

**THE REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALTO SURETY & INSURANCE CO., INC., DEFENDANT AND
APPELLANT.**

G.R. No. L-13251. November 23, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the decision of the Court of First Instance of Manila in Civil Case No. 27474, the dispositive portion of which states:

"In view of all the foregoing, judgment is hereby rendered in favor of the plaintiff, the Republic of the Philippines, and against the defendant, Alto Surety & Insurance Co., Inc., ordering the latter to pay to the former the sum of P51,021.00, with legal interest from the date of filing of the complaint until it is fully paid, and the costs of suit."

Briefly, the facts and circumstances of the case may be narrated as follows: On September 9, 1955, the plaintiff, Republic of the Philippines, filed suit against the defendant, Alto Surety & Insurance Co., Inc., praying that the latter be condemned to pay the sum of P51,021.00 representing the liability assumed by it under Alto Bond No. C-9060, the pertinent terms and conditions of which are hereunder reproduced:

"Now therefore, for and in consideration of the above, we Ted Lewin, as principal, and the ALTO SURETY AND INSURANCE Co., INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, in consideration of the above and of the issuance by the Bureau of Internal Revenue to Ted In of a Tax Clearance, hereby jointly and severally bind ourselves in the sum of Pesos Fifty-one Thousand Twenty-One Only (P51.021.00), Philippine Currency, under the conditions that Ted Leivin will return to the Philippines within three (3) months from the date of his departure and should he fail to do so, that we be liable to the Bureau of Internal Revenue for his Corporate Tax Assessments in the amount first above-mentioned."

which conditions, plaintiff asserts, were violated when Ted Lewin failed to return to this country within the period therein stipulated. In its answer, the defendant admitted that "its principal, Ted Lewin, has not returned to the Philippines notwithstanding the lapse of three months," but denied that he has no intention of returning. By ; way of special defense, the surety alleges that plaintiff, by its own act or acts, has prevented the compliance of the condition imposed on the bond, when, through its Department of Foreign Affairs, it issued Foreign Service Circular Noa. 329 and 428, dated December 2, 1953 and June 3, 1954, respectively, the contents of which are mentioned elsewhere below.

At the trial, the parties submitted a stipulation of facts, which, for easy reference, is hereunder quoted in full:

"COME now plaintiff and defendant, thru respective undersigned attorneys, and to this Honorable Court respectively submit the following agreed statement of facts-"

1. That on June 15, 1953, the Collector of Internal Revenue assessed against and demanded from Messrs. Ted

Lewin and Jose L. P. fe Leon the payment of the sum of P51,021.00 as corporate income! tax due from the latter for the year ending December 31, 1953;'

2. That on or about September 23, 1953, Mr. and Mrs. Ted Lewin applied for a tax clearance with the Bureau of Internal Revenue because they intend to leave the Philippines for the United States;

3. That because Ted Lewin has a pending tax liability in the aforesaid amount of P51,021.00 the Bureau of Internal Revenue required said Ted Lewin to file a surety bond in its favor in the same amount to guarantee his return to the Philippines to answer for his aforesaid tax liability;

4. That on September 25, 1953, Ted Lewin, as principal and the defendant Alto Surety & Insurance Co., Inc., as surety, jointly and severally posted and filed a surety bond with the Bureau of Internal Revenue in thS amount of P51.021.00, which bond was accepted by Me latter office, 'under the condition that Ted Lewin would return to the Philippines within three (3) months from the date of his departure and should he fail to do so, that we shall be liable to the Bureau of Internal Revenue for his corporate tax assessments in the amount first above-mentioned.' A true copy of the bond is attached as Annexed 'A' to the complaint and made an integral part of this pleading;

5. That to assure the return of Ted Lewin. to the Philippines, he secured a Permit to Re-enter the Philippines, No. 70155, from the Bureau of Immigration, the date of its issue being September 16, 1954. A certified true copy of said 'Permit to Re-enter the Philippines' is hereto attached and made a part of the pleading and is marked as Annex 'B';

6. That Ted Lewin left the Philippines on September 26, 1953, and has not returned to the Philippines within' the stipulated three months from the date of his departure;

7. That on December 9, 1953, the Department of Foreign Affairs issued Foreign Service Circular No. 329 to the effect that 'No-Philippine visa of any kind should be issued to this person (Ted Lewin) without prior authorization from the Department.' A true copy of the same is attached herewith as Annex 'C';

8. That on June 3, 1954, the Department .of Foreign Affairs issued again another Foreign Service Circular No. 428 directing- 'that the necessary steps should be immediately taken by all Philippines foreign service establishments abroad, particularly those in the United States from which he (Ted Lewin) might try to obtain a visa, with a view to refusing him readmission into this jurisdiction.' A true copy of the same is hereto attached as Annex 'D';

9. That on or about October 25, 1955, Ted Lewin managed to return to the Philippines on a seaman's visa, on board the vessel 'Maria Incs', which anchored at Manila Bay, and sought to re-enter the Philippines as a permanent resident but plaintiff did not allow him to land;

10. That on December 14, 1955, Ted Lewin instituted Civil Case No. 28309 in the Court of First Instance of Manila against the Commissioner of Immigration and the Commissioner of Customs for the purpose of releasing him from confinement but the herein plaintiff resisted said case resulting in the dismissal thereof, the Court stating in its decision that Ted Lewin has failed to state a cause of action to justify the issuance of habeas corpus.

"Wherefore, it is respectfully prayed that judgment be rendered in accordance with the above agreed statement of facts."

In this appeal, as well as in the lower court, the appellant surety company urges that by virtue of the act or acts of the appellee, mentioned from paragraphs 7 to 10 of the agreed stipulation of facts, either the latter is estopped from confiscating or forfeiting the bond in its favor or the appellant surety company was released from t» liability under the same.

In the series of acts complained by the appellant, the , On'y one relevant to the present dispute refers to Foreign Service Circular No. 329 issued on December 2, 1953 (See Par. 7 of the Agreed stipulation of Facts, supra), to the effect that "No Philippine visa of any kind should be issued to this person (Ted Lewin) without prior authorization from the Department". The others have no pertinence to the case, considering that they took place after the three-month period fixed in the bond; so that, whether true or untrue, they have little or no significance on appellant's liability or non-liability under the bond.

Basing the resolution of the case solely on the facts as found by the lower court, this being an appeal by certio-rari, there is little doubt but that it was correct in rendering the decision appealed from. It appears that Ted Lewin was issued, before his departure (and before Alto Bond No. C-9060 was executed by and between the parties), a reentry permit by the government, wherein it was expressly provided that possession thereof "relieves the alien to whom it is issued from the necessity of securing a visa from a Philippine or United States consul before returning to this country." The same had an expiry date of March 16, 1954. The questioned foreign service circular (No. 329), it will be observed, did not revoke or cancel the said reentry permit. Nothing therein is said or mentioned that would warrant a different conclusion. There was, accordingly, no necessity for him (Lewin) to still secure a visa to be able to return to this country within the aforesaid period of three months.

On the other hand, if it had been shown that Foreign Service Circular No. 329 had the effect, one way or the other, of preventing the principal, Ted Lewin, from being able to return to the Philippines within the stipulated term of the bond or that it actually increased the risk originally undertaken by the surety company, such circular, an act of the appellee, might have had the effect of discharging the appellant from its agreed liability or, at least, of justifying Lewin's failure to return within the required period. But no such showing was made during the trial nor was anything to that effect mentioned by the parties in their stipulation of facts. In fact, as observed by the lower court, it does not appear that Lewin ever applied for any visa nor had he manifested any intention of returning within the three-month term. The foregoing are factors that are incumbent upon the surety company to show in order to extricate itself from its liability under the bond.

During the pendency of this appeal, appellant filed with this Court a motion for new trial, which, per resolution of March 28, 1958, would be resolved upon consideration of the case on the merits. It is alleged as grounds for new trial that the case was submitted for decision without the testimony of the appellant's principal; that when Ted Lewin, its principal, reached the Philippines on a seaman's visa, appellee successfully blocked his efforts, administrative and judicial, to land in the Philippines; that during that time, appellant tried to subpoena him to testify in the hearing of this case, but was prevented from doing so, as his landing was made impossible by the appellee and because of the difficulty of serving a subpoena on board the ship, so that it was thereby made impossible for the appellant to discover and produce Lewin's testimony; that recently, however, the Government reversed its stand and allowed the temporary return of appellant's principal thereby making available his testimony to the court; and that if the motion will be granted, appellant will be able to show that when Ted Lewin arrived in New York on October 2, 1953, his passport, together with other papers, including the reentry permit, were confiscated by the U. S. authorities, and he was able to secure their return only some time in August, 1955, and that he tried to return to the Philippines during the period of confiscation, but that he was not able to do so because of the refusal of Philippine consular officials to issue him a visa.

One of the requirements for the granting of a motion for new trial is a satisfactory showing that even with the exercise of reasonable diligence, the new matter sought to be admitted could not have been discovered and produced at the trial (Sec. 1 [b], Rule 37, Rules of Court). From the motion, it would appear that Ted Lewin's presence within our territorial waters during the pendency of the trial was already known by the appellants. His intended testimony could have been, upon reasonable effort, made available to the court had appellant simply

made use of one or some of the means provided under Rule 18 of the Rules of Court (entitled Depositions and Discovery). It is not alleged that appellant tried to do so and failed. Accordingly, the motion for new trial is denied.

Wherefore, the judgment appealed from is hereby affirmed. Costs against the appellant.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Judgment affirmed.

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