

MANILA UNDERWRITERS INSURANCE CO., INC., PETITIONER, VS. HON. BIENVENIDO A. TAN, AND JOSE DE BORJA, RESPONDENTS.

G. R. No. L-17445. November 27, 1964

Ponente: DIZON, J.

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DIZON, J.:

This is a petition for certiorari and prohibition filed by the Manila Underwriters Insurance Co., Inc. to annul the orders issued by the respondent judge on August 30, 1960 and September 10, 1960 in Civil Case No. 12796 entitled Gelacio E. Tumambing vs. Jose de Borja, on the ground that they were issued without or in excess of jurisdiction or with grave abuse of discretion.

In the civil case above mentioned, the respondent judge, upon application of the plaintiff therein, issued a writ of preliminary attachment against the properties of the defendant, upon a bond executed by petitioner, Manila Underwriters Insurance Co., Inc., in the amount of P8,000.00 conditioned for the payment of such damages as defendant may suffer by reason of the attachment, should the court finally adjudge that plaintiff was not entitled thereto.

After issues had been joined, the case was tried, and on December 21, 1954, the court rendered judgment as follows:

"In view of the foregoing consideration, the court hereby renders judgment:

- (a) Dismissing the plaintiff's complaint;
- (b) Ordering the dissolution of the writ of preliminary attachment of the defendant's properties, but maintaining the bond filed by the plaintiff in full force and effect so as to respond for damages suffered by the defendant for the wrongful issuance of the said writ of preliminary attachment; and
- (c) Sentencing the plaintiff to pay the defendant the sum of P8,138.30) for the first counterclaim, P5,500.00 for the second counter-claim. P5,000.00 for the third counterclaim, P20,000.00 for the fourth counter-claim, or a total of P38,938.39, with legal interest from the filing of the said counterclaim, until paid, with costs against the plaintiff."

It is not disputed that petitioner was not impleaded nor given any kind of notice in relation to the counter-claim filed by the defendant. Neither was he given notice of the trial. On January 25, 1955, however, a copy of the decision was served upon it

On March 19, 1957, after the Court of Appeals had affirmed said decision, respondent Borja filed a motion for a writ of execution against petitioner which the latter opposed alleging that, inasmuch as it had not been notified of the claim for damages in the manner required by Section 20 of Rule 59 of the Rules of Court (now Section 20 of Rule 57 of the New Rules of Court), it cannot be made liable under its bond. This opposition notwithstanding, on March 27, 1957, the respondent judge issued an order granting Borja's motion for execution. Petitioner appealed to Us (G. R. No. 12256) and on April 29, 1960, We rendered judgment in favor of petitioner, as follows:

"In accordance with the foregoing interpretation, petitioner Surety not having boon notified in the manner required by the Rules of Court before judgment has become final, should not be made liable under its bond.

Wherefore, the order appealed from is hereby set aside. So ordered."

On August 15, 1960, respondent Borja, filed another motion in the same case asking the court to require petitioner again to show cause why it should not be made liable under its bond, and thereafter to issue a writ of execution against it. Petitioner opposed the motion on the ground that our decision in G.R. No. L-12256 had finally disposed of the issue raised therein. Despite this, the respondent judge, on August 30, 1960 issued an order citing petitioner to appear before it and show cause why it should not be liable under its bond, and on September 10 of the same year, his honor also denied petitioner's motion for reconsideration of said order. Thereupon the present action was filed.

Upon the undisputed facts stated heretofore, it appears abundantly clear that the respondent judge seriously erred in issuing the orders complained of. The question of whether petitioner could still be held liable upon its bond must be deemed finally settled by our decision in G. R. No. L-12256, and any attempt to hold petitioner liable upon the bond already mentioned must necessarily be deemed as an improper attempt to reopen a case already finally adjudicated.

Wherefore, the orders complained of are hereby declared void and of no legal force and effect. The writ of preliminary injunction issued in this case on October 26, 1960 is hereby made final. Costs against respondent Borja.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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