

IN THE MATTER OF THE INTESTATE ESTATE OF THE LATE CIRILO JAMANDRE, JOSE T. JAMANDRE, ADMINISTRATOR-APPELLEE, VS. LUZON SURETY COMPANY, INC., CLAIMANT-APPELLANT.

G.R. No. L-29822. September 29, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the order of the then Court of First Instance of Negros Occidental, disapproving claimant-appellant's claim for premiums against the intestate estate of the late Cirilo Jamandre as one of the indemnitors with the appellant on a redelivery bond which the latter issued in behalf of one of the defendants-intervenor in Civil Case No. 3902, entitled "Maria Jamandre Yanson, plaintiff, versus Jose T. Jamandre, defendant; and Magdalena Tejico, defendant-intervenor, of the Court of First Instance of Negros Occidental. The late Cirilo Jamandre was one of the indemnitors on an indemnity agreement which he executed in favor of claimant-appellant Luzon Surety Co., Inc..

Claimant-appellant, as surety, made an undertaking with Magdalena Tejico, as principal, in the amount of P25,320.00 in favor of Maria Jamandre Yanson, to answer for such damages as may be occasioned and awarded to the latter in connection with the return of a certain property which was previously seized by plaintiff from the defendants in said Civil Case No. 3902. The corresponding premiums and documentary stamps due on the said bond were paid and receipted for to cover two (2) years of undertaking from July 2, 1956 to July 2, 1958.

In September 1957, or well within the period that the surety bond undertaken by the defendant Magdalena Tejico was existing and in force, due to an order for the immediate execution of the judgment in favor of plaintiff Maria Jamandre Yanson in said Civil Case No. 3902, for replevin, and a writ of execution having been issued, the very property covered by the bond was actually delivered back to plaintiff Maria Jamandre Yanson. Thus, according to herein administrator-appellee Jose T. Jamandre, the undertaking to guarantee payment of damages to Maria Jamandre Yanson for the possession of the property which was for sometime transferred to defendants in said civil case for replevin, and assumed by claimant-appellant, as surety, was terminated on that date.

On the other hand, appellant surety company argues that the fact that the property seized from, and returned to, the defendants, does not render the contract (Indemnity Agreement) invalid; for, like any other contract, only the obligations thereunder can be extinguished by the causes provided by law. Further, appellant contends that since the decision of the trial court in favor of plaintiff Maria Jamandre Yanson was appealed to the then Court of Appeals and ultimately to this Court which affirmed the judgment, Magdalena Tejico should pay the premiums during the pendency of the appeal, but failed to pay the same despite repeated demands.

The only issue here is whether the bond posted by Magdalena Tejico in Civil Case No. 3902 for the delivery to the plaintiff of the property seized from, and returned to, the defendant has been terminated by the return of the property subject thereof to the plaintiff, or whether the said bond is coterminous with the pendency of the case.

It is admitted that in Civil Case No. 3902 of the then Court of First Instance of Negros Occidental, judgment was rendered in favor of plaintiff Maria Jamandre Yanson. Thus, the property was redelivered to her pending appeal

before the then Court of Appeals and ultimately before the Supreme Court which affirmed the judgment of the lower court, although modified in the sense that the award of damages was limited to simple attorney's fees.

The bond assumes the following obligations:

"NOW, THEREFORE, We, MAGDALENA TEJICO, as Principal and LUZON SURETY COMPANY, INC., as Sureties, in consideration of the above and of the return of said property to said defendant-intervenor, hereby bind ourselves, jointly and severally, in the sum of TWENTY FIVE THOUSAND THREE HUNDRED TWENTY PESOS (P25,320.00), Philippine Currency x x x for the delivery (of the property) if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant-intervenor, and the costs of the action x x x." (Indemnity Agree-ment, p. 16, record on appeal; Under-scoring supplied.)

A counterbond under Section 5 of Rule 60 of the Rules of Court is filed by the party (usually the defendant) whose property has been taken by the officer upon order of the court, upon the filing of a bond executed to the plaintiff for the delivery of the property to him, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant. Said Section 5 of Rule 60 provides:

"Sec. 5. Return of property. ? If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property as stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney."

Considering therefore the bond put up by appellant Surety Company holding itself liable for the payment of such sum as may be recovered against the defendant, including the costs of the action, it cannot go back and deny liability in its undertaking. In the same manner, the indemnity agreement signed by the late Cirilo Jamandre for the payment of advance annual premium to the Surety Company must be respected. Stated otherwise, the indemnity agreement stands as long as the original bond exists. The bond filed for the delivery to the plaintiff of properties seized from, and returned to, the defendant is coterminous with the case where it is filed. Thus, the bond executed by Tejico and Luzon Surety in the amount of P25,320.00 guarantees not only the return of the property of the defendant but also "the payment of such sum to him (plaintiff) as may be recovered against the defendant-intervenor."

ACCORDINGLY, the administrator of the estate of the late Cirilo Jamandre is hereby ordered to pay appellant Luzon Surety Company, Inc., the premiums due on the bond up to the entry of the final judgment in Civil Case No. 3902.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Abad Santos, Plana, and Escolin, JJ., concur.

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