

**VISAYAN SURETY & INSURANCE CORPORATION, PETITIONER,
VS. CENTRAL BANK OF THE PHILIPPINES, THE HONORABLE JUDGE
JUAN P. ENRIQUEZ, AND THE SHERIFF OF THE CITY OF MANILA,
RESPONDENTS.**

G. R. No. 12129. September 17, 1958

Ponente: FELIX, J.

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FELIX, J.:

On April 7, 1943, pursuant to Instruction No. 43 issued by the Director General of the Japanese Military Administration, the Bank of the Commonwealth, a domestic banking corporation, was placed in liquidation. Special Civil Case No. 1930 was duly instituted by the Solicitor General acting for the liquidator, the Bureau of Financing. Upon the liberation of the Philippines, the Central Bank of the Philippines, which under Republic Act No. 265 had supervision over all banking institutions, took over the duties of the defunct Bureau of Financing.

Sometime in November, 1951, the Bank of the Commonwealth received U. S. Treasury Check No. 1473493 for the sum of P24,475.95 drawn on the National City Bank of New York, Manila branch, in payment of the claim filed by the said bank with the U. S.—Philippine War Damage Commission for war damage reparations. Upon learning of this check, the Central Bank of the Philippines issued an instruction to all banks and banking institutions not to accept or pay said check. Accordingly, the National City Bank of New York refused to accept and pay the same. On August 13, 1951, the Bank of the Commonwealth filed a complaint with the Court of First Instance of Manila (Civil Case No. 14452) against the Central Bank of the Philippines, Miguel Cuaderno and Nicanor Tomas, then Director of the Department of Supervision and Examination of said Bank, praying that defendants be ordered to withdraw, revoke or cancel the instructions issued by them to the National City Bank of New York and to allow the latter Bank to accept and pay Check No. 1473423 issued by the United States Treasury in favor of plaintiff. And upon plaintiff's filing a bond for P5,000 subscribed by the Visayan Surety & Insurance Corporation, to answer "for such damages as defendants may sustain by reason of the injunction if it should be finally decided that plaintiff was not entitled thereto", the Court issued a writ of preliminary injunction. However, upon motion of defendants, the Court, by order of August 29, 1951, required the filing of an additional bond for the sum of P19,500 which was undertaken by the Union Surety & Insurance Co., Inc. Thereafter, the Superintendent of Banks of the Central Bank lifted its previous order to the banks stopping payment of said U. S. Treasury check.

It appears that a complaint for damages was also filed against the Central Bank, Governor Miguel Cuaderno and Ceferino Eugenio with the Court of First Instance of Manila (Civil Case No. 8352) in connection with a raid conducted by the Superintendent of Banks of the Central Bank in the premises of the plaintiff which allegedly was operating as a commercial bank despite the fact that it was in the state of liquidation.

On July 20, 1954, plaintiff filed a motion, corrected by another motion dated July 27, 1954, praying for the dismissal of Civil Cases Nos. 8352 and 14452 against defendants Central Bank of the Philippines, Miguel

Cuaderno and Nicaïor Tomas, said motion also praying that the bond filed in Civil Case No. 14452 in the total sum of P24,500 (P5,000.00 of which was subscribed to by the Visayan Surety & Insurance Corporation) "be transferred to, and maintained in full force and effect for purposes of the records of the liquidation proceeding pending before Branch VIII of the Court of First Instance of Manila, Special Proceedings No. 1930". This petition was granted by orders of the Court of August 3, 1954, and August 18, 1954.

On November 5, 1954, the Court issued an order in Special Proceedings No. R-1930 directing the liquidator, the Central Bank of the Philippines, to avail of the proceeds of U. S. Treasury Check No. 1473493 {which the bank in liquidation was able to collect), to pay the ordinary claims and other approved claims against the latter bank. In virtue of said order, the liquidator required the Bank of the Commonwealth to turn over the proceeds of the war damage check, but as it failed to do so, demands were made on the sureties. The Visayan Surety & Insurance Corporation refused to comply therewith contending that it could not effect payment unless there be a judgment to that effect, while the Union Surety & Insurance Co., Inc., failed to make any move. This precipitated the filing by the liquidator of a motion dated August 26, 1955, to forfeit the bond in said case. The Visayan Surety & Insurance Corporation opposed said motion, alleging that the Court had no jurisdiction to entertain the same or order the forfeiture of the bonds and that no award for damages could be charged against them. It was claimed that actually, no bond was filed in Special Proceedings No. R-1930; that while by order of the Court of August 18, 1954, the bond in Civil Case No. 14452 was transferred to the present case, said transfer was erroneous, improper and illegal and in effect would bind the surety beyond the terms of its contract. Furthermore, it was contended that the order of the Court dismissing Civil Case No. 14452 did not contain any award for damages on the bond, and as the aforesaid order of dismissal had long become final, no further award for damages could be charged on the bond.

On January 13, 1956, the Court granted the motion of the Liquidator and ordered the forfeiture of the bonds in favor of the Central Bank of the Philippines. From this order, the Visayan Surety & Insurance Corporation filed a motion for reconsideration, duly opposed by the liquidator. As it appears that an order denying said motion for reconsideration was issued by the Court on March 19, 1956, the liquidator filed a motion for execution of the order of January 13, 1956. Counsel for the Visayan Surety & Insurance Corporation once again opposed the aforesaid motion stating that he was not furnished copy of the order of March 19, 1956; that upon inquiry, he learned that the notice was served on the Visayan Surely company itself, and that as this service may not be considered as a notice said order had not become final as far as said oppositor was concerned. The motion for execution was left unresolved for sometime until the liquidator filed anew a motion for the resolution of the same, which latter motion was set for hearing on December 8, 1956. It appearing, however, that the Judge presiding over said branch of the Court was elevated to the Court of Appeals, no hearing was actually held. But without such hearing, the Executive Judge of the Court of First Instance of Manila issued an order dated January 3, 1957, granting the writ of execution prayed for by the liquidator; hence, the Visayan Surety company filed a motion to vacate the same, which motion was denied for lack of merit. The Visayan Surety & Insurance Corporation therefore, filed with this Court a petition for certiorari and prohibition naming the Central Bank of the Philippines, the Court of First Instance of Manila and the Sheriff as respondents, praying that the order of forfeiture of petitioner's bond be annulled and that respondents be ordered to desist from proceeding with Civil Case No. R-1930 against petitioner. And as prayed for by petitioner, this Court, by resolution of April 5, 1957, issued a writ of preliminary injunction upon the surety's filing a bond for P500.00.

As may be seen from the foregoing narration of facts, the question presented by the instant case hinges on the legality of the order of the Court of August 3, 1954, as amended by the order of August 18, 1954, transferring the bond filed in Civil Case No. 14452 to Special Proceedings No. R-1930, after the first case was dismissed upon motion of the plaintiff. (The question of the execution of the bond furnished by the Union Surety & Insurance Co.,

Inc., is not involved in this proceeding). Petitioner does not dispute the fact that the orders sought to be nullified were issued upon motion of the principal. It maintains, however, that as the bond was merely intended to answer for damages that may be caused the respondents by the issuance of the injunction in Civil Case No. 14452 and as the surety never consented to the dismissal of the complaint and the transfer of the bond to Special Proceedings No. R-1930 or even notified thereof, it cannot be held liable in a case other than the one wherein the bond was filed.

The records of the case show that the bond, V.S. & I.C. No. V-AG-51/123 for the sum of P5,000.00, undertaken by the Visayan Surety & Insurance Corporation, was filed in Civil Case No. 14452 upon order of the Court to secure payment of damages that defendants therein may sustain by reason of the issuance of injunction in said case, should it finally be decided that plaintiff (the principal) was not entitled to such a writ. But the case was dismissed upon motion of the plaintiff without defendant's opposition and, as a natural consequence, the injunction issued therein must have been dissolved, without any provision as to the liability of the surety. Such dismissal would have released the bond, but the principal, in addition to its prayer for the dismissal of the complaint, also moved for the transfer of the bond filed in Civil Case No. 14452 to Special Proceedings No. R-1930. It must be noted that under the terms of the bond, the surety binds itself with the principal to guarantee only the payment of damages that may result from the issuance of a writ of injunction in said case. Apparently aware of this specific purpose for which the bond was filed, the principal tried and was able to secure the approval of the court to the transfer thereof from Civil Case No. 14452 to the other proceeding, but in so doing, the principal, the defendants in said Case No. 14452 and the Court failed to notify the surety or even to serve notice of the order of August 18, 1954, approving the motion. Considering that the extent of the liability of a surety is determined only by the clause of the contract of suretyship (*Government of the Philippine Islands vs. Herrera*, 38 Phil. 410) or by circumstances which may be clearly deduced therefrom (*La Insular vs. Machuca Gotauco et al.*, 39 Phil. 567, cited in *Solon vs. Solon*, 64 Phil. 729), the conclusion is inevitable that upon the dissolution of the writ of injunction issued in Civil Case No. 14452, the latter's obligation under the bond was accordingly terminated. Taking into account the fact that the surety neither agreed to the transfer of the bond to another case nor acquiesced thereto, and in the absence of any proof or showing that the surety bound itself to an extension or continuance of its liability the court was without authority to order the transfer of such bond to another case and, consequently, the order of August 3, 1954, as amended by the order of August 18, 1954, is null and void. It goes without saying, therefore, that the order of January 13, 1956, ordering the forfeiture of the bond in Special Proceedings No. R-1930 is likewise a nullity.

Respondents, on the other hand, advance another argument. They contend that as petitioner's motion for the reconsideration of the order of forfeiture of bond was denied by the court in its order of March 19, 1956, without an appeal having been perfected despite the fact that the surety was allegedly notified thereof, the aforementioned order had become final and executory. We have gone over the records and find, as alleged by petitioner, that notice of said order was improperly served. It appeared that a copy of the aforesaid order was sent to the surety company and not to its counsel of record. On this matter, this Court had said:

Where a party has appeared by an attorney, service upon him should be made upon his attorney unless service on the party himself was ordered by the court; a notice given to the client and not to his attorney is not a notice in law. It is immaterial or unimportant that the party volunteered to get the copy, because the purpose of section 2 of Rule 27 is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case (*Chainani vs. Tancinco et al.*, 90 Phil., 862).

Under the aforecited doctrine, therefore, the service upon the party of the order denying its motion for reconsideration and not upon its attorney of record is improper and inadequate notice and does not have the effect of starting the running of the period to appeal. But this conclusion is already beside the point in view of our ruling

on the basic issue involved in this case. Wherefore, and in the light of the foregoing considerations, the orders of the lower Court of August 13, 1954, and January 13, 1956, involved herein, are hereby set aside and decision rendered granting the herein petition and making permanent the preliminary injunction issued by this Court. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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