

AFP GENERAL INSURANCE CORPORATION, PETITIONER, VS. NOEL MOLINA, JUANITO ARQUEZA, LEODY VENANCIO, JOSE OLAT, ANGEL CORTEZ, PANCRASIO SIMPAO, CONRADO CALAPON AND NATIONAL LABOR RE...*G.R. No. 151133. June 30, 2008*

Ponente: QUISUMBING, J.

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This is a petition for review on certiorari of the Decision[1] dated August 20, 2001 of the Court of Appeals in CA-G.R. SP No. 58763 which dismissed herein petitioner's special civil action for certiorari. Before the appellate court, petitioner AFP General Insurance Corporation (AFPGIC) sought to reverse the Resolution[2] dated October 5, 1999 of the National Labor Relations Commission (NLRC) in NLRC NCR CA-011705-96 for having been issued with grave abuse of discretion. The NLRC affirmed the Order[3] dated March 30, 1999 of Labor Arbiter Edgardo Madriaga in NLRC NCR Case No. 02-00672-90 which had denied AFPGIC's Omnibus Motion to Quash Notice/Writ of Garnishment and Discharge AFPGIC's appeal bond for failure of Radon Security & Allied Services Agency (Radon Security) to pay the premiums on said bond. Equally challenged is the Resolution[4] dated December 14, 2001 of the appellate court in CA-G.R. SP No. 58763 which denied herein petitioner's motion for reconsideration.

The facts of this case are not disputed.

The private respondents are the complainants in a case for illegal dismissal, docketed as NLRC NCR Case No. 02-00672-90, filed against Radon Security & Allied Services Agency and/or Raquel Aquias and Ever Emporium, Inc. In his Decision dated August 20, 1996, the Labor Arbiter ruled that the private respondents were illegally dismissed and ordered Radon Security to pay them separation pay, backwages, and other monetary claims.

Radon Security appealed the Labor Arbiter's decision to public respondent NLRC and posted a supersedeas bond, issued by herein petitioner AFPGIC as surety. The appeal was docketed as NLRC NCR CA-011705-96.

On April 6, 1998, the NLRC affirmed with modification the decision of the Labor Arbiter. The NLRC found the herein private respondents constructively dismissed and ordered Radon Security to pay them their separation pay, in lieu of reinstatement with backwages, as well as their monetary benefits limited to three years, plus attorney's fees equivalent to 10% of the entire amount, with Radon Security and Ever Emporium, Inc. adjudged jointly and severally liable.

Radon Security duly moved for reconsideration, but this was denied by the NLRC in its Resolution dated June 22, 1998.

Radon Security then filed a Petition for Certiorari docketed as G.R. No. 134891 with this Court, but we dismissed this petition in our Resolution of August 31, 1998.

When the Decision dated April 6, 1998 of the NLRC became final and executory, private respondents filed an Urgent Motion for Execution. As a result, the NLRC Research and Information Unit submitted a Computation of the Monetary Awards in accordance with the NLRC decision. Radon Security opposed said computation in its Motion for Recomputation.

On February 5, 1999, the Labor Arbiter issued a Writ of Execution^[5] incorporating the computation of the NLRC Research and Information Unit. That same date, the Labor Arbiter dismissed the Motion for Recomputation filed by Radon Security. By virtue of the writ of execution, the NLRC Sheriff issued a Notice of Garnishment^[6] against the supersedeas bond.

Both Ever Emporium, Inc. and Radon Security moved to quash the writ of execution.

On March 30, 1999, the Labor Arbiter denied both motions, and Radon Security appealed to the NLRC.

On April 14, 1999, AFGIC entered the fray by filing before the Labor Arbiter an Omnibus Motion to Quash Notice/Writ of Garnishment and to Discharge AFGIC's Appeal Bond on the ground that said bond "has been cancelled and thus non-existent in view of the failure of Radon Security to pay the yearly premiums."^[7]

On April 30, 1999, the Labor Arbiter denied AFGIC's Omnibus Motion for lack of merit.^[8] The Labor Arbiter pointed out that the question of non-payment of premiums is a dispute between the party who posted the bond and the insurer; to allow the bond to be cancelled because of the non-payment of premiums would result in a factual and legal absurdity wherein a surety will be rendered nugatory by the simple expedient of non-payment of premiums.

The petitioner then appealed the Labor Arbiter's order to the NLRC. The appeals of Radon Security and AFGIC were jointly heard as NLRC NCR CA-011705-96.

On October 5, 1999, the NLRC disposed of NLRC NCR CA-011705-96 in this wise:

WHEREFORE, premises considered, the appeals under consideration are hereby DISMISSED for lack of merit.

SO ORDERED.^[9]

In dismissing the appeal of AFGIC, the NLRC pointed out that AFGIC's theory that the bond cannot anymore be proceeded against for failure of Radon Security to pay the premium is untenable, considering that the bond is effective until the finality of the decision.^[10] The NLRC stressed that a contrary ruling would allow respondents to simply stop paying the premium to frustrate satisfaction of the money judgment.^[11]

AFGIC then moved for reconsideration, but the NLRC denied the motion in its Resolution^[12] dated February 29, 2000.

AFGIC then filed a special civil action for certiorari, docketed as CA-G.R. SP No. 58763, with the Court of Appeals, on the ground that the NLRC committed a grave abuse of discretion in affirming the Order dated March 30, 1999 of the Labor Arbiter.

On August 20, 2001, the appellate court dismissed CA-G.R. SP No. 58763, disposing as follows:

WHEREFORE, the foregoing considered, the petition is denied due course and accordingly DISMISSED.

SO ORDERED.^[13]

AFGIC seasonably moved for reconsideration, but this was denied by the appellate court in its Resolution^[14] of December 14, 2001.

Hence, the instant case anchored on the lone assignment of error that:

THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE PUBLIC RESPONDENT NLRC ALTHOUGH THE LATTER GRAVELY ABUSED ITS DISCRETION WHEN IT ARBITRARILY IGNORED THE FACT THAT SUBJECT APPEAL BOND WAS ALREADY CANCELLED FOR NON-PAYMENT OF PREMIUM AND THUS IT COULD NOT BE SUBJECT OF EXECUTION OR GARNISHMENT.[15]

The petitioner contends that under Section 64[16] of the Insurance Code, which is deemed written into every insurance contract or contract of surety, an insurer may cancel a policy upon non-payment of the premium. Said cancellation is binding upon the beneficiary as the right of a beneficiary is subordinate to that of the insured. Petitioner points out that in *South Sea Surety & Insurance Co., Inc. v. CA*,[17] this Court held that payment of premium is a condition precedent to and essential for the efficaciousness of a contract of insurance.[18] Hence, following *UCPB General Ins. Co., Inc. v. Masagana Telamart, Inc.*,[19] no insurance policy, other than life, issued originally or on renewal is valid and binding until actual payment of the premium.[20] The petitioner also points to *Malayan Insurance Co., Inc. v. Cruz Arnaldo*,[21] which reiterated that an insurer may cancel an insurance policy for non-payment of premium.[22] Hence, according to petitioner, the Court of Appeals committed a reversible error in not holding that under Section 77[23] of the Insurance Code, the surety bond between it and Radon Security was not valid and binding for non-payment of premiums, even as against a third person who was intended to benefit therefrom.

The private respondents adopted in toto the ratiocinations of the Court of Appeals that inasmuch as a supersedeas bond was posted for the benefit of a third person to guarantee that the money judgment will be satisfied in case it is affirmed on appeal, the third person who stands to benefit from said bond is entitled to notice of its cancellation for any reason. Likewise, the NLRC should have been notified to enable it to take the proper action under the circumstances. The respondents submit that from its very nature, a supersedeas bond remains effective and the surety liable thereon until formally discharged from said liability. To hold otherwise would enable a losing party to frustrate a money judgment by the simple expedient of ceasing to pay premiums.

We find merit in the submissions of the private respondents.

The controversy before the Court involves more than just the mere application of the provisions of the Insurance Code to the factual circumstances. This instant case, after all, traces its roots to a labor controversy involving illegally dismissed workers. It thus entails the application of labor laws and regulations. Recall that the heart of the dispute is not an ordinary contract of property or life insurance, but an appeal bond required by both substantive and adjective law in appeals in labor disputes, specifically Article 223[24] of the Labor Code, as amended by Republic Act No. 6715,[25] and Rule VI, Section 6[26] of the Revised NLRC Rules of Procedure. Said provisions mandate that in labor cases where the judgment appealed from involves a monetary award, the appeal may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company accredited by the NLRC.[27] The perfection of an appeal by an employer "only" upon the posting of a cash or surety bond clearly and categorically shows the intent of the lawmakers to make the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.[28] Additionally, the filing of a cash or surety bond is a jurisdictional requirement in an appeal involving a money judgment to the NLRC.[29] In addition, Rule VI, Section 6 of the Revised NLRC Rules of Procedure is a contemporaneous construction of Article 223 by the NLRC. As an interpretation of a law by the implementing administrative agency, it is accorded great respect by this Court.[30] Note that Rule VI, Section 6 categorically states that the cash or surety bond posted in appeals involving monetary awards in labor disputes "shall be in effect until final disposition of the case." This could only be construed to mean that the surety bond shall remain

valid and in force until finality and execution of judgment, with the resultant discharge of the surety company only thereafter, if we are to give teeth to the labor protection clause of the Constitution. To construe the provision any other way would open the floodgates to unscrupulous and heartless employers who would simply forego paying premiums on their surety bond in order to evade payment of the monetary judgment. The Court cannot be a party to any such iniquity.

Moreover, the Insurance Code supports the private respondents' arguments. The petitioner's reliance on Sections 64 and 77 of the Insurance Code is misplaced. The said provisions refer to insurance contracts in general. The instant case pertains to a surety bond; thus, the applicable provision of the Insurance Code is Section 177,[31] which specifically governs suretyship. It provides that a surety bond, once accepted by the obligee becomes valid and enforceable, irrespective of whether or not the premium has been paid by the obligor. The private respondents, the obligees here, accepted the bond posted by Radon Security and issued by the petitioner. Hence, the bond is both valid and enforceable. *A verbis legis non est recedendum* (from the language of the law there must be no departure).[32]

When petitioner surety company cancelled the surety bond because Radon Security failed to pay the premiums, it gave due notice to the latter but not to the NLRC. By its failure to give notice to the NLRC, AFGIC failed to acknowledge that the NLRC had jurisdiction not only over the appealed case, but also over the appeal bond. This oversight amounts to disrespect and contempt for a quasi-judicial agency tasked by law with resolving labor disputes. Until the surety is formally discharged, it remains subject to the jurisdiction of the NLRC.

Our ruling, anchored on concern for the employee, however, does not in any way seek to derogate the rights and interests of the petitioner as against Radon Security. The former is not devoid of remedies against the latter. Under Section 176[33] of the Insurance Code, the liability of petitioner and Radon Security is solidary in nature. There is solidary liability only when the obligation expressly so states, or when the law so provides, or when the nature of the obligation so requires.[34] Since the law provides that the liability of the surety company and the obligor or principal is joint and several, then either or both of them may be proceeded against for the money award.

The Labor Arbiter directed the NLRC Sheriff to garnish the surety bond issued by the petitioner. The latter, as surety, is mandated to comply with the writ of garnishment, for as earlier pointed out, the bond remains enforceable and under the jurisdiction of the NLRC until it is discharged. In turn, the petitioner may proceed to collect the amount it paid on the bond, plus the premiums due and demandable, plus any interest owing from Radon Security. This is pursuant to the principle of subrogation enunciated in Article 2067[35] of the Civil Code which we apply to the suretyship agreement between AFGIC and Radon Security, in accordance with Section 178[36] of the Insurance Code. Finding no reversible error committed by the Court of Appeals in CA-G.R. SP No. 58763, we sustain the challenged decision.

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed Decision dated August 20, 2001 of the Court of Appeals in CA-G.R. SP No. 58763 and the Resolution dated December 14, 2001, of the appellate court denying the herein petitioner's motion for reconsideration are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, concur.

[1] CA rollo, pp. 133-138. Penned by Associate Justice Wenceslao I. Aguir, Jr., with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr. concurring.

[2] Id. at 16-21.

[3] Id. at 14-15.

[4] Id. at 161-162.

[5] Rollo, pp. 63-65.

[6] Id. at 66.

[7] CA rollo, p. 30.

[8] Id. at 14-15.

[9] Id. at 20.

[10] Rollo, pp. 58-59.

[11] Id. at 59.

[12] Id. at 61-62.

[13] CA rollo, pp. 137-138.

[14] Id. at 161-162.

[15] Rollo, p. 24.

[16] Sec. 64. No policy of insurance other than life shall be cancelled by the insurer except upon prior notice thereof to the insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:

- (a) non-payment of premium;
- (b) conviction of a crime arising out of acts increasing the hazard insured against;
- (c) discovery of fraud or material misrepresentation;
- (d) discovery of willful or reckless acts or omissions increasing the hazard insured against;
- (e) physical changes in the property insured which result in the property becoming uninsurable; or
- (f) a determination by the Commissioner that the continuation of the policy would violate or would place the insurer in violation of this Code.

[17] 314 Phil. 761 (1995).

[18] Id. at 767.

[19] 367 Phil. 539 (1999).

[20] Id. at 544.

[21] No. L-67835, October 12, 1987, 154 SCRA 672.

[22] Id. at 679.

[23] Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

[24] ART. 223. Appeal. - . . .

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

x x x x

[25] AN ACT TO EXTEND PROTECTION TO LABOR, STRENGTHEN THE CONSTITUTIONAL RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES, FOSTER INDUSTRIAL PEACE AND HARMONY, PROMOTE THE PREFERENTIAL USE OF VOLUNTARY MODES OF SETTLING LABOR DISPUTES, AND REORGANIZE THE NATIONAL LABOR RELATIONS COMMISSION, AMENDING FOR THESE PURPOSES CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, EFFECTIVE ON MARCH 2, 1989.

[26] Section. 6. Bond. - In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.

[27] Navarro v. NLRC, 383 Phil. 765, 773 (2000).

[28] Catubay v. National Labor Relations Commission, 386 Phil. 648, 658 (2000).

[29] Blancaflor v. NLRC, G.R. No. 101013, February 2, 1993, 218 SCRA 366, 370-371.

[30] Madrigal and Paterno v. Rafferty and Concepcion, 38 Phil. 414, 423 (1918).

[31] Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety; Provided, That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only a reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond; Provide, however, That if the non-acceptance of the bond be due to the fault of the surety, no such service fee, stamps or taxes shall be

collected.

In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

[32] *Cordero v. The Court of First Instance of Laguna*, 67 Phil. 358, 362 (1939); F. Moreno, *Philippine Law Dictionary* 993 (3[rd] ed., 1988).

[33] Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. (as amended by Pres. Decree No. 1855.)

[34] *Sesbreño v. Court of Appeals*, G.R. No. 89252, May 24, 1993, 222 SCRA 466, 481.

[35] Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

[36] Sec. 178. Pertinent provisions of the Civil Code of the Philippines shall be applied in a suppletory character whenever necessary in interpreting the provisions of a contract of suretyship.

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