

**PEOPLE'S SURETY & INSURANCE COMPANY, INC.,
PETITIONER, HONORABLE COURT OF APPEALS (FOURTH DIVISION)
AND RAFAEL V. GUZMAN, RESPONDENTS.**

G.R. No. L-21627. June 29, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original petition for certiorari and prohibition.

On December 29, 1960, Rosario Yulo filed with the Court of Appeals a petition - docketed as CA-G. R. No. 28671-R - for certiorari, prohibition and mandamus, with preliminary injunction, against the Court of First Instance of Manila, the Sheriff of Manila and Rafael V. Guzman. As prayed for, the appellate Court issued said writ on January 7, 1961, upon a bond, in the sum of P2,000.00, subscribed by Yulo, as principal, and the People's Surety & Insurance Co., Inc., as surety, to answer for such damages as Guzman may sustain by reason of the injunction, should the Court finally decide that Yulo was not entitled thereto.

During the pendency of said case, or on July 17, 1961, Guzman filed a "Manifestation" claiming P50,000.00 from Yulo, as damages allegedly sustained on account of the issuance of said writ of preliminary injunction, and praying that the same be dissolved. After receiving evidence on said claim, without notice to the People's Surety & Insurance Co., Inc., hereinafter referred to as the Surety, the Court of Appeals rendered, on February 5, 1962, a decision dismissing the petition, dissolving the injunction, and holding Yulo and the Surety, solidarily liable in the sum of P2,000.00 for the actual damages suffered by Guzman, in addition to sentencing Yulo to pay P1,000.00 to Guzman, by way of attorney's fees. No appeal having been taken therefrom, said decision became final on May 30, 1962. Subsequently, the appellate Court issued the corresponding writ of execution against Yulo.

Sometime later, the writ of execution was returned unsatisfied; whereupon Guzman filed an urgent ex parte motion for an alias writ of execution against Yulo and the Surety. The latter objected to the motion and prayed for its denial, or, at least, that action thereon be held in abeyance, pending disposition of case G. R. No. L-20857 of the Supreme Court, in which Yulo sought to annul, inter alia, the aforementioned decision of the Court of Appeals, dated February 5, 1962 (which case was dismissed on March 13, 1963). This notwithstanding, on March 25, 1963, the Court of Appeals passed a resolution granting said urgent ex parte motion of Guzman, for the issuance of an alias writ of execution against Yulo and the Surety. On the same date, said writ was issued.

Soon thereafter, or on or about April 18, 1963, the surety filed a motion for reconsideration of the order of March 25, 1963, upon the ground that the Court had no jurisdiction to issue a writ of execution against the Surety, because the same had not been notified of Guzman's claim for damages or given its day in Court, before the entry of final judgment in CA-G. R. No. 28671-R. On May 29, 1963, said appellate Court passed a resolution suspending its judgment, dated February 5, 1962, and its resolution of March 25, 1963, insofar as the Surety is concerned, and ordering Guzman to file an application for damages, with notice to the Surety, within 20 days from notice, and directing that the case be set for hearing "after the issues are joined."

Hence, on June 11, 1963, Guzman filed said application or claim for damages against the Surety. The latter objected thereto, inserting that the decision in the case had long become final and executory and that, in fact, entry of judgment had been made on May 30, 1962. Despite this objection, the Court passed, on July 5, 1963, a resolution setting the case of hearing on August 2, 1963. Accordingly, on July 31, 1963, the Surety filed with this Court the present action for certiorari and prohibition, contending that the Court of Appeals had acted without or in excess of jurisdiction: 1) in allowing a writ of execution to be issued against the Surety upon a judgment rendered without notice thereto; 2) in passing the resolution of May 29, 1963, authorizing Guzman to file an application for an award for damages against the Surety; and, 3) in approving the resolution of July 5, 1963 setting for hearing the claim for damages against the Surety.

The latter, likewise, prayed, in its petition herein, for a writ of preliminary injunction, which we did not issue, despite the fact that we gave due course to the petition. On January 13, 1964, the Surety filed a motion for the issuance of said writ, upon the ground that, on September 18, 1963, the Court of Appeals had passed another resolution, in CA-G. R. No. 28671-R, rendering judgment against the movant (Surety) "on the bond posted by it for the amount of P2,000 in favor of respondent Rafael V. Guzman," and that, on December 23, 1963, the corresponding writ of execution of this resolution had been issued.

At the outset, it should be noted that, while case CA-G. R. No. 28671-R was pending decision in the Court of Appeals, sometime in 1961, Guzman had filed therein a claim for damages against Yulo; that notice of such claim was not furnished the Surety; and that neither had the latter been notified of the hearing for the reception of evidence on said claim. Since the decision of the Court of Appeals on February 5, 1962, holding the Surety liable under the bond in question was rendered without notice thereto, said decision is null and void as regards the Surety, for lack of due process.

Precisely, because of this fact, on May 29, 1963, the Court of Appeals, suspended its aforementioned decision, as well as its resolution of March 25, 1963 (granting Guzman's motion for the issuance of a writ of execution, not only against Yulo, but, also, against the Surety) and, ordered Guzman to "make an application for damages," against the Surety, upon the theory that, as long as notice and an opportunity to be heard are given thereto, Guzman's claim for damages could still be entertained by the Court of Appeals. It should be noted, however, that in *Del Rosario v. Nava* (95 Phil., 637), this Court, speaking through Mr. Justice Reyes, J. B. L., held:

"It will be seen that the rulings above quoted are silent on the question now before us, that is to say, the time within which the application and notice to the surety should be filed in those cases where a judgment for damages has already been rendered against the plaintiff as principal of the attachment bond. Upon mature consideration, we have reached the conclusion that under the terms of section 20 of Rule 59, the application for damages and the notice to the sureties should be filed in the trial court by the party damnified by the wrongful or improper attachment either 'before the trial' or, at the latest, 'before entry of the final judgment,' which means not later than the date when the judgment becomes final and executory (sec. 2, Rule 35). Only in this way could the award against the sureties be 'included in the final judgment' as required by the first part of section 20 of Rule 59. The rule plainly calls for only one judgment for damages against the attaching party and his sureties; which is explained by the fact that the attachment bond is a solidary obligation. Since a judicial bondsman has no right to demand the exhaustion of the property of the principal debtor (as expressly provided by article 2084 of the new Civil Code, and article 856 of the old one), there is no justification for the entering of separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce the award of damages against whomsoever he considers in a better situation to pay it.

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"In view of the foregoing, we hold that while the prevailing party may apply for an award of damages against

the surety even after an award has been already obtained against the principal, as ruled in *Visayan Surety Insurance Corp. v. Pascual*, G. R. No. L-3694, still the application and notice against the surety must be made before judgment against the principal becomes final and executory, so that all awards for damages may be included in the final judgment. Wherefore, the court below committed no error in refusing to entertain the ap-pellant Nava's application for an award of damages against the appellee surety Company ten months after the award against the principal obligor had become final."

Inasmuch as this view has been reiterated in subsequent cases,[1] it is now well settled that a court has no jurisdiction to entertain any proceeding seeking to hold a surety liable upon its bond, where the surety has not been given notice of the proceedings for damages against the principal and the judgment holding the latter liable has already become final. The reason for the rule is obvious. Indeed, to allow such proceeding would, in effect, divest said judgment of the character of finality it had already acquired. Moreover, the rule has for its purpose to avoid multiplicity of suits, by including in said judgment the award for damages incurred by reason of the improper issuance of a writ of preliminary injunction. Such inclusion is not possible where - as in the case at bar - the decision has become final and entry of judgment has already been made.

WHEREFORE, the decision of the Court of Ap-peals of February 5, 1962, and the orders of said Court dated March 25, May 29 and July 5, 1963, are hereby annulled, insofar as the Surety is concerned, and respondents herein are perpetually restrained from enforcing, executing and/or carrying into ef-fect said decision and orders, as regards the Sure-ty, with costs against respondent Rafael V. Guzman.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] *Visayan Surety & Insurance Co. v. Lacson*, et al., 96 Phil. 878; *Visayan Surety & Insurance Co. v. De Aquino*, et al., 96 Phil. 900; *Port Motors Inc. v. Raposas*, 100 Phil. 732; *Alliance Insurance & Surety Co., Inc. v. Edmundo S. Piccio*, L-9950, July 31, 1959; *Manila Under-writers Insurance Co., Inc. v. Hon. Bienvenido Tan*, etc., et al., L-12256, April 29, 1960; *De Guia, et al. v. Alto Surety & Ins. Co., Inc.*, L-18647, February 28, 1963; and *Luneta Motor Co. v. Antonio Menendez*, et al., L-16880, April 30, 1963.

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