

**PEOPLE'S SURETY AND INSURANCE COMPANY, INC.,
PETITIONER, VS. HON. CRISANTO ARAGON, JUDGE OF THE
MUNICIPAL COURT OF MANILA, THE SHERIFF OF MANILA AND
EULOGIO P. FLORES, RESPONDENTS.**

G. R. No. L-19423. January 31, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is a petition, for certiorari to annul two orders of respondent Judge directing execution of petitioner's bond in a suit for replevin.

The following facts are not disputed. Alfredo Baura filed a complaint for the recovery of a car against Eulogio P. Flores in the Municipal Court of Manila where the same was docketed as Civil Case No. 855519. To secure immediate possession of the car, Baura filed a bond subscribed by the petitioner People's Surety and Insurance Co., Inc. "to answer for the prosecution of the action, the return of the property to the defendant if the return thereof should be adjudged, and for the payment to him of such sums as may in the cause be recovered against the plaintiff, and the costs of the action."

The respondent Judge issued a warrant for the seizure of the car but the warrant was not carried out in view of the request of plaintiff's counsel to hold service of the same in abeyance. Sixty days having elapsed without any instruction from either the plaintiff or his counsel, the sheriff returned the writ to the court unsatisfied.

When the case was called for hearing on April 18, 1961, neither plaintiff Baura nor his counsel showed up, prompting defendant Flores to file a motion to dismiss with a counterclaim against Baura for P2 000.00 for "embarrassment, mental anxiety and torture." A copy of the motion was served on plaintiff Baura; none was given to the surety.

No action was taken on the motion to dismiss. Instead, the court reset the case for hearing for October 28, 1961 . Again, despite due notice, neither Baura nor his lawyer appeared. The court, therefore, tried the case and rendered a decision, dismissing the complaint and ordering Baura to pay defendant Flores the sum of P2,000.00 as damages.

When the decision became final, Flores moved for execution of the bond. In an order dated December 16, 1961 . the respondent Judge granted the motion. Accordingly, a writ of execution was issued. Petitioner then filed a motion for reconsideration but the same was denied by the respondent Judge in an order dated January 27, 1962 . In view thereof, the petitioner contended that execution of its bond was improper because of the following:

- No application for damages had been made by defendant before the trial or before the entry of judgment;
- No notice of application for damages was given to it; and
- There was no judgment against its bond.

Section 10, Rule 62 of the Rules of Court provides:

"The amount, if any to be awarded to either party upon any bond filed by the other in accordance with the provision of this rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in section 20 of Rule 59."

Section 20 of Rule 59 states:

"If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before the entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. * * *"

Under the above-quoted provisions, in order to recover on a replevin bond, the following requisites must be observed:

- There must be an application showing the right to damages and the amount thereof;
- Notice of the application for damages must be given to the plaintiff and his surety;
- There must be a hearing in case the application is opposed; and
- Any award for damages must be included in the judgment of the court.

In this case, no application for damages arising out of any wrongful seizure of defendant's property was ever filed by defendant Flores. While it is true that he filed a motion to dismiss with a counterclaim for damages, yet the damages claimed were those caused by plaintiff's alleged bad faith in filing his complaint. Even the decision of the respondent court clearly states that—

"Considering the reasons stated in plaintiff's counsel's motion and the continued failure of Plaintiff to prosecute his case, despite due notice; and more significant, the obvious, consequential damages and harassment suffered by the defendant;

"Judgment is hereby rendered dismissing the complaint, without costs; and on the counterclaim, the Plaintiff is hereby condemned to pay the defendant the sum of P2,000.00 as and for damages." (Italics supplied)

Indeed, defendant Flores can claim no damages arising from loss of possession of his car because, as already stated, the writ of replevin was never carried out by the sheriff. In order to recover damages against the Surety Company, it was not shown that the defendant Flores suffered damages as a result of the deprivation of possession of his car. (*Aguasin vs. Velasquez*, 88 Phil., 357). Defendant Flores' failure to file such an application for damages before the entry of final judgment is a bar to recovery on the bond and relieves the surety of its obligation under it. (*Visayan Surety and Insurance Corp. vs. Paacual*, 85 Phil., 799).

Even assuming that defendant's counterclaim can be considered a claim for damages under the bond, still We hold that execution of the bond is improper because no notice of the same was given to the surety. As this Court held in *Aguasin vs. Velasquez*, 88 Phil., 357—

"If the surety is to be bound by his undertaking, it is essential * * * that the damages be awarded upon application and after proper hearing and included in the final judgment. As a corollary to these requirements, due notice to the plaintiff and his surety setting forth the facts showing his right to damages and the amount thereof under the bond is indispensable. This has to be so if the surety is not to be condemned or made to pay without due process of law. It is to be kept in mind that the surety in this case was not a party to the action and had no notice or intervention in the trial. It seems elementary that before being condemned to pay, it was the

elementary right of the surety to be heard and to be informed that the party seeking indemnity would hold it liable and was going to prove the grounds and extent of its liability."

Wherefore, the orders of December 16, 1961 and January 27, 1962 of the respondent court are hereby set aside, with costs against respondent Eulogio P. Flores.

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

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