

**DONALD A. ROCCO, PLAINTIFF, VS. MORTON MEADS, DEFENDANT
AND APPELLEE, PLARIDEL SURETY & INSURANCE CO.,
BONDSMAN AND APPELLANT.***G.R. No. L-7550. April 29, 1955*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Manila approving the taxation of costs in favor of defendant. The case was certified to this Court by the Court of Appeals for the reason that only a question of law is involved in this appeal.

On March 11, 1948, plaintiff herein brought a civil action in the Court of First Instance of Manila to recover damages alleged to have been caused by defendant to plaintiff in instituting a criminal action for estafa against plaintiff, which criminal action was dismissed. On July 13, 1948, he secured an order for the attachment of defendant's properties, filing a bond for the issuance of the said writ executed by the Plaridel Surety and Insurance Company, appellant in this proceeding. The properties of the defendant were attached, but upon defendant's presenting a counterbond, the order of attachment was lifted. The defendant then filed an answer containing a counterclaim for P15,000 as damages alleged to have been occasioned to him by the filing of the complaint and the attachment of his properties. He also asked for the attachment of the plaintiff's properties, which the court granted on April 6, 1949 and which was carried out by the sheriff. The defendant sought to have the properties attached sold but the petition was denied upon opposition of the plaintiff. The case was tried and on April 18, 1949 the court entered judgment dismissing the complaint on the ground that plaintiff has not proven his cause of action. Instead it allowed defendant to recover the following damages on his counterclaim:

P125.55 as premium for the counterbond to lift the order of attachment;
P620.00 for payment of guards detailed by the Sheriff's Office;
P500.00 for attorney's fees; and
P5,000.00 for consequential damages for inability of defendant to use the transportation equipment attached.

Against this judgment, the case was appealed by the plaintiff to the Court of Appeals and this Court affirmed the judgment dismissing the complaint but it modified the amount of damages that the defendant was allowed to recover on his counterclaim. The modification consisted in the elimination of the items of P125.55, P500.00 and P5,000, the last as consequential damages. When the judgment of the Court of Appeals became final and upon the case being returned to the Court of First Instance for the execution of the judgment, the clerk of court made a taxation of the costs, as follows:

"1. Sheriff's guards fees

P7,840.00

2. Premium on Bond for a Writ of Attachment

205.75

3. Other Sheriff's fees, as per receipts attached

18.50

Total.....

P8,064.25

Opposition thereto was filed before the Court of First Instance, but this opposition was denied and the court approved the said taxation. So execution was issued and upon the return thereof unsatisfied in part, motion was presented against the Plaridel Surety and Insurance Company to compel it to pay the costs. The opposition is based on two grounds, namely, that the bondsman is not liable for the satisfaction of the judgment or any deficiency thereof, and that its bond is not answerable for the levying of the attachment by the defendant of plaintiff's properties. The court overruled this opposition, holding that the judgment of the Court of Appeals awarding costs to the defendant, and the sheriff's fees for services during the attachment of the plaintiff's properties are recoverable as part of such costs, citing in support thereof the case of Macondray & Co., Inc. vs. Bernabe and Ferrer, 67 Phil. 658.

The above facts present for our consideration this legal question: Is plaintiff's bond on attachment liable for the sheriff's fees for guarding plaintiff's properties attached by defendant upon his counterclaim against the plaintiff? The claim of the surety on the bond, now appellant in this Court, is that the bond is not responsible therefor under Section 4 of Rule 59, whereas the defendant contends that the said fees are recoverable as costs against the bond on attachment.

It is to be noted at the outset that the liability of the plaintiff for the costs taxed in this case is not in issue; what is in issue is the supposed liability of the plaintiff's attachment bond for said costs, after the execution therefor had been returned unsatisfied. The liability of the plaintiff's bond in attachment is defined in Section 4 of Rule 59, as follows:

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

It is clear from the above provision that the responsibility of the bondsman arises only "if the court shall finally adjudge that the plaintiff was not entitled thereto." According to Chief Justice Moran, the liability attaches if "the plaintiff is . not entitled to the attachment because the requirements entitling him to the writ are wanting," or "if the plaintiff has no right to the attachment because the facts stated in his affidavit, or some of them, are untrue." (II Moran, Comments on the Rules of Court, 1952 ed., p. 21). But there is no finding in the decision of the court a quo, or in that of the Court of Appeals, that the plaintiff was not entitled to the attachment. With out a finding to this effect, no liability can be imposed upon the bondsman, because his liability can not extend beyond that which the law has fixed for him. The court a quo evidently assumed that in case of costs, not damages, the bond is responsible if the party who furnished it is liable, but this is incorrect because the clause "if the court shall finally adjudge that the plaintiff was not entitled thereto," which is the foundation stone on which the bondsman's liability is based, applies both to damages and to costs.

The case of Macondray & Co. vs. Bernabe and Ferrer, *supra*, cited by the court a quo as authority for ordering the execution against appellant bondsman, refers to the costs or expenses incurred by a plaintiff in enforcing his legitimate claim or credit against the defendant. The liability of a defendant for costs for all the processes that the

plaintiff utilizes or avails of to enforce his legitimate claim or credit against defendant is justified. But the case cited is not applicable to the case at bar for the following reasons: In the first place, the costs in that case (Macondray & Co. vs. Bernabe and Ferrer) were being enforced against the defendant himself, whereas in the case at bar, the payment of the costs is being enforced not against a party (plaintiff) but against his bondsman, whose responsibility is limited to the terms and conditions of the bond. In the second place, the issuance of the attachment writ in this case was not found by the court to have been unlawful or without cause; there is no finding of fact that plaintiff was not entitled to the attachment prayed for.

There is another reason why the bondsman, appellant in this case, can not be held responsible for costs sought to be enforced by execution of the bond. These costs represent the expenses that the defendant himself had incurred to enforce his counterclaim, which was dismissed. They were not costs sustained by the defendant by reason of the attachment within the meaning of Section 4 of Rule 59, above-quoted. The phrase "by reason of the attachment" in this section applies to the costs as well as to the damages. This construction is supported by the punctuation. There is also no justification for making the bondsman on plaintiff's attachment responsible for the costs that may be awarded defendant, because such costs did not arise by reason of the attachment obtained by plaintiff's bond. When a surety on the attachment bond executes the bond therefor, he does not guarantee that the plaintiff's cause of action is meritorious and covenant that he will be responsible for all the costs adjudged against his principal in case the action fails. It is unreasonable to extend the responsibility that the bondsman has assumed to any and all costs arising in the proceedings, especially those not arising from the attachment secured by this bond.

"Liability on the bond is contractual in nature, and is ordinarily restricted to the obligations expressly assumed therein.

"Liability on an attachment bond is created by, and rests on, its stipulations. The obligor has a right to stand on the very terms of his contract, and his liability will not be extended beyond the fair import of the words used; his liability is one not to be extended by implication, and it will not be inferred that he has agreed to do more than that which is fairly expressed in the bond; * * *." (7 CJS 342)

His liability should be limited to those which arise by virtue or in connection with the attachment, and no more.

In connection with the motion to dismiss the appeal, we note from the record that a similar one was presented to the Court of Appeals before the briefs were filed and the jurisdiction of this Court of the case became apparent, and said court denied the same.

This denial is binding on us as it was made while the Court of Appeals still had jurisdiction of the case and the latter was pending therein.

For the foregoing considerations, the order of execution against the appellant Plaridel Surety & Insurance Company for the payment of the costs, subject of the appeal, is hereby reversed. With costs of the appeal against defendant-appellee Morton Meads.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.

Order reversed.

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