

ANA GERARDO, PLAINTIFF AND APPELLANT, VS. PLARIDEL SURETY AND INSURANCE CO., INC., DEFENDANTS AND APPELLEES.*G.R. No. L-7807. October 31, 1956*

Ponente: CONCEPCION, J.

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This is an appeal taken by the plaintiff, from an order, of the Court of First Instance of Bulacan, granting defendant's motion to dismiss the complaint and dismissing the same with costs.

It appears that on November 2, 1938, plaintiff Ana Gerardo and Sergio M. Reyes executed a deed, whereby the former leased to the latter two (2) parcels of fishpond, situated in the barrio of San Roque, municipality of Hagonoy, province of Bulacan, at a yearly rental of P2,100 for a period of eight (8) years beginning from December 22 1938. Before the expiration of said period or on December 13, 1944, Ana Gerardo leased the fishpond to Salud and Consuelo Sebastian, for a term of three (3) years from December 22, 1946 (when the lease contract with Sergio Reyes was to expire), at a rental of P120,000 Japanese currency, a year, which, on November 1, 1946, was amended to a yearly rental of P12,000 Philippine currency.

Meanwhile, Sergio M. Reyes had died and his widow, Anicia Reyes, was appointed judicial administratrix of his intestate estate. In this capacity, Mrs. Reyes instituted, on December 2, 1946 Civil Case No. 131 of the Court of First Instance of Bulacan, against Ana Gerardo and Salud and Consuelo Sebastian, for cancellation of the contract of lease between these defendants and renewal of the contract between Ana Gerardo and the deceased Sergio M. Reyes, upon the ground that the latter had, under his contract of lease, a preferential right (*derecho de tanteo*) to another lease of the fishpond in question, upon expiration of the term therein stipulated. In her answer to the complaint in said case No. 181, Ana Gerardo expressed among other things, her willingness to lease said fishpond to the estate of Sergio M. Reyes, at a yearly rental of P12,000. Soon thereafter, or on December 28, 1946, Ana Gerardo moved for the appointment of a receiver. Mrs. Reyes objected thereto and offered to file a bond, pursuant to Rule 61, section 4 of the Rules of Court, in view of which, on January 14, 1947, the court denied the motion for receivership, upon the filing of a bond for P8,000. On or about January 20, 1947, the court approved said bond, which was executed by Mrs. Reyes and the Plaridel Surety and Insurance Co., as principal and surety, respectively. In due course, said court rendered judgment on September 3, 1948, the dispositive part of which is as follows:

"Por todas estas consideraciones, el juzgado es de opinion que la cantidad de P12,000.00 como renta o canon anual por la pesqueria en litigio es justa y razonable. Por consiguiente el juzgado dicta sentencia fijando la cantidad de P12,000 como renta justa y razonable, cuya cantidad la demandante Anicia T. Reyes esta obligada a pagar a la demandada Ana Gerardo como canon anual de la pesqueria por la extension o continuacion del contrato de arrendamiento a contar desde la expiracion del contrato original, debiendo pagar la demandante Anicia T. Reyes dentro de quince (15) dias despues de firme esta decision de las rentas anuales atrasadas despues de la expiracion del contrato Exhibit G;

"2.o Que si transcurridos los quince dias arriba fijados la demandante dejare de pagar canon de P12,000 se

declara terminado el contrato original de arrendamiento y se le ordena a que entregue y devuelva la posesion de la pesqueria a la demandante Ana Gerardo mediante pago a la demandada por la demandante la cantidad de P12.000 anual por el y ocupacion de la propiedad, a contar desde la expiracion del contrato de arrendamiento Exhibit G hasta la fecha de su entrega. Sin especial pronunciamiento en cuanto a las costas de juicio."

On appeal, Mrs. Reyes assailed the reasonableness of the rental fixed in this decision, which, however, was affirmed by the Court of Appeals, on August 25, 1950. Prior thereto, or on November 8, 1949, the lower court had, on motion of Ana Gerardo, ordered the execution of its aforementioned decision, during the pendency of the appeal therefrom. Accordingly, on December 8, 1948, the provincial sheriff took possession of the fishpond. Thereafter, he collected from Mrs. Reyes the net sum of P4,030.82. On February 27, 1951 when the decision of of the Court of Appeals was already final, Ana Gerardo filed, with the lower court a motion for the issuance of an "alias writ of execution commanding the sheriff of Manila to satisfy the judgment of the Honorable Court against the Plaridel Surety and Insurance Co., to the extent of their liability of P8,000 under the surety bond." This motion, to which the surety company objected, was denied, on September 28, 1951. Thereupon, Ana Gerardo instituted case G. R. No. L—5259 of this, Court, entitled "Ana Gerardo vs. Hon. Bonifacio Ysip, Judge of the Court of First Instance of Bulacan, Plaridel Surety and Insurance Co., Inc., and Anicia T. Reyes." In the petition therein filed, Ana Gerardo prayed that a writ of certiorari setting aside said order of September 28, 1951 be issued and that the surety company be held "liable for its bond in the sum of JP8,000 in favor of * * * Ana Gerardo."

Said petition was dismissed by minute resolution of this Court, dated December 12, 1951 (which became final on January 2, 1952), reading:

"The respondent judge had and did not exceed his jurisdiction in denying the motion for execution filed by the petitioner against the other respondent Plaridel Surety Insurance Co., Inc., nor did he act with grave abuse of discretion for the respondent judge had no discretion to grant or deny said motion. The question whether or not said Judge, in view of the facts in this case, erred or acted not in accordance with law in denying petitioner's motion for execution against the defendant surety's bond for damages, although said damages had not been claimed in the same action with due rected to surety, is a question ;that can not be reviewedETA C E rected by this Court by certiorari, but by appeal which is the proper remedy. Petition for certiorari filed in G. R. No. L-5259, Ana Gerardo vs. Hon. Bonifacio Ysip, etc., et al., is therefore dismissed. Mr. Justice Pablo and Mr. Justice Tuason concur in the dismissal of the petition not because appeal is the appropriate remedy but because the motion for execution filed in the Court of First Instance is premature; an order of execution is issued only after the determination, after hearing both parties, in the same proceeding of the responsibility of the judicial bondsmen. (Rule 61, Sec. 4 and Rule 59, Sec. 20; Visayan Surety vs. Victoria Pascual, et al., G. R.» No. L—2981, March 23, 1950)" (Italics supplied.)

On January 8, 1952, Ana Gerardo commenced the present action against the surety company (Civil Case No. 613 of the Court of First Instance of Bulacan). In the complaint therein, she states the facts relative to the institution of case No. 131, the giving of the P8,00Q bond, and the decision of the lower court and that of the Court of Appeals, and alleged that Mrs. Reyes is indebted in the sum of P19,969.18, as balance of the rentals for the use and occupation of the fishpond up to November 8, 1948 after deducting the P4,030.82 collected by the sheriff as there stated, and that said sum of P19,969.18 is unsatisfied despite demands made to Mrs. Reyes and the surety company. The prayer of said complaint is: "* * * that judgment be rendered against the dependant in the amount of Eight Thousand Pesos (P8,000) as its liability under the bond, plus costs."

The surety company seasonably moved that the complaint be dismissed because the cause of action therein set forth is barred by the judgment rendered in Case No. 131 and because the Court of First Instance of Bulacan has no jurisdiction over the subject matter of the complaint. Said court granted this motion and dismissed the complaint. Hence, the present appeal

The order of dismissal appealed from is based upon the ground that plaintiff's claim under the bond above referred to cannot be entertained except in Civil Case No. 131, in which it was filed, and before the judgment therein had become final, pursuant to Rule 62, section 9, and Rule 59 section 20, of the Rules of Court. Impliedly conceding that this view—which is borne out by the decision of this Court in *Visayan Surety and Insurance Corporation vs. Pascual* (47 Off. Gaz., 5075, 5079) and *del Rosario vs. Nava* (50 Off. Gaz., 4189)—is correct when the undertaking involved is a judicial bond, appellant questions the applicability of said provisions of the Rules of Court to the case at bar, upon the ground that appellee's bond is "contractual", not judicial.

At the outset, it must be noted, however, that all bonds, including "judicial" bonds, are contractual in nature. Bonds exist only in consequence of a meeting of minds, under the conditions essential to a contract (Art. 1305, Civil Code of the Philippines. Judicial bonds constitute merely a special class of contracts of guaranty, characterized by the fact that they are given "in virtue * * * of a judicial order" (See Title XV, Chapter 4 of the Civil Code of the Phil., and Art. 2082 thereof).

It will be recalled, also, that, when appellant moved, in case No. 131, for the appointment of a receiver, Mrs. Reyes objected thereto and prayed "that she be allowed to file bond corresponding to one year rental of the premises as provided for under the provision of Rule 61 section U, of the Rules of Court," reading:

"The application for the appointment of a receiver may be denied, or the receiver already appointed may be discharged, when the party opposing the appointment makes it appear by affidavits, that such appointment was procured without sufficient cause; the adverse party may oppose tho affidavits thus presented by counter-affidavits. The application may also be denied, or the receiver discharged, when the party opposing the appointment files a bond executed to the applicant in the amount to be fixed by the court, to the effect that such party will pay applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment."

Acting in conformity therewith, the lower court issued an order of the following tenor:

"Vista la peticion jurada presentada por la contra-demandante, pidiendo el nombramiento de un depositario, bajo los fundamentos alegados en dicha peticion; el juzgado despues de oidos dos argnmentos de ambas partes cuando se llamo a vista esta peticion; y en vista ademas, de la oferta de fianza hecha por la demandante contra-demandante en su escritcude oposicion a dicho nombramiento de depositario, de acuerdo con el articulo 4 de la regla 61 de los reglamentos de la corte, por la presente, deniega dicha peticion de nombramiento de depositario, previa prestacion de una fianza de P8,0 00 por la aqui demandante contra-demandada, a favor de la peticionaria, flora iesponder del pago todos los dans y perjuidos que se puede irrigar a dicha contra-demandante." (Record on Appeal, p. 24.) (Italics supplied.)

Soon thereafter, Mrs. Reyes filed the bond in question, which we quote:

"Whereas by an order issued by the Court of First Instance of Bulacan, Philippines, on the 14th day of January, 1947, Anicia T. Reyes was ordered to file a bond in the sum of eight thousand pesos (P8,000) in the conformity with Sec. 4 Rule 61 of the New Rules of Court;

"Wherefore, we Anicia T. Reyes, as principal, and the Plaridel Surety & Insurance company, a corporation duly organized and existing under and by virtue of the laws of the Philippines, as surety jointly and severally bind ourselves in the sum of eight thousand pesos only (P8,000.00), Philippine currency, executed to the defendants to pay. all such damages they may suffer by reason of the acts and omissions of the plaintiff.

"The condition of this bond is such that if the said plaintiff discharges faithfully all the duties as lessee of the property placed in her charge, and obeys all orders of the court, then in this case this obligation shall be void, otherwise it shall remain in full force and effect." (Record on Appeal, pp. 25-25.) (Italics supplied.)

In other words, the offer of Mrs. Reyes to give bond, as well as the order accepting the offer, and the bond itself, made specific reference to Rule 61, Section 4, of the Rules of Court, thus indicating clearly the intent of the parties to comply merely with the provisions! thereof. In fact, the second paragraph of the bond—in which Mrs. Reyes and herein appellees bind themselves in the sum of P8,000, in favor of the defendants in case No. 131, to pay all damages they may suffer by reason of the acts and omissions of the plaintiff***—follows the language of said section 4, pursuant to which the application for appointment of a receiver "may also be denied * * *when the party opposing" it "files a bond * * * in an amount * * * fixed by the court, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omission * * * specified in the application as ground for such appointment".

Citing the last paragraph of the bond—which conditions the same upon the faithful discharge by Mrs. Reyes of "all the duties as lessee of the property placed in her charge"—appellant insist that the undertaking in dispute is not a judicial bond. This pretense is untenable, for the provisions of said undertaking should not be read separately and independently of each other, and, being interrelated must be construed, together, as part and parcel of a single harmonious and integrated act, intent and agreement. Moreover, as above stated, the reference made to Rule 61, section 4, of the Rules of Court, in the first paragraph of the bond, and the language of its second paragraph, incorporating that of said section of the Rules of Court, as well as the specific mention thereof in Mrs. Reyes' offer to give a bond and in the order accepting such offer, apart from the circumstance that Mrs. Reyes submitted the bond for approval and that the court approved it, leave no room for doubt that the undertaking in question comes squarely within the purview of said provision.

Again, appellant's petition for the appointment of a receiver was explicitly predicated, among other things, upon the danger of insolvency of Mrs. Reyes and nonpayment by her of the rentals that may fall due. Hence, the statement in the last paragraph of the bond, relative to the faithful discharge of the duties of Mrs. Reyes as lessee of the fishpond, adds nothing, that is not covered by the second paragraph of said instrument, for the same guarantees the payment of "all such damages" as may be suffered by Ana Gerardo "by reason of the acts and omissions" of said Mrs. Reyes, and unpaid rentals are, obviously included in said damages.

At any rate, it is well settled that "where a statutory bond, superadds a conditions which the statute does not require, its validity, even as a statutory bond, is not affected by the unnecessary matter which will be rejected as surplusage. In such cases the bond, will be held valid as to the statutory condition" (8 Am. Jur. 717.)

Lastly, even appellant herein considered appellee's undertaking as a judicial bond. This is conclusively established by the fact that the former actually sought to collect damages under said bond, in Case No. 131, by filing a petition, dated February 27, 1951, for the issuance of a writ of execution against the surety company. The failure of such petition and that of the application for certiorari filed with this court (in case G. R. No.-5259)—to annul the order denying said petition—were due, mainly to the circumstance that the execution prayed for was improper until after determination of the amount of damages sustained by Ana Gerardo on account of the acts and omissions of Mrs. Reyes, and this required a provision hearing, with due notice to the latter and the surety company. . Obviously, appellant would not have filed the aforementioned "petition for execution" in case No. 131, had she not understood appellee's undertaking to be the judicial bond provided for in Rule 61, section 4, of the Rules of Court.

Wherefore, the order appealed from must be, as it is hereby affirmed, with costs against the appellant. So ordered.

Paras, C. J., Montemayor, Bautista Angela, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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