

**REPUBLIC SAVINGS BANK, PLAINTIFF AND APPELLEE, VS. FAR
EASTERN SURETY & INSURANCE CO., INC., DEFENDANT AND
APPELLANT.**

G.R. No. L-14959. August 31, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

For having subscribed a bond to suspend execution pending the appeal of the judgment in ejectment against Salvador Villareal (Civil Case No. 3858 of the Municipal Court of Quezon City), the appellant insurance company was, after proper hearing, ordered to pay. It contends here that it incurred no responsibility on the bond, because the appeal in the said case was never perfected.

The record shows that the judgment rendered on June 8, 1957, directed Salvador Villareal "to vacate the premises at No. 14G-A Pulog Extension, Galas, to restore possession thereof to Republic Savings Bank, plaintiff, and to pay plaintiff corporation P180.00 as back rentals from April 1957 to June 1957 with legal interest, etc." This judgment became final and executory on June 24, 1957, through failure of defendant to appeal within fifteen days (p. 3 appellee's brief, p. 10 Record on Appeal). For reasons that do not appear, the defendant on July 10, 1957, submitted the bond now in question (under sec. 8 of Rule 72) for the purposes of his appeal.

The plaintiff, however, noting that defendant had failed to appeal on time, asked for and got on July 16, 1957, execution of the judgment. Later, on July 25, 1957, it submitted a petition for execution against the bond and bondsmen. Over the surety's objection, the court granted the petition. On appeal to the court of first instance, the order was affirmed. Said that Court:

"* * * The court believes that the office of a supersedeas bond is to stay execution. The parties in this case never seem to deny that the immediate execution of the decision of the lower court has been stayed, and as a matter of fact execution never issued until after the motion of the plaintiff in Civil Case No. 3858 was filed. In other words, it is of the opinion of the Court that because the execution of the judgment was stayed by virtue of the filing of the supersedeas bond, the said bond became liable notwithstanding the non-perfection of the appeal of Salvador Villareal in said Civil Case No. 3858."

It may be true that execution issued only on July 16, 1957, even if the decision had become executory on June 24, 1957. But that was not due to the filing of the supersedeas bond, but due to plaintiff's failure to demand execution. If plaintiff had asked on July 10, 1957 it would undoubtedly have obtained execution, because the judgment was already executory and final. At that time the bond did not and could not legally suspend the execution which it was intended to suspend. So, the bond failed in its purpose; it had no object nor consideration. Therefore, the surety incurred no obligation under it.

Judgment reversed, and surety absolved. No costs.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ.,

concur.

Paredes and Dizon, JJ., took no part.

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