

**CENTRAL SURETY AND INSURANCE COMPANY, INC., PETITIONER,
VS. HON. ALBERTO Q. UBAY AS JUDGE OF THE COURT OF FIRST
INSTANCE OF RIZAL, CALOOCAN CITY, BRANCH XXXII AND ONG
CHI, DOING...**

G.R. No. L-40334. February 28, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Ong Chi, doing business under the firm name "Tableria de Luxe", sued Francisco Reyes, Jr. for a sum of money in the City Court of Caloocan City. Ong Chi applied for a writ of attachment and upon filing a bond in the amount of P6,464.18, a jeep belonging to Reyes was placed in custodia legis.

Reyes moved to dissolve the writ of attachment. He posted a counterbond in the amount of P6,465.00; his surety was Central Surety and Insurance Co., the petitioner herein. The condition of the counterbond is that "in consideration of the dissolution of said attachment, [Francisco Reyes, Jr., as principal and Central Surety and Insurance Co., as surety] hereby jointly and severally, bind ourselves in the sum of SIX THOUSAND FOUR HUNDRED SIXTY FIVE ONLY (P6,465.00) Philippine Currency, under the condition that in the case the plaintiff recovers judgment in the action the defendant will on demand redeliver the attached property so released to the officer of the Court to be applied to the payment of the judgment or in default thereof that the defendant and surety will on demand pay to the plaintiff the full value of the property released." (Rollo, p. 11.) The writ of attachment was thereafter lifted and the jeep was returned to Reyes.

In the course of time, the City Court rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering said defendant to pay plaintiff the sum of P6,964.18, with legal interests thereon from the date of the filing of this complaint until fully paid, plus the sum of P500.00, as and by way of attorney's fees, and the costs of the suit." (Id., p. 14.)

Defendant Reyes appealed to the Court of First Instance of Rizal but said court affirmed the judgment in toto. (Rollo, p. 16.) Upon finality of the judgment, a writ of execution was issued against Reyes. The jeep which was the object of the attachment was sold by the sheriff for P4,000.00 and the amount was credited against the judgment in partial satisfaction thereof.

Soon after the sale of the jeep, Central Surety and Insurance Co. filed a motion to cancel the counterbond. Ong Chi not only opposed the motion but he also asked that the surety company pay the deficiency on the judgment in the amount of P5,730.00 (P9,730.00 as of the filing of the motion, less P4,000.00 the proceeds of the sale of the jeep). The motion for a deficiency judgment was opposed by the surety on the ground that it had fulfilled the condition of the counterbond. Despite the opposition, the court ordered the surety to pay. A motion for reconsideration was denied which accounts for the instant petition.

The issue is whether or not the petitioner surety is liable for the deficiency. The petitioner urges a negative answer; it relies on the terms of the counterbond. Upon the other hand, the private respondent claims that an affirmative answer is proper; he relies on Section 17 of Rule 57, Rules of Court which stipulates thus:

"SEC. 17. When execution returned unsatisfied, recovery had upon bond. - If the execution be returned unsatisfied in whole or in part, the surety or sureties on any counterbond given pursuant to the provisions of this rule to secure the payment of the judgment shall become charged on such counterbond, and bound to pay to the judgment creditor upon demand, the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action."

The petition is highly impressed with merit.

The stipulation in the counterbond executed by the petitioner is the law between the parties in this case and not the provisions of the Rules of Court.

Under the counterbond, the petitioner surety company bound itself solidarily with the principal obligor "in the sum of P6,465.00 under the condition that in case the plaintiff recovers judgment in the action, the defendant will, on demand, redeliver the attached property so released to the officer of the court to be applied to the payment of the judgment or in default thereof that the defendant and surety will, on demand, pay to the plaintiff the full value of the property released." The main obligation of the surety was to redeliver the jeep so that it could be sold in case execution was issued against the principal obligor. The amount of P6,465.00 was merely to fix the limit of the surety's liability in case the jeep could not be reached. In the instant case, the jeep was made available for execution of the judgment by the surety. The surety had done its part; the obligation of the bond had been discharged; the bond should be cancelled.

The impropriety of the orders of the respondent judge is made more manifest by still another circumstance. The petitioner's surety bond was for the amount of P6,465.00. So even on the assumption that the bond was not discharged, since the sale of the jeep yielded P4,000.00, the surety can be held liable at most for P2,465.00. But the respondent judge ordered the surety to pay P5,730.00 which is the entire deficiency and is in excess of P2,465.00. It is axiomatic that the obligation of a surety cannot extend beyond what is stipulated.

WHEREFORE, the petition is granted; the questioned orders of the respondent judge are hereby set aside and in lieu thereof another is entered cancelling the petitioner's counterbond, with costs against the private respondent.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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