

JOSEPH ABELOW, PLAINTIFF AND APPELLEE, VS. JOSE DE LA RIVA, ET AL., DEFENDANTS, LUZON SURETY CO., INC., BONDSMAN AND APPELLANT.

G. R. No. L 12271. January 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from the order of the Manila court of first instance directing the issuance of an alias writ of execution against the Luzon Surety Co., Inc.

In October 1950, Joseph Abelow filed in said court an action of replevin against Jose de la Riva and Gonzalo G. Padua to recover certain personal properties, plus damages. Having submitted the affidavit required by law with a "bond for manual delivery of personal property" under the provisions of Rule 62, subscribed by Luzon Surety Co. Inc., plaintiff secured an order for seizure and delivery to him of the properties. This order was duly served by the sheriff, after the complaint had been amended to include San Ildefonso Lumber Co. as additional defendant, the entity actually holding the personalty, and after an amended bond had been submitted, also signed by Luzon Surety. However, about a month later, upon submission of a counter-bond, the order of seizure was lifted, and the sheriff returned the properties.

The replevin case came up for hearing in due course; and judgment was rendered absolving the defendants, even as plaintiff was required to pay San Ildefonso the sum of P12,986.00 with interest for damages caused by the seizure, plus P1,500.00 as attorneys fees. On appeal, the Court of Appeals affirmed the judgment.

The record having been remanded to the court below, the corresponding writ of execution was issued; but it was returned unsatisfied, the sheriff having found no leviable properties of plaintiff Abelow. Whereupon, the defendants prayed for an alias writ of execution against Luzon Surety Co. Inc., that had subscribed the replevin bond. Notified of the petition, the surety objected, calling attention to the circumstance that the judgment which had become final long before, contained no pronouncement against it, that it had no notice of the claim against plaintiff, that the court had lost jurisdiction to amend it then so as to include any order against the surety since it had become final, and that under Rule 62, defendants are barred from recovery owing to their failure to submit their claim against the surety and to give it notice thereof before the entry of final judgment. These arguments notwithstanding, the Manila judge decreed execution against Luzon Surety.

Hence this appeal, which we find to be meritorious, inasmuch as the judgment under execution contained no directive for the surety to pay, and the defendants failed to make any claim against it, or notify it before such judgment had become final. This is in line with several decisions of this Court,[1] specially *Liberty Construction Co. vs. Pecson* wherein the facts were practically on all fours with those in the present case.

The procedure for the enforcement of the surety's liability under a bond for delivery of personal property is described in section 10, Rule 62 in connection with sec. 20 Rule 59 of the Rules of Court. Applying said sections we have repeatedly held that the surety may only be held liable if "before the judgment becomes final, an order

against the surety is entered after a hearing with notice to said surety. After the judgment becomes final it is too late to file such claim with notification. [2]

The appellees assert that the surety had been "notified". Yes, notified of the claim after the judgment had become final. Not "notified" before its promulgation. They also cite our ruling in *Florentino vs. Domadag*, Phil. 882. But such ruling was abandoned in later adjudications specially in *Visayan Surety, supra*, and *Liberty Construction Supply, supra*. [3]

In view of the foregoing, the appealed order is revoked, with costs against defendants-appellees. So ordered.

Paras, C.J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes J.B.L., and Endencia, JJ., concur.

[1] *Visayan Surety vs. Pascual*, 47 Of. Gaz. 5075; *Liberty Construction Supply vs. Pecson*, L-3694, May 23, 1951; *Facundo vs. Tan*, 47 Off. Gaz. 2912; *Aguasin vs. Velasquez*, L-3399, May 16, 1951; *Visayan Surety vs. Lacson*, L-7541, April 29, 1955.

[2] See footnote No. 1, cases cited.

[3] See *Moran*, Rules of Court (1957 Ed.) Vol. 2, p.50,

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