

APOLINARIO DEE, DEE HONG LUE, YAN SEPENG AND DEE K. CHIONG, PLAINTIFFS AND APPELLEES, VS. IGOR A. MASLOFF, LEOPOLDO D. ALODAGA AND ROSARIO CHUA, DEFENDANTS. RIZAL SURETY & INSUR...

G.R. Nos. L-15836 and L-16220. September 29, 1962

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2c707cb22af3/>

PADILLA, J.:

The appeal docketed as CA-G. R. No. 25004-R in the Court of Appeals was certified to this Court pursuant to a resolution adopted by the latter on 6 November 1959, in view of its relation with G. R. No. L-15836 (Civil Case No. 797 of the Court of First Instance of Manila).

On 28 September 1946 the plaintiff Apolinario Dee, in his capacity as treasurer of the proposed Capalonga Sawmill Co., Inc. brought in the Court of First Instance of Manila an action for replevin (Civil Case No. 797) to recover possession of a sawmill, its equipment and appurtenances located at Capalonga, Camarines Norte, claiming and alleging that he had been dispossessed thereof by the defendants Igor A. Masloff, Leopoldo D. Alodaga and Rosario Chua. Dee Hong Lue, Dee K. Chiong and Yang Sepeng by a motion to intervene filed on 28 January 1947 joined Apolinario Dee as plaintiffs. In an amended complaint filed on 28 February 1948 and allowed on 15 April 1948 the plaintiffs prayed for damages in addition to what the plaintiff Apolinario Dee prayed in his original complaint. In the original complaint Apolinario Dee also prayed for the appointment of a receiver, and on 30 September 1946 the Court of First Instance of Manila appointed Manuel B. Gochico as receiver with authority to take possession of the sawmill in question upon the filing of a bond in the sum of P10,000. The turnover of the sawmill, equipment and appurtenance to the receiver was delayed in view of the defendants' refusal to surrender the possession thereof. Only after the hearing for contempt, with which the defendants had been charged, held on 29 November 1946 was possession of the sawmill, equipment and appurtenances surrendered to the receiver.

On 24 December 1946 defendants Igor A. Masloff and Leopoldo D. Alodaga answered the complaint. On 6 January 1947 defendant Igor A. Masloff filed a "Petition to File Counter-Bond for the Lifting of the Order of Receivership" which was supplemented by another motion filed on 19 March 1947. On 26 August 1947 the court granted the petition, upon the filing of a bond in the sum of P30,000, set aside the order of 30 September 1946 that appointed Manuel B. Gochico receiver of the Capalonga Sawmill, and, upon the approval of the bond, directed Manuel B. Gochico to turn over to the defendant Igor A. Masloff all the properties in his possession as receiver. In compliance with this order, defendant Igor A. Masloff filed a Rizal Surety & Insurance Company bond for P30,000, and the properties of the Capalonga Sawmill were returned to him.

Meanwhile, on 7 October 1946, before the receiver took possession of the sawmill, defendant Igor A. Masloff applied for a loan to the former Agricultural and Industrial Bank, predecessor of the Rehabilitation Finance Corporation, which was not aware of the litigation between Igor A. Masloff, Leopoldo D. Alodaga and Rosario

Chua, as defendants, on one hand, and Apolinario Dee, Dee Hong Lue, Dee K. Chiong and Yang Sepeng, as plaintiffs, on the other (Civil Case No. 797). This loan application for the sum of P10,000 was approved after verification of the ownership and possession of the sawmill, machineries, equipment and appurtenances; and after the mortgage thereon to the Agricultural and Industrial Bank was executed, the proceeds of the loan were released to Igor A. Masloff. As Igor A. Masloff failed to pay the amortizations on his loan the Rehabilitation Finance Corporation foreclosed extrajudicially by requesting the Provincial Sheriff of Camarines Norte to do so. The public auction sale was set for 20 August 1948.

On 18 August 1948 the same plaintiffs in civil case No. 797 for replevin brought an action in the same court against the Rehabilitation Finance Corporation (now the Development Bank of the Philippines) and Igor A. Masloff for annulment of the mortgage executed by the latter in favor of the former, the Agricultural and Industrial Bank, on the sawmill, machineries, equipment and appurtenances and for a writ of preliminary injunction to prevent the Rehabilitation Finance Corporation from proceeding with the public auction sale set for 20 August 1948 by the Provincial Sheriff of Camarines Norte (civil case No. 6114). On 5 January 1949 in the last mentioned case an amended complaint was filed to implead as defendants Leopoldo D. Alodaga and Rosario Chua. On 18 August 1948 the court issued a writ of preliminary injunction as prayed for upon the filing by the plaintiffs of a bond in the sum of P12,000 to answer for the damages that the Rehabilitation Finance Corporation may suffer by reason of the writ. The writ did not reach the Provincial Sheriff of Camarines Norte on time and the sale went on as published.

After the answer of defendant Igor A. Masloff and the answer with a counterclaim of the Rehabilitation Finance Corporation had been filed, civil case No. 6114 was jointly heard with case No. 797.

After hearing, on 15 January 1959 judgment was rendered in both cases, the dispositive part of which reads as follows:

WHEREFORE, in Civil Case No. 797, judgment is rendered in favor of plaintiff and intervenors, ordering Igor Masloff to pay P50,000.00 to Apolinario Dee as duly elected treasurer of the business association, under the style "Capalonga Sawmill Company, Inc., with legal rate of interest from the filing of the complaint and to pay the costs. The case with respect to the other defendants is dismissed, as well as all counterclaims, for insufficiency of evidence.

In Civil Case No. 6114, judgment is rendered in favor of plaintiff and against defendants, ordering the Rehabilitation Finance Corporation (now Development Bank of the Philippines) and Igor Masloff jointly and severally to pay Dee Hong Lue the sum of P50,000.00 with legal rate of interest from March 1, 1954 when the property probably became a loss with costs.

Defendants Igor A. Masloff, Leopoldo D. Alodaga and Rosario Chua did not appeal from this judgment. The Rehabilitation Finance Corporation has appealed from the judgment rendered in civil case No. 6114.

On 20 February 1959 the plaintiffs filed a "Motion for Amendment of Judgment in Civil Case No. 797," praying that the judgment thus rendered be amended, "so as to include a judgment against Rizal Surety & Insurance Company on its bond No. 3649 dated October 9, 1947, to pay the sum of P50,000.00, jointly and severally, with defendant Igor A. Masloff, to Apolinario Dee, as duly elected treasurer of the business association under the style 'Capalonga Sawmill Company, Inc.' with legal rate of interest from the filing of the complaint and to pay the costs." The plaintiffs served a copy of this motion upon the Rizal Surety & Insurance Company. On 27 February 1959 the surety company filed an "Opposition to 'Motion for Amendment of Judgment in Civil Case No. 797.'" On 28 February 1959 the plaintiffs filed a "Reply to Opposition." On 12 March 1959 the surety company filed a "Rejoinder to 'Reply to Opposition.'" "

After a consideration of the aforesaid pleadings, on 30 March 1959 the court amended the dispositive part of its judgment of 15 January 1959 to read as follows:

Wherefore, in Civil Case No. 797, judgment is rendered in favor of plaintiff and intervenors, ordering Igor Masloff and Rizal Surety & Insurance Company, jointly and severally, the latter up to P30,000.00 only, to pay P50,000.00 to Apolinarip Dee as duly elected Treasurer of the business association, under the style "Capalonga Sawmill Company," of the complaint and to pay the costs. The case with respect to the other defendants is dismissed, as well as all counterclaim, for insufficiency of evidence.

From this amended judgment rendered in civil case No. 797 the Rizal Surety & Insurance Company has appealed.

The surety company submits that the sole legal issue of this case is:

Whether, under the circumstances detailed above, the proceeding consisting of a "motion" which sought to hold a bond liable and the surety's opposition to said motion, taken after judgment has been rendered in the main case, constitute sufficient hearing under the law to support an order of forfeiture of the bond,

and, further, assigns as error the following:

The lower court erred in condemning the full penal amount of the bond in question on the mere allegations of a "motion" without setting the incident for hearing and taking evidence as to the alleged damages, thereby depriving the surety-appellant of an opportunity to be heard as to the reality of the alleged damages.

There is no question that the application for damages on the bond must be filed before the trial or, in the discretion of the court, before entry of the final judgment with due notice to the defendant and his surety (Section 9, Rule 61 and section 20, Rule 59, Rules of Court). In other words, the claim for damages must be filed before the judgment has become final and executory (*Visayan Surety & Insurance Corporation vs. Lacson et al.*, 96 Phil., 878; 51 Off. Gaz. 2914).

The only question then to decide is whether there was hearing to justify the amended judgment of 30 March 1959, ordering the appellant surety company to pay to the extent of its bond, jointly and severally, with defendant Igor A. Masloff, who was also directed to pay damages to the plaintiffs. Such amended judgment having been rendered after the appellant surety company had been served with a copy of a "motion" filed by the appellees where the latter prayed for the inclusion of the appellant surety company as party jointly and severally liable with the defendant Igor A. Masloff for the damages already awarded to the appellees, to which the appellant surety company filed its "Opposition" and "Rejoinder" to the "Reply to Opposition" filed by the appellees, without putting in issue the reasonableness of the amount awarded for damages but confining itself to the defense in avoidance of liability on its bond that it was not a party to the case and never made a party therein and was not notified of the trial of the case, and that the appellees were guilty of laches, the requirement of hearing was fully satisfied or complied with. The appellant surety company never prayed for an opportunity to present evidence in its behalf. In ordinary civil cases a judgment on the pleadings could or may be rendered, if the facts alleged in the pleadings constituting a cause of action are admitted or not specifically denied, without going through the proceedings of a trial. In *Visayan Surety & Insurance Corporation vs. Pascual et al.*, 85 Phil., 779, this Court held:

* * * damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety;

* * * if, as in this case, no notice is given to the surety of the application for damages, the judgment that may be entered against the principal cannot be executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. In such case, upon application of the prevailing party, the court must order the surety to show cause why the bond should not respond for the

judgment for damages. If the surety should contest the reality or reasonableness of the damages claimed by the prevailing party, the court must set the application and answer for hearing. The hearing will be summary and will be limited to such new defense, not previously set up by the principal, as the surety may allege and offer to prove. The oral proof of damages already adduced by the claimant may be reproduced without the necessity or retaking the testimony, but the surety should be given an opportunity to cross-examine the witness or witnesses if it so desires.

In the case of Material Distributors (Phil.), Inc. vs. Miles Timber and Transport Corporation et al., 103 Phil., 162; 55 Off. Gaz. 1025, this Court held:

* * * It will be noted, however, that the bond was given in consideration of the release of certain properties under receivership, and that said properties were subject to the claims of the parties herein, particularly the lessor and the receiver. In other words, the circumstances under which it had been required and filed leave no room for doubt that said bond was given to take the place of the properties released as above stated. * * *

The above rule is applicable to the present, for the reason that both cases are similar in that the bond in both was given in consideration of the release of certain properties under receivership; the properties were subject to the claims of the parties in the case; and, while the bond in the above-cited case provided to answer for "any or all claims," the bond in the present case provided "para responder a (de) los daños y perjuicios que el demandante pudiera sufrir" which amounts to the same thing.

The amended judgment rendered in civil case No. 797 appealed from is affirmed, with costs against the appellant Rizal Surety & Insurance Company.

In the brief filed in support of the appeal taken by the Rehabilitation Finance Corporation five errors claimed to have been committed by the trial court are assigned, to wit:

- The lower court erred in finding that Igor Masloff was not the owner of the sawmill mortgaged by him to the RFC on November 15, 1946 and in holding that the said mortgage, as well as the foreclosure thereof and the purchase by the defendant-appellant RFC of the mortgaged chattels at the public auction sale, is invalid pursuant to article 2085 (2) of the Civil Code.
- The lower court erred in holding that the defendant-appellant RFC is in law bound to return the mortgaged chattels, or to pay the value thereof at the time of the loss.
- The lower court erred in ordering the defendant-appellant RFC and Igor A. Masloff, jointly and severally, to pay Dee Hong Lue the sum of P50,000.00, with interest at the legal rate from March 1, 1954.
- The lower court erred in not holding that the chattel mortgage over the sawmill, as well as the subsequent acquisition of said property in the foreclosure sale by the defendant-appellant RFC, is valid and binding on plaintiffs-appellees.
- The trial court erred in not awarding defendant-appellant RFC's counterclaim for damages by virtue of the issuance of the writ of preliminary injunction and in failing to order plaintiffs-appellees to pay the same.

The trial court held that the mortgage executed by Igor A. Masloff on the sawmill, machineries, equipment and appurtenances described in the mortgage instrument to the Agricultural and Industrial Bank (Exhibit 4-RFC) is invalid, because the mortgagor Igor A. Masloff was not the owner thereof at the time the mortgage was constituted, and to support the pronouncement the appellees rely upon the agreement executed on 15 June 1946 by Dee Hong Lue and Igor A. Masloff, Leopoldo D. Alodaga and Na Lu Suat alias Rosario Chua (Exhibit A), the letter dated 28 June 1946 where it is stated that said sawmill was formerly owned by Igor A. Masloff, Leopoldo D. Alodaga and Rosario Chua and the timber concessions were issued to Leopoldo D. Alodaga on 26 January 1946 and to Igor A. Masloff on 9 May 1946 (Exhibit D). The documentary evidence, however, shows otherwise.

The declaration of real property filed on 22 April 1946, before the actions were brought by the appellees, to wit: 18 August 1948 and 28 September 1946, shows that Igor A. Masloff was the owner of the building and machineries valued at P40,000 (Exhibit 1-H-RFC). Exhibits 1-A-RFC, 1-B-RFC and 1-C-RFC show that Igor A. Masloff was the owner of the motor launch "Liberty" and Exhibits 1-D-RFC and 1-E-RFC show that Igor A. Masloff was the owner of the motor launch "Freedom," the first four certificates were issued by the Acting Collector of Customs of Jose Panganiban and the last executed and sworn to by the master carpenter who built the last-named motor launch; and Exhibit 1-Q-RFC, a lease contract, shows that Igor A. Masloff is the lessee of a 4-hectare tract of land where the building and machineries declared in Exhibit 1-H-RFC are erected and located. True, the statement made by Igor A. Masloff is binding upon him as far as his contractual relation with the appellees is concerned but not upon the appellant Rehabilitation Finance Corporation. So that when on 7 October 1946 Igor A. Masloff applied to the predecessor of the appellant corporation for a loan, representing that he was the owner of the building, machineries and chattels he offered to put up as collateral or guaranty and Backing up his representation with the documents already mentioned, and upon that representation and documents he was granted a loan of P10,000 applied for, and the amount of the loan was released and paid to him by the mortgagee, the predecessor of the appellant corporation, and the mortgage on the motor launches "Liberty" and "Freedom" was entered in the Record Book of Transfer and Encumbrances of Vessels, page 75, of the port of Jose Panganiban, where it appeared that the motor launches were not encumbered previously, as certified to by the Collector of Customs of the port of Jose Panganiban (Exhibit 4-B-RFC) and the other properties mortgaged by Igor A. Masloff to the predecessor of the appellant corporation and registered were not encumbered before the mortgage to the predecessor of the appellant corporation, as certified to by the Registrar of Deeds in and for the province of Camarines Norte (Exhibit 4-C-RFC), no other conclusion may be drawn except that the mortgage executed on 15 November 1946 by Igor A. Masloff in favor of the predecessor of the appellant corporation is legal, valid and binding. The appellees do not even hint that the appellant corporation's predecessor knew of the agreement, transactions and litigation over the properties mortgaged to it between the appellees and Igor A. Masloff. Therefore, the pronouncement that the mortgage executed by Igor A. Masloff in favor of the predecessor of the appellant corporation and the sale to the latter at public auction by foreclosure are invalid cannot be upheld. The mortgage and sale were legal and valid.

The conclusion arrived at renders unnecessary further consideration of the case, because the mortgage and sale in question being valid, it follows that the appellant corporation cannot be held responsible to the appellees for the sum Igor A. Masloff was held responsible to pay to the appellees.

Lastly, if the mortgage and sale in question were valid, the appellant corporation is entitled to recover from Igor A. Masloff the amount of the loan, interest and expenses incurred in the foreclosure of the mortgage and sale at public auction of the mortgaged properties amounting to P17,108.34 as of 24 July 1958 (Exhibit 3-RFC). The appellees sought to recover the possession of the properties subject matter of this litigation by bringing an action for that purpose, asking for appointment of a receiver who was relieved by a bond filed by Igor A. Masloff for P30,000 posted by the Rizal Surety & Insurance Company. The appellant corporation, after the properties were sold to it as a result of an extrajudicial foreclosure, put guards in the place to preserve the properties acquired by it at the public auction sale. As the expenses in maintaining the guards were mounting and the keeping of the guards there was found unprofitable, it asked the court to allow it to withdraw the guards it had placed. The court granted the petition. So, if the properties were lost after the guards had been withdrawn, the appellant corporation cannot be made responsible for the loss of the properties. When the guards placed by the appellant corporation were allowed to be withdrawn by an order of the court entered on 27 February 1954, the appellees who had sought and were seeking to take possession of the properties and who were notified of the petition of the appellant corporation were in duty bound to guard, preserve and keep the properties but they did not, and because of such

lack of vigilance the properties were lost.

In its answer the appellant corporation by way of counterclaim asks for damages amounting to P5,000 allegedly caused or suffered by it as a result of the improper, irregular and illegal issuance of the writ of preliminary injunction asked by the appellees. But the writ did not come to the knowledge of the Sheriff of Camarines Norte on the date the public auction sale was held, so the sale was carried out and the appellant corporation was the highest bidder. The counterclaim, therefore, is without foundation.

Nevertheless, the appellant corporation is entitled to the remaining and existing mortgaged properties, to collect its loan, interest and incidental expenses, and if, after selling what remains of the mortgaged properties there should be a balance, to collect it from the mortgagor Igor A. Masloff.

In civil case No. 797 judgment was rendered ordering Igor A. Masloff and the Rizal Surety & Insurance Company to pay, jointly and severally, to the appellees, the first P50,000 and the second to the extent or amount of its bond, for the value of the sawmill, equipment, machineries and appurtenances of the Capalonga Sawmill, from which judgment Igor A. Masloff has not appealed. In civil case No. 6114 judgment was rendered ordering again Igor A. Masloff to pay the appellees P50,000, the value of the same properties. It is inequitable for the court to compel Igor A. Masloff to pay twice for the value of the same properties, but he having not appealed from the judgment rendered in this last case, this Court cannot pass upon the liability of Igor A. Masloff to pay the same amount for the value of the properties which he had been ordered to pay in the first case No. 797.

The judgment rendered in civil case No. 6114 (G. R. No. L-16220) is reversed in so far as the Rehabilitation Finance Corporation is concerned, without pronouncement as to costs in both instances.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.