

**RE: CANCELLATION OF A MEMORANDUM ANNOTATED ON TRANSFER
CERTIFICATE OF TITLE NO. 1754. ROSA M. VDA. DE
ZABALJAURREGUI, PETITIONER AND APPELLEE, VS. LUZON SURETY
CO., INC., OPPOSIT...**

G.R. No. 16251. August 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Luzon Surety Co., Inc., appealed from the order of the Court of First Instance of Baguio City, in G.L.R.O. Record No. 11766, directing that the memorandum of the mortgage executed in favor of appellant by Rosa M. Vda. de Zabaljaurregui on her property in Baguio City be cancelled from her Transfer Certificate of Title No. 1754.

This case arose from the following facts: On October 2, 1952 the President of the Philippines remitted the unexecuted portion of the prison term of John V. Svanholm, who had been convicted of estafa, on the conditions (1) that he would pay the Government, as offended party, the adjudged indemnity of P23,377.59-P3,377.50 upon acceptance of the pardon and thereafter P500.00 a month, with a surety bond to guarantee full payment, which bond . would be forfeited to the Government in case of failure to pay any instalment; and (2) that he would voluntarily leave the Philippines, never to return. On the same day Svanholm accepted the pardon and the conditions, paid the Government P12,377.50, and with appellant as surety executed a bond in favor of the Government for PI 1,000. One of the conditions of the bond is as follows:

"The liability of the Luzon Surety Co., Inc. under this bond will expire FORTY-SIX (46) months from date hereof. Furthermore, it is hereby agreed and understood that the Luzon Surety Co., Inc. will not be liable for any claim not discovered and presented to the Company within three (3) months from the expiration of this bond and that the obligee hereby waives his right to file any court action against the surety after the termination of the period of three months above mentioned."

As counter-guaranty in favor of the surety company Rosa M. Vda. de Zabaljaurregui mortgaged to it her land above-mentioned, which mortgage was duly annotated on her certificate of title. Svanholm left the Philippines and paid additional amounts totaling P6,100.00, but defaulted after his last payment on February 10, 1956, leaving a balance of P4,000.00.

On March 19, 1959 Rosa M. Vda. de Zabaljaurregui filed with the Court of First Instance of Baguio City a petition for cancellation of the memorandum of mortgage annotated on her certificate of title, alleging that the period specified in the bond in respect of the surety's liability expired on November 2, 1956; that no claim had been presented to the surety within that period and therefore the Government had waived its right to file any court action to enforce liability under the bond; and that the surety having thus been released, the mortgage in its favor should also be released. The surety company opposed the petition on the grounds that its liability had been neither released nor cancelled by the Government, which might at any time contest the validity of the last paragraph (quoted above) of the bond and claim from the surety the payment of the unpaid balance due from Svanholm; and

that the petition does not find any authority under Act 496 for which reason the court, acting as a land registration court, had no jurisdiction over the subject matter of the petition. The Government was impleaded through the Solicitor General, who filed an answer to the petition, alleging that it was for the City Fiscal of Manila to take parties thereto being petitioner and the surety company alone; and that it was for the City Fiscal of Manila to take whatever action he might deem fit as regards the violation of the terms of the conditional pardon granted to Svanholm,

On June 22, 1956 the court granted the petition and ordered the Register of Deeds of Baguio to cancel the memorandum of mortgage in favor of the surety company. Reconsideration of the order having been denied, the surety company appealed to this Court.

Since the mortgage in question is auxiliary to the bond, the issue is whether or not the surety company may still be held liable under the latter on account of Svanholm's default.

The bond was executed on October 2, 1952 and expired forty-six months thereafter, or on August 2, 1956. In accordance with its terms appellant would not be liable for any claim not discovered and presented within three months from the expiry date. If the Government had any claim against appellant—as indeed it had, for as of February 29, 1956, Svanholm should have, but had not, paid his account in full [1]—then it should have presented such claim to appellant not later than November 2, 1956. Its failure, to do so, as expressly stipulated in the bond, constituted a waiver of its right to file a court action thereon.

Invoking the case of *Pao Chuan Wei vs. Nomorosa*[2] appellant argues that the Government might still file suit against it and contest successfully the legality of the aforequoted provision of the bond. The citation is not in point. The stipulation in the bond involved in said case, which is similar to the one involved here, was not declared void. It was merely interpreted to mean that presentation of the claim within three months was a condition precedent to the filing of a court action. Since the obligee in said case presented his claim seasonably although it did not file the action within the same period, this Court ruled that the stipulation in the bond concerning the limitation being ambiguous, the ambiguity should be resolved against the surety, which drafted the agreement, and that the action could be filed within the statutory period of prescription. In the instant case the Government presented no claim at all; indeed, has evinced no desire to hold appellant surety company responsible. Up to March 19, 1959, when appellee filed her petition, the Government had made no demand on appellant. And although it was impleaded as a party, the Republic of the Philippines, through the Solicitor General, took no steps to protect its interests, and instead passed the responsibility to the City Fiscal of Manila, who likewise has not taken action on the bond up to now.

To be sure, the power of a land registration court to cancel, alter or amend a certificate of title or any memorandum thereon, pursuant to Section 112 of Act No. 496, may be exercised only if there is "unanimity among the parties," or there is no adverse claim or serious objection on the part of any one of them, for otherwise the case becomes controversial and should be threshed out in an ordinary case. But appellant's objection to the petition is not serious enough to make this case controversial. The Government, although made as party, has adopted an attitude of complete indifference in the face of petitioner's contention that appellant is no longer liable on its bond—a contention that appears to be unassailable. There is therefore no longer any reason for the continuation of the mortgage as the principal obligation which it guarantees has long ceased to be demandable. It would be unfair to appellee if the mortgage should continue, under these circumstances, to encumber her property.

The appealed order is affirmed, with costs against appellant.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

[1] The surety bond (Annex B) which Svanholm and appellant surety company executed, was to guaranty payment of the balance of PI 1,000. By its terms, Svanholm was supposed to have paid the P500 monthly beginning April 30, 1954 until the P11,000 should have been fully paid. If Svanholm had paid the monthly installments as they fell due, he should have finished paying as of February 29, 1956, the date of his last payment, he had paid only a total of P6,100 leaving an unpaid balance of P4,900". It is therefore clear that even prior to said date, he had been delinquent in the payment of the accruing installments—by reason of which fact the bond (Annex)] should have been forfeited in favor of the Government of the Republic of the Philippines following the procedure outlined by the aforequoted provision of the bond.

[2] 103 Phil. 57.

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