

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
REPUBLIC SURETY & INSURANCE CO., INC.,
DEFENDANT-APPELLEE.**

G.R. No. L-20802. March 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Go Siu Gui, a Chinese citizen, arrived in the Philippines on October 3, 1948. Admitted as a temporary visitor, he was originally allowed to stay in the country up to October 3, 1949. When he overstayed, the Second Deputy Commissioner of Immigration issued a warrant for his arrest on October 14, 1949. However, upon his posting of additional cash bonds his stay here was extended to December 3, 1949. He was able to obtain several other extensions, the last of which expired in February 1950. Subsequently, in a decision dated June 9, 1950 the Commissioner of Immigration - acting upon the recommendation of a board of special inquiry - ordered the deportation of Go Siu Gui on the first available transportation.

While the order of deportation remained unexecuted, defendant Republic Surety & Insurance Co., Inc. posted on November 24, 1950 a P7,000.00 surety bond in favor of the Commissioner of Immigration for the temporary admission into the Philippines of Go Siu Gui. Thereafter, nothing significant appears to have been done with respect to his deportation.

Almost nine (9) years later, on July 16, 1959, the Commissioner of Immigration sent a letter to the Surety to produce the person of Go Siu Gui at the Bureau of Immigration within forty-eight (48) hours, otherwise the bond would be declared forfeited. On July 24, 1959, the surety having failed to comply within the time limit, the Commissioner of Immigration gave it notice that the bond was confiscated, and requested that it remit the amount of P7,000.00 within 72 hours. Again the surety failed to comply, and on February 2, 1960 suit for the recovery of the amount was instituted by the plaintiff in the Court of First Instance of Manila. One month later, or on March 11, 1960, the defendant actually surrendered the person of the principal to the Commissioner of Immigration. During the pendency of the case and before the plaintiff could conclude the presentation of its evidence, the then acting Commissioner, Agapito R. Conchu, issued an order dated March 24, 1962, declaring the bond posted by the defendant null and void ab initio and therefore considered the same cancelled. The said official reasoned out:

"Section 40(a) of the Immigration Law does not authorize the Commissioner of Immigration to accept a bond for the temporary liberty of a person already ordered deported. It follows therefore that the bond posted by the Republic Surety & Insurance Co. for the temporary stay of Go Siu Gui was null and void ab initio. If it could not be accepted according to the law, no action against it could later be taken; by the Commissioner of Immigration who was duty bound to know whether or not he was empowered to approve and accept said bond which, under Section 40(a) of the Immigration Law of 1940, he was not authorized to accept."

As a consequence of the above order of cancellation, defendant moved to dismiss the complaint.

The lower court granted the motion in a decision dated December 5, 1962, the dispositive portion of which reads:

"WHEREFORE, the bond having been cancelled by the Commissioner of Immigration which in effect sets aside the order of confiscation, the action is hereby dismissed without pronouncement as to costs."

In the present appeal by the Republic, the Solicitor General assails the validity of the order of the acting Commissioner of Immigration declaring the bond null and void on the ground that it had not been approved by the Secretary of Justice. No law, however, is cited which expressly requires such approval. Section 3 of the Immigration Act of 1949 is invoked, but it refers to the power and duty of the Commissioner "to issue, subject to the approval of the Department Head, such rules and regulations and prescribe such forms of bond ... and shall issue from time to time such instructions, not inconsistent with laws, as he shall deem best calculated to carry out the provisions of the Immigration Laws." By reason of their nature, the matters contemplated in this section, being of general application, are made subject to the approval of the Department Head. But not isolated acts or decisions of the Commissioner in individual cases, which are covered by the other portion of the same Section 3 of the Immigration Law giving the Commissioner charge of the administration of all laws relating to the immigration of aliens.

Essentially the conflict in this case stems from a misapprehension of the true import of the surety bond in question. It is entitled Surety Bond For Temporary Stay and was posted - as paragraph No. 1 thereof categorically states - for the temporary admission into the Philippines of Go Siu Gui, a Chinese citizen. But considering that as early as June 9, 1950 (the surety bond was dated November 24, 1950) Go Siu Gui had already been ordered deported, although execution of the order had been deferred meanwhile for reasons not appearing clearly in the record, the primary purpose for which exhibit "A" was posted could not have been served at all by said surety bond.

The terms and conditions of the surety bond negate plaintiff's assertion that it was a bond to secure Go Siu Gui's release from his detention cell while awaiting deportation. The surety undertook, inter alia;

"(b) ... to make Go Siu Gui at all times available to and to present him within 24 hours after receipt of notice to produce before the immigration authorities for investigation of his right to further stay in the Philippines;

"(c) That in case Go Siu Gui, after such inquiry is found to have violated any limitation or condition under which he was admitted as non-immigrant and is subject to deportation (the surety) undertakes to produce him for deportation within 24 hours after receipt of demand to do so;

x x x

"(e) That the undersigned (surety) also undertakes that the surety bond shall respond for the expenses incurred in connection with the expulsion of Go Siu if he is found deportable, x x x"

These conditions are quite clear. Nowhere is there any indication that when the surety filed the bond it was aware that Go Siu Gui had in fact already been ordered deported. Considering paragraph (e) in particular the surety could not have intended to assume responsibility over the person of Go Siu Gui pending actual deportation. It was evidently of the belief that the question of deportation was still open. Otherwise the terms of the bond should have been worded differently. The condition upon which the surety's obligation was based, namely, if the principal should be found deportable, was a useless one since the deportability of the principal was already a closed matter, and therefore should not give rise to the conditional obligation at all.

Even on grounds of equity the dismissal of the complaint is justifiable, since after all the defendant surrendered its principal soon after the suit was filed. The short delay could not have materially prejudiced the interests of the plaintiff, considering its own inaction to implement the order of deportation for a period of nine years.

Wherefore, the decision appealed from is hereby affirmed. No pronouncement as to costs.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

Ruiz Castro, J., did not take part.

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