

**IRINEO FACUNDO, PETITIONER, VS. BIENVENIDO A. TAN ET AL.,
RESPONDENTS.***G.R. No. L-2717. December 29, 1949*

Ponente: PARAS, J.

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On April 9, 1948, Irineo Facundo filed in the Court of First Instance of Rizal a special civil action for prohibition (civil case No. 487) against Lucio M. Tianco, as municipal judge of Rizal City, and Valentin R. Lim. On April 10, 1948, the court issued a writ of preliminary injunction, upon the filing by Facundo of a bond for P1,000, ordering municipal judge Tianco to desist from issuing an alias writ of execution in civil case No. 32 of his court. On April 24, 1948, the Court of First Instance of Rizal rendered a decision dismissing the petition for prohibition and dissolving the writ of preliminary injunction. On July 29, 1948, Lim filed a motion praying that the injunction bond for P1,000 filed by Facundo be forfeited in favor of Lim for unpaid rentals due from Facundo under the decision of municipal judge Tianco in civil case No. 32. On September 30, 1948, the Court of First Instance of Rizal, through Judge Bienvenido A. Tan, issued an order (1) holding that Lim was able to prove, at the hearing held on September 16, 1948, damages amounting to more than P1,000 suffered by way of uncollected rentals as a result of the writ of preliminary injunction, (2) ordering the confiscation of the injunction bond, and (3) directing the bonding company to pay Lim the sum of P1,000. This order gave rise to the present petition in G. R. No. L-2717 in which the petitioner Irineo Facundo prays for its annulment.

On April 24, 1946, Irineo Facundo instituted in the Court of First Instance of Rizal a petition for certiorari and prohibition (civil case No. 7674) against Jose M. Santos, ex-justice of the peace of Pasay, Ricardo C. Robles, as justice of the peace of Pasay, and Valentin R. Lim. The court issued a writ of preliminary injunction upon the filing by Facundo of a bond of P1,000. On June 21, 1946, the court rendered a decision dismissing the petition for certiorari and prohibition. This decision was, upon appeal of Facundo, affirmed by the Supreme Court on December 17, 1946. Lim filed in the Court of First Instance of Rizal a motion dated July 29, 1948, praying for the forfeiture of the injunction bond in favor of Lim, to cover back rentals due under the decision of the justice of the peace court in civil case No. 32, which Lim failed to collect because of the writ of preliminary injunction. On September 30, 1948, the Court of First Instance of Rizal, through Judge Bienvenido A. Tan, issued an order (1) holding that Lim was able to prove, at the hearing held on September 16, 1948, damages amounting to more than P1,000, (2) ordering the confiscation of the injunction bond, and (3) directing the bonding company to pay Lim the sum of P1,000. This order gave rise to the present petition in G. R. No. L-2718 in which Facundo prays for its annulment.

On August 4, 1947, Irineo Facundo instituted in the Court of Appeals a petition for certiorari (C.A.-G.R. No. 1566-R) against Judge Eulalio Garcia of the Court of First Instance of Rizal, Valentin R. Lim, and the provincial sheriff of Rizal. On August 5, 1947, the Court of Appeals issued a writ of preliminary injunction, upon the filing by Facundo of a bond for P1,000, restraining the provincial sheriff from enforcing the writ of execution issued by the justice of the peace court of Pasay in civil case No. 32. On November 26, 1947, the Court of Appeals rendered

a decision dismissing the petition for certiorari and dissolving the writ of preliminary injunction. Lim filed a motion dated July 29, 1948, praying that the injunction bond be forfeited in favor of Lim to cover unpaid rentals due under the decision in civil case No. 32 which Lim was not able to collect because of the writ of preliminary injunction. This motion was denied by the Court of Appeals on August 10, 1948, without prejudice to the right of Lim to claim for such damages as might have been caused by the issuance of the writ of preliminary injunction. Upon motion for reconsideration filed by Lim, the Court of Appeals issued a resolution on September 24, 1948, requiring Lim to proceed within ten days in accordance with section 20, Rule 59, of the Rules of Court. On January 21, 1949, the Court of Appeals issued an order holding that damages had been proved by Lim at the hearing held on November 3, 1948, and ordering Facundo to pay Lim P416.45, representing rentals from August 6, 1947, to December 11, 1947, at the rate of P100 monthly. This order and the order of September 24, 1948, gave rise to the present petition for certiorari in G. R. No. L-2767 in which Facundo prays for their annulment.

The contention of the herein petitioner, Irineo Facundo, in all these three cases is that the claim for damages of herein respondent Valentin R. Lim had been presented out of time, because they were not filed before the final termination of the proceedings in which the writs of preliminary injunction were issued and no award for such damages was included in the final judgments.

In G.R. No. L-783, Brodett vs. De la Rosa,[1] and on January 23, 1947, we laid down the following pronouncement: "Acting upon the petition of Attorney Luciano de la Rosa, dated January 14, 1947, in G. R. No. L-783, Brodett vs. De la Rosa, praying this Court to order the return of the sum of P200 deposited by him on September 2, 1946, as per official receipt No. 109356, as a cash bond for the issuance of the writ of preliminary injunction prayed for in petitioner's petition herein; the opposition thereto of respondents' counsel dated January 16, 1947; and the reply dated January 18, 1947, of said movant; it appearing that the decision rendered herein under date of December 18, 1946, became final on January 11, 1947, as appears from the entry of judgment made by the Clerk of this Court on the last mentioned date; considering that before said final judgment no application stating and claiming damages, which might have been suffered by respondents by reason of said writ of preliminary injunction, was filed; and considering that damages are only recoverable in such cases if the amount thereof is claimed, proven and awarded in the manner and form and following the procedure established in Rule 60, section 9, in relation with Rule 59, section 20, namely, through the filing before the trial or, in the discretion of the court, before entry of final judgment, with due notice to the adverse party (and his surety or sureties, if any) of an application setting forth the facts showing the right to damages and the amount thereof, upon which application proper hearing should be had, and the amount awarded, if any, included in the final judgment (See also *Somes vs. Crossfield*, 9 Phil., 13, and *Santos vs. Moir*, 36 Phil., 350): the Court resolves to grant, as it hereby grants, the aforesaid petition."

The rule, therefore, is that a claim for damages suffered by reason of the issuance of a writ of preliminary injunction must be filed before the trial or, in the discretion of the court, before entry of final judgment. It appearing that respondent Lim sought to recover damages upon the injunction bonds only on July 29, 1948, when the decisions in the three proceedings in which the writs of preliminary injunctions were issued had become final, the herein respondent courts could no longer make any adjudication in favor of respondent Lim. The latter, however, argues that in his answers to the three petitions for certiorari and prohibition in which writs of preliminary injunction were issued, he included allegations regarding the accrual of damages. That these general allegations had not been intended to, and cannot, take the place of an application spoken of in section 20 of Rule 59, setting forth the facts showing respondent Lim's right to damages and the amount thereof, is obviously inferable from the total absence in said answers of any prayer for award of damages upon the injunction bonds.

Upon the other hand, it is undeniable that respondent Lim suffered damages by way of unpaid rentals, but these

damages could have been properly avoided if the respondent courts required the herein petitioner to pay or deposit said rentals, because in forcible entry and detainer cases stay of execution refers only to possession and can be obtained only upon compliance with the conditions imposed in section 8 of Rule 72 of the Rules of Court.

Wherefore, the herein three petitions are granted and the orders of the respondent courts respectively involved therein are set aside, without costs. So ordered.

Moran, C.J., Ozaeta, Pablo, Padilla, Tuason, Reyes, and Torres, JJ., concur.

[1] 77 Phil., 752.

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