

INDUSTRIAL INSURANCE CO., INC., AS REPRESENTED BY ITS BONDS SUPERVISOR, ELISEO FLORES, PETITIONER, VS. HON. ROLANDO G. MISLANG, ACTING PRESIDING JUDGE OF THE REGIONAL TRIAL COUR...

Ponente: CORALES, J.

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CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the March 25, 2011[2] and July 6, 2011[3] Orders of the Regional Trial Court (RTC), Branch 164, Pasig City in Criminal Case No. 15726-D which respectively denied petitioner Industrial Insurance Co., Inc.'s (Industrial Insurance) Omnibus Motion to Quash Writ of Execution dated October 26, 2010 and Recall Bailbond No. JCR (2) 011275 (Omnibus Motion) and its subsequent motion for reconsideration.

The Antecedents

On July 26, 2007, Industrial Insurance issued a P120,000.00 personal bail bond[4] with serial number JCR (2) No. 011275 for the provisional release of accused Lemuel Mabote (Mabote) who was charged[5] with illegal possession of drugs[6] in Criminal Case No. 15726-D. Respondent Feliciano Enriquez (Enriquez), Industrial Insurance's Operations Manager for Judicial Bonds in criminal cases,[7] signed the bail bond being the authorized signatory under the General Agency Agreement[8] and Board Resolution dated August 17, 2005[9] of the company. Enriquez also executed Endorsement No. 0708[10] which states that "the restriction for NOT VALID FOR DRUG TRAFFICKING and VALID for P100,000.00 ONLY risk/offense for this particular bond is hereby reconsidered and deleted and that the bail bond JCR (2) 011275 is hereby APPROVED".

When Mabote failed to appear on the September 20, 2007 hearing, the RTC ordered his arrest and the confiscation of his bail bond in favor of the government. It also directed Industrial Insurance to produce the living body of Mabote within 30 days from notice and show cause why no judgment should be entered against the bond.[11]

On April 25, 2008, Industrial Insurance, through a certain George D. Baro, Jr. (Baro), filed a Motion for Extension of Time[12] to comply with the September 20, 2007 Order. It appears that despite the grant of this motion, Industrial Insurance failed to produce the person of Mabote. On September 16, 2009, the RTC rendered a judgment against the bond. Thereafter, the RTC directed the issuance of a writ of execution through its February 22, 2010 Order and the writ was eventually issued on October 26, 2010.

After a year, or on February 9, 2011 to be more specific, Industrial Insurance filed its Omnibus Motion[13] arguing that the bail bond and the judgment against it were void. According to Industrial Insurance, the judgment against the bail bond is contrary to Section 21, Rule 114 of the Revised Rules of Criminal Procedure because the produced order was issued after Mabote had already jumped bail and not before the scheduled hearing on September 20, 2007. It also raised the following arguments in support of its contention that the bail bond was void, to wit: Enriquez acted beyond the scope of his authority when he executed Endorsement No. 078 in order to delete the excluded risk in the bond and increased the allowable bail; Endorsement No. 078 materially altered the

terms and conditions of the bail bond without the approval of the Insurance Commission, thus, violative of Section 226 and 231 of the Insurance Code; and the bail bond with its supporting documents did not comply with Section 13, Rule 114 of the Revised Rules on Criminal Procedure considering that the affidavit of justification was not taken under oath before the judge, the serial number and place of commission of the notary public as well as his roll of attorneys and office address were not stated in the jurat of the waiver of appearance, and the Supreme Court Certificate of Accreditation and Authority (Diploma) is a mere photocopy.

The Ruling of the RTC

In its March 25, 2011 Order,[14] the RTC denied Industrial Insurance's omnibus motion for lack of merit. The pertinent portions of the Order read:

Movant bondsman contended that it was not given due process of law because there was no prior produce order issued and served that directs it to produce the accused on the scheduled date and time of the hearing held on September 20, 2007, thus, the forfeiture of the bailbond through the Order dated September 2007 as well as the subsequent rendition of the judgment against the bailbond through the Order dated September 2009 were issued in violation of bondsman Industrial Insurance Company, Inc. right to due process of law. It is also contended that the bailbond is void and should be cancelled as it was irregularly and illegally issued by Feliciano Enriquez former general agent of Industrial Insurance Company, Inc. beyond the scope of his authority.

This Court is not persuaded. The movant bondsman conveniently forgot that it filed on April 25, 2008 a Motion for Extension of time to produce the living body of the accused and it was granted an extension of a period of time of thirty days in the Order dated April 29, 2008. As such, movant bondsman has fully acknowledged its obligation. It cannot therefore feign ignorance as to the consequence of its failure to fulfill its undertaking, which is, judgment on the bond in the Order dated September 16, 2009 and the issuance of writ of execution in the Order dated February 22, 2010, and Writ of Execution dated October 26, 2010.

WHEREFORE, in light of the foregoing, the movant bondsman's omnibus motion must perforce be denied for lack of merit. (Emphasis appears in the original text of the Decision; underscoring supplied)

Industrial Insurance moved for reconsideration[15] but the RTC denied the same in its July 6, 2011 Order.[16]

Undeterred, Industrial Insurance filed the instant petition for certiorari anchored on the following grounds:[17]

I.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT RENDERED A FORFEITURE, JUDGMENT AND WRIT OF EXECUTION AGAINST THE SUBJECT BAIL BOND WITHOUT A PRIOR ORDER DIRECTING THE BONDSMAN TO PRODUCE THE ACCUSED ON A SPECIFIC DATE AND TIME IN VIOLATION OF SECTION 21, RULE 114 OF THE REVISED RULES ON CRIMINAL PROCEDURE.

II

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT FAILED TO ACKNOWLEDGE THAT THE SUBJECT BAIL BOND IS VOID FOR HAVING BEEN ISSUED IN VIOLATION OF SECTIONS 226 AND 361 OF THE INSURANCE CODE.

III

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT FAILED TO ACKNOWLEDGE THAT THE BAIL BOND AND ITS SUPPORTING DOCUMENTS ARE FATALLY DEFECTIVE WARRANTING OUTRIGHT DISAPPROVAL UNDER SECTION 13, RULE 114 OF THE REVISED RULES ON CRIMINAL PROCEDURE AND RETURN OF THE BONDS TO THE BONDSMAN PURSUANT TO ADMINISTRATIVE MATTER NO. 04-7-02-SC OTHERWISE KNOWN AS THE 2004 SUPREME COURT GUIDELINES ON CORPORATE SURETY BONDS.

Industrial Insurance reiterates its arguments in the Omnibus Motion and claims that the April 18, 2008 Motion for Extension of Time is not binding on the company because Baro has no authority to sign the same.[18]

For his part, Enriquez argues that Industrial Insurance gave him unlimited authority to sign and issue bail bonds as shown in the August 2, 2007[19] Secretary's Certificate. He insists that Industrial Insurance is denying the validity of the bail bond in order to discredit his name and avoid the payment of confiscated bonds. Enriquez avers that in 2008, Industrial Insurance was experiencing losses due to forfeited bonds and to avoid payment, it issued a fabricated Secretary's Certificate dated August 24, 2005 to supposedly limit his authority to issue bonds only up to the maximum amount of P100,000.00. Allegedly, no Board of Directors' meeting was held on August 24, 2005 and as certified[20] by the Office of the Clerk of Court and Ex-Officio Sheriff Notarial Section's Certification, Atty. Henry D. Adasa, who purportedly notarized the August 24, 2005 Secretary Certificate, was not a Notary Public in the City of Manila in 2005. Enriquez further claims that in recognition of his unlimited authority to issue bail bonds, Industrial Insurance provided him with blank endorsements and the contents of Endorsement No. 0708 was supplied by the Chairman and President of Industrial Insurance.[21]

The Office of the Solicitor General (OSG) also filed a Comment[22] on behalf of the public respondent. It argues that the RTC did not act with grave abuse of discretion in denying Industrial Insurance's Omnibus Motion considering that there has been full compliance with the mandate of Section 21, Rule 114 of the Revised Rules on Criminal Procedure. The public respondent cannot be faulted for rendering judgment against the bond because Industrial Insurance failed to fulfill its obligation despite the grant of a 30-day extension period to produce the person of Mabote in court. The OSG also contends that the limit of authority supposedly given by Industrial Insurance to Enriquez is an internal matter between the parties and the courts are not privy nor bound by the same unless so disclosed.

This Court's Ruling

The petition is devoid of merit.

Being an extraordinary remedy, a petition for certiorari is available only and restrictively in truly exceptional cases.[23] The sole office of this is the correction of errors of jurisdiction and does not include a review of public respondent's evaluation of the evidence and factual findings.[24] It cannot be issued to review the intrinsic correctness of the subject judgment, whether upon the law or upon the facts of the case, because the inquiry should be limited to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[25]

It also bears stressing that a petition for certiorari under Rule 65 of the Rules of Court would prosper only if there is a clear showing of grave abuse of discretion on the part of the public respondent. It is therefore imperative for the petitioner to prove that the power of discretion is being exercised in an arbitrary or despotic manner by reason of passion or personal hostility which is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law.[26]

Industrial Insurance failed to discharge this burden. It did not present any controverting evidence to rebut the disputable presumption that official duties have been regularly performed.[27] The petition did not even make a clear narration of the facts that led to the issuance of the September 20, 2007 Order directing the arrest of Mabote and forfeiting his bail bond in favor of the government, i.e., was there an order setting the case for hearing on September 20, 2007 and who were furnished with a copy of this Order. We need all these factual bases to make a ruling on the propriety of the order of forfeiture of bail bond and the eventual judgment on the bail. We cannot simply assume that Industrial Insurance has not been furnished a copy of the notice of hearing sans proof thereof. Mere allegation is not equivalent to proof.[28] Thus, it is reasonably presumed that the notice for the September 20, 2007 hearing has been served to Mabote and Industrial Insurance.

The writ of execution and judgment on the bond cannot also be nullified on the ground of denial of due process. The essence of due process is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice and hearing.[29] Here, the parties did not dispute the fact that after the summary forfeiture of the bond, the RTC gave Industrial Insurance a 30-day period to produce the person of Mabote and to show cause why a judgment should not be rendered against them for the amount of the bond. Industrial Insurance did not deny receiving a copy of such forfeiture order and in fact, its representative has filed a motion for extension of time to comply with the RTC's directive. Evidently, Industrial Insurance has been afforded every opportunity to defend its failure to produce Mabote.

It is also too late in a day for Industrial Insurance to argue against the validity of the bail bond. As aptly ruled by the RTC, Industrial Insurance has fully acknowledged its obligation when it filed a motion for extension of time on April 25, 2008. The defects in the bail bond could have very well been brought to the attention of the RTC immediately after the receipt of the forfeiture order but instead of doing so, it only filed a motion for extension of time alleging that it is already mobilizing its personnel to locate or apprehend Mabote. To reiterate, Industrial Insurance did not deny having received the order of forfeiture of bond as well as the judgment on the bond. It also admitted that it has been served with a copy of the writ of execution on November 25, 2010.[30] If there was indeed good reason to challenge the writ of execution, Industrial Insurance should have done something within a reasonable time. However, it waited for the judgment on the bond to attain finality, and almost four (4) months after the receipt of the writ, before it filed the Omnibus Motion assailing the judgment on the bail. This failure to immediately respond to the writ obviously militates against Industrial Insurance claim for relief. One who sleeps on his rights shall not be heard to complain.[31]

The same holds true with respect to Industrial Insurance's contention that the motion for extension is not binding on it. It did not escape Our attention that it is only after the denial of its Omnibus Motion that Industrial Insurance questioned the authority of Baro to comply with the directives in the forfeiture order. This motion has been extant in the records of the court a quo and could have been easily noted by Industrial Insurance considering its claim that it conducted a verification of the records upon receipt of the writ of execution. Notably, Industrial Insurance did not show any evidence to prove its claim that Baro is not an officer or employee of the company. In the absence of contrary evidence, it is therefore presumed that Baro has been authorized to file the motion for extension of time.

The Court also notes that Industrial Insurance's arguments as to the invalidity of the bail bond were all based on negative facts, i.e., Baro has no authority to sign the motion for extension, Endorsement No. 0708 removing the restrictions in IICI JCR(2) 011275 was executed by Enriquez beyond the scope of his authority due to the absence of the approval of the Insurance Commission, and non-submission of the required supporting documents. Well-settled is the rule that when a plaintiff's case depends upon the establishment of a negative fact, and the

means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[32] Industrial Insurance failed to substantiate the foregoing negative averments with any documentary evidence. Thus, the bare allegations in its Omnibus Motion fall short in satisfying the degree of proof needed to support its claim and do not have probative value.[33]

Moreover, Industrial Insurance's reliance in *People v. Peczon*[34] is highly misplaced. The factual milieu in the Peczon case is not in all fours with this case. In the Peczon case, the records clearly show that 11 of the 19 bondsmen were not serve with a notice of hearing; after receipt of the forfeiture order, these bondsmen submitted their respective written explanation for their failure to produce the principals on the scheduled hearing and why judgment against the bond should not be rendered. In contrast with this case, there is no clear showing here that Industrial Insurance did not receive the notice of hearing. Industrial also failed to comply with the show cause order and did not offer any plausible explanation for such failure. In fact the judgment against the bond had already been final and executory without any action on the part of Industrial Insurance, thus, the execution may issue at once. It is the judgment on the bond, and not the order of forfeiture of the bail bond, which ultimately determines the liability of the surety.[35]

The decision of the RTCs as to the validity of the other bail bonds issued by Enqriuez does not also find application here. It suffices to state that only the decision and judgment rendered by the Supreme Court form part of our legal system and bind the lower courts and tribunals.[36] Accordingly, the RTC, Branch 164 cannot be faulted in not taking into consideration the orders being invoked by Industrial Insurance.

WHEREFORE, the petition is DENIED. The March 25, 2011 and July 6, 2011 Orders of the Regional Trial Court, Branch 164, Pasig City in Criminal Case No. 15726-D are hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Villon, J., Chairperson and Macalino, JJ., concur.

[1] Rollo, pages 3-28.

[2] Penned by Acting Presiding Judge Rolando G. Mislang, *ibid.*, page 29.

[3] *Ibid.*, page 30.

[4] *Ibid.*, pages 103-104.

[5] See Information dated July 10, 2007, *ibid.*, pages 101-102.

[6] Republic Act No. 9165, Section 11. Possession of Dangerous Drugs. - x x x.

[7] See Resolution No. 05-25 as mentioned in the Secretary's Certificate, rollo, page 95-96.

[8] *Ibid.*, pages 89-94.

[9] See Secretary's Certificate dated August 24, 2005, *ibid.*, page 97.

- [10] Ibid., page 105.
- [11] The September 20, 2007 Order was only mentioned in the March 25, 2011 Order but copy thereof was not attached to the petition.
- [12] Rollo, pages 149-151.
- [13] Ibid., pages 31-46.
- [14] Supra, at note 2.
- [15] See Motion for Reconsideration (Re: Order dated 25 March 2011), rollo, pages 62-70.
- [16] Supra, at note 3.
- [17] See pages 9-10 of the Petition, rollo, pages 11-12.
- [18] See Reply (RE: Comment [On Petition for Certiorari dated September 8, 2011] dated 12 October 2011), *ibid.*, pages 144-148.
- [19] Ibid., pages 123-124.
- [20] See Certification dated December 10, 2008, *ibid.*, page 125.
- [21] See Enriquez' Comment to the Petition for Certiorari, *ibid.*, pages 116-120.
- [22] Ibid., pages 132-143.
- [23] See *Odango v. NLRC*, G.R. No. 147420. June 10, 2004.
- [24] *Ong v. Philippine Deposit Insurance*, G.R. No. 175116. August 18, 2010.
- [25] See *Odango v. NLRC*, supra, at note 23; *Ong v. Philippine Deposit Insurance*, *ibid.*
- [26] See *Fernandez v. Comelec*, G.R. No. 171821. October 9, 2006.
- [27] Rules of Court, Section 3 (m).
- [28] See *Villanueva v. Philippine Daily Inquirer, Inc.* G.R. No. 164437. May 15, 2009.
- [29] *Cayago v. Lina*, G.R. No. 149539. January 19, 2005.
- [30] See page 6 of the petition, rollo, page 8.
- [31] See *South Pachem Development v. Court of Appeals*, G.R. No. 126260. December 16, 2004.
- [32] See *Spouses Cheng v. Spouses Dailisan*, G.R. No. 182485. July 3, 2009.
- [33] See *LNS v. Padua*, G.R. No. 179792. March 5, 2010.
- [34] G.R. No. L-15584. October 27, 1961.
- [35] See *Mendoza v. Alarma*, G.R. No. 151970. May 7, 2008.
- [36] See *Quasha Ancheta v. Special Sixth Division*, G.R. No. 182013. December 4, 2009.

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