

JOSE B. PANGILINAN, PLAINTIFF-APPELLEE, VS. OSCAR ZAPATA, DEFENDANT, CAPITAL INSURANCE & SURETY, CO., INC., APPELLANT.

G.R. No. L-26782. February 16, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

In an ejectment suit filed by Jose B. Pangilinan against Oscar Zapata in the City Court of Manila, Judge Amado G. Roan rendered a decision dated June 26, 1965, ordering Zapata to vacate the premises located at 1822 Rizal Avenue, Manila and to pay Pangilinan back rentals amounting to P1,000 as of June, 1965 and a monthly rent of P250 beginning July, 1965 until Zapata vacated the premises, plus P100 as attorney's fee.

Zapata appealed the decision to the Court of First Instance of Manila (Civil Case No. 61930). To stay execution, he posted a supersedeas bond which was executed by Capital Insurance & Surety Co., Inc. (Capital Insurance for short) through its general agent, Pan American Insurance Agencies, Inc. Under that bond Capital Insurance was bound to pay Pangilinan the sum of P1,250.

In the Court of First Instance of Manila Pangilinan and Zapata entered into a compromise agreement which was approved by the court on February 1, 1966. In that agreement Zapata acknowledged that he was indebted to Pangilinan in the aggregate amount of P1,514, and it was stipulated that the sum of P1,374 out of that total obligation was guaranteed by the supersedeas bond.

Due to Zapata's failure to live up to the terms of the compromise agreement and inasmuch as the sheriff could not levy upon any properties in his name, Pangilinan, the judgment creditor, filed a motion for execution against the supersedeas bond. Capital Insurance opposed the motion. It contended that it was not bound by the compromise agreement because it was not a party thereto.

The lower court overruled the opposition of Capital Insurance. It held that the compromise agreement merely incorporated the surety's obligation under its supersedeas bond and, hence, its consent to the compromise was not required. The lower court ordered that a writ of execution be issued against Capital Insurance. That company appealed to this Court from that order on the ground that it is contrary to law.

The parties filed their briefs. The case was submitted for decision on June 1, 1967. In this Court's resolution of November 7, 1975 the parties were required to manifest whether the appeal had become moot and academic in view of the fact that appellant Capital Insurance had ceased to do business.

Pangilinan in his manifestation of January 29, 1976 averred that the appeal had become moot and that he interposed no objection to the dismissal of the case "without prejudice" to his right to recover from Zapata the amount of the judgment.

Counsel for Capital Insurance in a manifestation dated January 30, 1976 stated that in his opinion the case had become moot because the Government on October 10, 1969 filed in the Court of First Instance of Manila a

petition for receivership and liquidation, Civil Case No. 77926, entitled "Republic of the Philippines vs. Capital Insurance & Surety Co., Inc."

Wherefore, the appeal is dismissed for having become moot and academic. No costs. So ordered.

Fernando (Chairman), Barredo, Antonio, and Concepcion Jr., JJ., concur.

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