

**SERAFIN TIJAM, ET AL., PLAINTIFFS-APPELLEES, VS. MAGDALENO SIBONGHANOY ALIAS GAVINO SIBONGHANOY, ET AL., DEFENDANTS, MANILA SURETY AND FIDELITY CO., INC. (CEBU BRANCH) BONDING C...**

*G.R. No. L-21450. April 15, 1968*

Ponente: DIZON, J.

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**DIZON, J.:**

On July 19, 1948 - barely one month after the effectivity of Republic Act No. 296 known as the Judiciary Act of 1948 the spouses Serafin Tijam and Felicitas Tagalog commenced Civil Case No. R-660 in the Court of First Instance of Cebu against the spouses Magdaleno Sibonghanoy and Lucia Baguio to recover from them the sum of P1,908.00, with legal interest thereon from the date of the filing of the complaint until the whole obligation is paid, plus costs. As prayed for in the complaint, a writ of attachment was issued by the court against defendants' properties, but the same was soon dissolved upon the filing of a counter-bond by defendants and the Manila Surety and Fidelity Co., Inc. hereinafter referred to as the Surety, on the 31st of the same month.

After being duly served with summons the defendants filed their answer in which, after making some admissions and denials of the material averments of the complaint, they interposed a counterclaim. This counterclaim was answered by the plaintiffs.

After trial upon the issues thus joined, the Court rendered judgment in favor of the plaintiffs and, after the same had be-come final and executory, upon motion of the latter, the Court issued a writ of execution against the defendants. The writ having been returned unsatisfied, the plaintiffs moved for the issuance of a writ of execution against the Surety's bond (Rec. on Appeal pp. 46-49), against which the Surety filed a written opposition (Id. pp. 49) upon two grounds, namely, (1) Failure to prosecute and (2) Absence of a demand upon the Surety for the payment of the amount due under the judgment. Upon these grounds the Surety prayed the Court not only to deny the motion for execution against its counter-bond but also the following affirmative relief: "to relieve the herein bonding company of its liability, if any, under the bond in question" (Id. p. 54) The Court denied this motion on the ground solely that no previous demand had been made on the Surety for the satisfaction of the judgment. Thereafter the necessary demand was made, and upon failure of the Surety to satisfy the judgment, the plaintiffs filed a second motion for execution against the counter-bond. On the date set for the hearing thereon, the Court, upon motion of the Surety's counsel, granted the latter a period of five days within which to answer the motion. Upon its failure to file such answer, the Court granted the motion for execution and the corresponding writ was issued.

Subsequently, the Surety moved to quash the writ on the ground that the same was issued without the required summary hearing provided for in Section 17 of Rule 59 of the Rules of Court. As the Court denied the motion, the Surety appealed to the Court of Appeals from such order of denial and from the one denying its motion for reconsideration (Id. pp. 97). Its re-cord on appeal was then printed as required by the Rules, and in due time it

filed its brief raising therein no other question but the ones covered by the following assignment of errors:

"I. That the Honorable Court a quo erred in issuing its order dated November 2, 1957, by holding the incident as submitted for resolution, without a summary hearing and compliance with the other mandatory requirements provided for in Section 17, Rule 59 of the Rules of Court.

"II. That the Honorable Court a quo erred in ordering the issuance of execution against the herein bonding company-appellant.

"III. That the Honorable Court a quo erred in denying the motion to quash the writ of execution filed by the herein bonding company-appellant as well as its subsequent motion for reconsideration, and/or in not quashing or setting aside the writ of execution."

Not one of the assignment of errors - it is obvious -raises the question of lack of jurisdiction, neither directly nor indirectly.

Although the appellees failed to file their brief, the Court of Appeals, on December 11, 1962, decided the case affirming the orders appealed from.

On January 8, 1963 - five days after the Surety received notice of the decision, it filed a motion asking for extension of time within which to file a motion for reconsideration. The Court of Appeals granted the motion in its resolution of January 10 of the same year. Two days later the Surety filed a pleading entitled MOTION TO DISMISS, alleging substantially that appellees' action was filed in the Court of First Instance of Cebu on July 19, 1948 for the recovery of the sum of P1,908.00 only; that a month before that date Republic Act No. 296, other-wise known as the Judiciary Act of 1948, had already become effective, Section 88 of which placed within the original ex-clusive jurisdiction of inferior courts all civil actions where the value of the subject matter or the amount of the demand does not exceed P2,000.00, exclusive of interest and costs; that the Court of First Instance therefore had no jurisdiction to try and decide the case. Upon these premises the Surety's motion prayed the Court of Appeals to set aside its decision and to dismiss the case. By resolution of January 16, 1963 the Court of Appeals required the appellees to answer the motion to dis-miss, but they failed to do so. Whereupon, on May 20 of the same year, the Court resolved to set aside its decision and to certify the case to Us. The pertinent portions of its reso-lution read as follows:

"It would indeed appear from the record that the action at bar, which is a suit for collection of money in the sum of exactly P1,908.00 exclusive of interest, was ori-ginally instituted in the Court of First Instance of Cebu on July 19, 1948. But about a month prior to the filing of the complaint, more specifically on June 17, 1948, the Judiciary Act of 1948 took effect, depriving the Court of First Instance of original jurisdiction over cases in which the demand, exclusive of interest, is not more than P2,000.00. (Secs. 44[c] and 86[b] R.A. No. 296.)

"We believe, therefore, that the point raised in appellant's motion is an important one which merits serious consideration. As stated, the complaint was filed on July 19, 1948. This case therefore has been pending now for almost 15 years, and throughout the entire proceeding appellant never raised the question of jurisdiction until after receipt of this Court's adverse decision.

"There are three cases decided by the Honorable Supreme Court which may be worthy of consideration in connection with this case, namely: Tyson Tan, et al. vs. Filipinas Compañia de Seguros, et al., G.R. No. L-10096, March 23, 1956; Pindangan Agricultural Co., Inc. vs. Jose P. Dans, etc., et al., G. R. No. L-14591, September 26, 1962; and Alfredo Mon-telibano et al. vs. Bacolod-Murcia Milling Co., Inc., G. R. No. L-15092, September 29, 1962, wherein the Honorable Supreme Court frowned upon the 'undesirable practice' of appellants submitting their case for decision and then accepting the judgment, if favorable, but attacking it for lack of jurisdiction when adverse.

"Considering, however, that the Supreme Court has the 'exclusive' appellate juris-diction over 'all cases in which the juris-diction of any inferior court is in issue' (Sec. 1, Par. 3[3], Judiciary Act of 1948, as amended), we have no choice but to certify, as we hereby do certify, this case to the Supreme Court.

"ACCORDINGLY, pursuant to Section 31 of the Judiciary Act of 1948 as amended, let the record of this case be forwarded to the Supreme Court."

It is an undisputed fact that the action commenced by appellees in the Court of First Instance of Cebu against the Sibunghanoy spouses was for the recovery of the sum of P1,908.00 only - an amount within the original exclusive jurisdiction of inferior courts in accordance with the pro-visions of the Judiciary Act of 1948 which had taken effect about a month prior to the date when the action was commenced. True also is the rule that jurisdiction over the subject matter is conferred upon the courts exclusively by law, and as the lack of it affects the very authority of the court to take cognizance of the case, the objection may be raised at any stage of the proceedings. However, considering the facts and circumstances of the present case - which shall forth-with be set forth - We are of the opinion that the Surety is now barred by laches from invoking this plea at this late hour for the purpose of annulling everything done heretofore in the case with its active participation.

As already stated, the action was commenced in the Court of First Instance of Cebu on July 19, 1948, that is, almost fifteen years before the Surety filed its motion to dismiss on January 12, 1963 raising the question of lack of jurisdiction for the first time.

It must be remembered that although the action, ori-ginally, was exclusively against the Sibunghanoy spouses, the Surety became a quasi-party therein since July 31, 1948 when it filed a counter-bond for the dissolution of the writ of attachment issued by the court of origin (Record on Appeal, pp. 15-19). Since then, it acquired certain rights and assumed specific obligations in connection with the pending case, in accordance with Sections 12 and 17, Rule 57, Rules of Court (Bautista vs. Joaquin 46 Phil. 885; Kimpang & Co. vs. Javier 65 Phil. 170).

Upon the filing of the first motion for execution against the counter-bond the Surety not only filed a written opposition thereto praying for its denial but also asked for an additional affirmative relief - that it be relieved of its liability under the counter-bond upon the grounds relied upon in support of its opposition - lack of jurisdiction of the court a quo not being one of them.

Then, at the hearing on the second motion for execution against the counter-bond, the Surety appeared, through counsel, to ask for time within which to file an answer or opposition thereto. This motion was granted, but instead of such answer or opposition, the Surety filed the motion to dismiss men-tioned heretofore.

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppel in pais, of estoppel by deed or by record, and of estoppel by laches.

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The doctrine of laches or of "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the

question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for, the reason that such a practice can not be tolerated - obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*Pease vs. Rathbun-Jones etc.* 243 U.S. 273, 61 L.Ed. 715, 37 S.Ct. 283; *St. Louis etc. vs. McBride*, 141 U.S. 127, 35 L. Ed. 659). And in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (*supra*) - to the effect that we frown upon the "undesirable practice" of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse -as well as in *Pindañgan etc. vs. Dans et al.*, G. R. L-14591, September 26, 1962; *Montelibano et al., vs. Bacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union etc. vs. the Court of Industrial Relations et al.*, G.R. L-20307, Feb. 26, 1965, and *Mejia vs. Lucas* 100 Phil. p. 277.

The facts of this case show that from the time the Surety became a quasi-party on July 31, 1948, it could have raised the question of the lack of jurisdiction of the Court of First Instance of Cebu to take cognizance of the present action by reason of the sum of money involved which, according to the law then in force, was within the original exclusive jurisdiction of inferior courts. It failed to do so. Instead, at several stages of the proceedings in the court a quo as well as in the Court of Appeals, it invoked the jurisdiction of said courts to obtain affirmative relief and submitted its case for a final adjudication on the merits. It was only after an adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction. Were We to sanction such conduct on its part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.

Coming now to the merits of the appeal: after going over the entire record, We have become persuaded that We can do nothing better than to quote in toto, with approval, the decision rendered by the Court of Appeals on December 11, 1962 as follows:

"In Civil Case No. R-660 of the Court of First Instance of Cebu, which was a suit for collection of a sum of money, a writ of attachment was issued against defendants' properties. The attachment, however, was subsequently discharged under Section 12 of Rule 59 upon the filing by defendants of a bond subscribed by Manila Surety & Fidelity Co., Inc.

"After trial, judgment was rendered in favor of plaintiffs.

"The writ of execution against defendants having been returned totally unsatisfied, plaintiffs moved, under Section 17 of Rule 59, for issuance of writ of execution against Manila Surety & Fidelity Co., Inc. to enforce the obligation of the bond. But the motion was, upon the surety's opposition, denied on the ground that there was 'no showing that a demand had been made by the plaintiffs to the bonding company for payment of the amount due under the judgment' (Record on Appeal, p. 60).

"Hence, plaintiffs made the necessary demand upon the surety for satisfaction of the judgment, and upon the latter's failure to pay the amount due, plaintiffs again filed a motion dated October 31, 1957, for issuance of writ of execution against the surety, with notice of hearing on November 2, 1957. On October 31, 1957, the

surety received copy of said motion and notice of hearing.

"It appears that when the motion was called on November 2, 1957, the surety's counsel asked that he be given time within which to answer the motion, and so an order was issued in open court, as follows:

'As prayed for, Atty. Jose P. Soberano, Jr., counsel for the Manila Surety & Fidelity Co., Inc., Cebu Branch, is given until Wednesday, November 6, 1957, to file his answer to the motion for the issuance of a writ of execution dated October 30, 1957 of the plaintiffs, after which this incident shall be deemed submitted for resolution.

**'SO ORDERED.**

'Given in open court, this 2nd day of November, 1957, at Cebu City, Philippines.

‘(Sgd.) JOSE M. MENDOZA

Judge' (Record on

Appeal, pp. 64-65,

under-scoring ours).

"Since the surety's counsel failed to file any answer or objection within the period given him, the court, on December 7, 1957, issued an order granting plaintiffs' motion for execution against the surety; and on December 12, 1957, the corresponding writ of execution was issued.

"On December 24, 1957, the surety filed a motion to quash the writ of execution on the ground that the same was 'issued without the requirements of Section 17, Rule 59 of the Rules of Court having been complied with,' more specifically, that the same was issued without the required 'summary hearing'. This motion was denied by order of February 10, 1958.

"On February 25, 1958, the surety filed a motion for reconsideration of the above-stated order of denial; which motion was likewise denied by order of March 26, 1958.

"From the above-stated orders of February 10, 1958 and March 26, 1958---denying the surety's motion to quash the writ of execution and motion for reconsideration, respectively---the surety has interposed the appeal on hand.

"The surety insists that the lower court should have granted its motion to quash the writ of execution because the same was issued without the summary hearing required by Section 17 of Rule 59, which reads:

'SEC. 17. When execution returned unsatisfied, recovery had upon bond. ? If the execution be returned unsatisfied in whole or in part, the surety or sureties on any bond given pursuant to the provisions of this rule to secure the payment of the judgment shall become finally charged on such bond, and bound to pay to the plaintiff upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action.' (Underscoring ours)

"Summary hearing is 'not intended to be carried on in the formal manner in which ordinary actions are prosecuted' (83 C.J.S. 792). It is, rather, a procedure by which a question is resolved with dispatch, with the least possible delay, and in preference to ordinary legal and regular judicial proceedings' (Ibid, p. 790). What is essential is that 'the defendant is notified or summoned to appear and is given an opportunity to hear what is urged upon him, and to interpose a defense, after which follows an adjudication of the rights of the parties' (Ibid., pp. 793-794); and as to the extent and latitude of the hearing, the same will naturally lie upon the discretion of the court, depending upon the attending circumstances and the nature of the incident up for

consideration.

"In the case at bar, the surety had been notified of the plaintiffs' motion for execution and of the date when the same would be submitted for consideration. In fact, the surety's counsel was present in court when the motion was called, and it was upon his request that the court a quo gave him a period of four days within which to file an answer. Yet he allowed that period to lapse without filing an answer or objection. The surety cannot now, therefore, complain that it was deprived of its day in court.

"It is argued that the surety's counsel did not file an answer to the motion 'for the simple reason that all its defenses can be set up during the hearing of the motion even if the same are not reduced to writing' (Appellant's brief, p. 4). There is obviously no merit in this pretense because, as stated above, the record will show that when the motion was called, what the surety's counsel did was to ask that he be allowed and given time to file an answer. Moreover, it was stated in the order given in open court upon request of the surety's counsel that after the four-day period within which to file an answer, 'the incident shall be deemed submitted for resolution'; and counsel apparently agreed, as the order was issued upon his instance and he interposed no objection thereto.

"It is also urged that although according to Section 17 of Rule 59, supra, there is no need for a separate action, there must, however, be a separate judgment against the surety in order to hold it liable on the bond (Appellant's Brief, p. 15). Not so, in our opinion. A bond filed for discharge of attachment is, per Section 12 of Rule 59, 'to secure the payment to the plaintiff of any judgment he may recover in the action,' and stands 'in place of the property so released'. Hence, after the judgment for the plaintiff has become executory and the execution is 'returned unsatisfied' (Sec. 17, Rule 59), as in this case, the liability of the bond automatically attaches and, in failure of the surety to satisfy the judgment against the defendant despite demand therefor, writ of execution may issue against the surety to enforce the obligation of the bond."

UPON ALL THE FOREGOING, the orders appealed from are hereby affirmed, with costs against the appellant Manila Surety and Fidelity Company, Inc.

Reyes, J.B.L., (Acting C.J.), Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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