

ETHEL CASE AND MINNA NANTZ, PETITIONERS, vs. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF MANILA, AND FELIPE F. CRUZ, RESPONDENTS.

G.R. No. L-832. October 14, 1946

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for a writ of certiorari to set "aside the order issued by respondent judge denying the motion for delivery of the property to petitioners" and to direct "said judge to order the delivery of the property to the petitioners in accordance with Rule 62 of the New Rules of Court."

It appears that the herein petitioners are plaintiffs in civil case No. 55 of the Court of First Instance of Manila, entitled Ethel Case vs. Felipe F. Cruz, for the recovery of a truck. On July 12, 1946, petitioners, as such plaintiffs, applied for a writ of seizure and filed a bond of P20,000 under the provisions of section 5 and 6, Rule 62, of the Rules of Court. The order prayed for was issued by Judge Fernando Jugo and was carried out by the sheriff on July 14. On the 17th, the defendant, one of the respondents herein., through his attorney, filed an ex parte motion for the return of the truck and filed a counter bond of P20,000. Simultaneously, this attorney gave a copy of the counterbond to the sheriff to be served on the plaintiffs or their attorney.

According to respondents' answer in the present prodeeding, on the aforesaid date the deputy sheriff, Simeon Serdenia, prepared the necessary papers for the return of the property to Felipe F. Cruz. At that time, the petitioners' counsel, Attorney Benedicto G. Balderrama, happened to be in the sheriff's office and was informed by Serdenia of the filing of the counterbond and asked if he had any objection to its sufficiency, to which Atty. Balderrama answered no, as the counterbond had been executed by a surety company. It is also alleged that Serdenia was not able to deliver a copy of the oounterbond to Atty. Balderrama because the latter left the sheriff's office before the other necessary papers and the "diligencia" were completed. It is finally alleged that on the following day, July 18th, Serdenia fell ill with the result that copy of the counterbond was not furnished to the petitioners or their attorney until he recovered from his illness a few days later. Atty. Balderrama them refused to receive the copy on the ground that the five-day period had already elapsed.

These allegations are denied by the petitioners. It was nevertheless admitted by Atty. Balderrama in the course of the argument before this court that he was really present on the oocasion and on the date above stated in the sheriff's office. We are inclined to believe, in the nature of things, that he at least learned of the filing of the oounterbond by the defendant there and then.

Sections 5 and 6, Rule 62, of the Rules of Court, read as follows:

"SEC. 5. Return of property.—If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he, does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property as

stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered, against the defendant, and by serving a copy of such bond on the plaintiff or his attorney.

"SEC. 6. Disposition of property by officer.—If within five days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided In the last preceding section; or if the defendant so objects, and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant."

According to these provisions, if the defendant in a case of replevin wants to have the property returned to him, he must put up a bond in double the amount of the chattel and furnish the plaintiff with a copy of the undertaking within five days from the date the sheriff took possession of the property. Both requirements, in our opinion, are mandatory. The furnishing of a copy of the counterbond has to be accomplished within the prescribed period if the plaintiff is to have an opportunity to contest the redelivery of the property sought by the defendant,

However, there was substantial compliance with the last requirement. Since the sole purpose of furnishing a copy or the counterbond is to enable the plaintiff to see if the bond is in the prescribed form and for the right amount and to resist the return of the property to

the defendant if it is not, that opportunity was afforded the petitioners to the fullest extent when their attorney was shown in the sheriff's office the defendant's counterbond. After the plaintiffs' attorney read or saw the counterbond, service of a copy thereof on him became a purposeless, unnecessary formality. There is no reason why the maxim, "Equity regards substance rather than form," should not hold good here.

The defendant took adequate steps to comply with the above-quoted provisions of the Rules of Court. He or his attorney was not expected personally to serve a copy of the counterbond on the plaintiffs or their attorney. If he is not; if, in other words, service might be effected through others, no more suitable person could have been selected than the sheriff, the officer of the court whose chief function it is, among others, to serve pleadings and notices and who, above all had the property in litigation in custody. That the sheriff did not deliver the copy of the counterbond intended for the plaintiffs or their attorney through an unavoidable circumstance, or even through negligence, should not adversely affect the defendant under the circumstances of this case. If it be said that the fault of an agent is imputable to his principal, it should be remembered that this principle is applicable to cases where actual damage has been suffered, in which event the principal would have to bear the loss and other consequences; but it should not apply to cases where the fault consists of purely technical harmless non-observance of a rule of practice or procedure which has not injured or misled any one or deprived the court of its jurisdiction.

The circumstance that the plaintiffs' attorney from all appearances purposely avoided service of a copy of the defendant's counterbond by leaving the sheriff's office while the sheriff was preparing the papers which were to be handed to him, deserves special attention. This is the tenor of the allegations in paragraphs 6 and 7 of the respondents answer which, unlike the allegations in paragraph 4 and 5, have not been specifically denied. Such conduct of the plaintiffs' attorney in itself affords sufficient ground for denying the petition. The plaintiffs have not come with very clean hands. They had a greater share of the blame than the defendant for the omission on which they predicate their prayer for relief.

The outstanding truth is that the defendant's counterbond was unassailable. The amount was ample and the surety thereon solvent. A loophole had to be sought somewhere else and the plaintiffs found an ally in the sheriff's

illness.

But we refuse to come to the aid of an unmeritorious cause. Lapses in the literal observance of a rule of procedure will be overlooked when they do not involve public polioy, when they arose from an honest mistake or unforeseen aoident, when they have not prejudiced the adverse party and have not deprived the court of its authority. Conceived in the beat traditions of practical and moral justice and common sense, the Rules of Court frown upon hair-splitting technicalities that do not square with their liberal tendency and with the ends of justice (section 2, Rule 1), unless something in the nature of the factors just stated intervenes. This should be the case especially where, as here, the omission or fault complained of could have been prevented by the petitioners if they had adopted the norm of practice expected of men of good intentions.

The petition is denied with costs against the petitioners.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, and Padilla, JJ., concur.

CONCURRING

HILADO, J.:

I concur. In voting for the denial of the petition and in concurring in the foregoing decision, with particular reference to the facts on which its Conclusion is based, I had to act in view of the fact that petitioner submitted this case for decision upon his petition, the answer of respondents, and his reply (he entitled it "motion") thereto, without either party offering any evidence in support of his respective allegations and without said petitioner giving the opposing party an opportunity to introduce evidence.

Under the doctrine laid down in *Evangelista vs. de la Rosa* (76 Phil., 115), the herein petitioner must be taken to have submitted and rested his petition on the material and relevant allegations of the opposing party taken together with such of his own as are admitted therein. One of those allegations was that petitioner's attorney actually saw the counterbond filed by respondent Cruz in the sheriff's office on July 17, 1946, only three days after the sheriff took possession of the truck.

With this explanation of my vote, I concur fully in the foregoing decision.

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