

EMILIO SY, ET AL., PETITIONERS, VS. HON. PATRICIO CENIZA, ETC., ET AL., RESPONDENTS.*G. R. No. 16961. June 29, 1962*

Ponente: PADILLA, J.

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Bonifacio R. Sevilla and Matias Ranillo, Jr. were movie film producers doing business under the style of Sevilla-Ranillo Productions. Sometime before 1955 they and theater owners Persing Tan Queto and Antonio Yap Hockun entered into a contract whereby the latter were granted the exclusive right to exhibit at their Waling-Waling Theater at Ozamiz City, Ken Theater at Pagadian, Zamboanga del Sur, Ivy Theater at Dipolog, Zamboanga del Norte, and Gen Theater at Oroquieta, Misamis Occidental, all the pictures to be produced by the former under a profit-sharing ratio of 50-50% if a deposit of not more than P2,000 per picture be made by the theater owners within 30 or 45 days before the release of any picture and under a ratio of 60-40% in favor of the producers if no deposit be needed by the latter. It was stipulated that the producers "shall not enter into any booking contract of any kind with any theater" in the places above enumerated. The first picture produced under the contract was entitled "Paradista" and the parties complied with their respective obligations. The second picture produced was entitled "Dalagang Pilipinhon," but the producers sold it to Mrs. Capper, who was the maternal grand-mother of Matias Ranillo, Jr., one of the producers. In view of this sale, the theater owners brought an action against Bonifacio R. Sevilla and Matias Ranillo, Jr. for specific performance and breach of contract praying that they be ordered to perform the obligations under the contract and to pay damages, and that a preliminary writ of mandatory injunction issue (civil case No. 1828). On 13 October 1955 the court issued a writ ordering the defendants producers to turn over the film "Dalagang Pilipinhon" to the Sheriff of Cebu City who in turn was directed to deliver ' it to the plaintiffs or their authorized representatives and enjoining the release to or exhibition thereof by any other cinema or theater owners in Dipolog, Zamboanga del Norte, City of Ozamis and Pagadian, Zamboanga del Sur. On 31 October 1955 upon a counterbond in the sum of P20,000 filed by the defendants the court dissolved the preliminary writ of mandatory injunction. In the said bond, Emilio Sy, Silvino Clarete and Florencio Calugcug, the petitioners herein, were the sureties or bondsmen.

On 29 April 1957 the court rendered judgment ordering the defendants, jointly and severally, to pay the plaintiffs P5,000 for actual and moral damages, P1,000 as attorney's fees, and costs. On 19 November 1958 a writ of execution and on 23 February 1959 as alias writ thereof were issued, the first having been returned unsatisfied (Annexes B and B-I).

On 18 February 1959 the sureties in the counterbond, petitioners herein, were served notice that their property would be sold at public auction (Annex C). By an urgent petition filed on 17 March 1959 they prayed that the Provincial Sheriff of Misamis Occidental be enjoined from selling their property and that the writ of execution issued on their counterbond be set aside (Annex D). The plaintiffs, respondents herein, objected thereto. On 21 March 1959 the sale of the petitioners' property set for 31 March 1959 was enjoined (Annex E).

On 31 March 1959 the petitioners replied to the respondents' objection, contending that their counterbond could

not answer for the judgment rendered in the case, for said bond was put up to answer only for damages which the dissolution of the writ of preliminary injunction might have brought about or caused to the respondents and that after final judgment had been entered any claim against the bond was barred and the court ceased to have jurisdiction over it (Annex F). On 14 May 1959 the court denied the petition to consider the counterbond withdrawn.

On 9 June 1959 the respondents filed a "Petition for the Final Charge of Defendants' Bond and for the Issuance of Writ of Execution Thereof" (Annex H), to which on 17 June 1959 the petitioners objected (Annex I). On 15 June 1959 the petitioners moved for the reconsideration of the order of 14 May 1959 denying their petition to consider or declare the counter bond withdrawn (Annex G).

On 12 April 1960 the court again denied the discharge or withdrawal of the counterbond and allowed the respondents to apply or ask for a hearing with notice to the petitioners to prove the extent of damages they (the respondents) had suffered as a result of the dissolution of the writ of preliminary injunction issued on 13 October 1955.

By these proceedings, the petitioners pray this Court to enjoin the respondent court from hearing or receiving evidence on the damages arising or resulting from the dissolution of the writ of preliminary injunction, to annul the orders of 14 May 1959 and 12 April 1960 and to grant them any other just and equitable relief.

The question to determine is whether after judgment had been rendered which has become final and executory, a counterbond filed or put up by sureties or bondsmen, who were not parties to the action nor had been notified of the proceedings had therein, may be made or held liable to answer for and satisfy the judgment on their counterbond.

The petitioners contend that under such circumstances they are relieved from liability on their counterbond; whereas the respondents claim that, even after entry of final judgment, they may be made or held answerable on their counterbond to satisfy the judgment rendered in the case.

The point had been passed upon by this Court in the case of *Alliance Insurance & Surety Co., Inc. vs. Hon. Edmundo S. Piccio etc. et al.*, 105 Phil., 1192 where it was

said that—

It really appears from the above that the application for damages resulting from the issuance of a writ of preliminary injunction must be filed before the trial or before entry of final judgment with due notice to the other party and his surety, setting forth the facts showing his right to the damages and the amount thereof. It likewise appears that the damages may be awarded only upon proper application and after proper hearing, and shall be included in the final judgment, the philosophy of this ruling being that the court that had acted on the provisional remedy which caused the damages has the exclusive jurisdiction to assess them because of its control of the case. * * * And it has been held that this remedy is exclusive and by failing to file a motion for the determination of damages on time and while the judgment is still under the control of the court, the claimant loses his right to such damages,

and after stating that the issue involved was—

* * * Since plaintiff's claim for damages has already been awarded in the main decision without notice to the surety and the decision has become final, can said claim still be pressed against the surety by setting the same for hearing and giving the surety notice thereof? Does the failure to notify the surety on time relieve the surety from his liability under the bond?

this Court held—

This is the issue that was resolved by this court in a more recent case wherein after making a review of all the decisions of this Court on matters pertaining to the execution of the bond that may be filed in relation to attachment, injunction, and replevin, reached the conclusion that such failure is fatal in that it has the effect of relieving the surety from liability. * * * (Italics supplied.)

Contrary to the respondents' contention, there is no distinction or difference between sureties or bondsmen of a bond and those of a counterbond, for section 9, Rule 60, of the Rules of Court makes no such distinction or difference. "Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed ascertained, and awarded under the same procedure as prescribed in section 20 of Rule 59." [1]

The writs prayed for are granted; the orders entered by the respondent court on 14 May 1959 and 12 April 1960 are annulled and set aside, without special pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Section 9, Rule 60, of the Rules of Court.

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