

LUZON SURETY COMPANY, INC., PETITIONER, VS. THE HON. COURT OF APPEALS, 6TH DIVISION, PRIMITIVO DOMINGUEZ, PIO DOMINGUEZ, SATURNINO CARREON, ARSENIO RIVERA, FRANCISCO MARTINEZ, E...

G.R. No. L-15339. May 23, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition for certiorari wherein petitioner Luzon Surety Co., Inc. seeks to annul and set aside the resolutions dated January 20, 1959 and February 20, 1959, of respondent Court of Appeals, granting the motion for leave to prove damages against the bond furnished by petitioner, after the entry of final judgment on the principal case.

It appears that on July 22, 1958, the Sabungang Bagong Silang, Inc., filed with respondent Court of Appeals, a petition for mandamus, with a prayer for a writ of preliminary injunction (Annex A), in the case entitled "Sabungang Bagong Silang, Inc., Petitioner, vs. Honorable Gustavo Victoriano, Judge of the Court of First Instance of Rizal, et al., Respondents" (CA-G.R. No. 22979-R), for the purpose of compelling the respondent judge to approve its record on appeal, and preventing the execution of the decision rendered by him, in Civil Case No. 4628 of the Court of First Instance of Rizal. Upon petitioner Luzon Surety's filing a bond in the amount of P1,000.00, respondent Court of Appeals on April 26, 1958, issued the corresponding summons and writ of preliminary injunction against respondents Victoriano, et al. in said case.

On May 9, 1958, respondents Victoriano, et al., filed a motion to dismiss said petition (Annex B), on the ground that the same is frivolous and intended merely for delay. On July 21, 1958, respondent Court of Appeals, granting the motion to dismiss, rendered a decision (Annex C), denying the petition for mandamus and dissolving the writ of preliminary injunction, as follows:

"In view of all the foregoing considerations, the petition is denied, with costs against the petitioner (Sabungang Bagong Silang, Inc.). The preliminary injunction heretofore issued (against respondents Victoriano, et al.), is declared dissolved. Let copies of this decision be immediately served on the parties' attorneys."

On August 6, 1958, petitioner Sabungang Bagong Silang, Inc., filed a motion for reconsideration of the above-mentioned decision, which motion was denied by respondent Court of Appeals on August 18, 1958, for lack of merit. On August 25, 1958, the Clerk of Court of respondent Court of Appeals made an entry of final judgment in said case, and on November 3, 1958, said entry and decision was remanded to the Court of First Instance of Rizal.

On December 23, 1958, or 4 months after the entry of final judgment, respondents Victoriano, et al. filed with respondent Court of Appeals a motion for leave to file claim for damages upon petitioner Luzon Surety's bond for preliminary injunction (Annex D). To this motion, petitioner Luzon Surety filed its opposition (Annex E) on

December 24, 1958, on the grounds that (1) said decision dated July 21, 1958 of respondent Court of Appeals does not contain any judgment for damages against petitioner; (2) said decision had already become final and executory; and (3) said motion was filed out of time, or after entry of final judgment and, therefore, considered barred.

On January 20, 1959, respondent Court of Appeals, in a minute resolution (Annex F), granted said motion for leave to file claim for damages of respondents Victoriano, et al.

On January 30, 1959, petitioner Luzon Surety, filed a motion for reconsideration of said resolution (Annex G), which was denied by respondent Court of Appeals in its minute resolution of February 20, 1959 (Annex H). Hence, this petition for certiorari.

Section 9, Rule 60 (on injunction) of the Rules of Court, provides:

"SEC. 9. Judgment to include damages against party and sureties.— Upon the trial, the amount of damages to be awarded to the plaintiff, or to the defendant, as the case maybe, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in section 20 of Rule 59." (Italics supplied.)

Section 20, Rule 59, of the same Rules, states that—

"SEC. 20. Claim for damages on plaintiff's bond on account of illegal attachment.—If the judgment on the action be in favor of defendant, he may recover upon the bond given by plaintiff damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court." (Id.)

The rule is well-settled that a claim for damages suffered by reason of the issuance of a preliminary injunction must be presented in the principal action, and judgment therefor must be included in the final judgment of the case. The remedy is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to such damages. (*Japco vs. City of Manila*, 48 Phil., 851; *Santos vs. Moir*, 36 Phil., 350; *Visayan Surety Insurance Corporation vs. Lacson, et al.*, 96 Phil., 878; 50 Off. Gaz. [6] 2914.)[1] In other words, the claim for damages may be made in the discretion of the court at any time before the judgment rendered had become final and executory. If the prevailing party fails to file his claim for damages the bond filed to answer therefor shall upon proper petition be withdrawn. (2 *Moran*, Comments on the Rules of Court [1952 Ed.] 4; *Facundo vs. Tan*, G.R. No. L-2726 prom. December 29, 1949; *Visayan Surety vs. Pascual*, 85 Phil., 779; 47 Off. Gaz. 5075.)[2]

In the instant case, it is not disputed that no claim for damages suffered as a consequence of the issuance of the writ of preliminary injunction in question was ever presented by respondents Victoriano, et al. in the principal action, namely, the mandamus case; that the judgment of respondent Court of Appeals of July 21, 1958, contained no judgment for damages against petitioner Luzon Surety's bond in favor of said respondents; that said decision of respondent Court of Appeals became final on August 25, 1958; and that the motion for leave to file claim for damages upon petitioner Luzon Surety's bond, was filed with said court only on December 23, 1958, or almost 4 months after said decision became final and executory.

Pursuant to the afore-quoted provisions of the Rules of Court, and in line with our rulings in the above-cited

cases, there can scarcely be any doubt that respondent Court of Appeals had gravely erred in granting the motion of respondents Victoriano, et al. (in CA-G.R. No. 22979-R) for leave to file claim for damages against petitioner Luzon Surety's bond for preliminary injunction.

Wherefore, the resolutions of respondent Court of Appeals appealed from, are hereby annulled and set aside, with costs against the respondents, other than the Court of Appeals and the respondent judge. So ordered.

Paras, C J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., on leave, took no part.

[1] See also *Somes vs. Crossfield*, 9 Phil., 13; *Macatangay vs. Municipality of San Juan*, 9 Phil., 19.

[2] *Facundo vs. Santos*, 77 Phil., 736; 44 Off. Gaz., (3) 860; *Facundo vs. Lim*, G. R. No. L-2667, prom. December 29, 1949.

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