

ASIAN SURETY & INSURANCE CO., INC., PETITIONER, VS. HON. RAMON O. NOLASCO, PRESIDING JUDGE, BRANCH IX, COURT OF FIRST INSTANCE OF MANILA AND JOSE SAN AGUSTIN, SHERIFF OF THE CI...

G.R. No. L-24709. October 20, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari and/or prohibition with preliminary injunction, praying that the herein respondents Hon. Ramon O. Nolasco, Presiding Judge, Branch IX, Court of First Instance of Manila, Jose San Agustin, Sheriff of the City of Manila, and Ramon C. Dy, refrain from enforcing the orders issued by said respondent Judge on June 3, 1965 and June 29, 1965 and after due notice and hearing, a writ of prohibition issue commanding the respondents to desist absolutely and perpetually from enforcing the judgment in Civil Case No. 54065 of the Court of First Instance of Manila against petitioners counterbond filed therein.

The facts are:

1) On May 28, 1963, the private respondent Ramon C. Dy filed a complaint with the Court of First Instance of Manila, assigned to Branch IX, and docketed as Civil Case No. 54065, entitled "Ramon C. Dy vs. Jovita Peraldo, doing business under the firm name of 'Nation's Pet Shop & Tin-smith' and George Uy King, doing business under the firm name of 'George Tinsmith Shop'."

The suit was to collect from the defendants the sum of P10,000.00 on a promissory note plus P500.00 for and as attorney's fees and the costs of the suit;[1]

2) On May 29, 1963, upon motion of Ramon C. Dy, the respondent Judge Ramon O. Nolasco issued an order of attachment against the defendants therein, Jovita Peraldo and George Uy King. On the strength of this order, the herein respondent Sheriff of Manila, through his deputy Simon Castillo, attached certain properties belonging to defendants Jovita Peraldo and George Uy King;[2]

3) On May 31, 1963, the herein petitioner Asian Surety & Insurance Co., Inc. executed a counterbond for the dissolution of the aforesaid writ of attachment, binding itself jointly and severally with therein defendants Jovita Peraldo and George Uy King in the sum of Ten Thousand Five Hundred Pesos (P10,500.00), Philippine Currency, under the following terms:

" . . . that in case the plaintiff recover judgment in the action the defendant will on demand redeliver the attached property so released to the officer of the Court to be applied to the payment of the judgment or in default thereof that the defendant and surety will on demand pay to the plaintiff the full value of the property released."

By virtue of the aforementioned counterbond, respondent Judge issued an order on June 8, 1963, discharging the attachment.[3]

4) On May 11, 1964, after hearing, respondent Judge Ramon O. Nolasco rendered his decision in Civil Case No. 54065, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the said defendants, jointly and severally, to pay the plaintiff the sum of P10,000.00, with legal rate of interest from the date of the filing of the complaint until fully paid, together with the sum of P500.00 as and for attorney's fees, and to pay the costs of these proceedings.

SO ORDERED." [4]

5) Upon the aforesaid decision becoming final and executory, a writ of execution was issued. The writ was returned not satisfied because the sheriff could not locate the defendants' place of business or their residence in the City of Manila and could not locate after due diligence any property of said defendants which may be levied upon to satisfy the execution. [5]

6) On November 26, 1964, the herein respondent Ramon C. Dy filed a motion with the court a quo for the execution of the aforementioned decision or judgment against the here-in petitioner's counterbond, which motion was opposed by petitioner Asian Surety & Insurance Co., Inc. on the ground that the property attached and released on its counterbond was then in custodia legis in another pending case and, therefore, could not be redelivered to the officer of the court in accordance with its undertaking. [6]

7) On February 23, 1965, the herein private respondent Ramon C. Dy filed a reply to petitioner's opposition alleging that the property released by the latter's counterbond was different from that under custodia legis in another case; [7]

8) On April 20, 1965, the respondent Judge issued an order setting for hearing the aforementioned motion of private respondent Ramon C. Dy for execution of the judgment against the counterbond in order to determine "the existence and the contents of the Sheriff's Return allegedly executed by Deputy Sheriff Simon Castillo in relation to the order of attachment issued in the case." [8]

9) On June 3, 1965, respondent Judge Nolasco issued an order granting the motion for execution of petitioner's counterbond. Hence on June 15, 1965 the herein petitioner filed an "Urgent Motion for Reconsideration" of said order on the ground that it cannot be made liable on its counter-bond unless the award be made after notice and hearing and before the final entry of judgment in the case, citing Section 20, Rule 57 of the Rules of Court. [9]

10) On June 29, 1965, respondent Judge Ramon O. Nolasco, issued an order finding no valid reason to disturb his order of June 3, 1965, considering that the order of execution in question was issued under the provisions of Section 17 and not Section 20 of Rule 57 of the Rules of Court. The urgent motion for reconsideration was denied and his order of June 17, 1965 suspending the writ of execution against the Asian Surety & Insurance Co., Inc. was set aside. Hence, this petition for certiorari and/or prohibition with preliminary injunction. [10]

Assailing the orders of June 3, 1965 and June 29, 1965, the petitioner Asian Surety & Insurance Co. Inc. avers that the court a quo acted without or in excess of its jurisdiction, or with grave abuse of discretion in holding that petitioner is liable beyond the terms of its undertaking on the counterbond in question.

Petitioner contends that under the terms of the surety contract, its undertaking is that, in the event that the plaintiff in the action recovers judgment against the defendants therein and the latter fail to deliver the property so released to the officer of the court, jointly and severally, it "will on demand pay to the plaintiff the full value of the property so released." It insists that its undertaking under the counterbond is to pay solidarily to the plaintiff, Ramon C. Dy, the full value of the property released under the counterbond. By the order of respondent Judge dated June 3, 1965, the counterbond is made liable for the payment of the judgment in the sum of P10,000.00,

with legal interest from the filing of the complaint until fully paid, together with the sum of P500.00 as and for attorney's fees and the costs of the litigation which is, according to herein petitioner, contrary to the terms of its undertaking. Petitioner submits that since a surety on any bond, whether judicial or otherwise, cannot be held liable beyond the terms of its undertaking, this order of respondent Judge was an act beyond or without jurisdiction, or in grave abuse of discretion. To support its stand, petitioner cited Art. 1305 of the Civil Code of the Philippines and the rulings in Gerardo vs. Plari-del Surety & Ins. Co., Inc., G. R. No. L-7807, Oct. 31, 1956 and Santos and Frias vs. Hon. Mejia, et al., G. R. No. L-6383, Dec. 29, 1953, 53 O. G. 3770.

Petitioner contends that the stipulation in the counterbond is not that it is to "secure the payment of any judgment that the attaching creditor may recover in the action" as required by Section 17 of Rule 57 of the Rules of Court and insisted on by the herein respondents, but that it bound itself jointly and severally with the defendants in the action to redeliver the released property to the officer of the court to be applied to the payment of the judgment or in default thereof pay on demand to the plaintiff the full value of the property released; and that the bond filed by it is not one contemplated under Section 12 of Rule 57 of the Rules of Court but since the same was approved by respondent Judge and the other party in whose favor it was executed did not object, it is therefore accountable only according to the terms of its undertaking, citing Santos and Frias vs. Hon. Mejia, et al., G. R. No. L-6383, Dec. 29, 1953, 53 O.G. 3770.

With respect to the matter of notice and hearing, petitioner claims that there must be prior notice and hearing before a surety can be held liable under the bond. It alleges that it was not given an opportunity to be heard before its counter-bond was charged.

Petitioner Asian Surety & Insurance Co. contends that respondent Judge had assumed erroneously that under Section 17, Rule 57 of the Rules of Court, there is no need to file an application against the counterbond before the trial or before appeal is perfected or before judgment becomes executory as provided for under Section 20 of the same Rule 57 and hence, respondent Judge's order holding the counter-bond liable under Section 17 of said Rule 57 is an abuse of discretion. It is the stand of petitioner herein that under the terms of its undertaking, it assumes only the payment of the "full value of the property released" and therefore takes it out of the "ambit" of said Section 17 and brings it within the contemplation of Section 20 of the same Rule 57. Considering that the pre-requisite of applying against the counterbond before appeal had been perfected or before the judgment becomes executory as provided for under said Section 20 had not been complied with, the petitioner maintains that the respondent Judge committed a grave abuse of discretion, or acted beyond or without jurisdiction in holding the counterbond liable for the payment of the judgment.[11]

The herein respondents countered that the real issue is not whether a bonding company may be or may not be held liable beyond the terms of its undertaking but what the herein petitioner, under the terms of the bond in question, undertook to do, considering the Rules under which the bond was issued, the circumstances of its issuance and the terms of the undertaking pursuant to Section 12, Rule 57 of the Rules of Court.

The respondents argue that:

"The Rules simply require a bond 'in an amount equal to the value of the property attached.' Defendants and petitioner could have proved that the value of the property attached is so much. Without asking for the determination of the value of the property attached, defendants and petitioner filed the bond in question in the amount of P10,500.00. Can it not be said that defendants and petitioner voluntarily fixed the value of the property attached at P10,500.00?"[12]

On the question of notice and hearing before the surety may be held liable under its bond, respondents herein distinguish the provisions of Section 20 of Rule 57 and Section 17 of the same Rule.

Respondents say that Section 20 deals with the pro-cedure for claiming damages on a bond filed to secure the issuance of a writ of preliminary attachment whereas Section 17 provides for the procedure in executing a bond filed to lift an attachment. Hence, Section 17 of Rule 57 applies in the present case and not Section 20 of the same Rule as con-tended by the petitioner.[13]

Further, respondents aver:

"Petitioner was duly served with a copy of the amended and supplemental motion for execution of counterbond filed by the plaintiff (Annex "G" of the petition). Petitioner duly filed its opposition (Annex "H" of the petition). Pe-titioner was likewise served with a copy of plaintiff's reply (Annex "I" of the petition), and petitioner filed its rejoinder (Annex "J" of the petition). Petitioner was like-wise served with a copy of the order of respondent Judge (Annex "K" of the petition) setting case for hearing on May 20, 1965 at 8:30 a.m. before the Deputy Clerk of Court, who was commissioned to receive evidence, for the parties to prove the existence and the contents of the Sheriff's re-turn . . ."

"Neither petitioner nor its counsel appeared at the hearing of May 20, 1965. Hence, it should not now be heard to question the ruling of the Judge based on the evidence presented therein by interposing an absolution that it was not given the opportunity to be heard."[14]

From the foregoing, it appears clear that there are only two contentious issues in this case:

- 1) Is petitioner Asian Surety & Insurance Co., Inc. liable on its counterbond to pay the amount of P10,500.00?
- 2) Is prior notice and hearing essential to hold the surety liable under its bond?

We shall first determine the question of whether or not there had been notice to the petitioner and hearing in the present case.

In Rule 57, two separate bonds are mentioned. Section 17 speaks of a counterbond filed and executed in behalf of the defendant in favor of the plaintiff to secure payment of the judgment which plaintiff may obtain should the exe-cution be returned unsatisfied while Section 20 provides for the procedure to recover on a bond executed by the plain-tiff to secure the payment of damages that the defendant may suffer by reason of the levy on his property under the writ of attachment. The counterbond filed to lift the writ of attachment executed by the herein plaintiff Asian Surety & Insurance Co., Inc., for and in behalf of the defendants below and in favor of the therein plaintiff Ramon C. Dy is clearly the bond contemplated under Section 17 of said Rule 57 which reads:

"SEC. 17. When execution returned unsatisfied, recovery had upon bond. If the execution be returned unsa-tisfied 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 counterbond, 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."

This section allows the counterbond to be charged only after notice and hearing, summary though the latter might be.

This Court has ruled that the requirement of notice and hearing is substantially complied with from the time the surety was allowed to move for the quashing of the writ of execution and for the cancellation of its obligation.[15] In the present case, the petitioner Asian Surety & Insurance Co. was served with a copy of the amended and supplemental motion for execution of the counter-bond and had in fact filed an opposition thereto. Petitioner was likewise served with a copy of the order of respondent court setting the date for hearing to receive evidence of the existence and contents of the Sheriff's Return with respect to the order of execution to enforce the court's decision

on the principal action. Both said surety and the defendants therein, according to the records of the case, failed to attend. We are satisfied that, in accordance with the rule laid down in *Luzon Steel Corp. vs. Sia*, supra, the requisite of notice and summary hearing had substantially been complied with and, therefore, the here-in petitioner cannot be heard to complain that it had not been notified and given its day in court.

The submission of the petitioner that there being no evidence as to the full value of the property attached, it is not liable on its counterbond has no merit.

The petitioner surety has the burden to prove that the value of the property attached is less than P10,500.00. When the petitioner executed the counterbond in the amount of P10,500.00, it is presumed that the full value of the property attached was P10,500.00. The petitioner cannot now complain that there was no evidence on the full value of the property attached. Precisely, under Section 12, Rule 57, Revised Rules of Court, the judge shall, after hearing, order the discharge of the attachment if 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 re-cover in the action. The defendants in Civil Case No. 54065 and the petitioner surety must have considered the full value of the property attached when they filed the bend in the amount of P10,500.00. The defendants and the petitioner would not have filed a counterbond in the said amount if the value of the property attached were less.

In view of the foregoing, the respondent Judge did not err in holding the petitioner surety liable for the full amount of the counterbond of P10,500.00 which covers the principal of P10,000.00 and the attorney's fees in the amount of P500.00.

Anent the issue of interest, this Court has ruled that the surety is liable for interest on the principal obligation although that would increase the liability of the surety to more than the maximum of its undertaking under the bond.[16] Citing the rulings of this Court in *Tagawa vs. Aldanese*, 43 Phil. 852; and *Plaridel Surety & Insurance Co., vs. P. L. Galang Machinery Co.*, 100 Phil. 679, 682, We held:

"If a surety upon demand fails to pay, he can be held liable for interest, even if in thus paying, the liability becomes more than that in the principal obligation. The increased liability is not because of the contract but because of the default and the necessity of judicial collection."

It is the holding of this Court that if a surety, upon demand, fails to pay, he can be held liable for interest, even if in thus paying, the liability becomes more than the principal obligation. The increased liability is not because of the contract but because of the default. In the present case, the Asian Surety & Insurance Co., Inc., petitioner herein, is liable for interest only from the time demand was made upon it until the principal obligation is fully paid.

The petitioner, however, shall not be liable to pay costs.

WHEREFORE, the orders of June 3, 1965 and June 29, 1965 are hereby affirmed but the amount of P10,500.00 shall bear legal interest only from the date of the receipt by the petitioner, Asian Surety & Insurance Co., Inc., of the order of June 3, 1965 until the said amount is fully paid, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

[1] Petition, p. 2, Rollo, pp. 1-2.

- [2] Ibid., p. 2.
- [3] Ibid., p. 3.
- [4] Ibid., Annex "D", Rollo, p. 26.
- [5] Ibid., p. 4, Annex "E", Rollo, p. 33.
- [6] Ibid., p. 4, Annexes "F" and "H", Rollo, pp. 34 and 39, respectively.
- [7] Ibid., pp. 4-5.
- [8] Ibid., p. 5, Annex "K", Rollo, pp. 53-55.
- [9] Ibid., pp. 5-6.
- [10] Ibid., p. 7, Annex "P", Rollo, p. 78.
- [11] Ibid., pp. 7-19.
- [12] Reply Memorandum for the Respondents, p. 3, Rollo, p. 153.
- [13] Ibid., pp. 6-7.
- [14] Ibid., p. 7.
- [15] Luzon Steel Corp. vs. Sia, L-26549, May 15, 1969, 28 SCRA 58.
- [16] Philippine National Bank vs. Luzon Surety Co., Inc., November 28, 1975, 68 SCRA 207.

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