

URBANA D. ANZURES, PETITIONER, VS. ALTO SURETY & INSURANCE CO., INC., ET AL., RESPONDENTS.*G. R. No. L-5693. February 28, 1953*

Ponente: PARAS, C.J.

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On August 4, 1950, the petitioner filed in the Court of First Instance of Manila civil case No. 11748 against Benjamin Aguilar for the recovery of P3,500, with a prayer for a preliminary writ of attachment. The court accordingly issued a writ of attachment in virtue of which two automobiles belonging to Benjamin Aguilar were levied upon. The attachment was subsequently discharged upon the filing by Benjamin Aguilar of a bond subscribed by the herein respondent Alto Surety & Insurance Co., Inc. in the amount of P3,500. When the case was called for hearing, the petitioner and Benjamin Aguilar filed a joint petition for a "judgment by compromise," alleging that Benjamin Aguilar would pay the plaintiff the sum of P3,500, that appeal was waived, and that there be no pronouncement as to costs. On October 8, 1951, the Court of First Instance of Manila, rendered a decision approving the compromise and rendering judgment in accordance therewith, without costs. Upon motion of respondent Alto Surety & Insurance Co., Inc., the herein respondent Judge of the Court of First Instance of Manila issued order cancelling the bond. As the petitioner failed to obtain a reconsideration, the present petition was instituted, urging this court to set aside the order and restore the bond put up by the respondent Alto Surety & Insurance Co., Inc., in its full effect.

Under section 12, Rule 59, of the Rules of Court, the bond filed, as in this case, for the discharge of an attachment is "to secure the payment to the plaintiff of any judgment he may recover in the action," and stands "in place of the property so released". It follows that the order of cancellation issued by the respondent judge is erroneous. Indeed, judgment had already been rendered by the Court of First Instance of Manila in civil case No. 11748, sentencing Benjamin Aguilar to pay the sum of P3,500 to the petitioner; and it is not pretended that said judgment is a nullity. There is no point in the contention of the respondent Surety Company that the compromise was entered into without its knowledge and consent, thus becoming as to it essentially fraudulent. The Surety is not a party to civil case No. 11748 and, therefore, need not be served with notice of the petition for judgment. As against the conjecture of said respondent that the parties may easily connive by means of a compromise to prejudice it, there is also the likelihood that the same end may be attained by parties acting in bad faith through a simulated trial. At any rate, it is within the power of the Surety Company to protect itself against a risk of the kind.

Wherefore, the order of the respondent Judge cancelling the bond in question is set aside. So ordered with costs against the respondent Alto Surety & Insurance Co., Inc.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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