for the principal's liability that might be adjudged by the court in the

case where it was filed, if the surety did not wish to execute such bond. It is a settled rule in this jurisdiction that a surety or a guarantor is not responsible beyond the terms of his undertaking. And it appearing that the bond filed in this case expired on 4 July 1952, the surety cannot be held liable under the bond beyond 4 July 1952, and it could cancel the bond ten days thereafter if the obligees failed to notify it of the principal's obligation under the bond.

The petition for a writ of mandamus is denied, without costs.

*Paras, C. J., Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.*

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<sup>[1]</sup> Section 6, Rule 60.

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