

**VISAYAN SURETY & INSURANCE CORPORATION, PETITIONER,
VS. ISAAC LACSON, CARMEN P. DE LACSON, THE HONORABLE
JUDGE EMILIO RILLORAZA AND THE SHERIFF OF PASAY CITY,
RESPONDENTS.**

G.R. No. L-7541. April 29, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

In Civil Case No. 1313-P of the Court of First Instance of Rizal, the Visayan Surety & Insurance Corporation (Visayan Surety for short) was ordered to pay respondents Isaac Lacson and Carmen P. de Lacson damages by reason of the issuance of a preliminary injunction therein.

Asserting abuse of discretion and lack of jurisdiction, it instituted these proceedings, to annul such order.

The record shows that in the above lawsuit entitled *Dy Kho vs. Isaac Lacson et al.*, the respondent judge granted the petition for preliminary injunction upon the filing of a bond for the amount P1,500 in the usual form, signed by Dy Kho as principal, and the Visayan Surety as surety.

After due hearing however, and on November 8, 1952, the case was dismissed and the injunction dissolved by an order the dispositive part of which reads:

"Wherefore, the writ of certiorari applied for is hereby denied, and the preliminary injunction previously granted in the present case is hereby dissolved, and the above-entitled case is hereby ordered dismissed, with costs against the petitioner."

Copy of this order was received by the Lacsons on November 10, 1952. On November 12, 1952, they filed a motion to set a date for presentation of evidence of damages they suffered thru the injunction; yet no copy of their pleading was served upon the surety. And on November 21, 1952 it was denied for being insufficient "in form and in substance".

Again on February 23, 1953 the Lacsons prayed for a date to present their "evidence for damages suffered * * * as a result of the filing of the above entitled civil case which is not only frivolous but just to delay matters". And on March 10, 1953, supplementing their petition, they likewise prayed for assessment of the damages they had suffered by reason of the issuance of the injunction. Copies of their petitions were served on Dy Kho and the Visayan Surety. Pursuant thereto, the respondent judge heard the evidence, and in his order of November 28, 1953, awarded to the Lacsons damages in the sum of P26,750 payable by Dy Kho, and also damages of P1,500 chargeable to the bond subscribed by the Visayan Surety. Notified of the order, the latter filed a motion to reconsider calling attention to the circumstance that the original decision, awarding no damages against the surety, had become final before the respondents asked for its modification by their motions of February and March 1953. His Honor declined to change his stand.

Whereupon this petition for certiorari with prohibition and injunction was filed here on March 6, 1954. It was given due course; the respondents answered; and the controversy was subsequently submitted for decision upon memoranda prepared by both sides.

The issues raised by the pleadings have heretofore been discussed in decisions of this Court on the subject, applying section 9, Rule 60, and section 20, Rule 59.

"A claim for damages suffered by reason of the issuance of a preliminary injunction must be presented in the principal action, and judgment therefor must be included in the final judgment of the case. The remedy is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to such damages." (Moran Comments on the Rules of Court, 1952 Ed. Vol. 2 p. 81, citing *Casimiro Japco vs. Moir*, 36 Phil., 350; *Somes vs. Crossfield*, 9 Phil., 13; *Macatangay vs. Municipality of San Juan de Bocboc*, 9 Phil., 19.)

"In other words, the claim for damages may be made in the discretion of the Court at any time before the judgment rendered had become final and executory. If the prevailing party fails to file his claim for damages, the bond filed to answer therefor shall upon proper petition be withdrawn." (Moran op. cit. Vol. 2 p. 54, citing *Facundo vs. Tan*, L-2767, Dec. 29, 1949, 47 Off. Gaz., 2912; *Brodett et al. vs. De la Rosa et al.*, 44 Off. Gaz., 872; *Lardizabal vs. Judge Felix*, 44 Off. Gaz., 63.)

"A claim for damages suffered by reason of the issuance of a preliminary injunction must be presented in the principal action, and judgment therefore must be included in the final judgment of the case. The remedy is exclusive and by failing to file a motion for the determination of the damages in time and while the judgment is still under the control of the court, the claimant loses his right to such damages. *Somes vs. Crossfield*, 9 Phil., 13; 9 P. R. A. 7; *Macatangay vs. Municipality of San Juan de Bocboc*, 9 Phil., 19; 9 P. R. A. 10; *Santos vs. Moir*, 36 Phil., 350; *Japco vs. City of Manila*, 48 Phil., 851." (Francisco, Annotated Rules of Court [1940] Vol. 2 p. 127.).

From the above it may be gathered that if the judgment dissolving a writ of preliminary injunction contains no pronouncement against the surety for damages caused by the issuance of such writ, the defendant or the injured party, may ask for (and be given) opportunity to prove damages against the surety, provided such surety is notified and the decision has not yet become final.

The record shows that on November 10, 1952, the respondent spouses (defendants in the action) received notice of the order of November 8, 1952 and the plaintiff received his on or before November 15, 1952 (Annex G). The order of dismissal, therefore, became final and executory on or before December 15, 1952. No valid appeal was perfected during that time; and no legal steps had been taken to check the running of the period to prosecute an appeal.

Consequently, when on March 10, 1953[1] a motion for the first time asked for damages against the surety, with notice to the same, the judgment had already become final for three months—i. e., not susceptible to any amendment allowing damages against such surety. In this connection, the respondents allege that on November 12, 1952, before the judgment had become final, they requested for damages against the surety. But inasmuch as no copy was served on the surety, the motion was a useless piece of paper;[2] and no claim of interruption of the period could be based on it, specially because they interposed no appeal from its denial.

Indeed it is markworthy that when the Visayan Surety moved for reconsideration in the lower court alleging want of jurisdiction because the judgment had become final, the respondents in their opposition (Annex N) never mentioned their said useless motion of November 12. They merely pointed out to the court that although the surety had been notified of their petition of March 10, 1953, it made "no opposition verbal or in writing". They repeat the same line of argument here, insisting that, not having contested their motion, petitioner "is guilty of

laches and is now under estopped". To this proposition the Visayan Surety replies that it offered no opposition because it "did not like to dispute any matter before a court that had no jurisdiction". It could have added another reason: it assumed or had the right to assume that the court would realize it had already lost jurisdiction—the judgment having become final and executory. Anyway, mere silence on the part of one party could not confer on the lower court the jurisdiction, that it had already lost, to amend its judgment.

The petitioner has aptly invoked the following precedents:

"Before final judgment in the main action, the party suffering from the execution of the injunction order should file with the court trying that action his application for damages resulting from the execution of the injunction order, with due notice to the other party and his sureties." (Santos vs. Moir, 36 Phil., 350, p. 353.)

"A claim for damages suffered by reason of the issuance of a preliminary injunction must be presented in the principal action, and judgment therefor must be included in the final judgment of the case. The remedy is exclusive and by failing to file a motion for the determination of the damages in time and while the judgment is still under the control of the Court, the claimant loses his right to such damages." Japco vs. City of Manila, 48 Phil., p. 651.)

"The rule, therefore, is that a claim for damages suffered by reason of the issuance of a writ of preliminary injunction must be filed before the trial or, in the discretion of the court, before entry of final judgment. It appearing that respondent Lim sought to recover damages upon the injunction bonds only on July 29, 1948, when the decisions in the three proceedings in which the writs of preliminary injunctions were issued had become final, the herein respondent courts could no longer make any adjudication in favor of respondent Lim. * * *". (Facundo vs. Tan, 47 Off. Gaz., 2912.)

The respondents maintain that certiorari does not lie, because petitioner's remedy was to appeal. The general rule is that these special civil actions will not be entertained where there is a remedy by appeal. However, exceptions have heretofore been made in several instances wherein the lower court acted without jurisdiction. (See Moran Rules of Court, 1952 ed., Vol. 2, p. 168.)

Again they lastly allege that one Joseph Gotianuy, a high official of the Visayan Surety, paid the respondent Isaac Lacson the sum of P1,500 on March 5, 1954. If such payment was tendered on behalf of the Visayan Surety or with its consent, this petition should now be dismissed. But Gotianuy, it clearly appears, paid out of his own personal funds, "to keep up with my personal cordial relations with him (Lacson)"—without the consent of the Visayan Surety, and with the distinct understanding that the disbursement shall not affect these proceedings.

In view of the foregoing, the order of the respondent judge dated November 28, 1953 is hereby revoked, with costs. So ordered.

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

Order revoked.

[1] The motion of February 23, contained no claim for damages arising out of the issuance of injunction.

[2] Manakil vs. Revilla 42 Phil., 81; Roman Catholic Bishop vs. Municipality of Unisan, 44 Phil., 866; see Francisco, Annotated Rules of Court (1940) Vol. 1 pp. 619-620.

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