

**RELIANCE SURETY & INSURANCE COMPANY INCORPORATED,  
PETITIONER, VS. LA CAMPANA FOOD PRODUCTS, INC., MACARIO M.  
OFILADA, CITY SHERIFF OF MANILA, AND THE HONORABLE COURT  
OF APPEALS,...**

*G.R. No. L-15573. October 28, 1960*

Ponente: LABRADOR, J.

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**LABRADOR, J.:**

This is a petition to annul an order of the Court of First Instance of Rizal, Hon. Hermogenes Caluag, presiding, ordering the issuance of an alias writ of execution of its judgment. The order is dated October 16, 1958.

The circumstances leading to the issuance of the order sought to be annulled are as follows: In Civil Case No. Q-2192, entitled "La Campana Food Products, Inc., plaintiff, vs. Honrado Samano and Reliance Surety and Insurance Company, Inc., defendants, Reliance Surety and Insurance Company, Inc., cross-claimant, versus Honrado Samano, cross-defendant," the Court rendered a decision dated September 21, 1957, the dispositive part of which reads, as follows:

"In view of the foregoing, judgment is hereby rendered as follows:

(a) Ordering the defendants to pay jointly and severally the amount of P5,778.26 to the plaintiff, with interest thereon at the legal rate from August 27, 1956 until the whole amount is fully paid;

(b) Ordering the defendants to pay jointly and severally to the plaintiff a sum equivalent to 15% of the whole amount due to plaintiff by way of attorney's fees;

(c) Should the defendant Reliance Surety and Insurance Co., Inc. be made to pay this obligation by virtue of the surety bond (Exhibit "B"), without of course exceeding the amount of said bond which is only for P5,000.00, then defendant Honrado Samano and third-party "defendants Lee and Francisco Samano are ordered to reimburse to the said Reliance Surety & Insurance Co., Inc. whatever amount it has paid to plaintiff, plus interest thereon at the legal rate, jointly and severally;

(d) Ordering defendants to pay the costs.

So ordered."

On March 25, 1958, the Clerk of the Court issued a writ for the execution of the judgment, quoting the dispositive part of the judgment, as above indicated. By virtue of that execution, the Reliance Surety and Insurance Company, Inc. paid the amount of P5,000 on April 7, 1958. As this payment does not cover the additional sums specified in the judgment, more specifically the interest on the amount of the judgment and the attorney's fees, La Campaña Food Products filed a motion for the issuance of an alias writ of execution for said interest and attorney's fees. Opposition to this motion was filed by the Reliance Surety and Insurance Company on June 8, 1958. On October 16, 1958, the court issued an order overruling the opposition of the surety company and granting the issuance of

an alias writ of execution as prayed for. The writ was issued on October 18, 1958. Motion to reconsider the order of the court was denied, so the surety company filed a petition for certiorari with the Court of Appeals. Said court in CA-G. R. No. 24060-R denied the petition for certiorari and dissolved the writ of preliminary injunction issued earlier, and the case was appealed to this Court by certiorari.

It is argued in the petition before Us that the issuance of the order of the court authorizing the alias writ of execution is not justified, for the reason that the payment of the sums specified in the alias writ of execution are beyond the liability prescribed by law for the surety.

It is not necessary for us to decide the question raised in this appeal for We lack the jurisdiction to consider the question raised, because the judgment of the Court of First Instance, which is sought to be executed by the issuance of the alias writ, had long before become final and executory. The decision was rendered on September 21, 1957, and the first writ of execution was issued on March 25, 1958. Assuming Without deciding that the judgment is erroneous, insofar as it orders the payment of an amount exceeding P5,000, such part of the judgment as may order payment beyond the lawful liability of the surety, is already beyond recall or modification when the surety company, petitioner herein, sought to object thereto on June 5, 1958. From September 21, 1957 to June 5, 1958, more than eight months had passed. If the surety company had wanted to question the validity of the objected portions of the judgment, it should have done so within the proper time, before the judgment became final and executory.

The petition for the issuance of the writ of certiorari is hereby denied, with costs against petitioner.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Petition denied.

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