

**ASIAN SURETY AND INSURANCE CO., INC., PLAINTIFF-APPELLANT,
VS. ISLAND STEEL, INC. AND CITY SHERIFF OF MANILA,
DEFENDANTS-APPELLEES.**

G.R. No. L-31366. November 15, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

In this appeal, Asian Surety and Insurance Co., Inc. — Asian Surety for short — assails the order of the Court of First Instance of Manila, dismissing its complaint in Civil Case No. 64849, an action to annul the judgment in Civil Case No. 51586. The dismissal is predicated upon the following holding of the trial court, to wit:

"The present action, in substance, is a petition for relief from judgment of the Court of First Instance, governed by Section 2, Rule 38 of the Rules of Court

.....

"Accordingly, the Asian Surety and Insurance Co., Inc. should have filed the petition for relief in Civil Case No. 51586 of this Court. As a necessary consequence thereof, it is unnecessary for this Branch to pass upon the various questions raised by the parties, not only in the motion to dismiss but also in the other incidents pending resolution.

"WHEREFORE, let this case be dismissed without prejudice to the filing of an appropriate petition in Civil Case No. 51586 before Branch XII of this Court, without any pronouncement as to costs. The restraining order heretofore issued in this case is set aside and declared of no further force and effect." (Order dated May 21, 1966, Record on Appeal, pp. 160-161).

Its motion for reconsideration of the above order having been denied, Asian Surety interposed an appeal to the Court of Appeals. Finding, however, that the issues raised therein involved pure questions of law, the Court of Appeals certified the case to Us.

We affirm the challenged order of dismissal.

Civil Case No. 64849 is an action for annulment of the judgment rendered in Civil Case No. 51586, a suit for recovery of a sum of money instituted by Island Steel Co., against Asian Surety. Basis of the complaint in Civil Case No. 51586 was ASIC Bond No. 005-MB/SB-108[1], issued by Asian Surety in favor of Island Steel to guarantee performance by one Leonor C. Villanueva of her obligation in the contract to sell executed on March 1, 1962 by and between Villanueva and Island Steel, whereby the latter agreed to sell on credit to Villanueva GI iron sheets up to the amount of P20,000.00 payable within sixty (60) days from date of the corresponding invoices, without need of demand for payment by Island Steel.[2]

Pursuant to the contract, Villanueva ordered and received from Island Steel 2,500 pieces of corrugated iron sheets with a total value of P19,780.00. On her failure to pay the amount, Island Steel demanded satisfaction of said purchase price from Asian Surety as guarantor thereof. In due time, Island Steel filed Civil Case No. 51586

against Asian Surety in the Court of First Instance of Manila for recovery of said amount plus interest.

At the trial, Asian Surety attempted to prove its allegations that the contract to sell entered into by Island Steel and Villanueva was fictitious and that no delivery of the goods in question was in fact made by the former to the latter. The lower court, however, found otherwise and adjudged Asian Surety liable to Island Steel in the amount of P20,000.00, plus interest thereon at 12% per annum from June 4, 1962, the date of extrajudicial demand, until paid.[3]

On appeal, the Court of Appeals affirmed the decision of the lower court.[4] Asian Surety sought a further review by Us of the appellate court's decision, but due to its failure to file a petition within the extended period granted to it, We issued a resolution, dated March 7, 1966, to wit:

"It appearing that petitioner has not filed its petition for review on certiorari of the decision of the Court of Appeals in L-25586, (Asian Surety and Insurance Co., Inc. versus Court of Appeals, et al.) despite the lapse of the period for the purpose on February 17, 1966, the Court of Appeals is hereby NOTIFIED that it may now take steps towards executing its judgment in the case."

To annul the judgment in Civil Case No. 51586 and to enjoin execution thereof, Asian Surety instituted Civil Case No. 64849 against Island Steel and the City Sheriff of Manila. In its complaint, Asian Surety set forth the details of the alleged fraud committed by Island Steel as follows:

"13. That the defendant committed the following fraudulent and collusive acts which taint the proceedings and the judgment in Civil Case No. 51586 with fraud and rendered it null and void ab initio, which plaintiff discovered only on or before March 23, 1966:

a) That it entered into a simulated fraudulent and fictitious contract to sell with Leonor C. Villanueva and in collusion and connivance with each other, then induced the plaintiff to issue its Surety Bond No. MB/SV-108;

b) That it ostensibly received a purchase order made by Leonor C. Villanueva which was fictitious, simulated and impossible of submission by mail within 24 hours as it appears to be, and it fraudulently and fictitiously made it appear that it made deliveries of 2,300 pieces of galvanized iron sheets to Leonor C. Villanueva when in truth and in fact it did not do so, the fictitious and simulated character of said delivery being shown by invoices which were impossible of delivery by registered mail within 24 hours as they appeared to have been made;

c) That defendant made no earnest effort, in fact no effort at all, to collect the purchase price from the vendee Leonor C. Villanueva, whose obligation it was to pay for the alleged galvanized iron set forth by her or if it did, such efforts were simulated and collusive and made only as a pretense for in truth three days after the lapse of 60 days from the alleged delivery, the collection letter was addressed to the plaintiff herein and despite requests record of the plaintiff, the defendant never furnished copies of invoices and delivery receipts and purchase orders evidencing the transaction which plaintiff discovered to be simulated and fictitious;

d) that to mislead the Court and prevent the plaintiff herein from setting up the proper defenses in said Civil Case No. 51586, the defendant in conspiracy and collusion with Leonor C. Villanueva, deliberately and fraudulently refrained from filing suit against her but instead released her from liability and filed suit against the plaintiff herein, concealing from the court material facts instead of revealing all of them in order that justice may be done, and by doing and having done so, the defendant mislead the court into taking cognizance and jurisdiction of the fraudulent suit, the real subject matter of which was the enforcement of a right of the vendor against vendee arising from the contract of purchase and sale, having been concealed from the Court, which the principal contract, the contract of the plaintiff herein of guaranty being merely subsidiary and adventitious;

e) That the defendant herein concealed from the Court and from the plaintiff as party-litigant the fact that the

said contract of sale was simulated and fictitious;

f) That defendant corporation did not elect nor appoint officers to manage its business and corporate affairs and that it ceased operations a short time after this alleged contract to sell to Leonor C. Villanueva;

g) That notwithstanding that the defendant did not deliver the articles and goods sold to the plaintiff, or informed the latter of such deliveries, defendant, by a fraudulent legal action, with intent to enrich itself at the expense of the plaintiff, attempted to collect the purchase price from the plaintiff herein only instead of suing the principal debtor who, as the plaintiff later discovered, acted in collusion with defendant in the transaction;

h) By means of the aforesated deceit, misrepresentation and concealment, the defendant obtained a fraudulent judgment against the plaintiff herein as primary or principal debtor as the very vendee itself when in truth and in fact the defendant therein, now plaintiff herein, was merely acting as a solidary guarantor." (pp. 6-10, Record on Appeal).

Evident on the face of the complaint is the appellant's failure to state a cause of action. It is quite elementary that an action to annul a final judgment on ground of fraud will lie only if the fraud be extrinsic or collateral in character. In *Almeda vs. Cruz*,^[5] this Court ruled that "fraud to be a ground for nullity of a judgment must be extrinsic to the litigation. Were this not the rule there would be no end to litigation, perjury being such common occurrence in the trial. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehood to his adversary's proof."

Fraud is regarded as extrinsic or collateral where it has prevented a party from having a trial or from presenting all of his case to the court.^[6] This definition has been elucidated in *U.S. vs. Throckmorton*^[7] in this wise:

"Where the unsuccessful party had been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side — these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former decree or judgment, and open the case for a new and fair hearing."

Tested against the above criterion, the fraud ascribed by Asian Surety to the appellee is clearly intrinsic rather than extrinsic in character. The issue of the alleged fraud had been raised by Asian Surety in Civil Case No. 51586 when it adduced evidence to prove its allegation of non-delivery of the goods by Island Steel to Villanueva; and the trial court, after considering such evidence, came to the conclusion that the GI sheets in question had in fact been delivered by appellee to Villanueva.

Likewise, in its appeal to the Court of Appeals, Asian Surety had the full opportunity to ventilate the alleged fraudulent transaction between the appellee and Villanueva when it assigned as one of the errors of the lower court the following:

"The court a quo erred in finding that Leonor C. Villanueva actually purchased on credit from plaintiff 2,500 of galvanized iron sheets at the price of P8.60 a piece with a total value of P19,780, notwithstanding the lack of evidence to prove the same."^[8]

The finding of the Court of First Instance in Civil Case No. 51586 that there was indeed delivery of the goods to Villanueva by the appellee pursuant to a contract to sell entered into in good faith, as affirmed by the Court of Appeals sub silentio, laid to rest the issue as to validity of the said contract to sell as well as the fact of delivery of the goods in question. To allow Asian Surety to revive the same question by the instant action to annul the

judgment would not only violate the rule of res judicata, but would encourage the appellant's contumacious resistance of a just and valid obligation.

WHEREFORE, the order of dismissal of the complaint in Civil Case No. 64849 is hereby affirmed, with treble costs against appellant Asian Surety and Insurance Co., Inc.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

[1] Annex B of Complaint, pp. 21-25, Record on Appeal.

[2] Annex A of Complaint, pp. 16-21, Record on Appeal.

[3] Annex A, Motion to Dismiss, p. 86, Record on Appeal.

[4] Annex B, Motion to Dismiss, pp. 72-81, Record on Appeal.

[5] 84 Phil. 636.

[6] Anuran vs. Aquino, 38 Phil. 29.

[7] 98 U.S. 61, 25 L.Ed. 93.

[8] Appellant's Brief in CA-G.R. No. 32202-R, p. 5, quoted on p. 64, Record on Appeal.

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