

CAPITAL INSURANCE & SURETY CO., INC., PETITIONER, VS. HON. LUIS B. REYES, ET AL., RESPONDENTS

G. R. No. L-20789. June 20, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original action for a writ of certiorari, with preliminary injunction, to annul an order of respondent, Hon. Luis B. Reyes, as Judge of First Instance of Manila, and restrain the execution of said order. Upon the filing of the petition and of the requisite bond, on February 2, 1963, we issued the writ of preliminary injunction prayed for.

The record shows that on January 5, 1960, respondent spouses, Pacita Tuason, Principe and Federico Principe, instituted Civil Case No. 74237 of the Municipal Court of Manila, against Isidro de Leon, for unlawful detainer. In due course, said court rendered judgment on April 25, 1962:

**** ordering the defendant to vacate the premises described in the complaint; to pay the plaintiff the rents from September, 1958 to February, 1959, at the rate of P100.00 a month and from March, 1959 up to the time when the said defendant shall have actually vacated the premises in question at the rate of P130.00 a month, plus the sum of P100.00 as and for attorney's fees; and the cost of the suit.

"Defendant's counterclaim is dismissed".

De Leon appealed to the Court of First Instance of Manila from this judgment and, to stay its execution, he filed a supersedeas bond, posted by petitioner herein, Capital Insurance & Surety Co., Inc., represented by its agent, Pan American Insurance Agencies, Inc., hereinafter referred to as the Surety, reading:

"WHEREAS, in the above-entitled case, pending in this Court, an appeal has been taken to the Court of First Instance of Manila and the Court has required the appellant to give bond in the sum of PESOS FIVE THOUSAND FIVE HUNDRED FORTY ONLY (P5,540.00) Philippine Currency, as a condition to the stay of execution of the judgment against ISIDRO DE LEON as appellant and PRINCIPAL, and Che CAPITAL INSURANCE AND SURETY CO., INC. thru its Gen. Agent, the PAN AMERICAN INSURANCE AGENCIES, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal place of business at No. 378 Dasmarinas Street, Manila, as SURETY, are held and firmly bound to said PACITA TUASON-PRINCIPE, et al. in the sum of PESOS FIVE THOUSAND FIVE HUNDRED FORTY ONLY (P5,540.00) Philippine Currency, for which payment well and truly to be made, we, the appellant and the SURETY, our heirs and legal representatives, jointly and severally bind ourselves.

THE CONDITION OF THE FOREGOING BOND IS AS FOLLOWS:

"That the appellant and the SURETY are held and firmly bound unto the appellee jointly and severally, in the sum of PESOS FIVE THOUSAND FIVE HUNDRED FORTY ONLY (P5,540.00) Philippine Currency, to secure the fulfillment and payment of the judgment so appealed, together with the costs, in case the same should be affirmed, in whole or in part, or in case the judgment should become effective on account of the

appellant's having abandoned or withdrawn the appeal, or in case it should be dismissed or declared to be improperly allowed."

On July 12, 1962, during the pendency of said appeal, which was docketed as Civil Case No. 50675 of the Court of First Instance of Manila, the Principes moved for the execution of the judgment of the municipal court, upon the ground that De Leon had failed to deposit the amount corresponding to some monthly rentals that had accrued meanwhile. This motion was granted and the corresponding writ of execution issued. Pursuant thereto, the sum of P390.00, deposited by De Leon, by way of rentals for March, April and May, 1962, was garnished. Subsequently, or on October 23, 1962, the Principes filed a motion for a writ of execution against the Surety, on the aforementioned supersedeas bond. Respondent Judge granted this motion in an order dated January 7, 1963. A reconsideration of said order having been denied, the Surety commenced the present action against respondent Judge, the Sheriff of Manila, and the Principes, upon the ground that, under the terms and conditions of the above quoted supersedeas bond, respondent Judge had acted without or in excess of his jurisdiction in causing a writ of execution to be issued against said petitioner for the rentals that had accrued prior to the rendition of the decision of the municipal court.

Upon the other hand, respondents herein maintain, upon the authority of *Romero vs. Pecson*, 46 Off. Gaz., 4882 and *Villaroman vs. Abaya*, G. R. No. L-4833, March 21, 1962, that, under the provisions of Section 8 of Rule 70 of the Rules of Court, the entire judgment of the municipal court may be ordered executed upon failure of the defendant in a forcible entry or unlawful detainer case, who has appealed from an adverse judgment of said court, to pay the rentals that fall due during the pendency of the appeal.

Respondents' theory is correct only insofar as the liability of the defendant in said case, but not as regards the liability of the Surety under the supersedeas bond therein filed. The obligations of the Surety thereunder are governed by the terms and conditions of the supersedeas bond, which, in the case at bar, provides that petitioner shall pay the amount of the judgment in the municipal court "in case the same shall have been affirmed in whole or in part, or in case the judgment should become effective on account of appellants' having abandoned or withdrawn the appeal, or in case it should be dismissed or declared to be improperly allowed". In the present case, none of these conditions has materialized as yet. The unlawful detainer case is still pending in the Court of First Instance of Manila. In other words, the decision of the municipal court has not been affirmed in whole or in part. neither has the appeal therefrom been either abandoned or withdrawn, or dismissed or declared to be improperly allowed. The cases invoked by respondents refer to the liability of the defendants therein. That of the Surety under a supersedeas bond was not involved in said cases, no such bond having been filed therein. As a consequence, a grave abuse of discretion amounting to excess of jurisdiction has been committed in issuing the order herein complained of, and, since an appeal would not afford an adequate relief, the writ prayed for by petitioner herein should be granted.

WHEREFORE, the aforementioned order of respondent Judge dated January 7, 1962, as well as the writ of execution issued in compliance therewith, are hereby annulled and the writ of preliminary injunction issued by this Court on February 2, 1963, made permanent, with costs against respondents Mr. & Mrs. Principe. It is so ordered.

Reyes, Barrera, Dizon, Regala, Makalintal Bengzon, Zaldivar and Sanchez, JJ., concur.

DIZON, J., concurring:

I concur with the majority opinion in view of the terms and conditions contained in the supersedeas bond filed in the present case-which alone determine the liability of the surety. The reason for this separate opinion is my belief that said terms and conditions are not in accordance with the provisions of Section 8, Rule 70 of the Rules of

Court to the effect that the supersedeas bond therein provided for is conditioned upon appellant's obligation "(a) to enter the action in the Court of First Instance and (b) to pay the rents, damages, and costs accruing down to the time of the judgment appealed from".

It is, of course, settled, that the supersedeas bond answers only for the rents or damages awarded by the municipal court of origin, the rents accruing after the rendition of its judgment being secured by periodical deposits or payments to be made by the defendant-appellant (*Aylon vs. Jugo, et al.*, 78 Phil. 816; *Sison vs. Bayona* 109 Phil. 557,) during the pendency of the surety-as intended by law-necessary arises upon the issuance of the corresponding writ of execution either of the judgment appealed from or of the one rendered by the appellate court. The purpose of the rule requiring the filing of a supersedeas bond is obviously to give the landlord (appellee) in ejectment cases such security as would assure him the collection of the damages awarded by the court of origin in case of execution of its judgment and not only when said judgment shall have been affirmed in whole or in part or it had become effective on account of appellants abandonment or withdrawal of his appeal, or said appeal is dismissed or declared to have been improperly allowed. My view, therefore, is that the supersedeas bond under consideration abridges the right of the landlord (appellee) without authority of law; but as the surety may not be held liable except upon the terms and conditions he had accepted, it follows that in this particular case the writ prayed for is in order

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