

****Title:****

Philippine British Assurance Co., Inc. v. Intermediate Appellate Court, Sycwin Coating & Wires, Inc., and Dominador Cacpal

****Facts:****

- Sycwin Coating & Wires, Inc. (respondent) filed a complaint for collection of a sum of money against Varian Industrial Corporation with the Regional Trial Court (RTC) of Quezon City.
- During the trial, Sycwin attached properties of Varian due to a supersedeas bond.
- To lift the attachment, Varian posted a counterbond of P1,400,000 through Philippine British Assurance Co., Inc. (PBAC).
- The RTC ruled in favor of Sycwin on December 28, 1984, ordering:
 1. Payment of P1,401,468.00 plus interest.
 2. 5% of the principal as liquidated damages.
 3. P30,000 as exemplary damages.
 4. 15% of the principal as attorney's fees.
 5. Costs of suit.
- Varian appealed and Sycwin requested execution pending appeal, approved by the Intermediate Appellate Court (IAC).
- Varian's properties were not delivered upon the writ of execution's demand.
- Sycwin petitioned the IAC to enforce the counterbond against PBAC, which the IAC granted on September 12, 1985, leading PBAC to file this Petition for Review on Certiorari.

****Issues:****

1. Whether an order of execution pending appeal can be enforced against a counterbond posted to lift an attachment.
2. The necessity of a motion for reconsideration before filing a petition for certiorari in this context.

****Court's Decision:****

1. ****Execution Pending Appeal on Counterbond:****
 - The Court upheld that the counterbond under Section 5, Rule 57 of the Rules of Court secures "any judgment" for the attaching creditor.
 - Section 17, Rule 57 specifies that the surety on the counterbond becomes liable if execution is unsatisfied, applying to judgments pending appeal.
 - Applying the principle that courts should not distinguish where the law does not, the Court held the counterbond covers both final and non-final judgments.

- The Court referenced *Towers Assurance Corporation v. Ororama Supermart*, emphasizing that any unsatisfied execution—be it from a pending appeal or final judgment—can be charged against the counterbond, provided procedural conditions are met.

2. **Motion for Reconsideration:**

- Normally, a motion for reconsideration is required before certiorari, but the Court allowed it here due to urgent need.

- The Court acknowledged exceptions to the rule, such as where immediate relief is essential to prevent injustice or undue harm.

Doctrine:

1. **Liability on Counterbond:**

- A counterbond posted under Section 5, Rule 57, to lift attachment, is liable for any judgment meandering through various stages of litigation, including pending appeal.

- The execution until satisfied, then, binds the counterbond, irrespective of the judgment's executory finality.

2. **Exceptions to Motion for Reconsideration Requirement:**

- In cases expressing urgency or significant immediate need, the general requirement for a motion for reconsideration before certiorari can be dispensed.

Class Notes:

- **Elements of Counterbond Liability:**

1. Issuance and non-satisfaction of execution against the principal debtor.
2. Demand upon the surety for payment.
3. Notice and summary hearing for the surety on its liability.

- **Rule 57, Sections 5, 12, 17:**

1. **Sec. 5:** Attachment and security via counterbond.
2. **Sec. 12:** Discharge of attachment with counterbond equivalent to property value.
3. **Sec. 17:** Liability on counterbond if execution unsatisfied.

- **Legal Maxim:** "Ubi lex non distinguit, nec nos distinguere debemos" ("Where the law does not distinguish, we must not distinguish").

Historical Background:

- This case contextualizes the procedural adherence and interpretive leeway wielded by courts in post-judgment and provisional remedy scenarios (e.g., attachments,

counterbonds).

- Reflects the judiciary's stance of ensuring enforcement mechanics are fair, agile to meet immediate needs, without circumventing statutory dictates.
- Radiates a balance between rigid adherence to procedural formalities and pragmatic dispensation when urgent justice administration necessitates.