

**PLARIDEL SURETY & INSURANCE COMPANY, PETITIONER, VS.
HON. W. DE LOS ANGELES, SIMEON BIGLANG-AWA, TOMAS GALVEZ,
AND CITY SHERIFF OF QUEZON CITY, RESPONDENTS.**

G.R. No. L-25550. July 31, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Certiorari proceedings to annul certain orders of the Court of First Instance of Rizal, Quezon City Branch. IV, in its Civil Case No. Q-1317.

It appears that on July 9, 1954, Tomas Galvez, one of the herein respondents, filed an action for replevin in the then municipal court of Quezon City for the recovery of nine carabaos against Simeon Biglangawa. On the same date, the herein petitioner, Plaridel Surety & Insurance Company, at the instance of the plaintiff, executed a bond to answer for the return of the personal properties (carabaos) to the defendant, if the return thereof be adjudged, and for the payment of such sums as may in the cause be recovered against the plaintiff, and costs of suit.[1]

After trial, the said municipal court rendered judgment in favor of the plaintiff and against Simeon Biglangawa, declaring the former as the lawful owner of the carabaos in dispute. On appeal to the Court of First Instance, the judgment was reversed and Biglangawa was declared the owner of the carabaos. The plaintiff again appealed to the Court of Appeals but failed, for on April 24, 1964, a decision was rendered by that court affirming that of the Court of First Instance.

Almost a year after promulgation of the Court of Appeals decision, or on March 1, 1965, Biglangawa filed with the Court of First Instance, a motion for execution of the replevin bond posted by the herein petitioner surety in favor of Galvez, and on June 8, 1965, the respondent judge issued the following order:

"It appearing from the evidence presented by the defendant that the value of the carabao recovered from the plaintiff by the Sheriff and returned to said defendant is P550.00 and considering that same is supported by Exh. "A", which is the Deed of Absolute Sale covering the carabaos stated above, the Court hereby orders, in accordance with the order of May 31, 1965, that the amount of P550.00 be deducted from the Replevin Bond in the amount of P2,000.00 and let the corresponding writ of execution be issued."

The herein petitioner filed a motion for reconsideration and/or to quash the writ of execution issued in pursuance to the above order, on the ground that the same was improper, irregular, illegal and void, having been issued contrary to Section 10, Rule 60 of the new Rules of Court, inasmuch as there had been no application for damages made by Biglangawa against the bond; and that, more-over, petitioner had never been impleaded as a party defendant in the complaint. Apparently, this motion was denied when on October 11, 1965, the respondent judge issued another order affirming the order of June 8, 1965. Hence, this petition.

Upon the petitioner's posting a bond in the amount of P1,000.00, a writ of preliminary injunction, as prayed for, was issued shortly after the filing of the petition, restraining the respondents from, enforcing the orders above

mentioned.

We find the petition to be meritorious.

In issuing the disputed orders, the lower court, undoubtedly, has overlooked the provision of Section 10, Rule 60[2] governing the procedure for the enforcement of the surety's liability under a bond for delivery of personal property, which provides:

"Sec. 10. Judgment to include recover against sureties.- The amount, if any, to be awarded to either party upon any bond filed by the other in accordance with the provisions, of this rule, shall be Claimed, ascer-tained, and granted under the same procedure as prescribed in section 20 of Rule 57."

The procedure referred to under Rule 57[3] requires that:

"x x x such damages may be award-ed only upon application and after pro-per hearing and shall be included in the final judgment. The application must be filed before the trial or be-fore 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 amount thereof." (Underscoring ours)

This Court has made a paraphrase of these provisions in *People's Surety & Insurance Co., Inc. vs. Aragon, etc. et al.*,[4] thus:

"x x x in order to recover on a replevin bond, the following requisites must be observed:

"1. There must be an application showing the right to damages and the amount thereof;

"2. Notice of the application for damages must be given to the plaintiff and his surety;

"3. There must be a hearing in case the application is opposed; and

"4. Any award for damages must be included in the judgment of the court."

Even in earlier cases,[5] it has consistently been ruled that the surety may only be held liable if, before judgment becomes final, an order against the surety is entered after a hearing with notice to the surety.

While respondents do not deny the non-inclusion of the surety as defendant in the replevin suit, they do assert that the said surety, anyway, was notified and afforded the opportunity and time within which to oppose the motion for execution upon the bond executed by it. This notification, however, which was made after almost a year after the promulgation of the judgment by the Court of Appeals, did not cure the tardiness of the claim upon the liability of the surety, which, by mandate of the Rules, should have been included in the judgment.

IN VIEW OF THE FOREGOING, the questioned orders are hereby revoked. The preliminary injunctive a writ issued at the commencement of the proceedings in this Court as made permanent, with costs against the respondents.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

[1] Under Sec. 2 Rule 62 of the old Rules of Court, now Sec. 2, Rule 60.

[2] Sec. 10, Rule 62 of the old Rules of Court.

[3] Sec. 20, Rule 59 of the old Rules of Court.

[4] G. R. No. L-19423, January 31, 1963.

[5] Visayan Surety vs. Pascual, 85 Phil. 779; Facundo vs. Tan, 85 Phil. 249; Aguasin vs. Velasques, 88 Phil. 357; Liberty Construction Supply vs. Pecson, 89 Phil. 50; Visayan Surety vs. Lacson 96 Phil. 878; and Joseph Abelow vs. de la Riva, 105 Phil. 159.

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