

**PEOPLE'S HOMESITE AND HOUSING CORPORATION,
PLAINTIFF-APPELLEE, VS. CORAZON JEREMIAS (REMIAS) AND
GERONIMO PERECHO, DEFENDANTS, CAPITAL INSURANCE &
SURETY COMPANY, INC., MOVANT-A...**

G.R. No. L-43252. September 30, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

In Civil Case No. Q-12133 of the Court of First Instance of Quezon City, the Presiding Judge of Branch IV, on December 2, 1968, dismissed the appeal of Capital Insurance and Surety Company, Inc. from an order of the City Court of Quezon City issuing a writ of execution on the surety's performance bond filed in Civil Case No. I-7608, entitled "People's Homesite & Housing Corporation vs. Corazon Jeremias, et al." Said order of December 2, 1968, reads:

"ORDER

"This is a motion to dismiss appeal filed by plaintiff, through counsel, on the ground that, the appellant Capital Insurance and Surety Co., was not a party to the original case.

"After considering the grounds and allegations contained in the aforesaid motion to dismiss appeal, the court believes that the same is meritorious.

"WHEREFORE, the appeal interposed by Capital Insurance and Surety Co., Inc. is hereby ordered dismissed.

"SO ORDERED.

"Quezon City, Philippines, December 2, 1968.

"(SGD.) WALFRIDO DE LOS ANGELES

Judge"

(pp. 11-12 Record on Appeal, p. 7, rollo - L-43252)

From the afore-quoted order, the Capital Insurance and Surety Company, Inc. appealed to the Court of Appeals which however in a Resolution dated February 4, 1976, forwarded the appeal to Us as it involves solely a question of law.

The relevant facts which We gather from the record of the instant Petition and that of G.R. No. L-24504, entitled "Corazon Jeremias (Remias) vs. Court of Appeals and People's Homesite and Housing Corporation," the latter having a bearing to the case, follow:

Sometime in June, 1960, the People's Homesite and Housing Corporation (PHHC for short) filed with the Municipal Court of Quezon City (Civil Case No. 1-7608) an action for forcible entry and illegal detainer against the spouses Corazon Jeremias and Geronimo Perecho, concerning a 600 sq. meter lot described as Lot 3, Block E-145, East Avenue Subdivision, Diliman, Quezon City. Answering that complaint, the defendant-spouses claimed that they had applied with the PHHC to purchase the lot; that they had protested the award of the lot to Mr. and Mrs. Tiongco (not parties to the case) as they (defendant-spouses) had a preferential right to purchase the property because of their occupancy, and their protest was still under investigation by the PHHC, hence, they prayed that the hearing of the case be deferred until the termination of the administrative investigation. Notwithstanding this prayer of the defendant-spouses, the Municipal Court heard the case and on October 10, 1961, rendered judgment in favor of PHHC, with the following dispositive portion:

"WHEREFORE, in the light of the foregoing discussion this Court finds that there is sufficient preponderance of evidence supporting plaintiff's complaint in this case for the defense of the de-fendants is without merit and not legally valid under our law, hence this court so renders its DECISION in favor of the plaintiff and against the defendants. So orders therefore, the defendants and all persons claiming right under them to vacate the premises in question (Lot No. 3, Block E-145, East Avenue Subdivision, Quezon City) and to restore the possession of the same to the plaintiff; so orders the defendants to remove and demolish their house constructed thereon and all other improvements made by them in the premises; so orders the defendants to pay the plaintiff P36.00 per month for their occupancy and use of the premises in question from February 16, 1960 until they (have) vacated and restored the possession of the premises in question to the plaintiff and to pay the legal rate of interest at 6% from the same period of time covered; so orders denying attorney's fees not allowed by law unless it is a contract between the parties as a part of liquidated damages; and so orders the defendants to pay the costs of the suit." [1]

The above-named defendant-spouses did not appeal from the foregoing decision. On June 9, 1962, a writ of execution was issued but it was not implemented. In an order of June 30, 1962, the Municipal Court required the spouses to "x x x file their performance bond in the amount of ONE THOUSAND ONE HUNDRED (P1,100.00) PESOS, Philippine Currency, subject to the approval of the Court, to secure and guarantee the performance of their obligation to the plaintiff corporation in accordance with the decision of the Court in this case x x x", and they complied by filing a surety bond of the Capital Insurance & Surety Co., Inc. for P1,100.00. [2]

In the meantime, on October 8, 1963, the Board of Directors of PHHC issued Resolution No. 240 sustaining the award of the lot in question in favor of awardee-buyer Estela Tiongco. Hence, on November 9, 1963, the Municipal Court issued an alias writ of execution of its decision in Civil Case No. I-7608; however, the spouses Jeremias--Perecho refused to comply. As a consequence, on February 1, 1964, upon motion of PHHC and after due hearing, the Municipal Court issued a special order of demolition. [3]

To forestall the execution of the above-mentioned order of demolition, Corazon Jeremias and her husband Geronimo Perecho filed an original petition with the Court of First Instance of Rizal at Quezon City, docketed therein as Civil Case No. Q-7807, for relief from the October 10, 1961, judgment of the Municipal Court in the above-mentioned Civil Case No. I-7608, but this was dismissed on February 13, 1964 by then Hon. Judge Nicasio Yatco. [4] Upon appeal to the Court of Appeals the said order of dismissal was affirmed on March 4, 1965, in CA-G.R. No. 34167-R. The decision of the Court of Appeals was elevated to this Court under G.R. No. L-24504 but the Petition for Review was dismissed in a Minute Resolution of July 12, 1965, for being a dilatory remedy. The final entry of judgment in L-24504 was made on September 2, 1965. [5]

On the basis of the Court's decision in L-24504, PHHC sought from now the City Court, Quezon City, a writ of execution on the performance bond filed in Civil Case No. I-7608. Notice was sent to Capital Insurance & Surety Co., Inc. which filed through counsel a written opposition disclaiming liability on the ground that its

per-formance bond had already expired. In an order of February 3, 1968, the City Court granted PHHC's motion for a writ of execution against the surety company's performance bond. On March 20, 1968, the surety company appealed the aforesaid order to the Court of First Instance of Quezon City (Civil Case No. Q-12133) which as stated earlier issued the order of December 2, 1968, quoted in page one of this Decision.

Appellant surety company now asserts that it may appeal from the aforesaid order of execution against its bond notwithstanding the fact that it was not initially a party in the ejectment case, Civil Case No. I-7608.

We find appellant's contention meritorious.

A party is one who is to be benefited or injured by a judgment or order of a court,[6] and includes any person who is a "party to the record." [7]

While it is a fact that the initial parties in the complaint for forcible entry and detainer were PHHC and the spouses Jeremias--Perecho, however, when the latter filed a performance bond to insure the execution of the judgment in said case and PHHC moved to execute that bond, the surety company became necessarily a party in the case when notice was served on it of the motion for execution, especially after it had opposed the aforesaid motion, and the inferior court granted a writ of execution against its performance bond. The order of execution was a final order insofar as the surety-appellant was concerned, hence, appealable.

Having resolved favorably the standing of the surety company to appeal from the order of execution against its surety bond in Civil Case No. I-7608, We proceed to inquire into the merits of its appeal so as to put an end to this much-delayed litigation.

The pertinent provisions of the surety bond filed by the defendant-spouses in Civil Case No. I-7608 follow:

"xx xx xx

"WHEREAS PRINCIPALS agree to post the performance bond in the amount of ONE THOUSAND ONE HUNDRED (P1,100.00) PESOS, Philippine Currency in accordance with the terms and conditions of the above-quoted order;

"NOW THEREFORE, if the above bounden principal shall in all respects duly and fully observe and perform all and singular the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, other-wise to remain in full force and effect.

"Liability of surety on this bond will expire upon final termination of Civil Case No. I-7608, MC, Quezon City and said bond will be cancelled 15 days after its expiration, unless surety is notified of any existing obligation thereunder." (Italics supplied) (pp. 35-38, R.A., rollo of L-24504)

Appellant contends that its liability on the bond expired upon the final termination of the ejectment case on September 13, 1965, without any demand having been made upon it within 15 days from said date, as the demand was made by PHHC only around 2 years and 3 months after the decision became final.[8]

Appellant's submission is devoid of merit.

Firstly, it is erroneous to claim that the decision in Civil Case No. I-7608 became final on September 13, 1965. What became final on September 13, 1965 (the date of final entry of judgment of this Court in L-24504) was the order of dismissal of Civil Case No. Q-7807 of the Court of First Instance of Rizal, which was the petition for relief from judgment of the City Court in Civil Case No. I-7608.

Secondly, when appellant's surety bond was filed in Civil Case No. I- 7608 the decision therein had already become final, hence the phrase "upon final termination of Civil Case No. I-7608, MC Quezon City" appearing in

the bond could not have referred to the date of finality of the decision.

A civil case is deemed terminated not upon the rendition of a final judgment but upon execution and satisfaction of said final judgment.

"An execution is the fruit and end of the suit, and is very aptly called the life of the law. The suit does not terminate with the judgment; and all proceedings on the execution, are proceedings in the suit. x x x" (Italics supplied) (The Bank of the United States vs. Halstead, 10 Wheat (U.S. 51) 6 L. ed 264)

"Execution is the process of the court for carrying its decree into effect, and except so far as regulated by statute, is still within the court's control. x x x The suit is not ended by the judgment; it is still pending." (Italics supplied) (Chapin v. James, 11 R.I. 86, 23 Am Rep 412)

The case of Naric vs. Rivera (L-4023, February 29, 1952) invoked by appellant is not in point.[9] In that Naric case, the bond executed by the surety contained this specific provision:

"This bond expires on March 20th, 1949, and will be cancelled TEN DAYS after its expiration, unless the surety is notified of any existing obligations thereunder, or unless the surety renews or extends it in writing for another term."

The Court, in absolving the surety under this bond held:

"After March 20, 1949, the bond was neither renewed nor extended. Within ten days after said date, no notice was given to the surety about pending obligation of Arsenio Rivera. There is no question that it was served notice for the first time only on April 27, 1949. But on March 20, 1949, the bond had been automatically cancelled. It is clear that the liability of the surety under the bond never arose, because notice (or renewal) within ten days was a condition precedent, and that condition was not fulfilled."

Obviously, the bond in the Naric case provided a specific date (March 20th, 1949) for its expiration. On the other hand, in the bond filed by herein appellant surety, there was no specific date provided for the bond's expiration.

WHEREFORE, the order of execution of the City Court of Quezon City against the performance bond of Capital Insurance & Surety Company, Inc. is affirmed and judgment is rendered against said bond in the amount of One Thousand One Hundred (P1,100.00) Pesos, the same to earn 6% interest from February 3, 1968, which is the date of the order of execution, until paid. With costs against appellant.

SO ORDERED.

Makasiar, Concepcion, Jr., and Martin, JJ., concur.

Teehankee, J., (Chairman), in the result.

[1] see pp. 11-27 of Record on Appeal in CA-G.R. 34167-R found on p. 51, rollo L-24504.

[2] see pp. 35-36, R.A., *ibid*.

[3] pp. 31-33, R.A., *ibid*.

[4] pp. 39-40, R.A., *ibid*.

[5] see pp. 18-41; p. 60 rollo L-24504.

[6] Moran's, Rules of Court, 1970 Ed. Vol. 1, p. 145.

[7] Pacific States Savings & Loan Co. vs. Mortimer, 161 P2d. 684, citing Elliott v. Superior Court, 144 Cal 501,

507, 77 P1109, 1112, 103 Am St. Rep. 102.

[8] pp. 16-17 of R.A. p. 7, rollo of L-43252.

[9] pp. 17-18, *ibid*.

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