

**CONSOLACION INSURANCE AND SURETY COMPANY, INC.,
PETITIONER, VS. HON. ANGEL H. MOJICA, PRESIDING JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL (PASAY CITY BRANCH),
MACARIO M. OFI...**

G.R. No. L-21282. September 29, 1966

Ponente: DIZON, J.

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DIZON, J.:

Petition (amended) for certiorari, with a prayer for the issuance of a writ of preliminary injunction, filed by the Consolacion Insurance and Surety Company, Inc. to set aside the writ of execution issued against its bond filed in Civil Case No. 389-R of the Court of First Instance of Rizal (Pasay City Branch) for the dissolution of the writ of preliminary attachment issued therein.

Respondent Claro Cortes, doing business under the name and style of Cortes & Sons, commenced Civil Case No. 389-R in the Court of First Instance of Rizal against Natalia L. Sison and Sergio Mendoza, doing business under the name and style of Kapit Bahay Restaurant, etc., to recover the sum of P7,858.62, alleged purchase price of construction materials supplied by him to the latter, with a prayer for the issuance of a writ of preliminary attachment on defendants' properties. The writ prayed for was issued by the court, but it was later dissolved upon defendants' filing a counter bond, with petitioner herein as surety in the sum of P8,000.00 "to answer for any judgment that may be awarded to the plaintiff".

On October 3, 1962, the respondent judge rendered judgment based upon a compromise agreement entered into between the parties, reading as follows:

- “1. That it is agreed upon by the parties in this case that as of today, August 2, 1962, the balance remaining and outstanding accounts the defendants due the plaintiff is P5,949.15;
2. That it has been agreed upon between the parties that defendants confess judgment to the amount above-stated provided that no execution will issue within four (4) months from today, August 2, 1962;
3. That it has been agreed upon by the parties that the plaintiff waives the 25% liquidated damages and attorney's fees on the amount and interests due the P5,949.15 within the period of four (4) months.”

On December 21, 1962, respondent Cortes filed a motion for execution against defendants and herein petitioner on its bond for the sum of P4,226.25, which was still owing under the judgment abovementioned. Petitioner objected to the motion alleging that it was not bound by the compromise agreement entered into by the parties without its consent and had, therefore, been released from any liability under its bond; that, at any rate, it had the right of exhaustion under Section 17, Rule 59 of the Rules of Court.

On January 21, 1963, the respondent judge issued the appealed order. Petitioner's motion for a reconsideration thereof having been denied, the present action was commenced.

No answer to the amended petition appears to have been filed by respondent Cortes; to the contrary, in his "Second Motion for Extension of Time to File Answer", filed on July 12, 1963, he states the following:

"2. That the Kapit Bahay Inc. etc. had almost paid respondent Claro Cortes etc. the amount stated in the judgment alleged in par. 7 of the petition and in the writ of execution Annex B, for as of this moment, the outstanding indebtedness of the former to the latter is just a little over P1,000.00.

3. That the respondent Claro Cortes is not interested in proceeding against the petitioner for its liability under the bond posted by the said petitioner which is in issue in this proceedings.

4. That the issue in this case had become moot and academic, and it would serve respondent Claro Cortes no practical purpose for the Kapit Bahay Incorporated, etc. had made arrangement for the payment of the balance of its indebtedness to Claro Cortes."

WHEREFORE, the present case is hereby dismissed, without costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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