

LUZON SURETY CO., INC., PETITIONER, VS. RAFAEL P. GUERRERO, SR., PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL AND HON. DEMETRIO VINSON IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST ...

G. R. No. L-20705. October 22, 1966

Ponente: DIZON, J.

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DIZON, J.:

Before Us is a motion for reconsideration filed by respondent Rafael P. Guerrero Sr. praying "that the decision of this Honorable Court dated June 20, 1966, be reconsidered in the sense that the lower court be ordered to receive the evidence and/or application for damages of the respondent Rafael P. Guerrero against the petitioner Luzon Surety Co. Inc., or in the alternative for the sake of Justice and equity to modify the decision of June 20, 1966 exempting the respondent Rafael P. Guerrero from costs".

Our decision in this case granting the writ of certiorari prayed for in the petition filed by Luzon Surety Company Inc. is predicated upon the following considerations: that the bond filed by petitioner was an injunction bond liable - up to the amount of P600.00 - for such damages as the party enjoined may suffer by reason of the writ of preliminary injunction issued against him, should that writ be subsequently declared to have been issued without sufficient cause; that to determine the liability of the surety upon such bond, the aggrieved party must make a claim for damages, and that the same should be set for hearing with previous notice to both parties.

In the present case, the respondent court, on October 29, 1962, not only dismissed the petition for relief filed by the Navarro spouses, who were defendants in the ejectment case filed in the Municipal Court of Bacolod City, but also held the indemnity bond filed by petitioner liable for such damages as respondent Guerrero might have suffered by reason of the injunction. Then on December 8 of the same year, resolving an ex-parte motion filed by Guerrero, said court issued an order for the issuance of a writ of execution against the bond filed by petitioner herein. Damages caused through the improvident issuance of a writ of preliminary injunction - as is well known - may not be recovered in a separate action but must be claimed in the same proceeding where the injunction bond was filed. In the case at bar, the allegations and prayer for relief contained in the motion to dismiss filed by Guerrero on August 23, 1962 and in his ex-parte motion for execution dated December 6, 1962 (Annexes "C" and "E" respectively, of the petition) comply substantially with the requirement concerning the filing of a claim, but no hearing in connection therewith was held before the writ of execution complained of was issued.

IN CONSONANCE WITH THE FOREGOING, the motion for reconsideration is granted to the extent that the lower court is directed to hold the required hearing in relation to such claim for damages and afterwards proceed to determine the same. Without cost

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

Barrera, J., on leave.

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