

LEELIN MARKETING CORPORATION, PLAINTIFF-APPELLANT, VS. C & S AGRO DEVELOPMENT COMPANY, MARIO SANTOS & AURELIO CARTAÑO, DEFENDANTS, BELFAST SURETY & INSURANCE CO., INC., BONDSMAN...

G.R. No. L-38971. April 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Is the counterbond put up by a surety company for the discharge of an attachment liable for the money judgment in favor of the judgment creditor? That issue being purely legal, the then Court of Appeals certified the appeal before it to this Tribunal.

This was an action originally for a sum of money filed by plaintiff Leelin Marketing Corp. (LEELIN, for short) against defendants Mario Santos and Aurelio Cartaño doing business under the name and style of C & S Agro Development Company before the Court of First Instance of Camarines Sur. LEELIN procured a writ of preliminary attachment upon its filing of a bond of P12,962.17, the amount of its claim, by virtue of which the merchandise in the stores of defendants in Tabaco and Legazpi, Albay, one panel car and one sedan car were attached. However, upon presentation by defendants of a counterbond executed by Belfast Surety and Insurance Co., Inc., (the Surety, for brevity) in the amount of P20,000.00, and approved by the Trial Court, the attachment was dissolved.

The counterbond provides as follows:

"WHEREFORE, we Mario Santos, Aurelio Cartaño and C & S Development Co., as principals and Belfast Surety & Insurance Co., Inc. of Manila, Philippines, as surety in consideration of the lifting of said attachment hereby jointly and severally bind ourselves in the sum of TWENTY THOUSAND (P20,000.00) PESOS in favor of the plaintiff under the condition that we will pay all costs which may be adjudged to plaintiff and all damages which it may sustain by reason of the attachment, if the same shall finally be adjudged to have been wrongful and without sufficient cause." [1] (Italics supplied)

Defendants having failed to appear for trial, a commissioner appointed by the Court received the evidence. In due course, decision was rendered ordering defendants:

". . . to pay jointly and severally to the plaintiff, Leelin Marketing Corporation, the amounts of P14,020.26 in full payment of their account together with their corresponding interests as of January 15, 1969 with interest at the rate of 12% per annum on the amount of P12,962.17 until fully paid; P3,505.07 as attorney's fees, and P1,312.25 to indemnify plaintiff of the expenses incurred by it in connection with this case and the writ of preliminary attachment secured therein. Without pronouncement as to costs."

The decision having become final and executory, a writ of execution was issued but the same was returned unsatisfied. LEELIN moved to charge the Surety on its counterbond, setting the motion for hearing. The Surety filed an opposition denying all liability for payment of the monetary judgment.

Resolving the motion, the Trial Court "reluctantly" held that the Surety cannot be held liable for the judgment under the terms and conditions set forth in the bond. Said the Court:

"In the spirit prevailing in Section 20, Rule 57, Revised Rules of Court, we believe, the plaintiff should have notified the surety (Belfast Surety & Insurance Co., Inc.) when it presented its evidence during the trial, in the spirit of fairness and to comply with the strict requirements of due process.— A day in Court must be given the Surety before it should be adjudged or held liable under the counterbond. This should have been done by the plaintiff either before trial or before entry of the final judgment, i.e., not later than the date when the judgment becomes final and executory. This is the rule and has been reiterated by our Supreme Court in numerous cases. Plaintiff failed to observe or follow this procedure; accordingly, we cannot hold the surety liable even if the terms and conditions of the bond were differently words as quoted. . . ."[2]

We reverse.

There is an apparent confusion between a bond put up by an attaching creditor for the issuance of writs of attachment covered by Section 4 of Rule 57 of the Rules of Court, and the counterbond given by the adverse party for the discharge of writs of attachment already issued covered by Section 12 of the same Rule 57. It is the bond posted by the attaching creditor under Section 4, Rule 57, in an amount not exceeding its claim, that answers for costs and all damages which may be sustained by the adverse party by reason of the attachment, if the Court shall finally adjudge that the attaching creditor was not entitled thereto. Explicitly, Section 4, Rule 57 provides:

"Sec. 4. Condition of applicant's bond.— The party applying for the order must give a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto."

And, it is the claim for damages on account of illegal attachment that may be awarded only after proper hearing and which shall be included in the final judgment. That claim 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, pursuant to Section 20 of Rule 57 of the Rules of Court, reading:

"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.

....."

On the other hand, a counterbond under Section 12 of Rule 57 of the Rules of Court is filed by the party whose property has been attached, equal to the value of the property attached, in order to secure the payment of any judgment that the attaching creditor may recover in the action. To discharge an attachment upon said counterbond, said Rule explicitly provides:

"Sec. 12. Discharge of attachment upon giving counterbond.— At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counterbond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court

where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. Upon the filing of such counter-bond, copy thereof shall forthwith be served on the attaching creditor or his lawyer. Upon the discharge of an attachment in accordance with the provisions of this section the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become, insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching creditor may apply for a new order of attachment." (Italics ours)

And, when execution against the principal debtor is returned unsatisfied, Section 17 of Rule 57 allows recovery upon the bond as follows:

"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 counterbond given pursuant to the provisions of this rule to secure the payment of the judgment shall become charged on such counter-bond, and bound to pay to the judgment creditor 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." (Italics supplied)

It is thus clear that the cases cited by the Surety requiring notice of hearing before the finality of the judgment in regards the claim of damages have no applicability in the case at bar. The application by the Trial Court of Section 20, Rule 57, is likewise misplaced.

Under Section 17 of Rule 57, in order that the judgment creditor may recover from the Surety on the counterbond, it is necessary (1) that execution be first issued against the principal debtor and that such execution was returned unsatisfied in whole or in part; (2) that the creditor made a demand upon the surety for the satisfaction of the judgment; and (3) the surety be given notice and a summary hearing in the same action as to his liability for the judgment under his counterbond.[3]

In the case at bar, we find that LEELIN had substantially complied with the foregoing requisites. A writ of execution had been issued and had been returned unsatisfied. It had filed a motion to charge the Surety on its counterbond. A notice for the hearing of the motion had been served on the Surety and summary hearing was held.

It must be conceded that there is nothing in the language or terms of the bond executed by the Surety under which it could be held liable for the amount of the judgment. Admittedly, too, LEELIN did not contest the words of the bond but remained silent with respect thereto at the time it was presented. As good faith is presumed, we assume that the parties had committed a mutual mistake believing that its terms correctly reflected the purpose for which it had been filed, that is, to secure the discharge of the writ of attachment. Mutual mistake and good faith having attended the execution of the bond, the reformation of the instrument is in order.[4]

The Surety should be held estopped from denying that the purpose and intent of the bond was for the lifting of the attachment for that would be allowing it to enrich itself by its own bad faith.[5] By the very wording of its bond, the same was issued "in consideration of the lifting of (the) attachment".

A modification of the bond is declared and the provision of section 12 of Rule 57 of the Rules of Court considered read into and embodied in the bond in question. It is not the terms of the bond that control but the provisions of the law requiring the filing of such bond. In statutory or judicial bonds, the rule is "that the statute under which the bond is given shall be read into and considered as a part thereof, and that whatever conditions contrary to law that may be embodied therein will be ruled out and treated as surplusage, the theory being that when a contract of suretyship is entered into pursuant to a statute, the parties are deemed to have had the law in contemplation when

the contract was executed." [6]

WHEREFORE, the Order appealed from is reversed, and the Court of origin is hereby ordered to proceed with the execution against Belfast Surety and Insurance Co., Inc., to the extent of the amount of the counterbond, with costs against said surety company.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

[1] p. 27, Record on Appeal.

[2] pp. 29-30, *ibid*.

[3] *Towers Assurance Corporation vs. Ororama Supermart*, 80 SCRA 262 (1977).

[4] ART. 1361. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed; *De la Cruz vs. Del Pilar*, 95 Phil. 444 (1954).

[5] *De la Cruz vs. Del Pilar*, *supra*.

[6] *De la Cruz vs. Del Pilar*, *supra*; *Anzures vs. Alto Surety & Ins. Co., Inc., et al.*, 92 Phil. 742 (1953).

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