

LIBERTY CONSTRUCTION SUPPLY CO., PETITIONER, VS. HON. POTENCIANO PECSON, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND ALTO SURETY AND INSURANCE CO. INC., RESPONDENTS.

G. R. No. L-3694. May 23, 1951

Ponente: FERIA, J.

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FERIA, J.:

These are the undisputed facts according to the pleadings filed in this Court:

In said case No. 8266, a complaint was filed on or about June 8, 1949, by Fernando Quema as plaintiff against Jaime Castro alias Jaime Rodriguez Tinio, Benjamin Layug, and the Liberty Construction Supply Company as defendants, for the recovery of the possession of certain personal properties, to wit: 400 black iron pipes, 4" x 20", valued at P5,600, which the said plaintiff alleged to have been fraudulently taken from him by the defendants Benjamin Layug and Jaime Castro alias Jaime Rodriguez Tinio and delivered to Liberty Construction Supply Company, which was allegedly in connivance with them.

In order to secure immediate possession of the pipes involved in said action, the plaintiff therein, upon filing his complaint put up on a bond, which was signed and executed by him as principal and by the respondent Alto Surety and Insurance Co., Inc., as surety.

In view of said bond, the respondent Judge ordered the sheriff to take immediate possession, and the sheriff took immediate possession, of the 400 black iron pipes described in said complaint, but, upon the herein petitioner filing a re-delivery bond, as required by law, the possession of said iron pipes was returned to the said petitioner.

After recovering the possession of said black iron pipes, and within the time prescribed by the Rules of Court, the petitioner filed its answer in said suit denying specifically the allegations of the complaint affecting said petitioner and demanding by way of counterclaim against said plaintiff damages in the amount of P1,366.55, which said petitioner alleged to have suffered by reason of its malicious inclusion as one of the defendants in said suit and of the malicious and unjustified seizure of the pipes involved in the action.

On September 1, 1949, after trial, the respondent Judge rendered judgment in said case dismissing the complaint and sentencing the plaintiff to pay the Liberty Construction Supply Company the sum of P1,366.55, with six per centum per annum as interest from the date of the filing of the complaint until the amount is fully paid.

Months after the aforesaid judgment has become final, no appeal having been taken from it, or on December 27, 1949, the petitioner Liberty Construction Supply Company, upon motion, obtained from the respondent Judge a writ of execution against the plaintiff in the suit aforementioned, for the collection of the amount awarded it by the court, but said writ of execution was returned by the sheriff unsatisfied because the said plaintiff had been found to be insolvent. In view of the return of the writ of execution referred to in the preceding paragraph, the herein petitioner presented before the respondent Judge a motion for alias writ of execution against the respondent

Alto Surety and Insurance Co.

On January 21, 1950, the respondent Judge rendered an order for the issuance of an alias writ of execution against the said surety company, and in accordance with said order. But the respondent Judge upon motion for reconsideration filed by the said Alto Surety and Insurance Co., Inc., reconsidered and set aside said alias writ of execution and his previous order for the issuance thereof, on the ground that said order and alias writ of execution had been issued without jurisdiction in view of the supposed failure of the herein petitioner, as one of the defendants in the aforesaid civil case No. 8266, to file his claim for damages in accordance with the provisions of section 10, Rule 62, and section 20, Rule 59, of the Rules of Court.

On February 22, 1950, the petitioner, with notice to respondent Surety Company moved for the reconsideration of the last order of the respondent Judge on the ground that, in rendering its judgment in the said case, the court had complete jurisdiction over the subject matter and over the parties, including the said surety company, and that it had no other alternative than to comply with its ministerial duty to order the execution of its final judgment, but the respondent Judge denied the petitioner's motion for reconsideration.

The petitioner, in support of his contention that the judgment for damages in favor of the petitioner against the plaintiff in the civil case binds the respondent Alto Surety and Insurance Co., Inc., although the latter was not notified or included as defendant in the petitioner's counterclaim for damages against the said plaintiff, quotes the decision of this Court in the case of Florentino vs. Domadag, 45 O. G. (11) 4937, promulgated on May 14, 1948. But the ruling in said case was abandoned in a later case entitled Visayan Surety and Insurance Corp. vs. Pascual et al.,[*] 47 O. G. (10) 5075, promulgated on March 23, 1950. in which this Court held that "damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety" and "that if the surety is given such due notice, he is bound by the judgment that may be entered against the principal, and writ of execution may issue against said surety to enforce the obligation of the bond," and that if no notice is given the surety the judgment cannot be executed against him without giving him an opportunity to present such defense as he may have which the principal could not previously set up.

In view of the foregoing, the respondent Judge acted in accordance with law in refusing to order the execution of its judgment against the respondent Alto Surety and Insurance Co., Inc., and therefore the petition for mandamus is denied with costs against the petitioner.

So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

[*]85 Phil., 779.

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