

**PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER, VS.
HON. SERAFIN E. CAMILON, IN HIS CAPACITY AS JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL, BRANCH VIII; THE CITY
SHERIF...**

G.R. No. L-42447. August 30, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

It appearing from the allegations of the petition and the comment of respondents, that, as reiterated in their respective memoranda, (1) in Civil Case No. 9205 of the Court of First Instance of Rizal, entitled Steel Distributors, Inc. vs. Co Ban Ling & Sons, et al. a judgment was rendered on August 24, 1968, worded as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendants Co Ban Ling and Sons, Co Chin Leng and the Pioneer Insurance and Surety Corporation, to pay, jointly and severally, the plaintiff, Steel Distributors, Inc. the sum of P35,760.00 with interest of 12% per annum from March 31, 1966, the date of the filing of the complaint, until fully paid, the further sum of P3,000.00 as attorney's fees, and the costs of this suit.

"In the event that the properties of the defendants Co Ban Ling and Sons, Co Chin Leng and the Pioneer Insurance and Surety Corporation are not sufficient to satisfy the judgment, defendant Co Chin Tong and Macario Co Ling are hereby ordered to pay, jointly with the other partners, the balance of the obligation to the plaintiff

"The counterclaim filed by the defendants is hereby dismissed." (Pp. 14-15, Record.)

and upon appeal to the Court of Appeals, the appellate court decided thus:

"WHEREFORE, except with the modification that the liability of appellant Co Chin Leng in the questioned transaction at bar is only joint, or pro rata and subsidiary, the decision under review is hereby affirmed in all other respects, at appellants costs." (Page 23, Record.)

(2) upon motion of the judgment creditors, the respondent judge ordered the issuance of a writ of execution wherein petitioner herein was included as object also thereof; (3) a motion to quash the said writ of execution insofar as petitioner is concerned was denied by respondent judge this wise:

"There is no merit in the Motion to Quash Writ of Execution filed by Pioneer Insurance and Surety Corporation since under the decision affirmed by the Court of Appeals its liability was adjudged to be jointly and severally with defendant Co Ban Ling & Sons Co.

"On the other hand, non-inclusion of the other defendants in the writ is of no consequence at this stage since their liability is not primary but will accrue only in the event the judgment cannot be satisfied by defendant partnership and Pioneer Insurance and Surety Corporation.

"In view thereof, the Motion to Quash is denied.

"SO ORDERED." (Page 31, Record.)

and, the Court being of the view that the rule of excussion claimed by petitioner under Section 17 of Rule 17, which petitioner invokes, considering it was only the bondsman to secure the lifting of the writ of preliminary attachment, is not applicable in the instant case where there is already a final and executory judgment sentencing the bondsman as joint and solidarily liable, as in the case of *Luzon Steel Corporation vs. Sia*, 28 SCRA, 58-63, the Court resolved to DISMISS the petition, without prejudice to petitioner recovering from its co-judgment debtor whatever it has to pay under the writ of execution herein questioned. The restraining order issued by this Court on January 22, 1976 is hereby lifted effective immediately.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., see dissent.

DISSENTING OPINION

AQUINO, J.:

I dissent because the petitioner was not served with copies of the decisions of the trial court and the Court of Appeals and of the motion for execution. It came to know of its solidarily liability only when the sheriff wanted to enforce the writ of execution against it.

It contends that its liability under its counter-bond was fixed at P35,760 but under the judgment it is liable to pay 12% interest and attorney's fees. The amount sought to be enforced against it in 1976 already exceeded P80,000.

The petitioner is entitled to a summary hearing on the amount of its liability, as contemplated in section 17, Rule 57 of the Rules of Court (*Towers Assurance Corporation vs. Ororarama Supermart*, L-45848, November 9, 1977, 80 SCRA 262). The hearing on its motion to quash the writ of execution was not a sufficient hearing.

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