

PANTALEON PACIS, PETITIONER, VS. THE COMMISSION ON ELECTIONS, ATANACIO NEGRE AND MUNICIPAL BOARD OF CANVASSERS OF SANCHEZ MIRA, CAGAYAN, RESPONDENTS.*G.R. No. L-29026. August 29, 1969*

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

After promulgation of the September 28, 1968 main decision of this Court in the above-entitled case confirming the May 11, 1968 resolution of the Commission on Elections, dissolving the writ of preliminary injunction issued by this Court on June 11, 1968 and declaring valid and subsisting the canvass of votes and the proclamation of private respondent Atanacio Negre as Mayor-elect of the Municipality of Sanchez Mira, Province of Cagayan, the latter, through counsel, moved for assessment and award of damages sustained by him as a result of the preliminary injunction issued in favor of petitioner Pantaleon Pacis, upon the P1,000 cash bond deposited with this Court by said petitioner, pursuant to Section 9, Rule 58, in connection with Section 20, Rule 57, of the Rules of Court.

Petitioner opposed, pleaded good faith. A hearing was conducted by an officer of this Court to ascertain the amount of damages.

The un rebutted evidence is that private respondent was enjoined from performing his duties as Mayor of Sanchez Mira from June 19, 1968, after receipt of the injunctive writ on June 18, 1968, until October 17, 1968 when judgment in the above-entitled case became final and executory, thus depriving him of four months' salaries at P500 per month totalling a little less than P2,000.

1. It may be well to state at this point that the present is a motion of private respondent for assessment and award of damages upon the P1,000 cash bond. The reglementary period within which to file the appropriate motion is before the main judgment becomes executory.

The judgment dissolving the preliminary injunction issued in favor of petitioner and dismissing the main cause became final and executory on October 17, 1968. The motion herein was filed on October 16. It can be seen from the procedure laid out in the Rules of Court for proceeding against an injunction bond that the motion of private respondent barely missed the statutory period. Section 9 of Rule 58 on preliminary injunctions directs that the procedure in Section 20 of Rule 57 on attachment be followed, viz:

"SEC. 20. Claim for damages on account of illegal attachment. -If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any 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 before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court."

The foregoing remedy has been said to be exclusive such that no claim for recovery of damages may be filed after the judgment has become final and executory.[1]

2. Good faith on his part in obtaining the injunction because the main cause was then undecided by this Court, petitioner posits, is fatal to any claim for damages.

The foregoing question entails an expansive discussion on the principles governing recovery of damages sustained as a result of a wrongfully obtained injunction.

The practice of issuing restraining orders (used here in its generic term as referring to all types of "status quo" orders) started as a common-law equitable relief in the English courts to preserve the status quo of a case pending the final determination of the relative rights of the parties. Since these orders cause damages to the restrained party if his rights were later affirmed -more than what would be occasioned him as an ordinary party litigant if no restraining order were issued - a system by which he was recompensed evolved. An account of this is recited in the case of *Harless vs. Consumers' Gas Trust Co.*, 43 N.E.456, 457, thus:

"In the early history of equity jurisprudence temporary restraining orders were issued without requiring any bond or other security. If upon final hearing the injunction was dissolved, the party enjoined might recover his costs. x x x As the party enjoined suffered great damages for which he had no adequate remedy, the custom grew up in the equity courts that the chancellor, in the exercise of his discretion, might require of the plaintiff a pledge or bond to indemnify the defendant against loss in the event the injunctive order should be wrongfully issued. Upon the dissolution of the injunction the court might, in the same proceeding, determine whether or not the defendant was entitled to damages, and assess the same, or cause them to be assessed by reference to a master. This is still the practice in the courts of chancery in England and on the equity side of circuit courts of the United States, and this method is adopted by statute in some of the states." [2]

Damages sustained as a result of a wrongfully obtained injunction may be recovered upon the injunction bond required to be filed with the court. This principle of recovery of damages has been recognized in our jurisdiction in the early case of *Molina vs. Somes* (1913), 24 Phil. 49, 61-62.

The filing of a bond before the issuance of an injunction has been made a reglementary requisite under the same rule which permits the issuance of an injunction. It is this same rule therefore which must first be examined in determining whether good faith is a proper defense against a claim for damages.

The statutory undertaking of the bond is that it shall answer for all damages which the party to be restrained may sustain by reason of the injunction "if the court should finally decide that the plaintiff was not entitled thereto." [3] Malice or lack of good faith is not an element of recovery on the bond. This must be so, because to require malice as a prerequisite would make the filing of a bond a useless formality. Too, it is axiomatic that probable cause is necessary before an injunction may be ordered, and if good faith were tenable as a defense, it would rule out practically all relief from actual damages sustained as a result of an injunction.

Jurisprudence, evolved from jurisdictions where this equitable relief originated and expanded, supports the view we just expressed. The holding is that the dissolution of the injunction, even if the injunction was obtained in good faith, "amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction bond immediately accrues to the defendant." [4] The dissolution of the injunction because of the failure

of petitioner's main cause of action, therefore, is an "actionable wrong", so to speak, for the purpose of recovery upon the bond.

3. The foregoing background paves the way for a discussion whether private respondent can recover damages in excess of the amount of the bond.

As stated, this present proceeding is upon a motion for assessment of damages on the bond. There is nothing in the Rules of Court which allows recovery of damages other than upon the bond pledged by the party suing for an injunction. Section 9, Rule 58, limits recovery only upon the bond, thus:

"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 57." [5]

It would be misreading the rule to allow damages beyond the amount of the bond. The bond, under this rule, is the only protection conceded to the party restrained. Recovery cannot be made beyond what the law permits.

This principle is skillfully explained in *Molina vs. Somes*, supra, at pp. 64-65, thus:

"The assertion by some text writers and courts that the one who sues out an injunction without legal cause is liable on the theory that he wrongfully induced or moved the court to take the action which it did, is, in our judgment, without stable foundation. He who obtains a thing by permission of the law, and by strict compliance with the law, ought not to be held liable in any manner except that specified in the law under which he operates. He ought not to be held for a trespass or other wrong, as they assert he may be in replevin, etc. How can it be logically said that one who, acting in good faith, obtains an injunction or property under a replevin in precisely the manner required by law has committed a legal wrong against the person as to whom the law authorizes him to obtain the injunction? The law itself, by virtue of the conditions which it imposes, fully protects the defendant against the evil effects of the injunction; and if the party securing the injunction has performed all that the law requires of him as a condition precedent to obtaining it, what more can be asked? In return for the restrictions of the injunction, the defendant has been given certain legal rights against the plaintiff by way of an undertaking which, by virtue of the law itself, fully compensates him for the change of position. The bond is full compensation for the privileges which the plaintiff receives and for those which the defendant loses. The law says so. The statute asserts that the doing of certain things by the plaintiff shall be a complete compensation to the defendant for that which the law requires him to give up. If it is not complete compensation, then the law is unjust, in that it requires the defendant to give up something for which he receives no compensation. It is not to be presumed or believed that the legislature intended to do such a thing, and it is not to be presumed or believed that it did do it. But, even if the law be unjust, an injustice of the law cannot be cured by an injustice to a party. The giving of the undertaking legally equalizes the status of the two. To put upon the plaintiff the additional burden of a trespass or other wrong would destroy the legal equilibrium and produce an injustice,"

Recovery of private respondent must therefore be limited to the amount of the bond. Where the bond is insufficient in amount, the law expressly gives the party affected the recourse of excepting thereto and provides for the dissolution of the injunction if "a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith." [6]

Because petitioner's bond is only for P1,000.00, it will not be sufficient to satisfy even the actual damages suffered by private respondent. So it is that there is no imperative need to discuss petitioner's assertion that only actual damages may be allowed.

This Court is therefore of the view that private respondent Atanacio Negre is entitled to recover only upon the P1,000 cash deposit of petitioner.

Upon the foregoing premises, judgment is hereby rendered declaring that the P1,000 cash deposit of petitioner be forfeited in favor of private respondent Atanacio Negre. The Clerk of this Court is hereby ordered to deliver the amount to private respondent Atanacio Negre. The present judgment shall form part of the September 28, 1968 judgment of this Court in the above-entitled case. No costs in this instance.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.
Reyes and Zaldivar, JJ., on official leave.

[1] Japco vs. City of Manila, 48 Phil. 851, 855, citing Santos vs. Moir, 36 Phil. 350, Somes vs. Crossfield, 9 Phil. 13, and Macatangay vs. Municipality of San Juan de Bocboc, 9 Phil. 19; Facundo vs. Tan, 85 Phil. 249, 253; Visayan Surety and Insurance Corporation vs. Lacson, 96 Phil. 878, 882-883; Curilan vs. Court of Appeals, 105 Phil. 1160, 1163-1164; Luzon Surety vs. Court of Appeals, G.R. No. L-15339, May 23, 1960. See: 3 Moran, Comments on the Rules of Court, 1963 ed., p. 79.

[2] Citing Russell vs. Farley, 105 U.S. 433.

[3] Section 4(b), Rule 58, Rules of Court.

[4] Sullivan vs. Winer, 307 S.W. 2d. 704, 707- 708, citing Pierce vs. Camp-bell, 217 Mo. App. 179, 274 S. W. 875, High on Injunctions, 4th ed., vol. 2, sec. 1665, p. 1660; Kelder vs. Dale, 313 S.W. 2d. 59, 64. See: Jones vs. Rountree, 74 S.E. 1096, 1097; Winslow vs. Mulchey, 35 S.W. 762, 763; People vs. Eisenberg, 123 N.E. 532, 534.

[5] Emphasis supplied. Section 20, Rule 57, has been here quoted earlier.

[6] Section 8, Rule 58, Rules of Court.

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