

VICTOR VADIL, ETC., ET AL., PETITIONERS VS. HON. JOSE R. DE VENECIA, ET AL., RESPONDENTS.

G.R. No. L-16113. October 31, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari to review the order dated August 5, 1959 of the Court of First Instance of Nueva Vizcaya, directing the execution of petitioners' bond.

On April 13, 1953, Pablo Española Estate, Inc. filed in the court of First Instance of Nueva Vizcaya an action against Raymundo Guinsatao for the recovery of the sum of P9,360. It applied for a writ of preliminary attachment on the ground that Guinsatao had removed or was about to remove his properties with intent to defraud his creditors.

Guinsatao denied the allegations of the complaint and expressed willingness to file a counterbond to discharge the writ of preliminary attachment applied for by Pablo Española Estate Inc. Whereupon, the court ordered him "to file a counterbond within 5 days from the receipt of this order, in the amount of P9,360.00 to secure the payment to the plaintiff of any judgment he may recover in the present case.

Guinsatao filed a bond entitled "Defendant's Bond" which reads:

"Whereas, in an action now pending in the Court of First Instance of the Province of Nueva Viscaya, First Judicial District, wherein PABLO ESPAÑOLA ESTATE INC., is plaintiff, and RAYMUNDO GUINSATAO defendant, the above-named plaintiff has applied for an order of a Writ of Preliminary Attachment against RAYMUNDO GUINSATAO.

"And whereas, the Law allows the plaintiff certain securities:

"Know all men by these presents: That RAYMUNDO GUINSATAO of Mabasa, Dupax, Nueva Vizcaya as principal and ESTEBAN VADIL, EUGENIO VADIL, JUAN GALIBOSO, JOAQUIN VADIL, VICTOR VADIL and VICENTE VADIL all of Mabasa, Dupax, Nueva Vizcaya as sureties, are hereby held and in the sum of NINE THOUSAND THREE HUNDRED SIXTY (P9,360.00) PESOS, for which payment well and truly to be made we bind ourselves, our heirs, and legal representatives, jointly and severally, firmly by these presents.

"The condition of this obligation is as follows:

"To pay all the costs which may be awarded to the defendant, and all damages that the defendant may suffer by reason of the Writ of Preliminary Attachment should it be finally adjudged that the same was done without legitimate cause.

"Then this obligation shall be null and void, otherwise of full force and virtue.

(Sgd.) RAYMUNDO GUINSATAO

"(Sgd.) JOAQUIN VADIL (Sgd.) ESTEBAL VADIL

(Sgd.) VICTOR VADIL (Sgd.) EUCENIO VADIL

(Sgd.) VICENTE VADIL (Sgd.) Juan Galiboso"

The case was then tried, after which the trial court rendered judgment ordering Guinsatao to pay respondent Pablo Española Estate Inc. the sum of P9,360 plus legal interest. After the decision become final, execution followed but Guinsatao had no sufficient property. And so, on motion of Pablo Española Estate Inc., the lower court ordered the execution of the bond. Hence, this petition.

While this case was pending in this Court, petitioner Joaquin Vadil moved for the dismissal of the case as to him on the ground that he had not engaged the services of Attorneys Primicias and Del Castillo. While joining in the motion to dismiss the case as to Joaquin Vadil, Atty. Teodoro Regino of the law firm of Primicias and Del Castillo denied Joaquin's allegation and asked that Joaquin Vadil be cited for contempt for allegedly telling falsehood.

As prayed for by Joaquin Vadil, this case is dismissed as to him. There is no ground in the motion to cite Joaquin Vadil for contempt.

We now come to the merits of this case. Petitioners contend that they are not liable to the plaintiff in the trial court because their undertaking under the bond was to pay "all the costs which may be awarded to the defendant, and all damages that the defendant may suffer by reason of the Writ of Preliminary Attachment should it be finally adjudicated that the same was done without legitimate cause" rather than to pay the judgment that plaintiff might recover.

This is a case where, instead of a bond conditioned on the payment to the plaintiff of any judgment which he may recover in an action, as the trial court directed, the bond filed provides that the sureties will pay—

***all the costs which may be awarded to the defendant, and all damages that the defendant may suffer by reason of the Writ of Preliminary Attachment should it be finally adjudged that the same was done without legitimate cause,"

thus raising doubt as to whether the petitioners, as sureties, understood the import of the order of the court.

This doubt, as to whether petitioners understood the court order, is further shown by the fact that under Section 2 of Rule 59 of the Rules of Court, the issuance of an order of attachment may be prevented if the defendant "makes deposit or gives bond * * * in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which is to be attached." Now, if, as alleged in the motion of Pablo Española Inc., only P150 was realized from the sale of Guinsatao's property, it is not likely that petitioners would agree to stand surety for P9,360 for the defendant, whose properties (worth only P150) stood in imminent danger of attachment.

We are inclined to resolve the doubt in favor of petitioners. As this Court held in *People vs. De la Cruz*, 93 Phil., 487; 49 Off. Gaz., No. 8, 3389, sureties are favorites of the law. Assuming an obligation without any thought of material gain, except in some instances, all presumption are indulged in their favor. And in *Pacific Tobacco Co. vs. Lorenzana, et al.*, 102 Phil. 234, this Court said in amplification:

***"The rationale of this doctrine is reasonable; an accommodation surety acts without motive of pecuniary gain and, hence, should be protected against unjust pecuniary impoverishment by imposing on the principal duties akin to those of a fiduciary. This cannot be said of compensated corporate surety which is a business association organized for the purpose of assuming classified risks in large numbers, for profit and on an impersonal basis, through the medium of standardized written contractual forms drawn by its own

representatives with the primary aim of protecting its interest. (See Stearn's The Law Suretyship, 4th ed. 402-403).

We hold there fore that petitioners are not liable to Pablo Española Estate, Inc. on their bond.

Another reason in support of the conclusion reached herein is that actually there was no writ of attachment issued by the Court. It is to be noted that the obligation to be assumed by the bondsmen is premised upon the issuance of such a writ.

We feel it unnecessary to pass upon the other assignments of error.

WHEREFORE, the petition is granted; the writ of preliminary injunction is made permanent and the order dated August 5, 1939 and the writ of execution dated September 4, 1959 are hereby set aside, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion and Paredes, JJ., concur.

I concur, no writ of attachment having issued and the sureties were not heard before final judgment.

I concur in the concurring opinion of Justice Reyes.
Dizon and Makalintal, JJ., concur in the result.

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