

PEDRO R. JAO AND CATALINA SIA, PLAINTIFFS AND APPELLEES, VS. ROYAL FINANCING CORPORATION, ET AL., DEFENDANTS AND APPELLEES. ASSOCIATED INSURANCE & SURETY CO., INC., BONDSMAN AND...

G.R. No. 16716. April 28, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On October 30, 1957, plaintiffs spouses Pedro R. Jao and Catalina Sia, signed a promissory note in favor of the defendant Royal Financing Corporation, guaranteed by a chattel mortgage, executed on October 31, 1957. On June 27, 1958, in accordance with the extra-judicial foreclosure of chattel mortgage filed by defendant corporation on June 25, 1958, the Sheriff of Manila, announced and advertised for sale the properties of plaintiff, which were the object of the chattel mortgage, the same to take place on July 11, 1958 at plaintiffs' premises in Manila. On July 7, 1958, plaintiffs filed a complaint (Civil Case No. 36800), against the Royal Financing Corporation and the Sheriff of Manila, praying the lower court to declare the promissory note of October 30, 1957, null and void, for having allegedly paid the same; to declare the chattel mortgage of October 31, 1957 null and void, due to the payment of the obligation, and to order the Sheriff to desist from selling the properties and the corporation to pay plaintiffs the sum of P1,000.00 as attorney's fees and P5,000.00 as moral damages. In order to stop the sale of the properties at public auction, plaintiffs on July 10, 1958, filed plaintiffs' bonds for preliminary injunction in the amount of P2,500.00 with plaintiffs, as principals and the defendant Associated Insurance & Surety Co., Inc., as sureties. The trial court suspended the sale scheduled for July 11, 1958. Subsequently, the defendants filed their separate Answers, which, after the customary admissions and denials, interposed affirmative defenses claiming that plaintiffs have no cause of action, that plaintiffs were still indebted to defendant corporation in the sum of P1,713.30, so much so that plaintiffs and their counsel Gualberto Cruz, had on April 28, 1958, asked for an extension of 30 days within which to pay their indebtedness and set up a counterclaim praying for P15,000.00 as moral damages, P1,000.00 for attorney's fees; and to proceed with the sale of the chattels in accordance with the extra-judicial foreclosure of the chattel mortgage.

On June 11, 1959, the lower court issued the following order of dismissal:

"When this case was called for hearing on June 9, 1959, at 10:00 o'clock a.m., neither plaintiffs nor their counsel, appeared, although a certain Mr. Eugenio Gutierrez, not himself a lawyer, appeared for them, stating that their attorney, Mr. Gualberto Cruz, was ill. There was no formal motion for postponement made nor was there presented a medical certificate with regards to Atty. Cruz' illness.

Defendants, through counsel, made an oral motion to dismiss. The Court held its ruling in abeyance until shown by the Sheriff's return that there had been due notice to said plaintiffs of the hearing set for June 9, 1959, in which case, the said oral motion to dismiss would be granted, but without prejudice.

The Court has since been satisfied by the sheriff's return that plaintiffs, through their counsel, Atty. Gualberto

Cruz had been properly notified. Premises considered, the motion to dismiss is hereby granted. Let this case be dismissed without prejudice. * * *".

On September 7, 1959, defendant corporation moved for judgment against the surety's bond (Associated Insurance & Surety Co., Inc.), as the sheriff had reported that the mortgaged properties had disappeared and were no longer in the plaintiffs' possession, and no auction sale could be carried out, and that the defendant corporation desired to present evidence to prove its pending counterclaim. On September 19, 1959, counsel for the surety company opposed, alleging that the motion was premature as the counterclaim had not yet been decided, and there was no decision or ruling, subject of execution against the surety, should the plaintiffs be unable to satisfy said decision.

On October 12, 1959, the lower court issued an order, the relevant portions of which are hereunder reproduced—

"* * *. Under the circumstances, and particularly because the bond in question was put up precisely to secure defendant's right, particularly in its mortgage credit, in the satisfaction of which, the sale of plaintiffs' properties was suspended, the surety cannot now be heard to claim that the bond cannot be executed either because it is premature or because it was not mentioned in the order to dismiss this action.

This Court is not to be hoodwinked with such subtle legal juggling, and hereby orders:

- That the bond of P2,500.00 put up by plaintiffs through the Associated Insurance & Surety Co., Inc. be executed to satisfy defendant's mortgage claim and
- That this case with respect to defendant's counterclaim be tried on November 3, 1959, at 9:00 o'clock in the morning."

A motion for reconsideration filed by the Surety Company of the above Order was denied. Hence, the present appeal was directly elevated to this Court, the questions raised being purely legal in nature. Appellant surety company alleged, that the trial court erred (1) In holding that plaintiffs' bond for preliminary injunction issued by the bondsman-appellant was to secure the defendant-appellee Hoyal Financing Corporation's mortgage credit; and (2) in ordering the execution of the bond on behalf of plaintiffs-appellees. The pertinent portions of the bond are quoted below:

"WHEREAS the above-named plaintiff has filed an action in the Court of First Instance of Manila against the above-named defendant and prayed for a preliminary injunction and the Court has ordered that a writ of preliminary injunction issue upon the filing of a bond in the sum of TWO THOUSAND FIVE HUNDRED PESOS ONLY (P2,500.00) Philippine Currency;

WHEREAS, we PEDRO R. JAO & CATALINA SIA as Principal and the ASSOCIATED INSURANCE & SURETY CO. INC., of Manila as Sureties, in consideration of the above and of the issuance of said writ of preliminary injunction, hereby, jointly and severally, bind ourselves to herein defendants in the sum of TWO THOUSAND FIVE HUNDRED PESOS ONLY (P2,500.00) Philippine Currency, under the condition that we and the plaintiff will pay to herein defendants the party enjoined all such damages as surety party may sustain by reason of the injunction, if the Court should finally decide that the plaintiff was not entitled thereto."

The purpose of the bond, therefore, is to secure the defendants-appellees (Corporation), for any such damages they may sustain by reason of the injunction, if the Court should finally decide that the plaintiffs-appellees (spouses Jao) were not entitled thereto. There is nothing which could even remotely be construed to mean as a security for the mortgage credit of the corporation. The bondsman-appellant has nothing to do with the mortgage credit; it did not issue the bond with the idea of securing said mortgage credit. The bond was solely and expressly issued for the purpose of securing the prayer for preliminary injunction filed by the plaintiff-appellee and to secure the defendants-appellees for whatever damage they may sustain as a result or by reason of the injunction, if

the same should be declared as wrongfully issued. A guaranty can not extend to more than what is expressly stipulated there; it cannot be extended by implication beyond its specified limits (Art. 2055, new Civ. Code; *Uy Aloe vs. Cho Jan Ling*, 27 Phil., 427; *Solon vs. Solon*, 64 Phil., 729). We, therefore, hold that the bond in question was not put up to secure defendants right, particularly their mortgage credit.

Granting for the purpose of argument that the bond covers the mortgage credit, the defendant-appellant poses the question as to whether or not the execution of the judgment has been effected in accordance with law. It contends it is not. The plaintiffs-appellees and the trial court claim otherwise. The pertinent provisions of law applicable to the matter on appeal, are section 9, of Rule 60, in connection with section 20 of Rule 59. Damages against the surety under a bond for attachment, injunction, receivership and delivery of personal property (replevin), can only be obtained or awarded, pursuant to these provisions. In order that the surety may be bound under the bond for damages, the following requisites must be fulfilled, to wit: (1) The application for damages must be filed in the same case where the bond was issued; (2) such application for damages must be filed before the entry of final judgment; and (3) after a hearing with notice to the surety (*Facundo vs. Tan, et al.*, *Facundo vs. Santos, et al.*, *Facundo vs. Lim, et al.*, 85 Phil., 248, 47 Off. Gaz., 2912; *Visayan Surety & Ins. Corp. vs. Pascual*, 85 Phil., 779; 47 Off. Gaz., 5075; *Liberty Cons. Co. vs. Pecson, et al.*, 89 Phil., 50; *Abelow vs. De la Riva, et al.*, 105 Phil., 159). The dismissal of the case filed by the plaintiffs-appellees on July 11, 1959, had become final and executory before the defendant-appellee corporation filed its motion for judgment on the bond on September 7, 1959. In the order of the trial court, dismissing the complaint, there appears no pronouncement whatsoever against the surety bond. The appellee-corporation failed to file its proper application for damages prior to the termination of the case against it. It is barred to do so now. The prevailing party, if such would be the proper term for the appellee-corporation, having failed to file its application for damages against the bond prior to the entry of final judgment, the bondsman-appellant is relieved of further liability thereunder (*Del Rosario vs. Nava*, 95 Phil., 637; 50 Off. Gaz., [9] 4189).

The motion for judgment against surety's bond filed by the appellee-corporation, is not the proper application spoken of under sec. 20, Rule 59. The said motion prayed for immediate judgment, without even asking the trial court to first determine, thru proper hearing, the reasonableness or reality of the claim for damages, considering the fact that the bond held the bondsman liable for damages, if any, sustained by the corporation in or by virtue of the issuance of the injunction, and not for the mortgage credit. A claim even filed within the time is not sufficient to render the bond answerable for damages. Such claim for damages must be duly substantiated and proven by competent evidence to show that they are not merely fabricated or made on pretext. There having been no hearing, the trial court was not justified in rendering judgment against the bondsman-appellant for any amount, much less the full amount of the bond, as was adjudged in the present case by the said trial court (*Jesswani vs. Daldos*, G. R. No. L-4651, May 12, 1952).

In view hereof, we reverse the orders of the trial court dated October 12, 1959 and November 17, 1959, rendering judgment against the bond in question, and enter another relieving the bondsman-appellant of further responsibility in connection therewith. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., and Dizon, JJ., concur.

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